



**CITY OF MARSHALL  
Personnel Committee**

**A g e n d a**

**Tuesday, September 12, 2023 at 4:00 PM  
On Main, City Hall**

**APPROVAL OF AGENDA**

**APPROVAL OF MINUTES**

- [1.](#) Approval of the Minutes

**NEW BUSINESS**

- [2.](#) Consider Personnel Policy Amendments

**ADJOURN**

**Disclaimer: These agendas have been prepared to provide information regarding an upcoming meeting of the Common Council of the City of Marshall. This document does not claim to be complete and is subject to change.**

## CITY OF MARSHALL AGENDA ITEM REPORT

<b>Presenter:</b>	Chair
<b>Meeting Date:</b>	Tuesday, September 12, 2023
<b>Category:</b>	APPROVAL OF MINUTES
<b>Type:</b>	ACTION
<b>Subject:</b>	Consider Approval of the Minutes
<b>Background Information:</b>	Enclosed are the minutes from the previous meeting.
<b>Fiscal Impact:</b>	
<b>Alternative/ Variations:</b>	Staff encourages Members to provide any suggested corrections to the minutes in writing to City Clerk, Steven Anderson, prior to the meeting.
<b>Recommendations:</b>	That the minutes from the previous meeting be approved as filed with each member and that the reading of the same be waived.

-UNAPPROVED-

MINUTES  
PERSONNEL COMMITTEE MEETING  
February 21, 2023, at 12:45 p.m.

MEMBERS PRESENT: Steven Meister, Amanda Schroeder, and Craig Schafer

MEMBERS ABSENT: None

STAFF PRESENT: Sheila Dubs, Human Resource Manager; Sharon Hanson, City Administrator; E.J. Moberg, Director of Administrative Services; Laura Wing, Payroll and Benefits Specialist; Karla Drown, Finance Director; Trisha Stelter, MMU Human Resources/Payroll Coordinator; and Kevin Lee, MMU Finance Manager.

The meeting was called to order at 12:45 PM.

MOTION BY Schafer, SECONDED BY Schroeder to appoint Councilmember Meister as the Committee Chairperson. ALL VOTED IN FAVOR 2-0.

MOTION BY Schafer, SECONDED BY Schroeder to approve the Minutes of the November 7, 2022 meeting. ALL VOTED IN FAVOR 2-0.

Chairperson pro tem Schroeder requested Administrator Hanson, introduce the agenda item under consideration, Refined Community Services Organizational Structure.

Councilperson Meister arrived at 12:50 p.m.

Administrator Hanson gave a background to the change process of the Community Services structure. Since December 13, 2022 when the Council approved a reorganization, Hanson and Human Resources have been working on revised job descriptions for the Parks Superintendent and the Community Education Coordinator positions. Both positions have taken on additional responsibilities and supervisory duties, which were substantial enough to send to Gallagher for a re-evaluation of job ratings. The Committee reviewed the current and proposed DBM proposals and the history of the compensation study decisions. Hanson explained that positions with a DBM in the C ranges become FLSA exempt, which will impact the Community Education Coordinator position. Hanson also reviewed the new pay range proposals. Schafer commented on support of the FLSA exempt movement with the Community Education Coordinator position. Hanson noted that there will be a title change for the Parks Superintendent to Parks and Recreation Superintendent, not to a director title as formerly presented. Hanson further explained that in consultation with Gallagher, our compensation and job evaluation consultant, a director title and

DBM rating are not appropriate for this job description. The consultant also recommended that the Community Education Coordinator title remain the same; it will be noted in the job description, however, that this position is the City's designated Community Education Director. The Committee discussed and agreed on the titles of Parks and Recreation Superintendent and Community Education Coordinator.

Hanson reviewed the proposed organizational structure with amendments to the office support positions. Hanson reviewed the history and current utilization of the temporary office helper position. Hanson proposed to change that temporary position to a part-time permanent position, which would result in greater consistency with staffing and duties. Staff are seeking approval for a part-time position at 24 hours per week. At a future meeting, Staff will also be bringing forward a proposed realignment with the Administrative Assistant and existing full-time Office Assistant/Receptionist positions. Meister asked about the future workload for the office staff. Dubs responded that the work load is there. Schafer asked about benefit eligibility. Dubs responded that this part-time employee would not be benefit-eligible.

MOTION BY Schafer, SECONDED BY Schroeder to approve the refined Community Services Organizational Structure. ALL VOTED IN FAVOR 3-0.

MOTION BY Schafer, SECONDED BY Schroeder to approve the DBM structure and amended wage schedule. ALL VOTED IN FAVOR 3-0.

Chairperson Meister requested E.J. Moberg introduce the next agenda item under consideration, Workers Compensation Quote and Renewal.

Moberg reviewed the history of the quote process and dates. Staff had additional questions about the BITCO quote, so the City renewed with LMCIT, until the questions could be answered. Moberg reviewed the information in the committee packet. Moberg noted that the resolution for the appointment of the insurance agent notes that the City would be providing 6% of the annual premiums for property and 2% for worker's compensation. Moberg reviewed the questions Staff had regarding volunteer coverage, and the LMCIT to BITCO comparison summary sheet. Moberg stated that staff have received no response from our agent on several questions and potential gaps in coverage that were identified, and the question of effective date is unanswered at this time. Moberg identified that a single reference, the City of Monticello, was provided for staff to perform a reference check on BITCO services, which has been conducted. Staff have requested other governmental entity references, but have not received any references to date. The pricing information was reviewed. Moberg noted that the North Risk agent has indicated that the pricing quote is being re-reviewed at this time by BITCO. Moberg noted that the pricing information includes an agent commission of 7% to North Risk, not 2% as the resolution with LMCIT indicated.

Schafer asked if our City Attorney has reviewed this information. Moberg indicated that she has not been requested to do so. Schroeder stated that it makes us nervous that we're not getting the

answers we need to our questions. Moberg noted that the LMCIT has a clause that the City cannot return for a minimum of three years if we leave the LMCIT for worker's compensation coverage. The City also received a quote from MN Assigned Risk Pool, that number was lower than what we received from LMCIT. Schafer indicated that this savings is almost 2% of the levy, which is hard to walk away from that. Meister asked why the LMCIT can cut us out for three years. Moberg stated that the initial thought from staff is that this company is new to Minnesota public entities, and while we appreciate the savings, we are uncomfortable in taking on risks. Hanson indicated that we don't have a ton of workers compensation claims, and she indicated agreement with Councilmember Lozinski, that the BITCO quote is worthy of a look due to the pricing and number of claims we have. Stelter asked if LMCIT was contacted to review their pricing. Moberg indicated that he did contact them and there is no change in pricing. Schafer asked who reinsures BITCO. Moberg answered that staff have not requested this information. Schafer indicated support for moving to BITCO. Meister asked MMU staff present what they think. Lee stated that he understands the savings, but is concerned about being first. He stated that MMU has the ability to raise rates, as needed, but MMU has very little usage of workers compensation and no concerns with our current company. Lee stated that trying to get answers from North Risk about BITCO has been difficult and asked why our agent didn't conduct an RFP for five different companies to quote us. It was noted that North Risk is the agent for the City of Monticello, the only public entity in Minnesota that is currently working with BITCO. Meister indicated that we're talking huge money. If we used a lot of these things, we may have a germane argument. The most important thing is to keep employees safe and review safety practices with Supervisors. Schafer asked for clarification on the percent of premiums paid to LMCIT, exposure testing, and tort limits. Moberg explained that the City has 2.5 million in tort limits, which is more than the minimum required.

MOTION BY Schafer, SECONDED BY Schroeder to recommend BITCO as the provider for workers compensation insurance. ALL VOTED IN FAVOR 3-0.

Schroeder requested Staff provide the new pricing quote to the Committee from BITCO when that is received.

MOTION BY Schafer, SECONDED BY Meister to adjourn the meeting. Meeting adjourned at 1:40 PM. ALL VOTED IN FAVOR 3-0.

Respectfully Submitted,

Sheila Dubs  
Human Resource Manager

**CITY OF MARSHALL  
PERSONNEL COMMITTEE  
AGENDA ITEM REPORT**

<b>Presenter:</b>	Sheila Dubs
<b>Meeting Date:</b>	Tuesday, September 12, 2023
<b>Category:</b>	NEW BUSINESS
<b>Type:</b>	ACTION
<b>Subject:</b>	Consider Personnel Policy amendments
<b>Background Information:</b>	<p>City staff is proposing amendments to the Personnel Policy. Staff will review these amendment recommendations at the committee meeting.</p> <p>There are 3 categories of amendments.</p> <ol style="list-style-type: none"> <li>1) New MN laws;</li> <li>2) Recommended: to clarify or clean up language, or to more closely align with the LMC model policy; and</li> <li>3) Technical amendments (i.e., title/department changes, etc.)</li> </ol> <p><b>Amendments due to new MN laws:</b></p> <p>1.9—Reasonable Break Time for Nursing Mothers  7.6—Pregnancy and Parenting Leave  7.7—School Conference/Activity Leave  7.16—Bone Marrow and Organ Donation Leave  7.17—Elections/Voting  Chapter 10—Drug Free Workplace</p> <p><b>Recommended amendments:</b></p> <p>7.2—Vacation Leave  7.5—Funeral/Bereavement Leave  8.6—Use of City-owned vehicles  Appendix A and B</p> <p><b>Technical amendments:</b></p> <p>5.1—Direct Deposit  5.7—Overtime/Compensatory Time  5.10—Exempt Employees  6.1--Eligibility  6.2—Group Health and Welfare  6.5—Public Employees Retirement Fund  6.7 --Workers Compensation Insurance  6.8—Disability Insurance  7.0—Leave policies—introduction section  7.3—Vacation Donation</p>

	7.11—Leave of Absence without Pay 8.4—Clothing Allowance 8.18—Social Media 9.1--Workplace Accidents, Injuries, and Illnesses 11.5-Travel Advances 12.5—Employee Responsibilities
<b>Fiscal Impact:</b>	
<b>Alternative/ Variations:</b>	Several revisions are required in order to comply with new Minnesota laws that were effective on 07/01/2023. If the Committee desires additional discussion on one or more policies, staff request the Committee consider approval of the policies that can move forward for Council consideration, and staff will schedule another committee meeting for those policies that require further discussion.
<b>Recommendations:</b>	motion to recommend approval to the City Council.



## Personnel Policy Manual

ADOPTED: 08/25/2009

UPDATED: ~~05/23/2023~~DRAFT



**CITY OF MARSHALL  
PERSONNEL POLICY MANUAL**

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## Chapter 1: INTRODUCTION

### 1.9 REASONABLE BREAK TIME FOR NURSING MOTHERS AND LACTATING EMPLOYEES

Amendments to this policy comply with a new MN law.

~~A Nursing mothers and lactating employees~~ will be provided reasonable, paid break times to express milk ~~for her infant child during the 12 months following the birth of the child.~~ The break times ~~must~~ may, if possible, run concurrently with any break times already provided to the employee. The City will provide a clean, private, and secure room/location (other than a bathroom) that is in close proximity to her work area, shielded from view, free from intrusion, and includes access to an electrical outlet, where the ~~nursing mother employee~~ can express milk in private. Meal breaks (e.g., 30-minute unpaid lunches) may not be converted to paid time under this policy. The City will not discharge, discipline, penalize, interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate against an employee for asserting rights or remedies under this policy. This policy will be administered in accordance with Minnesota law (Statute 181.939).

## Chapter 5: COMPENSATION

All employees of the City will be compensated according to schedules adopted by the City Council. Unless approved by the Council, employees will not receive any amount from the City in addition to the pay authorized for the positions to which they have been hired to or appointed. Expense reimbursement for travel expenses may be authorized in addition to regular pay (reference Chapter 11: Travel and Training Policy).

### 5.1 DIRECT DEPOSIT

As provided for in Minnesota law, all employees are required to participate in direct deposit for payroll purposes. Employees are responsible for notifying the ~~Finance-Human Resource~~ Department of any change in status including changes in address, phone number, names of beneficiaries, marital status, relevant bank account information, etc. Employees receive a notice of deposit on the Friday following the close of the pay period.

### 5.7 OVERTIME / COMPENSATORY TIME

The City has established this overtime policy to comply with applicable state and federal laws governing accrual and use of overtime. In accordance with the Fair Labor Standards Act, the City Administrator will determine whether each employee is designated as *exempt* or *non-exempt* from earning overtime.

Overtime work is hours worked in addition to the established schedule, over 8 hours worked per day or the normally scheduled work day (i.e., 10-hour shift) and may only be performed with the approval of the appropriate division director or supervisor. Vacation, sick leave, paid holidays, compensatory time, and other types of leave do not count toward "hours worked". All authorized overtime for eligible employees shall be compensated at 1.5 times the employees regular base rate times the number of hours worked or taken as compensatory time off.

Overtime will be compensated for any authorized time worked over forty (40) hours during a normal work week; except for Public Safety employees that are normally scheduled to work more than an 8-hour work day, in which case, overtime will be calculated as being over 80 hours during a normal two-week work period.

Employees will be compensated for overtime over 8 hours worked per day or their normally scheduled work day (i.e., 10-hour shift), except upon employee request and supervisor approval, additional hours worked over 8 hours per day, or hours worked over the employee's normally scheduled work day (i.e., 10-hour shift), may be paid as regular time as long as hours worked do not exceed 40 hours worked per week.

Employees who are required to work overtime will be compensated on an overtime basis 1.5 times his/her regular rate. All employees, in all departments, are required to work overtime as requested by their supervisors as a condition of continued employment. Refusal to work overtime may result in disciplinary action up to and including termination. Supervisors will make reasonable efforts to balance the personal needs of their employees when assigning overtime work.

The employee's supervisor must approve overtime hours in advance. An employee who works overtime without prior approval may be subject to disciplinary action up to and including termination.

Compensatory time may be granted to an employee in lieu of overtime pay at the mutual agreement of the employee and supervisor, provided that such compensatory time earned does not exceed a total accumulation of 45 hours (equivalent to 30 hours of overtime work). Once an employee has accrued 45 hours of compensatory time, all further overtime will be paid. Employees may request and use compensatory time off in the same manner as other leave requests. All compensatory time will be marked as such on official timesheets, both when it is earned and when it is used. The ~~Finance~~ Human Resource Department will maintain compensatory time records. All compensatory time accrued will be paid when the employee leaves City employment at the hourly pay rate the employee is earning at that time.

#### **5.10 EXEMPT (NON-OVERTIME-ELIGIBLE) EMPLOYEES**

Exempt employees are expected to work the hours necessary to meet the performance expectations outlined by their supervisors. Generally, to meet these expectations, and for reasons of public accountability, an exempt employee will need to work 40 or more hours per week. The normal hours of business for management staff are Monday thru Friday, 8:00 a.m. to 5:4:30 p.m., plus evening meetings as necessary. Exempt employees do not receive extra pay for the hours worked over 40 in one workweek.

Exempt employees are paid on a salary basis. This means that they receive a predetermined amount of pay each pay period and are not paid by the hour. Their pay does not vary based on the quality or quantity of work performed, and they receive their full weekly salary for any week in which any work is performed.

Exempt employees are required to use paid leave when on personal business or away from the office for four (4) hours or more, on a given day. Absences of less than four (4) hours do not require use of paid leave as it is presumed that the employee regularly puts in work hours above and beyond the normal 8:00 a.m. to 5:4:30 p.m. Monday thru Friday requirement. Management employees must communicate their absence to the City Administrator or his/her designee.

The City will ~~only~~ make deductions from the weekly salary of an exempt employee in the following situations:

- Deductions for the first and last workweek of employment, when only part of the week is worked by the employee.
- Deductions when the employee is absent for a full day due to sickness or disability and is either not yet qualified to use the paid leave or has exhausted all of the paid leave.
- Deductions when the employee is absent for a full workweek and, for whatever reason, the absence is not charged to paid leave (e.g., an employee may have exhausted all paid leave).
- Deductions when the employee is absent for a partial day due to personal reasons, illness, or injury, and:
  - paid leave has not been approved or has been denied;
  - paid leave has been exhausted; or
  - the employee has specifically requested unpaid leave.
- The employee is suspended without pay for a full day or more for disciplinary reasons for violations of any written policy that is applied to all employees.
- Deductions for unpaid leave taken in accordance with approved absences under the Family Medical Leave Act or the MN Parental Leave Act.
- The City may, for budgetary reasons, implement a voluntary or involuntary unpaid leave program, and under this program, may make deductions from the weekly salary of an exempt employee. In this case, the employee will be treated as non-exempt for any workweek in which the budget-related deductions are made.

If an exempt employee regularly absents him/herself from work under this policy and it is found that there is excessive time away from work which is not justified, the situation will be handled as a performance issue. If it appears that less than eighty (80) hours per pay period is needed to fulfill the position's responsibilities,

the position will be reviewed to determine whether a part-time position will meet the needs of the City. Additional notification and approval requirements may be adopted by the City Administrator for specific situations as determined necessary.

The City will not make deductions from pay due to exempt employees being absent for jury duty or attendance as a witness, but will require the employee to pay back to the City any amounts received by the employee as jury fees or witness fees. Exempt employees on paid vacation or using floating holiday leaves for jury duty or attendance as a witness will not be required to submit amounts received as jury duty or witness fees.

All exempt positions, whether or not management, may require work beyond forty (40) hours per week. Exempt employees who find it necessary to adjust their working schedules to accommodate business need may take time off during regular working hours with supervisory approval. These hours may not be on a one-for-one basis.

## **Chapter 6: BENEFITS**

~~Benefits are privileges granted to qualified employees in the form of paid leave including vacations, holidays, floating holidays, personal leave, military leave, funeral leave, sick leave, and retirement plans; benefits may also include insurance plans such as health, dental, life and long-term disability, and any other benefits as approved by the City Council. No changes or modifications in employee benefits will be made without prior notification to all eligible employees.~~

### **6.1 ELIGIBILITY**

Employee benefits are those established by the City Council and apply only to eligible employees. For the purposes of Chapter 6: Benefits, eligible employees are full-time and ¾-time employees. Part-time and temporary employees are not eligible for benefits.

¾-time employees are eligible for group medical insurance, dental insurance, long-term disability insurance, and life insurance at his/her option under the condition that 25% of the payment of the respective premium plus 25% of the percentage of the premium paid by full-time employees is the employee's obligation through the payroll deduction process. ¾-time employees are also entitled to 75% of ~~the vacation, sick leave, severance pay, holiday, and floating holiday, funeral leave, and personal leave~~ benefits.

Employee ~~personal time, floating holiday, and funeral~~ leave benefits are pro-rated based on an employee's date of hire and again upon an employee's termination. Technical revisions: Deletions were moved to Section 7: Leave Policies.

### **6.2 GROUP HEALTH PLANS AND WELFARE**

The City ~~participates offers in a~~ group health, ~~dental, life, and long-term disability insurance and welfare~~ programs. City Council establishes the group ~~health and welfare~~ benefits offered to City employees. The types of coverage and participation level, if any, are determined annually by the City Council. For information regarding coverage and eligibility requirements, employees should refer to the summary plan description or contact the ~~Finance Human Resource~~ Department.

All eligible employees may enroll within the first 30 days of employment for group coverage. Group coverage for enrolled employees will begin the first of the month following ~~30 days~~ the first date of ¾-time ~~or full-time~~ employment.

When an eligible employee's employment is terminated, benefit coverage will cease at the end of the month in which the termination occurs.

All eligible employees will have the option of remaining under the employee group insurance plan upon retirement from the City. The employee is expected to pay the full premium for the coverage desired, plus the City's portion of the medical deductible (the City's self-insurance plan at an additional premium). In the event of death of an employee who qualifies under this Section (6.2), the eligible dependents have the right to exercise this option. In accordance with State law, eligible dependents include husband or wife and all

unmarried children to age 25. Employees should notify the [Finance-Human Resource](#) Department when a child is no longer an IRS tax dependent.

#### **6.5 PUBLIC EMPLOYEES RETIREMENT FUND (PERA)**

The City participates in the Public Employees Retirement Fund to provide pension benefits for its eligible employees. The City and the employee contribute to PERA each pay period as determined by state law. All eligible employees of the City are under the provisions of the Public Employees Retirement Association (PERA) and when applicable, the provisions of the federal Social Security Act. For information about PERA eligibility and contribution requirements contact the [Finance-Human Resource](#) Department.

#### **6.7 WORKERS COMPENSATION INSURANCE**

If an employee suffers from an illness or injury that is related to work, the employee may be eligible for workers' compensation benefits. Workers' compensation will pay for medical care and lost wages resulting from job-related illnesses or injuries. If an employee becomes injured or ill through work, the employee is required to inform the supervisor immediately regardless of how minor the injury or illness might be. The supervisor will file the report with the [Finance-Human Resource](#) Department within ten (10) calendar days; unless in cases of serious injury or death, notification must be received within 24 hours of the event.

Employees entitled to the benefits of the Workers' Compensation Act, because of injury or illness resulting from employment by the City, will be paid workers' compensation insurance benefits and supplemented by the City with the employee's accrued leave balances to equal the employee's normal rate of compensation. The employee will be charged with any accrued leave for that portion paid by the City only. Employees are required to exhaust all sick, vacation, floating holidays, holiday, compensatory time, and personal leave accruals prior to the approval of unpaid leave.

Failure to promptly report work related injuries may result in disciplinary action up to and including termination of employment. In addition, failure to promptly report an illness or injury that is related to work may result in the loss of Workers' Compensation benefits.

The City has the right to obtain a second medical opinion to determine the validity of an employee's workers' compensation claim, or to obtain information related to restrictions or an employee's ability to work. The City will arrange and pay for an appropriate medical evaluation when it is required by the City.

#### **6.8 LONG-TERM DISABILITY INSURANCE**

City sponsored long-term disability insurance is provided to eligible employees on the first of the month following ~~the first date 30-days~~ of employment. For additional information, contact the [Finance-Human Resource](#) Department.

## ***Chapter 7: LEAVE POLICIES***

The following leave policies are intended to be general summaries and may have state or federal statute applicability. Each leave request will be evaluated on a case-by-case basis and administered in accordance with applicable federal and state laws. Depending upon an employee's situation, more than one form of leave may apply during the same period of time. An employee will need to meet the requirements of each form of leave separately.

Except as otherwise stated, all paid time off, taken under any of the City's leave programs, must be taken consecutively, with no intervening unpaid leave. The City will provide employees with time away from work as required by state or federal statutes if there are requirements for such time off that are not described in the personnel policies.

All leave benefits will accrue during the probationary period. If paid leave is granted during the probationary period and employment is voluntarily or involuntarily terminated prior to completion of the probationary period, any pro-rated paid leave must be reimbursed to the City or withheld from the employee's last pay check.

The leave related portions of this clause were moved from section 6.1. It is more appropriate for this section describing Leave benefits.

¾-time employees are also entitled to 75% of vacation, sick, funeral, and personal leave benefits.

Employee leave benefits are pro-rated based on an employee's date of hire and again upon an employee's termination.

If any specific provisions of these leave policies conflict with any current union agreement, the union agreement will prevail for that respective bargaining unit.

#### **7.1 SICK LEAVE** Amendments are in the process of being drafted to comply with new MN law.

#### **7.2 VACATION LEAVE**

The City believes that vacation time is important to the health and well-being of our employees and as such, provides paid vacation for eligible employees for rest and recuperation.

Full-time employees earn vacation in accordance with the schedule below. ¾ time employees will accrue vacation leave on a pro-rated basis of the full-time employee schedule. Part-time and temporary/seasonal employees are not eligible to earn vacation leave.

For the purposes of determining an employee's vacation accrual rate, year of service will include all continuous time that the employee has worked for the City, including authorized unpaid leave in accordance with state and federal laws. Employees who are rehired after terminating City employment will not receive credit for prior service, unless specifically agreed upon at the time of rehire. Vacation is earned and credited to an employee's record after each bi-weekly pay period according to years of service at the following rates:

Amendments to the chart below are for clarification only—the amendments do not change the years of service schedule.

<b>Years of Service</b>	<b>Hours per Year of Service</b>	<b>Maximum Accrual</b>
<u>0 to <del>5</del> 4 years</u>	80 hours (10 days)	160 hours
<u>Start of year <del>5</del> 5 to 10 years</u>	120 hours (15 days)	240 hours
<u>Start of year <del>10</del> 10 to 15 years</u>	144 hours (18 days)	288 hours
<u>Start of year <del>15</del> 15 to 20 years</u>	160 hours (20 days)	320 hours
<u>Start of year <del>20</del> 20+ years</u>	200 hours (25 days)	400 hours

All vacations must be arranged with the employee's supervisor and with reasonable advance notice. Employees will be given the opportunity to select vacation periods in so far as is practical. Employees are strongly encouraged to take at least one (1) full week of vacation per year. Employees are required to exhaust their vacation leave balance prior to approval of an unpaid leave of absence. Vacation time does not accrue while an employee is on an unpaid leave of absence. Only the payroll and attendance records maintained by the Finance-Human Resource Department will be considered official.

When a recognized holiday falls on a working day during an employee's vacation, the day of the holiday will not be counted as a day of vacation.

An employee who terminates employment within their probationary period will not receive vacation pay upon termination and will be required to reimburse the City for any vacation pay received. An employee who terminates employment after successful completion of their probationary period will receive their accumulated vacation pay.

#### **7.3 VACATION DONATION**

The purpose of vacation donation is to provide financial assistance during approved unpaid leaves related to life-threatening illness, injury of self or immediate family members, for childbirth, adoption, and foster care placement, or death of an immediate family member. Employees eligible under this policy are full-time and ¾-time employees.



Employees may voluntarily and anonymously donate accrued vacation time in whole hours (minimum of one hour per donation) to an eligible recipient. The City will not inform the recipient of the names of those donating hours or the number of hours donated. The donated vacation will be converted to dollars by the City by multiplying the number of hours donated by the donor's hourly base pay rate at the time of processing. The resulting amount, less mandatory withholding (specified below), will be paid to the designated recipient, not to exceed the recipient's normal rate of pay per pay period.

Under a similar program, the IRS has ruled that these payments are to be considered wages, and therefore taxable income to the recipient. As a result, the payment will be included in the annual Form W-2 prepared for the recipient and State and Federal income tax, FICA/Medicare taxes, and supplemental retirement contributions depending on the eligibility of the recipient, will be withheld by the City at the time of payment. The IRS has also ruled that the donating employee realizes no income and incurs no tax deductible expense or loss, either upon donation or payment to the recipient.

Program information maintained by the City shall be handled in accordance with the Government Data Practices Act, M.S. 13.43, subd. 2. This policy will be administered by the Human Resource Department, office of the Finance Director/City Clerk.

#### **7.5 FUNERAL / BEREAVEMENT LEAVE**

In the case of death in an employee's immediate family, as well as brothers, sisters, step-siblings, brothers and sisters-in-law, son/daughter-in-law, mother, father, parents-in-law, grandchildren, grandparents, and grandparents-in-law, the employee's supervisor may authorize a maximum of three (3) consecutive working days with pay for each emergency, as funeral leave. Funeral leave may not exceed forty (40) hours per year and may not be carried over to the following year. This leave is granted for the purposes of: attending the funeral, services, ceremonies, and/or interment; making necessary arrangements; travel related to the death; and bereavement time.

#### **7.6 PREGNANCY AND PARENTING LEAVE**

Amendments to this policy comply with a new MN law

All employees are entitled to take an unpaid leave of absence under the Pregnancy and Parenting Leave Act of Minnesota. Employees who work twenty (20) hours or more per week and have been employed at least 12 months preceding the request are entitled to take an unpaid leave of absence under the Pregnancy and Parenting Leave Act of Minnesota. Eligible employees for this leave are female employees for pre-natal care, or incapacity due to pregnancy, childbirth, or related health conditions, or a biological or adoptive parent in conjunction with/after the birth or adoption of a child. The leave may not exceed 12 weeks, and must begin within 12 months of the birth or adoption of the child; except when a newborn remains in the hospital longer than the mother, the leave must begin within 12 months after the child leaves the hospital.

Employees must provide reasonable notice, verbal or written, ~~notice~~ to the supervisor of the date the leave is to commence and the estimated duration of the leave at least 30 days prior to the date on which leave is to begin, or if 30 days' notice cannot be given, as much notice as practical.

Employees ~~are will be~~ required to use and/or exhaust all applicable other accrued leave balances during the leave, as applicable, prior to the approval of unpaid leave.

The employee is entitled to return to work in the same position and at the same rate of pay the employee was receiving prior to commencement of the leave. Group insurance coverage, if applicable, will remain available while the employee is on unpaid leave; however, the employee will be responsible for the entire premium unless otherwise provided in City policies (i.e., where leave is also FMLA qualifying). An employee granted an unpaid, non-FMLA leave under this policy must make arrangements for the payment of the employee and employer's contributions towards health insurance benefits with the Finance-Human Resource Department.

If the employee has any FMLA eligibility remaining at the time this leave commences, this leave will also count as FMLA leave. The two leaves will run concurrently until eligibility for either leave expires.

The City will inform employees of their parental leave rights at the time of hire, and when an employee makes an inquiry about, or requests parental leave.

The City will not discharge, discipline, penalize, interfere with, or otherwise retaliate or discriminate against an employee for asserting parental leave rights or remedies.

This leave will be administered in accordance with the Minnesota Pregnancy and Parenting Leave Act.

#### **7.7 SCHOOL CONFERENCE / ACTIVITY LEAVE**

Amendments to this policy comply with a new MN law.

Any All employees who has worked half-time or more for more than twelve (12) consecutive months, may are eligible to take unpaid leave for up to a total of sixteen (16) hours during any school year to attend school conferences or classroom activities related to the employee's child (child must be under 18 or under 20 and still attending secondary school), provided the conference or classroom activities cannot be scheduled during non-work hours. Employees must provide reasonable prior notice of leave whenever possible and make a reasonable effort to schedule the leave so as not to disrupt the department operations. Employees may substitute accrued vacation or other appropriate paid leave time available, but are not required to do so.

#### **7.11 LEAVE OF ABSENCE WITH / WITHOUT PAY**

A period of leave time requested by an employee exceeding 15 workdays must be accompanied by a written leave of absence request. Upon request of an employee, a leave of absence with/without pay may be granted by the City Administrator. All leave balances, except sick time, must be exhausted prior to approval of an unpaid, non-medical, leave of absence. All leave balances must be exhausted prior to approval of an unpaid medical leave of absence. Such leaves of absence may be granted for justifiable reasons on a case-by-case basis. Leaves of absence without pay should not exceed 90 days; and in no case, will leave without pay exceed one (1) year.

A leave of absence with/without pay may also be granted by the City Administrator in the case of physical or mental disability in cases where the employee cannot satisfactorily perform work for the City and the request must be accompanied by a physician's statement identifying the employee's restrictions and/or essential functions of the job that cannot be completed by the employee. No vacation, sick leave benefits, or length of service will accrue during an employee's period of leave of absence without pay if the leave extends 14 or more consecutive calendar days.

All employees on approved leave of absence will be required to contact their supervisor two weeks prior to the agreed upon return to work date, or other agreed upon advance notification, on their status and intention to return to work. The employee should immediately contact his/her supervisor if his/her medical condition changes or the employee decides that he/she will not be returning to work. While on leave, any employee who does not comply with the terms of the approved leave of absence or does not provide timely and/or appropriate documentation will be considered to have voluntarily resigned.

During a leave of absence without pay, employees may continue medical, dental, and life insurances on the City's plan; however, it is the employee's responsibility to pay for the City's and the employee's costs of the insurance premiums, as well as the City's portion of the medical deductible.

#### **7.16 BONE MARROW AND ~~KIDNEY ORGAN~~ DONATION LEAVE**

Amendments to this policy comply with a new MN law.

The City will provide a maximum of forty (40) hours of paid leave to an employee who seeks to undergo a medical procedure to donate bone marrow or a kidney organ. This leave requires approval by the City Administrator. Employees requesting leave for bone marrow or kidney organ donation surgery are required to provide the City with a physician's verification for the purpose and length of the leave requested. FMLA leave will run concurrently with this leave for eligible employees if the beneficiary of the donated bone marrow or kidney organ is the employee's spouse or child as defined by the Family and Medical Leave Act. The City will not discharge, discipline, penalize, interfere with, or otherwise retaliate or discriminate against an employee for asserting bone marrow or organ donation rights or remedies.

These leaves will be administered in accordance with applicable Minnesota Statutes.

#### **7.17 ELECTIONS / VOTING**

**Amendments to this policy comply with a new MN law.**

All employees eligible to vote ~~at a state primary or general election, at an election to fill a vacancy in the office of United States senator or representative, or at an election to fill a vacancy in the office of state senator or state representative in an election~~ will be allowed time off with pay to vote on the day of that election or during the time period allowed under Minnesota law (Minn. Stat. 203B.081) for voting in-person before election day. Employees wanting to take advantage of such leave are required to arrange for time off with his/her respective supervisor, in advance, in order to minimize the disruption of the department's normal activities.

An employee selected to serve as an election judge pursuant to Minnesota law, will be allowed time off with pay for purposes of serving as an election judge, provided that the employee gives the City at least twenty (20) days written notice. The written notice to be absent from work must be accompanied by a certification from the appointing authority stating the hourly compensation to be paid the employee for service as an election judge and the hours during which the employee will serve. Employees will be required to turn over any compensation they receive for service as an election judge, minus mileage reimbursement, to the City in order to receive their regular wages for the period.

The city reserves the right to restrict the number of employees absent from work for the purpose of serving as an election judge.

These leaves will be administered in accordance with the applicable Minnesota Statutes.

## ***Chapter 8: PERFORMANCE AND CONDUCT STANDARDS***

### **8.4 CLOTHING ALLOWANCE**

The City provides a clothing allowance to selected positions based on the nature of the employee's responsibilities. All garment purchases must be approved by the respective Division Director. Clothing and other gear provided as a part of this allowance is the required attire. Employees may reference their respective bargaining agreements for specific provisions regarding clothing allowance. Employees not subject to a bargaining agreement may consult with their supervisor or the ~~Finance-Human Resources~~ Department for additional information.

### **8.6 USE OF CITY-OWNED VEHICLES**

This policy applies to all employees who drive City-owned vehicles. The City expects all employees who are required to drive as part of their job to drive safely and legally while on City business and to maintain a good driving record. City vehicles are furnished for business use only and may not be used for personal reasons, except as specifically required and authorized by the Division Director or City Administrator. City-owned vehicles assigned to employees for commuting purposes may be used for breaks and meal period stops taken in the course of employment. Non-City employees are not permitted to ride in City-owned vehicles except under circumstances involving the advancement of City business, as specifically authorized by the Division Director or City Administrator.

Prohibited personal use of city-owned vehicles includes, but is not limited to, travel to any place other than directly between home and work except as specifically required and authorized for the performance of City duties. Examples of prohibited travel include travel to a bank, shopping, medical appointments, personal business, entertainment, restaurants (except as specifically authorized for breaks and meal periods), picking up children at daycare or school, etc.

The City will examine employee driving records in accordance with the following schedule: a) as a condition of employment, prior to hire, when applicable to the job requirements, and b) once per year for all employees who are covered by the Federal Motor Carrier Safety Administration (FMCSA) regulations this policy to determine compliance with this policy. Employees who are issued a citation while using City-owned vehicle, have their driver's license revoked, or receive restrictions on their license are required to notify their immediate supervisor on the first work day after any temporary, pending or permanent action is taken on their license and to keep their supervisor informed of any changes thereafter. Reference the Drug Free Workplace policy for additional compliance requirements. The City will determine appropriate action on a case-by-case basis.

All City vehicles, in their entirety, shall be designated as tobacco-free, meaning that no person will smoke tobacco or other substances or use smokeless tobacco while in a City vehicle.

No City vehicles may be used for transportation to and from work by employees residing outside the Marshall City limits.

## **8.18 SOCIAL MEDIA**

### **Scope**

This policy applies to any existing or proposed social media web sites sponsored, established, registered or authorized by the City of Marshall by all City representatives, includes its employees and agents, Council members, appointed board or commission members and volunteers to the extent it affects the City. This policy also covers the private use of the City's social media accounts by all City employees and representatives. Questions regarding the scope of this policy should be directed to the City Administrator.

Social media includes, but is not limited to:

- Social networking sites such as Facebook, LinkedIn, [X \(formerly known as Twitter\)](#)
- Blogs
- Social news sites such as Reddit and BuzzFeed
- Video and photo sharing sites such as YouTube, Instagram, SnapChat, and Flickr
- Wikis, or shared encyclopedias such as Wikipedia
- An ever-emerging list of new web-based platforms generally regarded as social media or having many of the same functions as those listed above.

As used in this policy, "employees and agents" means all City representatives, including its employees, and other agents of the city, such as independent contractors or Council members.

## **Chapter 9: SAFETY**

### **9.1 WORKPLACE ACCIDENTS, INJURIES, AND ILLNESSES**

Both Minnesota Workers' Compensation laws and the state and federal Occupational Safety and Health Acts require that all on the job injuries and illnesses (no matter how minor) be reported as soon as possible by the employee, or on behalf of the injured or ill employee, to his/her supervisor. If a supervisor is not available and the nature of injury or illness requires immediate treatment, the employee is to go to the nearest available medical facility for treatment and, as soon as possible, notify his/her supervisor of the action taken. In the case of a serious emergency, 911 should be called. If the injury is not of an emergency nature, but requires medical attention, the employee will report it to the supervisor and make arrangements for a medical appointment.

Such reports are necessary to comply with state and federal laws and initiate insurance and workers' compensation benefits procedures. The employee's immediate supervisor is required to complete a [First Supervisor's Report of Injury-Accident](#) and any other forms that may be necessary related to an injury or illness on the job. In incidents of death or serious injury, a [Supervisor's Report of Accident First-Report-of Injury](#) form must be submitted to the City [Finance-Human Resource](#) Department within 24 hours. All other [Supervisor's Report of Accident First-Report-of Injury](#) (medical only or lost time claim) forms must be submitted no later than ten (10) days after actual knowledge of the injury was obtained. [Human Resources will complete the First Report of Injury form for submission to the insurance company and/or OSHA.](#)

## **Chapter 10: DRUG-FREE WORKPLACE**

[Amendments to this chapter are presented in a separate document.](#)

## **Chapter 11: TRAVEL AND TRAINING**

#### 11.5 TRAVEL ADVANCES

Employees may request a lodging ~~reimbursement advance~~ when expenses are estimated to exceed \$200. The employee shall request approval through the expense reimbursement process expressly stating that it is an "Advance Request." The employee must make such request at least three (3) weeks in advance of the first date of the travel. No other types of expense advancements are allowed.

Lodging receipts, where required, shall be provided to the City within five (5) business days following a return to work from travel status. If the amount advanced to the employee exceeds the actual expenses listed on the receipts, the employee shall return the amount due to the City within five (5) business days following notice to the employee of the excess amount. Failure to provide the receipts and, if applicable, reimbursement of an excess amount, to the City within these timelines shall result in a permanent loss of privileges to request future travel advances under this provision and may result in disciplinary action.

**City of Marshall Personnel Policy Manual**  
**SCHEDULE OF FEES AND RATES**

Applicable Policy		Fees / Rates
6.6	COBRA Administration Fee	2%
9.2	Safety Equipment/Gear Safety Footwear—initial or replacement	Maximum reimbursement  \$150.00 per calendar year <u>applicable to non-union employees</u>  <u>\$175 per calendar year for AFSCME job classifications requiring protective footwear (e.g., steel toe boots)</u>
11.7	Maximum Meal Allowance Rates for *Local Travel Breakfast Lunch Dinner  *Reference Appendix B for Non-Local Travel Rates	Rates include tax and gratuity <del>\$9.50</del> <u>13.00</u> <del>\$12.50</del> <u>15.00</u> <del>\$20.00</del> <u>26.00</u>
11.11	Vehicle Allowance—approved positions: Director of Public Works/City Engineer Director of Public Safety	\$250.00 per month
12.4	Mobile Communication Device Allowances Tier 1--City Administrator and Division Director Tier 2 --Personnel under the management of the City Administrator or Division Director Data Service Plan	\$40 per month \$30 per month  \$40 per month

**City of Marshall Personnel Policy Manual**  
**MAXIMUM ALLOWABLE REIMBURSEMENT / PER DIEM RATES**  
**FOR NON-LOCAL TRAVEL**

**Lodging and Meal Expenses – Effective October 1, ~~2022-2023~~ thru September 30, ~~2023~~2024**

**\*To view rates outside of Minnesota, go to [www.gsa.gov](http://www.gsa.gov) and reference “Per Diem Rates” for the state of your primary designation to determine which lodging and meal rates apply.** When applying meal per diems to out-of-state locations, subtract the incidental per diem from the total per diem rate.

Primary Destination	County	Season Begin Date	Season End Date	Lodging (not including taxes)	Meal Per Diems	Total Meal Per Diems will be reduced when meals are furnished to travelers as part of conference fees paid by the City.
Standard Rate This rate applies to all MN destinations or counties not specifically listed below.				<del>\$98</del> 107	\$54	Breakfast--\$13 Lunch--\$15 Dinner--\$26
Duluth	St. Louis	10/01/ <del>2223</del>	10/31/ <del>2224</del>	<del>\$149</del> 200	\$74	Breakfast--\$18 Lunch--\$20 Dinner--\$36
Duluth	St. Louis	11/01/ <del>2223</del>	05/31/ <del>2324</del>	<del>\$140</del> 148		
Duluth	St. Louis	06/01/ <del>2324</del>	09/30/ <del>2324</del>	<del>\$149</del> 200		
<del>Eagan / Burnsville / Mendota Heights / Lakeville / Inver Grove Heights</del>	<del>Dakota</del>			<del>\$100</del>	<del>\$64</del>	<del>Breakfast--\$16 Lunch--\$17 Dinner--\$34</del>
Minneapolis / St. Paul	Hennepin and Ramsey			\$148	\$74	Breakfast--\$18 Lunch--\$20 Dinner--\$36
Rochester	Olmsted			\$133	\$59	Breakfast--\$14 Lunch--\$16 Dinner--\$29

## **Chapter 10: DRUG-FREE WORKPLACE**

### **Purpose**

The City of Marshall (City) has a vital interest in maintaining safe, healthful, and efficient working conditions for employees, and recognizes that individuals who are impaired because of drugs and/or alcohol jeopardize the safety and health of other workers as well as themselves. The City does not intend to intrude into the private lives of its employees, but strongly believes that a drug- and alcohol-free workplace is in the best interest of employees and the public alike. Alcohol and drug abuse can cause unsatisfactory job performance, increased tardiness and absenteeism, increased accidents and workers' compensation claims, higher insurance rates, and an increase in theft of City property. The City of Marshall's Drug-Free Workplace policy has been established for the purpose of providing a safe workplace for all.

City employees and applicants required to hold a commercial driver's license by the United States Department of Transportation (DOT) for their job will be tested under the City's Drug and Alcohol Policy Testing for Commercial Drivers. All other employees and job applicants offered employment with the City must undergo testing as described by this policy.

This policy does not apply to Police Department employees when the prohibited act or possession is performed in accordance with Police Department Policy, and such use or possession is necessary in connection with the investigation of illegal activities. The Liquor Store Manager and liquor store employees are exempted from the applicability of alcohol use in this Policy only while attending work related seminars or events where product sampling is customary and performed within the scope of the essential job functions. These employees must use extreme discretion and consume a minimal amount of product while in attendance at these events. While on work time, employees may not consume/sample alcoholic beverages during in-store product sampling events. Further, an exclusion from this policy applies at the Fire Department for appreciation events and social gatherings as authorized by the Fire Chief related to the fire department.

To ensure the policy is clearly communicated to all employees and applicants to whom offers of employment have been made, and to comply with state law, employees and applicants are required to review this policy and sign a policy acknowledgement form. A job applicant will also acknowledge on this form that he/she understands that passing the drug test is a requirement of the job.

### **10.1 DRUG AND ALCOHOL POLICY AND TESTING**

#### **Persons Subject to Testing and Circumstances Under Which Testing May Be Required**

Under this policy, the City may test any applicant to whom an offer of employment has been made and may test any employee for alcohol and/or drugs, including cannabis, ~~controlled substance~~ under any of the following circumstances, with a properly



accredited or licensed testing laboratory, in accordance with Minn. Stat. § 181.953, subd. 1:

- a. Pre-Employment Testing: Every job applicant offered employment with the City receives the offer conditioned upon successful completion of a drug test, and/or an alcohol or cannabis test, if applicable, among other conditions. The City will not request or require a job applicant to undergo cannabis testing related to "lawful consumable products" pursuant to Minn. Stat. § 181.938, including alcohol, cannabis, lower-potency hemp edibles, and hemp-derived consumer products, except with respect to the categories of positions listed below in the definition of "Drug" or if otherwise required by state or federal law. If the job offer is withdrawn based on drug test results, the City will inform the applicant of the reasons for the withdrawal. A failure of the drug test, a refusal to take the test, or failure to meet other conditions of the offer will result in a withdrawal of the offer of employment, even if the applicant's provisional employment has begun. A negative or positive dilute test result (following a second collection), which has been confirmed, will also result in immediate withdrawal of an offer of employment to an applicant. Additionally, the City may terminate or withdraw an offer based on an adulterated sample.

Temporary and seasonal employees are not subject to pre-employment testing, with the exception of those designated by the hiring department as safety-sensitive positions.

- b. Reasonable Suspicion Testing: Consistent with Minn. Stat. § 181.951, subd. 3, employees will be subject to alcohol and or drug controlled substance testing, including cannabis testing, when reasonable suspicion exists to believe that the employee:
- Is under the influence of alcohol, or a controlled substance drugs, or cannabis; or
  - Has violated written work rules prohibiting the use, possession, sale or transfer of drugs, or cannabis, or alcohol while working, while on City property, or while operating City vehicles, machinery or any other type of equipment; or
  - Has sustained a personal injury as defined in Minn. Stat. § 176.011, subd. 16 or has caused another employee to sustain an injury; or;
  - Has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident.

Reasonable suspicion may be based upon, but is not limited to, facts regarding appearance, behavior, speech, breath, odor, possession, proximity to or use of alcohol, or a controlled substance drugs or cannabis or containers or paraphernalia, poor safety record, excessive absenteeism, impairment of job performance, or any other circumstances that would cause a reasonable employer to believe that a violation of the City's policies concerning alcohol or drugs may have occurred. These observations will be reflected in writing on a Reasonable Suspicion Record of Observed Behavior form (see Human Resources for the form).

For off-site collection, employees will be driven to the employer-approved medical facility by their supervisor or a designee. For an on-site collection service, the employee will remain on site and be observed by the supervisor or designee. The medical facility or on-site collection service will take the urine or blood sample and will forward the sample to an approved laboratory for testing.

Pursuant to the requirements of the Drug-Free Workplace Act of 1988, all City employees, as a condition of continued employment, will agree to abide by the terms of this policy and must notify Human Resources of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction. If required by law or government contract, the City will notify the appropriate federal agency of such conviction within 10 days of receiving notice from the employee.

- c. Treatment Program Testing: In accordance with Minn. Stat. § 181.951, subd. 6., the City may request or require an employee to undergo drug, ~~and alcohol~~, or cannabis testing if the employee has been referred by the City for chemical dependency treatment or evaluation, or is participating in a chemical dependency treatment program under an employee benefit plan. In such a case, the employee may be requested or required to undergo drug, ~~or alcohol~~, or cannabis testing without prior notice during the evaluation or treatment period and for a period of up to two years following completion of any prescribed chemical dependency treatment program.
- d. Routine Physical Examination Testing: The City may request or require an employee to undergo drug and/or alcohol testing, but not cannabis testing, except for the categories of positions listed above for which cannabis is considered a drug or unless otherwise required by state or federal law as part of a routine physical examination. The City, in accordance with Minn. Stat. § 181.951, subd. 3, will request or require this type of testing no more than once annually, and the employee will be provided with at least two weeks' written notice that the test will be required as part of the physical examination.
- e. Random Testing: In accordance with Minn. Stat. § 181.951, subd. 4, the City may require an employee to submit to random alcohol, drug, and cannabis testing if the employee is in a safety-sensitive position.

#### **Right of Refusal**

Employees and job applicants have the right to refuse to submit to an alcohol, ~~or drug~~, or cannabis test under this policy. However, such a refusal will subject an employee to immediate termination. If an applicant refuses to submit to applicant testing, any conditional offer of employment will be withdrawn.

Any intentional act or omission by the employee or applicant that prevents the completion of the testing process constitutes a refusal to test.

An applicant or employee who substitutes, or attempts to substitute, or alters, or attempts to alter a testing sample is considered to have refused to take an alcohol drug, or cannabis ~~and/or alcohol~~ test. In such a case, the employee is subject to immediate termination of employment, and in the case of an applicant, the job offer will be immediately withdrawn.

### **Refusal on Religious Grounds**

An employee or job applicant who, on religious grounds, refuses to undergo alcohol ~~and/or~~ drug ~~or alcohol~~ testing, including cannabis testing, of a blood sample will not be considered to have refused testing, unless the employee or job applicant also refuses to undergo alcohol drug, or cannabis ~~or alcohol~~ testing of a urine sample.

### **Cost of Required Testing**

The City will pay for the cost of all drug, ~~and alcohol~~ or cannabis testing requested or required of all job applicants and employees, with the exception of confirmatory retests. Job applicants and employees are responsible for paying for all costs associated with any requested confirmatory retests.

### **Prohibited Conduct**

#### **a. Use and Possession of Alcohol or Drug(s) in the Workplace**

Employees are prohibited from the use, possession, transfer, transportation, manufacture, distribution, sale, purchase, solicitation to sell or purchase, or dispensation of alcohol, drugs, including cannabis, or drug paraphernalia while on duty; is on City premises; while operating any City vehicle, machinery, or equipment; or when performing any City business, except (1) pursuant to a valid medical prescription used as properly instructed; (2) the use of over-the-counter ~~controlled substance~~ drugs used as intended by the manufacturer; or (3) when necessary for approved law enforcement activity.

Besides having a zero-tolerance policy for the use or possession of alcohol, illegal drugs, or misused prescription drugs on the worksite, we also prohibit the use, possession of, impairment by any cannabis or medical cannabis products (e.g., hash oils, edibles or beverages containing cannabinoids, or pills) on the worksite by a person working as an employee at the City or while "on call" and subject to return to work. Having a medical marijuana card, patient registry number, and/or cannabis prescription from a physician does not allow anyone to use, possess, or be impaired by that drug while working for the City. Likewise, the fact that cannabis may be lawfully purchased and consumed does not permit anyone to use, possess, or be impaired by them while working for the City. The federal government still classifies cannabis as an illegal drug, even though some states, including Minnesota, have decriminalized its possession and use. There is no acceptable concentration of marijuana metabolites in the blood or urine of an employee who operates our equipment or vehicles or who is on one of our worksites. Applicants and employees are still subject to being tested under our alcohol ~~and~~ drug, including cannabis, ~~and alcohol~~ testing policy.

Employees are subject to being disciplined, suspended, or terminated after testing positive for cannabis if the employee used, possessed, or was impaired by cannabis, including medical cannabis, while on the premises of the place of employment or during the hours of employment.

b. Alcohol or Drug Impairment

Employees are prohibited from being under the influence of alcohol or drugs, including cannabis, or having a detectable amount of an illegal drug in the blood or urine when reporting for work; while on duty; while on the City's premises; while operating any City vehicle, machinery, or equipment; or when performing any City business, except (1) pursuant to a valid medical prescription used as properly instructed; or (2) the use of over-the-counter controlled-substance drug used as intended by the manufacturer.

c. Driving While Impaired

A conviction of driving while impaired in a City-owned vehicle at any time during business or non-business hours, or in an employee-owned vehicle while conducting City business, may result in discipline, up to and including discharge.

**Criminal Controlled Substance Drug Convictions**

Any employee convicted of any criminal drug statute must notify his or her supervisor and the City's Human Resources Department in writing of such conviction no later than five days after such conviction. Within 30 days after receiving notice from an employee of a controlled-substance drug-related conviction, the City will take appropriate personnel action against the employee up to and including discharge, or require the employee to satisfactorily participate in a controlled-substance drug abuse assistance or rehabilitation program as an alternative to termination. In the event notice is not provided to the supervisor and the employee is deemed to be incapable of working safely, the employee will not be permitted to work and will be subject to disciplinary action, including dismissal from employment. In accordance with the Federal Drug-Free Workplace Act of 1988, if the City is receiving federal grants or contracts of over \$25,000, the City will notify the appropriate federal agency of such conviction within 10 days of receiving notice from the employee.

**Failure to Disclose Lawful Controlled Substance Drug**

Employees taking a lawful controlled-substance drug, including prescription and over-the-counter controlled-substance drugs, or cannabis, which may impair their ability to perform their job responsibilities or pose a safety risk to themselves or others, must advise their supervisor of this before beginning work. It is the employee's responsibility to seek out written information from his/her physician or pharmacist regarding medication and any job performance impairment and relay that information to his/her supervisor. In the event of such a disclosure, the employee will not be authorized to perform safety-sensitive functions.

**Review and Notification of Test Results**

- a. **Notification of Negative Test Results:** In the case of job applicants and in accordance with Minn. Stat. § 181.953, Human Resources will notify a job applicant of a negative drug result within three days of receipt of result by the City, and the hiring process will resume. In accordance with Minn. Stat. § 181.953, subd. 3, a laboratory must report results to the City within three working days of the confirmatory test result. A “Negative Test Results Notification” form will be sent to the job applicant, and the job applicant may request a copy of the test result report from Human Resources.

In the case of current employees and in accordance with Minn. Stat. § 181.953, Human Resources will notify the employee of a negative drug and/or alcohol result within three days of receipt of result by the City. A “Negative Test Results Notification” form will be sent to the employee, and he or she may request a copy of the test result report from Human Resources.

- b. **Notification of Positive Test Results:** In the event of a confirmed positive blood or urine alcohol and/or drug, or cannabis, test result, the City will notify the employee of a positive drug and/or alcohol result within three days of receipt of the result. Human Resources will send to the employee or job applicant a “Positive Test Results Notification” letter containing further instructions. The employee or job applicant may contact Human Resources to request a copy of the test result report if desired. In accordance with Minn. Stat. § 181.953, subd. 3, a laboratory must report results to the City within three working days of the confirmatory test result.

#### **Right to Provide Information after Receiving Test Results**

Within three working days after notice of a positive ~~controlled substance~~ drug, or alcohol, or cannabis test result on a confirmatory test, the employee or job applicant may submit information to the City to explain the positive result. In accordance with Minn. Stat. § 181.953, subd. 10, if an employee submits information either before a test or within three working days after a positive test result that explains the positive test result, such as medications the employee is taking, the City will not take an adverse employment action based on that information unless the employee has already been under an affirmative duty to provide the information before, upon, or after hire.

#### **Right to Confirmatory Retest**

A job applicant or employee may request a confirmatory retest of the original sample at the job applicant's or employee's own expense after notice of a positive test result on a confirmatory test. Within five working days after notice of the confirmatory test result, the job applicant or employee must notify the City in writing of the job applicant's or employee's intention to obtain a confirmatory retest. Within three working days after receipt of the notice, the City will notify the original testing laboratory that the job applicant or employee has requested the laboratory to conduct the confirmatory retest or transfer the sample to another qualified laboratory licensed to conduct the confirmatory retest. The original testing laboratory will ensure the control and custody procedures are followed during transfer of the sample to the other laboratory. In accordance with Minn. Stat. § 181.953, subd. 3, the laboratory is required to maintain all

samples testing positive for a period of six months. The confirmatory retest will use the same ~~controlled substance~~ drug and/or alcohol threshold detection levels as used in the original confirmatory test.

In the case of job applicants, if the confirmatory retest does not confirm the original positive test result, the City's job offer will be reinstated, and the City will reimburse the job applicant for the actual cost of the confirmatory retest. In the case of employees, if the confirmatory retest does not confirm the original positive test result, no adverse personnel action based on the original confirmatory test will be taken against the employee, the employee will be reinstated with any lost wages or salary for time lost pending the outcome of the confirmatory retest result, and the City will reimburse the employee for the actual cost of the confirmatory retest.

#### **Access to Reports**

In accordance with Minn. Stat. § 181.953, subd. 10, an employee will have access to information contained in his or her personnel file relating to positive test results and to the testing process, including all information gathered as part of that process.

#### **Dilute Specimens**

A negative or positive dilute test result (following a second collection) which has been confirmed will subject an employee to immediate termination.

#### **Consequences for Employees Engaging in Prohibited Conduct**

- a. Job Applicants: The City's conditional offer of employment will be withdrawn from any job applicant who refuses to be tested or tests positive for illegal drugs as verified by a confirmatory test. The City's conditional offer of employment will also be withdrawn from any job applicant who tampers with their sample; including but not limited to presenting a temperature out of range sample, and/or a sample from another donor.
- b. Employees:
  - No Adverse Action without Confirmatory Test. The City will not discharge, discipline, discriminate against, or request or require rehabilitation of an employee based on a positive test result from an initial screening test that has not been verified by a confirmatory test.
  - Suspension Pending Test Result. The City may temporarily suspend a tested employee with or without pay, or transfer that employee to another position at the same rate of pay pending the outcome of the requested confirmatory retest, provided the City believes that it is reasonably necessary to protect the health or safety of the employee, co-employees, or the public. The employee will be asked to return home and will be provided appropriate arrangements for return transportation to his or her residence. In accordance with Minn. Stat. § 181.953, subd. 10, an employee who has been suspended without pay will be reinstated with back pay if the outcome of the requested confirmatory retest is negative.

## Discipline and Discharge

Confirmatory Positive Test Result: The City will not discharge an employee for a first confirmatory positive test unless the following conditions have been met:

- The City has first given the employee an opportunity to participate in either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the City after consultation with a certified chemical use counselor or physician trained in the diagnosis and treatment of chemical dependency. Participation by the employee in any recommended substance abuse treatment program will be at the employee's own expense or pursuant to the coverage under an employee benefit plan. The certified chemical use counselor or physician trained in the diagnoses and treatment of chemical dependency will determine if the employee has followed the rehabilitation program as prescribed; and
- The employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program, as evidenced by withdrawal from the program before its completion or by a refusal to test or positive test result on a confirmatory test after completion of the program.

### Other Misconduct

Nothing in this policy limits the right of the City to discipline or dismiss an employee on grounds other than a positive confirmatory test result, including conviction of any criminal drug statute for a violation occurring in the workplace or violation of other City personnel policies.

### Emergency Call Back to Work Provisions

If an employee is called out for a City emergency and he or she reports to work and is suspected of being under the influence of alcohol, drugs, and/or alcohol/cannabis, he or she will not be subject to the testing procedures of this policy, but ~~may be subject to discipline and~~ will not be allowed to work. Appropriate arrangements for return transportation to the employee's residence will be made. It is the sole responsibility of the employee who is under the influence of alcohol and/or drugs, including cannabis, and who is called out for a City emergency, to notify his or her supervisor of this information and advise if he or she is unable to respond to the emergency call back.

### Non-Discrimination

The City of Marshall policy on work-related substance abuse is non-discriminatory in intent and application; however, in accordance with Minn. Stat., Ch. 363, disability does not include conditions resulting from alcohol or other drug or cannabis abuse which prevents an employee from performing the essential functions of the job in question or constitutes a direct threat to property of the safety of individuals.



Furthermore, the City will not retaliate against any employee for asserting his or her rights under this policy.

### **City's Employee Assistance Program**

The City has in place a formal employee assistance program (EAP) to assist employees in addressing serious personal or work-related problems at any time. The City's EAP provides confidential, cost-free, short-term counseling to eligible employees. Eligible employees include: full-time employees, firefighters, and part-time police officers. Employees who may have an alcohol, cannabis, or other drug abuse problem are encouraged to seek assistance before a problem affects their employment status. Employee assistance program services are available by calling 866-451-5465 contacting Morneau Shepell at 866-451-5465 or online at www.niseap.com.

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### **Policy Contact for Additional Information**

If you have any questions about this policy or the City's drug, ~~and~~ alcohol, and cannabis testing procedures, you may contact your immediate supervisor or Human Resources to obtain additional information.

By this policy, the City of Marshall has established a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace and its policy of maintaining a drug-free workplace. Each City employee will receive a copy of this policy and will be required to read it.

### **Definitions**

Alcohol: Means the intoxicating agent in beverage alcohol or any low molecular weight alcohols such as ethyl, methyl, or isopropyl alcohol. The term includes but is not limited to beer, wine, spirits, and medications such as cough syrup that contain alcohol.

Alcohol use or usage: Means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Applicant: Means a person applying for a job with the City.

Cannabis: Means cannabis and its metabolites, including cannabis flower, cannabis products, lower-potency hemp edibles, and hemp-derived consumer products.

Cannabis testing: Means analysis of a body component sample according to the standards established under one of the programs listed in Minn. Stat. 181.953, subd. 1, for the purpose of measuring their presence or absence of cannabis in the sample tested.

City: Means the City of Marshall.

City premises: Means, but is not limited to, all City job sites and work areas. For the purposes of this policy, City premises also includes any other locations or modes of



transportation to and from those locations while in the course and scope of employment of the City.

City vehicle: Means any vehicle which employees are authorized to use solely for City business when used at any time; or any vehicle owned or leased by the City when used for City business.

Collection site: Means a place designated by the City where job applicants and employees present themselves for the purpose of providing a specimen of their breath, urine, and/or blood to be analyzed for the presence of ~~controlled substance~~drugs and alcohol.

Confirmatory test: Means a ~~controlled substance~~drug or alcohol test on a sample to substantiate the results of a prior ~~controlled substance~~drug or alcohol test on the same sample, and that uses a method of analysis allowed under one of the programs listed in Minn. Stat. § 181.953, subd. 1.

Drug: ~~Includes any “controlled substance” as defined in Minn. Stat. § 152.01, subd. 4., and also includes all cannabinoids, including those that are lawfully available for public consumption that do not otherwise qualify as being a “controlled substance” as defined in Minn. Stat. 152.01, subd. 4. Cannabis and its metabolites are considered a “drug” for positions in the following categories, regardless of the kind of testing involved: safety sensitive positions; peace officer positions; firefighter positions; positions requiring face-to-face care, training, education, supervision, counseling or medical assistance to children, vulnerable adults or patients receiving treatment, examination or emergency care or a medical, psychiatric, or mental condition; positions requiring a commercial driver’s license or requiring the employee to operate a motor vehicle for which state or federal law requires drug or alcohol testing; positions funded by a federal grant; or other positions for which state or federal law requires testing of a job applicant or employee.~~

Drug and/or alcohol testing, ~~drug or alcohol testing~~, and drug and/or alcohol test: Mean analysis of a body component sample according to the standards established under one of the programs listed in Minn. Stat. § 181.953, subd.1, for the purpose of measuring their presence or absence of drugs, alcohol, or their metabolites in the sample tested. “Drug and alcohol testing”, “drug or alcohol testing”, and “drug or alcohol test” do not include cannabis or cannabis testing, unless stated otherwise.

Drug paraphernalia: Has the meaning set forth in Minn. Stat. § 152.01, subd. 18.

Employee: Means a person who performs services for compensation for the City and includes independent contractors except where specifically noted in this policy.

Initial screening test: Means a drug and/or alcohol test that uses a method of analysis under one of the programs listed in Minn. Stat. § 181.953, subd. 1.

Job applicant: Means a person who applies to become an employee of the City, and includes a person who has received a job offer made contingent on the person passing alcohol and/or drug, including cannabis, testing.

Positive test result: Means a finding of the presence of alcohol, ~~illegal~~ drugs, cannabis, or their metabolites that exceeds the values listed in the table below. Minimum threshold detection levels are subject to change as determined in the City's sole discretion.

Drug Panel	Initial Level	Confirmation Level
AMPHETAMINES	1000 ng/mL	500 ng/mL
BARBITURATES	300 ng/mL	200 ng/mL
BENZODIAZEPINES	300 ng/mL	300 ng/mL
COCAINE METABOLITES	300 ng/mL	150 ng/mL
MARIJUANA METABOLITES	50 ng/mL	15 ng/mL
METHADONE	300 ng/mL	200 ng/mL
METHAQUALONE	300 ng/mL	300 ng/mL
OPIATES	2000 ng/mL	2000 ng/mL
PHENCYCLIDINE	25 ng/mL	25 ng/mL
PROPOXYPHENE	300 ng/mL	200 ng/mL

Random selection basis: Means a mechanism for selection of employees that (1) results in an equal probability that any employee from a group of employees subject to the selection mechanism will be selected, and (2) does not give an employer discretion to waive the selection of any employee selected under the mechanism.

Reasonable suspicion: Means a basis for forming a belief based on specific facts and rational inferences drawn from those facts.

Safety-sensitive position: Means a job, including any supervisory or management position, in which an impairment caused by drug or alcohol, and/or cannabis usage would threaten the health or safety of any person.

Under the influence: Means (1) the employee tests positive for alcohol, ~~or~~ drugs, or cannabis, or (2) the employee's actions, appearance, speech, and/or bodily odors reasonably cause the City to conclude that the employee is impaired because of ~~illegal~~ drug use or alcohol use.

## 10.2 Drug and Alcohol Policy and Testing for Commercial Drivers

### Purpose and Objectives

This policy implements the drug and alcohol testing requirements of the Federal Motor Carrier Safety Administration (FMCSA), an agency of the U.S. Department of Transportation (DOT). It is in addition to the Drug and Alcohol Policy (Policy 10.1 above) which is established under Minnesota state law and the Drug Free Workplace Act of 1988.

The City of Marshall (City) has a vital interest in maintaining safe, healthful, and efficient working conditions for employees, and recognizes that individuals who are impaired because of drugs and/or alcohol jeopardize the safety and health of other workers as well as themselves. The City is concerned about providing a safe workplace for its employees, and while the City does not intend to intrude into the private lives of its employees, it is the goal to provide a work environment conducive to maximum safety and optimum work standards. Alcohol and drug abuse can cause unsatisfactory job performance, increased tardiness and absenteeism, increased accidents and workers' compensation claims, higher insurance rates, and an increase in theft of City property. The use, possession, manufacture, sale, transportation, or other distribution of ~~controlled substance~~ or ~~drug~~ paraphernalia and the unauthorized use, possession transportation, sale, or other distribution of alcohol is contrary to this policy and jeopardizes public safety.

In response to regulations issued by United States Department of Transportation (DOT), the City has adopted this Policy on Drugs and Alcohol for employees who hold a commercial driver's license (CDL) to perform their duties. The City also has a separate Policy on Drug and Alcohol Testing for employees not covered by DOT regulations.

Given the significant dangers of alcohol and ~~controlled substance~~ use, each applicant and driver must abide by this policy as a term and condition of hiring and continued employment. Moreover, federal law requires the City to implement such a policy.

To ensure this policy is clearly communicated to all drivers and applicants, and in order to comply with applicable federal law, drivers and applicants are required to review this policy and sign a *Certificate of Receipt*.

Because changes in applicable law and the City's practices and procedures may occur from time to time, this policy may change in the future, and nothing in this policy is intended to be a contract, promise, or guarantee the City will follow any particular course of action, disciplinary, rehabilitative or otherwise, except as required by law. This policy does not in any way affect or change the status of any at-will employee.

Any revisions to the Federal Omnibus Transportation Employee Testing Act and/or Federal Motor Carrier Safety Administration (FMCSA) regulations will take precedent over this policy to the extent the policy has not incorporated those revisions.

### **Persons Subject to Testing & Types of Tests**

All employees, except those specifically exempted below, are subject to testing whose job duties include performing “safety-sensitive duties” on City vehicles that:

1. Have a gross combination weight rating or gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds, whichever is greater; or
2. Have a gross vehicle weight rating or gross vehicle weight of 26,0001 or more pounds whichever is greater; or
3. Are designed to transport 16 or more passengers, including the driver; or
4. Are of any size and are 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).

Employees exempted: The Federal Highway Administration (FHWA) has granted states the option of waiving CDL requirements for authorized emergency vehicles. The state of Minnesota has exercised the option not to require CDLs. Therefore, 49 CFR Part 382 is not applicable to City Firefighters or Chemical Assessment Team (CAT) employees. The requirements of Policy 10.1 apply to employees in these job classes.

The following functions are considered safety-sensitive:

- all time waiting to be dispatched to drive a commercial motor vehicle
- all time inspecting, servicing, or conditioning a commercial motor vehicle
- all time driving at the controls of the commercial motor vehicle
- all other time in or upon a commercial motor vehicle (except time spent resting in a sleeper berth)
- all time loading or unloading a commercial motor vehicle, attending the same, giving or receiving receipts for shipments being loaded or unloaded, or remaining in readiness to operate the vehicle
- all time repairing, obtaining assistance, or attending to a disable commercial motor vehicle.

### **Types of Testing**

The City may test any applicant to whom a conditional offer of employment has been made and any driver for controlled substancedrug and alcohol under any of the following circumstances:

- a. Pre-Employment Testing: All applicants, including current employees seeking a transfer, applying for a position where duties include performing safety-sensitive duties described above, will be required to take a drug test prior to the first time a driver performs a safety-sensitive function for the City. A driver may not perform

safety-sensitive functions unless the driver has received a ~~controlled-substance~~ drug test result from the Medical Review Officer (MRO) indicating a verified negative test result. In addition to pre-employment ~~controlled-substance~~ drug testing, applicants will be required to authorize, in writing, former employers to release alcohol test results of .04 or greater, positive ~~controlled-substance~~ drug test results, refusals to test, other violations of drug and alcohol testing regulations, and completion of return to duty requirements within the preceding three years.

The City will contact the candidate's DOT regulated previous and current employers within the last three years for drug and alcohol test results, as referenced above, and review the testing history if feasible before the employee first performs safety-sensitive functions for the City. Beginning in 2020, ~~the City will also conduct a limited query of the Federal Motor Carrier Safety Administration's Clearinghouse for all candidates~~ an applicant must provide consent to the City, and successfully pass a full query of the Federal Motor Carrier Safety Administration's Clearinghouse. In addition, at least once a year, the City will conduct a limited query of the Clearinghouse for each currently employed CDL driver. If the limited query reveals that the Clearinghouse has information about resolved or unresolved drug and alcohol program violations by a candidate or current employee, he or she will be asked to provide electronic consent to a full query of the Clearinghouse (unless he or she has previously provided electronic consent). In the event a full query of the Clearinghouse reveals unresolved violation information for a candidate or current employee, the driver will not be permitted to perform safety-sensitive functions, including the operation of a Commercial Motor Vehicle and, in the case of a candidate, may have their conditional offer of employment rescinded or, in the case of a current employee, may be subject to discipline.

- b. **Post-Accident Testing:** As soon as practicable following an accident involving a commercial motor vehicle operating on a public road, the City will test each surviving driver for ~~controlled-substance~~ drugs and alcohol when the following occurs:
- The accident involves a fatality, or
  - The driver receives a citation for a moving traffic violation from the accident and an injury is treated away from the accident scene, or
  - The driver receives a citation for a moving traffic violation from the accident and a vehicle is required to be towed from the accident scene.

The following chart summarizes when DOT post-accident testing needs to be conducted:

Type of accident involved	Citation issued to the DOT covered CDL driver?	Test must be performed by the City
i. Human fatality	YES	YES
	NO	YES
ii. Bodily injury with immediate medical treatment away from the scene	YES	YES
	NO	NO
iii. Disabling damage to any motor vehicle requiring tow away	YES	YES
	NO	NO

A driver subject to post-accident testing must remain readily available or the driver will be deemed to have refused to submit to testing. This requirement to remain ready for testing does not preclude 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 medical care.

- c. Post – Accident ~~Controlled Substance~~Drug Testing: Drivers are required to submit a urine sample for post-accident ~~controlled substance~~drug testing as soon as possible. If the driver is not tested within thirty-two (32) hours after the accident, the City will cease its attempts to test the driver and prepare and maintain on file a record stating why the test was not promptly administered.
- d. Post- Accident Alcohol Testing: Drivers are required to submit to post-accident alcohol testing as soon as possible. After an accident, consuming alcohol is prohibited until the driver is tested. If the driver is not tested within two (2) hours after the accident, the City will prepare and maintain on file a record stating why the test was not administered within that time. If eight hours have elapsed since the accident and the driver has not submitted to an alcohol test, the City will cease its attempts to test the driver and prepare and maintain on file a record stating why the test was not administered.

The City may accept the results of a blood or breath test in place of an alcohol test and urine test for the use of ~~controlled substance~~drugs if:

- The tests are conducted by federal, state, or local officials having independent authority for the test, and
- The tests conform to applicable federal, state, or local testing requirements, and
- The test results can be obtained by the City.

Whenever such a test is conducted by a law enforcement officer, the driver must contact the City and immediately report the existence of the test, providing the name, badge number, and telephone number of the law enforcement officer who conducted the test.

- e. Random Testing: Every driver will be subject to unannounced alcohol and ~~controlled substance~~drug testing on a random selection basis. Drivers will be selected for testing by use of a scientifically valid method under which each driver has an equal chance of being selected each time selections are made. These random tests will be conducted throughout the calendar year. Each driver who is notified of selection for random testing must cease performing safety-sensitive functions and report to the designated test site immediately. It is mathematically possible drivers may be selected ~~be picked~~ and tested more than once, and others not at all.

If a driver is selected for a random test while he or she is absent, on leave or away from work, that driver may be required to undergo the test when he or she returns to work.

Beginning ~~2019~~2020, federal law requires the City to test at a rate of at least ~~twenty-five~~50 percent (~~25~~50%) of its average number of drivers for ~~controlled substance~~drugs each year, and to test at a rate of at least ten percent (10%) of its average number of drivers for alcohol each year. These minimum testing rates are subject to change by the DOT.

- f. Reasonable Suspicion Testing: When a supervisor has reasonable suspicion to believe a driver has engaged in conduct prohibited by federal law or this policy, the City will require the driver to submit to an alcohol and/or ~~controlled substance~~drug test.

The City's determination that reasonable suspicion exists to require the driver to undergo an alcohol test will be based on "specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver." In the case of ~~controlled substance~~drugs, the observations may include indications of the chronic and withdrawal effects of a ~~controlled substance~~drug.

The required observations for reasonable suspicion testing will be made by a supervisor or other person designated by the City who has received appropriate training in identification of actions, appearance and conduct of a driver which are indicative of the use of alcohol or ~~controlled substance~~drugs. These observations leading to an alcohol or ~~controlled substance~~drug test, will be reflected in writing on the Reasonable Suspicion Record of Observed Behavior form (see Human Resources for the form) and signed by the supervisor who made the observations. The record will be retained by the City Human Resources department. The person who makes the determination that reasonable suspicion exists to conduct testing, will not be the person conducting the testing, which shall instead be conducted by another qualified person.

Alcohol testing is authorized only if the observations are made during, just before, or just after the driver has ceased performing such functions. If a reasonable suspicion alcohol test is not administered within two (2) hours following the determination of

reasonable suspicion, the City will prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If a reasonable suspicion alcohol test is not administered within eight (8) hours following the determination of reasonable suspicion, the City will prepare and maintain on file a record stating the reasons the alcohol test was not administered and will cease attempts to conduct the alcohol test.

Notwithstanding the absence of a reasonable suspicion test, no driver may 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 use, nor will the City permit the driver to perform or continue to perform safety-sensitive functions until (1) an alcohol test is administered and the driver's alcohol concentration is less than .02; or (2) twenty-four (24) hours have elapsed following the determination of reasonable suspicion.

- g. Return-to-Duty Testing: The City reserves the right to impose discipline against drivers who violate applicable FMCSA or DOT rules or this policy, subject to applicable personnel policy and collective bargaining agreements. Except as otherwise required by law, the City is not obligated to reinstate or requalify such drivers for a first positive test result.

Should the City consider reinstatement of a DOT covered driver, the driver must undergo a Substance Abuse Professional (SAP) evaluation and participate in any prescribed education/treatment, and successfully complete return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 and/or or a ~~controlled-substance~~drug test with a verified negative result, before the driver returns to duty requiring the performance of a safety-sensitive function. The SAP determines if the driver has completed the education/treatment as prescribed.

The employee is responsible for paying for all costs associated with the return-to-duty test. The ~~controlled-substance~~drug test will be conducted under direct observation.

- h. Follow-Up Testing: The City reserves the right to impose discipline against drivers who violate applicable FMCSA or DOT rules or this policy, subject to applicable personnel policies and collective bargaining agreements. Except as otherwise required by law, the City is not obligated to reinstate or requalify such drivers.

Should the City reinstate a driver following a determination by a Substance Abuse Professional (SAP) that the driver is in need of assistance in resolving problems associated with alcohol use and/or use of ~~controlled-substances~~drugs, the City will ensure that the driver is subject to unannounced follow-up alcohol and/or ~~controlled-substance~~drug testing. The number and frequency of such follow-up testing will be directed by the SAP and will consist of at least six (6) tests in the first twelve (12) months following the driver's return to duty. Follow-up testing will not exceed sixty



(60) months from the date of the driver's return to duty. The SAP may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the SAP determines such test is no longer necessary. The employee is responsible for paying for all costs associated with follow-up tests.

Follow-up alcohol testing will be conducted only when the driver is performing safety-sensitive functions, or immediately prior to or after performing safety-sensitive functions.

### Cost of Required Testing

The City will pay for the cost of pre-employment, post-accident, random, and reasonable suspicion ~~controlled substance~~drug and alcohol testing requested or required of all job applicants and employees. The driver must pay for the cost of all requested confirmatory re-tests, return-to-duty, and follow-up testing.

### ~~Required Prior Controlled Substance and Alcohol Checks for Applicants~~

~~The City will conduct prior drug and alcohol checks of applicants for employment to drive a commercial motor vehicle. Applicants must execute a consent form authorizing the City to obtain the required information. The City will obtain (pursuant to the applicant's written consent) information on the applicant's alcohol test with a concentration result of 0.04 or greater, positive controlled substance test results, and refusals to be tested within the preceding three (3) years which are maintained by the applicant's previous employers. The City will obtain all information concerning the applicant which is maintained by the applicant's previous employers within the preceding three (3) years pursuant to DOT and FMCSA controlled substance and alcohol testing regulations. The City will review such records, if feasible, prior to the first time a driver performs safety-sensitive functions.~~

### Prohibited Conduct

The following conduct is explicitly prohibited by applicable DOT and FMCSA regulations and therefore constitutes violation of City policy.

- a. Under the influence of alcohol when reporting for duty or while on duty  
No driver may report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. Drivers reporting for duty or remaining on duty to perform safety-sensitive functions while having an alcohol concentration of 0.02, but less than 0.04, will be removed from duty for 24 hours, escorted home and placed on vacation leave, compensatory time, or other appropriate leave of absence for hours missed from work.
- b. On-Duty Use of Alcohol  
No driver may use alcohol while performing safety-sensitive functions.
- c. Pre-Duty Use of Alcohol

No driver may perform safety-sensitive functions within four (4) hours after using alcohol. If an employee has had alcohol within four hours, they are to notify their supervisors before performing any safety-sensitive functions.

d. Alcohol Use Following an Accident

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

e. Refusal to Submit to a Required Alcohol or ~~Controlled Substance~~ Drug Test

No applicant or driver may refuse to submit to pre-employment, post-accident, random, reasonable suspicion or follow-up alcohol or ~~controlled substance~~ drug testing.

In the event an applicant or driver does in fact refuse to submit to required alcohol or ~~controlled substance~~ drug testing, no test will be conducted. Refusal by a driver to submit to ~~controlled substance~~ drug or alcohol testing will be considered a positive test result, will cause disqualification from performing safety-sensitive functions, and may appear on the driver's permanent record. Drivers who refuse to submit to testing will be subject to discipline, up to and including termination. In accordance with the Federal Motor Carrier Safety Administration's (FMCSA) Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse reporting requirements, beginning January 6, 2020, the City will report a driver's refusal to submit to a DOT test for drug or alcohol use to the Clearinghouse within three business days. If an applicant refuses to submit to pre-employment ~~controlled substance~~ drug testing, any applicable conditional offer will be withdrawn.

For purposes of this section, a driver is considered to have refused to submit to an alcohol or ~~controlled substance~~ drug test when the driver:

- Fails to provide adequate breath for alcohol testing without a valid medical explanation after he or she has received notice of the requirement for breath testing.
- Fails to provide adequate urine for ~~controlled substance~~ drug testing without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement for urine testing.
- Fails to report for testing within a reasonable period of time, as determined by the City.
- Fails to remain at a testing site until testing is complete.
- In the case of directly observed or monitored collection, fails to permit observation or monitoring.
- Fails or declines to take a second test as required by the City and/or collector.
- Fails to undergo a medical examination as directed by the City pursuant to federal law.
- Refuses to complete and sign the alcohol testing form, to provide a breath or saliva sample, to provide an adequate amount of breath, or otherwise cooperate in any way that prevents the completion of the testing process.

- Engages in conduct that clearly obstructs the test process.

f. Altering or attempting to alter a urine sample or breath test

A driver altering or attempting to alter a urine sample or ~~controlled substance~~ drug test, or substituting or attempting to substitute a urine sample, will be subject to providing a specimen under direct observation. Both specimens will be subject to laboratory testing. In such case, the employee may be subject to immediate termination of employment and any job offer made to an applicant will be immediately withdrawn.

g. Controlled Substance Drug Use

No driver may report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any ~~controlled substance~~ drug, except when the use is pursuant to the instructions of a licensed medical practitioner who has advised the driver in writing the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle. Drivers must forward this information regarding therapeutic ~~controlled substance~~ drug use to the City immediately after receiving any such advice.

Having a medical marijuana card and/or a cannabis prescription from a physician does not allow anyone to use or possess that drug in the City's workplace. The federal government still classifies cannabis as an illegal drug. There is no acceptable concentration of marijuana metabolites in the urine or blood of an employee who performs safety-sensitive duties for the City. Employees are still subject to being tested under our policies, as well as for being disciplined, suspended or terminated after testing positive for cannabis while at work.

h. Controlled Substance Drug Testing

No driver may report for duty, remain on-duty or perform a safety-sensitive function if the driver tests positive for ~~controlled substance~~ drug.

- i. Additional Prohibited Conduct: In addition to the conduct prohibited by applicable DOT and FMCSA regulations, the City also maintains other applicable policies regarding drug and alcohol that are applicable to all employees. For specifics regarding those requirements, refer to the City's Prohibited Conduct within Policy 10.1.

### **Collection and Testing Procedures**

Drivers are required to report immediately upon notification to the collection site. For random tests conducted off site, employees may use a City vehicle to drive to the collection site. Drivers will be expected to provide a photo ID card for identification to the collection staff. All drivers will be expected to cooperate with collection site personnel request to remove any unnecessary outer garments such as coats, sweaters or jackets and will be required to empty their pockets. Collection personnel will complete a Federal Custody and Control Form (CCF) which drivers providing a sample will sign as well.

a. Alcohol Testing

Employees will be tested for alcohol just before, during, or immediately following performance of a safety-sensitive function. If a driver is also taking a DOT ~~controlled substance~~drug test, ~~generally speaking,~~ the alcohol test is completed before the urine collection process begins. Screening tests for alcohol concentration will be performed utilizing a non-evidential screening device included by the National Highway Traffic Safety Administration on its conforming products list (e.g., a saliva screening device) or an evidential breath testing device (EBT) operated by a trained breath alcohol technician (BAT) at a collection site. An alcohol test usually takes approximately 15 minutes if the result is negative. If a driver's first attempt is positive (with an alcohol concentration of .02 or greater), the driver will be asked to wait at least 15 minutes and then be tested again. The driver may not eat, drink or place anything in his/her mouth (e.g., cigarette, chewing gum) during this time. All confirmation tests will be conducted in a location that affords privacy to the driver being tested, unless unusual circumstances (e.g., when it is essential to conduct a test outdoors at the scene of an accident) make it impracticable to provide such privacy. Any results less than 0.02 alcohol concentration is considered a "negative" test result.

If the driver attempts and fails to provide an adequate amount of breath, he/she will be referred to a physician to determine if the driver's inability to provide a specimen is genuine or constitutes a refusal to test. Alcohol test results are reported directly to the ~~Employer~~City by the collection site staff.

b. Controlled Substance~~Drug~~ Testing

The City will use a "split urine specimen" collection procedure for ~~controlled substance~~drug testing. Collection of urine specimens for ~~controlled substance~~drug testing will be conducted by an approved collector and will be conducted in a setting and manner to ensure the driver's privacy.

~~Controlled substance~~Drug testing generally takes about 15 minutes. At the collection site, the driver will be given a sealed container and must provide at least 45 ml of urine for testing. Once the sample is provided the collection personnel will check the temperature and color and look for signs of contamination. The urine is then split into two separate specimen containers (A, or "primary," and B, or "split") with identifying labels and security seals affixed to both. The collection facility will be responsible for maintaining a proper chain of custody for delivery of the sample to a DHHS-certified laboratory for analysis. The laboratory will retain a sufficient portion of any positive sample for testing and store that portion in a scientifically-acceptable manner for a minimum 365-day period.

If an employee fails to provide a sufficient amount of urine to permit a ~~controlled substance~~drug test (45 milliliters of urine), the collector will discard the insufficient specimen, unless there is evidence of tampering with that specimen. The collector will urge the driver to drink up to 40 ounces of fluid, distributed reasonably over a period of up to three hours, or until the driver has provided a sufficient urine specimen, whichever occurs first. If the driver has not provided a sufficient specimen within three hours of the

first unsuccessful attempt, the collector will cease efforts to attempt to obtain a specimen. The driver must then obtain, within five calendar days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen. If the licensed physician concludes the driver has a medical condition, or with a high degree of probability could have, precluded the driver from providing a sufficient amount of urine, the City will consider the test to have been canceled. If a licensed physician cannot make such a determination, the City will consider the driver to have engaged in a refusal to test, and will take appropriate disciplinary action under this policy.

The primary specimen is used for the first test. If the test is negative, it is reported to the MRO who then reports the result, following a review of the CCF Form for compliance, to the City. If the initial result is positive or non-negative, a "confirmatory retest" will be conducted on the primary specimen. If the confirmatory re-test is also positive, the result will be sent to the MRO. The MRO will contact the driver to verify the positive result. If the MRO is unable to reach the driver directly, the MRO must contact the City who will direct the driver to contact the MRO.

#### **Review of Test Results**

The MRO is a licensed physician with knowledge and clinical experience in substance abuse disorders, and is responsible for receiving and reviewing laboratory results of the ~~controlled substance~~ drug test as well as evaluating medical explanations for certain drug test results. Prior to making a final decision to verify a positive test result, the MRO will give the driver or the job applicant an opportunity to discuss the test result, typically through a phone call. The MRO, or a staff person under the MRO's supervision, will contact the individual directly, on a confidential basis, to determine whether the individual wishes to discuss the test result. If the employee or job applicant wishes to discuss the test result:

- The individual may be required to speak and/or meet with the MRO, who will review the individual's medical history, including any medical records provided.
- The individual will be afforded the opportunity to discuss the test results and to offer any additional or clarifying information which may explain the positive test result. If the employee or job applicant, believes a mistake was made at the collection site, at the labor, on a chain-of-custody form, or that the drug test results are caused by lawful substance use, the employee should tell the MRO.
- If there is some new information which may affect the original finding, the MRO may request the laboratory to perform additional testing on the original specimen in order to further clarify the results; and
- A final determination will be made by the MRO that the test is either positive or negative, and the individual will be so advised.

If the MRO upholds the positive, adulterated or substituted drug determination, that test result will be provided to the City. There is no opportunity to explain a positive alcohol test provided in the DOT regulations.

The driver can request the MRO to have the split specimen (the second “B” container) tested at the driver’s expense. This includes all costs that may be associated with the re-test. There is no split specimen testing for an invalid result. The driver has 72 hours after they have been notified of the positive result to make this request. If the employee requests an analysis of the split specimen, the MRO will direct the laboratory to send the split specimen to another certified laboratory for analysis.

If an employee has not contacted the MRO within 72 hours, the employee may present information documenting that serious injury, illness, lack of actual notice of the verified test result, inability to contact the MRO, or other circumstances unavoidably prevented the employee from making timely contact. If the MRO concludes there is legitimate explanation for the employee’s failure to contact within 72 hours, the MRO will direct the analysis of the split specimen.

If the results of the split specimen are negative, the City may pay for all costs associated with the ~~re-test~~ and there will be no adverse action taken against the employee or job applicant.

## Notification of Test Results

### Employees

The City will notify a driver of the results of random, reasonable suspicion, and post-accident tests for ~~controlled-substances~~ if the test results are verified positive, and will inform the driver which ~~controlled-substance~~ or substances were verified as positive. Results of alcohol tests will be immediately available from the collection agent.

### Right to Confirmatory Retest.

Within seventy-two (72) hours after receiving notice of a positive ~~controlled substance~~ test result, an applicant or driver may request through the MRO a re-analysis (confirmatory retest) of the driver’s split specimen. Action required by federal regulation as a result of a positive ~~controlled-substance~~ test (e.g., removal from safety-sensitive functions) will not be stayed during retesting of the split specimen. If the result of the confirmatory retest fails to reconfirm the presence of the ~~controlled substance~~(s) or ~~controlled-substance~~ metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO will cancel the test.

### Dilute Specimens

- Dilute Negatives:  
*Creatinine concentration of specimen is equal to or greater than 2 mg/dL, but less than or equal to 5 mg/dL.* If the City receives information that a driver has provided a dilute negative specimen, the City will direct a recollection, pursuant to the MRO’s direction, under direct observation.

*Creatinine concentration of specimen is greater than 5 mg/dL.* If the MRO advises the City that the employee's dilute negative specimen contains a creatinine concentration greater than five mg/dL the City will direct the driver to take a second screening test, not under direct observation. The second screening test will be performed as soon as possible after the City receives word of the dilute negative specimen. This second screening test is applicable to pre-employment testing, reasonable suspicion, post-accident, or random testing.

- **Dilute Positives:**  
If the City receives information that a driver has provided a dilute positive specimen, the City will consider the employee to have tested positive under this policy.

## **Consequences for Drivers Engaging in Prohibited Conduct**

### **Job Applicants**

Any applicable conditional offer of employment will be withdrawn from a job applicant or employee seeking a transfer who refuses to be tested or tests positive for a controlled substance/drug pursuant to this policy.

### **Employees**

Drivers who are known to have engaged in prohibited behavior with regard to alcohol misuse or use of controlled substances/drugs, as defined earlier in this policy, are subject to the following consequences:

#### **a. Removal from Safety-Sensitive Functions**

No driver may perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by federal law.

No driver who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 may perform or continue to perform safety-sensitive functions for the City, including driving a commercial motor vehicle, until the start of the driver's next regularly scheduled duty, but not less than twenty-four (24) hours following administration of the test.

If a driver tests positive under this policy, or is found to have an alcohol concentration of .02 or greater but less than .04, the driver will be removed from safety sensitive duties and escorted home; the driver should not drive home, but be escorted to his or her home. The driver will then be placed on vacation or may utilize other existing accruals for hours missed from work. If no accruals are available, the employee will be placed on an administrative leave of absence. The driver is not eligible to use sick leave accruals in this situation.

#### **b. Notification of Resources Available**

The City will advise each driver who has engaged in conduct prohibited by federal law or who has a positive alcohol or ~~controlled substance~~ drug test of the resources available to the driver, including but not limited to the City's Employee Assistance Program (EAP), in evaluating and resolving problems associated with the misuse of alcohol and use of a ~~controlled substance~~ drug, including the names, addresses, and telephone numbers of Substance Abuse Professionals and counseling and treatment programs. The City will provide this SAP listing in writing at no cost to the driver.

c. Discipline

The City reserves the right to impose whatever discipline the City deems appropriate in its sole discretion, up to and including termination for a first occurrence, against drivers who violate applicable FMCSA or DOT rules or this policy, subject to applicable personnel policies and collective bargaining agreements. Except as otherwise required by law, the City is not obligated to reinstate or requalify such drivers following a first positive confirmed ~~controlled substance~~ drug or alcohol test result.

d. Evaluation, and Return to Duty Testing

Should the City wish to consider reinstatement of a driver who engaged in conduct prohibited by federal law and/or who had a positive alcohol or ~~controlled substance~~ drug test, the driver must undergo a SAP evaluation, participate in any prescribed education/treatment, and successfully complete return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 and/or or a ~~controlled substance~~ drug test with a verified negative result, before the driver returns to duty requiring the performance of a safety-sensitive function. The SAP will determine what assistance, if any, the driver needs in resolving problems associated with alcohol misuse and ~~controlled substance~~ drug use and will ensure the driver properly follows any rehabilitation program and submits to unannounced follow-up alcohol and ~~controlled substance~~ drug testing.

e. Follow-Up Testing

If the driver passes the return-to-duty test, he/she will be subject to unannounced follow-up alcohol and/or ~~controlled substance~~ drug testing. The number and frequency for such follow-up testing will be as directed by the SAP and will consist of at least six tests in the first twelve months. These tests will be conducted under direct observation.

f. Refusal to test

All drivers and applicants have the right to refuse to take a required alcohol and/or ~~controlled substance~~ drug test. If an employee refuses to undergo testing, the employee will be considered to have tested positive and may be subject to disciplinary action, up to and including termination. Refer to Refusing to Test provided earlier in this policy.

**Responsibility for Cost of Evaluation and Rehabilitation**



Drivers will be responsible for paying the cost of evaluation and rehabilitation (including services provided by a Substance Abuse Professional) recommended or required by the City or FMCSA or DOT rules, except to the extent that such expense is covered by an applicable employee benefit plan or imposed on the City pursuant to a collective bargaining agreement.

### **Reporting to the FMCSA's CDL Drug and Alcohol Clearinghouse**

In accordance with the Federal Motor Carrier Safety Administration's (FMCSA) Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse reporting requirements beginning January 6, 2020, the City will report the following information to the Clearinghouse within three business days:

- ✓ A DOT alcohol confirmation test result with an alcohol concentration of 0.04 or greater;
- ✓ A negative DOT return-to-duty test result;
- ✓ The driver's refusal to submit to a DOT test for drug or alcohol use;
- ✓ An "Actual knowledge" violation: the employer has knowledge that a driver has used alcohol or drugs, based on the employer'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 drugs, or an employee's admission of alcohol or drug abuse, except as provided in § 382.121:
  - On-duty alcohol use pursuant to § 382.205;
  - Pre-duty alcohol use pursuant to § 382.207
  - Alcohol use following an accident pursuant to § 382.209
  - Drug use pursuant to § 382.213;
- ✓ Employers will also report negative return-to-duty test results and the successful completion of a driver's follow up testing plan ~~A report that the driver successfully completed all DOT follow-up tests~~ as ordered by a SAP.

### **Loss of CDL License for Traffic Violations in Commercial and Personal Vehicles**

Effective August 1, 2005, the FMCSA established strict rules impacting when CDL license holders can lose their CDL for certain traffic offenses in a commercial or personal vehicle. Employees are required to notify their supervisor immediately if the status of their CDL license changes in anyway.

### **Maintenance and Disclosure of Records**

Except as required or authorized by law, the City will not release driver's information that is contained in records required to be maintained by this policy or FMCSA and DOT regulations. Beginning in 2020, the City will be required to query and report to the agency's Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse prior to hiring new drivers, will conduct annual checks of existing CDL-drivers, and will report certain violations of the DOT drug and alcohol testing program for holders of CDLs. In addition, a driver is entitled, upon written request, to obtain copies of any records

pertaining to the driver's use of alcohol or a ~~controlled substance~~drug, including any records pertaining to his or her alcohol or ~~controlled substance~~drug tests.

#### **Policy Contact for Additional Information**

If you have any questions about this policy or the City's ~~controlled substance~~drug and alcohol testing procedures, you may contact your immediate supervisor or Human Resources to obtain additional information.

#### **Definitions**

Accident: Means an occurrence involving a commercial motor vehicle operating on a public road which results in a fatality; bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle. The term "accident" does not include an occurrence involving only boarding and alighting from a stationary motor vehicle; an occurrence involving only the loading or unloading of cargo; or an occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle unless the 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 49 C.F.R. § 177.823; 49 C.F.R. § 382.303(a); 49 C.F.R. § 382.303(f).

Alcohol Concentration (or Content): Means the alcohol on a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test. 49 C.F.R. § 382.107.

Alcohol Use: Means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol. 49 C.F.R. § 382.107.

Applicant: Means a person applying to drive a commercial motor vehicle. 49 C.F.R. § 382.107.

Breath Alcohol Technician or BAT: Means an individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT). 49 C.F.R. § 40.3.

City: Means City of Marshall.

City Premises: Means all job sites, facilities, offices, buildings, structures, equipment, vehicles and parking areas, whether owned, leased, used or under the control of the City.

Collection Site: Means a place designated by the City where drivers present themselves for the purpose of providing a specimen of their urine or breath to be analyzed for the presence of alcohol or ~~controlled substance~~drugs. 49 C.F.R. § 40.3.

Commercial Motor Vehicle: Means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle (1) has a gross combination weight rating or gross combination weight of 26,001 or more pounds, ~~whoever-whichever~~ is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds, whichever is greater; or (2) has a gross vehicle weight rating or gross vehicle weight of 26,001 or more pounds, whichever is greater; or (3) is designed to transport sixteen (16) or more passengers, including the driver; or (4) is of any size and is used in the transportation of materials found to be 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 Regulation. (49 C.F.R. part 172, subpart F) § 382.107.

Fire trucks and other City emergency response vehicles are not considered to be commercial vehicles under this policy, and therefore, personnel that operate City emergency response vehicles are exempted from the requirements of 49 CFR Part 382.

Confirmation (or Confirmatory) Test: For alcohol testing means a second test, following a positive non-evidential test, following a positive non-evidential (e.g., saliva) screening test or a breath alcohol screening test with the result of 0.02 or greater, that provides quantitative data of alcohol concentration. For ~~controlled-substance~~drug testing, "Confirmation (or Confirmatory) Test" means a second analytical procedure to identify the presence of a specific ~~controlled-substance~~drug or metabolite which is independent of the screen test and which uses a different technique and chemical principal from that of the screen test in order to ensure reliability and accuracy. 49 C.F.R. § 382.107.

Controlled Substance: Means those substances identified in 49 C.F.R. § 40.85. Marijuana, amphetamines, opioids, (including heroin), phencyclidine (PCP), cocaine, and any of their metabolites are included within this definition. 49 C.F.R. § 382.107; 49 C.F.R. § 40.85).

Department of Transportation or DOT: Means the United States Department of Transportation.

DHHS: Means the Department of Health & Human Services or any designee of the Secretary, Department of Health & Human Services. 49 C.F.R. § 40.3.

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, including damage to motor vehicles that could have been driven, but would have been further damaged if so driven. Disabling damage does not include damage which can be remedied temporarily at the scene of the accident without special tools or parts, tire disablement without other damage even if no spare tire is available, headlight or tail light damage or damage to turn signals, horn or windshield wipers which make them inoperative. 49 C.F.R. § 382.107.

Driver: Means any person who operates a commercial motor vehicle. This includes, but is not limited to full-time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors who are either directly employed by or under lease to the City or who operate a commercial motor vehicle at the direction of or with the consent of the City. For purposes of pre-employment testing, the term driver includes a person applying to drive a commercial motor vehicle. 49 C.F.R. § 382.107.

Drug: Has the same meaning as “controlled substance”.

Employee seeking a transfer: Refers to an employee who is not subject to DOT regulations seeking a transfer to a position that will subject them to DOT regulations in the sought-after position.

Evidential Breath Testing Device or EBT: Means a device approved by the National Highway Traffic Safety Administration (“NHTSA”) for the evidential testing of breath and placed on NHTSA’s “Conforming Products List of Evidential Breath Measurement Devices.” 49 C.F.R. § 40.3.

Federal Motor Carrier Safety Administration or FMCSA: Means the Federal Motor Carrier Safety Administration of the United States Department of Transportation.

Medical Review Officer or MRO: Means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by a ~~controlled substance~~ testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual’s confirmed positive test result together with his or her medical history and any other relevant biomedical information. 49 C.F.R. § 40.3

Performing (a Safety-Sensitive Function): Means any period in which a driver is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions. 49 C.F.R. § 382.107.

Positive Test Result: Means a finding of the presence of alcohol or ~~controlled substance~~, or their metabolites, in the sample tested in levels at or above the threshold detection levels established by applicable law.

Reasonable Suspicion: Means a belief a driver has engaged in conduct prohibited by the FMCSA ~~controlled substance~~ and alcohol testing regulations, except when related solely to the possession of alcohol, based on specific contemporaneous, articulable observations made by a supervisor or City official who has received appropriate training concerning the appearance, behavior, speech or body odors of the driver. The determination of reasonable suspicion will be made in writing on a Reasonable Suspicion Record Form during, just preceding, or just after the period of the work day that the driver is required to be in compliance with this policy. In the case of a

~~controlled substance~~drug, the observations may include indications of the chronic and withdrawal effects of a ~~controlled substance~~drug.

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 or she is relieved from work and all responsibility for performing work. Safety-sensitive functions include:

- a. All time at a City plant, terminal, facility, or other property, or on any public property,
- b. waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- c. All time inspecting equipment as required by 49 C.F.R. § 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- d. All time spent at the driving controls of a commercial motor vehicle in operation;
- e. 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 C.F.R. § 393.76);
- f. 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
- g. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle. 49 C.F.R. § 382.107.

Screening Test (also known as Initial Test): In alcohol testing, mean an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in ~~her-his~~ or her system. Screening tests may be conducted by utilizing a non-evidential screening device included by the National Highway Traffic Administration on its conforming products list (e.g., a saliva screening device) or an evidential breath testing device (EBT) operated by a trained breath alcohol technician (BAT). In ~~controlled substance~~drug testing, "Screening Test" means an immunoassay screen to eliminate "negative" urine specimens ~~f~~rom further consideration. 49 C.F.R. § 382.107.

Substance Abuse Professional" or "SAP": Means a licensed physician (medical doctor or doctor of osteopathy), licensed or certified psychologist, licensed or certified social worker, licensed or certified employee assistance professional, or licensed or certified addiction counselor (certified by the National Association of Alcoholism and ~~Controlled Substance~~Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and ~~controlled substance~~drug-related disorders. 49 C.F.R. § 40.281.