

COUNCIL ACTION FORM

Meeting Date: January 13, 2020

Staff Contact: John Sullivan, Public Works Director

Agenda Item: Drug & Alcohol Testing Agreement

Background / Description of Item:

The City of Westwood utilizes an outside vendor, Compliance One, for the administration and testing of employees with a commercial driver's license (CDL) for drugs and alcohol.

The Federal Motor Carrier Administration (FMCSA) recently established the CDL Drug and Alcohol Clearinghouse (Clearinghouse). This new database contains information pertaining to violations of the U.S. Department of Transportation (DOT) controlled substances (drug) and alcohol testing program for holders of CDLs.

The Clearinghouse rule requires FMCSA-regulated employers, medical review officers (MROs), substance abuse professionals (SAPs), consortia/third party administrators (C/TPAs), and other service agents to report to the Clearinghouse information related to violations of the drug and alcohol regulations in 49 Code of Federal Regulations, Parts 40 and 382 by current and prospective employees.

The Clearinghouse final rule requires the following:

- Employers must query the Clearinghouse for current and prospective employees' drug and alcohol violations before permitting those employees to operate a commercial motor vehicle (CMV) on public roads.
- Employers must annually query the Clearinghouse for each driver they currently employ.

The City of Westwood has utilized Compliance One for this service for several years. The attached revised contract and Clearinghouse addendum reflects the additional requirements in reporting to the new CDL Drug and Alcohol Clearinghouse.

Staff Recommendation:

Staff recommends Council authorize the Mayor to execute the Drug and Alcohol Testing Agreement with Compliance One, Inc.



Third-Party Administration Agreement

THIS DRUG/ALCOHOL TESTING AND/OR FMCSA CLEARINGHOUSE SERVICES AND/OR EMPLOYEE ASSISTANCE AGREEMENT (hereinafter, the "Agreement") is made and entered into this **1ST** day of **January 2020**, by and between, ComplianceOne, Inc., herein known as (COMPLIANCEONE) a Kansas corporation, and **City of Westwood (C14039)** hereinafter known as "Company."

WHEREAS, Company desires to obtain the services of COMPLIANCEONE as a third-party administrator, for purposes of drug and alcohol testing of its employees, provide FMCSA Clearinghouse services, and/or providing an employee assistance program for its employees;

WHEREAS, Company desires to have COMPLIANCEONE act as intermediary in the transmission of drug and alcohol test results from the laboratory conducting the testing to Company; and

WHEREAS, COMPLIANCEONE desires to perform the aforementioned services for Company and will do so in accordance with applicable state and federal laws and regulations.

NOW THEREFORE, in consideration of the agreements contained herein and *other good and valuable consideration*, the parties hereto agree as follows:

1. **TERM.** This Agreement **will run for a two year primary term beginning on the 1st day of January, 2020 and ending on the 1st day of January, 2022, and will automatically renew for an additional two year term at the end of the primary term or any subsequent renewals thereof, unless terminated pursuant to paragraph 20 herein.**

2. **SERVICES.** The services requested under this Agreement are as follows:
 - X Third Party Administration/D&A Testing DOT Program
 - Third Party Administration/D&A Testing NDOT Program
 - National Third-Party Admin/D&A Testing Program

 - X Mobile Collections

 - X Employee Assistance Program

 - X Training (Supervisor Reasonable Suspicion/Employee/DER)
 - Walk-In Clinic Services Topeka, Kansas Location
 - We-Notify Training/Licensing Notifications

 - X FMCSA Clearinghouse Query Services



3. PARTIES DUTIES IN INITIAL PROGRAM STARTUP. To facilitate Company's drug and/or alcohol testing program, COMPLIANCEONE will:
 - A. Prepare and give to Company one (1) policy and procedures notebook containing information necessary for Company to start and maintain its drug and alcohol testing program in digital format.
 - B. Enter Company Information Form Data into COMPLIANCEONE' account information systems.
 - C. Enter Company's employee roster information into COMPLIANCEONE' information systems to be utilized for random drug and alcohol testing selection lists and notices.
 - D. Order testing supplies for use by Company. COMPLIANCEONE' fees for the initial set-up, additional program set-up and products are set out in Attachment A, attached hereto and incorporated herein by this reference.
 - E. Company will provide COMPLIANCEONE with its initial employee roster and a signed copy of Attachment B, a copy of which is attached hereto and incorporated herein by this reference, verifying that appropriate tests have been conducted on each employee on the roster and that Company maintains in its files verified negative test results on each employee.
 - F. Using the form provided in Attachment B, Company will provide COMPLIANCEONE with the name of the person or group responsible for the implementation of Company's drug and alcohol testing policy and procedures and the names of the persons responsible for receiving the names selected for random tests and to whom test results may be reported.
4. COMPLIANCEONE WILL DO THE FOLLOWING IN THE ADMINISTRATION OF COMPANY DRUG AND ALCOHOL TESTING PROGRAM:
 - A. Maintain a list of Company's Designated Employer Representative ("DERs") authorized to receive names of employees selected for random testing and to whom test result may be reported.
 - B. Maintain training records of supervisors, employees and DER's who have successfully completed COMPLIANCEONE' training.
 - C. Maintain a roster of employees subject to random testing, which is updated monthly by the DERs.
 - D. Using a scientifically valid method, conduct a quarterly, computer-generated, random selection of Company employees for random drug and alcohol testing.
 - E. Assist in finding a collection site for test specimen collection with trained/certified collectors, within reasonable distance of Company.
 - F. Provide on-site mobile collection staffed by trained and certified collectors if applicable.
 - G. If applicable, utilize a Substance Abuse and Mental Health Services Administration ("SAMHSA") certified laboratory to conduct testing of all DOT specimens.



- H. Retain a certified Medical Review Officer (“MRO”) who will review all positive test results.
 - I. At the employee’s request, ComplianceOne will expedite a second test of sample B from the original collection to an alternate lab contracted with ComplianceOne. “ It is up to the company to decide who will pay for this re-test and additional charges to the company will apply as set out on price list”
 - J. Report all test results on to a DER within two (2) business days of receipt of all required paperwork and verification from the MRO.
 - K. Maintain and secure records of positive and negative drug and alcohol test results, refusals to test, random pool records, and random lists and notices.
 - L. If applicable, provide paperwork requested by the Department of Transportation (“DOT”), and/or any state or local officials with regulatory authority over the Company or any of its drivers, within two (2) business days.
 - M. Refer employees to qualified substance abuse professionals (“SAP”) when such referrals are required or permitted by Company’s policy.
 - N. Manage the Return-to-Duty and Follow-up process, as those terms are defined in the DOT regulations.
 - O. If applicable, submit monthly, blind performance samples (as that term is defined by DOT regulations on drug and alcohol testing) to a SAMHSA certified laboratory.
 - P. Prepare Management Information System (“MIS”) reports when requested by Company.
 - Q. If applicable, follow the federal DOT regulations found in 49 CFR Part 40 relating to drug and alcohol testing.
5. COMPANY DUTIES IN MAINTENANCE OF DRUG AND ALCOHOL TESTING PROGRAM. To maintain its drug and alcohol testing program, Company will:
- A. Provide COMPLIANCEONE, by the 15th day of each month, with an updated employee roster certifying that the appropriate tests have been completed on the employees listed on the roster and that the Company maintains the required negative test results in its files for each employee.
 - B. Provide COMPLIANCEONE, as necessary, with updated lists of the primary and secondary DERs (Attachment B).
 - C. Pay the fees for testing and retesting, requested by Company employees, based on the fee schedule set forth in Attachment C or any amendments thereto.
 - D. If Company is regulated by the DOT, comply with all applicable DOT regulations, found in 49 CFR Part 40, relating to drug and alcohol testing and ensure that all of its employees, officials, representatives and agents comply with applicable DOT regulations relating to drug and alcohol testing.



6. COMPLIANCEONE WILL DO THE FOLLOWING IN THE ADMINISTRATION OF COMPANY FMCSA CLEARINGHOUSE SERVICES:

- A. Perform full queries on drivers when directed by Company.**
- B. Perform limited queries on drivers when directed by Company for annual or semi-annual queries as required.**
- C. Manage tracking for annual query requirements.**
- D. Retain electronic or wet signature consent from driver's employer for limited queries.**
- E. Support customers with their questions or issues with the FMCSA Clearinghouse.**
- F. Provide online query request form.**
- G. Enter driver drug and alcohol violation information as required.**
- H. Report on Return to Duty and Follow-Up testing.**
- I. Write and provide policy addendum for FMCSA Clearinghouse.**

7. COMPANIES DUTIES IN MAINTENANCE OF FMCSA CLEARINGHOUSE SERVICES:

- A. Provide ComplianceOne the required information to process queries in an efficient manner through ComplianceOne's website portal.**
- B. Provide ComplianceOne with a fully complete CSV template with driver information to process annual queries through ComplianceOne's website portal.**
- C. Select ComplianceOne as employers' TPA during the registration process with the Clearinghouse.**
- D. Assure drivers employed by company have registered with the Clearinghouse.**
- E. Provide assistance to ComplianceOne staff to ensure all drivers have signed and returned the Limited Query Consent form.**

8. EMPLOYEE ASSISTANCE PROGRAM. For the fees and number of visits delineated in Attachment C, COMPLIANCEONE will provide Company Employee Assistance Program services ("EAP services") as follows:

- A. The EAP services provided will include a toll free 1-800 number, available 24 hours a day, answered by licensed or certified master's level mental health professionals who will provide crisis intervention, telephone assessment, and assistance with a referral to community resources if appropriate.**



- B. Referrals for face-to-face counseling, will be directed to the nearest community mental health center or appropriate agency for assessment and determination of the most appropriate level of care and will include coordination of the time, date, therapist, and location according to the caller's convenience. A face-to-face contact, with a qualified therapist, will be assured within specific time frames, according to the level of urgency.
 - C. The number of referral visits set out in Attachment C to this Agreement for each employee and employee's household at no cost to the employee. For purposes of the foregoing provision, a visit is defined as "**per employee per year**" for the employee and their immediate household members. **Costs for all visits in excess of the specified number, whether voluntary or mandatory, will be the responsibility of the employee or the individuals seeking treatment.**
 - D. A quarterly newsletter Healthy Exchange will be mailed to the Company to be distributed to all covered employees.
9. COMPLIANCEONE DUTIES IN ADMINISTRATION OF COMPANY EMPLOYEE ASSISTANCE PROGRAM. COMPLIANCEONE will serve as Third Party Administrator ("TPA") of Company's Employee Assistance Program. In its role as TPA, COMPLIANCEONE will:
- A. Maintain a list of Company's Designated Employer Representatives ("DERs") authorized to receive information and reports.
 - B. Refer employees to mental health professionals or qualified Substance Abuse professionals ("SAP") when necessary.
10. COMPANY DUTIES IN MAINTENANCE OF EMPLOYEE ASSISTANCE PROGRAM. Company agrees to the following:
- A. Provide COMPLIANCEONE with an updated employee count monthly.
 - B. Provide COMPLIANCEONE, as necessary, with updated lists of the primary and secondary DERs.
11. SUPERVISOR REASONABLE SUSPICION TRAINING. If requested by Company and for the fees outlined in Attachment C, COMPLIANCEONE will provide Company supervisors with the necessary and/or appropriate training in establishing and documenting reasonable suspicion to support drug and alcohol testing. Such training will be provided using one or more different means and methods. Supervisor who successfully complete such training will receive a certificate documenting the training.
12. DOT DRIVER'S TRAINING – DRUGS IN THE WORKPLACE. If requested by Company and for the fees outlined in Attachment C, COMPLIANCEONE will train Company's employees on the effects of alcohol and controlled substance use on an individual's health, work and personal life through one or more different means.
13. DER TRAINING. If requested by Company and for the fees outlined in Attachment C, COMPLIANCEONE will train Company's DERs with the required DOT training.



COMPLIANCEONE' fees for the above services and products provided by Company are outlined in Attachment C, a copy of which is attached hereto and incorporated herein by this reference. Such fees may be amended from time to time by COMPLIANCEONE as outlined in paragraph 17 of this Agreement.

14. PROGRAM INTEGRITY. Company agrees that all of its drug and alcohol tests, including pre-employment, random, reasonable suspicion, post-accident, return-to-duty, and follow-up must be conducted through and administered by COMPLIANCEONE in order to maintain the integrity of the Statistical Laboratory Reports and Management Information System (MIS) reports.
15. INVOICE AND PAYMENT. COMPLIANCEONE will send Company a monthly invoice for all services provided pursuant to this Agreement. Payment by Company to COMPLIANCEONE is due within thirty (30) days after receipt of invoice.
16. DELINQUENT PAYMENT. Any payment more than thirty (30) days past due shall be considered delinquent and constitute a material breach of this Agreement. In the event a payment is delinquent, COMPLIANCEONE may, at its sole option, cancel the remainder of this agreement with fifteen (15) days' notice to Company.
17. FEE SCHEDULE CHANGE. All fees listed on Attachment C are subject to change by COMPLIANCEONE upon COMPLIANCEONE providing sixty (60) days written notice to Company, and upon Company's receipt by the Company of any new fee schedule, the new fee schedule shall be incorporated into and become a part of Company's Agreement with COMPLIANCEONE.
18. INDEMNIFICATION. Company agrees to indemnify and hold COMPLIANCEONE harmless for any cause of action brought against COMPLIANCEONE and/or any and all claims, liabilities (including reasonable attorneys' fees), loss, damages or judgments asserted against, imposed upon or incurred by COMPLIANCEONE arising out of the acts or omissions of Company or Company's employees, agents or representatives and/or Company's negligent performance or nonperformance of its obligations under this Agreement, including, but not limited to, Company's failure to comply with applicable DOT regulations relating to drug and alcohol testing.
19. KANSAS LAW CONTROLS. The parties acknowledge and agree that the formation of this Agreement occurred in Kansas when the Agreement was signed by COMPLIANCEONE. Accordingly, the parties agree that this Agreement shall be governed by and construed in accordance with Kansas law.
20. TERMINATION.
 - A. Either Party may terminate this Agreement by providing sixty (60) days written notice to the other party in advance of said termination. During the sixty (60) day period between receipt of such termination notice and the actual termination of the Agreement, COMPLIANCEONE will continue to bill Company and Company will be obligated to pay such bills, with said bills being equal to the greater of: (i) a monthly participant fee that is the average billed for the immediate past twelve (12) month period; or (ii) the payment calculated using the roster for the current month.
 - B. This Agreement may be terminated immediately by COMPLIANCEONE if Company is a DOT regulated Company and does not comply with DOT regulations relating to drug and alcohol



testing. COMPLIANCEONE will notify the appropriate regulatory agencies of Company's non-compliance with the regulations.

C. The Agreement also may be terminated by COMPLIANCEONE as provided in Section 16 above.

21. AUTHORIZED REPRESENTATIVE. The party signing on behalf of Company represents and certifies that he or she is duly authorized to execute this Agreement on behalf of and bind Company and that all actions necessary to enter into this Agreement have been properly accomplished by Company.

22. WAIVER/MODIFICATION. No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of both parties to this Agreement. The waiver by either party of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach of that or any other provision by said party.

23. WRITTEN NOTICE.

A. All communications regarding this Agreement to Company shall be sent to:

B. All communications regarding this Agreement to COMPLIANCEONE shall be sent to:

Drug and Alcohol Testing Services
COMPLIANCEONE, Inc.
2121 SW Chelsea Dr.
Topeka, Kansas 66614

C. All communications provided for in this Agreement shall be either personally delivered or mailed U.S. postage, First Class prepaid.

24. CONFIDENTIALITY – The terms and conditions of this Agreement and all information provided by Company to COMPLIANCEONE and all testing information provided by COMPLIANCEONE to Company shall remain confidential between the parties, absent a written authorization signed by the person involved in the testing.

25. THIS AGREEMENT shall be binding on the parties hereto, and their assignees and remain confidential between the parties.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day, month, and year above written.

ComplianceOne, Inc.

By: _____

Title: Chief Operating Officer

Date: _____

City of Westwood (CI4039)

By: _____

Title: _____

Date: _____



ATTACHMENT B

DRUG AND ALCOHOL TESTING

Verification Form

Please attach a computer-generated or typed roster report with the Employee Name and Driver's License Number.

TOTAL NUMBER OF EMPLOYEES LISTED ON ROSTER:

Company Representative

Date



ATTACHMENT C
PRICE LIST (DOT & Non DOT)

Initial Program Set-up Fee:

Random Selection Pricing:

\$4.00 per participant per month Standard random pool DOT & NDOT

Employee Assistance Program:

\$1.50 per participant per month 1 Face to Face visit included per employee and family member

Drug and Alcohol Test Pricing for Pre-Employment, Post Accident, Reasonable Cause, Follow-Up and Return-to-Duty Testing:

Test Pricing:

\$00.00 per test	RANDOM SELECTION TEST
\$75.00 per test	5-panel urine specimen drug test
\$75.00 per test	Evidential Breath Alcohol Test
\$150.00 per test	Retest of confirmed positive sample (charged to employer but may be reimbursed by employee).

Training:

Initial Supervisor/Designated Employer Representative (DER) training at no charge.

FOLLOW-UP TRAINING OPTIONS:

\$ 30.00 per person DER/Supervisor training completed online

\$ 7.50 per person Employee training completed online

FMCSA Clearinghouse Services:

\$10.00	Full/Pre-employment Query – Per driver
\$5.00	Annual Query Spreadsheet upload – Per driver
\$10.00	Entry of any program violation

Miscellaneous Program Materials:

\$50.00 each Replacement of program manual when requested by employer



2121 SW Chelsea Drive * Topeka, Kansas 66614 * 800-886-1123 Phone * 785-232-5016 Fax
www.comp-one.com

FMCSA CLEARINGHOUSE POLICY ADDENDUM

This FMCSA Clearinghouse Policy Addendum is incorporated into and made part of the original Drug and Alcohol Testing Policy from ComplianceOne. This addendum is effective January 1, 2020.

The Clearinghouse is a secure online database that will give employers, the Federal Motor Carrier Safety Administration (FMCSA), State Driver Licensing Agencies (SDLAs), and State law enforcement personnel real-time information about commercial driver's license (CDL) and commercial learner's permit (CLP) holders' drug and alcohol program violations.

The Clearinghouse will contain records of violations of drug and alcohol prohibitions in [49 CFR Part 382, Subpart B](#), including positive drug or alcohol test results and test refusals. When a driver completes the return-to-duty (RTD) process and follow-up testing plan, this information will also be recorded in the Clearinghouse.

The requirement that the following personal information collected and maintained under this part shall be reported to the FMCSA Clearinghouse:

- i. A verified positive, adulterated, or substituted drug test result;
- ii. An alcohol confirmation test with a concentration of 0.04 or higher;
- iii. A refusal to submit to any test required by subpart C of this part;
- iv. An employer's report of actual knowledge, as defined at Part 382.107:
 - A. On duty alcohol use pursuant to Part 382.205;
 - B. Pre-duty alcohol use pursuant to Part 382.207;
 - C. Alcohol use following an accident pursuant to Part 382.209; and
 - D. Controlled substance use pursuant to Part 382.213;
- v. A substance abuse professional (SAP as defined in Part 40.3 of this title) report of the successful completion of the return-to duty process;
- vi. A negative return-to-duty test; and
- vii. An employer's report of completion of follow-up testing.

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

Certificate of receipt. Each employer shall ensure that each driver is required to sign a statement certifying that he or she has received a copy of these materials described in this section. Each employer shall maintain the signed certificate and may provide a copy of the certificate to the driver.

Employers will be required to conduct **BOTH** electronic queries and traditional manual inquiries with previous employers to meet the three-year timeframe, required by FMCSA's drug and alcohol use testing program, for checking CDL driver violation histories. Drivers may also view their own records for information recorded on or after January 6, 2020.