

5:30 p.m. – Work Session

No motions or decisions will be considered during this session, which is open to the public.

6:00 p.m. – Council Meeting (Council Chambers)

A. Welcome & Roll Call

B. Pledge of Allegiance – Bart Stevens

C. Invocation – Alan Arnold

D. Public Comment

(This is an opportunity to address the City Council regarding your concerns or ideas. No action will be taken during public comment. Please try to limit your comments to three minutes.)

E. Presentations and Reports

1. Mayor's Report
2. Council Assignment Reports
3. Recognition of Mr. Dave Leahy

F. Consent Items

1. Consideration to approve meeting minutes from:
May 17, 2022 Council Work Session
May 17, 2022 Council Meeting

G. Action Items

1. Motion to approve Resolution 2022-15 amending Personnel Policies Handbook Chapter 12, Substance Abuse and Drug Free Workplace.
Stacey Comeau, Human Resources
2. Consideration to approve Resolution 2022-16, adopting the Mutual Aid Agreement renewal between all Weber County Fire Departments.
Jared Sholly, Fire Chief
3. Discussion and action for further Council direction for later City Council meeting regarding water shares for H&P Investments, LLC, future Shake Shack site, others.
Shawn Douglas, Public Works and Steve Brooks, City Administrator

H. Comments

1. City Council
2. City Staff
3. Mayor

J. Adjournment

The undersigned, duly appointed City Recorder, does hereby certify that the above notice and agenda was posted within the Riverdale City limits on this 3rd day of June 2022 at the following locations: 1) Riverdale City Hall Noticing Board 2) the City website at <http://www.riverdalecity.com/> 3) the Public Notice Website: <http://www.utah.gov/pmn/index.html> and 4) A copy was also provided to the Standard-Examiner.

Michelle Marigoni
Riverdale City Recorder

**The City Council meeting on June 7, 2022 is viewable electronically and may be accessed by clicking on the link below. The regular City Council Chambers will be available for in person participation with recommended social distancing followed. The agenda for the meeting is also attached above. **https://www.youtube.com/channel/UCegcYe-pIXSRZGd5llencvA/videos?view_as=subscriber

Minutes of the **Work Session** of the **Riverdale City Council** held Tuesday May 17, 2022, at 5:30 p.m., at the Civic Center in the Council Chambers, 4600 S Weber River Dr., Riverdale City, Weber County, Utah.

Present:

City Council: Braden Mitchell, Mayor
Alan Arnold, Councilmember
Bart Stevens, Councilmember
Steve Hilton, Councilmember
Karina Merrill, Councilmember

City Employees: Steve Brooks, City Attorney
Mike Eggett, Community Development
Matt Hennessy, Fire Chief
Shawn Douglas, Public Works
Scott Brenkman, Police Chief
Rich Taylor, Community Center
Michelle Marigoni, City Recorder

Excused: Anne Hansen, Councilmember (arrived during work session)

The City Council Work Session meeting began at 5:30 p.m. Mayor Mitchell welcomed all in attendance. It was noted for the record that all Councilmembers were present, as well as city staff.

Pledge of Allegiance

Mayor Mitchell will lead the Pledge of Allegiance.

Public Comment:

Mayor Mitchell asked if anyone knew of any public comment. There was none.

Presentations and Reports:

Mayor's Report

City Administration Report

Department Reports March
April Anniversaries Employee Recognition
Staffing Authorization Plans
Community Development Report

Consent Items

Consideration to approve meeting minutes from:

May 3, 2022 Council Work Session
May 3, 2022 Council Meeting

Mayor Mitchell asked if there were any changes to the minutes from the May 3 meetings. There were no changes.

Action Items

Discussion regarding agricultural zoning uses

Presenters: Steve Brooks, City Administrator/Attorney and Mike Eggett, Community Development

Mike Eggett, Community Development stated this is a follow-up from a request at the last council meeting. The AICUZ and A-1 zoning, as well as APZ-1 and APZ-2. There was a study and an agreement between the state and the federal government regarding areas around Hill Air Force Base.

Mr. Brooks reminded Councilmember Merrill that this may affect her, so she will need to disclose this.

Councilmember Merrill asked if there was a possibility to table so she could research and learn more about the items presented in the packet.

Mr. Stevens asked for clarification about the item on tonight's agenda, and if he was correct in understanding that there would be no decisions made on this. He stated that tabling the item would not be productive.

Mr. Allen said there could be a consensus to move the item to the planning commission, and that he supports councilmembers doing research. He said this was regarding the entire A-1 zone and not only the areas near the base, though that does need to be addressed, though there are other properties that would be affected.

Councilmember Merrill asked for advice in wording a disclosure. Mr. Brooks explained how disclosure works, and that disclosure needs to be made any time a decision may benefit them.

Consideration of Resolution #2022-14 adopting drought rates for culinary water usage

Presenter: Shawn Douglas, Public Works

Mr. Douglas said this was brought up in the last meeting and asked if Council had any questions. Mr. Stevens asked if there has been a time where water was subsidized. Mr. Douglas explained water is run as only an enterprise fund and that money is not made on water fees. Mr. Cardon explained that moving water from the water fund to the general fund would require a public hearing process.

Mr. Allen said he has had residents asking about water. He said previous councils made promises that current council may not be able to keep due to changes in the state laws. Mr. Allen encouraged using the city website, social media, and newsletter to educate residents. Mr. Douglas said he would prefer to have this go into effect in July so there is time for education, and that it would run through October. After that, the drought would be reassessed, and normal rates could return if the drought situation is improved.

Consideration of Ordinance #950 implementing fees for violations of water restrictions

Presenter: Shawn Douglas, Public Works

Mr. Douglas explained this is to have a way to notice and enforce the water restrictions with graduated fees. He hopes it does not need to be used but needs to have something to back up the notices. The public works staff have been speaking to violators personally to communicate the problems and educate residents. Face to face communication has been more successful than phone calls or emails.

Discussion and consideration regarding Truth in Taxation process

Presenters: Steve Brooks, City Administrator/Attorney and Cody Cardon, Business Administration

Mr. Cardon said this will provide more information on the process.

Consideration of adjourning into Closed Executive Session pursuant to the provisions of Section 52-4-205 of the Open and Public Meetings Act for the purpose of discussing the purchase or sale of real property (Roll call vote)

Presenter: Steve Brooks, City Administrator/Attorney

Mr. Brooks said there will be three items regarding real property discussed in the closed session.

Comments

1. City Council:
2. City Staff:
3. Mayor: Would like to make a change in the agenda moving forward. The pledge will rotate through Councilmembers, and he would like an invocation added. Staff may be invited to Mr. Stevens objected to having an invocation during the public meeting.

Residents have been asking for rain collection barrels. Mr. Douglas reminded that more than two barrels require a permit.

Adjournment

Having no further business to discuss, the Work Session was adjourned at 5:59 p.m.

Minutes of the Regular Meeting of the Riverdale City Council held Tuesday, May 17, 2022, at 6:00 p.m., at the Civic Center, 4600 S Weber River Dr., Riverdale City, Weber County, Utah.

Present:

City Council:

- Braden Mitchell, Mayor
- Alan Arnold, Councilmember
- Bart Stevens, Councilmember
- Steve Hilton, Councilmember
- Anne Hansen, Councilmember
- Karina Merrill, Councilmember

City Employees:

- Steve Brooks, City Attorney
- Mike Eggett, Community Development
- Nate Hennessy, Fire Department
- Shawn Douglas, Public Works
- Scott Brenkman, Police Department
- Michelle Marigoni, City Recorder

Visitors:

- Lori Fleming
- Richard Copps
- Wayne Higgs
- Christopher Higgs

Welcome & Roll Call

The City Council meeting began at 6:00 p.m. Mayor Mitchell called the meeting to order and welcomed all in attendance, including all Council Members, City Staff, and all members of the public.

Pledge of Allegiance

Mayor Mitchell led the Pledge of Allegiance.

Moment of Silence

Mayor Mitchell called for a moment of silence in and asked those in attendance to keep in mind first responders and the role they play in keeping us safe, as well as world leaders, military, and city council as they make decisions.

Public Comment

There was no public comment.

Presentations and Reports

Mayor's Report

Mayor Mitchell – No report.

City Administration Report

Department Reports March –

- Sales tax continues to be strong and outpace last year, which is good.
- Fire code violations have been increasing. Code enforcement's workload has been steadily increasing.
- Community Center – non-residents use the pickleball and facilities more than Riverdale residents.
- Police Report – Aggravated assault on a police officer – shots fired at officers. Suspect ended up passing away, but luckily no officers were hurt.

May Anniversaries Employee Recognition – Shawn Douglas – 31 years.

Staffing Authorization Plans – Remains below authorization.

Community Development Report – A lot of things going on and it will continue to get busier.

Mr. Stevens and Mr. Hilton asked about the video from the shooting. Mr. Brooks said it may be possible for Council to view at a later date.

Consent Items

Consideration to approve meeting minutes from:

May 3, 2022 Council Work Session
May 3, 2022 Council Meeting

Mayor Mitchell asked if there were any changes to the minutes from the May 3 meetings. There were no changes. Councilmember Arnold made a motion to approve the minutes, Councilmember Hilton seconded the motion. All were in favor and the minutes were approved.

Action Items

1. Discussion regarding agricultural zoning uses

Presenters: Steve Brooks, City Administrator/Attorney and Mike Eggett, Community Development

Councilmember Merrill disclosed that she may benefit from decisions made regarding A-1 Zoning.

Mr. Brooks, speaking as the city attorney, said it is his obligation to protect the city and residents. He said with pending court cases he would prefer not to discuss this at this time.

Motion: Councilmember Merrill motioned to table this item.
Second: Councilmember Arnold

Discussion on motion:

Mr. Stevens said this was all known prior to putting this on the agenda. He found the packet informational and would like to have a discussion. He asked why it would be brought up and then tabled.

Mr. Arnold said the discussion provides a balance of both sides to come up with the best things for Riverdale. He said the A-1 zoning does not really affect Riverdale any longer. A balanced discussion is necessary to make a decision that is best for Riverdale.

Mr. Stevens said this is an educational process of understanding, knowing, and learning, and there shouldn't be two sides.

Verbal Votes:

Councilor Arnold:	Yes
Councilor Stevens:	No
Councilor Hilton:	Yes
Councilor Hansen:	Yes
Councilor Merrill:	Yes

Motion passes 4 to 1. Item will be tabled.

2. Consideration of Resolution #2022-14 adopting drought rates for culinary water usage

Presenter: Shawn Douglas, Public Works

Discussion:

Mr. Hilton asked if this will be shown as the rate or as a surcharge. Mr. Cardon said it could be noted on the bill, but not separated in the rates.

Mr. Arnold suggested putting the information in the newsletter. Mr. Douglas said there may be a QR code in the newsletter and on a postcard that will link to the information. It will also be on the website. The rates will be based on Weber Basin's guidelines and drought ratings. These rates would be in effect through October 2022.

Councilmember Hilton asked if the proposal includes tiers based on usage. Yes, Mr. Douglas confirmed. Mr. Hilton asked why the river looks so high. Mr. Douglas explained this is due to snowmelt in drainages with no catch areas, below the reservoirs. Mr. Hilton suggested information regarding the river also be included in the newsletter.

Councilmember Arnold asked why there is a fee before water is used, and why trailer parks are different. Mr. Douglas said the state determines the differences.

Motion: Councilmember Arnold moved to approve Resolution #2022-14
Second: Councilmember Hilton

Discussion on motion:

Mr. Stevens said he did not like the term “drought rates”. Mr. Douglas said it is called the “drought conservation water rates”. Mr. Stevens asked that the full title be used in the newsletter.

Mr. Brooks said it will show “water rate during drought conditions” in the fee schedule. Mr. Arnold asked if the drought had been declared by the mayor. Mr. Brooks said it has been done verbally but needs to be done in writing, and that it will be done soon.

Roll Call Votes:

Councilor Arnold	Yes
Councilor Merrill	Yes
Councilor Hansen	Yes
Councilor Hilton	Yes
Councilor Stevens	Yes

All in favor, motion carried.

3. Consideration of Ordinance #950 implementing fees for violations of water restrictions

Presenter: Shawn Douglas, Public Works

Discussion:

Mr. Douglas said this one is self-imposed. Notices are being given based on complaints and observed violations at this time. Communication is being made face-to-face to educate residents. This is meant as back up for enforcement for serious violators. Many residents are concerned about the water and are willing to do what is needed for conservation.

Ms. Hansen referred to a clause regarding a class B misdemeanor and who would need to enforce that. Mr. Brooks said there could be a civil and a criminal penalty, though it does not generally come to a criminal case. If it did, a police officer would need to issue the citation.

Motion: Councilmember Arnold moved to approve Ordinance #950

Second: Councilmember Hansen

Verbal Vote:

Councilor Stevens	No
Councilor Hansen	Yes
Councilor Arnold	Yes
Councilor Merrill	Yes
Councilor Hilton	Yes

4. Discussion and consideration regarding Truth in Taxation process

Presenters: Steve Brooks, City Administrator/Attorney and Cody Cardon, Business Administration

Discussion: Mr. Brooks said more direction is needed and turned the time over to Mr. Cardon, who went over some of the information that was in the packet two weeks ago as a refresher.

Mr. Cardon explained the increase is in dollar amounts. Mr. Arnold asked what the amount being brought in is currently. Mr. Cardon said it is approximately \$750,000, and that a 100% increase would mean an additional \$750,000. The amount is what determines the rate, which changes based on property values.

Mr. Cardon went over the process for Truth in Taxation: A municipality must decide before June 21 if they want to increase tax rates. If there are two or more cities who want to raise rates, the county will publish a notice. The city specifies a dollar amount to be collected, and the county determines the rate that would accomplish this. The city is then required to publish notice one week before the hearing. Public hearings are held. The process is finished in September.

Mayor Mitchell said he will be gone the first week in August and asked if this could still be done, noting he wants to be present for all parts of the process. Mr. Cardon said the dates depend on the schedule, but it would most likely be in July.

Mr. Cardon explained this increase could fund 3 FF, 2 PO, Emergency manager, and a part time code enforcement employee.

The last tax increase was in 2007. Since then, cost of public safety has increased. Fire cost has nearly doubled. Mr. Cardon showed comparisons with Farr West City, and how their public safety cost with the county has tripled.

Mr. Stevens spoke about the difference between police and fire contracts with the county and fire districts, and that fire is assessed on taxes, but sheriff services are a fee paid by the contract cities.

Mr. Cardon asked Council for direction so he can make appropriate changes to the budget.

Ms. Hansen said it was compelling to hear about the staff shortages for police and fire and expressed the importance of having enough staff to handle the calls that come in and to take care of the residents. She appreciates how hard the police have worked to keep within budget. She understands there is growth in the city and retirements, and that they have met the end of being able to keep getting more efficient. Giving Riverdale the ability to handle their calls also helps the surrounding cities who are needing to help our officers.

Mr. Brooks said this increase would help drastically.

Mr. Stevens noted RC Willey closing will be about an 800,000 loss in sales tax, so the timing of this is crucial.

Mayor Mitchell said he is really trying to make sure the information is being put out correctly. He asked to keep the increase under 100% if at all possible, as he is not thrilled any increase has to be made, but that it needs to be done and it would be easier to digest if it was under 100%.

Mr. Stevens said he thinks people have been desensitized because everything is going up. The young people that are usually hired for public safety and public works are not applying because they can make more money somewhere else. We need to be competitive, which is difficult when seasonal and part time employees are needed. Many places are paying impressive wages and that is who we need to compete with and start paying.

Mr. Brooks said staff is looking for guidance on an amount, which would determine the rate. Mr. Cardon further explained the rate will also adjust with the county assessment of growth, so there is not a way to guarantee a percentage at this time. He asked that a decision be made on

Mr. Arnold said he is in favor of even the 100% increase, specifically for public safety. The police calls have been changing and becoming more volatile. Officers should not need to go on these calls alone. He will gladly talk to people about it if needed, even though he is up for reelection soon.

Mayor Mitchell asked for a consensus to move forward with process: All were in favor.

Mr. Stevens asked that the increase amount stay under one million. Ms. Hansen asked for a simplified table with numbers to make it easier to vote on the amount. Mr. Cardon informed council that he would have more information on numbers in June after the county assessments.

Mr. Arnold noted that Riverdale's low tax rate and lack of increases does not look good to the state, especially with the problem of sales tax changes coming up.

Richard Cops, a Roy resident, spoke up and said Riverdale is one of the lowest tax areas in the county.

5. Consideration of adjourning into Closed Executive Session pursuant to the provisions of Section 52-4-205 of the Open and Public Meetings Act for the purpose of discussing the purchase or sale of real property (Roll call vote)

Presenter: Steve Brooks, City Administrator/Attorney

Motion: Councilmember Hansen moved to enter closed session

Second: Councilmember Arnold

Roll Call Votes:

Councilor Hilton Yes
Councilor Stevens Yes
Councilor Merrill Yes
Councilor Hansen Yes
Councilor Arnold Yes

The Closed Executive Session began at 7:16 pm

The Closed Executive Session ended at 8:25 pm

Comments

1. City Council:

- Stevens asked about the video from the shooting.

2. City Staff:

-

3. Mayor:

- Dave Leahy is going to resign from the veteran's committee and should have recognition.
- Thanks to city staff and how they work together, and their vast knowledge.

Adjournment.

Having no further business to discuss, Councilmember Arnold made a motion to adjourn. The motion was seconded by Councilmember Hilton and all voted in favor. The meeting was adjourned at 8:29 p.m.

**RIVERDALE CITY
CITY COUNCIL AGENDA
June 7, 2022**

AGENDA ITEM: G1

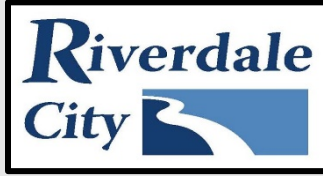
SUBJECT: Motion to approve Resolution 2022-15 amending Personnel Policies Handbook Chapter 12, Substance Abuse and Drug Free Workplace.

PRESENTER: Stacey Comeau, Human Resources

INFORMATION:

- a. [Executive Summary](#)
- b. [Resolution 2022-15 with Personnel Policy Amendment](#)
- c. [SB0046](#)
- d. [Medical Cannabis Utah Code](#)
- e. [UMCA Public Employee Protections](#)

[BACK TO AGENDA](#)



City Council Executive Summary

For the Council meeting on:
June 07, 2022

Petitioner:
Stacey Comeau

Summary of Proposed Action

Motion to approve resolution 2022-15 amending Personnel Policies Handbook Chapter 12 Substance Abuse and Drug Free Workplace.

Summary of Supporting Facts & Options

- Amending Chapter 12 of the Personnel Policies Handbook to comply with Senate Bill 46 Medical Cannabis Patient Protection Amendments.

Legal Comments – City Attorney

Steve Brooks, Attorney

Fiscal Comments – Business Administrator/Budget Officer

Cody Cardon,
Business Administrator

Administrative Comments – City Administrator

Steve Brooks,
City Administrator



RESOLUTION NO. 2022-15

**A RESOLUTION ADOPTING AN AMENDMENT TO THE RIVERDALE CITY
PERSONNEL POLICIES & PROCEDURES HANDBOOK**

WHEREAS, Riverdale City has previously adopted a Personnel Policy Handbook which includes Employee Personnel Policies and Procedures; and

WHEREAS, it is necessary, from time to time, to make amendments to the Personnel Policy Handbook to supplement, change, clarify, or revise certain sections of the Handbook; and

WHEREAS, the City Council has reviewed the affected sections of the Personnel Policy and has determined a need to amend said sections; and

WHEREAS, the City finds the amendment of this policy to be in the best interest of Riverdale City and the employees of Riverdale City; and

WHEREAS, this amendment to the Personnel Policy Handbook will be made available to all City employees.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Riverdale that the amendment to the Riverdale City Personnel Policies Handbook as set forth in the attached Exhibit A (Chapter 12 Substance Abuse and Drug Free Workplace), is hereby adopted and the Policy Handbook shall be amended with these changes incorporated therein and now read as outlined in said Exhibit A, as an amendment to the policy.

All other title, chapters, sections, and terms in the Personnel Policy Handbook shall remain the same, in full force and effect, unless specifically amended hereby.

This resolution shall take effect immediately upon its adopting and passage.

PASSED AND ADOPTED this _____ day of June, 2022

Braden Mitchell, Mayor

Attest:

Michelle Marigoni, City Recorder

Exhibit A

Chapter 12 SUBSTANCE ABUSE AND DRUG FREE WORKPLACE

12-1 Policy Statement

The City believes that a healthy and productive work force, safe working conditions free from the effects of drugs and alcohol, and maintenance of the quality of services rendered by the City are important. The abuse of drugs and alcohol creates a variety of workplace problems, including increased injuries on the job, increased absenteeism, increased financial burden on health and benefit programs, increased workplace theft, decreased employee morale, decreased productivity, and a decline in the quality of services.

Therefore, the City hereby adopts this Policy for testing employees and prospective employees as related to drugs and alcohol in the workplace.

- A. In order to achieve a drug-free workplace, employees in, and applicants for, safety sensitive positions shall be required to participate in alcohol and drug testing:
 - 1. When an applicant has been extended a conditional offer of employment but before beginning work;
 - 2. When there is a reasonable suspicion to believe that the employee is in an impaired state;
 - 3. When the employee has been involved in an "on duty accident" or unsafe work practice and based on the facts and circumstances of each case, there is an objectively reasonable basis for conducting such test;
 - 4. On a random basis;
 - 5. As a condition for return to duty after testing positive for controlled substances or alcohol; and,
 - 6. As part of follow-up procedures to employment related drug or alcohol violations.

- B. Applicants for all other positions shall, as a condition of employment, be required to participate in alcohol and drug testing after the applicant has been extended a conditional offer of employment but before beginning work.

12-2 Drug & Alcohol Testing Policy Definitions

For the purposes of this policy:

- * "Alcohol" Alcohol is defined as the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols in methyl and isopropyl alcohol no matter how packaged or in what form the alcohol is stored, utilized or found.

- * "Drugs" used in this policy refer to and include all drugs, paraphernalia, controlled substances, or mood or mind altering inhalants, any of which were not prescribed by a licensed physician/dentist in the United States for the person taking or in possession of the drug or substance, or which have not been used as prescribed or directed.

- * "Drug Paraphernalia" means objects used to manufacture, compound, covert, produce, process, prepare, test, analyze, pack, store, contain, conceal, and/or to inject, ingest, inhale, or otherwise introduce a drug into the human body.
- * "Employee" means any person in the service of the City whether for compensation or as a volunteer.
- * "Prospective employee" means any person who has made application for employment with the City and to whom the City has offered employment, conditioned upon the results of a drug and alcohol test.
- * "Conviction" means a finding of guilt (including a plea of no contest) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal statutes.
- * "Criminal Drug Statute" means a Federal or State criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance. **Except as provided in Title 26, Chapter 61a, Utah Medical Cannabis Act.**
- * "MRO" means Medical Review Officer, charged with reviewing and interpreting test results and determining any alternate medical explanations.
- * "Drug Policy Coordinator" is the City employee specifically designated to administer the Drug and Alcohol Testing Policy and through whom any procedures, or disciplinary or rehabilitative action regarding this policy, must be reviewed and approved. The Drug Policy Coordinator is the City Administrator or other person designated by the City Administrator.
- * "CDL-Commercial Driver's License" is the license required to operate a commercial vehicle.
- * "Positive Test" any test result showing a blood alcohol content of 0.024⁴ or greater or the presence of any controlled substance in the test subject. **Except as provided in Title 26, Chapter 61a, Utah Medical Cannabis Act.**
- * "Refusal to Submit to Testing" failure to provide a testing sample without a valid and verified medical explanation, after the employee has received notice that he/she is being tested and a sample is required, or engages in conduct that clearly obstructs the testing process.
- * "Reasonable Suspicion" knowledge sufficient to induce an ordinarily prudent and cautious person under the circumstances to believe that a prohibited activity is occurring.
- * "Safety Sensitive Duties" any duties requiring a Commercial Drivers License, ~~Firefighting Duties, Police Duties, any other duties or positions deemed safety sensitive.~~ **or which directly affects the safety of employees, the general public, or positions where there is access to controlled substances, as defined in Utah Code Title 58, Chapter 37, Utah Controlled Substances Act, during the course of performing job duties.**
- * "Sample" means urine, blood, breath, saliva or hair.

12-3 Testing Policy

It is the policy of the City to test employees and prospective employees for the presence of drugs or alcohol, according to the provisions set forth below, as a condition of hire or continued employment. Any employee or prospective employee failing (except as provided in Title 26, Chapter 61a, Utah Medical Cannabis Act) or refusing to take the test will not be eligible for employment, or if employed, may be subject to termination, If an employee's breath alcohol concentration is .0014 or more, a second breath specimen shall be tested approximately 10 minutes later. The results of the second test shall be determinative, however the employee may ask for a blood test after the second positive breath specimen. The City shall consider as negative all confirmed positive drug and alcohol test results with a medically sufficient explanation.

*Safety sensitive positions ~~are defined as any employee working for the Police Department, Fire Department, or the Public Works Department.~~ include any duties requiring a Commercial Drivers License, or the duties performed directly affects the safety of employees, the general public, or positions where there is access to controlled substances, as defined in Utah Code Title 58, Chapter 37, Utah Controlled Substances Act, during the course of performing job duties.

A. The City shall require the testing of employees and prospective employees, including management, on a periodic basis, under the following circumstances and purposes:

1. **Pre-Employment Testing.** All prospective employees shall be tested for drug and alcohol usage prior to being placed for employment. All job applicants shall be informed of the policy at the pre-employment interviews. A copy of this policy shall be available for review by all job applicants. All prospective employees shall be required, prior to being hired by the City, to sign the acknowledgment form, agreeing to abide by the terms of this policy. The City will exclude from employment any job applicant or prospective employee who refuses to abide by the terms of this policy. Any prospective employee whose pre-employment drug and alcohol test results in a confirmed positive and who does not have a medically sufficient explanation (as determined in the sole, but reasonable, discretion of the MRO), may reapply for employment with the City after six months from the date of such test. If the City hires a prospective employee, he or she must have first successfully passed the above-referenced pre-employment drug and alcohol test, and thereafter he or she will be subject to all the procedures and requirements for drug and alcohol testing as set forth in this policy.

In addition, any employee who has taken an extended leave of absence of six months or longer must be retested under this section before returning to work.

2. **Reasonable Suspicion (For Cause) Testing.**

A. When a designated supervisor makes a determination that there is a reasonable suspicion to believe that an employee performing or assigned to safety sensitive positions is using, is under the influence of, or is in possession of alcohol or controlled substances, the employee shall be subject to drug/alcohol testing.

1. The Supervisor making the determination that reasonable suspicion exists shall submit written documentation setting forth the specific, contemporaneous articulable observations concerning the appearance, behavior, speech or body odors of the employee

which resulted in the reasonable suspicion determination. Reasonable suspicion of use of a controlled substance may also be based on observation of indications of the chronic and withdrawal effects of controlled substances.

- a. The required observations underlying reasonable suspicion testing must be made by a supervisor or city official who has received at least two (2) hours of training on the physical, behavioral, speech and performance indicators of alcohol and drug use.
 - b. Observations underlying the reasonable suspicion testing must be documented in writing and signed by the supervisor or city official within twenty four (24) hours or before the results of the test are announced, whichever is later.
2. Reasonable suspicion testing may not be conducted by the same supervisor who makes the reasonable suspicion determination.
- B. Special requirements associated with reasonable suspicion alcohol testing.
1. Alcohol testing is authorized only if the observations set forth above are made during, just proceeding or just after the performance of safety sensitive functions.
 2. If an alcohol test is not administered within two (2) hours following the identification of reasonable suspicion, the supervisor prepare and maintain documentation stating why the test was not administered within two (2) hours.
 3. If an alcohol test is not administered within eight (8) hours following the identification of reasonable suspicion, the supervisor shall cease attempts to administer an alcohol test and shall prepare and maintain documentation stating why the test was not administered within eight (8) hours.
- C. Special requirements associated with reasonable suspicion drug testing.
1. If a drug test is not administered within thirty two (32) hours following the identification of reasonable suspicion, the supervisor shall cease attempts to administer a drug test, and shall prepare and maintain documentation stating why the test was not administered within thirty two (32) hours.
- D. Upon required testing due to reasonable suspicion, the employee tested shall not engage in the operation of any City equipment or engage in any employment related duties, which his/her supervisor deems dangerous to himself/herself or others until the results of the tests are received and the employee is released back to work by the Drug Policy Coordinator.
3. **Return to Duty Testing.** If the City returns to duty an employee who is assigned to a safety sensitive position after he or she has voluntarily sought rehabilitation for drug or alcohol abuse and has successfully completed rehabilitation, such employee shall be entered into a program of unannounced drug and alcohol testing for a predetermined period of time at the sole discretion of the City.

4. **Post-Accident Testing.** The City may require employees in safety sensitive positions* to submit to a post-accident drug test if, based on the facts and circumstances of each case, there is an objectively reasonable basis for conducting such a test.

If a DOT recordable accident occurs – the driver must be drug tested within 32 hours and alcohol tested within 2 hours. An accident is considered to be a DOT recordable accident if any of the following conditions exist:

1. Fatality, or bodily injury requiring medical treatment away from the scene.
2. One or more vehicles is towed from the scene of the accident.

5. **Random Testing.** Employees assigned to, or performing, safety sensitive duties are subject to random drug/alcohol tests.

A. Random tests shall be:

1. unannounced; and
2. reasonably spread throughout the year.

B. Each employee within a testing pool must have an equal chance of being tested each time a random test is conducted.

B. Employee's required to hold a Commercial Driver's License (CDL) and drive commercial vehicles as a condition of employment may be tested as required by federal and/or state law.

C. Any drug or alcohol testing shall occur during or immediately after the regular work period of current employees, and shall be deemed work time for purposes of compensation and benefits for current employees.

D. Individuals will be tested on City premises or sent to an outside clinic or testing facility licensed to perform such tests. If an employee is sent to an outside clinic for a "Reasonable Suspicion" test, the employee must be driven to the facility by the supervisor or his/her designee. The employee must then be put on administrative leave until the results of the test are available. The supervisor must make arrangements or help the employee make arrangements to get home without driving him/herself.

E. The City shall pay all costs of testing and transportation associated with a test required by the City.

F. All sample collection and testing shall be performed under the following conditions:

1. The collection of samples shall be performed under reasonable and sanitary conditions.
2. Samples shall be collected and tested with due regard to the privacy of the individual being tested, and in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples.
3. The collection of samples shall be documented, and the documentation procedures shall include labeling of samples, to reasonably preclude the

probability of erroneous identification of test results. An opportunity shall be provided for the employee or prospective employee to provide notification of any information that he or she considers to be relevant to the test, including identification of currently or recently used prescriptions or non-prescription drugs, or other relevant medical information.

4. Sample collection, storage, and transportation to the place of testing shall be performed in a manner that reasonably precludes the probability of sample misidentification, contamination or adulteration.
 5. Sample testing shall conform to scientifically accepted analytical methods and procedures.
 6. Testing shall include verification or confirmation of any positive initial screening test by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable method.
- G. In the case of urine testing, an employee or prospective employee will submit a split urine sample. A split urine sample shall consist of at least 45 ml of urine. The urine shall be divided into two specimen bottles, with at least 30 ml of urine in one bottle and at least 15 ml of urine in the other. If the test results of the 30 ml urine sample indicate the presence of drugs, the donor of the test shall have 72 hours from the time he is so notified to request, at his option that the 15 ml urine sample be tested for the indicated drugs, the expense of which shall be divided equally between the donor and the City. The test results of both samples may be considered at any subsequent disciplinary hearing.
- H. Drug and alcohol testing will be conducted in compliance with federal, state and local laws, including but not limited to Utah Code Ann. s 34-41-101 *et seq.*

12-4 City Action

Upon receipt of a verified or confirmed positive drug or alcohol test result, which indicates a violation of this policy (and in the case of urine testing after providing the employee or prospective employee notice of the result of the initial test and the option to have the 15ml urine sample tested), or upon the refusal of any employee or prospective employee to provide a sample, the City may use that test result **except as provided in Title 26, Chapter 61a, Utah Cannabis Act,** or refusal as the basis for disciplinary or rehabilitative actions, which may include, but not be limited to, the following:

- A. Termination of employment.
- B. Refusal to hire a prospective employee.
- C. Any other disciplinary measures in conformance with the City's practices, policies, or procedures.

12-5 Confidentiality

The information received from the drug testing results shall be the property of the City. Test results information may be released to the person who has been tested upon written request.

12-6 Work Place Rules

Employees who possess, dispense, manufacture, or distribute alcohol, drugs or drug paraphernalia on City premises, or on City time may be subject to disciplinary action, including termination.

Employees ~~undergoing prescribed medical treatment with a drug that may alter physical or mental abilities must report that to their supervisor.~~ taking legally prescribed or over the counter medications that have the potential to negatively impact the employee's ability to perform his/her job functions in a safe and effective manner must report such use to their supervisor and may be required to present medical documentation describing the effects such medication may have on the employee's ability to perform his/her tasks. The City may take such action as it deems appropriate, including but not limited to temporarily transferring the employee to a different position, permitting the employee to take leave or other steps, depending on the circumstances.

Medical cannabis is considered the equivalent of the authorized use of any other medication used at the discretion of a physician; and does not constitute the use of an illicit substance or otherwise disqualify an individual from needed medical care.

As provided in Title 26, Chapter 61a, Section 111, Utah Cannabis Act, partially referenced below:

26-61a-111. Nondiscrimination for medical care or government employment -- Notice to prospective and current public employees -- No effect on private employers.

- (1) For purposes of medical care, including an organ or tissue transplant, a patient's use, in accordance with this chapter, of cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage form:
 - (a) is considered the equivalent of the authorized use of any other medication used at the discretion of a physician; and
 - (b) does not constitute the use of an illicit substance or otherwise disqualify an individual from needed medical care.
- (2)
 - (a) Notwithstanding any other provision of law and except as provided in Subsection [\(2\)\(b\)](#), the state or any political subdivision shall treat:
 - (i) an employee's use of medical cannabis in accordance with this chapter or Section [58-37-3.7](#) in the same way the state or political subdivision treats employee use of any prescribed controlled substance; and
 - (ii) an employee's status as a medical cannabis cardholder or an employee's medical cannabis recommendation from a qualified medical provider or limited provider in the same way the state or political subdivision treats an employee's prescriptions for any prescribed controlled substance.
 - (b) A state or political subdivision employee who has a valid medical cannabis card is not subject to retaliatory action, as that term is defined in Section [67-19a-101](#), for failing a drug test due to marijuana or tetrahydrocannabinol without evidence that the employee was impaired or otherwise adversely affected in the employee's job performance due to the use of medical cannabis.
 - (c) Subsections [\(2\)\(a\)](#) and [\(b\)](#) do not apply:
 - (i) where the application of Subsection [\(2\)\(a\)](#) or [\(b\)](#) would jeopardize federal funding,

a federal security clearance, or any other federal background determination required for the employee's position;

(ii) if the employee's position is dependent on a license or peace officer certification that is subject to federal regulations, including 18 U.S.C. Sec. 922(g)(3); or

(iii) if an employee described in Subsections [34A-2-102\(1\)\(h\)\(ii\)](#) through [\(vi\)](#) uses medical cannabis during the 12 hours immediately preceding the employee's shift or during the employee's shift.

Any employee convicted of violating a criminal drug statute must notify the City Administrator within five (5) days of conviction. The City may take appropriate disciplinary or rehabilitative actions as a consequence.

No employee may use or be under the influence of drugs or alcohol on the City's premises, in the City's vehicles, or any time the employee is representing the City on City business, except in cases involving a current, prescription prescribed in the United States, or over-the-counter drug, taken as prescribed or directed.

12-7 Miscellaneous

A copy of the City's Drug and Alcohol Testing Policy shall be distributed to and posted for all employees, and all employees shall be required to acknowledge receiving, reading, and acknowledging the policy. Copies shall be made available to prospective employees.

This policy applies to management as well as other employees.

Employees wishing assistance with overcoming drug or alcohol abuse may contact their supervisor or the Drug Policy Coordinator for information about counseling and rehabilitation programs.

12-8 Acknowledgment of Policy

The City shall require each employee to read this policy and sign a form, acknowledging that they have received and read a copy of this policy and agree to abide by its terms as a condition of continued employment. The signed acknowledgment shall be kept in each employee's personnel file.

12-9 Drug and Alcohol Policy Not a Contract

This Drug and Alcohol Testing Policy is the unilateral action of the City and does not constitute an express or implied contract with any person affected by or subject to the policy. Neither this policy nor any action taken pursuant to this policy assures or guarantees employment or any terms of employment to any person for any period of time. The City may alter, terminate or make exceptions to this policy at any time, at the City's sole discretion. This policy does not limit or alter the City's right to terminate any employee at any time for any reason.

MEDICAL CANNABIS PATIENT PROTECTION

AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel W. Thatcher

House Sponsor: Joel Ferry

Cosponsors: Michael S. Kennedy

Jacob L. Anderegg Daniel McCay

Luz Escamilla Evan J. Vickers

LONG TITLE

General Description:

This bill amends protections for medical cannabis patients.

Highlighted Provisions:

This bill:

- amends protections for medical cannabis patients, including public employees, to protect the holding of a medical cannabis card and medical cannabis recommendations; and

- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-61a-111, as last amended by Laws of Utah 2021, Chapter 344

78A-2-231, as last amended by Laws of Utah 2021, Chapters 260 and 337

80-3-110, as last amended by Laws of Utah 2021, Chapters 38, 337 and renumbered

29 and amended by Laws of Utah 2021, Chapter 261 and last amended by Coordination Clause,
30 Laws of Utah 2021, Chapter 261

31

32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **26-61a-111** is amended to read:

34 **26-61a-111. Nondiscrimination for medical care or government employment --**
35 **Notice to prospective and current public employees -- No effect on private employers.**

36 (1) For purposes of medical care, including an organ or tissue transplant, a patient's
37 use, in accordance with this chapter, of cannabis in a medicinal dosage form or a cannabis
38 product in a medicinal dosage form:

39 (a) is considered the equivalent of the authorized use of any other medication used at
40 the discretion of a physician; and

41 (b) does not constitute the use of an illicit substance or otherwise disqualify an
42 individual from needed medical care.

43 (2) (a) Notwithstanding any other provision of law and except as provided in
44 Subsection (2)(b), the state or any political subdivision shall treat:

45 (i) an employee's use of medical cannabis in accordance with this chapter or Section
46 [58-37-3.7](#) in the same way the state or political subdivision treats employee use of any
47 prescribed controlled substance~~[-]~~; and

48 (ii) an employee's status as a medical cannabis cardholder or an employee's medical
49 cannabis recommendation from a qualified medical provider or limited provider in the same
50 way the state or political subdivision treats an employee's prescriptions for any prescribed
51 controlled substance.

52 (b) A state or political subdivision employee who has a valid medical cannabis card is
53 not subject to adverse action, as that term is defined in Section [67-21-2](#), for failing a drug test
54 due to marijuana or tetrahydrocannabinol without evidence that the employee was impaired or
55 otherwise adversely affected in the employee's job performance due to the use of medical
56 cannabis.

57 (c) Subsections (2)(a) and (b) do not apply where the application of Subsection (2)(a)
58 or (b) would jeopardize federal funding, a federal security clearance, or any other federal
59 background determination required for the employee's position, or if the employee's position is
60 dependent on a license that is subject to federal regulations.

61 (3) (a) (i) A state employer or a political subdivision employer shall take the action
62 described in Subsection (3)(a)(ii) before:

63 (A) giving to a current employee an assignment or duty that arises from or directly
64 relates to an obligation under this chapter; or

65 (B) hiring a prospective employee whose assignments or duties would include an
66 assignment or duty that arises from or directly relates to an obligation under this chapter.

67 (ii) The employer described in Subsection (3)(a)(i) shall give the employee or
68 prospective employee described in Subsection (3)(a)(i) a written notice that notifies the
69 employee or prospective employee:

70 (A) that the employee's or prospective employee's job duties may require the employee
71 or prospective employee to engage in conduct which is in violation of the criminal laws of the
72 United States; and

73 (B) that in accepting a job or undertaking a duty described in Subsection (3)(a)(i),
74 although the employee or prospective employee is entitled to the protections of Title 67,
75 Chapter 21, Utah Protection of Public Employees Act, the employee may not object or refuse to
76 carry out an assignment or duty that may be a violation of the criminal laws of the United
77 States with respect to the manufacture, sale, or distribution of cannabis.

78 (b) The Division of Human Resource Management shall create, revise, and publish the
79 form of the notice described in Subsection (3)(a).

80 (c) Notwithstanding Subsection 67-21-3(3), an employee who has signed the notice
81 described in Subsection (3)(a) may not:

82 (i) claim in good faith that the employee's actions violate or potentially violate the laws
83 of the United States with respect to the manufacture, sale, or distribution of cannabis; or

84 (ii) refuse to carry out a directive that the employee reasonably believes violates the

85 criminal laws of the United States with respect to the manufacture, sale, or distribution of
86 cannabis.

87 (d) An employer may not take retaliatory action as defined in Section 67-19a-101
88 against a current employee who refuses to sign the notice described in Subsection (3)(a).

89 (4) Nothing in this section requires a private employer to accommodate the use of
90 medical cannabis or affects the ability of a private employer to have policies restricting the use
91 of medical cannabis by applicants or employees.

92 Section 2. Section 78A-2-231 is amended to read:

93 **78A-2-231. Consideration of lawful use or possession of medical cannabis.**

94 (1) As used in this section:

95 (a) "Cannabis product" means the same as that term is defined in Section 26-61a-102.

96 (b) "Directions of use" means the same as that term is defined in Section 26-61a-102.

97 (c) "Dosing guidelines" means the same as that term is defined in Section 26-61a-102.

98 (d) "Medical cannabis" means the same as that term is defined in Section 26-61a-102.

99 (e) "Medical cannabis card" means the same as that term is defined in Section
100 26-61a-102.

101 (f) "Medical cannabis device" means the same as that term is defined in Section
102 26-61a-102.

103 (g) "Recommending medical provider" means the same as that term is defined in
104 Section 26-61a-102.

105 (2) In any judicial proceeding in which a judge, panel, jury, or court commissioner
106 makes a finding, determination, or otherwise considers an individual's medical cannabis card,
107 medical cannabis recommendation from a recommending medical provider, or possession or
108 use of medical cannabis, a cannabis product, or a medical cannabis device, the judge, panel,
109 jury, or court commissioner may not consider or treat the individual's card, recommendation,
110 possession, or use any differently than the lawful possession or use of any prescribed controlled
111 substance if:

112 (a) the individual's possession complies with Title 4, Chapter 41a, Cannabis Production

113 Establishments;

114 (b) the individual's possession or use complies with Subsection 58-37-3.7(2) or (3); or

115 (c) (i) the individual's possession or use complies with Title 26, Chapter 61a, Utah

116 Medical Cannabis Act; and

117 (ii) the individual reasonably complies with the directions of use and dosing guidelines

118 determined by the individual's recommending medical provider or through a consultation

119 described in Subsection 26-61a-502(4) or (5).

120 (3) Notwithstanding Sections 77-18-105 and 77-2a-3, for probation, release, a plea in

121 abeyance agreement, a diversion agreement, or a tendered admission under Utah Rules of

122 Juvenile Procedure, Rule 25, a term or condition may not require that an individual abstain

123 from the use or possession of medical cannabis, a cannabis product, or a medical cannabis

124 device, either directly or through a general prohibition on violating federal law, without an

125 exception related to medical cannabis use, if the individual's use or possession complies with:

126 (a) Title 26, Chapter 61a, Utah Medical Cannabis Act; or

127 (b) Subsection 58-37-3.7(2) or (3).

128 Section 3. Section 80-3-110 is amended to read:

129 **80-3-110. Consideration of cannabis during proceedings -- Drug testing.**

130 (1) As used in this section:

131 (a) "Cannabis" means the same as that term is defined in Section 26-61a-102.

132 (b) "Cannabis product" means the same as that term is defined in Section 26-61a-102.

133 (c) (i) "Chronic" means repeated or patterned.

134 (ii) "Chronic" does not mean an isolated incident.

135 (d) "Directions of use" means the same as that term is defined in Section 26-61a-102.

136 (e) "Dosing guidelines" means the same as that term is defined in Section 26-61a-102.

137 (f) "Medical cannabis" means the same as that term is defined in Section 26-61a-102.

138 (g) "Medical cannabis cardholder" means the same as that term is defined in Section

139 26-61a-102.

140 (h) "Recommending medical provider" means the same as that term is defined in

141 Section [26-61a-102](#).

142 (2) In a proceeding under this chapter, in which the juvenile court makes a finding,
143 determination, or otherwise considers an individual's medical cannabis card, medical cannabis
144 recommendation from a recommending medical provider, or possession or use of medical
145 cannabis, a cannabis product, or a medical cannabis device, the juvenile court may not consider
146 or treat the individual's medical cannabis card, recommendation, possession, or use any
147 differently than the lawful possession or use of any prescribed controlled substance if:

148 (a) the individual's possession or use complies with Title 4, Chapter 41a, Cannabis
149 Production Establishments;

150 (b) the individual's possession or use complies with Subsection [58-37-3.7\(2\)](#) or (3); or

151 (c) (i) the individual's possession or use complies with Title 26, Chapter 61a, Utah
152 Medical Cannabis Act; and

153 (ii) the individual reasonably complies with the directions of use and dosing guidelines
154 determined by the individual's recommending medical provider or through a consultation
155 described in Subsection [26-61a-502\(4\)](#) or (5).

156 (3) In a proceeding under this chapter, a child's parent's or guardian's use of cannabis or
157 a cannabis product is not abuse or neglect of the child unless there is evidence showing that:

158 (a) the child is harmed because of the child's inhalation or ingestion of cannabis, or
159 because of cannabis being introduced to the child's body in another manner; or

160 (b) the child is at an unreasonable risk of harm because of chronic inhalation or
161 ingestion of cannabis or chronic introduction of cannabis to the child's body in another manner.

162 (4) Unless there is harm or an unreasonable risk of harm to the child as described in
163 Subsection (3), in a child welfare proceeding under this chapter, a child's parent's or guardian's
164 use of medical cannabis or a cannabis product is not contrary to the best interests of the child
165 if:

166 (a) for a medical cannabis cardholder after January 1, 2021, the parent's or guardian's
167 possession or use complies with Title 26, Chapter 61a, Utah Medical Cannabis Act, and there
168 is no evidence that the parent's or guardian's use of medical cannabis unreasonably deviates

169 from the directions of use and dosing guidelines determined by the parent's or guardian's
170 recommending medical provider or through a consultation described in Subsection
171 26-61a-502(4) or (5); or

172 (b) before January 1, 2021, the parent's or guardian's possession or use complies with
173 Subsection 58-37-3.7(2) or (3).

174 (5) Subsection (3) does not prohibit a finding of abuse or neglect of a child, and
175 Subsection (3) does not prohibit a finding that a parent's or guardian's use of medical cannabis
176 or a cannabis product is contrary to the best interests of a child, if there is evidence showing a
177 nexus between the parent's or guardian's use of cannabis or a cannabis product and behavior
178 that would separately constitute abuse or neglect of the child.

179 (6) If an individual, who is party to a proceeding under this chapter, is ordered by the
180 juvenile court to submit to drug testing, or is referred by the division or a guardian ad litem for
181 drug testing, the individual may not be ordered or referred for drug testing by means of a hair
182 or fingernail test that is administered to detect the presence of drugs.

Effective 3/23/2022

26-61a-111 Nondiscrimination for medical care or government employment -- Notice to prospective and current public employees -- No effect on private employers.

- (1) For purposes of medical care, including an organ or tissue transplant, a patient's use, in accordance with this chapter, of cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage form:
 - (a) is considered the equivalent of the authorized use of any other medication used at the discretion of a physician; and
 - (b) does not constitute the use of an illicit substance or otherwise disqualify an individual from needed medical care.
- (2)
 - (a) Notwithstanding any other provision of law and except as provided in Subsection (2)(b), the state or any political subdivision shall treat:
 - (i) an employee's use of medical cannabis in accordance with this chapter or Section 58-37-3.7 in the same way the state or political subdivision treats employee use of any prescribed controlled substance; and
 - (ii) an employee's status as a medical cannabis cardholder or an employee's medical cannabis recommendation from a qualified medical provider or limited provider in the same way the state or political subdivision treats an employee's prescriptions for any prescribed controlled substance.
 - (b) A state or political subdivision employee who has a valid medical cannabis card is not subject to retaliatory action, as that term is defined in Section 67-19a-101, for failing a drug test due to marijuana or tetrahydrocannabinol without evidence that the employee was impaired or otherwise adversely affected in the employee's job performance due to the use of medical cannabis.
 - (c) Subsections (2)(a) and (b) do not apply:
 - (i) where the application of Subsection (2)(a) or (b) would jeopardize federal funding, a federal security clearance, or any other federal background determination required for the employee's position;
 - (ii) if the employee's position is dependent on a license or peace officer certification that is subject to federal regulations, including 18 U.S.C. Sec. 922(g)(3); or
 - (iii) if an employee described in Subsections 34A-2-102(1)(h)(ii) through (vi) uses medical cannabis during the 12 hours immediately preceding the employee's shift or during the employee's shift.
- (3)
 - (a)
 - (i) A state employer or a political subdivision employer shall take the action described in Subsection (3)(a)(ii) before:
 - (A) giving to a current employee an assignment or duty that arises from or directly relates to an obligation under this chapter; or
 - (B) hiring a prospective employee whose assignments or duties would include an assignment or duty that arises from or directly relates to an obligation under this chapter.
 - (ii) The employer described in Subsection (3)(a)(i) shall give the employee or prospective employee described in Subsection (3)(a)(i) a written notice that notifies the employee or prospective employee:
 - (A) that the employee's or prospective employee's job duties may require the employee or prospective employee to engage in conduct which is in violation of the criminal laws of the United States; and

- (B) that in accepting a job or undertaking a duty described in Subsection (3)(a)(i), although the employee or prospective employee is entitled to the protections of Title 67, Chapter 21, Utah Protection of Public Employees Act, the employee may not object or refuse to carry out an assignment or duty that may be a violation of the criminal laws of the United States with respect to the manufacture, sale, or distribution of cannabis.
- (b) The Division of Human Resource Management shall create, revise, and publish the form of the notice described in Subsection (3)(a).
- (c) Notwithstanding Subsection 67-21-3(3), an employee who has signed the notice described in Subsection (3)(a) may not:
 - (i) claim in good faith that the employee's actions violate or potentially violate the laws of the United States with respect to the manufacture, sale, or distribution of cannabis; or
 - (ii) refuse to carry out a directive that the employee reasonably believes violates the criminal laws of the United States with respect to the manufacture, sale, or distribution of cannabis.
- (d) An employer may not take retaliatory action as defined in Section 67-19a-101 against a current employee who refuses to sign the notice described in Subsection (3)(a).
- (4) Nothing in this section requires a private employer to accommodate the use of medical cannabis or affects the ability of a private employer to have policies restricting the use of medical cannabis by applicants or employees.

Amended by Chapter 174, 2022 General Session

Amended by Chapter 256, 2022 General Session

Amended by Chapter 290, 2022 General Session

Summary of Public Employee Protections

Utah Medical Cannabis Act | March 11, 2022

The Utah Medical Cannabis Act provides certain protections to public employees who are medical cannabis patients. The underlying thrust of the protections is that medical cannabis should be treated like a conventionally prescribed controlled substance, and an employee's impairment, if any, rather than the substance their medical provider has recommended, should be the public employer's focus.

Parity with other prescribed controlled substances

The Utah Code requires that the state or any political subdivision of the state that is an employer to treat an employee's lawful use of medical cannabis in the same way the employer treats use of prescribed controlled substances. UTAH CODE ANN. § 26-61a-111(2)(a)(i). Effectively, a public employer could not take an action against an employee based on medical cannabis use unless the employer also takes the same action against any other employee for use of a prescribed controlled substance.

With the passage of 2022 S.B. 46,¹ the state and any political subdivision that is an employer will be required to treat an employee's status as a medical cannabis cardholder or their doctor's recommendation to use medical cannabis in the same way the employer treats prescriptions for any prescribed controlled substance. UTAH CODE ANN. § 26-61a-111(2)(a)(ii) as amended by 2022 S.B. 46. Effectively, a public employer could not take an action against an employee based on the employee's holding of a medical cannabis card or a recommendation from the employee's medical provider unless the employer also takes the same action against other employees who have a prescription for any controlled substance.

Drug testing and impairment

A public employer is prohibited from taking an "adverse action"² for failing a drug test due to marijuana or tetrahydrocannabinol (THC) unless the employer has evidence that the employee was impaired or that the employee's job performance was otherwise adversely affected by the employee's use of medical cannabis. UTAH CODE ANN. § 26-61a-111(2)(b). Effectively, this prohibits an employer from taking an action against an employee based on the results of a drug test, instead requiring evidence of some kind of impairment related to the employee's use of medical cannabis.

Exceptions to Employee Protections

The above protections do not apply in certain limited public employment situations (UTAH CODE ANN. § 26-61a-111(c)), which were expanded with the passage of 2022 S.B. 190.³ The protections do not apply if:

- federal funding, a federal security clearance, or a federal background determination required for the employee's job would be jeopardized (§ (2)(c)(i));
- the job is dependent on a license that is subject to federal regulations (§ (2)(c)(ii));
- the employee is a law enforcement, correctional, special function, or federal officer (§ (2)(c)(ii)); or
- the employee is an emergency medical technician, an advanced emergency medical technician, a paramedic, a firefighter, or a dispatcher *who* uses medical cannabis during the employee's shift or the 12 hours immediately preceding the shift. § (2)(c)(iii) as amended by 2022 S.B. 190.

Effectively, there are very limited circumstances where the public employee protections do not apply.

¹ <https://le.utah.gov/~2022/bills/static/SB0046.html>.

² Adverse action is defined to mean "discharge, threaten, or discriminate against an employee in a manner that affects the employee's employment, including compensation, terms, conditions, location, rights, immunities, promotions, or privileges" under UTAH CODE ANN. § 67-21-2.

³ <https://le.utah.gov/~2022/bills/static/SB0190.html#26-61a-111>

**RIVERDALE CITY
CITY COUNCIL AGENDA
June 7, 2022**

AGENDA ITEM: G2

SUBJECT: Consideration to approve Resolution 2022-16 adopting the Mutual Aid Agreement renewal between all Weber County Fire Departments

PRESENTER: Jared Sholly, Fire Chief

INFORMATION:

- a. [Executive Summary](#)
- b. [Resolution 2022-16 with Interlocal Agreement](#)
- c. [Westnet Weber 2022 Maintenance Agreement](#)

[BACK TO AGENDA](#)



City Council Executive Summary

For the Council meeting on:
June 7, 2022

Petitioner:
Jared Sholly, Fire Chief

Summary of Proposed Action

Consideration of Resolution 2022-16 Adopting the Mutual Aid Agreement Renewal Between all Weber County Fire Departments

Summary of Supporting Facts & Options

Interlocal Agreement regarding the WestNet First In equipment, between the Weber County Fire Departments and Weber Area Dispatch 911 and Emergency Services District for paging equipment (First In Alerting System) located in the fire station. The agreement allows for repairs of critical dispatching hardware in the station to be maintained by Weber Area Dispatch 911 and Emergency Services District through WestNet. The cost to the city is \$585.75, that will be paid to the district on an annual basis.

1. The following First In equipment and associated software will be maintained by the Weber Area Dispatch 911 and Emergency Services (“District”) pursuant to contract(s) entered into between the District and WestNet.
 - a. Transmitters
 - b. All First In specific software and equipment located at the district
 - c. Master Control Units (MCU) located in the fire stations

Legal Comments – City Attorney

Steve Brooks, Attorney

Fiscal Comments – Business Administrator/Budget Officer

Cody Cardon, Business Administrator

Administrative Comments – City Administrator

Steve Brooks, City Administrator



RESOLUTION NO. 2022-16

A RESOLUTION OF RIVERDALE CITY COUNCIL APPROVING AN INTERLOCAL AGREEMENT BETWEEN RIVERDALE CITY AND MULTIPLE OTHER AGENCIES CONCERNING AUTOMATIC MUTUAL AID AND USING THE WESTNET FIRE AND EMS STATION AND APPARATUS PAGING AND DISPATCHING EQUIPMENT SERVICES.

WHEREAS, Utah Code Ann. §11-13-101 et. sec., permits governmental entities to enter into cooperation or Interlocal agreements with each other; and

WHEREAS, Riverdale City (herein “City”) recognizes the importance of, and wishes to participate in, any joint expertise, manpower and equipment that the combined services from the local jurisdictions offer to each other in providing EMS First Responder Services and assisting each other in times of need and emergency services; and

WHEREAS, the Riverdale City Council has fully reviewed the attached Interlocal Agreement between the Riverdale City and multiple other neighboring or nearby agencies concerning the joint, mutual and automatic aid of each other in times of need or emergency, services and/or equipment and finds it to be in the best interest of Riverdale City to participate in such efforts and agrees to all the terms and conditions contained therein including expending money for our portion of the costs for said equipment; and

NOW THEREFORE, the Riverdale City Council hereby approves the attached Interlocal Agreement as written and authorizes the Mayor of Riverdale City to execute this Agreement on behalf of the City.

RESOLVED this _____ day of June, 2022.

Braden Mitchel, Mayor
Riverdale City

Attest:

Attachment 1

**INTERLOCAL AGREEMENT
REGARDING THE WESTNET FIRST
IN EQUIPMENT**

This agreement is entered into, pursuant to the provisions of the Interlocal Cooperation Act, by and among WEBER AREA DISPATCH 911 & EMERGENCY SERVICES DISTRICT, MORGAN COUNTY, MOUNTAIN GREEN FIRE DISTRICT, NORTH VIEW FIRE DISTRICT, OGDEN CITY, PLAIN CITY, RIVERDALE CITY, ROY CITY, SOUTH OGDEN CITY, WASHINGTON TERRACE CITY, and the WEBER FIRE DISTRICT, all bodies politic of the State of Utah.

WITNESSETH:

WHEREAS, the parties are desirous of entering into an agreement regarding the WestNet fire and EMS station and apparatus paging and dispatching equipment (“First In Equipment”); and

WHEREAS, such agreement is in furtherance of the purposes of Section 11-7-1 Utah Code Annotated, 1953 as amended; and

WHEREAS, each party desires to cooperate with and assist the other in the maintenance and replacement of the First In equipment; and

WHEREAS, this agreement is intended to “enhance” but not replace the existing “Mutual Aid Agreements;”

NOW, THEREFORE, the Parties hereby agree as follows:

1. First In Equipment. The following First In equipment and associated software will be maintained by the Weber Area Dispatch 911 and Emergency Services (“District”) pursuant to contract(s) entered into between the District and WestNet.
 - a. Transmitters
 - b. All First In specific software and equipment located at the District
 - c. Master Control Units (MCU) located in the fire stations
2. Maintenance Costs. The District will bill a pro rata share of all maintenance, repair, and equipment costs for the equipment specified in paragraph 1 to the Cities and Departments. The cost for each City/Department will be based on the number of stations that the City or Department has connected to the system.

The Cities and Department shall be responsible for the maintenance, repair, and equipment costs for all additional equipment associated with the First In system that is not specified in paragraph 1.

3. Payment. The Cities and Departments shall pay invoices received from the District, pursuant to paragraph 2 above, within 30 days.
4. Addition or Removal of Stations. If a City or Department decides to add or remove a station from the system, the City or Department shall notify the District by October 1st so that the maintenance costs can be adjusted for the following calendar year.
5. No Separate Legal Entity. The Parties to this agreement agree that no separate legal entity shall be created by this agreement.
6. Term and Termination. This agreement shall take effect upon signing and shall be effective until December 31, 2022. Unless the Parties provide notice of termination 90 days prior December 31st, this agreement will automatically renew until December 31st of the following year. The agreement shall continue to automatically renew year after year until terminated as specified above.
7. Counterparts. This agreement may be executed in counterparts, each of which shall be an original and all of which together shall constitute the same instrument.
8. Captions and Headings. The captions and headings herein are for convenience of reference only and in no way define or limit the scope or intent of any sections or provisions of this agreement.
9. Amendments. This agreement may be amended by a written agreement approved and signed by all Parties in the manner provided by the Interlocal Cooperation Act.
10. Authorization. The individuals signing this agreement on behalf of the Parties confirm that they are the duly authorized representatives of the Parties and are lawfully enabled to sign this agreement on behalf of their entities.
11. Filing of Agreement. An executed counterpart of this agreement shall be filed with the keeper of the records of each of the Parties.
12. Governing Law. This agreement shall be governed by and construed in accordance with the applicable laws of the State of Utah.
13. No Third Party Beneficiaries. This agreement is not intended to benefit any party or person not named as a party specifically herein.
14. Additional Interlocal Cooperation Act Provisions. In satisfaction of the requirements of the Interlocal Cooperation Act (“Act”), the Parties agree as follows:
 - a. This agreement shall be submitted to the attorney authorized to represent each party for review as to proper form and compliance with applicable law before the agreement may be signed by the party.
 - b. The parties agree that they are not creating an interlocal or separate entity by virtue of this agreement.

- c. The parties agree that each party shall maintain separate ownership and control over its own real and personal property. All First In equipment, except for the MCU's, located at the Cities and Departments is property of the Cities and Departments. The MCU's and all other First In equipment is the property of the District.
- d. In accordance with §§ 11-13-206 and -207 of the Act, the executive director of the District shall act as the administrator of this agreement.
- e. This agreement shall not constitute a joint venture between the parties. No party shall serve as the legal representative or agent of the other party for any purpose. Neither party shall have power to assume or create, in writing or otherwise, any obligation or responsibility of any kind, express or implied, in the name of or on behalf of the other party. Neither party shall have any obligation with respect to the other party's debts or other liabilities.

WEBER AREA DISPATCH 911 &
EMERGENCY SERVICES DISTRICT

By: _____

Date: _____

ATTEST

By: _____

MORGAN COUNTY

By: _____

Date: _____

ATTEST

By: _____

MOUNTAIN GREEN FIRE DISTRICT

By: _____

Date: _____

ATTEST

By: _____

NORTH VIEW FIRE DISTRICT

By: _____

Date: _____

ATTEST

By: _____

OGDEN CITY

By: _____

Date: _____

ATTEST

By: _____

PLAIN CITY

By: _____

Date: _____

ATTEST

By: _____

RIVERDALE CITY

By: _____

Date: _____

ATTEST

By: _____

ROY CITY

By: _____

Date: _____

ATTEST

By: _____

SOUTH OGDEN CITY

By: _____

Date: _____

ATTEST

By: _____

WASHINGTON TERRACE CITY

By: _____

Date: _____

ATTEST

By: _____

WEBER FIRE DISTRICT

By: _____

Date: _____

ATTEST

By: _____



Weber Area Dispatch 911 and Emergency Services District



First-In Fire Station Alerting System Limited On-Site Maintenance and Technical Support Statement of Work January-December 2022

Change History

Revision Number	Revision Date	Revision Author	Section Changed and Description
1.0	12/01/11	Westnet	Original document
2.0	01/27/12	Westnet	Per customer request, eliminate Category 3 and reduce Category 4 to phone support and T&M for repairs.
3.0	03/07/12	Westnet	Customer requested that all but Category 1 be eliminated.
4.0	08/07/12	Westnet	Name change edits, add Category 4
5.0	09/19/12	Westnet	Revise pricing to Category 1, Add Category 4
6.0	12/03/12	Westnet	Revised to make clarifications and corrections requested by the customer.
7.0	02/13/13	Westnet	Limited liability language revision
8.0	12/01/14	Westnet	Renewal – update to #6 (Schedule)
9.0	10/22/15	Westnet	Updated for renewal
10.0	11/17/16	Westnet	Updated for renewal
11.0	12/06/17	Westnet	Updated for renewal
12.0	10/04/18	Westnet	Updated for renewal
13.0	01/17/19	Westnet	Revised to make changes requested by the customer.
14.0	12/19/19	Westnet	Updated for renewal
15.0	10/05/20	Westnet	Updated date and time and materials hourly rate from \$145 to \$185 for annual renewal
16.0	10/14/21	Westnet	Remove Uintah from list of covered stations.

Table of Contents

1.	Introduction.....	4
2.	Assumptions.....	4
3.	Project Deliverables.....	4
4.	Services.....	4
5.	District Responsibilities.....	4
6.	Schedule.....	5
7.	Price.....	5
8.	Payment Terms.....	6
9.	Ownership of Data / Computer Software.....	6
10.	Maintenance.....	6
11.	Warranty.....	6
12.	Taxes.....	7
13.	Place of Performance.....	7
14.	Termination.....	7
15.	Entire Agreement.....	7
16.	Approval Signature.....	7
	Attachment A – Party Responsibility Detail.....	9
	Attachment A – Service Exclusions and Conditions.....	10
	Indemnification.....	11
	Insurance	11
	Limitation of Liability	12
	Attachment B – Westnet Limited Warranty.....	13

1. INTRODUCTION

This document is submitted to serve as a mutually acceptable Statement of Work (SOW) between Westnet, Inc. and Weber Area Dispatch 911 and Emergency Services District (herein District). This SOW is intended to clarify purchased services to be provided herein. Functionality or services not identified within this SOW may, at the discretion of Westnet, be included at additional cost with appropriate revisions to the SOW. References to Westnet include subcontractors hired by Westnet to perform the on-site maintenance.

2. ASSUMPTIONS

This SOW and corresponding pricing are based upon the following assumptions:

1. The District will complete all District Responsibilities enumerated in Attachment A.
2. This SOW reflects those costs for the described work that can be reasonably assumed from the information provided. Westnet expressly reserves the right to make claim for those costs that could not be reasonably assumed and for the extension of time that could result.

3. PROJECT DELIVERABLES

There are no scheduled deliverables under this SOW. Should the District elect to purchase additional equipment or replacement equipment for damaged or destroyed units, said equipment is referred to in this SOW as Deliverables.

4. SERVICES

The proposed services include the functionality described below:

Westnet, Inc. will provide two (2) on-site maintenance trips, and 24/7 toll-free technical support for the systems described as Category 1, Category 2 and Category 4 in Section 4 below.

Repair for any Category 4 equipment that is not covered under this Statement of Work (damage due to a Service Exclusion or Condition listed below) will be performed on a Time and Materials basis at a rate of \$185.00 per hour.

The District is contracting with other parties for all maintenance and repair services for the Emergency Transmitting Equipment for Wide Area Simulcast Paging System (identified as Category 3 in the Contract for Communications and Fire Station Alerting Systems with the Ogden City Corporation executed September 2, 2010).

5. DISTRICT RESPONSIBILITIES

- A. See the Assumptions section above.
- B. The District will be responsible for those items listed in Attachment A. Failure to provide or maintain items listed in Attachment A may result in cancellation of the Services.

6. SCHEDULE

All services and materials provided under this Agreement shall commence on the Start Date as set forth below.

Unless previously terminated as set forth in Section 14 (Termination), at each anniversary of the Start Date this Agreement may be renewed for an additional year (each an "Additional Term").

<u>Start Date</u>	<u>End Date</u>
January 1, 2022	December 31, 2022

7. PRICE

The price for work outlined in this SOW is valid for ninety (90) days from the date of this document. The price for implementing this SOW is as follows:

Category 1 First-In CAD and Radio Interface Systems and Category 2 – Automated Voice Dispatch Over the Radio

Category 1 & 2 Description	Extended Price
First-In CAD and Radio Interface Systems. These systems include: <ul style="list-style-type: none"> • First-In CAD Interface System for the District • First-In Radio Interface Controller System • Backup Dispatch Center RIC Lite • District Wide Area Paging Terminal First-In Voice Dispatch System for District <i>The District will be responsible for maintaining the CAD interface.</i>	
Total	\$36,372.92

Category 4B – On-Site Fire Station Equipment

Category 4 Description	Quantity	Unit Price	Extended Price
Core First-In Fire Station Alerting Systems The Core System includes: <ul style="list-style-type: none"> • Master Control Unit • Control Remote • Radio Isolation Unit • Power Module & UPS • Data Line Surge Protector 	22	\$1775.04 (12 mo)	\$39,050.88
Total			\$39,050.58

Summary of All Maintenance Costs

Description	Extended Price
Category 1 and 2 - First-In CAD, Radio Interface Systems and Automated Voice Dispatch Systems	\$36,372.92
Category 4 - Core Fire Station Alerting Equipment	\$39,050.58
TOTAL MAINTENANCE COSTS	\$75,423.80

8. PAYMENT OF TERMS

Payment for this SOW will be according to the following schedule:

Payment Milestone	Payment Percentage or Term
Annual maintenance cost of \$77,198.84	Payable quarterly in advance of the quarter.
Upgrades and replacement cost of any services or equipment not included under maintenance or additional trips exceeding two (2) trips per year.	40% down, balance upon completion.

Payment is due within thirty (30) days from the date of invoice. Interest charges will be assessed at a rate of 1.5% per month, prorated on the basis of a thirty (30) day month will be assessed on delinquent payments.

9. OWNERSHIP OF SPARE EQUIPMENT/ DATA / COMPUTER SOFTWARE

All spare equipment, computer software, hardware source-code and related deliverables (programs, data or program enhancements) shall be the property of Westnet, Inc. and, if applicable, shall be licensed to the District pursuant to the Westnet Software License Agreement.

10. MAINTENANCE

District shall be responsible for all on-site maintenance and repairs to all other District systems. In the event that District elects to have Westnet, Inc. perform such maintenance or repairs, maintenance and repairs will be performed at prevailing rates plus expenses.

11. WARRANTY

Nothing in this Agreement shall be construed as a Product warranty, or as a change or modification to the Westnet, Inc. Standard Limited Warranty that was originally supplied with the Product, which may or may not still be in effect. There is no warranty on the training services or technical support.

12. TAXES

Unless otherwise specifically stated, prices are exclusive of all federal, state, or local sales, use, property, gross receipts, valued added or similar taxes based upon amounts payable to Westnet, Inc. pursuant to this SOW (herein taxes). If taxes are included in a Quote and there is an increase in the tax rate from the time of the quote to the payment of the invoice, the District will be responsible for the difference between the quoted tax rate and the actual amount due.

13. PLACE OF PERFORMANCE

Place of performance is at Westnet for technical support, audio level-setting, and preliminary trouble-shooting. District agrees to provide appropriate work place accommodations, computer equipment, software and necessary fire station and dispatch access for Westnet personnel for all on-site work.

14. TERMINATION

Either party may cancel this Agreement at any time, with or without cause, upon thirty (30) days written notice to the other party. In such event, Westnet will refund the price for the Agreement reduced pro-rata based upon the amount of elapsed time the payment was made prior to the cancellation.

15. ENTIRE AGREEMENT

The terms and conditions of this Statement of Work, the Westnet Limited Warranty, and Customer’s purchase order constitute the entire agreement between the parties with respect to the subject matter hereof. All prior agreements, representations, statements, negotiations and undertakings are superseded hereby. No amendment or modification shall be binding unless made in writing and signed by an authorized representative of the parties. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

16. APPROVAL SIGNATURE

Signature by all parties listed below constitutes acceptance of and notice to proceed with this SOW in accordance with the terms and conditions specified herein.

This document is approved by:

Westnet Project Manger	
Name:	
Signature:	Date:

Authorized Customer Signature	
Name:	
Title:	
Signature:	Date:



Please send this signed document, together with a purchase order, if applicable, to:
Westnet, Inc.

Attn: Contracts Administration
15542 Chemical Lane
Huntington Beach, CA 92649

ATTACHMENT A

Party Responsibility Detail

The District

DISTRICT RESPONSIBILITIES:

1. Provide and maintain an operating 24/7 VPN for the duration of the Agreement. The VPN shall allow Westnet to connect to all fire stations that are equipped with the First-In Fire Station Alerting equipment. The VPN must be operating and tested with Westnet before the maintenance commences.
2. Ensure that the Westnet monitor computer in Dispatch has 24/7 access to the VPN and to all fire stations served by the District. District will return the Westnet Monitor Computer to Westnet at the conclusion of the contract term.
3. Provide the make and model number of fire station radio that First-In will be connected to for the source of dispatch audio. If there are any connections to this radio other than the outside antenna and the power source, the District will provide a diagram showing the method of connection, connector pins used, signals obtained from the radio and signals sent to the radio by the fire station equipment.
4. Provide the name, 24-hour telephone number and position of responsible party that can be contacted about each station's radio communication, public address, CAD and network equipment.
5. Ensure that the Master Control Unit (MCU) at each station is at all times plugged into the Westnet furnished UPS.
6. Ensure that the Master Control Unit (MCU) at each station is at all times plugged into the First-In Radio Isolation Unit.
7. Ensure that the radio antenna and lightning arrestor is installed, is installed per current engineering standards and that all lightning protection equipment is connected to a 5-ohm earth ground by a #6 or larger cable not exceeding eight (8) feet in length between the 5-ohm earth ground and the protected equipment.
8. To obtain service and repair for the Product, contact the Westnet Systems Group at 800-807-1700. A Systems Group representative will assign a Case Number and provide diagnostic assistance.
9. Provide all shipping costs of units to Westnet.

WESTNET RESPONSIBILITIES:

1. Category 1 and Category 2 (First-In CAD and Radio Interface and Automated Voice Dispatch Systems) - provide 24/7 technical support and on-site maintenance
2. Provide Westnet-owned spare equipment with Customer's programming for Category 1, Category 2 and Category 4.

3. Westnet will provide all parts and labor necessary to restore the Product to working order in accordance with factory specifications in effect at the time the Product was purchased. Westnet will repair or replace any malfunctioning component of the Product provided that the malfunction was not caused by an event excluded under this SOW. If Westnet elects to upgrade the Product rather than repair it, Westnet is under no obligation to upgrade other Products covered under this Agreement. Westnet will pay for shipping back to Customer.
4. Westnet may subcontract the services provided under this Agreement upon prior written approval of the District.
5. Provide all shipping costs of units to the District.

SERVICE EXCLUSIONS AND CONDITIONS:

1. This Agreement may in the sole opinion of Westnet exclude:
 - a. Service made necessary by accident, misuse, abuse, neglect, water damage or improper maintenance;
 - b. Replacement of missing parts, retrofits or upgrades.
 - c. Installation, repair or replacement of other systems of which the Product may be a part;
 - d. Services made necessary by any external cause, including fire, theft, acts of God, alteration, problems arising from software or hardware not supplied by Westnet, power failures, surges or shortages, lightning, or repairs by persons other than those authorized by Westnet to service the Product;
 - e. Service on Product purchase under and/or used outside of the fifty (50) United States and the District of Columbia;
 - f. Service on Westnet products not specifically named in this Agreement;
 - g. Service on third party products or service made necessary by use of incompatible or improperly operating third party products;
 - h. Service of Product on which the Westnet or First-In label or logo, rating label or serial number have been defaced or removed;
 - i. Modifications to the Product not approved in writing by Westnet.
 - j. Should Westnet elect to provide replacement parts, a hardware or software upgrade, retrofit, or any other service excluded under this SOW, such an occurrence shall be considered a one-time event that is not within scope of this SOW and in no way is Westnet obligated to continue to provide, support or warranty that service.
2. If District or any District representative, employee or subcontractor authorizes Westnet to perform any services excluded under this SOW, District agrees to pay standard repair fees for such work.

3. If a reported problem involves a technical support call or on-site visit and the problem is associated with systems connected to the alerting system (i.e. radio, network, CAD, public address), Westnet may charge the District for labor costs after three technical support calls or two on-site calls if Westnet deems that the problem does not reside with the alerting system.
4. Westnet may service Customer-replaceable parts, by way of new or remanufactured replacement parts to District on an exchange basis. Upon receipt by the District of the replacement part, the original part becomes the property of Westnet, and shall be returned by District to Westnet or a Westnet representative. District shall pay Westnet the full retail value of the replacement part if Westnet does not receive the original part within ten (10) days after Customer's receipt of the replacement part.
5. Any Westnet-owned spares provided under this SOW are the property of Westnet. Any damage to a Westnet spare is not covered under this SOW and District shall pay for the repair or replacement of the spare.

INDEMNIFICATION:

1. Westnet shall indemnify and hold the District and its agents, employees, and officers harmless from and shall pay the costs of defense for any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the District arising out of, in connection with, or incident to the execution of this Agreement and/or Westnet's defective performance or failure to perform any aspect of this Agreement; provided however, that if such claims are caused by or result from the concurrent negligence of the District, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of Westnet; and provided further, that nothing herein shall require Westnet to indemnify, hold harmless, or defend the District, its agents, employees, and/or officers from any claims arising from the sole negligence of the District, its agents, employees, and/or officers. The provisions of this section shall survive the expiration or termination of this Agreement.

INSURANCE:

1. Westnet, at its own expense, shall maintain insurance during the term of this Agreement and for a minimum of one year after termination in the following amounts:
 - a. Commercial General Liability Insurance for bodily injury, personal injury, and property damage not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
 - b. Automobile Insurance with a limit of not less than \$1,000,000 per occurrence.
 - c. Workers Compensation insurance in accordance with Utah law.

LIMITATION OF LIABILITY:

1. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE MAXIMUM LIABILITY OF WESTNET AND WESTNET'S SUBCONTRACTORS FOR DAMAGES RELATING TO THE SERVICES RENDERED UNDER THIS AGREEMENT SHALL BE LIMITED TO THE INSURANCE LIMITS LISTED IN WESTNET'S CERTIFICATE OF INSURANCE, A COPY OF WHICH IS ATTACHED HERETO AND WHICH SHALL BE UPDATED WITHIN TEN (10) DAYS. IN NO EVENT SHALL THE LIMIT FOR GENERAL LIABILITY DECREASE WHILE THIS AGREEMENT IS IN EFFECT. THIS LIMITATION SHALL APPLY REGARDLESS OF THE FORM OF LEGAL ACTION.
2. REPAIR, REPLACEMENT, OR REFUND OF THE MAINTENANCE AGREEMENT PRICE, ARE THE CUSTOMER'S EXCLUSIVE REMEDY FOR BREACH OF THIS AGREEMENT. WESTNET DISCLAIMS ALL IMPLIED WARRANTIES REGARDING THE SERVICES, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SOME STATE LAWS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES. ANY IMPLIED WARRANTIES THAT MAY BE IMPOSED BY LAW ARE LIMITED IN DURATION TO THE TERM OF THIS AGREEMENT.
3. TO THE MAXIMUM EXTENT PERMITTED BY LAW, WESTNET OR WESTNET'S SUBCONTRACTORS SHALL NOT BE LIABLE TO DISTRICT FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING FROM THE SERVICES PROVIDED UNDER THIS AGREEMENT, DELAY IN FURNISHING SERVICES, OR FAILURE TO FURNISH SERVICES, INCLUDING WITHOUT LIMITATION, LOSS OF DATA OR SOFTWARE, LOSS OF USE OR LOST PROFITS, WHETHER BASED IN CONTRACT, TORT OR OTHERWISE, EVEN IF WESTNET HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO THE CUSTOMER. THIS AGREEMENT GIVES THE DISTRICT SPECIFIC LEGAL RIGHTS, AND THE DISTRICT MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

ATTACHMENT B**WESTNET, INC.****STANDARD LIMITED WARRANTY**

Westnet, Inc. (“Westnet”) is providing its Standard Limited Warranty (“Limited Warranty”) covering the First-In™ products, parts, components, software and systems purchased by Customer (collectively, the “Product”). If Westnet, or an authorized Westnet subcontractor performs the installation, such installation service will be deemed to be part of the Product for purposes of this Limited Warranty.

Warranty Commencement Date: When Westnet, or an authorized Westnet subcontractor, installs the Product, this Warranty shall commence upon the (1) first beneficial use of the Product by Customer, or (2) when installation is complete, whichever occurs first. In all other instances, this warranty commences upon delivery. This Limited Warranty is not extended if Westnet repairs or replaces the Product.

Scope of Warranty: Westnet warrants exclusively to Customer that the Product will be free from defects in material and workmanship for a period of one (1) year from the Warranty Commencement Date. Westnet will perform all warranty work at its service location only, unless Westnet agrees, in its sole discretion, to perform at Customer’s location. Customer’s exclusive remedy for any breach of this Limited Warranty will be either (1) the repair or replacement, at Westnet’s option, of the non-conforming Product, or (2) at Westnet’s sole discretion, reimburse Customer the purchase price paid by Customer for the Product, provided Customer has returned the Product to Westnet. Repairs may be made with either new or reconditioned components and will be shipped to Customer at the expense of Westnet. Any replaced Product becomes the property of Westnet.

Limitations/Exclusions: This Limited Warranty applies only if Westnet confirms that the alleged defect or non-conformance exists and was not caused by Customer’s or any third person’s misuse, negligence, improper installation or testing, or unauthorized attempts to open, repair or modify the Product, or by accident, fire, water, lightening, power cuts or outages, power or telephone line transients, viruses, other hazards, or acts of God, or by any other cause beyond the range of intended use in accordance with the Product’s normal usage and Westnet’s published instructions. ***This Limited Warranty does not cover the following:*** (1) Any parts and cabling used in the installation of a Product unless Westnet or an authorized Westnet subcontractor (and not Customer or a third party installation company) performs the complete installation, (2) Physical damage to the surface of the Product after its delivery to Customer, including cracks or scratches on the LCD or outside casing, (3) When the malfunction results from the use of this Product in conjunction with other products, or ancillary or peripheral equipment, and Westnet determines there is no fault with the Product itself, (4) Any defect or malfunction of the Product due to any communications software or device Customer may use with the Product, (5) Any damages to or defects in the delivered Products that are observable in a reasonable visual inspection ***unless*** a Claim is made in writing to Westnet within thirty (30) days after the date of delivery. This Limited Warranty does not cover loss or damage of any kind resulting from any delay in delivery.

EXCEPT FOR THIS EXPRESS LIMITED WARRANTY AND WESTNET'S STATUTORY WARRANTY OF GOOD TITLE, WESTNET MAKES NO WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE PRODUCT COVERED HEREBY, AND EXPRESSLY DISCLAIMS THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY

QUALITY, CORRESPONDENCE WITH DESCRIPTION, OR (SUBJECT TO THE INFRINGEMENT PARAGRAPH SET FORTH HEREIN) NONINFRINGEMENT OF PATENTS OR OTHER PROPRIETARY RIGHTS. NO EMPLOYEE, AGENT OR REPRESENTATIVE OF WESTNET IS AUTHORIZED TO MAKE ANY REPRESENTATION OR WARRANTY ON BEHALF OF WESTNET RELATING TO THE PRODUCTS EXCEPT TO THE EXTENT SPECIFICALLY STATED HEREIN. WESTNET NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE, INSTALLATION, MAINTENANCE OR USE OF THE PRODUCTS.

Warranty Claims: In order to make a Claim under this Limited Warranty, Customer must first notify Westnet in writing not more than one (1) year after the Warranty Commencement Date. Notice must be sent to: **Westnet, Attention Warranty Department, 15542 Chemical Lane, Huntington Beach, California 92649** or can be faxed to **(714) 901-5610**. Inquiries regarding this Limited Warranty can also be directed by phone to **(714) 548-3500**.

Upon receipt of written notice, Westnet will first, at its option and expense, inspect the Product in its installed location. Unless otherwise waived by Westnet in writing, Customer must return the alleged non-conforming Product to Westnet's designated service center. Customer shall be responsible for all expenses associated with the transportation to/from Westnet's designated service center. Westnet shall not be liable for any damage incurred in the transportation of Product to/from Westnet's designated service center.

LIMITATION OF LIABILITY: IN NO EVENT SHALL WESTNET, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR SUBCONTRACTORS, BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INCIDENTAL, SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOST PROFITS, LOSS OF USE, LOSS OF DATA OR LOSS OF GOODWILL) COST OF CAPITOL OR COST OF COVER ARISING OUT OF OR RELATING TO CUSTOMER'S SELECTION, ORDERING, DELIVERY, PURCHASE, USE, RESALE OR DISTRIBUTION OF THE PRODUCT, EVEN IF WESTNET HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

AGGREGATE LIABILITY: TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL THE TOTAL AGGREGATE LIABILITY OF WESTNET, ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, OR SUBCONTRACTORS, ARISING FROM, RELATING TO, OR CONNECTED WITH THE PRODUCT, EXCEED **THE PURCHASE PRICE OF THE PRODUCT**. IT IS INTENDED THAT THIS LIMITATION WILL APPLY TO ANY AND ALL LIABILITY OR CAUSE OF ACTION, EXCEPT FOR THAT PROVIDED FOR IN THE INFRINGEMENT PARAGRAPH SET FORTH HEREIN, HOWEVER ALLEGED OR ARISING.

INFRINGEMENT. Westnet agrees to defend Customer and to pay (1) any damages award issued by a court of competent jurisdiction against Customer, and (2) direct expenses, including reasonable attorneys' fees (but excluding any lost revenues, lost profits or other consequential economic damages of Customer) as a result of any action brought against Customer, if and to the extent the action is based on a valid claim that any Product purchased by Customer under this Agreement infringes another person's U.S. patent, copyright, trade secret or trademark. Westnet will not have liability for, and Customer will defend Westnet against, and pay any damages awarded against Westnet and direct expenses, including reasonable attorneys' fees (but excluding any lost revenues, lost profits or other consequential economic damages of Westnet) to the extent the claimed infringement is based on or results in any material part from (a) any use of the Product other than in accordance with Westnet's published instructions, (b) any unauthorized modification or alteration of the Product, (c) any combination or use of the Product with any other product or system or technologies not supplied by Westnet; (d) Westnet's compliance with Customer's design or specifications, or (d) any refusal to accept or use suitable modified or replacement Products provided by Westnet to avoid



infringement. Westnet's obligations under this paragraph will be conditioned upon Customer promptly notifying Westnet in writing of the existence of any such claim, giving Westnet full authority to conduct the defense and settlement of the claim, at Westnet's expense and with counsel of Westnet's selection, and cooperating fully with Westnet and such counsel.

This Limited Warranty will be governed by the laws of the State of California, U.S.A., excluding their conflicts of laws principles. The United Nations Convention of Contracts for the International Sale of Goods is hereby excluded in its entirety from application to this Limited Warranty.