

RESOLUTION NO. 4338

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A CONTRACT ADDENDUM WITH CERTIFIED WPCI REGARDING DRUG AND ALCOHOL TESTING.

WHEREAS, the City of Miles City is required to provide for certain drug and alcohol testing by the Federal Motor Carrier Safety Administration;


AND WHEREAS, the terms of such testing, which is completed by Certified WPCI for the City, are set forth in a certain agreement between said parties, which requires revision through a certain Contract Addendum provided to the City by Certified WPCI;

NOW THEREFORE BE IT RESOLVED by the City Council of Miles City, Montana, as follows:

1. The "FMCSA Clearinghouse Ready C/TPA Contract Addendum" between the City of Miles City and Certified WPCI, attached hereto as Exhibit "A" and made a part hereof, is hereby approved and adopted by this Council.

2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Agreements on behalf of the City of Miles City and bind the City of Miles City thereto.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, AT A DULY CALLED MEETING THIS 28TH DAY OF JULY, 2020.



John Hollowell, Mayor

ATTEST:



Lorrie Pearce, City Clerk

Exhibit "A"

FMCSA Clearinghouse Ready C/TPA Contract Addendum

This Addendum is an amendment to the Third-Party Administrative Contractual Agreement between the Parties, the Certified WPCI (C/TPA) and CITY OF MILES CITY (Employer), an FMCSA Regulated Employer, to provide services that are otherwise covered under the Federal Motor Carrier Safety Administration Drug and Alcohol Clearinghouse Final Rule published on December 5, 2016 and found at www.fmcsa.dot.gov/regulations/commercial-drivers-license-drug-and-alcohol-clearinghouse.

It is understood between the Parties that the Clearinghouse reporting, and other compliance services, shall be conducted in accordance with the above Final Rule and other guidance issued by the Clearinghouse. It is further acknowledged, understood and agreed between the parties as follows:

1. Employer affirms that it has secured a Clearinghouse Ready FMCSA CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING POLICY and TOOLKIT OF FORMS to be in compliance with 49 CFR Part 382.601 (to provide a policy to Drivers notifying them of the Employer Clearinghouse obligations to report certain violations to the Clearinghouse), as updated by the Final Rule.
2. Employer affirms that it will secure from its CDL Drivers a written GENERAL CONSENT FOR LIMITED QUERIES OF THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION (FMCSA) DRUG AND ALCOHOL CLEARINGHOUSE FOR THE DURATION OF EMPLOYMENT and will also obtain from the Drivers the necessary personal information to accurately populate the EMPLOYER FMCSA CLEARINGHOUSE ANNUAL QUERY SPREADSHEET.
3. Employer affirms that it and/will provide basic training to its CDL Drivers on their Clearinghouse obligations and obtain from its CDL Drivers an FMCSA CLEARINGHOUSE CDL DRIVER ACKNOWLEDGMENT OF TRAINING MATERIALS;
4. Employer affirms that it and/will provide basic training to its staff who will have Clearinghouse access on behalf of the Employer on their Clearinghouse obligations, and will obtain a written FMCSA CLEARINGHOUSE ACCESS CONFIDENTIALITY AGREEMENT AND ACKNOWLEDGMENT
5. The Employer affirms that it shall continue to remain ultimately responsible in accordance with the Final Rule for the reporting of Driver violations and other Clearinghouse employer designated reporting responsibilities, 49 CFR Part 382.705;
6. That the Employer shall present to the C/TPA "evidence" in the form of an affidavit or declaration, or other admissible evidence, if it is requesting that the TPA report to the Clearinghouse a Driver Refusal or Actual Knowledge, or Alcohol Violation (submit a Scan or Photo of the Alcohol Technician completed Alcohol Testing Form) along with any other evidence of the violation such as video, photographs, statements in a format acceptable to the C/TPA.
7. The Employer affirms that it shall serve the Driver with a copy of the information which it seeks to report to the Clearinghouse and give the Driver an opportunity to respond prior to reporting a violation to the Clearinghouse, if at all possible;
8. The C/TPA reserves the right to make the final determination of information, presented to it by the Employer, as to whether it will report such to the Clearinghouse; in the event the C/TPA declines to make the report, the C/TPA will provide timely notice of such to the Employer along with the Employer's obligation to make a timely Clearinghouse Report.
9. The Final Rule requires persons reporting information to the Clearinghouse to do so truthfully and accurately and the Regulations prohibits anyone from reporting false information, inaccurate or misleading information, or information that *should* be known as false or inaccurate, 49 CFR Part 382.705.
10. No one may disclose or disseminate any information obtained from the FMCSA Clearinghouse except in accordance with the Final Rule, 49 CFR Part 382.723.
11. Employers, those granted Clearinghouse access, and DOT Service Agents, are specifically prohibited from using information from the Clearinghouse for any purpose other than to assess or

evaluate whether a driver is prohibited from operating a Commercial Motor Vehicle (CMV), 49 CFR Part 382.723.

12. Anyone granted access to the Clearinghouse who violates any provision of the Final Rule shall be subject to the civil and/or criminal penalty provisions as provided for in the Final Rule, 49 CFR Part 382.705.
13. Clearinghouse registration may be revoked for anyone who fails to comply with any of the prescribed rights and restrictions on access to the Clearinghouse, including but not limited to, submission of inaccurate information, misuse or misappropriation of access rights, or use of protected information from the Clearinghouse for a purpose other than whether a driver is prohibited from operating a CMV, 49 CFR Part 382.713.
14. The C/TPA represents that it will make reports to the Clearinghouse in a timely manner, conditioned upon the Employer providing the necessary information to the C/TPA, in a form acceptable to the C/TPA, in a timely manner.
15. The Parties agree to work in cooperation to fulfill their respective Clearinghouse obligations in a timely and professional manner, so as to reduce the risk of errors and to treat the Drivers in a respectful and dignified manner.
16. Anyone making an inadvertent error should make a correction immediately upon discovering the error, 49 CFR Part 382.717; and
17. Both parties agree to mutually indemnify the other for their own acts of gross negligence. Specifically, the Employer agrees to fully indemnify and defend the C/TPA in the event the Employer makes a report to the C/TPA, and the C/TPA in turn makes a report to the Clearinghouse on behalf of the Employer relying on such Employer information, of a driver violation which is ultimately determined by the FMCSA to be false or inaccurate, or should have known to be false or inaccurate, where the TPA relied upon the Employer's representation that it had adequate evidence to substantiate the claimed Driver violation.

Agreed to this 4th day of August, 2020

Employer: CITY OF MILES CITY
ADDRESS: PO Box 910
Miles City, MT 59301

USDOT Number:

DESIGNATED EMPLOYER REPRESENTATIVE (DER)

NAME: Linda Wilkins
TITLE:
OFFICE: 406-234-6392
MOBILE:
E-MAIL: lwilkins@milescity-mt.org

Certified Third Party Administrator; Linda J. Wilkins WPCI

Sign: Linda J. Wilkins