



Pipeline Safety Division Investigation Report

Investigation regarding: **Midwestern Electric Incorporated**

UPPAC Database Record ID: 1342

Investigator: Jay Scherer

Report Date: 02/09/2012

Damage Date: 10/07/2010 10:49:39 AM

Damage Address: 1943 Lawndale

City: Fort Wayne

County: Allen

The Parties

Excavator: **Midwestern Electric Incorporated**

Contact: Allen Brodbeck, President

Address: 3385 N. Arlington Ave., Indianapolis, In 46218

Telephone: (317) 545-7641

Facility Owner: NIPSCO

Contact: Kit Earle

Address: 101 West Ohio Street, Indianapolis, IN 46204

Pipeline Facility

Facility Type: Natural Gas

Facility Function: Service/Drop

Investigation regarding: Midwestern Electric Incorporated

UPPAC Database Record ID: 1342

Damage Impact

Product release: Yes

Ignition: No

Service Interruption: True

Number of Customers Affected: 1

Injuries: 0

Fatalities: 0

Repair Cost (if known): \$

Excavator Activities/Cause of damage information:

Excavator request locates: No Indiana 811 ticket Number:

Type of Equipment: Hand Tools

Type of work performed: Street Light

Synopsis: Damage to a natural gas service occurred during work for the City of Fort Wayne on a street light.

Findings: Reported by Indiana 811; excavator's response to initial notice received on 12/01//2011. Excavation with hand tools, a shovel and post-hole digger, occurred without a request for the marking of underground utilities.

Conclusion: There was a failure to provide notice of excavation.

Violation: IC 8-1-26-16(g): Failure to provide notice of excavation.

Midwestern Electric Incorporated currently has 2 reports of damages in the record, between 10/07/2010 10:49:39 AM and 05/16/2011 11:00:04 AM.

NO

LOCATE

TICKET

PROVIDED



101 West Ohio Street
Suite 1707
Indianapolis, IN 46204

December 15, 2011

Via Electronic Transmission – PipelineDamageCase@urc.in.gov

Pipeline Safety Division – Case No. 1342
Indiana Utility Regulatory Commission
101 West Washington Street, Suite 1500 East
Indianapolis, Indiana 46204

RE: Investigation Request for Information; Pipeline Division Case No. 1342

To Whom It May Concern:

Attached please find Northern Indiana Public Service Company's ("NIPSCO") written information relating to the following event:

Date of Event: 10/7/2010

Event Location: 1943 Lawndale, Fort Wayne

Facility Owner: Northern Indiana Public Service Company

Excavator: City of Ft Wayne

Other Party: N/A

Pipeline Division Case No. 1342

NIPSCO has reviewed its recovery and damage prevention files for this matter and has provided answers, when known, to the list of questions set forth in the Information Request.

Upon completion of the investigation, NIPSCO requests that it be provided with a copy of the Pipeline Division's Investigation Report with findings that will be forwarded to the Underground Plant Protection Advisory Committee. If there are any additional questions, please contact the undersigned.

Very truly yours,

Christopher C. (Kit) Earle

NiSource Corporate Services - Legal

Phone: 317-684-4904

Fax: 317-684-4918

Email: cearle@nisource.com

IURC INFORMATION REQUEST**Pipeline Safety Division Case No. 1342**

Date of Event	10/7/2010
Event Location	1943 Lawndale, Fort Wayne
Facility Owner	Northern Indiana Public Service Company
Excavator	City of Ft Wayne
Date of IURC Information Request	11/15/2011

EVENT LOCATION:

ADDRESS	1943
STREET	Lawndale
CITY/TOWN/IN ZIP CODE	Fort Wayne, In.
COUNTY	Allen
TOWNSHIP	St Joseph
PROPERTY OWNER	
USE - COMMERCIAL/RESIDENTIAL	
TENANT'S NAME	
IF COMMERCIAL USE, TENANT OR OWNER OCCUPIED	
IF TENANT OCCUPIED, TENANT'S FULL NAME	

EXCAVATOR:

NON BUSINESS FULL PERSONAL NAME	
BUSINESS NAME	City of Fort Wayne
ADDRESS	335
STREET	Murry St
CITY/ STATE/ZIP	Fort Wayne, In.
PREFERRED TELPHONE	(260)427-6167
SECONDARY TELEPHONE	
EMAIL ADDRESS	NATE.PARKER@CI/FT-WAYNE.IN.US

FACILITY INFORMATION - OWNER/OPERATOR OF UTILITY LINE:

BUSINESS NAME	NORTHERN INDIANA PUBLIC SERVICE COMPANY
RESPONSIBLE BUSINESS PERSON NAME AND TITLE	LUKE SELKING
ADDRESS	1501 HALE AVENUE
CITY/STATE/ZIP	FORT WAYNE, IN 46802
PREFERRED TELEPHONE	260/439-1290
SECONDARY TELEPHONE	
EMAIL ADDRESS	LSELKING@NISOURCE.COM

LOCATE MARKS:

DATE LOCATE REQUESTED	No Locate Requested
DATE LOCATE PERFORMED	No Locate Requested
DATE OF EVENT	10/7/2010
LOCATE NUMBER	No Locate Requested
811 DAMAGE NOTIFICATION NUMBER	1010071193
WERE LOCATE MARKS VISIBLE	No Locate Requested
DID THE EXCAVATOR WHITE LINE	No Locate Requested
WERE MAPS USED TO MARK FACILITY	No Locate Requested
WAS THERE A POSITIVE RESPONSE FROM OPERATOR/HOW	No Locate Requested
WAS OPERATOR EMPLOYEES ON SITE AT TIME OF INCIDENT	No

INJURIES:

NUMBER OF OUT-PATIENT	0
NUMBER OF IN-PATIENT INJURIES	0
WAS LOCAL FIRE DEPARTMENT CALLED	Unknown
FIRE DEPARTMENT NAME	Unknown
FIRE DEPARTMENT RESPONSE DESCRIPTION	Unknown
WAS LOCAL POLICE DEPARTMENT CALLED	Unknown
DEPARTMENT NAME	Unknown
POLICE DEPARTMENT RESPONSE DESCRIPTION	Unknown
ANY OTHER RESPONSE - IF SO, WHO AND DESCRIBE	Unknown

DESCRIBE WHAT HAPPENED AND WHY

Excavator was repairing underground wires without the benefit of a locate request. In CIS, it mentions contact Is Chris Stewart (260)409-0601 with Midwestern Electric so actual negligent party may not be City of Fort Wayne

#1342

NIPSCO 00271 IUPPSa 10/07/2010 10:49:40 1010071193-00A EMER DAMG GRID

DAMAGE DAMAGE

Ticket : 1010071193 Date: 10/07/2010 Time: 10:39 Oper: LPORTER Chan:046

State: IN Cnty: ALLEN Twp: ST JOSEPH
Cityname: FORT WAYNE Inside: Y Near: N
Subdivision:Address : 1943
Street : LAWNDALE
Cross 1 : BUENA VISTA Within 1/4 mile: Y
Location: LOCATE PARK STRIP
:
Grids : 4105A8506B 4106D8506B 4105A8506A 4106D8506A
Boundary: n 41.102047 s 41.099525 w -85.115257 e -85.108864Work type : REPAIR STREET LIGHTS
Done for : CITY OF FT WAYNE
Start date: 10/07/2010 Time: 10:47 Hours notice: 0/0 Priority: EMER
Ug/Oh/Both: U Blasting: N Boring: N Railroad: N Emergency: Y
Duration : 1 DAY Depth: 2 FEETCompany : CITY OF FT WAYNE Type: CONT
Co addr : 335 MURRY ST
City : FORT WAYNE State: IN Zip: 46803
Caller : NATE PARKER Phone: (260)427-6167
Contact : CHRIS STEWART - CELL Phone:
BestTime:
Mobile : (260)409-0601
Fax : (260)427-5293
Email : NATE.PARKER@CI/FT-WAYNE.IN.USRemarks : All tickets are taken and processed on Eastern Daylight Time
PER NATE - HIT A NIPSCO GAS LINE - GAS NOT BLOWING -DIGGING IN PARK STRIP- HAS
BEEN CRIMP OFF - CREW ON SITE - NATE HAS CONTACTED NIPSCO - NO PREVIOUS TICKET
AVAILABLE

Will you be white-lining the dig site area? NO

:

Submitted date: 10/07/2010 Time: 10:39
Members: AEPIN CC FW ID8000 ID9275 NIPSCO SM

Information Request

Pipeline Safety Division Indiana Utility Regulatory Commission

Case No. 1342

The Pipeline Safety Division of the Indiana Utility Regulatory Commission requests any and all information you can provide regarding the following criteria:

The Parties:

Excavator Information:

Business Name: *Midwestern Electric Inc*

Responsible Party Personal Name: *Al Brodbeck*

Title (if any): *President*

Address: *3385 N. Arington Ave*

City, State Zip: *Indianapolis, IN 46218-2545*

Preferred Telephone: *317-545-7641*

Cell Phone Number:

Email Address: *al_mwe@yahoo.com*

Facility Information:

Business Name: *NIPSCO*

Responsible Party Personal Name:

Title (if any):

Address:

City, State, Zip:

Preferred Telephone:

Cell Phone Number:

Email Address:

Locator Service Information:

Business Name:

Responsible Party Personal Name:

Title (if any):

Address:

City, State Zip:

Preferred Telephone:

Cell Phone Number:

Email Address:

Other (Witness, Police, Fire, Other) Information:

Personal Contact: Douglas P. Hillkey

Business/Organization Name: City of Fort Wayne

Title (if any) Director of Traffic Operations

Address: 200 E. Berry St.

City, State, Zip: Fort Wayne, IN 46802

Preferred Telephone: 260-427-1223

Cell Phone Number:

Email Address: doug.hillkey@cityoffortwayne.org

Utility Line Impact:

Location of Damage:

Address: 1915 Lawndale Dr.

City, State Zip: Fort Wayne, IN

Nearest Intersection: St. Joe Township / off N. Anthony

Product Type (circle one):

Natural Gas

Liquid Pipeline

Unknown/Other

Facility Type (circle one):

Distribution

Gathering

Service/Drop

Transmission

Unknown/Other

Size (Diameter/etc.): 1/2"

Pressure (PSIG/Inches): unknown

Interruption in Service: Yes / No Number of Customers Affected: 1

Evacuation: Yes / No If yes, How Many Evacuated? N/A

Repair Cost (if known): \$ unknown

Cause of Damage Information:

Type of Equipment (circle one):

- Auger
- Backhoe/Trackhoe
- Boring /Drilling
- Directional Drilling
- Explosives
- Farm Equipment
- Grader/Scraper
- Hand Tools *shovel, post hole digger*
- Milling Equipment
- Probing Device
- Trencher
- Vacuum Equipment
- Unknown/Other

Type of Work Performed (circle one):

- Agriculture
- Cable TV
- Curb/Sidewalk
- Bldg. Construction
- Bldg. Demolition
- Drainage
- Driveway
- Electric
- Engineering/Surveying
- Fencing
- Grading
- Irrigation
- Landscaping
- Liquid Pipeline
- Milling
- Natural Gas
- Pole
- Public Transit Authority
- Railroad Maintenance
- Road Work
- Sewer (Sanitary/Storm)
- Site Development
- Steam
- Storm Drain/Culvert
- Street Light
- Telecommunications
- Traffic Signal
- Traffic Sign
- Water
- Waterway Improvement
- Unknown/Other

Release of Product: Yes / No

Ignition and/or Fire: Yes / No

Excavator Notify 811: Yes / No

Locate Information:

Excavator Request Locate: Yes / No

Indiana 811 Locate Ticket Number: _____

Locate Marks Visible: Yes / No

Locate Marks Correct: Yes/No

Excavator "White Lined": Yes / No

Maps Used to Mark Facilities: Yes / No

Was Locate Provided within Two (2) Working Days: Yes / No

Operator Employees On-site during Excavation: Yes / No

Incident Impact Information:

Number of Outpatient Treated: _____

Number of Inpatient Treated: _____

Number of Fatalities: _____

Fire Department Response: Yes / No

Police Department Response: Yes / No

Ambulance Response: Yes / No

Additional Information/Comments:

Midwestern Electric Inc. is an independent contractor for maintenance of City of Fort Wayne's lighting system, pursuant to the attached contract. As such, they are solely responsible for contacting 811 and for excavation. Please feel free to contact Doug Hillney if further information is required.

YOUR PIPELINE SAFETY DIVISION CASE NO. 1342

YOUR FULL NAME: Lindsey M. Jackson

FULL NAME OF BUSINESS/ENTITY (if applicable): City of Fort Wayne

YOUR BUSINESS TITLE (if applicable): _____

ADDRESS: 200 E. Berry St

CITY: Ft Wayne STATE: IN ZIP CODE: 46802

YOUR TELEPHONE NUMBER: (260) 427-6363 SECOND NO. () - _____

YOUR EMAIL ADDRESS: lindsey.jackson@cityoffortwayne.org

TODAY'S DATE: 11/30/11

YOUR SIGNATURE: Lindsey M Jackson TITLE (if any) _____

Please return your Narrative Statement and Answers to the above questions to:

**Pipeline Safety Division – Case No. 1342
Indiana Utility Regulatory Commission
101 West Washington Street, # 1500E
Indianapolis, IN 46204**

Or scan document(s) and Email to:

PipelineDamageCase@urc.in.gov

CONTRACT / RESOLUTION NUMBER 93-7-12-06-2

FOR

STREET LIGHT SYSTEM MAINTENANCE

FOR

THE CITY OF FORT WAYNE, INDIANA

WITH

MIDWESTERN ELECTRIC, INC.

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STREET LIGHT SYSTEM MAINTENANCE CONTRACT

Contract 93-7-12-06-2

THIS CONTRACT is made and entered into this 18th day of October, 2006, by and between the Midwestern Electric Inc., hereinafter referred to as the **CONTRACTOR**, and the **CITY OF FORT WAYNE, INDIANA**, a political subdivision of the State of Indiana, acting by and through the **MAYOR** and the **Board of Public Works**, hereinafter referred to as the **CITY**;

This Contract, although executed on behalf of the **CITY** by the **Mayor** and **Board of Public Works** of the **City of Fort Wayne, Indiana**, shall not be binding upon the **CITY** unless and until the same shall have been ratified and approved by the **Common Council** of the **City of Fort Wayne, Indiana**. This Contract is also contingent upon the **Common Council** appropriating the necessary funds for this Contract in each annual budget of the **City**. In the event that **Common Council** fails to appropriate all the necessary funds for this Contract, the Contract shall, at the **City's** option, become null and void. Should **Common Council** fail to approve the Contract within ninety (90) days after the date of the proposal opening, then the contractor shall not be bound to the Contract unless he/she/it elects to be so bound.

WITNESSETH, that the **CONTRACTOR** and the **CITY**, for the considerations hereinafter named, agree as follows:

I SCOPE OF SERVICES

1. General

1.1 Objective

CONTRACTOR shall furnish all labor, insurance, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary to install, remove, maintain, replace, transfer or any other services necessary to maintain the **City street light system**, as defined in section 1.3 Overview of the City Street Light System, in good working order from January 1, 2007 through December 31, 2010, according to **all provisions of RESOLUTION/CONTRACT NO 93-7-12-06-2**, and to do everything required by this Contract and the other documents constituting a part hereof.

1.2 Definitions

Where the following terms occur herein, the intent and meaning shall be as follows:

1.2a Contractor

Shall mean Midwestern Electric, Inc., 3385 N. Arlington Avenue, Indianapolis, Indiana 46218-2542.

1.2b City

Shall mean the City of Fort Wayne, Indiana, One Main Street, Fort Wayne, Indiana 46802.

1.2c Surety

Shall mean the party who is bound with and for the Contractor to ensure the payment of all obligations and lawful debts pertaining to and for this contract.

1.2d Notice

Any written notice to be given hereunder by either party to the other party shall be effected by certified mail, return receipt requested. Notice to the Contractor shall be sufficient if made or addressed to Midwestern Electric Inc., 3385 N. Arlington Ave., Indianapolis, Indiana 46218-2542. Notice to the City shall be sufficient if made or addressed to City of Fort Wayne, Division of Public Works, One Main Street, Room 420, Fort Wayne, Indiana, 46802.

1.2e Contract Documents

The Contract documents are comprised of this Contract, including all exhibits and attachments thereto, the Contractor's proposal and bid sheets, the Certificate of Liability Insurance, the Corporate Guarantee in place of the Performance Bond and the Payment Bond, the City of Fort Wayne Drug and Alcohol Testing Procedures and the Certificate of Non-Segregated Facilities and Affirmative Action Plan. In the event of any conflict between the terms of any of these documents, the Contract shall govern.

1.2f Street Light Operations (SLO)

Shall mean the employees in Traffic Operations, Street Lighting Division under the City of Fort Wayne Board of Public Works responsible for all street light system maintenance and for providing the daily assignments to the Contractor for carrying out the services in this Contract.

1.2g Street Light Operations Supervisor

Shall mean the Supervisor of the Street Light Warehouse designated by the City with the authority to direct the Contractor in its performance of this Contract.

1.2h Contract Administrator

Shall mean the City's director of Traffic Operations designated to act on behalf of the City in all matters relating to this Contract.

1.2j Normal Working Hours

Shall mean eight (8) hours per day on Monday through Friday unless designated as a holiday. Each day begins at 7:00 AM and ends at 3:30 PM with an unpaid ½ hour for lunch. The City reserves the right to adjust these hours at its discretion.

1.3 Overview of the City Street Light System

The Contractor will be responsible for the maintenance and repair of approximately 32,750 city street lights. The majority (97%) are high-pressure sodium lamps with metal halide and incandescent lamps combined for 3%. Lamp pole materials in the City include wood, aluminum, concrete, and fiberglass, along with a small percentage of cast iron and cast aluminum. Pole heights range from 50 feet on major thoroughfares to 12 feet for ornamental lights in neighborhoods. Approximately 60% of the system uses underground wire with 40% overhead. Some alley lighting is provided by the City. In some locations, maintenance and repair work is required near primary circuits.

The Contractor's equipment and the daily staging area will be located at the Street Light Operations Warehouse, 335 East Murray Street in the City of Fort Wayne. All materials required for street light maintenance and repair are supplied by the City and are dispersed from the warehouse.

1.4 Responsibilities of the Contractor

Services provided under this Contract include preventive maintenance, remedial repairs, repairs caused by accidents and vandalism, repairs required because of damage to lighting equipment, including dig ups caused by other contractors and City Utilities crews, installation of new lighting equipment for small projects (approximately 1-15 poles) and assisting other contractors on larger projects that have been bid out.

The Contractor will respond to emergency call-outs both during normal working hours and beyond normal working hours including weekends and holidays.

The Contractor will maintain all equipment required by the Contract in good working condition with safety being of primary concern. This equipment will be located at the Street Light Operations Warehouse so as to be immediately available to perform all contracted services as directed by the City. Other supplementary equipment not located at the warehouse will be made available by the Contractor by rental or other temporary means within 24 hours of notification by the City. (Weekends and holidays excluded)

The Contractor will perform all services directed by the City through the issuance of a Job Ticket by the Street Light Warehouse Supervisor or a designated representative. When the assigned job is completed, the Contractor will record the required information on the job ticket and return it to the Street Light Warehouse Supervisor.

The Contractor's crew foremen will be required to maintain a daily log on a format approved by the City, of work performed including the nature of the problem, the corrective action, the date, the labor time for each crew member, the equipment used, and the material used.

In order to promote cooperative relationships with area vendors, the Contractor will establish and maintain procedures for paying these vendors within 45 days after receipt of acceptable invoices. The Contractor will have a corporate guarantee. This contract requirement will not create or transfer any liability for these payments to the City.

1.5 Contractor as Independent Contractor

It is expressly agreed and understood that the Contractor is in all respects an Independent Contractor and that the Contractor is in no respect an agent, servant or employee of the City of Fort Wayne.

1.6 Invoicing and Payments

The Contractor will invoice the City on the basis of work performed and accepted under the Contract for periods of one week using a format approved by the City. If the Contractor is in compliance with the provisions of the contract, the Board of Public Works will make payment for such work performed and completed within 45 days of receipt of any invoice. All foremen logs for each respective week will be included with each invoice. Failure to provide all information listed above may cause the City to withhold payment of the affected invoice.

2. Contract Sum

The City shall pay Contractor for the performance of the Contract the amount of **\$966,678.60 through 2007; \$998,095.65 through 2008; \$1,030,533.76 through 2009; \$1,064,026.10 through 2010.** In the event the amount of work is increased or decreased by the City, the contract sum shall be increased or decreased according to the hourly rates set forth in the Contractor's Proposal.

3. Term of Contract

The term of the Contract will be for a period of four (4) years. The City may extend the Contract, at its option, for one (1) year period or fraction thereof by written notice to the Contractor at least ninety (90) days before the contract is scheduled to expire. The City makes no guarantees regarding the potential extension of this Contract. Should the Contract be extended, Contractor agrees to be bound by the rate increases submitted in the Proposal.

3.1 Start Date of the Term

The start date of the Contract will be January 1, 2007. A notice to proceed will be issued to the Contractor by the City immediately following Contract approval by the City of Fort Wayne Common Council.

4. Entire Agreement / No Waiver

The Contract documents contain the entire agreement between the City of Fort Wayne and the Contractor and shall supercede all prior oral and written statements or written statements of understanding of any kind made by the parties or their representative(s). Amendments to this Contract must be in writing and duly executed by the parties in accordance with City rule and regulations and other applicable laws and ordinances.

4.1 No Waiver

The failure of the City of Fort Wayne to insist in any one or more instances upon the performance of any terms, covenant or conditions of the Contract, or to exercise any right thereunder, shall not be construed as a waiver or relinquishment of any other term, covenant, default or condition or the exercise of any other rights under the Contract.

5. Contract Management

The City's Director of Traffic Operations will be designated as the Contract Administrator on behalf of the City in all matters relating to this Contract. The Contractor's work assignments and daily supervision will be under the jurisdiction of the City's Supervisor of Street Light Warehouse (SLO). The SLO Supervisor will decide any and all questions which may arise as to the quality, quantity, character and classification of services performed by the Contractor and will work closely with the Contractor on the execution of the Contract.

5.1 Dispute Resolution

In the event of any performance or contractual dispute between the City's SLO Supervisor and the Contractor that cannot be resolved after a reasonable discussion period, the issue(s) in dispute will be referred in writing to the City's Contract Administrator. After careful review of the disputed issues, the Contract Administrator will render a written decision. If either or both parties do not agree with the decision of the Contract Administrator either party may appeal the decision in writing to the Chairman of the Board of Public Works within ten (10) working days after receipt of the decision of the Contract Administrator. During this process, both parties will operate in accordance with the decision of the Contract Administrator. After careful review of the disputed issues(s), the Chairman of the Board of Public Works will render a written decision within fifteen (15) days from receipt of the appeal. The decision of the Chair of the Board of Public Works will be final.

6. Services to be Performed

The Contractor will be expected to perform all services listed below and such other related services that may be required to assure the effective and efficient operation of the City's street light system.

6.1 System Maintenance

- Install, repair and maintain wood, aluminum, steel, concrete and fiberglass standards and poles either direct buried or foundation mounted.
- Install and / or construct pole foundations, both manufactured foundations and concrete foundations constructed on site.
- Provide transportation of all materials to and from job site.
- Install, repair and maintain all underground and overhead supply conductors which includes making necessary attachments, by a journeyman lineman, to American Electric & Power secondary lines and other power companies that will permit attachment by City Contractor. These secondary lines do not exceed 600 volts AC. Journeyman Lineman will also be called upon to work in the proximity to primary live distribution conductors in accordance with the standards specified in Section I, Item 7.
- Install, repair and maintain all lighting fixtures used throughout the City's street light systems along with all associated components required for proper operation of the systems.
- Provide electrical service work for municipal facilities.

6.2 Emergencies

The Emergency Call Out unit will be used to respond to emergency situations that occur during normal working hours and to emergency call-outs that occur outside of during normal working hours including weekends and holidays.

6.3 Restoration

Restore any right-of-way areas that are damaged during maintenance or construction work. This includes grassy areas and concrete and asphalt paving surfaces.

7. Performance Standards and Quality of Workmanship

All work performed by the Contractor in providing the services specified in this Contract shall meet or exceed the applicable specifications of Section 807 "Highway Illumination" of the 2006 edition of the Indiana Department of Transportation Standard Specifications for Road and Bridge construction.

The Contractor shall also adhere to the requirements of the 2005 edition of the National Electrical Safety Code published by The Institute of Electrical and Electronics Engineers, Inc., the Occupational Safety and Health Standards for the Construction Industry,

amended as of April, 2006, published by the United States Department of Labor and as directed by AEP in order to conform to the City's Light lease agreement.

The Contractor will be solely responsible for ensuring adherence to the above requirements. Any waiver of or deviation from any part of these standards must have specific written approval from the SLO Supervisor.

8. Street Light Operations Warehouse Facility

8.1 Equipment

All vehicles and equipment required for immediate availability will be located at and dispatched from the SLO warehouse. The City will provide a fenced and locked parking area inside the complex but assumes no responsibility or liability for the Contractor's vehicles and equipment.

At the discretion of the SLO Supervisor, during periods of extreme cold weather, Contractor vehicles designated for possible use in emergency situations may be parked inside the warehouse.

8.2 Personnel Reporting

All Contractor personnel assigned to perform the services specified in this Contract will report to the SLO warehouse by their designated work start time each work day.

8.3 Personal Vehicles

The City will provide parking spaces for the personal vehicles of Contractor personnel at the SLO warehouse on the outside of the fenced complex. Parking of personal vehicles will not be permitted inside the fenced complex. The City assumes no responsibility or liability for any damage or loss related to these vehicles.

8.4 Other Facility Usage

Other facilities provided for use by Contractor personnel at the SLO warehouse include:

- Restroom and showers
- Personal lockers
- Telephones for Contractor related business
- Fax machine for Contractor related business
- Ice machine for coolers

Since there is a cost to the City for providing electricity, water, waste disposal, janitorial service and phone service, a monthly reimbursement from the Contractor will be deducted from the invoices submitted for the first full week of each month. This will include the actual phone and fax charges related to the Contractor from the previous

month plus a fixed monthly charge of \$665.00 for the other services and facilities provided by the City.

8.5 Parts and Materials

All parts and materials required to perform the services specified in this Contract will be furnished by the City and will be distributed to the Contractor from the SLO warehouse. The Contractor will be required to provide material usage records in a manner acceptable to the SLO Supervisor.

II. ADDITIONAL REQUIREMENTS OF THE CONTRACTOR

1. Insurance

Prior to beginning work on this Contract the Contractor will be required to obtain at its expense, comprehensive automobile, property and liability insurance naming the Contractor and the City as co-insured for personal injury, property damage and/or liability arising from the services performed under the Contract. The City's Risk Management Department will review and approve insurance certificates. Prior to execution of a Contract, the Contractor shall furnish the City with certificates of insurance and other satisfactory evidence that such insurance is in force. Insurance policies may not be cancelled, permitted to expire or changed without thirty (30) days written notice to the City and any such changes are subject to approval by the City.

Coverage will include:

Comprehensive Public Liability and Property Damage Insurance in the amount of \$1,000,000 for each individual claim and \$2,000,000 aggregate claims. Some street lighting facilities are on joint poles with AEP, Verizon and Comcast Cablevision therefore, to protect AEP, Verizon and Comcast Cablevision as an owner and / or lessee against any damage and injury claims that might arise out of the Contractor's operation, the successful Contractor before starting work, will supply evidence of insurance coverage by furnishing AEP, Verizon and Comcast Cablevision two copies of a Certificate of Liability and Property Damage Insurance. This will apply to all other future companies with poles shared with City street lighting facilities.

Worker's Compensation insurance covering all of the Contractor's employees assigned to perform the services specified in this Contract in compliance with the Indiana Worker's Compensation Act.

Comprehensive Automobile Liability Insurance to cover all vehicles assigned to perform the services specified in this proposal. Public Liability limits shall not be less than \$500,000 each person and \$1,000,000 each occurrence. Property damage limits shall not be less than \$500,000 each occurrence.

2. Performance Bond

Prior to beginning work on this Contract, the Contractor shall furnish a corporate guarantee as security for performance of the Contract, equal to 50% of the total annual Base bid for the accepted proposal. The bond shall be duly executed by an incorporated surety company authorized to do business in the State of Indiana. Any changes or cancellation of the bond must be served by notice in writing to the City at least thirty (30) days prior to changes or cancellation. Failure to maintain bonding will result in termination of the Contract.

3. Licenses, Taxes and Compliance with the Law

The Contractor will be responsible for all licenses, taxes and other requirements necessary to perform the services specified in this Contract. The Contractor will be responsible for complying with all state, federal or local laws, regulations and ordinances relevant to the scope of services.

4. Certificate of Non-Segregated Facility and Affirmative Action Plan

CONTRACTOR is required to submit the following form annually to the Office of Contract Compliance, One Main Street, City-County Building, Room 420, Fort Wayne, Indiana 46802:

- ❖ Certificate of Non-Segregated Facilities
- ❖ Affirmative Action Plan

Prior to beginning work on this Contract, the Contractor must obtain from and return this form to the Office of Contract Compliance noted above. Once received, this form will be kept on record for a period of one (1) year. This form must be on record prior to beginning work on this Contract.

5. City of Fort Wayne Drug and Alcohol Testing Procedures

The City of Fort Wayne has in place an Alcohol and Drug Policy that also applies to any contractors doing business with the City. A copy of this policy is available for inspection in the office of Risk Management, 1 Main Street, Room 920. The Contractor will be furnished a copy of said policy and, as a condition of being awarded any contract, the Contractor shall execute an acknowledgment of receipt of said policy and agree to be bound by those provisions of the policy that may be applicable. A copy of this form will be retained by the Risk Management Department of the City of Fort Wayne. See Appendix B.

III. GENERAL PROVISIONS

1. Hours of Work

The normal working hours for the employees under this contract shall be five (5) days per week; eight (8) hours per day, unless there is inclement weather or a holiday. The work day shall start and end at the Street Light Operations Warehouse, 335 E. Murray Street. The crews will return to the Street Light Operations Warehouse within thirty (30) minutes after shift completion.

2. Inspection

The Board of Works, the City Engineers, officials of the Office of Compliance of the City of Fort Wayne, and any other City officials designated by the Board shall have access to the work sites and Contractor's records at all reasonable times for inspection of the work performed under and in compliance with the Contract.

Any inspection or failure to inspect by the Board or City does not relieve the Contractor of the obligation to comply with all provisions of the Contract.

3. Warranty

The Contractor fully warrants his work for one (1) year after the job completion date noted on the job ticket, and shall remedy at the Contractor's own expense any defects or problems occurring during that one-year period due to workmanship.

4. Cancellation and Performance

The Board of Works reserves the right to cancel this Contract for lack of performance, lack of cooperation, substandard workmanship, non-payment of creditors and failure to maintain required corporate guarantees, insurance and / or licenses.

5. Termination for Convenience

The Board of Works can terminate the Contract for the convenience of the Board at any time by providing written notice to the Contractor. If the Contract is terminated by the Board pursuant to this clause, the Contractor will be paid only for work performed up to the termination, and pursuant to this clause, all work including any finished or unfinished documents, data, studies, and reports prepared by the Contractor pursuant to the Contract shall become the property of the Board of Works of the City of Fort Wayne.

6. Termination for Default

If the Contractor fails to fulfill its obligations under the Contract in a timely and proper manner, the Board of Works shall have the right to terminate the Contract for default by written notice. If the Contract is terminated pursuant to this clause, all work including

finished or unfinished documents, data studies, surveys, and reports prepared by the Contractor shall become the Board's property. Termination pursuant to this clause is not the Board's exclusive remedy and will not prejudice the right of the Board to take any other legal action against the Contractor.

7. Changes

The Board may, at any time, by written change order, make changes to the general scope of the Contract. If any such change results in an increase or decrease in the cost of performance, time of performance, or any other material provision under the Contract, a claim by the Contractor for adjustment under this clause shall be submitted to the Board in writing within thirty (30) days after the issuance of the change order. All such change orders and resultant compensation shall be incorporated as written modifications to the Contract. Any dispute as to an equitable adjustment shall be pursued according to the Dispute Resolution clause 5.1 in this Contract, provided, however, that the Contractor will proceed with the work as changed, even if there is a dispute.

8. Assignability

The Contractor shall not assign or transfer any interest in the Contract without the prior written consent of the Board of Works.

9. Sub-Contracting

None of the services covered by the Contract shall be sub-contracted or contracted out without the prior written consent of the Contract Administrator. No subcontracts will be awarded to contractors who have been debarred or suspended from doing work for the City of Fort Wayne or federally assisted contracts.

10. Permits

Any permits or fees including those required for street light poles and street cuts will be provided by the City of Fort Wayne for this Contract.

11. Contractor's Protection of Work

The Contractor shall take all reasonable precaution for the safety of the employees on the job and shall comply with all applicable safety laws, building codes, and ordinances. The Contractor shall properly and fully guard all excavations and dangerous places and will use all due and proper precaution to prevent injury to any and all persons and property.

The Contractor shall supply and use portable mounted flasher arrow boards and advance warnings signs for work within the public right-of-way and as otherwise necessary. The Contractor shall be responsible for their proper use and installation as per the latest edition of the Indiana Uniform Manual on Traffic Devices.

The Contractor shall equip all vehicles assigned to perform the services specified in this proposal with arrow boards or flashing amber lights when arrow boards cannot be mounted.

12. Hold Harmless

Contractor shall indemnify, defend and hold harmless the City of Fort Wayne, its agents, servants, employees, departments, Boards and Commissions from and against any and all claims and damages of every kind, for injury to or death of any person or persons and for damage to or loss of property, arising out of or resulting from the acts or omissions of Contractor, its agents, servants, or employees in its performance of this Contract which shall include the payment of legal fees. The City of Fort Wayne shall indemnify, defend and hold harmless the Contractor, its agents, servants, and employees, from and against any and all claims and damages of every kind, for injury to or death of any person or persons and for damage to or loss of property, arising out of or resulting from the acts or omissions of the City of Fort Wayne, its agents, servants or employees in its performance of the Contract during the term hereof.

13. Public Safety

If at any time, in the opinion of the SLO Supervisor or the designated representative, the work is not properly lighted, barricaded and in all respects safe to public travel, or to persons on or about the work on public or private property, the SLO Supervisor or the designated representative shall have the right to order such safeguards to be erected and such precautions be taken as deemed advisable. The Contractor shall promptly comply with such orders. If under such circumstances the Contractor does not or cannot immediately put the same into proper and approved condition or if the Contractor or his representative are not upon the ground so that he can be immediately notified of the insufficiency of safety precautions, then the SLO Supervisor or the designated representative may put the work into such a condition that it shall be in all respects safe. The Contractor shall pay all expenses of such labor and materials as may have been used for this purpose by him or by the SLO Supervisor or the designated representative. Such action of the SLO Supervisor or the designated representative, or his failure to take such action, shall in no way relieve the Contractor of the entire responsibility for any cost, loss, or damage by any party sustained on account of the insufficiency of safety precautions taken by him or by the SLO Supervisor or the designated representative acting under authority of this section. The Contractor shall at all times remove any materials damaged due to accident from the work site.

14. Lead Base Paint

The Contractor will not apply any lead base paint and will take all necessary steps to reduce the hazard from lead base paint already on surfaces. Lead base paint is defined as paint containing more than six-one-hundredths of one percent of lead by weight in the total non-volatile content of liquid paint, or in the dried film of paint already applied, and

shall include cracking, scaling, peeling, chipping, or loose paint. Any surfaces to be painted shall be treated as necessary. Treatment involves washing, sanding, scraping, wire brushing, or otherwise cleaning so as to remove cracking, scaling, peeling, chipping, or loose paint back to sound surfaces and repainting with two (2) coats of suitable non-lead paint. If paint film integrity cannot be maintained the surface must be covered.

15. Contractor's Clean-Up

During any work and after completion, the Contractor shall clean up and remove all waste materials from the work site and will leave the premises in a clean and sightly condition.

Materials shall be neatly, safely and compactly piled up along the sides of the roadway on which the improvement is located or adjacent thereto, as the SLO Supervisor may direct, in such a manner as to cause the least inconvenience and damage to the property and to the general public, and not within fifteen (15) feet of any fire hydrant. Private drives and street crossings shall be kept open. Shade trees and other improvements shall be protected from damage. Injury to lawns, trees, sidewalks, street or other improvements shall be made good by the Contractor to the satisfaction of the SLO Supervisor or the designated representative. The Contractor shall at all times keep the work site clean and free of debris.

16. Severability

If any term or portion of this Contract is found to be illegal and/or unenforceable, such term or portion shall be deemed stricken and the remainder of the Agreement shall remain in full force and effect.

17. Choice of Law / Venue

The Contract Documents shall be interpreted in accordance with Indiana law. The parties will submit to jurisdiction and venue in Allen County, Indiana.

18. Anti-Discrimination under Indiana Code 5-16-6-1

The Contractor agrees as follows:

a. That in the hiring of employees for the performance of work under the Contract or any approved subcontract hereunder, no contractor or subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of disability, race, religion, color, sex, national origin or ancestry, discriminate against any resident of the State of Indiana who is qualified and available to perform the work to which the employment relates;

b. That no Contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of

work under the contract on account of race, religion, color, sex, national origin or ancestry;

c. That there may be deducted from the amount payable to the Contractor by the City of Fort Wayne under the contract a penalty of five dollars (\$5.00) per person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the Contract; and,

d. That the Contract may be cancelled or terminated by the City of Fort Wayne and all money due or to become due hereunder may be forfeited for a second or subsequent violation of the terms or conditions of this clause.

IV. SPECIAL PROVISIONS

1. Contractor Personnel

All Contractor personnel required to perform the services specified in this Contract shall be certified to meet the following qualifications of their respective classifications and each will be equipped with a hard hat and a safety vest or safety suspenders.

1.1 Journeyman / Lineman

Must have three and one-half or more year's experience in the trade, have passed a Journeyman Lineman examination given by a duly constituted Outside Union of the IBEW or have been certified by any Outside Joint Apprenticeship and Training Committee.

1.1a Justin Kalinowski

As a unique provision to this contract, a Journeyman/Lineman position may be filled by Justin Kalinowski, who is classified as a Technician/Lineman. A Technician/Lineman is qualified to perform the same duties as a Journeyman/Lineman **EXCEPT** he shall not work near primary circuits nor on any lighting circuits exceeding 480 volts.

Midwestern Electric Inc., holds the City harmless of any and all claims arising from the work performed by Justin Kalinowski acting in this capacity under this Contract. If, during any call out of the Emergency Call Out Unit, a Journeyman/Lineman is required because of the limitations of the Technician/Lineman, the City is not to be charged for the additional services of that Journeyman/Lineman.

The Technician/Lineman for this unique provision will receive the same pay rate as a Journeyman/Lineman.

1.2 Heavy Equipment Operator / Truck Driver

Must have at least one year experience in the trade and have passed an examination pertaining to this classification given by a duly constituted Outside Local Union of the IBEW.

1.3 Groundman

Must have experience in the trade, have the necessary qualifications pertaining to this classification and have been employed in the normal construction labor market for a period of at least one year in the last four years under a collective bargaining agreement.

2. Contractor Work Force Units

2.1 (2) Maintenance Units each of which will consist of:

- One Working Foreman Journeyman / Lineman
- One Heavy Equipment Operator / Truck Driver
- One Groundman
- One ¾ Ton Pick Up Truck
- One 50' Working Height Bucket Truck with Insulated Boom Bucket

NOTE: One Maintenance Unit must be equipped with a 60' Working Height Bucket Truck.

- All tools and equipment shown in this base proposal

2.1a Journeyman / Lineman Unit which will consist of:

- One Working Foreman Journeyman / Lineman
- One ¾ Ton Pick Up Truck
- All tools and equipment shown in this base proposal

2.1b Partial Maintenance Unit

A Partial Maintenance Unit may be permitted at the discretion of the Street Light Operations Supervisor or designated representative. A partial Unit is one where the assigned Groundman is temporarily not available or where the assigned Heavy Equipment Operator is temporarily not available and the Contractor chooses to substitute a Groundman who is qualified to temporarily perform the duties of the Heavy Equipment Operator. The Contractor will be solely responsible for insuring the qualifications of the Groundman. During these occurrences the City will recognize that the qualified Groundman is performing the duties of a Heavy Equipment Operator.

2.2 (1) One Emergency Call Out Unit which will consist of:

- The Journeyman / Lineman assigned to Call out
- A Pick Up Truck from one of the Maintenance Units
- or
- A Maintenance Unit Bucket Truck

NOTE: The type of truck required for the Emergency Call Out Unit or any additional equipment required will be determined by the Traffic Operations Trouble Truck person for each Call Out situation.

The term "Emergency Call Out" applies only to emergency situations that occur outside of normal working hours including weekends and holidays. Emergency situations that occur during normal working hours will be handled by the Relamping Unit or one of the Maintenance Units as directed by the Street Light Warehouse Supervisor or a designated representative.

The Contractor will provide for (2) two employees to be designated as "On Call" at ALL times outside of normal working hours including weekends and holidays. At least (1) one employee must be a Journeyman / Lineman. Both designated employees will be available for immediate call-out duties when contacted by a Traffic Operations Trouble Truck person. Designated phone numbers will be provided to the Traffic Operations Trouble Truck persons for each Contractor employee when that employee is on call.

3. Detailed Specifications for Maintenance Units

These specifications are intended to cover the duties and responsibilities of the Contractor and City for performing the necessary maintenance of the City Street Light System.

3.1 The Contractor shall be required to furnish two (2) Maintenance Units and a Journeyman / Lineman Unit as described under Work Force Units #2.1 and #2.1a on page 20 of this contract.

3.2 Maintenance orders will be issued by the SLO Supervisor to maintain and repair facilities of the street light system. The City of Fort Wayne will furnish all materials required to perform maintenance and repair work. The Working Foreman shall provide daily written reports as to the work performed on each order and cause of damage such as faulted cable, accident, tree damage, windstorm, etc.

3.3 The Units doing maintenance of the street light system shall be expected to perform maintenance on all City Street Light Systems including the present series street light system. Since these series systems are located adjacent to the primary wires, (4000 volts) this will require proper safety equipment. The units will also be expected to change and maintain the series street lighting regulators which are part of the street light system. The Units will also perform maintenance of municipally owned distribution

systems (up to 12 KV behind American Electric Power metering points and other power utilities as may be required).

3.4 The Maintenance Units shall be used on an hourly basis to perform the maintenance requirements. Anticipated operating time for the Units will be 8 hours per day, 5 days per week for normal work, but with the capability of working overtime in emergency situations. The Units may also be required to install miscellaneous capital improvement street lighting facilities.

3.5 At least one truck on each Unit shall be radio equipped. The radio would be furnished, installed and maintained by the City of Fort Wayne.

3.6 The definition of Holidays in the Contract shall be those "Closing Days" as observed by the City of Fort Wayne. List of holidays for 2007 is included as Appendix A of this Contract.

3.7 The Units will work under the direction of the City of Fort Wayne SLO Supervisor or the designated representative.

3.8 Contractor will be paid for Maintenance Units on an hourly rate basis. When workers are paid by the Contractor due to inclement weather, the Contractor will be paid for **labor only**. Two (2) hour report time will be paid on days workers report for work but do not work. Workers can be directed to perform miscellaneous work inside until such time the SLO Supervisor can determine that the weather is too inclement to perform outside maintenance work. This does not apply in case of an emergency. When no work is available the SLO Supervisor will advise the workers the preceding afternoon not to report the next morning.

3.9 Tools Required for each Maintenance Unit

1 - 120-240 test light

1 - clip on amp meter 6A to 100A scale

1 - Simpson 260 VOM or equivalent

3 ea - 2' #10 copper wire flexible jumper and 2' #10

jumper w/clips

1 - pipe cutter ½" - 2"

2 ea. - 14" pipe wrenches

1 - 16" or 18" crescent wrench

- 1 - sledge hammer
- 1 - hydraulic tree trimmers w/extensions 15'
- 1 - hydraulic ground tamper for poles
- 1 - wood handle pick
- 1 - frost bar
- 1 - 3/4 ton chain hoist
- 2 - 15' chains
- 1 - 1/2" 24V cordless drill w/wood & steel bits and sockets 1/4" to 3/4"
- 1 - skil drill w/concrete drill from 1/4" to 1 1/4" for anchor bolts
- 1 - 100' steel tape
- 1 - 100' extension cord
- 1 - set of socket wrenches 1/4" to 1 7/8"
- 1 - set of end wrenches 1/4" to 1 7/8"
- 1 - 36' extension ladder
- 1 - axe
- 1 - pr. tree trimmers w/extension to reach 25' (wooden lineman)
- 1 - set of blocks and 5 grips for copper and aluminum wire size #8 to #2 stranded
- 1 - 36" x 36" blanket 15KV tested
- 1 - gloves low voltage
- 1 - hot boots
- 1 - 40' long hand line 3/8" rope
- 6 - pins
- 1 - 100' - 3/8" rope for straight line

1 - 125' 1/8" rope w/ throwball

8 - 3/8" rope slings

2 - 5' round nose shovels

2 - 5' square nose shovels

1 - spade

1 - tile scooper or shovel for cleaning trench

2 - flexible nylon blocks

15 - 30" safety cones w/2 reflective strips

4 - barricades type I

1 - 3' level

1 - j strap w/ smooth grip 5/32" to 5/16"

1 - 8" cold chisel

1 ea. - 1 1/2" - 1 5/8" deep well sockets - 3/4" drive w/ universal attachment and 24" extension.

1 - 5/8" steel sling 4' long

1 - wooden handle crimping tool to #2 stranded copper

1 - stake on / T & B style crimping tool for butt connectors #10 copper with assorted splicing sleeves

1 ea. - 1/2" and 3/4" drive crowsfeet - 1/2" to 15/8"

4. Detailed Specifications for the Emergency Call-Out Unit

These specifications are intended to cover the duties and responsibilities of the Contractor and City to provide Emergency Call Out capabilities for the City Street Light System.

4.1 The Contractor will supply the services of an Emergency Call-Out Unit which will be available during ALL hours other than normal working hours including weekends and holidays, to handle accidents or emergencies. This unit shall be as described under Work Force Units #2.2 on page 21 of the Contract.

4.2 The Contractor shall supply the Emergency Call-Out Unit with a Fort Wayne based cellular phone(s) for emergency after hour calls. When called by the Traffic Operations Trouble Truck person the Emergency Call-Out Unit will respond to the site within one hour. The Unit shall be capable of immediate temporary repair to the street light facilities.

4.3 The Contractor shall be paid a minimum of two (2) hours on an hourly contract rate basis for each after working hours call-out for the Emergency Call-Out Unit. Multiple Emergency Call-Out calls falling within the call-out two hour period shall not be paid for on a concurrent basis.

4.4 Tools Required for the Emergency Call-Out Unit

Same tools as listed for the Relamping Unit.

5. Tools Required for each Journeyman / Lineman

- 1 - body belt and safety harness
- 1 - pr. climbers
- 1 - nut and bolt bag
- 1 - tool pouch
- 1 - 12" crescent wrench
- 1 - 6"- 8" crescent wrench
- 1 - pr. channel locks
- 1 - 6' folding wood ruler
- 1 - 9" lineman pliers
- 1 -2 lb. hammer
- 1 - skinning knife (0-600 volt rated)
- 1 - 6"- 8" phillips screwdriver
- 1 - 6"- 8" regular screwdriver
- 1 - crescent style pipe wrench up to 2 ½" diameter

ACKNOWLEDGEMENT

I, Allen Brodbeck, BEING President OF
(NAME) (TITLE)
Midwestern Electric, Inc., ACKNOWLEDGE RECEIPT OF

SAID DRUG AND ALCOHOL TESTING PROCEDURES OF THE CITY OF FORT
WAYNE AND AGREE TO BE BOUND BY THOSE PROVISIONS OF THE
PROCEDURES THAT MAY BE APPLICABLE.

DATED THIS 13th DAY OF October, 2006.

Allen Brodbeck
(signature)

Allen Brodbeck
(printed name)

IN WITNESS WHEREOF, the parties hereto have executed Contract #93-7-12-06-2, the day and year first above written:

CONTRACTOR

Midwestern Electric Inc.

BY: *Alfred Brodbeck*

CITY OF FORT WAYNE

BY: *Graham Richard*
GRAHAM RICHARD, MAYOR

BOARD OF PUBLIC WORKS

BY: *Regina A. Kostoff*
REGINA A. KOSTOFF, CHAIR

BY: *John Suarez*
JOHN SUAREZ, MEMBER

BY: _____
RYAN P. CHASEY, MEMBER

ATTEST: *Marilyn Huth*
MARILYN HUTH, CLERK

APPROVED AS TO FORM AND LEGALITY BY: _____
ASSOCIATE CITY ATTORNEY

THIS DOCUMENT PREPARED BY: DOUGLAS P. HILKEY, DIRECTOR
TRAFFIC OPERATIONS

ACKNOWLEDGEMENT

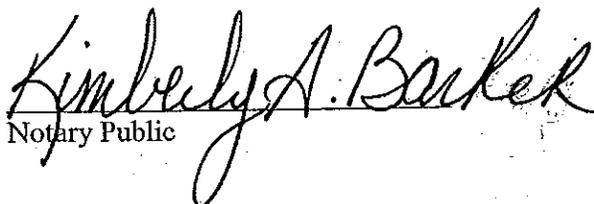
STATE OF INDIANA)

SS:

COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this day of , ,
personally appeared the within named Allen Brodbeck who being by me first
sworn upon his oath say this he is the President of Midwestern Ele. and as such duly
authorized to execute the foregoing instrument and acknowledged the same as the voluntary act
and deed of Company for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.


Notary Public

Kimberly A. Barker
Printed Name of Notary

My Commission Expires: April 29, 2008

Resident of Marion County.

ACKNOWLEDGEMENT

STATE OF INDIANA)

SS:

COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 18th day of October, 2006, personally appeared the within named **Graham Richard, Regina A. Kostoff, John Suarez, Ryan P. Chasey and Marilyn Huth**, by me personally known, who being duly sworn said that they are respectively the Mayor of the City of Fort Wayne, and the Chair, Members, and Clerk of the Board of Public Works of the City of Fort Wayne, Indiana, and that they signed said instruments on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledge said instrument to be in the voluntary act and deed of said City for the use and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Michelle R. Hadley

Notary Public

Michelle R. Hadley

Printed Name of Notary

My Commission Expires:

MICHELLE RENEE HADLEY
Resident Public, State of Indiana
Notary Public
County of Allen _____ County.
My Commission Expires 11/26/2006

APPENDIX A

2007 HOLIDAY SCHEDULE AND CLOSING DATES

FOR ALL CIVIL CITY AND CITY UTILITIES EMPLOYEES

<u>HOLIDAY</u>	<u>DATE OBSERVED</u>
New Year's Day	Monday, January 1, 2007
Martin Luther King, Jr. Day	Monday, January 15, 2007
Memorial Day	Monday, May 28, 2007
Independence Day	Wednesday, July 4, 2007
Labor Day	Monday, September 3, 2007
Veteran's Day	Monday, November 12, 2007
Thanksgiving Day	Thursday, November 22, 2007
Day after Thanksgiving	Friday, November 23, 2007
Christmas Eve Day	Monday, December 24, 2007
Christmas	Tuesday, December 25, 2007

These are the scheduled holidays unless otherwise modified by the collective bargaining agreements.

Appendix B

Drug and Alcohol Testing Procedures

1. INTENT

The City of Fort Wayne is dedicated to providing a safe and drug free workplace. The City of Fort Wayne's employees are our most valuable resource and it is our goal to provide a healthy, satisfying working environment that promotes personal opportunities for growth. In meeting these goals, it is our intent to:

- A. Assure that employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthy manner;
- B. Create a workplace environment free from the adverse effects of drug abuse and alcohol misuse;
- C. Prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances;
- D. Encourage employees to seek professional assistance any time personal problems; including alcohol or drug dependency, adversely affect their ability to perform their assigned duties; and
- E. Achieve the above objectives consistent with the need to protect and preserve the privacy and dignity of all employees.

2. PURPOSE OF EMPLOYEE DRUG AND ALCOHOL TESTING

This document provides a uniform procedure concerning the testing of employees or applicants for employment to detect individuals having drugs or alcohol in their system. The purpose of such testing is to provide employees, and the general public, work and service environments that are free from the effects of drug and alcohol abuse. The City of Fort Wayne is committed to providing a safe work place for its employees that is free of the effects of substance abuse. Since the city of Fort Wayne is involved in public service, the community depends on careful attention by all employees. Such attention cannot be affected by the use of drugs and/or alcohol. The use of any drug, including alcohol, can interfere with the safe and efficient functioning of the City's personnel. Therefore, drug or alcohol abuse is a matter of the City of Fort Wayne's concern and will be dealt with in an appropriate manner.

The City of Fort Wayne expects employees to report for work in condition to perform their duties. On-the-job involvement with drugs and/or alcohol is a violation of the City of Fort Wayne's policy and Federal law. The City of Fort Wayne also recognizes that employee off-the-job involvement with drugs and alcohol can have an impact on the work place and its ability to accomplish the goal of a safe, effective, drug and alcohol-free work environment.

3. APPLICABILITY

These policies apply to all safety-sensitive and non-safety-sensitive employees,

including paid part-time employees, temporary employees, volunteers, contract employees and contractors when they are on City of Fort Wayne property or when performing any safety-sensitive functions. These policies also apply to off-site lunch periods or breaks when an employee is scheduled to return to work.

Visitors, vendors, and contractor employees are governed by these policies while on City of Fort Wayne premises and will not be permitted to conduct City of Fort Wayne business if found to be in violation of these policies.

A list of job classifications presently designated as safety-sensitive is attached hereto as Appendix A. The City of Fort Wayne shall meet and confer with the appropriate a collective bargaining agent, if any, regarding any new or additional job classifications it may propose to add to the list of safety-sensitive job classifications. Any unresolved dispute over any proposed addition to Appendix A shall be subject to the grievance/arbitration procedures in any applicable collective bargaining agreement.

4. PROHIBITED SUBSTANCES

"Prohibited substances" addressed by these policies include the following:

- Illegally Used Controlled Substances or Drugs
Any illegal drug or substance identified in Schedules I through V Section 202 of the Controlled Substance Act (21 U.S.C. 812), as further defined by 21 CFR 1300.11 through 1300.15. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes the use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs.
- Alcohol
The use of beverages containing alcohol or substances including any medication, mouthwash, food, candy, or any other substance such that alcohol is present in the body while performing City of Fort Wayne business is prohibited. The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath-testing device.

5. PROHIBITED BEHAVIOR

- Reporting for duty or remain on duty while having an alcohol concentration of 0.02 or greater.
- Possessing alcohol while on duty or operating a City motor vehicle or other motorized equipment.
- Performing any job functions within four hours of having used alcohol.
- Using alcohol following an accident before undergoing a post-accident alcohol test.
- Using, manufacturing, distributing, dispensing or possessing controlled substances.

- Refusal to submit immediately to a chemical or alcohol test (reasonable suspicion, post-accident, and random) when requested.

All employees are required to notify the City of Fort Wayne of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action, up to and including termination.

The City of Fort Wayne is dedicated to assuring fair and equitable application of the Drug and Alcohol Testing procedures. Therefore, supervisors and managers are directed to use and apply all aspects of this procedure in an unbiased and impartial manner. Any supervisor or manager who knowingly disregards the requirements of this procedure, or who is found to deliberately misuse the procedure in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

6. DEFINITIONS

- A. "Accident (Non-Vehicular)" means where an employee sustains an on-the-job injury that results in casting, suturing or overnight hospitalization or in the opinion of the Risk Management investigator with the concurrence of at least one supervisor, the injury was the result of an employee's negligence.
- B. "Accident (Vehicular)" means an occurrence associated with the operation of a motor vehicle or other motorized equipment, if, as a result:
 - i. A death occurs; or
 - ii. An individual suffers bodily injury that requires medical treatment away from the scene of the accident; or
 - iii. One or more of the vehicles involved incurs disabling damage as a result of the occurrence and is transported away from the scene by a tow truck or another vehicle; or
 - iv. The employee receives a citation under state or local law for a moving traffic violation; or
 - v. In the opinion of the Risk Management investigator, with the concurrence of at least one supervisor, the employee driver's negligence contributed to the accident.
- C. "Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl or isopropyl alcohol. References to use or possession of any beverage, mixture or preparation containing ethyl alcohol (including any medication containing alcohol).
- D. "Alcohol Test" means a test conducted by a Certified Breath Alcohol Technician, or any other person approved by the City of Fort Wayne Police Department, using an Evidential Breath Testing Device to; measure the amount of alcohol concentration in a volume of breath.
- E. "Alcohol Use" means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
- F. "Breath Alcohol Technician (BAT)" means an individual trained and certified to proficiency in the use of an evidential breath-testing device.

- G. "Cancelled Test" means a test that has been declared invalid by a Medical Review Officer (MRO) for drug testing or for alcohol.
- H. "CDL" means a Commercial Driver's License.
- I. "Confirmation Test"
 - i. For alcohol testing, means a second test following a screening test with a result of 0.02% or greater, that provides a quantitative data of alcohol concentration. Conformation of the screening test must be by an Evidential Breath Testing (EBT) device listed on the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List (CPL), and must be capable of printing out each test result and air blank, and must sequentially number each test.
 - ii. For controlled substances testing, means a second analytical procedure to identify the presence of a specific drug metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. Gas Chromatography Mass Spectrometry (GC/MS) is the authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.
- J. "Controlled Substances/Drugs" for purposes of these procedures, means controlled substances or drugs are cocaine, marijuana, opiates, amphetamines, phencyclidine and any other substance determined by the U.S. Department of Transportation to be a controlled substance.
- K. "Controlled Substance (or Drug) Test" means a method for determining the presence of controlled substances in a urine sample using a scientifically reliable method.
- L. "Employee" means any person employed by the City of Fort Wayne in a non-public safety position, excluding any elected official.
- M. "EAP" means an Employee Assistance Program provided by the City of Fort Wayne to assist its employees in dealing with drug or alcohol dependency or other personal problems.
- N. "Evidential Breath Testing Device (EBT)" means a device approved by the NHTSA and placed on NHTSA's Conforming Products list and is used for the evidential testing of breath.
- O. "Medical Review Officer (MRO)" means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.
- P. "Non-negative Test Result (alcohol breath test result)" means an alcohol breath test result between .02 and .039.
- Q. "Safety-Sensitive classification" means:
 - i. Any of the job classifications listed on Appendix A.

- ii. A classification which involves the operation of a vehicle or equipment which is used to maintain public health and safety for which a CDL is a required condition of employment.
 - iii. Parks & Recreation staff responsible for the daily supervision of children.
- R. "Screening Test (also known as an "initial test")"
- i. In alcohol testing means an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in his or her system.
 - ii. In controlled substances testing means an immunoassay screen (or other DHHS-approved test) to eliminate "negative" urine specimens from further consideration.
- S. "Split Sample" means an additional sample collected with the original specimen, to be tested in the event the original specimen tests positive.
- T. "Verified Negative Drug test Results" means a drug test result reviewed by a Medical Review Officer and determined result reviewed by a Medical Review Officer and determined to have no evidence of prohibited drug use.
- U. "Verified Positive Drug Test Results" means a drug test result reviewed by a Medical Review Officer and determined to have evidence of prohibited drug use.

7. CIRCUMSTANCES OF DRUG AND ALCOHOL TESTING. The following drug and/or alcohol screening situations will be utilized by the City of Fort Wayne.

- A. Pre-employment Testing: All applicants shall undergo urine substance abuse testing immediately following the offer of employment. All current employees shall undergo urine substance abuse testing prior to or transfer from a non-safety-sensitive position into a safety-sensitive position. Receipt of negative substance abuse test result is required prior to commencement of employment. If an applicant refuses to be tested or fails the pre-employment substance abuse test, the applicant will be disqualified for employment for a period of six months. A negative pre-employment substance abuse test is required prior to further consideration for employment.
- B. Post-accident Testing: Such testing shall be limited to accidents as defined in Sections 6.A. and 6.B., except as follows: if an accident (non-vehicular), in the opinion of the risk management investigators with the concurrence of one supervisor, is the result of the negligence of an employee other than the injured employee, the negligent employee shall be tested and the non-negligent injured employee shall not be tested. Substance abuse tests must be performed within 8 hours after the accident. Alcohol tests must be performed within 3 hours after the accident.
- C. Reasonable Cause: Any employee may be subject to urine and/or breath testing when there are reasons to believe that substance abuse is adversely affecting his/her job. Such a determination will be made on the basis of documented objective facts and circumstances that are consistent with the

short-term effects of substance abuse. Examples of reasonable cause include, but are not limited to, the following:

- i. Physical signs and symptoms consistent with prohibited substance use.
- ii. Evidence that the employee has engaged in the manufacture, distribution, dispensing, possession, or use of prohibited substances on the job.
- iii. Fights (to mean physical contact), assaults, and flagrant disregard or violations of established safety, security, or other operating procedures.

Reasonable cause referrals must be made by one supervisor (two supervisors are preferred) who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited abuse or misuse. The questioned conduct must be witnessed and documented in writing.

- D. Random: Such tests shall be limited to employees who occupy safety-sensitive classifications (Appendix A), and who are not in the CDL testing pool. On a random, unannounced basis. Each year, at least 25% of all employees occupying safety-sensitive functions will be tested for drugs. All safety-sensitive employees will remain in the random selection pool at all times, regardless of whether or not they have been previously selected for testing. Random testing will be conducted in accordance with procedures established by the City's Risk Management Department.
- E. Return-to-duty: Employees who have previously refused to take a drug or alcohol test, or failed such a test, shall be tested for prohibited drug or alcohol use before they return to duty. The employee must first be certified as capable of resuming duties. Any such employee, once returned to duty, may be administered unannounced follow-up drug and alcohol tests for up to 60 months (CDL classifications only) and for up to 12 months (non-CDL classification) after their return to duty.

8. SUBSTANCES TO BE INCLUDED IN TESTING

Alcohol (Ethanol), amphetamines, cannabinoids (marijuana), cocaine, opiates, phencyclidine (PCP), and their metabolites will be included. Because the City of Fort Wayne is concerned about the abuse of prescribed and over-the-counter medication as well as illegal drugs and alcohol, the above list may be expanded to include yet to be developed substances, changes in the City of Fort Wayne policy, or changes to Federal laws and regulations.

9. DRUG TESTING PROCEDURES

The City of Fort Wayne shall identify and select only qualified medical laboratories certified by DHHS/NIDA/SAMHSA to perform the urinalysis testing described by these procedures. Appointments for urine collection for drug screens will be coordinated by the City of Fort Wayne Department of Risk Management. The specimens will be collected at special facilities that optimize

confidentiality and observe DPT collection procedures. The collection facility must adhere to the collection provisions set forth in the "DHHS" regulations entitled "Mandatory Guidelines for Federal Work place Drug Testing Programs 53FR (11970) published April 11, 1988 known as "DHHS Guidelines" and 49 CFR Par 40, as amended. A strict chain of custody will be maintained on the specimen as described in the "DHHS Guidelines". In the event that a non-designated collection facility must be used, the supervising employee contacting the facility must insure that he facility is properly advised concerning the collection requirements as described in the "DHHS Guidelines." Record keeping and reporting of all drug testing and results shall be in strict accordance with Federal guidelines to protect the confidentiality of the employees. If there is concern about an individual's ability to function safely, that individual will be provided transportation to their home after completion of the drug testing. Supervisors will always transport employees to the collection site.

10. DRUG TESTING CUT-OFF LEVELS

- **Initial Test**

The initial test shall use an immunoassay that meets the requirements of the Food and Drug Administration for commercial distribution. The most current NIDA/SAMHSA cut-off levels shall be used when screening specimens to determine whether they are negative for these drugs. Current cut-off levels are:

Initial Test Cut-Off Levels (ng/ml)

Marijuana Metabolites (cannabinoids)	50
Cocaine Metabolites	300
Opiate Metabolines*	300
Phencyclidine	25
Amphetamines	1,000

*25 ng/ml if immunoassay specific for free morphine

1. These cut-off levels are subject to change by the DHHS as advances in technology or other considerations warrant.

- **Confirmation Test**

All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/N4S) techniques using the most current NIDA/SANMSA cut-off levels. The current cut-off levels are:

Confirmatory Test Cut-Off Levels(ng/ml)

Marijuana Metabolite (1)	15
Cocaine Metabolite (2)	150
Opiates:	
Morphine	300
Codeine	300
Phencyclidine	25

Amphetamines:

Amphetamine	500
Methamphetamine (3)	500

- (1) Delta-9 tetrahydrocannabinol-9-carboxylic acid
- (2) Benzoylcegonine
- (3) Specimen must also contain amphetamine at a concentration equal to or greater than 200 ng/ml.

1. These cut-off levels are subject to change by the DHHS and/or the DOT advances in technology or other considerations warrant.

- **Split Sample Testing**

The employee may request, within 72 hours of notification of a positive test by the MRO, that the split sample be tested at a separate DHHS certified laboratory. This request must be made in writing to the MRO. The results of the split sample test shall be the final test results that are reported to the employer by the MRO. The cost for transportation and testing of the split sample is the sole responsibility of the employee and must be paid for in advance. If results from the split sample are negative, the City of Fort Wayne will reimburse the employee.

11. EFFECTS OF ALCOHOL

Alcohol is a socially acceptable drug that has been consumed throughout the world for centuries. It is considered a recreational beverage when consumed in moderation for enjoyment during social gatherings. However, when consumed primarily for its physical and mood altering effects, it is a substance of abuse. As a depressant, it slows down physical responses and progressively impairs mental functions.

1. **Signs and Symptoms of Use**

1. Dulled mental processes
2. Lack of coordination
3. Odor of alcohol on breath
4. Possible constricted pupils
5. Sleepy or stuporous condition
6. Slowed reaction time
7. Slurred speech

(Note: Except for the odor, these are the general signs for any depressant substance.)

2. **Health Effects**

The chronic consumption of alcohol average of three servings per day of beer (12 ounces), whiskey (1 ounce), or wine (6 ounce glass) over time may result in the following health hazards:

1. Decreased sexual functioning
2. Dependency
3. Fatal liver diseases
4. Increased cancers of the mouth, tongue, pharynx, esophagus, rectum, breast, and malignant melanoma

5. Kidney disease
 6. Pancreatitis
 7. Spontaneous abortion and neonatal mortality
 8. Ulcers
 9. Birth defects (up to 54% of all birth defects are alcohol related)
- 3. Social Issues**
1. Two-thirds of all homicides are committed by people who drink prior to a crime.
 2. Two to three percent of the driving population is legally drunk at any one time. This rate is doubled at night and on weekends.
 3. Two-thirds of all Americans will be involved in an alcohol-related vehicle accident during their lifetimes.
 4. The rate of separation and divorce in families with alcohol dependency problems is seven times the average.
 5. Forty percent of family court cases are alcohol problem related.
 6. Alcoholics are 15 times more likely to commit suicide than are other segments of the population.
 7. More than 60 percent of burns, 40 percent of falls, 69 percent of boating accidents, and 76 percent of private aircraft accidents are alcohol related.
- 4. Workplace Issues**
1. It takes one hour for the average person (150 pounds) to process one serving of an alcoholic beverage from the body.
 2. Impairment in coordination and judgment can be objectively measured with as little as two drinks in the body.
 3. A person who is legally intoxicated is six times more likely to have an accident than a sober person.
- 5. The Annual Toll**
1. 24,000 people will die on the highway due to the legally impaired driver.
 2. 12,000 more will die in non-highway due to the alcohol-affected driver.
 3. 15,800 will die in non-highway accidents.
 4. 30,000 will die due to alcohol-caused liver disease.
- *Up to another 125,000 will die due to alcohol-related conditions or accidents.
- 6. Intervention**
- Employees are advised that the City of Fort Wayne provides an Employee Assistance Program as part of its employee benefit program. Employees who may have a problem with alcohol consumption or illegal drug use are highly encouraged to take advantage of this program. Non-jeopardy referrals or voluntary participation in the program is desired.

12. ALCOHOL TESTING PROCEDURES

Alcohol testing will only be conducted using evidential breath testing devices in accordance with 49 CFR Part 654.

Breath testing will be coordinated by the City of Fort Wayne Department of Risk Management. The breath specimen will be conducted at a site that optimizes confidentiality. The collection site must adhere to the collection provision set forth in 49 CFR Part 654. A strict chain of custody will be maintained on the specimen. All record keeping will be in strict accordance with Federal regulations.

If there is concern about an individual's ability to function safely, the individual will be provided transportation to their home after completion of the testing.

Supervisors will always transport employees to the test site.

Alcohol breath testing will be performed in the following manner in accordance with 49 CFR Part 654:

1. Screening Test

The initial test shall be done using an EBT in accordance with 49 CFR Part 654. If the initial test results are less than 0.02 alcohol concentration, the results are negative and will be reported by the BAT as such. If the initial test results are 0.02 or greater, a second or confirmatory test must be conducted.

2. Confirmation Test

The confirmatory test must be conducted on the same EBT as the initial test in accordance with 49 CFR Part 654. Before the confirmatory test may be given, a minimum of 15 minutes and maximum of 20 minutes must have passed since the initial test was performed. During this period, the employee should avoid any actions that could increase mouth alcohol. The 15-20 minute wait period is to ensure that the presence of mouth alcohol does not artificially raise the test result.

Only the results of the confirmatory test shall be reported, irrespective of the results on the initial test. If the results of the initial and confirmatory tests are not identical, the confirmation test result is deemed to be the final test result. If the result of the confirmatory test is less than 0.02 alcohol concentration, a negative result shall be reported by the BAT. If the results of the confirmatory test are 0.02 or greater but less than 0.04 alcohol concentration (non-negative results), the employee must be removed from his/her safety-sensitive or non-safety-sensitive position for eight hours or longer and be referred to mandatory evaluation by the Department of Risk Management. Based on the Risk Management evaluation, the employee may be subject to the involuntary rehabilitation procedures set forth in Section XIX as well as other disciplinary measures up to termination.

If the results of the confirmatory test show an alcohol concentration of 0.04 or greater, the employee must be removed from his/her safety-sensitive or non-safety-sensitive position, be informed about educational and rehabilitative programs, and be evaluated by the Risk Management Department. The determination of the Risk Management Department will guide further decision regarding continued rehabilitation and employment of the employee.

13. POSITIVE TEST/REFUSAL TO TEST

A. A positive substance abuse test is a violation of the City of Fort Wayne's policy. An employee who refuses to submit to a drug and/or alcohol test will be considered to have failed the test. Failure to comply with the request for drug/alcohol testing will be just cause for termination. If a positive test for drugs is reported by the medical review officer, it is understood that the screening test was positive and a second confirmatory test, based on a different scientific principle was also positive. The acceptable method of confirmation is: gas chromatography/mass spectrometry (GC/MS). A verified positive drug test result as defined in Section 6.U. will result in immediate termination of employment.

If a positive test for alcohol (0.04 or above) is reported, it is understood that the positive test was the result of the confirmation test on an EBT. A non-negative alcohol test result as defined in Section 6.P. will result in immediate termination of employment. City of Fort Wayne employees with positive drug/alcohol screens will be informed in a meeting with their supervisor and/or department manager. If the employee is a member of a union, a Union Representative may be present, if requested by the employee, and the employee shall have recourse to the grievance procedure established in her or his Union's labor agreement to challenge any disciplinary action taken allegedly lacking in just cause.

B. Any employee who has resigned or been discharged after a positive urinalysis shall not be eligible for re-hire until six (6) months following his/her termination.

14. BEHAVIOR THAT CONSTITUTES A REFUSAL TO SUBMIT TO A TEST

Behavior that constitutes a refusal to submit to a test includes, but is not limited to, the following:

- Refusal to take the test.
- Inability to provide sufficient quantities of breath or urine to be tested without a valid medical explanation.
- Tampering with or attempting to adulterate the specimen or collection procedure.
- Not reporting to the collection site in the allotted time.
- Leaving the scene of an accident without a valid reason before the test has been conducted.

15. CONDITION OF EMPLOYMENT

Participation in the City of Fort Wayne Drug and Alcohol Testing program is a requirement of all non-public safety employees and, therefore, is a condition of employment for such employees.

16. CHANGES OR MODIFICATIONS

The City of Fort Wayne reserves the right to change the provisions of this testing procedure. All personnel and Unions will be notified at least 15 calendar days prior to instituting the changes and allowed an opportunity to comment. Changes required by Federal, State and/or Local law will not require advance notification.

17. USE OF LEGAL DRUGS

Employees who are taking prescription or non-prescription lawful drugs which they have been informed may affect the performance of their job duties must report such usage to the Risk Management Department and/or their immediate supervisor before beginning their work day. Such drugs used on the job may be determined to be allowable drugs if the medical review officer has determined that the use of the drug is consistent with safe performance of the employee's duties and the drug is being used at the prescribed dosage.

18. VOLUNTARY REHABILITATION

In an effort to meet the purpose of this drug and alcohol procedure, the City of Fort Wayne wants to provide a program that will be helpful to employees. The City of Fort Wayne maintains an Employee Assistance Program available to all employees. The purpose is to provide access to professional services to aid the employee who has an alcohol or drug problem, or other personal problems that may affect job performance.

All employees are encouraged to use this program's resources before their employment status is affected. Though voluntary participation treatment programs will not prevent disciplinary action (s) for procedure violations that have already occurred, no such employee shall be disciplined in any way solely as a result of having enrolled in the EAP.

Supervisors can assist in contacting the Employee Assistance Program. At the conclusion of treatment, arrangements for drug screen follow-up testing will be made. Specific guidelines will be agreed upon by management, supervisors and the rehabilitated employee at the time the employee returns to work.

The City of Fort Wayne's EAP provider and telephone number is: Life Plan, Sandra Tobin, (219) 481-2888. The 24 hour hotline is (800) 552-0985.

19. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act of 1990 (ADA) does not, in any way, preclude or interfere with the employer's compliance with the Department's new or existing drug and alcohol testing regulations. However, Title I of ADA, which prohibits discrimination against a "qualified individual with a disability," may affect the personnel actions an employer may wish to take with respect to some individuals who test positive for drugs or alcohol, or otherwise violate the prohibitions of the Department's drug and alcohol rules.

The ADA specifically authorizes employers covered by DOT regulations to require their employees to comply with the standards established in those regulations, including complying with any rules that apply to employment in safety-sensitive positions as defined in the DOT regulations. Under the ADA, an

employer is not viewed as "discriminating" for following the mandates of DOT drug and alcohol rules.

The ADA specifically provides that an employee or applicant who is currently engaging in the illegal use of drugs is not a "qualified individual with a disability." It is clear that an individual who has a positive test result on a DOT mandated drug test is currently engaging in the illegal use of drugs. Therefore, under Title 1, an employer may discharge or deny employment to an individual who has a positive result on a US DOT-mandated drug test.

Unlike the situation with respect to current use of illegal drugs, the use of alcohol contrary to law, Federal regulation, or employer policy does not deprive an individual of status as a "qualified individual with a disability" that he or she would otherwise have under Title 1. An individual is protected by Title 1, however, only if the individual has a disability in the first place. While, as the EEOC notes in its Title 1 regulation, "individuals disabled by alcoholism are afforded the same protections accorded other individuals with disabilities" (56 CFR 35752, July 26, 1991), not all individuals who use alcohol in violation of the law, Federal regulations of employer policy are "disabled by alcoholism."

Under Title 1, an employer may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance as it holds other employees, even if the unsatisfactory performance or behavior is related to the drug use or alcoholism of the employee.

It should also be pointed out that the ADA does not preclude an employer from disciplining or dismissing an employee who commits a violation of the employer's conduct and performance standards, even if the individual is an alcoholic or has another disability.

20. CONTACT PERSONS

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