

CITY OF WILLMAR

LABOR COMMITTEE MEETING

12:00 PM, FRIDAY, DECEMBER 20, 2019

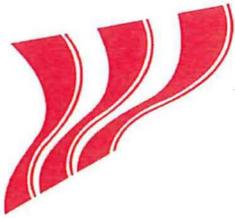
CONFERENCE ROOM #1

CITY OFFICE BUILDING

AGENDA

Chair:	Shawn Mueske
Vice Chair:	Fernando Alvarado
Members:	Samantha Beckman
	Vicki Davis
	Kathy Schwantes

1. Meeting Called to Order
2. Public Comment
3. Drug & Alcohol Testing Policies
4. Miscellaneous
5. Adjourn



LABOR COMMITTEE AGENDA REPORT

To: Labor Committee	Date: December 20, 2019
From: Samantha Beckman, Human Resource Director	Agenda item: Approval of Updated Drug and Alcohol Testing Policies

RECOMMENDED ACTION:

Motion By: _____ Second By: _____,
to approve the updated Drug and Alcohol Testing Policies.

HISTORY:

The Federal Motor Carrier Safety Administration (FMCSA-division of Department of Transportation) created a National Drug and alcohol Testing Clearinghouse for CDL Drivers that fully goes into effect January 6, 2020. This requires all CDL drivers to be registered and tracked in the online Clearinghouse database so employers can ensure that drivers have no drug or alcohol related violations and/or verify that mandatory return-to-duty rehabilitation has been completed.

The City of Willmar is registered with the Clearinghouse and should adopt the updated policy template provided by the League of Minnesota Cities to be in compliance.

FINANCIAL IMPACT:

ALTERNATIVES:

1. Let existing policies stand (in violation of the new DOT standards).
2. Amend the policies further.

REVIEWED BY: Brian Gramentz, City Administrator

COMMITTEE MEETING DATE: Labor, December 20, 2019

COUNCIL MEETING DATE: January 6, 2020

City of Willmar, Minnesota

Drug and Alcohol Testing for Commercial Drivers Policy

Purpose and Objectives

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

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

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

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

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

Any revisions to the Federal Omnibus Transportation Employee Testing Act will take precedent over this policy to the extent the policy has not incorporated those revisions.

Persons Subject to Testing & Types of Tests

All employees are subject to testing who job duties include performing “safety-sensitive duties” on City vehicles that:

1. Have a gross combination weight rating or gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds, whichever is greater; or

2. Have a gross vehicle weight rating or gross vehicle weight of 26,0001 or more pounds whichever is greater; or
3. Are designed to transport 16 or more passengers, including the driver; or
4. Are of any size and are used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

The following functions are considered safety-sensitive:

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

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

Pre-Employment Testing

All applicants, including current employees seeking a transfer, applying for a position where duties include performing safety-sensitive duties described above, will be required to take a drug test prior to the first time a driver performs a safety-sensitive function for the City. A driver may not perform safety-sensitive functions unless the driver has received a controlled substance test result from the Medical Review Officer (“MRO”) indicating a verified negative test result. In addition to pre-employment controlled substance testing, applicants will be required to authorize in writing former employers to release alcohol test results of .04 or greater, positive controlled substance test results, refusals to test, other violations of drug and alcohol testing regulations, and completion of return to duty requirements within the preceding three years.

All applicants, including current employees seeking a transfer, applying for a position where duties include performing safety-sensitive duties described above, will be required to take an alcohol test prior to the first time a driver performs a safety-sensitive function for the City, but only after a conditional offer of employment has been made. No applicant, including current employees seeking a transfer, will perform safety-sensitive functions unless the driver has received an alcohol test result from the MRO indicating a test result of .02 or less Blood Alcohol Content (“BAC”).

The City will contact the candidate’s DOT regulated previous and current employers within the last three years for drug and alcohol test results as referenced above, and review the testing history if feasible before the employee first performs safety-sensitive functions for the city. Beginning in 2020, the City will also conduct a limited query of the Federal Motor Carrier Safety Administration’s Clearinghouse for all candidates. In addition, at least once a year, the City will

conduct a limited query of the Clearinghouse for each currently employed CDL driver. If the limited query reveals that the Clearinghouse has information about resolved or unresolved drug and alcohol program violations by a candidate or current employee, he or she will be asked to provide electronic consent to a full query of the Clearinghouse (unless he or she has previously provided electronic consent). In the event a full query of the Clearinghouse reveals unresolved violation information for a candidate or current employee, the driver will not be permitted to perform safety-sensitive functions, including the operation of a Commercial Motor Vehicle and, in the case of a candidate, may have their conditional offer of employment rescinded or, in the case of a current employee, may be subject to discipline.

Post-Accident Testing

As soon as practicable following an accident involving a commercial motor vehicle operating on a public road, the City will test each surviving driver for controlled substances and alcohol when the following occurs:

- The accident involves a fatality or
- The driver receives a citation for a moving traffic violation from the accident and an injury is treated away from the accident scene or
- The driver receives a citation for a moving traffics violation from the accident and a vehicle is required to be towed from the accident scene.

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

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

A driver subject to post-accident testing must remain readily available or the driver will be deemed to have refused to submit to testing. This requirement to remain ready for testing does not preclude a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary medical care.

Post-Accident Controlled Substance Testing

Drivers are required to submit a urine sample for post-accident controlled substance testing as soon as possible. If the driver is not tested within thirty-two (32) hours after the accident, the City will cease its attempts to test the driver and prepare and maintain on file a record stating why the test was not promptly administered.

Post-Accident Alcohol Testing

Drivers are required to submit to post-accident alcohol testing as soon as possible. After an accident, consuming alcohol is prohibited until the driver is tested. If the driver is not tested within two (2) hours after the accident, the City will prepare and maintain on file a record stating why the test was not administered within that time. If eight hours have elapsed since the accident and the driver has not submitted to an alcohol test, the City will cease its attempts to test the driver and prepare and maintain on file a record stating why the test was not administered.

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

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

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

Random Testing

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

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

For 2014, federal law requires the City to test at a rate of at least fifty percent (50%) of its average number of drivers for controlled substance each year, and to test at a rate of at least ten percent (10%) of its average number of drivers for alcohol each year. These minimum testing rates are subject to change by the DOT.

Reasonable Suspicion Testing

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

The City's determination that reasonable suspicion exists to require the driver to undergo an alcohol test will be based on "specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver." In the case of controlled substance,

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

The required observations for reasonable suspicion testing will be made by a supervisor or other person designated by the City who has received appropriate training in identification of actions, appearance and conduct of a driver which are indicative of the use of alcohol or controlled substance. These observations leading to an alcohol or controlled substance test, will be reflected in writing and signed by the supervisor who made the observations. The record will be retained by the City. The person who makes the determination that reasonable suspicion exists to conduct testing, will not be the person conducting the testing, which shall instead be conducted by another qualified person.

Alcohol testing is authorized only if the observations are made during, just before, or just after the driver has ceased performing such functions. If a reasonable suspicion alcohol test is not administered within two (2) hours following the determination of reasonable suspicion, the City will prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If a reasonable suspicion alcohol test is not administered within eight (8) hours following the determination of reasonable suspicion, the City will prepare and maintain on file a record stating the reasons the alcohol test was not administered, and will cease attempts to conduct the alcohol test.

Notwithstanding the absence of a reasonable suspicion test, no driver may report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol use, nor will the City permit the driver to perform or continue to perform safety-sensitive functions until (1) an alcohol test is administered and the driver's alcohol concentration is less than .02; or (2) twenty-four (24) hours have elapsed following the determination of reasonable suspicion.

Return-to-Duty Testing

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

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

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

Follow-Up Testing.

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

Should the City reinstate a driver following a determination by a Substance Abuse Professional (SAP) that the driver is in need of assistance in resolving problems associated with alcohol use and/or use of controlled substance, the City will ensure that the driver is subject to unannounced follow-up alcohol and/or controlled substance testing. The number and frequency of such follow-up testing will be directed by the SAP and will consist of at least six (6) tests in the first twelve (12) months following the driver's return to duty. Follow-up testing will not exceed sixty (60) months from the date of the driver's return to duty. The SAP may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the SAP determines such test is no longer necessary. The employee is responsible for paying for all costs associated with follow-up tests.

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

Cost of Required Testing

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

Required Prior Controlled Substance and Alcohol Checks for Applicants

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

Prohibited Conduct

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

Under the influence of alcohol when reporting for duty or while on duty

No driver may report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. Drivers reporting for duty or remaining on duty to perform safety-sensitive functions while having an alcohol concentration of

0.02, but less than 0.04, will be removed from duty for 24 hours, escorted home and placed on vacation or compensatory, PTO, or another appropriate leave of absence for hours missed from work.

On-Duty Use of Alcohol

No driver may use alcohol while performing safety-sensitive functions.

Pre-Duty Use of Alcohol

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

Alcohol Use Following an Accident

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

Refusal to Submit to a Required Alcohol or Controlled Substance Test

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

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

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

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

- Refuses to complete and sign the alcohol testing form, to provide a breath or saliva sample, to provide an adequate amount of breath, or otherwise cooperate in any way that prevents the completion of the testing process.
- Engages in conduct that clearly obstructs the test process.

Altering or attempting to alter a urine sample or breath test

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

Controlled Substance Use

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

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

Controlled Substance Testing

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

In addition to the conduct prohibited by applicable DOT and FMCSA regulations, the City also maintains other applicable policies regarding drug and alcohol that are applicable to all employees. For specifics regarding those requirements, refer to the City's policy for non-DOT related drug and alcohol policy.

Collection and Testing Procedures

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

Alcohol Testing

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

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

Controlled Substance Testing

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

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

If an employee fails to provide a sufficient amount of urine to permit a controlled substance test (45 milliliters of urine), the collector will discard the insufficient specimen, unless there is evidence of tampering with that specimen. The collector will urge the driver to drink up to 40 ounces of fluid, distributed reasonably over a period of up to three hours, or until the driver has provided a sufficient urine specimen, whichever occurs first. If the driver has not provided a sufficient specimen within three hours of the first unsuccessful attempt, the collector will cease efforts to attempt to obtain a specimen. The driver must then obtain, within five calendar days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the employee’s failure to provide a sufficient specimen. If the licensed physician concludes the driver has a medical condition, or with a high degree of probability could have, precluded the driver from providing a sufficient amount of urine, the City will

consider the test to have been canceled. If a licensed physician cannot make such a determination, the City will consider the driver to have engaged in a refusal to test, and will take appropriate disciplinary action under this policy.

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

Review of Test Results

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

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

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

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

If an employee has not contacted the MRO within 72 hours, the employee may present information documenting that serious injury, illness, lack of actual notice of the verified test

result, inability to contact the MRO, or other circumstances unavoidably prevented the employee from making timely contact. If the MRO concludes there is legitimate explanation for the employee's failure to contact within 72 hours, the MRO will direct the analysis of the split specimen.

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

Notification of Test Results

Employees

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

Right to Confirmatory Retest

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

Dilute Specimens

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

Consequences for Drivers Engaging in Prohibited Conduct

Job Applicants

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

Employees

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

- **Removal from Safety-Sensitive Functions**

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

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

If a driver tests positive under this policy, or is found to have an alcohol concentration of .02 or greater but less than .04, the driver will be removed from safety sensitive duties and escorted home; the driver should not drive home, but be escorted to his or her home. The driver will then be placed on vacation or Compensatory, PTO, or another appropriate leave of absence, for hours missed from work.

- **Notification of Resources Available**

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

- **Discipline**

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

- **Evaluation, and Return to Duty Testing**

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

- **Follow-Up Testing**

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

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

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

- **Reporting to the FMCSA's CDL Drug and Alcohol Clearinghouse**
In accordance with the Federal Motor Carrier Safety Administration's (FMCSA) Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse reporting requirements beginning January 6, 2020, the City will report the following information to the Clearinghouse within three business days:
 - ✓ A DOT alcohol confirmation test result with an alcohol concentration of 0.04 or greater;
 - ✓ A negative DOT return-to-duty test result;
 - ✓ The driver's refusal to submit to a DOT test for drug or alcohol use;
 - ✓ An "Actual knowledge" violation; and
 - ✓ A report that the driver successfully completed all DOT follow-up tests as ordered by an SAP.

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

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

Maintenance and Disclosure of Records

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

Policy Contact for Additional Information

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

Definitions

Accident:

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

Alcohol Concentration (or Content):

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

Alcohol Use:

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

Applicant:

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

Breath Alcohol Technician or BAT:

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

City:

Means City of Willmar.

City Premises:

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

Collection Site:

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

Commercial Motor Vehicle:

Means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle (1) has a gross combination weight rating or gross combination weight of 26,001 or more pounds, whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds, whichever is greater; or (2) has a gross vehicle weight rating or gross vehicle weight of 26,001 or more pounds, whichever is greater; or (3) is designed to transport sixteen (16) or more passengers, including the driver; or (4) is of any size and is used in the transportation of materials found to be in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulation. (49 C.F.R. part 172, subpart F) § 382.107.

Confirmation (or Confirmatory) Test:

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

Controlled Substance:

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

Department of Transportation or DOT:

Means the United States Department of Transportation.

DHHS:

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

Disabling Damage:

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

Driver:

Means any person who operates a commercial motor vehicle. This includes, but is not limited to full-time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors who are either directly employed by or under lease

to the City or who operate a commercial motor vehicle at the direction of or with the consent of the City. For purposes of pre-employment testing, the term driver includes a person applying to drive a commercial motor vehicle. 49 C.F.R. § 382.107.

Drug:

Has the same meaning as “controlled substance.”

Employee seeking a transfer:

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

Evidential Breath Testing Device or EBT:

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

Federal Motor Carrier Safety Administration or FMCSA:

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

Medical Review Officer or MRO:

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

Performing (a Safety-Sensitive Function):

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

Positive Test Result:

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

Reasonable Suspicion:

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

Safety-Sensitive Function:

Means all time from the time a driver begins to work or is required to be in readiness to work until the time he or she is relieved from work and all responsibility for performing work. Safety-sensitive functions include:

- All time at a city plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- All time inspecting equipment as required by 49 C.F.R. § 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- All time spent at the driving controls of a commercial motor vehicle in operation;
- All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of 49 C.F.R. § 393.76);
- All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle. 49 C.F.R. § 382.107.

Screening Test (also known as Initial Test):

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

Substance Abuse Professional” or “SAP”:

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

City of Willmar, Minnesota

Drug and Alcohol Testing and Drug-Free Workplace Act Policy for Non-Commercial Drivers (Non-DOT)

Purpose and Objectives

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

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

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

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

Under this policy, the City may test any applicant to whom an offer of employment has been made, and may test any employee for alcohol and/or controlled substance under any of the following circumstances with a properly accredited or licensed testing laboratory, in accordance with Minn. Stat. § 181.953, subd. 1.

Temporary and seasonal employees are not subject to this policy with the exception of those designated by the hiring department as safety-sensitive positions.

(1) Reasonable Suspicion Testing:

Consistent with Minn. Stat. § 181.951, subd. 3, employees will be subject to alcohol and controlled substance testing when reasonable suspicion exists to believe that the employee:

- Is under the influence of alcohol or a controlled substance; or
- Has violated written work rules prohibiting the use, possession, sale or transfer of drugs or alcohol while working, while on city property, or while operating city vehicles, machinery or any other type of equipment; or

- Has sustained a personal injury as defined in Minn. Stat. § 176.011, subd. 16 or has caused another employee to sustain an injury or;
- Has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident.

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

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

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

(2) Treatment Program Testing:

In accordance with Minn. Stat. § 181.951, subd. 6., the City may request or require an employee to undergo drug and alcohol testing if the employee has been referred by the City for chemical dependency treatment or evaluation, or is participating in a chemical dependency treatment program under an employee benefit plan. In such a case, the employee may be requested or required to undergo drug or alcohol testing without prior notice during the evaluation or treatment period and for a period of up to two years following completion of any prescribed chemical dependency treatment program.

(3) Routine Physical Examination Testing:

The City may request or require an employee to undergo drug testing as part of a routine physical examination. The City, in accordance with Minn. Stat. § 181.951, subd. 3, will request or require this type of testing no more than once annually, and the employee will be provided with at least two weeks' written notice that the test will be required as part of the physical examination.

(4) Random Testing:

In accordance with Minn. Stat. § 181.951, subd. 4, the City may require an employee to submit to random testing if the employee is in a safety-sensitive position.

Right of Refusal:

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

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

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

Refusal on Religious Grounds:

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

Cost of Required Testing:

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

Prohibition against Controlled Substance and Alcohol

Use and Possession of Alcohol or Drug(s):

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

Besides having a zero-tolerance policy for the use or possession of alcohol, illegal drugs, or misused prescription drugs on the worksite, we also prohibit the use, possession of, impairment by any cannabis or medical cannabis products (e.g., hash oils or pills) on the worksite by a person working as an employee at the City or while “on call” and subject to return to work. Having a medical marijuana card, patient registry number, and/or cannabis prescription from a physician does not allow anyone to use, possess, or be impaired by that drug here. The federal government still classifies cannabis as an illegal drug, even though some states have decriminalized its possession and use. There is no acceptable concentration of marijuana metabolites in the blood or urine of an employee who operates our equipment or vehicles or who is on one of our worksites. Applicants and employees are still subject to being tested under our drug and alcohol testing policy. And employees are subject to being disciplined, suspended, or terminated after testing positive for cannabis if the employee used, possessed, or was impaired

by cannabis, including medical cannabis, while on the premises of the place of employment or during the hours of employment.

While Impaired of Alcohol or Drug(s):

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

Driving While Impaired:

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

Criminal Controlled Substance Convictions:

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

Failure to Disclose Lawful Controlled Substance:

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

Review and Notification of Test Results

Notification of Negative Test Results:

In the case of job applicants and in accordance with Minn. Stat. § 181.953, Human Resources will notify a job applicant of a negative drug result within three days of receipt of result by the City, and the hiring process will resume. In accordance with Minn. Stat. § 181.953, subd. 3, a laboratory must report results to the city within three working days of the confirmatory test

result. A “Negative Test Results Notification” form will be sent to the job applicant, and the job applicant may request a copy of the test result report from Human Resources.

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

Notification of Positive Test Results:

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

Right to Provide Information after Receiving Test Results:

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

Right to Confirmatory Retest:

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

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

lost wages or salary for time lost pending the outcome of the confirmatory retest result, and the City will reimburse the employee for the actual cost of the confirmatory retest.

Access to Reports:

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

Dilute Specimens:

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

Consequences for Employees Engaging in Prohibited Conduct

Job Applicants:

The City's conditional offer of employment will be withdrawn from any job applicant who refuses to be tested or tests positive for illegal drugs as verified by a confirmatory test.

Employees:

- No Adverse Action without Confirmatory Test. The City will not discharge, discipline, discriminate against, or request or require rehabilitation of an employee based on a positive test result from an initial screening test that has not been verified by a confirmatory test.
- Suspension Pending Test Result. The City may temporarily suspend a tested employee with or without pay, or transfer that employee to another position at the same rate of pay pending the outcome of the requested confirmatory retest, provided the City believes that it is reasonably necessary to protect the health or safety of the employee, co-employees, or the public. The employee will be asked to return home, and will be provided appropriate arrangements for return transportation to his or her residence. In accordance with Minn. Stat. § 181.953, subd. 10, an employee who has been suspended without pay will be reinstated with back pay if the outcome of the requested confirmatory retest is negative.

Discipline and Discharge:

Confirmatory Positive Test Result:

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

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

- The employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program, as evidenced by withdrawal from the program before its completion or by a refusal to test or positive test result on a confirmatory test after completion of the program.

Other Misconduct:

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

Emergency Call Back to Work Provisions:

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

Non-Discrimination

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

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

City's Employee Assistance Program

The City has in place a formal employee assistance program (EAP) to assist employees in addressing serious personal or work-related problems at any time. The City's EAP provides confidential, cost-free, short-term counseling to employees and their families. Employees who may have an alcohol or other drug abuse problem are encouraged to seek assistance before a problem affects their employment status. Employee assistance program services are available by contacting EAPessential at 800-460-4374 or the Human Resources Department.

Policy Contact for Additional Information

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

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

Definitions

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

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

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

City: Means the City of Willmar.

City premises: Means, but is not limited to, all City job sites and work areas. For the purposes of this policy, city premises also includes any other locations or modes of transportation to and from those locations while in the course and scope of employment of the City.

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

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

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

Drug: Has the same meaning as “controlled substance” defined in Minn. Stat. § 152.01, subd. 4.

Drug and alcohol testing, drug or alcohol testing, and drug or alcohol test: Mean analysis of a body component sample according to the standards established under one of the programs listed in Minn. Stat. § 181.953, subd.1, for the purpose of measuring their presence or absence of drugs, alcohol, or their metabolites in the sample tested.

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

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

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

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

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

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

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

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

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

**MMUA DRUG AND ALCOHOL
TESTING CONSORTIUM**

COMMERCIAL DRIVER'S LICENSE

**SUBSTANCE ABUSE PREVENTION
PROGRAM
FOR DRUGS AND ALCOHOL**

Adopted by: City of Willmar
Name of Employer or Contractor

Date Adopted: December 20, 1995

Effective: January 1, 1996

DRUG AND ALCOHOL
TESTING CONSORTIUM
COMMERCIAL DRIVER'S LICENSE
SUBSTANCE ABUSE PREVENTION PROGRAM
FOR DRUGS AND ALCOHOL

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- C Personnel Subject to Training

SECTION 1. PURPOSE AND CONSTRUCTION

This policy describes the City of Willmar Substance Abuse Prevention Program for certain personnel required to hold Commercial Driver's Licenses. The purpose of the program is to establish procedures for the administration of the Department of Transportation (DOT) substance abuse prevention program pursuant to the Commercial Driver's License Regulations, Code of Federal Regulations, Title 49 (49 CFR), Part 382. Part 382 requires employers to implement substance abuse prevention programs if they employ personnel who operate commercial motor vehicles and who are required to have commercial drivers' licenses. This program is being implemented through a consortium with other municipal utilities and local governments through the MMUA Drug and Alcohol Testing Consortium (the Consortium).

SECTION 2. APPLICABILITY

The City of Willmar has employees who drive commercial motor vehicles and who are required to have commercial drivers' licenses. The City of Willmar is therefore subject to the regulatory requirements of 49 CFR Part 382 and has joined with other municipal utilities, local governments and their contractors to comply with these regulations through the Consortium.

Drivers who use a commercial motor vehicle and who are required to have a Commercial Driver's License are subject to this policy. A list of employee positions subject to drug and alcohol testing is attached as **Appendix B** to this policy.

Employees and prospective employees shall be tested in accordance with requirements of the Commercial Driver's License Regulations, Code of Federal Regulations, Title 49 (49 CFR), Part 382 and Part 40.

For the purposes of this policy, commercial motor vehicles include:

- a. A motor vehicle with a gross combination weight of 26,001 or more pounds, including a towed unit with a gross weight of 10,000 pounds; or
- b. A motor vehicle designed to transport 16 or more passengers, including the driver; or
- c. A motor vehicle required to be placarded under regulation of hazardous materials (49 CFR Part 172, subpart F).

The following categories of employees are exempt from the CDL drug and alcohol testing program. These employees are not included in calculating the 50-employee threshold for determining the effective date of testing.

- a. Mass transit employees subject to Federal Transit Authority drug and alcohol testing under 40 CFR Parts 653 and 654. (However, elderly and disabled transit programs are subject to the CDL program).
- b. Drivers waived from having a CDL (e.g., fire fighters).

In the event of a conflict between this program and the provisions of 49 CFR, Part 382; the provisions of the federal regulations will prevail.

SECTION 3. CONSORTIUM

The MMUA Drug and Alcohol Testing Consortium (The Consortium) is a consortium of members of the Minnesota Municipal Utilities Association. The Consortium has developed this Substance Abuse Prevention Program to assist member employers in meeting federal Department of Transportation drug and alcohol testing requirements. As consortium participants, municipal utilities and local governments share costs for program administration and recordkeeping and pool their employees for the purpose of random testing.

Also eligible for membership in the consortium are contractors who perform work for MMUA members, and labor unions or other labor organizations whose members perform work for MMUA members as employees of contractors or the member themselves.

Contractors who provide drivers or other covered functions for the employer more than once a year must confirm at least every 6 months that the driver participates in a conforming drug and alcohol testing program.

MMUA may utilize third party service providers in administering consortium functions described in the program. References to administrative functions performed by "MMUA" or "consortium" should be construed to include performance by one or more of these third party agents.

SECTION 4. EFFECT OF USE, REFUSAL OR FAILURE

Any job applicant applying for a position with the employer who refuses or fails a pre-employment alcohol or drug test will not be hired. No employee covered by this policy who has engaged in prohibited drug use will perform safety-sensitive functions. The employer will immediately remove from performing safety-sensitive functions covered by the DOT safety standards in 49 CFR Part 382 any employee covered by this policy who refuses or fails an alcohol or drug test.

Any employee covered by this policy who refuses or fails an alcohol or drug test may receive disciplinary action, up to and including termination, in accordance with the substance abuse policy of the employer (see Appendix A). Furthermore, an employer or driver who violates these requirements may be subject to the penalties found at 49 U.S.C. 521(b), including:

- a. Employer
 1. Civil penalties ranging from \$500 to \$10,000; and
 2. Criminal penalties for knowing and willful violations with a maximum fine of \$25,000 or imprisonment for up to one year, or both.

- b. Drivers with Commercial Drivers' Licenses
 1. Civil penalties for knowing and willful violations ranging from \$500 to \$2,500; and
 2. Criminal penalties with a maximum fine of \$5,000 or imprisonment for up to 90 days, or both.

SECTION 5. SAFETY-SENSITIVE FUNCTIONS

The performance of safety-sensitive functions generally includes any time a driver is required to be ready to work in or on a commercial motor vehicle as defined in SECTION 2 APPLICABILITY (page 1) of this policy. Safety-sensitive functions include:

- a. All time the driver is waiting to be dispatched, unless the employer has relieved the driver from duty;
- b. All time inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- c. All driving time;
- d. All time in or on any commercial motor vehicle;

- e. All time supervising, assisting, or attending the loading or unloading of a vehicle, or remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded;
- f. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

SECTION 6. PROHIBITED CONDUCT

6.1 Prohibited Employee Conduct. Employees will not engage in the following conduct:

- a. Alcohol Concentration. Report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.
- b. Alcohol Possession. Be on duty or operate a commercial motor vehicle while possessing alcohol.
- c. On-duty Use. Use alcohol while performing safety-sensitive functions.
- d. Pre-duty Use. Perform safety-sensitive functions within 4 hours after using alcohol.
- e. Post-accident Use. Use alcohol for 8 hours following an accident or until undergoing a post-accident test.
- f. Refusal to Test. Refusal to submit to an alcohol or drug test, except a pre-employment test.
- g. Use drugs. Report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses drugs.
- h. Test Positive for Drugs. Report for duty, remain on duty, or perform a safety-function if tested positive for drugs.

Employees who engage in any of the preceding will be removed from safety-sensitive functions and referred to a substance abuse professional.

6.2 Prohibited Employer Conduct. The employer, if having actual knowledge that a driver is engaging in any of the conduct listed above, will not allow the driver to drive or perform any other safety-sensitive function.

6.3 Other Alcohol Conduct. Other regulated conduct related to an employee's use of alcohol includes the following:

- a. A driver whose test results indicate an alcohol concentration of .02 or greater, but less than .04, will not be allowed to perform safety-sensitive functions until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following the alcohol test. The employee shall receive their regular rate of pay if there are non-safety sensitive functions to be performed. Otherwise, employee must use benefits in accordance to personnel policy/contract.
- b. The employer will not take action against a driver based solely on alcohol test results of less than .04. However, the employer may take any lawful action against the driver so long as it has authority to do so independent of these regulations.

SECTION 7. TYPES OF TESTING

Covered employees are subject to **six** types of drug and alcohol testing under the substance abuse prevention program.

7.1 Pre-employment Testing. A pre-employment and alcohol test will be conducted as follows:

- a. A pre-employment drug and alcohol test will be conducted when an individual is hired for a position covered in this policy.
- b. A pre-employment drug and alcohol test will be conducted when a current employee becomes subject to this program as a result of a change in job description or work assignment. Such test shall be administered prior to the first time the employee performs a safety-sensitive function.
- c. Drug Specific Requirements:
 1. The employer will not allow a driver subject to a pre-employment test to perform safety-sensitive functions without a verified negative test result.
 2. The employer will notify a driver of the results of a pre-employment drug test if the driver requests the results within 60 days of being notified of the employer's decision regarding the driver's employment application.

3. A management official of the employer will make reasonable efforts to contact and request each driver who submitted a specimen under the employer's drug testing program to contact and discuss the results of the drug testing program with a medical review officer if the medical review officer has not been able to contact the driver. The management official will also immediately notify the medical review officer that the management official has notified the driver to contact the medical review officer within 24 hours.
- d. Alcohol Specific Requirements:
1. The employer will not allow a driver subject to a pre-employment test to perform safety-sensitive functions unless the alcohol test result indicates an alcohol concentration less than .04.
 2. If the pre-employment alcohol test result indicates an alcohol content of .02 or greater but less than .04, the employer will not allow the driver to perform safety-sensitive functions until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following the test. The Commercial Drivers regulation does not allow an employer to take other action against the driver based solely on such test results. However, an employer with authority independent of these regulations may take any lawful action it chooses.
- e. Exceptions to Pre-Employment Drug and Alcohol Testing:
1. Drug. Pre-employment drug testing is not required if the driver was in an appropriate drug-testing program within the previous 30 days and either was tested within the past 6 months or was subject to random testing for the past 12 months.
 2. Alcohol. Pre-employment alcohol testing is not required if the driver has taken an alcohol test required by this regulation or required by another DOT agency's alcohol misuse rule under part 40 within the past 6 months, with a result indicating an alcohol concentration less than .04.
 3. In either case, the employer must determine that the driver's previous known employers do not have a record of a violation during the past 6 months.
 4. If an employer chooses to rely on the exception, the employer must obtain the following information from the previous employers:
 - (a) Name and address of the program;
 - (b) Verification that the driver participated in the program;

- (c) Verification that the program procedures comply with 49 CFR Part 40;
- (d) Verification the driver qualifies for the exception;
- (e) Verification the driver has not refuse to be tested for alcohol or drugs;
- (f) Date the driver was last tested; and
- (g) Results of any tests taken within the previous 6 months.

7.2 Post-accident Testing. When an accident involving a commercial motor vehicle occurs, the employer will require a drug and alcohol test on each surviving driver who was performing safety sensitive functions with respect to the vehicle if the accident involved the loss of human life; or the driver received a ticket for a moving traffic violation arising from the accident; or the law enforcement official at the accident scene has determined the driver to be at fault or suspected to be at fault, causing personal injury, vehicular or structural damage in excess of \$500. The driver(s) will be tested as follows:

a. Drug Specific Requirements

1. The driver will be tested as soon as practicable, but no later than 32 hours after the accident. Because certain drugs or drug metabolites do not remain in the body for extended periods of time, testing should be as soon as possible. If the drug test is not administered within 32 hours after the accident, the employer will cease attempts to administer the drug test and will prepare and maintain records stating why the employer did not administer the tests promptly.
2. All reasonable steps will be taken to obtain a urine sample form an employee after an accident. In case of a conscious but hospitalized employee, the employer will request a hospital or medical facility to obtain a sample and if necessary, reference will be made to the DOT drug testing requirements. If an employee is unconscious or otherwise unable to evidence consent to the procedure, the medical facility shall collect the sample.
3. If an employee who is subject to post-accident testing is conscious, able to urinate normally (in the opinion of a medical professional) and refuses to be tested, that employee is deemed to have tested positive and will be removed from safety-sensitive functions and referred to a substance abuse professional.

b. Alcohol Specific Requirements

If the alcohol test is not administered in 2 hours the employer will prepare and maintain on file a record stating the reasons. If the alcohol test is not

administered within 8 hours the employer will stop attempts to administer the test and will prepare and maintain a record stating the reason.

- c. A driver who is subject to post-accident drug and alcohol testing will remain readily available for such testing or may be deemed to have refused to submit to testing. However, the driver is allowed to get necessary emergency medical attention for injured people, or, if necessary, to leave the scene of an accident for the period necessary to obtain assistance in responding to the accident.
- d. The employer will provide drivers with necessary information, procedures and instructions so that drivers will be able to comply.
- e. The employer may use drug and alcohol (breath or blood) test results taken by Federal, State, or local officials if such test results conform to applicable requirements and the employer obtains the results.

7.3 Random Testing. All employees working as drivers are subject to unannounced drug and alcohol testing based on random selection. Random testing will be conducted as follows:

- a. The employer, through the consortium, will ensure that random drug and alcohol tests are unannounced and spread reasonably throughout the calendar year.
- b. The consortium will calculate the number of drivers subject to random drug and alcohol tests using a scientifically valid method of random selection. To assure that the selection process is random; all drivers covered by this policy may be placed in a common pool.

1. Drug Specific Requirement

For drug testing, the number of drivers to be tested will be equivalent to at least fifty percent (50%) of this pool every twelve (12) months.

2. Alcohol Specific Requirement

For alcohol testing, the number of drivers to be tested will be equivalent to at least twenty-five percent (25%) of the common pool of drivers every twelve (12) months. The percentage of drivers to be tested for alcohol misuse can be adjusted by the FHWA Administrator to an amount between 10% and 50% of all drivers based on violation rates for the industry.

- c. All drivers will be subject to random testing on each random testing date and will have an equal chance of being tested each time selections are made. As a result of the random selection process, a driver may be tested more than once or not at all during the calendar year.
- d. A driver selected for random drug or alcohol testing will proceed to the test site immediately. However, if the driver is performing a safety-sensitive function, the driver will stop performing the safety-sensitive function and will proceed to the test site as soon as possible.
- e. The random selection procedure will employ a computer-based random number generator that is matched with the data base record number or social security number of each driver in the consortium pool.
- f. The consortium will select a sufficient number of alternate drivers for testing in each test period to ensure that testing is conducted at the required rate. Alternate drivers will be tested in order of selection only if persons selected are unavailable for testing due to vacations, medical leave or travel requirements.
- g. Random testing will be spread reasonably throughout the year.
- h. If a driver is subject to drug or alcohol testing under the testing rules of more than one DOT agency for the employer, the driver will be subject to drug or alcohol testing at the minimum annual percentage rate established for the calendar year by the DOT agency regulating more than fifty percent (50%) of the driver's function.

- i. If the employer is required to conduct random drug or alcohol testing under the testing rules of more than one DOT agency the employer may:
 - 1. Establish separate pools for random selection, with each pool having the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or
 - 2. Administer drug or alcohol tests to the highest minimum annual percentage rate to which the employer is subject.
- j. Alcohol Specific Requirement

The employer will administer a random alcohol test to a driver only just before, while, or just after the driver has ceased performing a safety-sensitive function.

7.4 Reasonable Suspicion Testing. When the employer has reasonable suspicion to believe that a driver covered by this policy is using a prohibited drug, or is using alcohol in a prohibited manner, the employer will require the driver to take a drug or alcohol test (whichever is appropriate) as follows:

- a. A decision to test must be based on specific contemporaneous, describable observations concerning the appearance, behavior, speech or body odors of the driver.
 - 1. Drug Specific Requirement

Observations may include indications of the chronic and withdrawal effects of controlled substances. For drugs, examples of this are evidence of repeated errors on-the-job, regulatory or employer rule violations, or unsatisfactory time and attendance patterns, coupled with a specific contemporaneous event that indicates probable drug use.
 - 2. Alcohol Specific Requirement

For alcohol, the observations must be made just before, while, or just after the driver has ceased performing safety-sensitive functions.
- b. The required observations for reasonable suspicion drug or alcohol testing must be made by a trained supervisor or a trained company official.
- c. The employer may only direct a driver to take a reasonable suspicion drug or alcohol test just during, just before, or just after the period of the workday that the driver is performing safety-sensitive functions.
- d. Drug Specific Requirements

The employer will make a written record of the observations leading to a reasonable suspicion drug test within 24 hours of the observations or before the results of the drug test are released, whichever is earlier. The supervisor or company official who made the observations must sign this record.

e. Alcohol Specific Requirements

1. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test may not conduct the alcohol test.
2. If the test is not administered within 2 hours following the supervisor's observation and determination that a reasonable suspicion of alcohol violations exists, the employer will prepare and maintain on file a record stating the reasons. If the alcohol test is not administered within 8 hours the employer will stop attempts to administer the test and will prepare and maintain a record stating the reason.
3. Once behavioral, speech, and performance indicators show a driver is under the influence of or impaired by alcohol, the driver will not report for, or remain on duty requiring the performance of safety-sensitive functions.
4. The employer will not permit a driver to perform or continue to perform safety-sensitive functions if the employer has a reasonable suspicion the driver is under the influence of alcohol until:
 - (a) An alcohol test shows the driver's alcohol concentration as less than .02; or
 - (b) 24 hours have elapsed following the determination of reasonable suspicion.
5. Other than requiring a driver to take an alcohol test, the Commercial Driver's License regulation (49 CFR Part 382) does not authorize the employer to take any action against the driver based solely on the driver's behavior and appearance with respect to alcohol use until the driver takes, or refuses to take, an alcohol test. However, the employer may take any lawful action against the driver, which the employer desires if the employer has independent authority to do so.

7.5 Return to Duty Testing. Any driver who has engaged in prohibited drug or alcohol use must undergo a drug or alcohol test before returning to duty requiring the performance of safety-sensitive functions. The drug test must indicate a verified negative result for drug use. The alcohol test must indicate an alcohol concentration of less than .02. The cost of the return to duty test shall be paid for by the employee.

7.6 Follow-up Testing. A driver returned to duty in accordance with subsection 7.5 is subject to follow-up testing.

a. Following a determination by a substance abuse professional that a driver needs help in resolving drug or alcohol abuse problems, the employer will administer unannounced follow-up drug or alcohol testing as directed by a substance abuse professional. At least 6 tests are required in the first 12 months following the driver's return to duty.

b. Alcohol Specific Requirement

The employer will conduct follow-up alcohol testing only just before, while, or just after the driver performs safety-sensitive functions.

SECTION 8. DRUG TESTING PROCEDURES

8.1 General Guidelines. The following testing procedures will be followed in conducting tests under this program:

a. Drug testing will be performed utilizing urine samples. A split sample method of collection will be used.

b. Tests for marijuana, cocaine, opiates, amphetamines and phencyclidine will be performed.

c. An applicant who is offered a position covered by this policy will be required to report to a drug testing collection site (see Appendix C) of this policy within 48 hours of notification and provide a specimen of his/her urine. In the event of post-accident testing, drivers will report to a collection site as soon as possible, but no later than 32 hours after an accident has occurred.

d. Upon notification that a drug test is required, a driver will report immediately to a drug collection site and provide a specimen of his/her urine. Since delay in reporting to a site after notification can adversely affect the outcome of a test result, the time allowed for drivers to report for drug testing after receiving notice will be travel time plus thirty (30) minutes.

e. Split Specimen Samples

A split sample of at least 45 ml of urine will be collected--30 ml for the primary sample and 15 ml for the split sample. If a 60-ml collection container or single specimen bottle is used, the collection site personnel will divide the specimen into two specimen bottles in the presence of the donor. Both bottles will be shipped in a single shipping container, together with copies 1,2, and the split specimen copy of the chain of custody form, to the laboratory.

If the test result of the primary specimen is positive, the MRO will, if requested by the employee within 72 hours after being notified of the test result, direct a different DHHS-certified laboratory to test the split specimen. The result of the second test will be provided to the MRO. If the result of second test fail to confirm the drugs found in the primary sample, the test will be canceled.

If the second test of the primary sample still tests positive, the employee will be billed for the costs.

f. Privacy

Unless there is a reason to believe that a particular individual may alter or substitute the specimen, procedures for collecting urine specimens will allow individual privacy.

The following circumstances are the only grounds for a reason to believe the individual may tamper with a specimen and which justify the use of monitoring procedures or direct observation of the donation of the urine specimen:

1. The specimen falls outside the normal temperature range and the employee either declines to allow a measurement of oral body temperature or oral body temperature varies by more than 1.8 degrees Fahrenheit from the specimen temperature.
2. The last urine specimen provided by the employee was determined by the lab to have a specific gravity of less than 1.00 and a creatinine concentration below .2g/L.
3. The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample.
4. In the case of follow up testing, the employee has previously been determined to have used a controlled substance without medical authorization.
5. A higher-level supervisor of the collection site person, or a designated employer representative will review and agree in advance of any decision to obtain a specimen under the direct observation of a same gender collection site person.

g. The employee may not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others.

- h. If the employee refuses to cooperate with the collection process, the collection site person will inform the employer representative and will document the non-cooperation on the drug testing custody and control form.
- i. Samples that yield positive results on confirmation must be retained by the laboratory in properly secured, long-term, frozen storage for at least one year. Within this one-year period, the employee or his/her representative, the consortium member, or the authorized federal or state agencies may request that the laboratory retain the sample for an additional period. If, within the one-year period, the laboratory has not received a proper written request to retain the sample for a further reasonable period specified in the request; the sample may be discarded.
- j. Since some analyses may deteriorate during storage, detected levels of the drug below the detection limits established in the DOT Procedures, but equal to or greater than established sensitivity of the assay, must, as technically appropriate, be reported and considered corroborative of the original positive results.
- k. The collection agency shall adhere to all requirements outlined in 49 CFR part 40, Procedures for Transportation Workplace Drug Testing Program.

8.2 Medical Review Officer (MRO). The MRO for this policy is:

Deitmar Hann-Jurgen Bennet M.D.
Patty Pepper, M.D.
c/o Chem Review
2301 University Drive, Bldg 21
Bismark, North Dakota 58504-7595
(800) 759-8510

A list of the MRO's duties can be found at 49 CFR sections 382.407 and 382.408 and Part 40 of the federal regulations. Those duties include:

a. Notifications to the Employer

The medical review officer may report to the employer in any manner, but must forward a signed written notification within three business days of completion of the medical officer's review. The report shall include:

1. Indication that the drug test met the requirements of part 40 drug testing procedures;
2. The name of the person tested;
3. The type of test;
4. The date and location of the specimen collection;
5. The identity of the person/entities performing collection, analysis and the MRO;
6. The verified results of the drug test and, if positive, the identity of the drugs testing positive; and
7. The fact the MRO made reasonable efforts to contact the driver.

b. Recordkeeping

The MRO will keep the following records:

1. Positive drug test results for five years.
2. Negative and canceled drug test results for one year.

c. Confidentiality

The MRO cannot release individual drug test results without first obtaining a specific, written authorization from the tested driver, except that the MRO can release the results to the employer, officials of the Secretary of Transportation, any DOT agency or any State or local officials with regulatory authority over the controlled substances testing program.

d. Medical Review Duties

The Medical Review Officer is responsible for the following:

1. Review the results of drug testing before they are reported to the employer.
2. Review and interpret each confirmed positive test result as follows to determine if there is an alternative medical explanation for the confirmed positive result:
 - (a) Conduct a medical interview with the individual tested.
 - (b) Review the individual's medical history, or any other relevant biomedical factors.
 - (c) Review all medical records made available by the individual tested to determine if a confirmed positive test resulted from legally prescribed medication.
 - (d) Verify that the laboratory report and assessment are correct.
3. If the MRO concludes there is legitimate medical explanation, other than prohibited drug use, for a confirmed positive result the MRO will declare the test to be negative.
4. Review the chain of custody to ensure that it is complete and sufficient on its face.
5. Contact the tested individual directly, on a confidential basis, to determine whether the employee wishes to discuss the test result. If, after making all reasonable efforts and documenting them, the MRO is unable to reach the individual directly, the MRO will contact the employer's designated management official who will direct the individual to contact the MRO as soon as possible.
6. The MRO will not disclose to any third party and medical information provided by the individual except, the MRO may disclose such information to the employer, a DOT agency or a physician responsible for determining the medical qualification of the employee under an applicable DOT agency regulation only if:

- (a) An applicable DOT regulation permits or requires such disclosure; or
 - (b) In the MRO's reasonable judgment, the information could result in the employee being determined to be medically unqualified under an applicable DOT agency rule; or
 - (c) In the MRO's reasonable judgment, the information indicates that continued performance by the employee of a safety-sensitive function could pose a significant safety risk.
7. Before obtaining medical information from the employee as part of the verification process, the MRO will inform the employee that information may be disclosed to third parties and the identity of any parties to whom the information may be disclosed.
 8. The MRO may verify a test as positive without direct communication with the employee if the employee expressly declines the opportunity to discuss the test or if the designated employer official has made and documented a contact with the employee and more than five days have passed without the MRO receiving any communication from the employee. If such a verification occurs, the employee may present the MRO information documenting unavoidable circumstances which prevented the employee from timely contacting the MRO. Based on this information, the MRO may reopen the verification.
 9. Following the verification of a positive test result, the MRO will, as provided in the employer's policy, refer the case to the employer's employee assistance program, to the employer's management official empowered to recommend or take administrative action, or both.
 10. Before the MRO verifies a confirmed positive result for opiates, the MRO will determine there is clinical evidence, in addition to the urine test, of unauthorized use of any opium, opiate, or opium derivative.

11. If the employer has used a single sample method, the MRO will notify each employee who has a confirmed positive test that the employee has 72 hours in which to request a re-analysis of the original specimen. If the employee makes such a request, the MRO will order, in writing, a re-analysis.
12. If the MRO questions the accuracy of any test result, only the MRO may require that the original specimen be re-analyzed.
13. Determine whether and when an employee who refused to take or did not pass a drug test administered under DOT procedures may be returned to duty.
14. Determine a schedule of unannounced testing in consultation with the operator for an employee who has returned to duty.
15. Ensure that an employee has been drug tested in accordance with DOT procedures before the employee returns to duty.

8.3 Testing Laboratory. The testing laboratory for this policy is:

MEDEXPRESS 4022 Willow Lake Blvd. Memphis, TN 38118 Phone: 800/528-2637 Fax: 701/258-2637

The testing laboratory will comply with all methods and procedures of 49 CFR Part 40 and will provide annual reports to The Consortium and to each consortium member showing compliance. In the event that the designated laboratory is unable to satisfactorily perform services required under this program, The Consortium will designate an alternative laboratory.

- a. The Consortium's testing lab will:
 1. Maintain employee test records in confidence; and
 2. Disclose information related to a positive drug test to the individual, the employer, or the decision maker in a lawsuit or other proceeding initiated by or on behalf of the individual and arising from a certified positive drug test.
- b. Drug testing labs must be secure at all times and must restrict access to specifically authorized individuals whose authorization is documented.

Documentation of individuals accessing drug testing areas, dates, and time and purpose of entry will be maintained.

c. Reporting Results

1. The lab will report test results to the employer's Medical Review Officer. Before any test result is reported, it will be reviewed and the test certified as an accurate report by the individual conducting the test.
2. Only confirmed positive specimens will be reported positive for a specific drug.
3. The lab may transmit results to the Medical Review Officer by various electronic means so long as they are designed to ensure confidentiality by limiting access to the transmission. Results may not be provided verbally by telephone.
4. The lab will provide a monthly statistical summary of urinalysis testing for each employer and the consortium. This analysis will not include any identifying information so that it is not likely that information about individual's tests can be inferred. This summary will be delivered to each employer by registered or certified mail not more than 14 calendar days after the end of the month covered by the summary.

d. Quality Assurance and Quality Control

1. All drug-testing labs must have quality assurance and control procedures to monitor each step of the drug testing process. As part of the quality control process the consortium will submit blind samples on behalf of consortium members. The consortium will submit three blind performance test specimens for each 100 employee specimens it submits for testing, up to a maximum of 100 blind performance test specimens per quarter.
2. The consortium will provide documentation to participating members showing the number of blind samples sent to the lab vs. the total number of samples submitted to the lab.

- e. **Individual Access to Test and Laboratory Certification Results**
Any employee who has undergone a drug test will, upon making a written request, have access to any records relating to the employee's drug test and any records relating to the results of any relevant certification, review, or revocation of certification proceedings.

8.4 Collection Agencies (For Urine Specimens). In order to provide maximum convenience to employees, the program will utilize the services of numerous collection sites throughout the state. A complete listing of collection sites is contained under separate copy by the employer.

Each collection agency will comply with all methods and procedures of 49 CFR Part 40 and will provide required reports.

The consortium and the lab will develop and maintain a procedure for collection, shipment, and access to urine specimens, which will include at a minimum:

- a. Use of a standard drug testing custody and control form, which identifies data on the donor, and on the specimen collection and transfer process.
- b. Use of a clean, split specimen bottle that is securely wrapped until filled with the specimen. The bottle will only be unwrapped immediately before being given to the employee and in the presence of the employee to be tested.
- c. Use of a tamper proof sealing for the specimen bottle.
- d. Use of a shipping container that will prevent undetected tampering.
- e. Written procedures and instructions including emphasis that the collection site person is responsible for maintaining the integrity of the specimen collection and transfer, carefully ensuring the modesty and privacy of the donor; that the collection site person is to avoid any conduct or remarks that might be understood as accusations or which are offensive or inappropriate; that unless it is impracticable, a direct supervisor of an employee will not serve as the collection site person for that employee; that if a collection must be monitored by non-medical personnel, or is directly observed, the collection site person will be of the same gender as the employee giving the sample.

SECTION 9. ALCOHOL TESTING PROCEDURES

9.1 General Requirements. The general requirements for alcohol testing under this program are as follows:

- a. Alcohol testing will be performed using breath samples.

- b. An applicant who is offered a position covered by this policy will be required to report for alcohol testing within 48 hours of notification and provide a breath specimen.
- c. Upon notification that an alcohol test is required, a driver will report for alcohol testing and provide a breath specimen. Since delay in reporting after notification can adversely affect the outcome of a test result, the time allowed for employees to report for alcohol testing after receiving notice will be travel time plus thirty (30) minutes.
- e. The party conducting alcohol test will adhere to all requirements outlined in 49 CFR Part 40, Procedures for Transportation Workplace Alcohol Testing Program.

9.2 Screening Tests. Alcohol screening tests will be conducted in accordance with the following procedures:

- a. Only evidential breath testing devices (EBTs) will be used. A log book will be maintained for each EBT which does not meet the requirements of an EBT used for confirmation test.
- b. The Breath Alcohol Technician and the driver will complete sections one and two, respectively, of the Breath Alcohol Testing Form, a sample of which is found in Appendix A of the 'Rules' section. If the driver refuses to sign this certification, the driver will be considered to have refused to take the alcohol test.
- c. An individually-sealed mouthpiece will be opened in front of the employee and the Breath Alcohol Technician (BAT) and will be attached to the Evidential Breath Testing Device (EBT).
- d. The Breath Alcohol Technician will tell the employee to blow forcefully into the mouthpiece for at least 6 seconds or until the EBT indicates that an adequate amount of breath has been obtained.
- e. If the result of the test is an alcohol concentration of less than .02, the Breath Alcohol Technician will date and sign the certification in Step 3 of the Breath Alcohol Testing Form. The driver will sign the certification and fill in the date in Step 4 of the form.
- f. If the driver does not sign Step 4 of the form, the Breath Alcohol Technician will note such failure in the "Remarks" section of the form. The driver's failure to sign Step 4 of the form does not constitute a refusal to be tested.
- g. If a test result printed by the EBT does not match the result displayed on the EBT, the Breath Alcohol Technician will note the difference in the "Remarks" section of the Breath Alcohol Testing Form. Both the driver and the BAT will

initial the notation. In such a case, the test is invalid and the BAT will inform the employer and the employee that the test is invalid.

- h. If the test result is an alcohol concentration of less than .02, no further testing is authorized for that particular test session. The Breath Alcohol Technician will transmit the results to the employer in a confidential manner and the employer will store the test results. Statistical information about alcohol test results will be provided to the consortium for compilation and distribution to consortium participants.
- i. If the result of initial test is an alcohol concentration of .02 or greater, a confirmation test will be performed. If the confirmation test is completed by a different Breath Alcohol Technician, the original Breath Alcohol Technician will complete and sign the Breath Alcohol Testing Form and provide the driver with Copy 2 of the form.

9.3 Confirmation Tests. If the result of the initial test is an alcohol concentration of .02 or greater, another alcohol test will be completed to confirm the results. All EBTs used for confirmation tests must be capable of providing a printed result in triplicate and assigning a unique sequential number to each test. The confirmation test will be administered as follows:

- a. **Waiting Period**
 - 1. The Breath Alcohol Technician will wait at least 15 minutes, but no longer than 20 minutes, after the completion of the initial test before administering the confirmation test.
 - 2. The Breath Alcohol Technician will instruct the driver not to eat, drink, put any object or substance in his or her mouth, and not to belch during the waiting period before the confirmation test.
 - 3. The Breath Alcohol Technician will explain to the driver that the reason for the waiting period and the restrictions on the driver's activities during that alcohol leading to an artificially high reading.
 - 4. The Breath Alcohol Technician will also explain to the driver that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instruction regarding the limitation of activities during the waiting period.
 - 5. If the Breath Alcohol Technician becomes aware that the employee has not complied with the waiting period instruction, the Breath Alcohol Technician will so note in the "Remarks" section of the Breath Alcohol Testing Form.

- b. If a Breath Alcohol Technician other than the one whom conducted the initial test is conducting the confirmation test; the new BAT will use a new Breath Alcohol Testing Form and will require the driver to complete the appropriate sections both before and after testing.
- c. A new mouthpiece will be used for the confirmation test and the same procedures will be used for administering the test as were used in administering the initial test.
- d. The Breath Alcohol Technician will ensure that the EBT registers 0.00 on an air blank before administering the confirmation test. If the reading is greater than 0.00, testing will not proceed using that instrument. However, testing may proceed on another instrument.
- e. If the initial and confirmation test results are not the same, the confirmation test result is considered to be the final result upon which any action in regard to the driver will be based.

9.4 Problems With Testing. The following is a list of procedures to be followed in the event of testing problems:

- a. Refusals to test and uncompleted tests
 - 1. Refusal by a driver to complete and sign the Breath Alcohol Testing Form Step 2, to provide an adequate amount of breath, or otherwise to cooperate with the testing process in a way that prevents the completion of the test, will be noted by the Breath Alcohol Technician in the "Remarks: section of the Breath Alcohol Testing Form. The Breath Alcohol Technician will end the testing process and will immediately notify the employer.

2. If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the Breath Alcohol Technician will, if practicable, begin a new test using a new Breath Alcohol Testing Form.
- b. Inability of Driver to precede an adequate amount of breath. If a driver is unable, or alleges that he or she is unable, to provide an amount of breath sufficient to complete a breath test because of a medical condition, the following procedures will be followed:
1. Breath Alcohol Technician
 - (a) The Breath Alcohol Technician will tell the driver to try to provide an adequate amount of breath. If the driver refuses to make the attempt, the Breath Alcohol Technician will immediately inform the employer.
 - (b) If the driver attempts and fails to provide an adequate amount of breath, the Breath Alcohol Technician will so not in the "Remarks" section of the Breath Alcohol Testing Form and immediately inform the employer.
 2. Employer
 - (a) The employer will tell the driver to obtain, as soon as practical after the attempted provision of breath, an evaluation from a licensed physician concerning the employee's medical ability to provide an adequate amount of breath.
 - (b) If the physician determines, in his or her reasonable medical judgement, that a medical condition has prevented the driver from providing an adequate amount of breath, the driver's failure to provide an adequate amount of breath will not be considered a refusal to take the test.
 - (c) If the physician is unable to determine that a medical condition has prevented the driver from providing an adequate amount of breath, the driver's failure to provide an adequate amount of breath is considered a refusal to take the test.
 - (d) The physician will provide the employer a written statement of the basis for the physician's conclusion.
- c. Invalid Tests

A breath alcohol test will be invalid under the following circumstances:

1. The next external calibration check of an EBT shows that the machine is inaccurate. In this event, every test result of .02 or greater obtained on the device since the last valid external calibration check is invalid.
2. The Breath Alcohol Technician does not observe the minimum 15-minute wait period prior to a confirmation test.
3. The Breath Alcohol Technician does not perform an air blank of the EBT before a confirmation test, or an air blank does not result in a reading of 0.00 prior to or after the administration of the test.
4. The Breath Alcohol Technician does not sign the Breath Alcohol Testing Form as required.
5. The Breath Alcohol Technician does not note on the "Remarks" section of the Breath Alcohol Testing Form that the employee has failed or refused to sign the form following the recording or printing on or attachment to the form of the test result.
6. The EBT fails to print a confirmation test result.
7. There is a difference between the sequential test number or alcohol test result displayed on the EBT and the sequential test number or alcohol test result on the printed result.

9.5 Testing Sites. The following shall apply to alcohol testing sites used in this program:

- a. The testing location must provide the driver being tested with privacy sufficient to prevent unauthorized people from seeing or hearing test results.
- b. Access to the testing location will be limited to authorized people when the EBT is not in a secure place or, when testing is being conducted.
- c. The only time a test will be conducted outside of the selected testing site will be when it is essential to perform the test at the scene of an accident. The employer will provide the employee with the greatest privacy possible under such circumstances in an effort to prevent unauthorized people from seeing or hearing test results.

9.6 Breath Alcohol Technician (BAT). The following shall apply to breath alcohol technicians under this program:

- a. Training

1. The BAT must be trained to proficiency in the operation of the EBT he or she is using and in the alcohol testing procedures of 49 CFR Part 40.
 2. Proficiency is demonstrated by successful completion of a course which provides training in EBT methodology, operation, and calibration checks; the fundamentals of breath analysis for alcohol content; and the procedures required for obtaining a breath sample, and interpreting and recording EBT results.
 3. Courses must be equivalent to a DOT model course as determined by the National Highway Traffic Safety Administration (NHTSA). NHTSA will review a BAT instruction course for equivalency.
 4. The course must provide documentation that the BAT has demonstrated competence in the operation of the specific EBT(s) he or she will use.
 5. Any BAT who will perform an external calibration check of an EBT will be trained to proficiency in conducting the check on the particular model of EBT, to include practical experience and demonstrated competence in preparing the breath alcohol simulator or alcohol standard, and in maintenance and calibration of the EBT.
 6. The BAT must receive additional training as needed to ensure proficiency concerning new or additional devices or changes in technology that the BAT will use.
- b. Parties Who May Act as a BAT
1. Generally the direct supervisor of an employee may not act as BAT for that employee's alcohol test. However, a BAT qualified supervisor of an employee may conduct the alcohol test for that employee if, and only if, another BAT is unavailable to perform the test in a timely manner.
 2. Law enforcement officer certified by state or local governments to conduct breath alcohol test are deemed to be qualified as BATs. Such officers must be certified to use the EBT that is used for the test to qualify under DOT alcohol testing requirements.
- c. The BAT will not leave the alcohol testing location while the testing procedure is in progress.
- d. The BAT will require the driver to provide positive identification when the driver enters the alcohol testing location. Positive identification will be through the use of a photo I.D. card or identification by an employer representative.

- e. The BAT will provide the driver with positive identification if the driver makes such a request.
- f. The BAT will explain the testing procedure to the driver before starting the testing process.
- g. If the EBT provides a printed result, but does not print the results directly onto the Breath Alcohol Testing Form, the Breath Alcohol Technician will show the driver the result displayed on the EBT. The Breath Alcohol Technician will then affix the test result printout to the Breath Alcohol Test Form using a method that will provide clear evidence of tampering.
- h. If the EBT prints the test results directly onto the Breath Alcohol Testing Form, the Breath Alcohol Technician will show the employee the result displayed on the EBT.
- i. Reporting of test results to the employer
 - 1. The Breath Alcohol Technician will transmit all test results to the designated employer representative in a confidential manner.
 - 2. If the results require the employer to prevent the driver from performing a safety-sensitive function the Breath Alcohol Technician will ensure the results are transmitted immediately.
 - 3. Such transmission may be in writing, in person, by phone or electronically.
 - 4. If the initial transmission of test results is not in writing, the Breath Alcohol Technician will follow the initial transmission by providing the employer with a copy of the Breath Alcohol Testing Form.

9.7 Employer Duties. The employer's duties in conducting alcohol testing under this program include:

- a. Breath Alcohol Testing form
 - 1. The employer will ensure that the Breath Alcohol Technician uses the three-part form required by the federal regulations.
 - 2. The parts of the form are as follows: Copy 1 (white) will be kept by the BAT; Copy 2 (green) will be given to the employee; Copy 3 (blue) will be transmitted to the employer for recordkeeping.
- b. The employer will designate one or more employer representatives for the purpose of receiving and handling alcohol-testing results in a confidential

manner. All communications by Breath Alcohol Technicians concerning alcohol test results will be to a designated employer representative.

- c. If test results are reported in any way other than writing, the employer will verify the identity of the Breath Alcohol Technician.
- d. The employer will establish documentation of the training and proficiency of each Breath Alcohol Technician it uses to test employees.
- e. The employer will comply with the NHTSA-approved quality assurance plan for each EBT it uses for alcohol testing including:
 - 1. Ensuring that external calibration checks of each EBT are performed as required;
 - 2. Taking an EBT out of service if any external calibration check results in a reading outside tolerance levels;
 - 3. Ensure that inspection, maintenance and calibration of each EBT are performed by appropriate parties;
 - 4. Ensure that each Breath Alcohol Technician who performs an external calibration check is qualified to do so; and
 - 5. Store the EBT in a secure space when it is not in use at a testing site.

9.8 Alcohol Testing Devices. The following shall apply to alcohol testing devices used to administer this program:

- a. The employer will use only Evidential Breath Testing devices (EBT) that meet the following requirements:

- 1. Initial Tests

The BAT may use a device that meets the regulatory requirements for a confirmation device.

If the BAT uses initial testing devices for screening tests that do not meet the regulatory requirements for confirmation EBTs, the employer will:

- (a) Use a logbook for each test performed using such a device. The logbooks must relate only to one device and cannot be used in conjunction with any other device. The logbook must include the following columns:

- (1) the test number;

- (2) date of the test;
 - (3) name of the BAT;
 - (4) location of the test;
 - (5) quantified test result; and
 - (6) initials of the employee taking each test.
- (b) Ensure that the BAT and the employee complete the following steps:
- (1) The BAT will show the employee the result displayed on the EBT.
 - (2) The BAT will record the displayed result, test number, testing device, serial number of the testing device, time and quantified result on the Alcohol Testing Form.
 - (3) The BAT will complete the log book.
 - (4) The employee will initial the log book entry.

2. Confirmation Tests

The EBT used for confirmation alcohol tests must meet the following requirements:

- (a) The EBT will have the capability of providing a printed result in triplicate of each breath test and associated identifying information.
- (b) The EBT will be capable of assigning a unique and sequential number to each completed test, with the number capable of being read by the Breath Alcohol Technician and the driver before each test and being printed out on each copy of the test result.
- (c) The EBT will be capable of printing out on each copy of the test result, the manufacturer's name for the device, the device's serial number, and the time of the test.
- (d) The EBT will be able to distinguish alcohol from acetone at the .02 alcohol concentration level.
- (e) The EBT will be capable of testing air blanks prior to each collection of breath and performing an external calibration check.

SECTION 10. INFORMATION AND TRAINING

10.1 Education. Every employee covered by this policy will receive the following drug and alcohol use education prior to the start of testing:

- a. Person available to answer questions about the materials;
- b. Categories of drivers subject to testing;
- c. Description of safety-sensitive position;
- d. Specific information on conduct which is prohibited;
- e. Circumstances when drivers will be tested;
- f. Testing procedures to protect the driver and integrity of testing process;
- g. Requirement that testing is required;
- h. Explanation of refusal to submit to testing and the consequences;
- i. Consequences of engaging in prohibited conduct;
- j. Consequences of alcohol concentration of 0.02 or greater, but less than 0.04;
- k. Information on effects of substance abuse on an individual's health, work, and personal life; signs of a substance abuse problem; and available methods of intervening when a problem is suspected.

The policy will be made available to each employee and displayed in the work area.

10.2 Training. Every supervisor covered by this policy who will determine whether a driver must submit to a reasonable suspicion drug or alcohol test will receive at least two hours of training annually on the specific, contemporaneous physical, behavioral, speech, and performance indicators of problem drug or alcohol abuse. One hour will cover alcohol misuse and one hour will relate to drug use.

A list of each management or supervisory position, which will be subject EAP training, is attached to this policy as **Appendix C**.

SECTION 11. DRIVER REFERRAL, EVALUATION AND TREATMENT

11.1 Drivers Engaged In Prohibited Drug/Alcohol Use. A driver who has engaged in prohibited conduct (See section 6) will be:

- a. Immediately removed from the performance of safety-sensitive functions;
- b. Advised by the MRO of resources available to the driver in evaluating and resolving drug or alcohol abuse problems including names, addresses, and

phone numbers of substance abuse professionals and counseling and treatment programs;

- c. Evaluated by a substance abuse professional to determine what assistance, if any, is necessary;
- d. Subject to return to duty drug and alcohol tests. For drugs, the driver must have a negative test result before being allowed to perform safety-sensitive functions. For alcohol, the driver must have a test result of less than .02 before being allowed to perform safety-sensitive functions.

11.2 Drivers Identified as Needing Assistance. Drivers identified as needing assistance will be:

- a. Evaluated by a substance abuse professional to determine that the driver has followed any rehabilitation program properly;
- b. Subject to unannounced follow up drug or alcohol tests under the following guidelines:
 - 1. The number and frequency of follow up tests will be determined by a substance abuse professional and will consist of at least six tests in the first twelve months;
 - 2. The employer may direct the employee to undergo return to duty and follow up drug or alcohol tests if the substance abuse professional determines such tests are necessary;
 - 3. Follow-up testing will not exceed 60 months from the date of the driver's return to duty; and
 - 4. The substance abuse professional may end testing after the first six tests if such tests are no longer necessary.

11.3 Evaluation and Treatment Services. The following shall apply to evaluation and treatment services provided under this program:

- a. Evaluation and rehabilitation may be performed by a substance abuse professional provided by the employer; a substance abuse professional under contract with the employer; or by a substance abuse professional not affiliated with the employer;
- b. The employer will ensure the substance abuse professional who determines a driver needs assistance does not refer the driver to the substance abuse professional's private practice; an entity from which the substance abuse professional receives remuneration; or an entity in which the substance abuse

professional has a financial interest unless such assistance is provided by a public agency; the employer or an entity under contract with the employer; the sole source of treatment under the driver's health insurance program; or the sole source of treatment reasonably accessible to the driver.

- c. The choice of substance abuse professional and assignment of costs will be made based on employer policies and agreements between the employer and drivers.

11.4 Scope. The policies governing the referral, evaluation and treatment of drivers do not apply to applicants who refuse to submit to pre-employment tests or to applicants having a verified positive pre-employment drug test result or a pre-employment alcohol test result of .04 or greater.

SECTION 12. RECORDKEEPING

12.1 Security and Inspection. The employer will maintain records of its drug and alcohol programs in a secure location with controlled access for the periods specified. These records will be available for inspection at the employer's principal place of business within two business days of a request by an authorized representative of the Federal Highway Administration.

12.2 Time-Frame for Record Retention. Records will be retained for the following periods:

- a. Records to be kept for 5 years:
 - 1. Verified positive drug test results and alcohol test results indicating an alcohol concentration of .02 or greater;
 - 2. Documentation of refusal to take drug or alcohol tests;
 - 3. Driver evaluation referrals;
 - 4. Annual Calendar year summary prepared pursuant to section 382.403.
- b. Records to be kept for 2 years:
 - 1. Other records relating to the collection/testing process;
 - 2. Training records.
- c. The employer will keep negative and canceled drug test results for one year. The employer will keep alcohol test results with a concentration of less than .02 for one year.

12.3 Records to be Kept. The employer will maintain the following records:

- a. Records relating to the collection process including:
 - 1. Collection logbooks, if used;
 - 2. Random selection process documents;
 - 3. Documents related to decisions to administer reasonable suspicion tests;
 - 4. Documents related to decisions on post-accident tests;
 - 5. Medical explanations for the inability of a driver to provide a urine sample for testing;

6. Consolidated annual calendar year summaries;
 7. Alcohol Specific Requirements
 - (a) Calibration documentation for evidential breath testing devices;
 - (b) Documents of Breath Alcohol Technician; Training.
- b. Records related to driver's test results:
1. Drug Specific Requirements
 - (a) Employer's copy of the drug test chain of custody and control form;
 - (b) Documents sent by the MRO to the employer;
 2. Alcohol Specific Requirements
Employer's copy of the alcohol test form, including test results;
 3. Documents related to driver's refusal to submit to a required test;
 4. Documents submitted by drivers to dispute test results.
- c. Records related to other violations of the law governing drug or alcohol programs;
- d. Evaluation records including records pertaining to a substance abuse professional's determination of a driver's need for assistance; and records concerning a driver's compliance with the recommendations of a substance abuse professional.
- e. Education and training records including:
1. Awareness records including the employer's drug and alcohol abuse policy;
 2. Documentation of compliance with education requirements including each driver's signed receipt of educational materials;
 3. Documentation of supervisor training for reasonable-suspicion testing;
 4. Certification that all training complies with regulatory requirements.
- f. Drug testing records including:
1. Agreements with collection sites, labs, MRO's and the Consortium;
 2. Names and positions of officials and their roles in the employer's testing program;

3. Monthly lab statistical summaries of urinalysis;

12.4 Management Information System. The employer will prepare and maintain an annual calendar year summary of the results of its drug and alcohol testing program for the previous calendar year by March 15 of each year. If notified in January, the employer is required to submit the report to the Federal Highway Administration by March 15.

a. Drug Specific Requirements of the Summary

1. Calendar year summaries that indicate one or more verified positive drug tests will include the following information:
 - (a) Number of drivers subject to part 382;
 - (b) Number of drivers subject to drug use rules of more than one DOT agency, organized by DOT agency
 - (c) Number of urine specimens collected, organized by type of test;
 - (d) Number of urine specimens collected, organized by type of test;
 - (e) Number of negative drug tests verified by a MRO, organized by type of test;
 - (f) Number of persons denied a position by pre-employment test;
 - (g) Number of drivers verified positive for multiple drugs;
 - (h) Number of drivers who refused testing;
 - (i) Number of supervisors who received drug training during the year;
 - (j) Number of drivers returned to duty who previously had a verified positive drug test;
 - (k) Number of drivers given a drug and alcohol test at the same time who had a verified positive drug test and an alcohol concentration of .04 or greater;
 - (l) Number of drivers violating non-testing provisions of the federal regulations and any responsive action.

2. Calendar Year Summaries with no violations can be recorded on an "EZ" report form containing:

- (a) Number of drivers subject to part 382;
- (b) Number of drivers subject to the drug use rules of more than one DOT agency, organized by DOT agency;
- (c) Number of urine specimens collected, organized by type of test;
- (d) Number of negative test results verified by an MRO, organized by type of test;
- (e) Number of drivers who refused testing;
- (f) Number of supervisors who received drug training during the year;
- (g) Number of drivers returned to duty who previously had a verified positive drug test.

c. Alcohol Specific Requirements

1. Calendar year summaries that indicate one or more alcohol test result of .02 or greater, or any other of the alcohol misuse provisions of Subpart B will include the following information:

- (a) Number of drivers subject to part 382;
- (b) Number drivers subject to testing under the alcohol misuse rules or more than one DOT agency, organized by DOT agency;
- (c) Number of persons denied a position by pre-employment alcohol test;
- (d) Number of drivers who refused testing;
- (e) Number of supervisors who received alcohol training during the year;
- (f) Number of screening alcohol test, by type of test;
- (g) Number of confirmation alcohol tests, by type of test;
- (h) Number of confirmation alcohol tests indicating alcohol concentration of .02 or greater, but less than .04, by type of test;
- (i) Number of confirmation alcohol tests indicating an alcohol concentration of .04 or greater, by type of test;
- (j) Number of drivers returned to duty who previously engaged in prohibited alcohol misuse under these regulations;
- (k) Number of drivers given a drug and alcohol test at the same time who had a verified positive drug test and an alcohol concentration of .04 or greater;
- (l) Number of drivers violating non-testing provisions of these regulations and any responsive action.

2. Calendar Year Summaries with no alcohol screening tests of .02 or greater can file an "EZ" report form containing:

- (a) Number of drivers subject to part 382;

- (b) Number of drivers subject to the drug use rules of more than one DOT agency, organized by DOT agency;
 - (c) Number of drivers who refused testing;
 - (d) Number of supervisors who received alcohol training during the year;
 - (e) Number of screen alcohol tests by type of test; and
 - (f) Number of drivers returned to duty who previously engaged in prohibited alcohol misuse.
- d. Employers subject to more than one DOT alcohol or drug program will identify each driver covered by more than one DOT agency. The identification will be by the total number of covered functions. Prior to conducting any drug test on any such driver, the employer will determine which agency rules authorize or require the test. The employer will direct the test results to the appropriate DOT agency or agencies.
- e. The Consortium will prepare annual calendar year summaries and reports for the employer. However, the employer will sign and submit such a report and will remain responsible for ensuring the accuracy and timeliness of each report the consortium prepares on its behalf.

SECTION 13. ACCESS TO FACILITIES AND RECORDS

13.1 Employer Records. Access to facilities and records held by the employer shall be as follows:

- a. The employer will not release driver information that is contained in drug or alcohol program records except as required by law or expressly authorized by the driver.
- b. A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of drugs or alcohol, including any test records. The employer will promptly give these records to the driver and will not make access to the records contingent upon payment for records other than those specifically requested.
- c. The employer will permit access all facilities utilized in complying with the drug and alcohol program laws to federal, state and local officials with regulatory authority over the employer or its drivers.
- d. The employer will make all drug or alcohol test results and other program information available to federal, state and local officials with regulatory authority over the employer or its drivers when requested.

- e. The employer will disclose information related to the employer's administration of post accident tests when requested by the National Transportation Safety Board as part of a related accident investigation.
- f. The employer will provide records to subsequent employers upon written request from a driver and only as expressly authorized by the terms of the driver's request.
- g. The employer may provide information to a driver or decision maker when a grievance or other proceeding has been initiated by or on behalf of the driver which arises from the results of a drug or alcohol test given by the employer, or from the employer's determination that the driver engaged in prohibited conduct. Such proceedings may pertain, but are not limited to, workers compensation, unemployment compensation or other benefits sought by the driver.
- h. The employer will release information regarding a driver's records as directed by the specific, written consent of the driver authorizing the release of the information to an identified person and only in accordance with the terms of the driver's consent.

13.2 Previous Employer. Access to records held by a previous employer are as follows:

- a. The employer will obtain, pursuant to a driver's consent, information on the driver's positive drug test results; alcohol test results of .04 or greater and refusals to be tested for drugs or alcohol within the preceding two years. The employer will obtain and review this information no later than 14 days after the first time a driver performs a safety-sensitive function for the employer, even if the driver stops performing safety-sensitive functions before 14 days have passed. The employer may not permit a driver to perform safety-sensitive functions after 14 days without obtaining the information.
- b. The employer may obtain, pursuant to a driver's written consent, any of the information concerning the driver which is maintained, under this part, by the driver's previous employers.
- c. The employer requesting information from previous employers within the previous 2 years must provide those employers with the driver's written authorization for release of the information.
- d. Release of information may be done by any method ensuring confidentiality. Each employer will maintain a written, confidential record with respect to each past employer contacted.
- e. The employer will not use a driver for safety-sensitive functions if the employer obtains information showing a verified positive drug test result; an alcohol test

result of .04 or greater or a refusal to be tested unless the employer obtains information on a subsequent substance abuse professional's evaluation.

DRUG AND ALCOHOL TESTING CONSORTIUM
SUBSTANCE ABUSE PREVENTION PROGRAM
Appendix A

Substance Abuse Prevention Policy

Name of Organization City of Willmar

DRUG AND ALCOHOL TESTING CONSORTIUM
 SUBSTANCE ABUSE PREVENTION PROGRAM
 Appendix B

Employee Positions Subject to Drug and Alcohol Testing

Name of Organization City of Willmar

List below, by title or description, all positions in your organization for which drug testing is required under 49 CFR, Part 382. Include the current number of employee for each position. See section 2 of the MMUA program for more information.

Title or description of employee position
Light Equipment Operator
Heavy Equipment Operator
Working Foreman
Park Maintenance Worker
Public Works Maintenance
Mechanic (Mechanic I)
Assistant Mechanic (Mechanic II)
Equipment Operator 1
Waste Treatment Plant Operator *
WTP Assistant Lab Technician *
WTP Assistant Mechanic *
* Biosolids Transport only

SUBSTANCE ABUSE PREVENTION PROGRAM
FOR
COMMERCIAL DRIVERS

SO WHAT'S THIS DRUG AND ALCOHOL TESTING ALL ABOUT?

The Federal Omnibus Transportation Employee Testing Act of 1991 requires alcohol and drug testing programs for every person who operates a commercial motor vehicle and is subject to commercial driver's license requirements. Alcohol and drug testing is required in the interest of public safety. The United States Department of Transportation has issued rules implementing the legislation's requirements. For large employers--those with 50 or more commercial drivers--the testing program is effective January 1, 1995. All other employers must comply as of January 1, 1996. From that day on, all new employees and contractors hired for safety-sensitive positions must be subject to pre-employment drug testing for five drugs: Marijuana; cocaine; opiates; amphetamines; and phencyclidine or PCP, which is also known as angel dust, and alcohol testing. In addition, all covered employees are subject to random testing, testing following an accident, testing for reasonable cause, and return to duty and follow-up testing following rehabilitation. A similar drug and alcohol testing program is also required for pipeline personnel.

Members of the Minnesota Municipal Utilities Association have joined together through the MMUA Drug and Alcohol Testing Consortium (The Consortium) to meet their obligations under the federal rules. In the consortium, individual employees are selected for random testing from a state-wide pool. By participating with other communities, the costs for testing, training, and record keeping can be reduced.

In general, the rules prohibit covered employees from performing safety-sensitive functions:

- (1) When test results indicate an alcohol concentration of 0.04 or greater;
- (2) Within 4 hours after using alcohol;
- (3) While using alcohol on the job;
- (4) During the 8 hours following an accident if the driver's involvement has not be discounted as a contributing factor in the accident or until they are tested;
- (5) If they refuse to submit to required alcohol tests;
- (6) If they use (affected by) drugs while on the job; and
- (7) If they positive to a drug test.

Employers have to remove from a safety-sensitive function any covered employee who violates any of these prohibitions until the employee has met the conditions for returning to duty. Additionally, employees testing with an alcohol concentration of 0.02 or greater, but less than the prohibited 0.04, will be removed from safety-sensitive

functions for 24 hours. In this case, however, the employee is not required to see a substance abuse professional.

It is natural for employees to be apprehensive about drug and alcohol testing. Drug testing is especially intrusive and raises privacy concerns. The federal regulations do make every effort to protect the interest of the employee through provisions requiring privacy and procedures designed to affirm the integrity of the testing process.

If you have any questions about the substance abuse testing program, do not hesitate to contact your employer's designated representative:

Kevin J. Halliday City Clerk-Treasurer 612/235-4913

DRUG AND ALCOHOL TESTING CONSORTIUM
SUBSTANCE ABUSE PREVENTION PROGRAM
Appendix A

Substance Abuse Prevention Policy

City of Willmar

SUBSTANCE ABUSE POLICY

1. Participation in Substance Abuse Rehabilitation Program

If the test of an employee, who is subject to the requirements of 49 C.F.R. Part 382, results in an Medical Review Officer (MRO) verified positive test for the use of drugs, or an alcohol concentration of 0.04 or greater, the employee will be referred to the Employee Assistance Program at Rice Memorial Hospital or other qualifying substance abuse professional for assessment and enrollment in a treatment and rehabilitation program. Results of the positive drug or alcohol test and terms of the rehabilitation will remain confidential, except as provided by the Federal Regulations.

Employees referred to the treatment and rehabilitation program as a result of an MRO verified positive test or breath testing showing an alcohol concentration above 0.04, must immediately cease any substance abuse, must subject themselves to periodic unannounced testing for a period of not to exceed sixty months, and must comply with all other conditions of the treatment and counseling program recommended by the substance abuse professional.

All of the expenses for the rehabilitation program shall be paid for entirely by the employee with the employee health insurance provider funding a portion as provided in the benefit plan.

An employee required to take time off in order to participate in a rehabilitation program will be permitted to use sick leave, comp time, vacation time, and/or unpaid leave.

Participation in substance abuse treatment and rehabilitation will not result in disciplinary action; however, non-covered duties will be assigned until the MRO or substance abuse professional determines that the employee may return to duty. Successful completion of the prescribed program will be required for the employee to continue employment with the City of Willmar.

If an employee is undergoing substance abuse treatment and counseling or has returned to duty upon successfully completing such treatment and rehabilitation and a subsequent test is a) verified by the MRO as positive, or b) results in an alcohol concentration of 0.04 or greater, the employee *will be provided a second opportunity for rehabilitation. An employee shall be offered rehabilitation twice and upon a third positive test, employment shall be terminated.* However, if the first and second violation of this policy results in personal injury, vehicular or structural damage of a \$500 value, employment shall be terminated upon the second violation.

Employees who undergo substance abuse treatment and counseling under this policy and who continue to work must meet all established standards of conduct and job performance.

If an employee refuses to participate in or fails to complete counseling or rehabilitation programs, the employee will not be allowed to continue City employment.

2. Temporary Reassignment of Duties (If Available)

If an employee, who is subject to the requirements of 49 C.F.R. Part 382, has tested positive for alcohol or drug use, the employer may temporarily reassign the employee to non-safety sensitive duties within any department of the city, if available opportunities are present, which does not require a drug or alcohol test. Results of the positive drug or alcohol test and reasons for the reassignment of duties will remain confidential, except as provided by the Federal Regulations.

**SUBSTANCE ABUSE POLICY OF THE EMPLOYER
REGARDING
INDEPENDENT CONTRACTORS

DEPARTMENTS AND AGENCIES**

CITY OF WILLMAR

POLICY

Independent Contractors and their employees not subject to the substance abuse policy of the City of Willmar who are involved in safety-sensitive functions with commercial motor vehicle for the City shall comply with the regulations imposed by 49 CFR Part 382 (Regulations). If a drug or alcohol test of a contract employee not subject to the employee policies of the City of Willmar is verified by the MRO as positive, or a confirmed alcohol test of 0.04 or greater, the substance abuse policy of the contractor shall apply. If the Independent Contractor does not have a written substance abuse policy, the City of Willmar substance abuse policy shall apply; however, the City is not liable for any expenses related to drug and alcohol testing or substance abuse counseling and treatment. The Independent Contractor or their employee testing positive for drugs or alcohol shall not perform work for the City of Willmar that is covered by the Regulations, except by the recommendation of the Medical Review Officer or substance abuse professional in accordance with the requirements of the Regulations.

SUBSTANCE ABUSE POLICY AGREEMENT
WITH
INDEPENDENT CONTRACTORS OF THE
CITY OF WILLMAR

AGREEMENT

I, the undersigned owner or principle of _____ (Contractor), an independent contractor performing work for the City of Willmar (Owner), hereby certify that all Contractor's employees who may perform safety-sensitive functions for the Employer are included in an substance abuse program that meets the requirements of 49 CFR Part 382 and a copy of the program has been attached hereto. I understand that the Contractor or Contractor employee whose test is verified as positive by the MRO, or has a confirmed alcohol test of 0.04 or greater, is prohibited from performing safety-sensitive functions for the Employer.

Executed this _____ day of _____, 19

Independent Contractor

DRUG TESTING PROGRAM COMPONENT IDENTIFICATIONS

MEDICAL REVIEW OFFICER:

Dr. Thomas Jetzer
Occupational Medicine Consultants
8100 34th Avenue South Suite 135
Bloomington MN 55425
612-379-7244

TESTING LABORATORY (SAMHSA CERTIFIED)

SMITHKLINE BEECHAM
506 East State Parkway
Schamburg IL 60173
800-447-4379

COMPANY DRUG TESTING PROGRAM COORDINATOR

Name DRUG TESTING PROGRAM COORDINATOR
COMPANY
ADDRESS
CITY STATE ZIP
PHONE

DRUG TESTING CONSTRUCTOR

Health Services of North America, Inc.
319 Main Street, P.O. Box 1687
La Crosse, WI 54602-1687
1-800-873-3733
1-608-782-3733
FAX 1-608-782-7794