TOWN OF WILLISTON
Appendix D

ALCOHOL AND DRUG ABUSE POLICY FOR CDL QUALIFIED EMPLOYEES

Amended this 6th day of July, 2015

Williston Selectboard

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Abstract: This policy was developed pursuant to the requirements articulated by the U.S. Department of Transportation (DOT) in Title 49, of the Code of Federal Regulations (CFR) and applies to employees who operate commercial motor vehicles (CMVs) while engaged in any municipal business. The policy details requirements for alcohol and drug testing.

Legislative History

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1. Introduction

1.1. This policy details requirements for alcohol and drug testing for certain employees and was developed based on the requirements articulated by the U.S. Department of Transportation (DOT) in Title 49, of the Code of Federal Regulations (CFR). It applies to employees who operate commercial motor vehicles (CMVs) while engaged in any municipal business.

1.2. An Administrative Procedures manual shall be developed and updated as necessary by the Manager pursuant to this policy.

1.3. This personnel policy does not constitute a contract of employment. Employment with the Town of Williston is ***at will*** and not for any definite period or succession of periods of time. The Town or the employee may terminate employment at any time, with or without notice. The Selectboard reserves the right to amend any of the provisions of this personnel policy for any reason and at any time, with or without notice.

2. Applicability

2.1. This policy applies to all Town of Williston employees and prospective employees who operate or who will operate commercial motor vehicles (CMVs) if they are hired, transferred or promoted while engaged in any municipal business. Employees and prospective employees are not subject to this policy by virtue of holding a CDL unless their job duties may require them to operate a CMV. All other municipal employees are subject to the provisions of the municipality's personnel policy regarding the Drug Free Workplace Policy (Attachment A), if applicable. This policy supersedes any provisions in the town's personnel policy regarding the consequences of the possession or use of drugs and alcohol as they pertain to CMV operators.

2.2. Individuals operating the above vehicles must have a valid commercial driver's license (CDL).

2.3. Each employee who is subject to this policy is required to sign an acknowledgement that he or she has been provided a copy of this policy. This acknowledgement will be maintained in the town's personnel files as part of the driver qualification file.

2.4. Given the varied nature of municipal needs, employees who are employed to operate CMVs have the potential to serve in safety-sensitive functions during any part of their job. Therefore, employees are subject to this policy at all times while they are actively working and during

periods when they may be called into work (e.g. to respond to weather-related incidents, respond to emergency situations, etc.).

2.5. Commercial Motor Vehicle operators will need to remain substance-free during expected winter events and other anticipated emergency incidents, given the likelihood that they will be called in to work and thus must be in compliance with elements of this Drug & Alcohol Policy.

3. Definitions

3.1. ***Accident*** means an occurrence associated with the operation of a CMV, if as a result:

- An individual dies, or
- An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident, or,
- One or more vehicles incur disabling damage as the result of the occurrence and are transported away from the scene by a tow truck or other vehicle. For purposes of this definition, ***disabling damage*** means damage that precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include:
    - damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, or
    - tire disablement without other damage even if no spare tire is available, or
    - damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that makes them inoperative.

3.2. ***Administrative Procedures Manual for Alcohol and Drug Abuse*** is a document prepared by the Town Manager and used to provide detailed information about the testing process and other related information.

3.3. ***Adulterated specimen*** is a specimen that has been altered, as evidenced by test results showing either a substance that is not normally found in that type of specimen or showing an abnormal concentration of a substance that is normally found in that specimen.

3.4. ***Alcohol*** means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.

3.5. ***Alcohol Concentration*** is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath-testing device.

3.6. ***Commercial motor vehicle*** means a motor vehicle or combination of motor vehicles used in commerce, to transport passengers, or property if the motor vehicle:

- Has a gross combination weight rating of 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or
- Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds); or
- Is designed to transport 16 or more passengers, including the driver; or
- Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

3.7. ***Covered Employee*** means an employee who performs a safety-sensitive function including an applicant or transferee who will be hired to perform a safety-sensitive function. Employees who operate CMVs are considered to be performing safety-sensitive functions.

3.8. ***Medical Review Officer*** means a licensed physician (medical doctor or doctor of osteopathy) who is responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history and any other relevant bio-medical information.

3.9. ***Observed Collection*** means the donor will provide his or her sample under the direct observation of either a collector or another individual of the same gender. The donor must raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show the observer, by turning around, that he/she does not have a prosthetic device. After the observer has determined that the donor does not have a prosthetic device, the donor may return his/her clothing to its proper position for observed urination.

3.10. ***Positive test result*** for a drug test means a verified presence of the identified drug or its metabolite at or above the minimum levels specified in 49 CFR Part 40, Section 40.87 as amended. A positive alcohol test result means a confirmed alcohol concentration of 0.04%

BAC or greater. Any positive test result reported to the Town's Finance Director by the medical review officer is verified by the medical review officer prior to reporting.

3.11. ***Safety-sensitive function*** includes the timeframe that begins when a driver starts work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

- All time at an employer or shipper 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, 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;
- 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.

3.12. ***Substance Abuse Professional*** means a licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

4. Responsibility for Employee Information

The Williston Selectboard has assigned the Finance Director as the individual who can provide employees with information regarding this Drug & Alcohol Policy and answer related questions on the pertinent issues. Employees may also obtain information about applicable Federal regulations from 49 CFR. Sources of information are provided in the Administrative Procedures manual prepared pursuant to this policy.

5. Prohibited Conduct

Conduct listed in this section is prohibited.

- Having a verified positive, adulterated or substituted drug test result.
- Performing safety-sensitive functions after notification of a verified positive, substituted or adulterated drug test result or an evidential breath-testing device alcohol test result indicating a measured alcohol concentration of 0.02% or greater, regardless of when the drug or alcohol was ingested and regardless of whether or not the driver is under the influence of alcohol or using drugs, as defined in federal, state or local law.
- Reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR PART 40, as amended.
- Consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. An on-call employee who has consumed alcohol must acknowledge the use of alcohol at the time that he/she is called to report for duty.
- Consuming alcohol within four (4) hours prior to the performance of safety-sensitive job functions.
- Misusing or being impaired by authorized or prescribed use of drugs or over-the counter medications which may affect work performance or pose a danger to the safety of the driver or to others. Drivers are required to inform the employer's designated representative of any therapeutic drug use that has the potential to impact the safe operation of equipment or motor vehicles.
- In cases where prescribed medication labeling suggests that machinery operation or driving may be compromised in any way, the driver shall obtain written authorization from the prescribing physician indicating that the driver is able to safely operate a CMV while using the substance. This must be provided to the municipality prior to operation of said CMV while using the prescribed substance(s).
- Reporting to work or remaining on duty requiring the performance of safety sensitive duties while having an alcohol concentration of 0.02% or greater regardless of when the alcohol was consumed.

- Consuming alcohol for eight (8) hours following involvement in an accident or before submitting-to any required post-accident drug/alcohol testing, whichever occurs first.

- Engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including municipal premises, vehicles, while in uniform or while on municipal business.

- Refusal to submit to alcohol or drug testing, as defined in Section 8 below.

6. Pre-employment Testing

6.1. When an individual applies to work for the town in a position that involves the operation of a CMV, or when a municipal employee is under consideration for a position that involves the operation of a CMV, that person will be required to undergo pre-employment urine drug testing. All offers of employment and offers for transfer for covered positions shall be conditional upon the applicant passing the drug test. Pre-employment testing must be completed prior to the individual working in the new position.

6.2. Pre-employment drug testing will be accomplished by providing advance notice of the test schedule and location to the position applicant. The length of the advance notice period will be kept as short as is reasonably feasible to coordinate and complete the test.

6.3. If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded. Prior to future consideration for employment performing safety sensitive duties, the municipality must receive evidence from a substance abuse professional that meets with the requirements 49 CFR part 40 as amended, regarding the absence of drug dependency. A negative pre-employment drug test will also be required.

6.4. Any applicant who fails a pre-employment drug test will be provided the results of the test.

6.5. When an existing employee is being placed, transferred, or promoted into a position that is covered by this policy and that person submits a drug test with a verified positive result, the employee may be subject to disciplinary action as outlined in the municipal personnel policies. That employee will also be eliminated from consideration for the position which triggered the need for the pre-employment test.

6.6. If a pre-employment/pre-transfer test is canceled for any reason, the applicant will be required to take and pass a pre-employment drug test before the individual is placed into a covered CDL position or performs safety sensitive duties.

7. Testing

7.1. All testing and specimen collection prescribed under this policy will be done in accordance with federal requirements. Prescribed testing

includes: pre-employment, random, reasonable suspicion, post-accident, return to duty, and follow-up, if applicable.

7.2. Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Service. All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner, and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.

8. "Testing Refusal" Defined

Under federal law, a test refusal is considered as a positive test and has the same consequences. An employee or prospective employee is considered to have refused a test when s/he does any of the following:

- Fails to appear for any test within a reasonable time, as determined by the employer or testing pool administrator, after being directed to do so by the employer;
- Fails to remain at the testing site until the testing process is complete;
- Fails to provide a urine specimen for any drug test required by Part 40 or DOT agency regulations;
- In the case of an observed collection in a drug test, fails to permit the observation or monitoring of the collection of a specimen;
- Fails to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- Fails to provide an adequate amount of saliva or breath for any alcohol test required, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- Fails or declines to take a second test that the employer or collector has directed the employee to take;
- Fails to undergo a medical examination or evaluation, as directed by the medical review officer as part of the verification process, or as directed by the DER as part of the "shy bladder" procedures;
- Fails to cooperate with any part of the testing process (e.g., refuses to empty pockets when so directed by the collector, behaves in a confrontational way that disrupts the collection process);
- If the medical review officer reports that there is verified adulterated or substituted test result.

9. Consequences of a Positive Test

9.1. The medical review officer will report positive test results to the Town's Finance Director only after verifying the test results as outlined in 49 CFR, Part 40 as amended. When the Finance Director is notified of this positive test result, the employee will be immediately suspended from operating CMVs and other safety-sensitive duties for the municipality and will be referred to a Substance Abuse Professional (SAP) for substance abuse assessment and/or treatment.

9.2. At the Town's sole discretion, an employee who had a positive test may be allowed to perform non-safety sensitive duties in lieu of a suspension.

9.3. On the day that the positive test results are received, the employee will be suspended from all duties with pay. Subsequent to that, if the employee is unable or not permitted to perform non-safety sensitive duties, he or she will be suspended without pay.

9.4. If an employee is suspended, the length of suspension will run the period of time in which it takes the individual to satisfactorily complete the treatment (as confirmed by the SAP). This may last for up to 3 months from the date the positive test result was received. After that period, if the employee has not successfully completed treatment, the employee may be terminated.

9.5. Any employee who has an initial positive test and has the split sample tested and obtains a negative result will immediately be permitted to return to their normal job duties.

9.6. An employee who provides written documentation from a SAP that substance abuse treatment has been satisfactorily completed within the 3 month suspension period must fulfill all return to duty testing requirements in the Administrative Procedures manual prepared pursuant to this policy under the Return to Duty Testing Section prior to performing any safety-sensitive duties. Follow-up testing will also be required as directed by the Substance Abuse Professional.

9.7. An employee who has a second positive test after completing return to duty testing will be terminated.

9.8. The cost of any evaluations, treatments and/or rehabilitation services will be paid directly by the employee or their insurance provider. The employee will be permitted to take accrued sick leave or administrative leave to participate in the SAP prescribed treatment program. If the employee has insufficient accrued leave, the employee shall be placed on leave without pay, until the SAP has determined that the employee has

successfully completed the required treatment program and releases him/her to return-to-duty. Any leave taken, either paid or unpaid, shall be considered leave taken under the Family and Medical Leave Act.

10. Testing Process and Other Related Information

For details concerning the testing process and other related information, refer to the Administrative Procedures manual prepared pursuant to this policy.

10.1. The following test procedures shall be outlined in the Administrative Procedures Manual:

- Drug Testing Process;
- Alcohol Testing Process;
- Observed Collections;
- Random Testing;
- Reasonable Suspicion Testing;
- Post-Accident Testing;
- Return to duty Testing; and
- Follow-up Testing

10.2. The following information shall be available in the Administrative Procedures Manual:

- Employee Information
- Contacts & Information
- Employee Access to Information
- Drug & Alcohol Testing Policy-Acknowledgement Form
- Drug Cutoff & Testing Limits as per DOT Rule 49 CFR Part 40 Section 40.87