

# CITY OF KIMBALL

## MUNICIPAL POLICY NUMBER 02-2011

### POLICY ON ALCOHOL AND CONTROLLED SUBSTANCES FOR COMMERCIAL DRIVERS

**DATE COUNCIL APPROVED:** January 18, 2011

#### **I. INTRODUCTION AND POLICY STATEMENT**

In response to regulations issued by the Federal Motor Carrier Safety Administration ("FMCSA") of the United States Department of Transportation ("DOT"), the City of Kimball has adopted this Policy on Alcohol and Controlled Substances for Commercial Drivers.

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).

It is the policy of the City to maintain for all its operators of commercial motor vehicles, whether employees, independent contractors or agents, a work environment conducive to maximum safety and optimum work standards. 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.

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.

The abuse of alcohol and use of controlled substance may adversely affect an individual's health, work and personal life. Using alcohol or a controlled substance can lead to a variety of physical problems, including cancer and damage to vital organs, depression and other psychological problems, social problems and isolation from family and friends. Moreover, the use of alcohol and a controlled substance can impair essential safety skills on the job, such as vision, judgment and coordination, and lead to increased absences, frequent accidents, decline in quantity and quality of work, lack of cooperation, poor concentration and judgment and lack of motivation. When a substance abuse problem arises, methods of intervening include confrontation, referral to an employee assistance program and referral to management.

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 that the policy is clearly communicated to all drivers and applicants to whom offers of employment have been made, and in order to comply with applicable federal law, drivers and applicants are required to review this policy and execute the "Certificate of Receipt" portion.

Because changes in applicable law and the City's practices and procedures may occur from time to time, terms of this policy may change in the future, and nothing in this policy is intended to be a contract, promise or representation of any specific term or condition of employment except to the extent required by law. In the event that applicable DOT or FMCSA regulations governing alcohol and controlled substance use and testing are supplemented or amended, this policy shall be deemed to have been amended to conform to the applicable regulations.

This policy does not in any way affect or change the status of any at-will employee. Nothing in this policy is a promise or guarantee or should be construed as a promise or guarantee that the City will follow any particular course of action, disciplinary, rehabilitative or otherwise, except as required by law. 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.

#### **II. 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 members themselves.

Contractors who provide drivers or other covered functions for the City 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 this 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.

### **III. CONDUCT PROHIBITED BY FEDERAL LAW**

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

- **Alcohol Concentration:** 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.
- **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.
- **Alcohol Use Following an Accident:** No driver required to take a post-accident alcohol test (see Part V.B of this Policy) 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 driver may refuse to submit to a post-accident, random, reasonable suspicion, or follow-up alcohol or controlled substance test.

In the event an applicant or driver refuses 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. If an applicant refuses to submit to pre-employment controlled substance testing, any conditional offer of employment will be withdrawn.

For purposes of this section, a driver refuses to submit to an alcohol or controlled substance test when the driver:

1. 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;
2. 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;
3. fails to report for testing within a reasonable period of time, as determined by the City;
4. fails to remain at a testing site until testing is complete;
5. in a case of directly observed or monitor collection, fails to permit observation or monitoring;
6. fails or declines to take a second test as required by the City and/or collector;
7. fails to undergo a medical examination as directed by the City pursuant to federal law; or
8. engages in conduct that clearly obstructs the testing process.

Refusal by a driver 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 a way that prevents the completion of the testing process constitutes a refusal to test.

- **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 that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle. Drivers must inform the City in writing of any therapeutic controlled substance use immediately after receiving any such advice.
- **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.

### **IV. CONDUCT PROHIBITED BY THE CITY**

In addition to the conduct prohibited by applicable DOT and FMCSA regulations, the City has adopted the following prohibitions and policies based on its independent authority.

- **Manufacture, Trafficking and Sale:** No driver may engage in the manufacture, sale, purchase, solicitation to sell or purchase, transportation, distribution or dispensing of alcohol or controlled substance or controlled substance paraphernalia while on duty, performing safety-sensitive functions, on City premises or in any City vehicle.
- **Criminal Controlled Substance or Alcohol Convictions:** Any driver convicted under any federal, state or local criminal controlled substance or alcohol statute for a violation occurring in the workplace, on City premises or in any City vehicle must notify the City in writing of such conviction no later than five (5) days after such conviction.

#### **V. REQUIRED BACKGROUND CHECKS AND VERIFICATIONS**

The City will conduct background 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 tests with a concentration result of 0.04 or greater, positive controlled substance test results and refusals to be tested within the preceding two (2) years which are maintained by the applicant's previous employers. In addition, the City will obtain all information concerning the applicant which is maintained by the applicant's previous employers within the preceding two (2) years pursuant to 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, but in any event no later than thirty (30) calendar days after the first time a driver performs safety-sensitive functions for the City.

#### **VI. CONTROLLED SUBSTANCE AND ALCOHOL TESTING**

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

- A. **Pre-Employment Testing:** The City will conduct pre-employment controlled substance testing of each applicant for a driver position after a conditional job offer has been made to the applicant and 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 indicating a verified negative test result. As an alternative to pre-employment controlled substance testing, the City may obtain information from the applicant's previous employers certifying compliance with another DOT controlled substance testing program. If requested, each applicant must execute a consent form authorizing the disclosure of such information. Pre-employment alcohol testing will not be conducted.
- B. **Post-Accident Testing:** As soon as practicable following an accident involving a commercial motor vehicle operating on a public road in commerce, the City will test for alcohol and controlled substance each surviving Driver:
  - (1) who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
  - (2) who receives a citation under State or local law for a moving traffic violation arising from the accident and one of the following two conditions is met: (1) the accident involved bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident, or (2) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

A Driver who is subject to post-accident testing must remain readily available for such testing. Drivers that are not readily available for such testing may be deemed by the City to have refused to submit to testing.

Drivers are required to submit to post-accident controlled substance testing as soon as possible within thirty-two (32) hours of the accident. 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.

Drivers are required to submit to post-accident alcohol testing as soon as possible within two (2) hours and in any event no more than eight (8) hours, after the accident. 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 the driver is not tested within eight (8) 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 administered.

In the event of an accident, it is possible that the driver will be directed to submit to a breath, blood, or urine test for the use of alcohol or controlled substance administered by a federal, state, or local law enforcement officer. 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.

**C. Random Testing:** Every driver will be subject to 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 (other than driving a commercial motor vehicle) and report to the designated test site immediately. It is mathematically possible that drivers may be selected for more than one (1) random test per year.

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

At this time, 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.

**D. Reasonable Suspicion Testing:** When the City has reasonable suspicion to believe that the driver has engaged in conduct prohibited by Federal Law (See Part II of this Policy), the City must require the driver to submit to an alcohol or controlled substance test. Alcohol testing will occur while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

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 made 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 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 will be reflected in writing on a Reasonable Suspicion Record Form. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test will not conduct the alcohol test of the driver, which shall instead be conducted by another qualified person.

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. If a reasonable suspicion controlled substance test is not administered within thirty-two (32) hours following the determination of reasonable suspicion, the City will cease attempts to administer a controlled substance test and will prepare a record stating the reasons for not administering the 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.

**E. Return-to-Duty Testing:** The City reserves the right to impose discipline against drivers who violate applicable FMCSA rules or this policy, subject to applicable personnel policy. Except as otherwise required by law, the City is not obligated to reinstate or re-qualify such drivers.

Should the City consider reinstatement of such a driver, the driver must undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than .02 if the conduct involved alcohol, or a controlled substance test with a verified negative result if the conduct involved a controlled substance, before the driver returns to duty requiring the performance of a safety-sensitive function.

- F. Follow-Up Testing:** The City reserves the right to impose discipline against drivers who violate applicable FMCSA rules or this policy, subject to applicable personnel policies. Except as otherwise required by law, the City is not obligated to reinstate or re-qualify such drivers.

Should the City reinstate a driver following a determination by a Substance Abuse Professional 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 Substance Abuse Professional and 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.

Follow-up alcohol testing will be conducted only when the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing safety-sensitive functions.

- G. 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.

## **VII. COLLECTION AND TESTING PROCEDURES**

- A. Alcohol Testing:** Employees will be tested for alcohol just before, during or immediately following performance of a safety-sensitive function. 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. 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.

If a breath test is being conducted, and a driver does not provide a sufficient amount of breath to permit a valid breath test, the collector will instruct the driver as to the proper way to provide a sufficient amount of breath, and ask the driver to attempt to provide a sufficient amount of breath a second time. If the driver again attempts and fails to provide a sufficient amount of breath, the collector may provide another opportunity for the driver to do so if the collector believes that there is a strong likelihood that another opportunity could result in a sufficient amount of breath. The collector may then change to a saliva alcohol screening test, if the collector is qualified to provide such a test. If none of these procedures result in a sufficient amount of breath for an alcohol test, the driver must obtain, within five days, an evaluation from a licensed physician who is acceptable to the City and whose expertise in the medical issues raised by the employee's failure to provide a sufficient specimen for testing. If the licensed physician concludes that a medical condition has, or with a high degree of probability could have, precluded the driver from providing a sufficient specimen, the City will consider the test to be canceled. If the licensed physician cannot make such a determination, the City will consider the driver to have refused to engage in the testing process, and will take appropriate disciplinary action under this policy.

If the collector is utilizing a saliva alcohol test, and the employee is unable to provide sufficient saliva to complete the test on a saliva screening device, the collector will conduct a new screening test using a new screening device. If the employee has not provided a sufficient amount of saliva to complete the new test, the collector will arrange to administer an alcohol test to the employee using a breath testing device.

- B. 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 calculated to ensure the driver's privacy. 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 of twelve (12) months.

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 for 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 working 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 that a medical condition has, 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.

- C. **Chain of Custody and Confidentiality of Test Results:** All controlled substance and alcohol testing will be performed in compliance with applicable law, including use of an appropriately-licensed urine testing laboratory which observes applicable control and custody procedures. The City will use procedures to test for the presence of alcohol and controlled substance in order to protect the driver and the integrity of the testing process, safeguard the validity of the test results, and ensure that test results are attributed to the correct driver. All reports of tests will be kept in the strictest confidence by the laboratory and provided only to the City and the City's MRO, unless the driver provides written consent or disclosure is otherwise permitted or required by law.

### **VIII. REVIEW AND NOTIFICATION OF TEST RESULTS**

- A. **Review by Medical Review Officer ("MRO"):** Results of controlled substance tests will be sent by the testing laboratory to an independent Medical Review Officer selected by the City. The MRO is responsible for performing many functions, including reviewing and interpreting test results, reviewing the driver's medical history to explain a positive test result, and notifying drivers of confirmed positive test results. Drivers who have been tested for controlled substance must remain available following the test to be contacted by the MRO.

Prior to making a final decision to verify a positive test result, the MRO will give the individual an opportunity to discuss the test result. 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 individual 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 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 determines that there is a legitimate medical explanation for a confirmed positive test result, the MRO will report the test result to the City as negative. If the MRO determines that there is no legitimate medical explanation for a confirmed positive test result, the MRO will report the positive test result to the City in accordance with DOT regulations. Based on a review of laboratory reports, quality assurance and quality control data, and other controlled substance test results, the MRO may conclude that a particular confirmed positive controlled substance test result is scientifically insufficient for further action. Under these circumstances, the MRO will conclude that the test is negative for the presence of controlled substances or controlled substance metabolites in a Driver's system.

- B. **Notification of Test Results:** The City will notify an applicant of the results of a pre-employment controlled substance test if the applicant requests such results within sixty (60) calendar days of being notified of the disposition of the applicant's employment application. 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.
- C. **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 reanalysis (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. Drivers will be reimbursed for any pay lost if taken out of service based upon a positive test result which is later negated by a confirmatory retest, and no adverse personnel action will be taken against the driver or job applicant based on the original test.

- D. Dilute Specimens:** If the City receives information that a driver has provided a dilute positive specimen, the City will consider the employee to have tested positive under this policy. If a driver provides a dilute negative specimen, the City will direct the driver to take a second screening test. The second screening test will be performed as soon as possible after the City receives word of the dilute negative specimen.

#### **IX. CONSEQUENCES FOR DRIVERS ENGAGING IN PROHIBITED CONDUCT**

- A. 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 (See Part II of this Policy).

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, and will be given transportation to his or her home. The driver will then be placed upon vacation, comp time or another appropriate leave of absence for hours missed from work until a confirmatory test has been completed.

- B. Notification of Resources Available:** The City will advise each driver who has engaged in conduct prohibited by Federal Law (See Part II of this Policy) 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 SAP, 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 information in writing to the driver.

- C. Evaluation and Follow-Up Testing:** The City reserves the right to impose discipline sanctions in its sole discretion against drivers who violate applicable FMCSA 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 re-quality such drivers.

Should the City reinstate a driver who engages in conduct prohibited by federal law or who has a positive alcohol or controlled substance test, the driver will be evaluated by a Substance Abuse Professional. 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 that the driver properly follows any rehabilitation program and submits to unannounced follow-up alcohol and controlled substance testing.

- D. Responsibility for Cost of Evaluation and Rehabilitation:** Based on the City's independent authority, 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 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.

- E. Inapplicability to Pre-Employment Testing:** The requirements of this policy with respect to referral, evaluation and rehabilitation do not apply to applicants who refuse to submit to a pre-employment controlled substance test or to applicants whose pre-employment controlled substance test is verified positive.

- F. Withdrawal of Conditional Job Offer:** The City's conditional offer of employment will be withdrawn from any job applicant who refuses to be tested or tests positive for a controlled substance pursuant to this policy.

- G. Discipline and Termination:** The City will not discharge a driver for whom a positive test result was the first such result for the driver on a controlled substance or alcohol test required by the City unless the City has independent grounds for doing so or the following conditions have been met:

1. The City has first given the driver an opportunity to participate in, as described in Sections VIII(B)-(D) above, either a controlled substance or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the City after consultation with a SAP or a physician trained in the diagnosis and treatment of chemical dependency; and
2. The driver 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 (as defined below) or positive test result on a confirmatory test after completion of the program.

If a driver declines to participate in a controlled substance or alcohol counseling or rehabilitation program, or fails to successfully complete the program, as evidenced by withdrawal from the program or by a positive test result after completion of the program, the City will discharge the driver.

If a driver refuses to submit to a test (as defined below), the City will consider that refusal to be the equivalent of a positive test. As a result, the City will provide the driver an opportunity to participate in either a controlled substance or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the City after consultation with a SAP or a physician trained in the diagnosis and treatment of chemical dependency. If the driver refuses to participate in the counseling or rehabilitation program or fails to successfully complete the program, as evidenced by withdrawal from the program before its completion or by a positive test result (or second refusal to test) on a confirmatory retest after completion of the program, the City will discharge the driver.

**H. Refusal to Submit to a Test:** Driver and applicants have the right to refuse to submit to an alcohol or controlled substance test under this policy. If an applicant or driver refuses to submit to a required alcohol or controlled substance test, no test will be conducted. However, such a refusal by a driver will be considered a positive test result, will cause disqualification from performing safety sensitive functions, and will result in discipline pursuant to this policy. If an applicant refuses to submit to pre-employment testing, any conditional offer of employment will be withdrawn.

For purposes of this section, a driver or applicant refuses to submit to an alcohol or controlled substance test when the applicant or driver:

1. 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;
2. 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;
3. fails to report for testing within a reasonable period of time, as determined by the City;
4. fails to remain at a testing site until testing is complete;
5. in a case of directly observed or monitor collection, fails to permit observation or monitoring;
6. fails or declines to take a second test as required by the City and/or collector;
7. fails to undergo a medical examination as directed by the City pursuant to federal law; or
8. engages in conduct that clearly obstructs the testing process.

Refusal by an applicant or driver to complete and sign required forms, to provide a breath or saliva sample, to provide an adequate amount of breath, or otherwise cooperate in a way that prevents the completion of the testing process constitutes a refusal to test.

## **X. 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 the FMCSA regulations. 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. The driver is responsible for making payment to the City for the cost of copying all records specifically requested by the driver.

## **XI. 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 the City Clerk to obtain additional information.

## **XII. 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 and evidential breath testing device (EBT). 49 C.F.R. § 40.3.
- **“City”** means City of Kimball.
- **“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 to be analyzed for the presence of 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 of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or (2) has a gross vehicle weight rating of 26,001 or more pounds; 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 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 C.F.R. § 382.107. Fire trucks and other emergency fire equipment are not considered to be commercial motor vehicles under this policy.
- **“Confirmation (or Confirmatory) Test”** for alcohol testing means a second test, following a positive non-evidential (e.g., saliva) screening test or a breath alcohol screening test with the result of .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. § 40.21(a). Marijuana, amphetamines, opiates (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. § 40.21(a).
- **“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.”
- **“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 that 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 and/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:
  1. 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;
  2. 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;
  3. All time spent at the driving controls of a commercial motor vehicle in operation;
  4. 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);
  5. 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
  6. 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, means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his 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 from 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. § 382.107.

### **XIII. Approval of Policy**

This policy shall be formally approved and adopted by the City Council.

**CERTIFICATE OF RECEIPT**

This policy, as distributed to drivers, contains two copies of this page. Every driver should keep the first page intact for his or her records. In addition, every driver should sign and complete the second page for the City's records.

**I certify that I have received the City Policy on Alcohol and Controlled Substance for Drivers in accordance with 49 C.F.R. § 382.601, which requires the City to provide educational materials that explain the requirements of federal law and the City's policies and procedures with respect to meeting these requirements. I acknowledge that I am responsible for reading, understanding, and complying with all Department of Transportation ("DOT") regulations and City policies regarding alcohol and controlled substance use and testing, and that I must abide by these regulations and policies as a condition of my employment. I understand that, because changes in applicable law and the City's practices and procedures may occur from time to time, terms of the City's policy may change without prior notice, and that nothing in this policy is intended to be a contract, promise, or representation of any specific term or condition of employment except to the extent required by law. I further understand that the City and its agents may:**

- administer to me an examination which may include tests for alcohol and controlled substance, including non-evidential alcohol screening (e.g., saliva screening), breath alcohol testing, and urine controlled testing,
- disclose results of alcohol or controlled substance testing and related information to a testing laboratory, the City's Medical Review Officer, a Substance Abuse Professional, and the DOT,
- use the results of alcohol and controlled substance testing, as well as other relevant evidence, in determining whether to hire me as a driver, discipline or discharge me, or retain me as a driver of the City, and
- discipline me if at any time I report for duty or perform safety-sensitive functions while under the influence of alcohol or controlled substance, refuse to submit to a required alcohol or controlled substance test, test positive for alcohol or controlled substance, or otherwise violate DOT regulations, this policy, or other policies regarding the use of alcohol or controlled substance adopted by the City.

**I have read this certification carefully and have been given an opportunity to ask questions about it before providing my signature below.**

\_\_\_\_\_  
Driver's Signature

\_\_\_\_\_  
Supervisor's Signature

\_\_\_\_\_  
Driver's Name (print)

\_\_\_\_\_  
Supervisor's Name (print)

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Date (month/day/year)

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- use the results of alcohol and controlled substance testing, as well as other relevant evidence, in determining whether to hire me as a driver, discipline or discharge me, or retain me as a driver of the City, and
- discipline me if at any time I report for duty or perform safety-sensitive functions while under the influence of alcohol or controlled substance, refuse to submit to a required alcohol or controlled substance test, test positive for alcohol or controlled substance, or otherwise violate DOT regulations, this policy, or other policies regarding the use of alcohol or controlled substance adopted by the City.

**I have read this certification carefully and have been given an opportunity to ask questions about it before providing my signature below.**

\_\_\_\_\_  
Driver's Signature

\_\_\_\_\_  
Supervisor's Signature

\_\_\_\_\_  
Driver's Name (print)

\_\_\_\_\_  
Supervisor's Name (print)

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Date (month/day/year)

## **APPENDIX A**

### **PARTICIPATION IN SUBSTANCE ABUSE REHABILITATION PROGRAM**

If the test of an employee, who is subject to the requirements of 49 CFR Part 382, results in a Medical Review Officer (MRO) verified positive test for the use of drugs, or an alcohol concentration of .02 or greater, the employee will be referred to an appropriate 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 .02, must immediately cease any substance abuse, must subject themselves to periodic unannounced testing for a period not to exceed sixty months, and must comply with all other conditions of the treatment and counseling program recommended by the SAP.

The employee's expenses for the substance abuse treatment and rehabilitation program not covered by the employee's health insurance provider will not be borne by the City.

An employee required to take time off in order to participate in a rehabilitation program will be permitted to use sick leave, vacation time, or unpaid leave during normal working hours.

Participation in substance abuse treatment and rehabilitation will not result in disciplinary action; however, non-covered duties will be assigned until the MRO or SAP 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.

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 verified by the MRO as positive, or results in an alcohol concentration of .02 or greater, the employee will be provided a second opportunity for rehabilitation at the employee's expense and shall be required to take vacation or unpaid leave during normal working hours.

An employee's third offense shall result in termination.

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.

CITY OF KIMBALL

ALCOHOL AND CONTROLLED SUBSTANCES TESTING  
CONSORTIUM FOR COMMERCIAL DRIVERS

**APPENDIX B**

**Employee Positions Subject to Drug and Alcohol Testing**

Name of Organization \_\_\_\_\_ City of Kimball \_\_\_\_\_

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 employees for each position. See Section 2 of the MMUA program for more information.

| Title or description of employee position | Number of Employees |
|---|---------------------|
| Public Works Department                   | 2                   |
|   |                     |
|   |                     |
|   |                     |
|   |                     |
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