

APPENDIX A

DETAILED SUBSTANCE ABUSE POLICY

A.1 – Purpose

The City of Bend is subject to several United States Department of Transportation (DOT) laws and regulations, including but not limited to:

- Omnibus Transportation Employee Testing Act of 1991
- The Drug-Free Workplace Act of 1988
- Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40 as amended)
- Prevention of Alcohol Misuse and Drug Use in Transit (49 CFR part 655)

This policy incorporates these requirements and City policy and, where the rules and regulations differ, adopts the more stringent policy.

All provisions, except those marked with (*), are adopted to comply with the requirements of 49 CFR Part 655 or Part 40. Provisions marked with (*) are adopted under the City of Bend's charter authority.

A.2 – Policy Statement

The City of Bend believes our employees are our most valuable resource and is dedicated to providing a safe working environment. This policy is intended to:

- Assure that employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthy manner;
- Create a workplace environment free from the adverse effects of drug abuse and alcohol misuse;
- Encourage employees to seek professional assistance anytime personal problems, including alcohol or drug dependency, adversely affect their ability to perform assigned duties; and,
- Fully comply with all federal and state laws and regulations including requirements of the Federal Motor Carrier Safety Administration (FMCSA) and the Federal Transit Administration (FTA)

Purpose of Employee Drug and Alcohol Testing

This policy provides a uniform procedure concerning the testing of employees or applicants for employment to detect individuals having drugs in their system. This policy also provides a uniform procedure concerning the testing of employees to detect individuals having alcohol in their system. The purpose of such testing is to provide employees, and the general public, work and service environments free from the effects of drug and alcohol abuse. The City of Bend is committed to providing a safe work place for its employees that is free of the effects of substance abuse. Since the City of Bend is involved in public service, the community depends on careful attention by all employees. Such attention cannot be affected by the use of drugs and/or alcohol. The use of any drug, including

alcohol, can interfere with the safe and efficient functioning of the City's personnel. Therefore, drug or alcohol abuse is a matter of City concern and will be dealt with in an appropriate manner.

A.3 – General Information

This policy applies to all applicants for positions and employees who perform one or more of the following safety-sensitive functions:

- Operation of a City revenue service vehicle (whether or not the vehicle is in revenue service);
- Dispatch and maintenance of a revenue service vehicle or equipment used in revenue service; or
- Operation of a commercial vehicle, which is defined as a vehicle used to transport passengers or property where the vehicle:
 - has a gross combination weight of at least 26,001 pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
 - has a gross vehicle weight of at least 26,001 pounds;
 - is designed to transport 16 or more passengers, including the driver; or
 - is used to transport hazardous materials as defined in the Hazardous Materials Transportation Act.

Certain operators of commercial vehicles have been granted operational waivers per the Omnibus Transportation Employee Testing Act of 1991; for example, operators of medical transport vehicles and fire apparatus. Employees and applicants whose job functions meet the above criteria and are not specifically exempted are considered "covered employees" for the purposes of this policy. Supervisors are considered "covered employees" if they may be called on to perform the above listed safety-sensitive functions. A list of positions which currently include these functions can be found in Appendix A of this section. These positions are considered "safety-sensitive" as used in this policy.

Conditions of Employment

Participation in City of Bend Drug and Alcohol Testing program as detailed in this policy is a requirement of safety-sensitive employees and, therefore, is a condition of employment for all employees covered by this policy.

Prohibited Substances: Illegally Used Controlled Substances or Drugs

Any illegal drug or substance identified in Schedules I through V, Section 202 of the Controlled Substance Act (21 U.S.C. 812), as further defined by 21 CFR 1300.11 through 1300.15. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine. Illegal use includes the use of any illegal drug previously listed, misuse of legally prescribed drugs,

and use of illegally obtained prescription drugs. The use of the above drugs is prohibited at any time. Therefore, employees may be tested any time while on duty.

Medical Marijuana

Marijuana is a Class I controlled substance; its use is illegal under federal law, although Oregon law (ORS 475.300 to 475.346) exempts from criminal prosecution in state court those individuals who obtain a “registry identification card” from the Oregon Department of Human Services. Possession of a “registry identification card” will not be accepted as an explanation for a positive test.

Prescription Drugs

Employees who are taking prescription drugs that may affect the performance of their job duties must report such usage to their immediate supervisor before beginning their workday. Use of such drugs on the job may be allowable. The decision, once informed by the employee, as to whether or not the employee works their assigned duties shall be the responsibility of the supervisor. Clearance from the employee’s physician may be required if there is a question regarding an employee’s ability to safely perform assigned duties.

Information and documentation regarding this section shall be maintained in the employee’s medical file by Human Resources in accordance with medical confidentiality and privacy regulations. All employees shall maintain the confidential nature of this information.

Alcohol

The use of beverages containing alcohol or other substances containing alcohol, including medication, mouthwash, food, candy, or other substance such that alcohol could be present in the body while performing City business, is prohibited.

Prohibited Behavior

Covered employees may not be under the influence of or in possession of controlled substances or drugs during assigned work hours, while on duty or representing the City, in uniform, or on City business. Covered employees may not be under the influence of alcohol during assigned work hours, while on duty or representing the City, in uniform, or on City business.* The following conduct is prohibited and may result in discipline, up to and including termination:

- Covered employees shall not report for duty or remain on duty while having an alcohol concentration of 0.02 or greater.
- Covered employees shall not consume alcohol while performing their safety-sensitive job functions.
- Covered employees shall not consume alcohol within four hours of reporting for work.

- The use of alcohol by covered employees within eight hours following an accident or before undergoing a post-accident alcohol test, whichever comes first, is prohibited.
- Reporting for duty, remaining on duty, or performing safety-sensitive job duties after having tested positive for a controlled substance is prohibited.
- Failure of a covered employee to report use of over-the-counter or prescribed medications that may affect the performance of job duties to his/her supervisor before start of the workday is prohibited.
- Refusal by a covered employee to submit immediately to a drug or alcohol test (reasonable suspicion, post-accident, and random) when directed is prohibited.

A.4 – Administration

Circumstances of Drug and Alcohol Testing

The City of Bend, in compliance with the testing regulations set forth under the DOT, shall conduct drug and/or alcohol testing at: pre-employment, post-accident, reasonable suspicion, random, return-to-duty, and follow-up situations.

Pre-employment Testing

All applicants for positions covered by this policy shall undergo urine drug testing following a conditional offer of employment or conditional offer to transfer into a safety-sensitive position. Receipt of a negative drug test result and a signed statement of release-consent from the prior two years of DOT-regulated employment (from the date of application or transfer) are required prior to start of work in a safety sensitive function.

Covered employees who have been off duty for more than 90 calendar days for any reason and have been out of the random pool must successfully pass a pre-employment drug test prior to the performance of a safety-sensitive function.

Post-accident Testing

Alcohol and drug testing is conducted after accidents on covered employees if:

- The accident results in a fatality, and the employee was performing safety-sensitive functions with respect to the vehicle;
- A person requires immediate medical treatment away from the scene;
- The driver receives a post-accident traffic citation; or
- A vehicle is towed from the scene.

Any other covered employee whose performance could have contributed to the accident, as determined by the City using the best information available at the time of the accident, will be given a drug and alcohol test.*

Covered employees will be tested using appropriate federal Alcohol Testing Forms (ATF) and federal drug testing Custody and Control Forms (CCF).

Post-Accident Alcohol Test Must Be Conducted As Follows:

- Every effort will be made to administer an alcohol test within two hours of the accident. If the test is not administered within two hours, the reason for the delay must be documented.
- If an alcohol test is not administered within eight hours following the accident, attempts to administer an alcohol test will cease and reasons the test was not administered within the eight hours will be documented.
- The regulations do not permit a waiver of the employer's obligation to test an employee after an accident, nor do they allow an employer to use the results of an alcohol test done by hospital personnel for treatment of an injury.
- The results of a breath or blood test for the use of alcohol, conducted by federal, state, or local officials having independent authority for the test, shall be considered to meet the requirements of this section.
- The involved employee must refrain from the consumption of alcohol until the test is completed or for at least eight hours, whichever is shorter.
- Every effort must be made to complete the alcohol test before performing the drug test collection.

Post-Accident Controlled Substance Tests Must Be Conducted As Follows:

- Every effort shall be made to administer a controlled substance test within 32 hours of an accident. If a test is not administered within 32 hours following the accident, attempts to administer a controlled substance test will cease, and the reasons the test was not administered within the 32 hours will be documented.
- The regulations do not permit a waiver of the employer's obligation to test an employee after an accident nor do they allow an employer to use the results of a controlled substance test done by hospital personnel for treatment of an injury.
- The results of a urine test for the use of controlled substances, conducted by federal, state, or local officials having independent authority for the test, shall be considered to meet the requirements of this section.

A covered employee who is subject to post-accident testing shall remain readily available for testing or will be deemed to have refused to submit to testing.

These testing requirements shall not delay necessary medical attention for injured persons following an accident or prohibit the covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

Reasonable Suspicion

All covered employees are subject to reasonable suspicion testing. A reasonable suspicion referral for testing will be made on the basis of documented objective facts and circumstances that are consistent with the short-term effects of

substance abuse. Testing for alcohol must be conducted just preceding, during, or just after the performance of safety-sensitive functions. Testing for drugs may be conducted at any time while on duty performing safety-sensitive functions. Physical signs and symptoms consistent with prohibited substance use are considered reasonable cause for DOT testing. Covered employees sent for reasonable suspicion testing based on the above will be tested using appropriate federal ATF and CCF forms.

Reasonable suspicion referrals must be made by two or more supervisors trained to detect the signs and symptoms of drug and alcohol use who reasonably conclude that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited abuse or misuse. These observations are independent of each other and based on the appearance, behavior, speech or body odor of the covered employee. The referring supervisors will document their observations, in writing, leading to the referral for testing. This documentation will become part of the confidential employee medical file. Some examples of symptoms include: slurred speech, uneven gait, inability to focus, dilated pupils, smell of alcohol or marijuana, excessive and/or unexplained workplace absences, negative performance patterns, etc. If referred testing is not administered within two hours of the referral, it must be documented as to the reason why. If an alcohol test is not administered within eight hours following the referral, cease attempts to administer an alcohol test and document the reasons the test was not administered within the eight hours.

If the employee is a CDL holder the DAPM/DER will report positive drug and/or alcohol test results to the state Department of Licensing/Motor Vehicles as required by state law.

Random Testing

All covered employees are subject to random drug and alcohol testing. A Random testing shall be conducted on covered employees for alcohol and drugs at or above the minimum annual rates established by the FMCSA. While the FTA and FMCSA have different minimum annual rates, the City has elected to use one random pool and test at the higher rate.

The selection of employees for random drug and alcohol testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employee Social Security numbers or other comparable identifying numbers. Each covered employee shall have an equal chance of being tested each time selections are made.

The number of employees to be tested is calculated on the total number of covered employees in the random pool. Random tests conducted under the regulations are unannounced until just prior to testing. The dates and times for administering random tests are spread reasonably throughout the calendar year

but at least quarterly. Each covered employee who is notified of selection for random testing must proceed to the test site immediately following notification.

Return-to-Duty Follow Up

A covered employee who has violated any of the provisions of this policy and is allowed to return to duty must successfully complete the SAP return-to-duty requirements in 49 CFR Part 40 and submit to a return-to-duty test before they may be returned to their position. The return-to-duty test may be subject to direct observation, and the result must indicate an alcohol concentration < 0.02 or a verified negative result on a drug test. The type of test administered is based upon the follow-up testing plan developed by the substance abuse professional (SAP). The SAP must direct at least 6 follow-up tests in the first 12 months after the employee returns to safety-sensitive duties.

Controlled Substance Testing Procedure

For all tests, a positive dilute result will be treated as a verified positive.*

A negative dilute result for any test will require the employee to undergo another test within 24 hours of the reported result.* This test will normally not be collected under a direct observation. If directed by the Medical Review Officer (MRO) because the sample was highly diluted, the employee will be required to undergo another test immediately under direct observation.

If the applicant or employee is a CDL holder, the Drug and Alcohol Program Manager (DAPM) or the Designated Employer Representative (DER) will report positive drug and alcohol test results to the state Department of Licensing/Motor Vehicles as required by state law.*

Substances to be Included in Drug Testing

Alcohol (Ethanol), amphetamines and methamphetamine, cannabinoids (marijuana), cocaine, opiates, phencyclidine (PCP), and their metabolites will be included in testing.

How the City Will Test (Drug testing Procedures)

The City shall identify and select only qualified facilities certified by DHHS/NIDA that can demonstrate experience and capability of quality control, documentation, chain of custody, technical expertise, and demonstrated proficiency in urine, blood, and breath analysis. Samples to be tested shall be obtained at facilities agreed upon by applicable bargaining unit(s) and the City. Appointments for urine collection for drug screens will be coordinated by the City of Bend Human Resources Department. The specimens will be collected at facilities that optimize confidentiality and observe DOT collection procedures. The collection facility must adhere to the collection provisions set forth in 49 CFR Part 40, as amended. A strict chain of custody will be maintained on the specimen as described in the DOT guidelines. Record keeping and reporting of all drug

testing and results shall be in strict accordance with federal guidelines to protect the confidentiality of the employees.

If there is concern about an individual's ability to function safely, that individual will be provided transportation to his/her home after completion of the drug and/or alcohol testing. Supervisors will always transport employees to the collection site for reasonable suspicion or post-accident testing.*

Drug Testing Cutoff Levels

Initial Test - The initial test shall use an immunoassay that meets the requirements of the Food and Drug Administration for commercial distribution. The most current Substance Abuse and Mental Health Services Administration (SAMHSA) cutoff levels shall be used when screening specimens to determine whether they are negative for these drugs. Current cutoff levels:

INITIAL TEST CUTOFF LEVELS (ng/ml)	
Marijuana Metabolites (cannabinoids)	50
Cocaine Metabolites	300
Opiate Metabolites	2,000
Phencyclidine	25
Amphetamines	1,000

Confirmation Test - All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques using the most current SAMHSA cutoff levels. The current cutoff levels are:

CONFIRMATORY TEST CUTOFF LEVELS (ng/ml)	
Marijuana Metabolite²	15
Cocaine Metabolite³	150
Opiates: Morphine	2,000
6-Acetylmorphine	10
Codeine	2,000
Phencyclidine :	25
Amphetamines:	
Amphetamine	
Methamphetamine⁴	500

These cutoff levels are subject to change by the DOT as advances in technology or other considerations warrant.

² Delta-9 tetrahydrocannabinol-9-carboxylic acid.

³ Benzoylcegonine.

³ Specimen must also contain amphetamine at a concentration equal to or greater than 200 ng/ml.

Split Sample Testing

The employee may request, within 72 hours of notification of a positive test by the MRO, that the split sample be tested at a separate certified laboratory. This request must be made verbally or in writing to the MRO. The results of the split sample test shall be the final test results that are reported to the employer by the MRO.

Alcohol Testing Procedures

Alcohol testing will be conducted without undue delay using evidential and non-evidential breath testing devices in accordance with 49 CFR Part 40. The alcohol testing will be conducted at a site that optimizes confidentiality. The collection site must adhere to the collection provisions set forth in 49 CFR Part 40.

Alcohol breath testing will be performed in the following manner in accordance with 49 CFR Part 40:

- Screening Test: The initial test shall be done in accordance with 49 CFR Part 40. If the initial test results are less than 0.02 alcohol concentration, the results are negative and will be reported by the Blood Alcohol Technician (BAT) as such. If the initial test results are 0.02 or greater, a confirmatory test must be conducted.
- Confirmation Test: The confirmatory test must be conducted on an evidential breath tester (EBT) in accordance with 49 CFR Part 40. Before the confirmatory test may be given, a minimum of 15 minutes and maximum of 30 minutes must have passed since the initial test was performed. During this period, the employee should avoid any actions that could increase mouth alcohol. The 15-30 minute wait period is to ensure that the presence of mouth alcohol does not artificially raise the test result.

Only the results of the confirmatory test shall be considered, irrespective of the results on the initial test. If the results of the initial and confirmatory tests are not identical, the confirmation test result is deemed to be the final test result.

If the result of the confirmatory test shows less than 0.02 alcohol concentration, a negative result shall be reported by the BAT.

If the results of the confirmatory test are 0.02 or greater but less than 0.04 alcohol concentration, the test is non-negative.* Employees are prohibited from performing safety-sensitive duties with a blood alcohol content (BAC) of 0.02 or greater.

If the results of the confirmatory test show an alcohol concentration of 0.04 or greater, the test is positive.

If there is concern about an individual's ability to function safely, the individual will be provided transportation to his/her home after completion of the testing. Supervisors will always transport employees to the collection site for reasonable suspicion and post-accident testing.*

Consequences of a Positive Test, Refusal to Test, or a Non-Negative Test Result

An alcohol concentration of 0.02 or greater or positive drug test is a violation of City policy.* An alcohol concentration of 0.04 or greater, or positive drug test result is a violation of DOT regulations.

An employee, who refuses to submit to a drug and/or alcohol test, will be treated as having a positive result for the test.

Employees who have a verified positive drug test result, or a BAC of 0.04 or greater on a DOT test, will be immediately removed from safety-sensitive duties and be provided with information on where to receive assistance for evaluation and counseling from a SAP.

Any employee who violates this policy is subject to discipline, up to and including termination. An applicant for employment who fails a pre-employment drug and/or alcohol test shall not be eligible for hire until 12 months following the date of the failed test.*

Behavior that Constitutes a Refusal to Test:

Employee behavior that constitutes a refusal to test includes, but is not limited to, the following:

- Failure to appear for any test within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer*;
- Failure to remain at the testing site until the testing process is complete*;
- Failure to provide a urine specimen for any drug test required by DOT regulations*;
- In the case of a directly observed or monitored collection in a drug test, failure to permit the observation or monitoring of the provision of a specimen;
- Failure to provide a sufficient amount of breath or urine when directed; and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- Failure or declination to take an additional drug test as directed by the employer or collector;
- Failure to undergo a medical examination or evaluation as directed by the MRO as part of the verification process, or as directed by the DER;
- Failure to cooperate with any part of the testing process (e.g., refusing to empty pockets when directed by the collector, behaving in a confrontational

way that disrupts the collection process, failure to wash hands after being directed to do so by the collector);

- For an observed collection, failure to follow the observer's instructions to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine any type of prosthetic or other device that could be used to interfere with the collection process.
- Possessing or wearing a prosthetic or other device that could be used to interfere with the collection process; or,
- Admitting to the collector or MRO that the specimen was adulterated or substituted.

* For pre-employment tests, failure to appear or leaving prior to starting the collection process is not a refusal under federal regulations (but is a violation of City policy).

Test Results Reporting, Recordkeeping, and Confidentiality

Retention of Records

The City shall maintain all alcohol and controlled substance testing information, including test results and other appropriate records, in a secure manner to prevent the disclosure of such information to unauthorized personnel.

The DAPM/DER shall maintain a secured file system that will contain the alcohol and controlled substance testing records. Files shall be maintained as confidential. Employee files shall be handled on a strict "need-to-know" basis.

The following records must be maintained for a minimum of five years:

- Records of alcohol test results with results indicating an alcohol concentration of 0.02 or greater.
- Records of verified positive controlled substance test results.
- Documents sent by the Medical Review Officer to the employer.
- Documentation of refusal to take a required alcohol or controlled substance test (including substituted or adulterated drug test results).
- A copy of each annual summary report.
- SAP reports.
- Follow-up test results and schedules.

The records obtained from previous employers must be maintained for a minimum of three years (employee drug and alcohol test results).

The following records must be maintained for a minimum of two years:

- Collection log books, if used.
- Documents relating to the random selection process.
- Documentation of breath alcohol technician training.

- Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.
- Documents generated in connection with decisions on post-accident tests.
- Documents verifying existence of a medical explanation for a covered employee's inability to provide adequate breath/urine for testing.
- Materials on alcohol misuse and controlled substance abuse awareness, including a copy of the Employer's policy on alcohol misuse and controlled substance abuse.
- Documentation of training provided to supervisors for the purpose of qualifying supervisors to make reasonable suspicion determinations concerning the need for alcohol or controlled substance testing.

Records of negative and cancelled drug test results and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one year:

- The employer's copy of the alcohol test form, including the results of the test.
- Documents related to the refusal of any covered employee to submit to an alcohol test required by this part.
- Documents presented by a covered employee to dispute the result of an alcohol test administered under this part.

Location of Records

All records shall be maintained in a secure location with controlled access and shall be made available for inspection at the City's Human Resources office after a request has been made by an authorized DOT representative. Any records held by the testing facility will be available for inspection at the testing facility after a request has been made by an authorized DOT representative.

Access to Facilities and Records

- Except as provided by law or expressly authorized by DOT regulations, the City shall not release covered employee information unless directed by the employee's specific, written consent authorizing the information release.
- Upon written request to the program manager, a covered employee may obtain copies of any records pertaining to the employee's alcohol or controlled substance tests.
- The City shall permit access to all facilities and records related to controlled substance and alcohol testing when requested by DOT authorized personnel or any state or local officials with regulatory authority.
- Records shall be made available to a subsequent employer upon receipt of a covered employee's written request.

Medical Review Officer (MRO) Notifications

Initial reporting of verified controlled substance testing by the Medical Review Officer to the employer will be accomplished using any communication device (i.e., telephone, secured fax, computer download).

A written notification of negative test results from the MRO to the employer, its agent or Third Party Administrator (TPA) will be provided to the employer within two business days of completion of the MRO's review; and, for all verified positive test results, results requiring an immediate collection under direct observation, adulterated or substituted specimen results, and other refusals to test, shall be provided on the same day or the next business day for all. The written report shall include the following information:

- Specimen ID number from the CCF and the donor SSN or employee ID number.
- Full name, as indicated on the CCF, of the individual tested.
- Type of test, if indicated on the CCF.
- Date of the test specimen collection.
- Date Copy 2 of the CCF was received.
- Name of the Medical Review Officer and the date the result was verified by the MRO.
- Verified results of a controlled substance test and the identity of the substance(s) that was/were verified positive. For cancelled tests, the reason for the cancellation; and for refusals to test, the reason for the refusal determination.
- As an exception to the reporting requirements above, the MRO may report negative results using an electronic data file.

Medical Review Officer (MRO) Record Retention

The MRO shall maintain all records related to verified positive results for a period of five years.

The MRO shall maintain all dated records and notifications (identified by individual) for a period of one year for negatives and canceled controlled substances test results.

The MRO must warn an employee who has a confirmed positive, adulterated, substituted or invalid test that they are required to provide to third parties drug test result information and medical information affecting the performance of safety-sensitive duties that the employee gives them in the verification process without the employee's consent as required in 49 CFR 40.327. This warning must be given to the employee before obtaining any medical information as part the verification process. Medical information includes information on medications or other substances affecting the performance of safety-sensitive duties that the employee reports using or medical conditions the employee reports having. The person to whom this information may be provided includes any federal or state agency as required by law.

Release of Test Information

Except as required by law or expressly authorized by the employee, as authorized in a signed statement of release, the City shall not release information that is contained in records required to be maintained under DOT regulations.

A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of drugs and/or alcohol, including any records pertaining to his/her drug and/or alcohol tests. The City shall promptly provide the records requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.

The City shall permit access to all facilities utilized in complying with the requirements of this part to the DOT, any DOT agency with regulatory authority over the employer or any of its covered employees.

The City shall make available copies of all results for employer alcohol/controlled substances testing conducted under this part and any other information pertaining to the employer's prohibited drug use and alcohol misuse program, when requested by DOT or any DOT agency with regulatory authority over the employer or covered employee.

When requested by the National Transportation Safety Board (NTSB) as part of an accident investigation, the City shall disclose information related to the employer's administration of a post-accident test administered following the accident under investigation.

The City may release information pertaining to an employee's drug or alcohol test, without the employee's consent, in certain legal proceedings, to include: lawsuit, grievance, or administrative proceeding brought by, or on behalf of, an employee and resulting from a positive DOT drug or alcohol test or refusal to test (including, but not limited to adulterated or substituted test results). These proceedings also include a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information sought is relevant to the case and issues an order directing the employer to produce the information. Information may also be disclosed to a decision-maker in a proceeding only with a binding stipulation that the decision-maker to whom it is released will make it available only to parties to the proceeding. **The employer must immediately notify the employee in writing of any information released based on this section.**

The City shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only with the employee's express written consent.

Voluntary Rehabilitation

All regular City of Bend employees are eligible to participate in the City's Employee Assistance Program (EAP), which affords assistance with alcohol and drug problems and provides other types of counseling. An employee who feels they have developed an addiction to, dependence upon, or problem with alcohol and/or drugs, is encouraged to seek assistance.

An employee who self-discloses and voluntarily submits to alcohol and/or drug rehabilitation may be returned to duty provided they meet all the conditions and requirements for "return-to-duty/follow-up" provided in this policy. Voluntary disclosure must occur prior to selection for any DOT- mandated testing and will not have any impact on prior or pending disciplinary actions.

Self-Disclosure–Voluntary Rehabilitation

An employee self-disclosing an issue with alcohol and/or drugs shall be:

- Immediately removed from a safety-sensitive position.
- Immediately referred to Designated Employer Representative (DER).
- Placed on leave (pay dependent upon accrued time off available).
- Referred to SAMHSA certified Substance Abuse Professional (SAP) via the City EAP. Employee is responsible for treatment expenses not otherwise covered.
- (Upon receipt of the written recommendations from the SAP) either moved into a non-safety-sensitive position or placed on a leave, in accordance with applicable City policies and the association contract, while undergoing treatment. The maximum time limit for the leave of absence or temporary reassignment shall not exceed 120 days.
- (Upon notification from the SAP) eligible to return to a safety-sensitive position) required to undergo a return-to-work-test for alcohol and/or drugs.
- (Upon notification that the return to work testing is negative, and in compliance with the association agreement) returned to the safety-sensitive position as soon as scheduling arrangements can be made.

Training

Each covered employee hired or transferred into a safety-sensitive position will be provided a copy of this policy and any related procedures or additional information deemed relevant.

The policy and informational materials provided to covered employees will also be made available to representatives of employee associations when requested.

Covered Employee Training

Training provided to covered employees will include 60 minutes covering the effects of controlled substance use on an individual's health, work, and personal life; signs and symptoms of a controlled substance problem (the employee's or

Co-worker's); and available methods of intervening when an alcohol problem is suspected.

Supervisor Training

All supervisors and personnel designated to determine whether reasonable suspicion exists and are required to send a covered employee in for testing for alcohol misuse and/or controlled substances use shall receive at least 60 minutes of training on alcohol misuse and receive at least 60 minutes of training on controlled substances use.

Training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances and available methods of intervening when an alcohol or a controlled substance problem is suspected, including confrontation and referral.

Other Conditions for Hire or Transfer to a Safety-Sensitive Position

The City of Bend is required to receive written consent from applicants and employees transferring to safety-sensitive positions requesting information from all other DOT-related employers for whom the applicant had worked within the previous two years. If the previous employer(s) do not have the requested drug testing information, the information must be sought from the applicant/employee. The City must not allow the applicant/transferee to perform safety-sensitive duties for more than 30 days unless receipt, or a documented effort to receive the information, has been completed. If the City finds that an applicant/transferee has a violation on his/her record and has not completed the return-to-duty process, the applicant/transferee must immediately stop performing the safety-sensitive functions, unless information is obtained on the applicant's/employee's full compliance with the return-to-duty requirements: SAP assessment, successful treatment, and negative return-to-duty and follow-up tests. Applicants/transferees must also disclose whether they have failed or refused a DOT drug or alcohol pre-employment test within the previous two years from employers who did not hire them. Refusal to provide consent will disqualify the applicant or employee from performing safety-sensitive functions.

Condition of Employment

Participation in the City of Bend Drug and Alcohol Testing program, as detailed in this policy, is a requirement of safety-sensitive employees and, therefore, is a condition of employment for all employees covered by this policy.

Employee Rights

The employee shall have the right to an association or union representative, up to and including the time the sample is given. However, this provision shall not cause an unreasonable delay in testing. Nothing herein shall restrict the employee's right to representation under general law.

If at any point the results of the laboratory testing procedures specified in this policy are negative, all further testing for the specific case at hand shall be discontinued. The employee will be provided with a copy of the results, and all documentation on the testing will be maintained in a secure place, but not in the regular official personnel file. All test results will be kept confidential by the City.

Upon request, an employee who tests positive shall be given access to all written documentation available from the testing laboratory that verifies the accuracy of the testing equipment used in the testing process, the chain of custody of the specimen, and the accuracy rate of the laboratory.

If the results of a reasonable suspicion test are negative, the employee shall have the right to grieve in accordance with applicable grievance procedures. If the results of the test(s) are positive, neither the association/union nor the employee shall have the right to challenge whether reasonable suspicion existed for the ordering of the test.

Changes or Modifications

The City of Bend reserves the right to change the provisions of this testing procedure. All covered personnel and labor associations will be notified prior to the effective date of the changes. Changes mandated by federal or state law will not require advance notification.*

Dissemination of Policy

This policy will be published and distributed to each covered employee within 30 days of adoption, and employees will be asked to acknowledge that they have received, read, understood, and agreed to abide by such policy. A New employee will receive a copy of the policy during the employee's orientation.

Contact Person

The contact person available to answer questions about the City of Bend Drug and Alcohol program is the Drug and Alcohol Program Manager, 541-388-5502.

A.5 – Definitions

Accident - An occurrence associated with the operation of a motor vehicle, if as a result: an individual dies, an individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident, the driver receives a post-accident traffic citation, or one or more of the vehicles involved incurs disabling damage as a result of the occurrence and is transported away from the scene by a tow truck or another vehicle.

Alcohol - The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl or isopropyl alcohol. References to use or possession of any beverage, mixture or preparation containing ethyl alcohol (including any medication containing alcohol).

Alcohol Test - A test conducted by a Breath Alcohol Technician (BAT), or other person approved by the DOT rules, using a Breath Testing Device to measure the amount of alcohol concentration in a volume of breath.

Alcohol Use - The consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

ATF–Alcohol Testing Form

BAC–Breath Alcohol Concentration - A measure of the amount of alcohol contained in a subject's blood. BAC is frequently calculated by measuring the amount of alcohol contained in a set volume of air exhaled from deep in the lungs.

(BAT) Breath Alcohol Technician-An individual trained to proficiency and certified in the use of an evidential breath testing device (EBT).

CDL-Commercial Driver's License

CanceledTest - A test that has a problem identified that cannot or has not been corrected or has been declared invalid by a Medical Review Officer (MRO). A canceled test is neither a positive or negative test.

CCF-Federal Drug Testing Custody and Control Form

Confirmation Test - For alcohol testing, a confirmation test is a second test following an initial screening test which confirms the initial results by providing a quantitative measure of alcohol concentration within the subject. Confirmation must be by an Evidential Breath Testing (EBT) device listed on the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List (CPL).

For drug testing, a confirmation test means a second analytical procedure to identify the presence and quantity of a specific drug metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. Gas Chromatography/Mass Spectrometry (GC/MS) is the authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.

Controlled Substance/Drugs - For purposes of this policy, controlled substances or drugs are cocaine, marijuana, opiates, amphetamines, and phencyclidine, and any other drugs as may be added by federal regulations at a later date.

Controlled Substance (Drug) Test - A method for determining the presence of controlled substances in a urine sample using a scientifically reliable method performed in accordance with procedures specified in 49 CFR Part 40.

C/TPA-Consortium/Third Party Administrator - A service agent who provides or coordinates one or more drug and/or alcohol testing services for DOT-regulated employers.

(DER) Designated Employer Representative - An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Part 40, as amended.

DAPM-Drug and Alcohol Program Manager

DHHS-United States Department of Health & Human Services

Direct Observation Drug Test - A process of collection where a same-sex observer must view the sample leaving the donor's body and entering the collection container. Prior to providing the sample, the donor must raise and/or lower clothing to allow the observer to verify no prosthetic or other devices intended to thwart the testing process.

DOT - United States Department of Transportation

Dilute - The sample contains more than the normal amount of water contained in human urine.

Employee - Any person employed by the City of Bend, including part-time and temporary employees; excluding workers provided through employment agencies and working under outsider vendor contracts.

EAP–Employee Assistance Program - Provided by the City to assist its employees in dealing with drug or alcohol dependency or other personal problems.

EBT-Evidential Breath Testing Device - A device approved by the NHTSA and placed on NHTSA's Conforming Products List, used for the determination of concentration of alcohol contained in the subject's blood.

FMCSA -United States Federal Motor Carrier Safety Administration

FTA- United States Federal Transit Administration

MRO–Medical Review Officer - A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results, who has knowledge of and clinical experience in substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's positive chemical test results, together with his/her medical history and any other relevant biomedical information. Only a MRO can certify a DOT drug test.

Monitor - Someone who must be the same gender as the donor in a monitored collection procedure, who can observe sounds or other indications of an attempt to tamper with the collection process. A monitor who is not also the collector, does not handle the urine specimen.

Non-negative Test Result- An alcohol breath test result between 0.02 and 0.039 BAC. A BAC < 0.04 is not a violation of FTA or FMCSA requirements, but is a violation of City policy.

Safety-Sensitive Function - Any of the following duties: operating a revenue service vehicle, including when not in revenue service (drivers and others required to operate revenue vehicles as part of their job duties); operating a non-revenue service vehicle when required to be operated by a holder of a CDL; controlling dispatch or movement of a revenue service vehicle (dispatchers or those who as part of their job duties fill in for a dispatcher); maintaining a revenue service vehicle or equipment used in revenue service (mechanics, service mechanics, service helpers). Note: A supervisor is considered to be safety-sensitive if he/she performs any of the above safety-sensitive functions as part of his/her job duties.

SAMHSA–Substance Abuse and Mental Health Services Administration - A part of the United States Department of Health and Human Services.

Screening Test (also known as initial test) - In alcohol testing, a screening test is a procedure to determine whether an employee may have a prohibited concentration of alcohol in his/her system. In drug testing, a screening test is an immunoassay screen (or other DHHS-approved test) to eliminate negative urine specimens from further consideration.

Service Agent - An individual other than the employer who provides 49 CFR Part 40 drug and alcohol related services to employers, to include: Collectors, BAT, laboratories, MROs, SAPs, and C/TPAs. The service agent may perform tasks needed by the employer to comply with DOT agency drug and alcohol regulations and is subject to the requirements and limitations of 49 CFR Part 40, as amended.

Split-Sample - An amount poured off from the original specimen and split into two separate containers. The split specimen may be tested when directed by the MRO to verify the original test results.

SAP-Substance Abuse Professional - A licensed physician, a licensed or certified psychologist, social worker, employee assistance professional, addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) or licensed marriage/family counselor, with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol-related disorders.

Validity Testing - Testing conducted by laboratories on specimens to detect test tampering.

Verified Negative (Drug Test Results) - A drug test chemical analysis result reviewed by a Medical Review Officer and determined not to be evidence of prohibited drug use.

Verified Positive (Drug Test Results) - A drug test chemical analysis result reviewed by a Medical Review Officer and determined to be evidence of prohibited drug use.

Addendum to Appendix A

Signs and Symptoms of Drug Use and Alcohol Misuse*

Marijuana and Hashish

It's possible to develop a psychological addiction to cannabis compounds, including tetrahydrocannabinol (THC) found in marijuana. People who have a marijuana addiction generally use the drug on a daily basis.

Signs of use and dependence can include:

- A heightened sense of visual, auditory and taste perception
- Poor memory
- Increased blood pressure and heart rate
- Red eyes
- Decreased coordination
- Difficulty concentrating
- Increased appetite
- Slowed reaction time
- Paranoid thinking

Amphetamines, Methamphetamines, Cocaine and Other Stimulants

This class of drugs includes amphetamines, methamphetamine and cocaine.

Signs of use and dependence can include:

- Euphoria
- Decreased appetite
- Rapid speech
- Irritability
- Restlessness
- Depression as the drug wears off
- Nasal congestion and damage to the mucous membrane of the nose in users who snort drugs
- Insomnia
- Weight loss
- Increased heart rate, blood pressure and temperature
- Paranoia

Methamphetamine, also known as "meth," is a particularly dangerous drug. It's highly addictive and causes a number of short-term and long-term health consequences.

Phencyclidine(PCP)

Signs of PCP use include:

- Hallucinations
- Euphoria
- Delusions
- Panic
- Loss of appetite
- Depression
- Aggressive, possibly violent behavior

Opiates(Narcotic painkillers)

Opiates are narcotic, painkilling drugs produced naturally from opium or made synthetically. This class of drugs includes heroin, morphine, codeine, methadone and oxycodone (OxyContin).

Signs of opiate use and dependence can include:

- Reduced sense of pain
- Sedation
- Depression
- Confusion
- Constipation
- Slowed breathing
- Needle marks (if injecting drugs)

Alcohol

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

Signs and symptoms of use:

- Dulled mental processes
- Lack of coordination
- Odor of alcohol on breath
- Possible constricted pupils
- Sleepy or stuporous condition
- Slowed reaction time
- Slurred speech

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

Health Effects: Chronic consumption of alcohol averages three servings per day of beer (12 ounces), whiskey (1 ounce), or wine (6 ounce glass), and over time may result in the following health hazards:

- Decreased sexual functioning
- Dependency
- Fatal liver diseases
- Increased cancers of the mouth, tongue, pharynx, esophagus, rectum, breast, and malignant melanoma
- Kidney disease
- Pancreatitis
- Spontaneous abortion and neonatal mortality
- Ulcers
- Birth defects (up to 54% of all birth defects are alcohol related)

Social Issues:

- Two-thirds of all homicides are committed by people who drink prior to a crime.
- 2% - 3% of the driving population is legally drunk at any one time. This rate is doubled at night and on weekends.
- Two-thirds of all Americans will be involved in an alcohol-related vehicle accident during their lifetimes.
- The rate of separation and divorce in families with alcohol dependency problems is seven times the average.
- 40% of family court cases are alcohol problem-related.
- Alcoholics are 15 times more likely to commit suicide than are other segments of the population.
- More than 60% of burns, 40% of falls, 69% of boating accidents, and 76% of private aircraft accidents are alcohol related.

Workplace Issues:

- It takes one-to-two hours for the average person (150 pounds) to process one serving of an alcoholic beverage from the body.
- Impairment in coordination and judgment can be objectively measured with as little as two drinks in the body.
- A person who is legally intoxicated is six times more likely to have an accident than a sober person.
- The legal intoxicated level for a person in Oregon is 0.08.