



In accordance with the Governor's current recommendations regarding COVID-19, this meeting will be held virtually. To attend, click on the following link:

https://us02web.zoom.us/webinar/register/WN_kGiFGMchTpu3lq1gVh3Y0w

The meeting passcode is 036771.

Online participants will be able to view presentation material and submit questions or comments.

You can also join by dialing in with your phone; call (669) 900-6833.

The meeting ID number is 881 3986 6961, and the meeting passcode is 036771.

AGENDA

11:30 a.m. STUDY SESSION – 10-Year Capital Plan Part A (Engineering Manager Brian Runyen and Capital & Special Projects Coordinator Andy Huffman)

12:15 p.m. BOARD MEETING (*Shall Begin at the Conclusion of the Study Session*)

1. Roll Call

2. Comments from the Audience

Comments will be limited to 4 minutes per individual, group, or organization; please state your name and organization (if applicable) when prompted via teleconference.

3. Consent Calendar

3.1 Approval or Correction of the Minutes of the Last Regular Meeting of February 16, 2022

3.2 Resolution No. 1801, A RESOLUTION Authorizing the Chair of the Board of Water Commissioners to Execute an Intergovernmental Agreement by and Between the Medford Water Commission and City of Medford, an Oregon Municipal Corporation, for Departmental Charges of the City of Medford

4. Items Removed from Consent Calendar

5. Intergovernmental Agreement for a Coordinated Water Rights Management and Water Sharing Plan

6. Resolution No. 1802, A RESOLUTION Approving Amendments to Section 9, Drug and Alcohol-Free Workplace Policy, of the Personnel Rules and Policies (Personnel Manual) for Employees of Medford Water Commission, Effective March 2, 2022

7. Management Reports

Management staff will be present and may provide information: Engineering Manager Brian Runyen, Water Meter & Controls Supervisor Ken Johnson, Water Maintenance Supervisor Lester McFall, Water Treatment/Quality Director Ben Klayman, Finance & Administration Director Tessa DeLine, Information Technology Manager Kris Stitt, Human Resources Manager Tanya Haakinson, and General Manager Brad Taylor.

8. Propositions and Remarks from the Commissioners

9. Adjourn

| DATES TO REMEMBER * | | | | | | |
|----------------------------|------------|------------------------|---------------------------------------|------------------------|-----------------|--|
| DATE | DAY | TYPE OF MEETING | STUDY SESSION TIME & TOPIC | REGULAR MEETING | LOCATION | |
| 03/16/22 | Wed | Board Meeting | 11:45am – Capital Planning Part B | 12:15 p.m. | TBD | |
| 04/06/22 | Wed | Board Meeting | 11:45am – TBD | 12:15 p.m. | TBD | |
| 04/20/22 | Wed | Board Meeting | 11:45am – CLAs, SDCs, & Fees | 12:15 p.m. | TBD | |

**Meeting dates, times, and locations are subject to change due to COVID-19 precautions and by order of Governor Brown.*



Memorandum

TO: Commissioners Bob Strosser, Michael Smith, John Dailey, Jason Anderson, and Daniel Bunn
FROM: Brad Taylor, General Manager
DATE: February 16, 2022
SUBJECT: Item 3.2 – Resolution 1801, Authorizing the General Manager to Execute an Intergovernmental Agreement with the City of Medford
OBJECTIVE: Board Approval

Issue

The current Intergovernmental Agreement (IGA) between Medford Water and City of Medford (City) for departmental charges of the City of Medford expired June 30, 2021.

Discussion

Medford Water is empowered with maintaining and operating the water system, including but not limited to, daily administration and billing of the water utility charges to City and others, and the City provides certain billable services to Medford Water pertaining to routine business operations in other areas of our administration. Both parties receive a benefit from sharing these costs.

The IGA allows for an annual adjustment of the costs based on the previous year's Consumer Price Index (CPI), which shall be the 12-month average (January through December) of West Cities as determined from the CPI, Pacific Cities and US City Averages for urban wage earners and clerical workers.

Exhibit A to the agreement, Annual Charges for City's Indirect Costs, outlines the allocation of the charges. Both parties perform a "math check" at the beginning of each fiscal year.

Medford Water will continue to staff recording functions, and lobbyist activities are done through League of Oregon Cities and the Oregon Water Utilities Council. This agreement shall be effective retroactive to the beginning of FY21-22 and forward through FY22-23.

Financial Impact

The adopted budget for FY21/22 has allocated funds for these billable services; the FY22-23 will allocate funds for these services as well.

Requested Board Action

Staff recommends approval of Resolution 1801, authorizing the Chair to execute an Intergovernmental Agreement with the City of Medford for departmental charges.

RESOLUTION NO. 1801

A RESOLUTION Authorizing the Chair of the Board of Water Commissioners to Execute an Intergovernmental Agreement by and Between the Medford Water Commission and City of Medford, an Oregon Municipal Corporation, for Departmental Charges of the City of Medford

WHEREAS, in accordance with and pursuant to the provisions of ORS Chapter 190, entitled "INTERGOVERNMENTAL COOPERATION", the City of Medford (City) and Medford Water Commission (Commission) are authorized to jointly provide for the performance of a function or activity in cooperation with a "unit of local government" that includes a commission or other governmental authority in Oregon; and

WHEREAS, the Commission, as per Medford Charter Section 19, is empowered with maintaining and operating the water system, including but not limited to, daily administration and billing of the water utility charges to City and others; and

WHEREAS the City provides certain billable services to the Commission pertaining to routine business operations in other areas of Commission administration; and

WHEREAS, the sharing of these costs is beneficial to both entities; and

WHEREAS, Commission and City staff have agreed to the content of the intergovernmental agreement (IGA);

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF WATER COMMISSIONERS OF THE CITY OF MEDFORD, OREGON, AS FOLLOWS:

That the Chair is hereby authorized to execute an IGA by and between the Commission and the City for Departmental Charges of the City as set forth in the Exhibit A, attached hereto and by reference made a part hereof.

PASSED at a regular meeting of the Board of Water Commissioners and signed by me in authentication thereof this 2nd day of March 2022.

ATTEST: _____
Yvette Finstad, Asst. Clerk of the Commission

Bob Strosser, Chair

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CITY OF MEDFORD AND MEDFORD WATER COMMISSION
FOR DEPARTMENTAL CHARGES OF THE CITY**

This Agreement, hereinafter referred to as "Agreement", is made and entered into this ____ day of _____, 2022, by and between the City of Medford ("City") and the Board of Water Commissioners of the Medford Water Commission ("Commission").

In accordance with and pursuant to the provisions of ORS Chapter 190, entitled "INTERGOVERNMENTAL COOPERATION", the City and Commission are authorized to jointly provide for the performance of a function or activity in cooperation with a "unit of local government" that includes a commission or other governmental authority in Oregon.

As a result of this Agreement, and pursuant to ORS 190.030, any unit of local government, consolidated department, intergovernmental entity or administrative officers designated herein to perform specified functions or activities is vested with all powers, rights and duties relating to those functions and activities that are vested by law in each separate party to the Agreement, its officers and agencies.

WHEREAS, the Commission, as per Medford Charter Section 19, is empowered with maintaining and operating the water system, including but not limited to, daily administration and billing of the water utility charges to City and others, providing water to the City, and maintaining and providing fire hydrants to the City for fire protection; and

WHEREAS, the Commission, as per Medford Charter Section 19, "It shall be the duty of the board to furnish water to the city of Medford for fire protection and other like public purposes," and the term "like public purposes is not expressly defined. For the duration of this particular Agreement, the parties understand "like public purposes" to refer to municipal functions, including Parks facilities that may charge admission for purposes of partial cost recovery, so long as under the totality of the circumstances the facility's operations maintain the primary character of a municipal service and not a for-profit venture. The parties understand that under the totality of the circumstances, Rogue Credit Union Community Complex would constitute a "like public purpose" but Harry & David Field would not.

WHEREAS, the City provides certain billable services to the Commission pertaining to routine business operations in other areas of Commission administration; and

WHEREAS, the sharing of these costs are beneficial to both entities;

NOW THEREFORE, the City and Commission agree as follows:

1. Indirect Costs. The Commission shall pay the City for services enumerated on Exhibit A (the "Indirect Costs"). The annual costs on Exhibit A were derived through the 2007-08 ("Base Year") end-of-fiscal year process and have been increased and compounded each fiscal year from the Base Year by the preceding calendar year's CPI (a 12-month average (January through December) of West Cities as determined from the "Consumer Price Indexes, Pacific Cities and U.S. City Averages," for Urban Wage Earners and Clerical Workers). The Indirect Costs shall be billed in twelve (12) monthly installments. Additionally, the Commission shall pay its share of

any extraordinary costs incurred by the Commission and related to the Indirect Costs. The City shall bill the Commission for

2. Direct Costs. In addition to Indirect Costs, the Commission shall pay to the City its share of the costs enumerated on Exhibit A (“Direct Costs”). The Commission shall remit payment for Direct Costs within 30 days of receipt of invoice.

3. City Water Bills. The City shall pay all invoiced water bills to the Commission.

4. Reimbursement Fee. The Commission shall pay to the City an annual reimbursement fee equal to the amount of water bills invoiced to the City the prior year in twelve equal monthly installments. For example, if during fiscal year 2019-2020, the total water bills invoiced from the Commission to the City is \$240,000.00, the Commission shall make twelve monthly payments to the City in the amount of \$20,000.00 in 2020-2021. Notwithstanding the foregoing, the water bills invoice to the City shall not be subject to the reimbursement fee: water bills serving Harry & David Field so long as the principal use of that field is functionally equivalent to a private business.

3) The City Chief Financial Officer and the Commission Finance and Administration Services Director shall deliver updated costs in July of every year, to the City Manager and Commission General Manager for approval and eventual inclusion in respective budgets. The update shall clarify the proposed costs for the coming fiscal year period starting July 1st but not change the basis of methodology for calculation unless mutually agreed upon by both parties.

By this Agreement, the City and Commission authorize the transfer of funds mentioned herein and authorize the City Manager and the Commission General Manager or their designees to commence the processes included herein.

This Agreement shall not become effective until all parties hereto have executed this Agreement. After execution, this Agreement will be effective, and retroactive if need be to July 1, 2021 and shall end June 30, 2023.

This Agreement may not be amended, changed, or modified in any way, except by written agreement signed by all parties hereto. Neither party shall assign or otherwise transfer its interest in this Agreement, except by written agreement signed by all parties hereto.

This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon. If any part of this Agreement is declared invalid, the remaining parts survive.

This Agreement and the exhibits attached and incorporated by reference herein contain the entire agreement between the parties hereto and supersede any and all prior express and/or implied statements, negotiations and/or agreements between the parties, either oral or written.

IN WITNESS WHEREOF, the parties hereby enter into this Agreement.

CITY OF MEDFORD

By: _____
Brian Sjothun
City Manager, City of Medford

Date: _____

MEDFORD WATER COMMISSION

By: _____
Bob Strosser
Chair, Board of Commissioners

Date: _____

MEDFORD WATER COMMISSION

ANNUAL CHARGES FOR CITY'S INDIRECT COSTS*

| City Costs | Commission Charge |
|----------------------------------|--------------------------|
| Computer Network | \$16,732 |
| Internet/Intranet Email | \$5,791 |
| Technical Service Desk Help | \$1,498 |
| Storage of Data | \$107 |
| Telephone System Maintenance | \$14,247 |
| Annex Landscaping | \$4,376 |
| Service Center Landscaping | \$2,651 |
| Annex Building Maint./Janitorial | \$37,348 |
| Service Center Janitorial | \$22,635 |

*These costs were originally based on the March 18, 2009 City of Medford Full Cost Allocation Plan by Mahoney Associates Consulting, LLC, using 2007-08 end-of-fiscal-year City of Medford data, with MWC historical clarifications and exclusion of reallocated administrative costs. Since then, the costs have been annually increased based on the preceding calendar year's CPI (a January through December 12-month as determined from the "Consumer Price Indexes, Pacific Cities and U.S. City Averages" for Urban Wage Earners and Clerical Workers.

MEDFORD WATER COMMISSION

CHARGES FOR CITY DIRECTCOSTS

| Category | % Share of Total Costs |
|--|-------------------------------|
| Monthly Share of Power Bill for Annex/Service Center | 33%/20% |
| Monthly Share of Natural Gas Bill for Annex/Service Center | 33%/20% |
| Monthly Share of Utility Bill for Annex/Service Center | 33%/20% |
| Monthly Share of 103B/109B Telephone Lines | 50% |
| Monthly Share of FO Communications Lines | 50% |
| Annual Share of RVCOG Bill | 18% |
| City Billable Costs e.g. audit/garage/shipping/etc. | 100% |

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CITY OF MEDFORD AND MEDFORD WATER COMMISSION
FOR DEPARTMENTAL CHARGES OF THE CITY**

This Agreement, hereinafter referred to as "Agreement", is made and entered into this ____ day of _____, 2021~~0~~, by and between the City of Medford ("City") and the Board of Water Commissioners of the Medford Water Commission ("Commission").

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In accordance with and pursuant to the provisions of ORS Chapter 190, entitled "INTERGOVERNMENTAL COOPERATION", the City and Commission are authorized to jointly provide for the performance of a function or activity in cooperation with a "unit of local government" that includes a commission or other governmental authority in Oregon.

As a result of this Agreement, and pursuant to ORS 190.030, any unit of local government, consolidated department, intergovernmental entity or administrative officers designated herein to perform specified functions or activities is vested with all powers, rights and duties relating to those functions and activities that are vested by law in each separate party to the Agreement, its officers and agencies.

WHEREAS, the Commission, as per Medford Charter Section 19, is empowered with maintaining and operating the water system, including but not limited to, daily administration and billing of the water utility charges to City and others, providing water to the City, and maintaining and providing fire hydrants to the City for fire protection; and

WHEREAS, the Commission, as per Medford Charter Section 19, "It shall be the duty of the board to furnish water to the city of Medford for fire protection and other like public purposes," and the term "like public purposes" is not expressly defined. For the duration of this particular Agreement, the parties understand "like public purposes" to refer to municipal functions, including Parks facilities that may charge admission for purposes of partial cost recovery, so long as under the totality of the circumstances the facility's operations maintain the primary character of a municipal service and not a for-profit venture. The parties understand that under the totality of the circumstances, Rogue Credit Union Community Complex would constitute a "like public purpose" but Harry & David Field would not.

WHEREAS, the City provides certain billable services to the Commission pertaining to routine business operations in other areas of Commission administration; and

WHEREAS, the sharing of these costs are beneficial to both entities;

NOW THEREFORE, the City and Commission agree as follows:

1. ~~Indirect Costs. The Commission shall pay the City for services enumerated on Exhibit A (the "Indirect Costs"). The annual costs on Exhibit A were derived through the 2007-08 ("Base Year") end-of-fiscal year process and have been~~1) The cost allocations of the indirect-billed services, pertaining to routine business operations billed by the City to the Commission, shall be based on agreed upon amounts of actual figures obtained through the 2007-08 end-of-fiscal year process, all as shown in exhibit B, and shall be increased and compounded each fiscal year from

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~~this Agreement date forward the Base Year~~ by the preceding calendar year's CPI ~~which shall be~~ (a 12-month average (January through December) of West Cities as determined from the "Consumer Price Indexes, Pacific Cities and U.S. City Averages," for Urban Wage Earners and Clerical Workers). ~~The Commission's annual indirect billed services pertaining to routine business operations~~ Indirect Costs shall be billed in twelve (12) monthly installments. ~~Additionally, the Commission shall pay its share of Any related~~ extraordinary costs incurred by the Commission and related to the Indirect Costs. ~~The City shall bill the Commission for incurred during this Agreement period above and beyond those included in the 2007-08 end-of-fiscal-year process may be brought up for joint discussion, unanimous decision, and mutual concurrence of payment share between the City and the Commission.~~

1. _____

2. _____ Direct Costs. In addition to Indirect Costs, the Commission shall pay to the City its share of the costs enumerated on Exhibit A ("Direct Costs"). The Commission shall remit payment for Direct Costs within 30 days of receipt of invoice.

3. _____ City Water Bills. The City shall pay all invoiced water bills to the Commission.

_____ Franchise Reimbursement Fee. The Commission shall pay to the City an annual franchise reimbursement fee equal to the amount of water bills invoiced to the City the prior year in twelve equal monthly installments. For example, if during fiscal year, ~~calendar or fiscal ????~~ year 2019-2020, the total water bills invoiced from the Commission to the City is \$240,000.00, the Commission shall make twelve monthly payments to the City in the amount of \$20,000.00 in 2020-2021. ~~Notwithstanding the foregoing, the following water bills invoiced to the City shall not be subject to the reimbursement fee: water bills incurred by a for-profit entity (except for water bills serving Harry & David Field), water bills incurred at a City owned facility for which admission is charged to the public, or water bills charged to City owned property that, due to the nature of its use, is subject to ad valorem real property taxation~~ Notwithstanding the foregoing, the water bills invoice to the City shall not be subject to the reimbursement fee: water bills serving Harry & David Field so long as the principal use of that field is functionally equivalent to a private business.

4. _____

2) The annual fiscal year fee billed the City to the Commission shall be in the amount of the City's annual water use billed through the City's individual utility bills as of the end of the preceding fiscal year. The fee shall be billed in twelve (12) monthly installments.

3) The City Chief Financial Officer and the Commission Finance and Administration Services Director shall deliver updated costs in ~~March~~ July of every year, to the City Manager and Commission General Manager for approval and eventual inclusion in respective budgets. The update shall clarify the proposed costs for the coming fiscal year period starting July 1st but not change the basis of methodology for calculation unless mutually agreed upon by both parties.

4) ~~Payments for billable services will be made or funds transferred within 30 days of receiving City's invoices.~~

By this Agreement, the City and Commission authorize the transfer of funds mentioned herein and authorize the City Manager and the Commission General Manager or their designees to commence the processes included herein.

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This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon. If any part of this Agreement is declared invalid, the remaining parts survive.

This Agreement and the exhibits attached and incorporated by reference herein contain the entire agreement between the parties hereto and supersede any and all prior express and/or implied statements, negotiations and/or agreements between the parties, either oral or written.

IN WITNESS WHEREOF, the parties hereby enter into this Agreement.

CITY OF MEDFORD

MEDFORD WATER COMMISSION

By: _____
Brian Sjothun
City Manager, City of Medford

By: _____
Daniel Bunn
Chair, Board of Commissioners

Date: _____

Date: _____

MEDFORD WATER COMMISSION

ANNUAL CHARGES FOR CITY'S INDIRECT COSTS*

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| Annual Share of RVCOG Bill | 18% |
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Memorandum

TO: Commissioners Bob Strosser, Michael Smith, John Dailey, Jason Anderson, and Daniel Bunn

FROM: Brad Taylor, General Manager

DATE: March 2, 2022

SUBJECT: Item 5.0

OBJECTIVE: Board motion of support to continue toward approval of an intergovernmental agreement (IGA) to implement Phase 1 of a Coordinated Water Rights Management and Water Sharing Plan)

Issue

In early 2020, Medford Water and the Cities of Talent, Ashland, Phoenix, Eagle Point, Central Point and Jacksonville (Partner Cities) completed a joint water rights strategy related to the water rights authorizing diversion at Medford Water's Duff Water Treatment Plant (WTP) on the Rogue River. The water rights strategy included a proposed approach to ensure orderly certification of the water rights at the Duff WTP; it also included a proposed plan for sharing water supply to meet combined short-term (Phase 1) and long-term (Phase 2) water supply needs. An intergovernmental agreement (IGA) to implement Phase 1 has been developed, and the General Manager is looking for concurrence that the IGA meets the guiding principles that were provided in by the Board in 2020.

Discussion

The results of the water rights strategy were presented to the Board during several meetings in 2020. The Board authorized the General Manager to move forward with drafting an intergovernmental agreement (IGA) to implement Phase 1 under a set of guiding principles. These principals included the following:

- Medford Water would be (and receive compensation for being) the Managing Agency for the Partners, but will not have a fiduciary responsibility to the other Partners.
- The agreement must be consistent with the City of Medford's January 1, 1999 City Charter.
- The agreement must ensure that Medford Water retains control of its water rights, the Duff WTP, and related infrastructure.
- The agreement should relate only to water rights associated with the Duff WTP (and not to the Big Butte Creek water rights).
- The Phase 1 IGA would provide for water sharing among the Partner Cities, and would seek commitments to develop a Phase 2 agreement. Medford Water would not, however, be bound to enter into a Phase 2 agreement.
- Medford Water could withdraw from the sharing agreement.

Over the past 2 years, the General Manager has met monthly with representatives of the Partner Cities to develop an IGA to implement Phase 1 of a water sharing agreement. Meetings have also been held with some of the Partner Cities' city councils. The Partners have developed a draft IGA that provides for orderly certification of the water rights at the Duff WTP, and a mechanism by which the Partner Cities would share water supply under their water rights and Medford Water would function as the Managing Agency. The IGA provides that the Partner City water sharing agreement would begin October 1, 2022, but a "dry run" is planned for May through September 2022. The IGA would renew every 5 years, consistent with the term of existing water supply agreements.

The draft IGA meets the guiding principles provided by the Board. Medford Water will be the Managing Agency and costs associated with these functions will be passed to the cities through costs of service and associated water rates. The draft IGA pertains to only the water rights associated with the Duff WTP, and expressly states that Medford Water (and all other partners) retain ownership of their water rights and Medford Water retains ownership of the Duff WTP and related infrastructure. The agreement provides for water sharing among the Partner Cities, and includes a mechanism for Partners to withdraw from the sharing agreement. The IGA recognizes that the water rights strategy recommended a second phase, but provides that entering into the Phase 1 agreement does not bind a party to enter into a Phase 2 agreement. The draft IGA has been reviewed by legal counsel (Clark Balfour of Cable Huston). The draft IGA is in the Board meeting packet for review. The IGA is intended to be supplemental to the Treat and Transport and wholesale water agreement.

Financial Impact

There is no financial impact to Medford Water.

Requested Board Action

Staff recommends a motion of support to continue to finalize the IGA with the Partner Cities.

**INTERGOVERNMENTAL AGREEMENT FOR
A COORDINATED WATER RIGHTS MANAGEMENT AND WATER SHARING PLAN**

I. Parties

This Intergovernmental Agreement (IGA) is between the Medford Water Commission (MEDFORD WATER) and the Cities of Ashland, Central Point, Eagle Point, Jacksonville, Phoenix, and Talent, hereinafter PARTNERS when referred to collectively, and MEDFORD WATER, ASHLAND, CENTRAL POINT, EAGLE POINT, JACKSONVILLE, PHOENIX, and TALENT when referred to individually, and PARTNER CITIES when referring to ASHLAND, CENTRAL POINT, EAGLE POINT, JACKSONVILLE, PHOENIX, and TALENT.

II. Recitals

- A. The PARTNERS all own and operate water systems that supply water to their respective customers;
- B. The PARTNERS recognize the vital importance of providing a reliable source of water to all their respective customers for public health, safety, and welfare and for sustaining economic development;
- C. The PARTNERS have invested in and each hold water right(s) that are diverted and treated at the Duff Water Treatment Plant (WTP) located on the Rogue River, and understand the importance of strategically managing those water rights;
- D. The Duff WTP, owned by MEDFORD WATER, provides treated water to the PARTNERS and is a critical regional water supply facility.
- E. The PARTNER CITIES receive water treated at the Duff WTP under Treat and Transport contracts with MEDFORD WATER. These contracts include rates of water that the PARTNER CITIES can receive from the MEDFORD WATER's water supply system during identified time periods.
- F. The PARTNERS value the important role each utility plays in meeting the water supply needs of the Rogue Valley Region;
- G. The PARTNERS entered into a cooperative agreement for developing a water rights strategy in 2019, which resulted in development of a Final Report entitled WATER RIGHTS STRATEGY FOR PARTNER WATER PROVIDERS (February 2020). The cooperative agreement and report executive summary are included in **Attachment 1**;
- H. The WATER RIGHTS STRATEGY FOR PARTNER WATER PROVIDERS recommends Phase I of the Coordinated Water Rights Management and Sharing Plan, which includes a coordinated water rights certification strategy for water rights diverted at the Duff WTP and a PARTNER CITIES water sharing framework;
- I. The WATER RIGHTS STRATEGY FOR PARTNER WATER PROVIDERS recommends a Phase II of the Coordinated Water Rights Management and Sharing Plan to continue the water rights certification strategy for water rights diverted at the Duff WTP and a PARTNER CITIES and MEDFORD WATER water sharing framework. A separate IGA will need to be developed and approved for Phase II;

- J. The PARTNERS recognize that this IGA is related to Phase I of the Coordinated Water Rights Management and Sharing Plan; and
- K. The PARTNERS enter this agreement in a spirit of good will and mutual cooperation, understanding that entering this IGA for Phase I of a Cooperative Water Rights Management and Water Sharing Plan is intended to improve the current and long-term reliability of individual and collective water supplies and is in the highest public interest.

III. Scope and Purpose

To develop, refine and implement Phase I of a Coordinated Water Rights Management and Water Sharing Plan that includes a coordinated water rights certification strategy for water rights diverted at the Duff WTP and a PARTNER CITIES water sharing framework. This IGA does not address Phase II of a Coordinated Water Rights Management and Water Sharing Plan, which would be established in a separate IGA. Being a signatory to this IGA does not require a PARTNER to become a signatory to an IGA developed for Phase II.

IV. Retention of Asset Ownership

- A. Each Partner will retain ownership of its water right(s). Nothing in this IGA will have the effect of conveying a water right to any other entity.
- B. MEDFORD WATER will retain ownership of the Duff WTP, the associated intake on the Rogue River, and all related infrastructure. Nothing in this IGA will have the effect of conveying any of MEDFORD WATER's water system to any other entity.

V. Water Right Certification Coordination

- A. The PARTNERS developed a strategy for managing the timing of certification of their existing water use permits and transfers, which is described in the Water Rights Certification Strategy Table provided in **Attachment 2**. The table identifies the water rights that have been or can be certificated at the current Duff WTP capacity (70 cfs), and the permits and transfers to be certificated at each subsequent WTP capacity (100 cfs, 131 cfs, 162 cfs and 193 cfs). Except as provided in subsection D of this section, only the portion of the Water Rights Certification Strategy Table for the Duff WTP's existing capacity of 70 cfs is applicable to this IGA for Phase I of the Water Rights Management and Water Sharing Plan.
- B. The PARTNERS agree to submit claims of beneficial use (COBUs) and requests for water right certificates to the Oregon Water Resources Department (OWRD) only at times consistent with the portion of the Water Rights Certification Strategy Table for the Duff WTP's existing capacity of 70 cfs, except as provided in subsection D of this section.
- C. At least 14 days prior to submitting a COBU and request for water right certificate to OWRD, PARTNERS agree to provide the Managing Agency with written notice of their intention to file a COBU.

- D. The Water Rights Certification Strategy Table will be reviewed by the PARTNERS annually as described in Section VIII, and will be updated to reflect the issuance of water right certificates consistent with Water Rights Certification Strategy.
- E. Each PARTNER will continue to be responsible for maintaining its own water rights, which will include but is not limited to filing water use reports with OWRD, developing claims of beneficial use and requesting water right certificates, and developing water management and conservation plans.

VI. Water Sharing

- A. Consistent with the PARTNER CITIES' contracts with MEDFORD WATER, each PARTNER CITY will use water under its individual water rights beginning May 1 of each year and ending September 30 of each year.
- B. By November 15 of each year, MEDFORD WATER will calculate the total volume of water used by each PARTNER CITY during the period of May 1 through September 30 based on meter readings for each city, referred to as each city's "Annual Metered Volume." The meters used to determine each PARTNER CITY'S "Annual Metered Volume" are listed in **Attachment 3**.
 - 1. The owner of each meter will ensure its meter(s) are calibrated to manufacturer standards.
 - 2. If a meter breaks or malfunctions the PARTNERS will use the best practicable information available to estimate water use.
- C. MEDFORD WATER will compare each PARTNER CITY'S Annual Metered Volume to the total volume of water authorized by each PARTNER CITY'S water rights (referred to as each PARTNER CITY'S "Total Authorized Water Volume")

as shown in **Attachment 4**.
- D. If a PARTNER CITY'S Annual Metered Volume exceeds its Authorized Water Volume, as provided in VI. C., MEDFORD WATER will subtract the Authorized Water Volume from the Annual Metered Volume to obtain that PARTNER CITY'S "Volume of Excess Use" for the year.
- E. If a PARTNER CITY'S Annual Metered Volume is less than that city's Authorized Water Volume, as provided in VI. C., MEDFORD WATER will subtract the Annual Metered Volume from the Authorized Water Volume to obtain that PARTNER CITY'S "Excess Water Right Volume" for the year.
- F. For each PARTNER CITY with a Volume of Excess Use, MEDFORD WATER will allocate the Volume of Excess Use equally among all PARTNER CITIES with an Excess Water Right Volume for that year. MEDFORD WATER will allocate the Volume of Excess Use equally up to, but not in excess of, the PARTNER CITIES' Authorized Water

Volumes. If equal allocation of a PARTNER CITY'S Volume of Excess Use would exceed one or more PARTNER CITY'S Authorized Water Volume, the Volume of Excess Use will be allocated equally among the PARTNER CITIES in the amount of the smallest Excess Water Right Volume. The remaining Volume of Excess Use will then be allocated equally among the remaining PARTNER CITIES with Excess Water Right Volume. This process will be repeated until the PARTNER CITY'S entire Volume of Excess Use has been allocated to other PARTNER CITIES. **Attachment 5** provides an example of the intended process.

- G. Any PARTNER CITY with a Volume of Excess Use will provide compensation to PARTNER CITIES with Excess Water Right Volume according to the volume of water allocated to that PARTNER CITY, and the Method of Cost Allocation provided in Section VII.

VII. Method of Cost Allocation

- A. By March 1 of each year, each PARTNER CITY will provide to MEDFORD WATER a copy of any Statement of Account or other invoices from the U.S. Army Corps of Engineers, or annual assessment from the Medford Irrigation District and/or Rogue River Irrigation District the PARTNER CITY received in the previous year related to their water rights associated with the Duff Water Treatment Plant as described in Attachment 2.
- B. Based on the information provided in subsection A., MEDFORD WATER will calculate the following total annual costs. An example of the calculations is provided in **Attachment 6**.
1. The Total Annual Operation and Maintenance (O&M) Costs for storage space for Lost Creek Reservoir will be calculated by adding together the annual O&M costs for Ashland, Jacksonville, Phoenix, and Talent. This cost is associated with 3,892 AF of storage space in the reservoir, as shown in Table 1 of Attachment 6;
 2. The Total Annual Repair Replacement and Rehabilitation (RR&R) Costs for storage space for Lost Creek Reservoir will be calculated by adding together any annual RR&R costs for Ashland, Jacksonville, Phoenix, and Talent. This cost is associated with the 3,892 AF of storage space, as shown in Table 2 of Attachment 6.
 3. The 5-year Rolling Average RR&R Cost for storage space for Lost Creek Reservoir will be calculated by adding together the Total Annual RR&R Costs for the preceding five years and dividing by 5. This calculation is shown in Table 3 in Attachment 6.
 4. The Total Annual Assessment Costs will be calculated by adding together the annual costs charged to Central Point and Eagle Point by Medford Irrigation District and Rogue River Irrigation District. This cost is associated with the 3,123.7 AF for which the irrigation districts charge assessments, as shown in Table 4 of Attachment 6.

5. The Total Water Volume Associated with the Costs is 7,015.7 AF, which is calculated by adding 3,892 AF associated with storage space plus 3,123.7 AF associated with the irrigation districts, as shown in Table 5 of Attachment 6.
- C. The Average Annual Cost Per Acre Foot will be calculated as follows.
 1. Calculate the Total Annual Cost by adding together the Total Annual O&M Cost for storage space, the Five-Year Rolling Average RR&R Cost, and the Total Annual Assessment Cost.
 2. Calculate the Annual Average Cost Per Acre Foot by dividing the Total Annual Cost by the Total Water Volume Associated with the Costs (7,015.7 AF), as shown in Table 5 of Attachment 6.
 - D. MEDFORD WATER will provide the PARTNER CITIES with the Average Annual Cost Per Acre Foot by March 30 of each year.
 - E. Each year after completing the calculations described in Section VI., for each PARTNER CITY with a Volume of Excess Use, MEDFORD WATER will multiply the Volume of Excess Use allocated to each PARTNER CITY (determined according to Section VI. D.) by the Average Annual Cost Per Acre Foot to obtain the “Annual Cost for Excess Use” owed to each PARTNER CITY.
 - F. By December 15 of each year, MEDFORD WATER will provide the PARTNER CITIES an Annual Summary Report of Water Sharing that includes the following information for the previous May through September:
 1. Each PARTNER CITY’S Annual Metered Volume;
 2. Each PARTNER CITY’S Authorized Water Volume;
 3. Each PARTNER CITY’S Excess Water Right Volume, or Volume of Excess Use for the year; and
 4. For each PARTNER CITY with a Volume of Excess Use, the volume of water allocated to each PARTNER CITY with an Excess Water Right Volume, and the associated Annual Cost for Excess Use. An example Annual Summary Report of Water Sharing is provided in **Attachment 7**.
 - G. By January 15 of each year, the PARTNERS will meet to review the Annual Summary Report of Water Sharing, and will work in good faith to resolve any discrepancies raised by a PARTNER CITY.
 - H. By February 15 of each year, each PARTNER CITY with a Volume of Excess Use shall pay the Annual Cost for Excess Use to other PARTNER CITIES as provided in the Annual Summary Report of Water Sharing.

VIII. Annual Meeting

- A. Medford Water will schedule an annual meeting with the PARTNERS during the month of April each year at a time and location agreeable to the PARTNERS.
- B. Each PARTNER will, to the extent possible, have at least one representative at the annual meeting.

- C. Agenda items will include, but are not limited to, the following:
1. An explanation of the processes established by this IGA, as necessary.
 2. Estimations provided by each PARTNER CITY of the amount of water it expects to use during the upcoming period of May 1 through September 30.
 3. Any available estimations of water supply expected to be available during the upcoming period of May 1 through September 30.
 4. A review of the Water Rights Certification Strategy Table (the current version is provided in Attachment 2), and a discussion of any updates to the table that are needed or any plans to certificate a water right included in the table.
 5. Coordination of any other activities regarding the Water Rights so that all Partners are apprised of actions by a Partner that may affect them.
 6. Any amendments needed to this IGA. The process for adoption of amendments is provided in Section XIV.

IX. Designation, Tasks and Powers of Managing Agency

- A. Medford Water shall perform the duties of the Managing Agency hereunder including but not limited to:
1. Coordinating use of the Partners' Rogue River water rights at the Duff Water Treatment Plant in accordance with the terms and conditions of this Agreement.
 2. Schedule and convene meetings with the Partners in accordance with the terms of this Agreement and as necessary to meet the requirements of this Agreement, maintain public records in accordance with the Oregon Public Records Law and rules, policies and procedures of Medford Water, and provide administrative support.
 3. Provide public communications and outreach, including response to public information, media or records requests in coordination with the Partner Cities.
 4. Retain consultants, attorneys, auditors, accountants and other professional services to assist the Managing Agency in accordance with Managing Agency contracting rules.
 5. Provide the Partners and their agents with reasonable access to books and records maintained by the Managing Agency specifically related to administration of this Agreement.
 6. Perform ministerial and administrative tasks to implement this Agreement.
- B. The General Manager of Medford Water shall be the person authorized to act for the Managing Agency, unless the Medford Water Commission specifies otherwise.

X. Governance

- A. Each Partner shall appoint a representative, elected or staff member, to receive notices, attend meetings as called and act as a liaison to the Partner's governing body. A Partner's representative shall serve at the discretion of the Partner's governing body, or the City Manager or City Administrator.

- B. The Representatives shall meet in accordance with the terms of this Agreement and as deemed necessary by the Managing Agency upon reasonable notice to carry out the terms and conditions of this Agreement.

XI. Failure to Perform/Breach/Remedies

- A. If a Partner fails to perform any obligation or term of this Agreement, (Defaulting Partner) the Managing Agency will notify the Defaulting Partner in writing and request performance and cure. If the Defaulting Partner cures the default within 30 days of notice or commences to diligently cure a default within 30 days and completes cure within a mutually agreed time, then the matter will be deemed resolved.
- B. If the default continues after notice and opportunity to cure, the Managing Agency and the Representative of the Defaulting Partner shall meet within 45 days to discuss and resolve. Other Partners (Remaining Partners) shall be apprised and may attend.
- C. If no satisfactory resolution is reached, the parties agree to mediate any disputes under ORS Chapter 36.

XII. Termination and Withdrawal

- A. A Partner may elect to withdraw from this Agreement (Withdrawing Partner) by providing written notice to the Managing Agency no later than October 1 of each year. If timely notice is given, the withdrawal shall be effective on the following May 1.
- B. Withdrawal from this Agreement will not affect any pre-existing agreements that may be operative. Withdrawal shall not relieve the Withdrawing Partner of any outstanding obligations remaining unpaid.
- C. Upon withdrawal, the Managing Agency will cause the Attachments affected by such Partner's withdrawal to be revised and adjusted as necessary to remove the Withdrawing Partner and its water rights, Authorized Water Volumes, and associated costs. The Managing Agency may create a new Attachment for addition to this Agreement to account for change in membership if the Managing Agency deems it the most reasonable method to identify the Partners, and their water rights, Authorized Water Volumes, and associated costs.
- D. This Agreement shall continue after withdrawal of a Partner unless dissolved as provided in Section XV, below.

XIII. Representations

By execution of this Agreement, each Partner represents to the others that the Agreement has been approved by the governing body and that the person executing the Agreement has full authority to do so and the Agreement is binding on the Partner. Further the designated Representative of the Partner is vested with authority to act on behalf of the Partner except for those decisions that require specific governing body approval: amendment and dissolution.

XIV. Amendment

Attachment 1

Cooperative Agreement and Report Executive Summary

**Intergovernmental Agreement for a Coordinated
Water Rights Management and Water Sharing Plan**

COOPERATIVE AGREEMENT FOR DEVELOPING A WATER RIGHT STRATEGY FOR ACCESS TO WATER AMONG MEDFORD WATER COMMISSION, CITY OF ASHLAND, CITY OF CENTRAL POINT, CITY OF EAGLE POINT, CITY OF JACKSONVILLE, CITY OF PHOENIX, AND CITY OF TALENT

This cooperative agreement (hereinafter "Agreement") is by and among Medford Water Commission and the Cities of Ashland, Central Point, Eagle Point, Jacksonville, Phoenix, and Talent, hereinafter PARTNERS when referred to collectively and MWC, ASHLAND, CENTRAL POINT, EAGLE POINT, JACKSONVILLE, PHOENIX, and TALENT when referred to individually.

RECITALS

- A. The PARTNERS all own and operate water systems that supply water to their respective customers;
- B. The PARTNERS recognize the vital importance of providing a reliable source of water to all their respective customers for public health, safety, and welfare and for sustaining economic development;
- C. The PARTNERS value the important role each utility plays in meeting the water supply needs of the Rogue Valley Region (RVR);
- D. The PARTNERS enter this agreement in a spirit of good will and mutual cooperation, with the understanding that coordinating a Water Right Strategy (WRS) will improve the current and long-term reliability of individual and collective water supplies and is in the highest public interest;
- E. The PARTNERS understand that the WRS will document the current understanding of the water rights held by the jurisdictions in the RVR, and provide options to the PARTNERS on how to move forward with securing and allocating water supplies for the RVR that may be in the best interests of the Region as a whole, but it will not bind PARTNERS to any particular direction or action; and
- F. The PARTNERS recognize that developing a WRS is the first step and that a second step of adopting a WRS would require a second IGA that would then guide the adoption, implementation, and management of the WRS moving forward. It is understood that a second step may not be possible if there is not agreement on how to move forward with the WRS.
- G. The PARTNERS are willing to fund development of a WRS.

AGREEMENT

The PARTNERS agree to the following:

I. RECITALS/PURPOSE

The above recitals are true and correct and are specifically adopted and incorporated herein as the purpose of this Agreement.

II. DEFINITIONS

- A. ASHLAND means City of Ashland.
- B. CENTRAL POINT means City of Central Point.
- C. EAGLE POINT means City of Eagle Point.
- D. JACKSONVILLE means City of Jacksonville.
- E. MWC means Medford Water Commission.

- F. OWRD means the Oregon Water Resources Department.
- G. PARTNERS means collectively the Medford Water Commission and the Cities of Ashland, Central Point, Eagle Point, Jacksonville, Phoenix, and Talent.
- H. PHOENIX means City of Phoenix.
- I. RVR is an abbreviation for Rogue Valley Region.
- J. STEERING COMMITTEE means a group comprised of at least a single voting representative from each of the PARTNERS. The Steering Committee function will be to oversee the implementation of this Agreement, to facilitate changes to it necessary to ensure its continued effectiveness in meeting the needs of the PARTNERS and to settle differences in interpretation of its provisions and execution.
- K. TALENT means City of Talent.
- L. WRS is an abbreviation for Water Right Strategy.

III. RESPONSIBILITIES

A. The PARTNERS:

1. Agree to form a STEERING COMMITTEE.
2. Agree not to move forward with any actions to certificate water rights at the MWC Duff Water Treatment Plant intake, except as provided in III.C, until a WRS is completed, or the term of this Agreement ends.
3. Agree to pay the identified, pro-rata costs of the development of a WRS as provided in Section IV (B) of this Agreement.

B. MWC:

1. Agrees to award and administer a contract with GSI Water Solutions to develop a WRS as described in Section IV (A) of this Agreement.
2. Agrees to pay monthly invoices to GSI Water Solutions on behalf of the PARTNERS.

C. PHOENIX:

1. Agrees not to request expedited processing of its claim of beneficial use under OWRD's Reimbursement Authority Program for Permit S-47672 until a WRS is completed, or the term of this agreement ends, whichever occurs first.
2. Agrees to notify the PARTNERS within a reasonable period of time in the event that OWRD begins review of its pending claim of beneficial use for Permit S-47672.

IV. WATER RIGHT STUDY SCOPE AND COST

- A. The draft outline of the scope of work to develop a WRS is included as Exhibit A. The PARTNERS intend to collaboratively develop and establish a final scope of work after this agreement is executed.

- B. The PARTNERS agree to share the cost of the WRS on a pro rata basis in proportion to their populations based on Portland State University's 2015 population data, as shown in Exhibit B. Exhibit B indicates preliminary costs. The total cost of the WRS is expected to be less than \$80,000. Final pro-rata cost share will be determined at the time the contract with the consultant is signed. Payments by PARTNERS will be due quarterly and must be remitted to MWC within 30 days of invoice.

V. DECISION MAKING PROCESS

- A. All decisions made under this Agreement, and during the course of the development of the WRS, shall be made through negotiations among the PARTNERS.
- B. The WRS does not bind any PARTNER(S) to any future action or direction proposed by the WRS.

VI. LIABILITY, INDEMNITY AND HOLD HARMLESS

- A. INDEMNIFICATION. To the extent allowed by the Oregon Constitution and the Oregon Revised Statutes, and not to exceed monetary limits of the Oregon Tort Claim Act, the PARTNERS agree to defend, indemnify, and hold harmless each other from claims, liability or damages, including attorney fees, arising out of error, omission or act of negligence on the part of the indemnifying party, its officers, agents, or employees in the performance of this Agreement.
- B. STATUS. In providing the services specified in this Agreement (and any associated services) the PARTNERS are public bodies and maintain their public body status as specified in ORS 30.260. The PARTNERS understand and acknowledge that each retains all immunities and privileges granted them by the Oregon Tort Claims Act and any and all other statutory rights granted as a result of their status as local public bodies.

VII. TERM AND TERMINATION

The term of the Agreement is twelve months from the last date of execution, unless the STEERING COMMITTEE members unanimously agree in writing to extend that date. Any PARTNER may agree to terminate its participation in the Agreement at any time with 15-day written notice to the other PARTNERS, provided, however, that once a contract with the selected consultant has been signed, the terminating PARTNER agrees to pay its full pro-rata share of the cost of the consultant contract to MWC.

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their proper officers on the dates noted below.

Brad Taylor

Brad Taylor (Jan 25, 2019) Jan 25, 2019

Brad Taylor
General Manager
Medford Water Commission

christopher clayton

christopher clayton (Jan 25, 2019) Jan 25, 2019

Chris Clayton
City Manager
City of Central Point

Kelly Madding

Kelly Madding (Feb 22, 2019) Feb 22, 2019

Kelly Madding
City Administrator
City of Ashland

Henry Lawrence

Henry Lawrence (Feb 22, 2019) Feb 22, 2019

Henry Lawrence
City Administrator
City of Eagle Point

Jeff Alvis

Jeff Alvis (Feb 25, 2019) Feb 25, 2019

Jeff Alvis
City Administrator
City of Jacksonville

Aaron Prunty

Aaron Prunty (Mar 18, 2019) Mar 18, 2019

Aaron Prunty
City Manager
City of Phoenix

Sandra Spelliscy

Sandra Spelliscy (Mar 18, 2019) Mar 18, 2019

Sandra Spelliscy
City Manager
City of Talent



February 7, 2020

Executive Summary

Water Rights Strategy for Partner Water Providers

I. Introduction

GSI Water Solutions, Inc. (GSI) is assisting the Partner Water Providers (Partners) to develop a water rights strategy. The Partners include the Cities of Ashland, Central Point, Eagle Point, Jacksonville, Phoenix, and Talent (jointly the Partner Cities) and Medford Water Commission (MWC).¹ In early 2019, the Partners signed a Cooperative Agreement to develop the strategy recognizing the benefits of mutual cooperation and the vital importance of providing source water to their respective customers for public health, safety and welfare, and for sustaining economic development.

The water rights strategy focuses on the Partners' water rights and water supply associated with the MWC Duff Water Treatment Plant (Duff WTP) on the Rogue River. During the months of May through September (peak season), much of the MWC's water supply and all of the Partner Cities' water supply is treated at the Duff WTP. During this peak season period, the Partner Cities currently rely on water rights they have obtained and hold Treat and Transport agreements with the MWC.

As the Partners plan for their long-term water supply needs, it is important that they have a full understanding of the status of their water rights and develop a common strategy to protect and secure them. The water rights strategy is intended to meet those needs.

II. Process

To develop the water rights strategy, GSI initially prepared a comprehensive water rights summary, which enabled the Partners to develop a shared understanding of the water rights at the Duff WTP. Next, GSI developed a consolidated water demand projection for each of the Partners, which included the maximum anticipated demands for the years 2030, 2040 and 2070. GSI then compared the Partners' individual and collective demands with their water rights. This evaluation showed that some of the Partners' water rights will likely provide them with sufficient supply past the year 2070, while other Partners' water rights do not provide sufficient water supply to meet current demands. The evaluation also showed that if the Partners shared their water supplies, they would have sufficient supply to meet all of their demands through 2070.

¹ MWC's customers include customers within the City of Medford, White City, Elk City and Charlotte Ann Water Districts, as well as other customers served by MWC outside of its service area (Outside Customers).

III. Goals, Interests and Priorities for Water Rights Strategy

The above-described differences between the Partners' water rights and projected water demands demonstrate the value of a strategy related to the Partner water rights at the Duff WTP. The strategy is intended to meet the following goals, interests, and priorities:

- Ensure that the water rights at the Duff WTP are strategically managed.
- Secure a long-term water supply for all Partners.
- Eliminate the need for Partners to unnecessarily purchase additional water rights.
- Retain each Partners' ownership of its existing water rights and create opportunities to obtain value for the water rights.
- Treat White City, Elk City and Charlotte Ann Water Districts, and other customers served by MWC outside of its service area (Outside Customers) equitably.

IV. Strategic Management of Partners' Existing Water Rights

A. Reasons for Developing Coordinated Approach to Water Rights and Water Use

GSI recommends that the Partners consider developing a coordinated approach to managing their water rights and water supply. This coordination could include not only coordinated management of the water rights at the Duff WTP, but also creation of an opportunity for the Partners to share their combined water supplies. Coordination will also be necessary to strategically secure the 20 existing water rights at the Duff WTP. Additionally, if the Partners established a combined water supply, it could address the imbalances between water rights and projected water demands that have been previously described, and eliminate the need for the purchase of additional water rights to meet their individual needs. Further, establishing a combined water supply could provide the Partners with some level of supply redundancy; that is, the arrangement could enable each Partner to obtain water from more than one source of supply.

B. Conceptual Framework for Water Supply Sharing

GSI and the Partners considered multiple approaches to sharing water supply. Based on GSI's understanding of the Partners' goals, interests, and priorities, as well as the Partners' water supplies and demands, GSI recommended an approach that provides an opportunity to meet the Partners' near-term and long-term goals without jeopardizing any of the Partners' water rights. In addition, the Partners would pool their water rights to establish a diverse water rights portfolio.

Under the recommended option, the Partner Cities and MWC would enter into an intergovernmental agreement (IGA) to work together on regional water supply. The IGA would describe how the water rights and water supply would be shared, which would occur in two phases. Until the Duff WTP capacity was expanded to 100 cfs in approximately 2028, the Partner Cities and the Outside Customers would share their water supplies. MWC could track

each entity's water use and compare that with the entity's individual water rights to determine whether any compensation was required for use of another entity's water rights. Additionally, the Partners would follow an agreed-upon strategy to request water right certificates for their water rights.

In the second phase of this option, the MWC would modify its agreements with the Partner Cities and Outside Customers and would begin to provide them with surplus water. The water rights held by the MWC and the Partner Cities would be placed into a regional water supply pool, which would be managed by the MWC. This would result in the Partners having a diverse water supply portfolio. The Partner Cities would retain ownership of their water rights, and the IGA would include a mechanism by which any of the Partner Cities could withdraw from the group.

The MWC would compensate the Partner Cities for any Operation and Management (O&M) costs it incurred associated with contracts for stored water that was being used by the Partners. The MWC would also provide Partner Cities with compensation (based on negotiations between each Partner City and the MWC) for water rights used by the Partners. The rate the Partner Cities pay to the MWC would reflect these expenses.

V. Summary of Recommended Option

The option recommended by GSI provides an approach to meeting the Partners' near-term and long-term water supply goals without jeopardizing any of the Partners' collective water rights. In the near term, the recommended option provides a method for the Partner Cities and MWC on behalf of the Outside Customers to initiate a shared water supply strategy. It then changes relatively quickly to reset the relationship with the MWC, which would then provide surplus water supply to the Partner Cities and Outside Customers. In addition, the Partners would pool their water rights to establish a diverse water rights portfolio. Finally, this option minimizes water rights transactions, such as extensions of time for permits and transfers, and decreases the risks associated with these transactions.

VI. Next Steps

Establishing a water sharing agreement will require completing a series of steps or actions. The following is a brief summary of some of the actions that will be required:

- The Partners' staff communicate with their councils/boards, and seek approval to develop a scope of work to develop an IGA.
- Staff develop the scope of work for drafting the IGA, and take the scope of work to city councils/ board for approval.
- Staff develop a draft IGA.
- Staff take the draft IGA to their city councils/board for review and approval.

Attachment 2

Water Rights Certification Strategy Table

**Intergovernmental Agreement for a Coordinated
Water Rights Management and Water Sharing Plan**

Water Rights Certification Strategy Table

| Action | Rate (cfs) | Development Deadline | Total Rate in Water Right Certificate Status (cfs) |
|---|--------------------|----------------------|--|
| Duff WTP - Existing Capacity – 70 cfs | | | |
| Current Status - Existing Certificates and Pending COBUs | | | |
| Central Point's Certificate 93754 | 1.13 | N/A | 65.26 |
| Central Point's Certificate 93755 | 1.13 | N/A | |
| Eagle Point's Certificate 88552 | 0.90 | N/A | |
| Eagle Point's Certificate 89864 | 1.25 | N/A | |
| Jacksonville's Certificate 87360 | No rate (400 AF) | N/A | |
| MWC's Certificate 86832 | 60.85 | N/A | |
| Talent's Certificate 91134 | No rate (533 AF) | N/A | |
| Central Point's Transfer T-10465 | 1.20 | 10/1/2014 | 66.46 |
| Eagle Point's Transfer T-10527 | 0.50 | 10/1/2013 | 66.96 |
| Phoenix's Permit S-47672 (COBU on hold)* | 5.0 | 10/1/2001 | (71.96) |
| Transactions | | | |
| Certificate Central Point's Transfer T-9900 | 1.846 | 10/1/2030 | 68.806 |
| Certificate Eagle Point's Transfer T-10614 | 1.15 | 10/1/2030 | 69.956 |
| Certificate Ashland's Permit S-54337* | No rate (1,000 AF) | 9/7/2021 | 69.956 |
| Total at this capacity | | | 69.956 cfs |
| Duff WTP Capacity – 100 cfs in approximately 2028 | | | |
| Certificate Jacksonville's Permit S-54974* | No rate (200 AF) | 11/19/2035 | 69.956 cfs |
| Certificate Talent's Permit S-53898* | No rate (759 AF) | 10/1/2065 | 69.956 cfs |
| Certificate Phoenix's Permit S-47672 | 5.0 | 10/1/2001 | 74.956 |
| Certificate Eagle Point's Transfer T-10960 | 1.77 | 10/1/2030 | 76.726 |
| Certificate Eagle Point's Transfer T-12221 | 0.7 | 10/1/2030 | 77.426 |
| Certificate Phoenix's Permit S-52650 | 3.1 | 10/1/2030 | 80.526 |
| Partially certificate MWC's Permit S-54935 (estimated rate) | 19.474 | 10/1/2056 | 100 |
| Total at this capacity | | | 100 cfs |
| Duff WTP Capacity – 131 cfs in approximately 2036 | | | |
| Partially certificate MWC's Permit S-23210 | 31 | 10/1/2050 | 131 |
| Total at this capacity | | | 131 cfs |
| Duff WTP Capacity – 162 cfs (TBD) | | | |
| Partially certificate remainder of MWC's Permit S-23210 | 8.15 | 10/1/2050 | 139.15 |
| Partially certificate MWC's Permit S-54935 (estimated rate) | 22.85 | 10/1/2056 | 162.0 |
| Extend MWC's Permit S-54935 as needed | | 10/1/2056 | |
| Total at this capacity | | | 162.0 cfs |
| Duff WTP Capacity – 193 cfs (TBD) | | | |
| Certificate remainder of MWC's Permit S-54935 (estimated rate) | 7.676 | 10/1/2056 | 169.676 |
| Total at this capacity | | | 169.676 cfs |

Notes

* These steps assume that certifying the "volume-only" water rights would not negatively impact the ability to certify the other Partner water rights, and all elements of seeking a certificate can be met.

AF: acre-feet cfs: cubic feet per second
COBU: claim of beneficial use MWC: Medford Water Commission

Attachment 3

Water Meters

**Intergovernmental Agreement for a Coordinated
Water Rights Management and Water Sharing Plan**

Meters and Information Source Documentation

| Water User | Meter Description | Source of Information | Notes: |
|----------------------|--|---------------------------------------|---|
| Central Point | BEALL MASTER | MWC Data Export | |
| Central Point | HOPKINS | MWC Data Export | |
| Central Point | VILAS MASTER 10" | MWC Data Export | |
| Eagle Point | AVENUE G NORTH 8" | MWC Data Export | |
| Eagle Point | AVENUE G SOUTH 6" | MWC Data Export | |
| Eagle Point | STEVENS & RILEY 4" | MWC Data Export | |
| Eagle Point | VISTA POINTE #1 | MWC Data Export | |
| Eagle Point | VISTA POINTE #2 | MWC Data Export | |
| Jacksonville | MADRONE/OAKGROVE 6" | MWC Data Export | |
| Phoenix MWC | Garfield St and Kings Avenue Meter | MWC Data Export | Phoenix has two connections to the MWC system, one direct connection at Garfield and Kings and the connection via TAP. This is the direct connection. |
| Phoenix TAP | TAP Master Meter on Samike Drive <i>less</i> Talent Meter | RVCOG Monthly Utility Billing Data | Phoenix TAP usage is the equal to the total from the TAP master meter at Samike, <i>less</i> what is measured at the Talent Meter on the TAP line. |
| Talent | Talent Meter at intersection Bear Creek Drive and Main Street in Phoenix <i>less</i> Ashland usage | RVCOG Monthly Utility Billing Data | Talent usage is the total of the Talent meter, <i>less</i> measured Ashland usage. |
| Ashland | Creel Road and Highway 97 | RVCOG Monthly Utility Billing Data | |

Attachment 4

Participating Partner Cities' Authorized Water Volumes

**Intergovernmental Agreement for a Coordinated
Water Rights Management and Water Sharing Plan**

Partner Cities' Authorized Water Volumes

| Water Right | Authorized Water Volume | | |
|---|---------------------------------|-------------------------------------|---|
| | From Water Right (acre-feet) | Calculated from Rate (acre-feet) | Total Authorized Water Volume (acre-feet) |
| Ashland | | | |
| Permit S-54337 | 1,000 | | |
| Total | 1,000 | | 1,000 |
| Central Point | | | |
| Transfer T-9900 | 666.0 | | |
| Certificate 93754 | | 412.4 | |
| Certificate 93755 | | 412.4 | |
| Transfer T-10465 | 438.0 | | |
| Total | 1,104.0 | 824.8 | 1,928.8 |
| Eagle Point | | | |
| Certificate 88552 | 321.3 | | |
| Transfer T-10527 | 181.5 | | |
| Transfer T-10614 | 273.7 | | |
| Transfer T-10960 | 520.3 | | |
| Certificate 89864 | 356.94 | | |
| Transfer T-12221 | 207.2 | | |
| Total | 1,860.94 | | 1,860.94 |
| Jacksonville | | | |
| Certificate 87360 | 400.0 | | |
| Permit S-54974 | 200.0 | | |
| Total | 600 | | 600 |
| Phoenix | | | |
| Permit S-47673 | 400 | | |
| Permit S-52650 | 600 | | |
| Total | 1,000 | | 1,000 |
| Talent | | | |
| Permit S-53898 | 759.0 | | |
| Certificate 91134 | 533.0 | | |
| Total | 1,292 | | 1,292 |
| Partner Cities' Authorized Water Volumes | 6,856.94 | 824.8 | 7,681.74 |

Attachment 5

Example Allocation of Excess Water Use

Intergovernmental Agreement for a Coordinated Water Rights Management and Water Sharing Plan

Example Allocation of Excess Water Use:

- Four cities hold water rights and use water as follows. Medford Water would calculate excess water use and unused water rights as shown in the column labeled “difference”

| City | Water Rights (AF) | Water Use (AF) | Difference (AF) |
|--------|-------------------|----------------|-----------------------------|
| City A | 500 | 1,490 | -990 (excess water use) |
| City B | 1,000 | 750 | 250 (unused water rights) |
| City C | 1,500 | 1,000 | 500 (unused water rights) |
| City D | 2,000 | 1,000 | 1,000 (unused water rights) |

- Medford Water would calculate the compensation that City A (the only City with excess water use) would need to provide to Cities B, C and D (who had unused water rights) as follows:
 - Total excess use - 990 AF
 - Cities B, C, D – each compensated for 250 AF (up to maximum of City B’s water rights), which accounts for 750 AF
 - Remaining excess use - 240 AF
 - Cities C and D – each compensated for 120 AF (for a total of 370 AF each)

Attachment 6

Example Calculation of Average Annual Cost per Acre-Foot

Intergovernmental Agreement for a Coordinated Water Rights Management and Water Sharing Plan

Table 1: Example Calculation of Total Annual O&M Costs for Storage Space (See VII.B.1. in IGA)

| Name | Application | Permit | Contracted Storage Space (AF) | Total O&M Cost (2020) |
|---------------|-------------|---------|-------------------------------|-----------------------|
| Ashland | S-85733 | S-54377 | 1000 | \$9,653.00 |
| Jacksonville | S-80641 | S-53445 | 400 | \$14,479.50 |
| Jacksonville | S-88088 | S-54974 | 200 | \$9,653.00 |
| Phoenix | S-60890 | S-47672 | 400 | \$24,132.50 |
| Phoenix | S-71996 | S-52650 | 600 | \$31,179.19 |
| Talent | S-84029 | S-53898 | 759 | \$4,826.50 |
| Totals | | | 3,892 | \$93,923.69 |

Table 2: Example Calculation of Total RR&R Costs for Storage Space (See VII.B.2. in IGA)

| Name | Application | Permit | Contracted Storage Space (AF) | Total RR&R Cost (2020) |
|---------------|-------------|---------|-------------------------------|------------------------|
| Ashland | S-85733 | S-54377 | 1000 | \$0 |
| Jacksonville | S-80641 | S-53445 | 400 | \$0 |
| Jacksonville | S-88088 | S-54974 | 200 | \$0 |
| Phoenix | S-60890 | S-47672 | 400 | \$0 |
| Phoenix | S-71996 | S-52650 | 600 | \$0 |
| Talent | S-84029 | S-53898 | 759 | \$0 |
| Totals | | | 3,892 | \$0 |

Table 3: Example Calculation of 5-year Rolling Average RR&R Cost (See VII.B.3. in IGA)

| Year | RR&R Cost |
|---|---------------|
| 2016 | \$0.00 |
| 2017 | \$0.00 |
| 2018 | \$0.00 |
| 2019 | \$0.00 |
| 2020 | \$0.00 |
| Total | \$0.00 |
| 5-year Rolling Average (Divide Total by 5) | \$0.00 |

Table 4: Example Calculation of Total Annual Assessment Costs (See VII.B.4. in IGA)

| Holder | Type of Right | Certificate /Transfer | Maximum Rate (cfs) | Maximum Volume (AF) | Period of Use | | Volume Associated with Irrigation Districts (AF) | Annual Assessment Costs (2020) |
|---------------|---------------|-----------------------|--------------------|---------------------|---------------|--------|--|--------------------------------|
| | | | | | | | | |
| Central Point | Non-District | T-9900 | 1.846 | 666 | 1-Apr | 1-Nov | N/A - Non-District Water Right | N/A - Non-District Water Right |
| Central Point | Non-District | | | | | | | |
| Central Point | Non-District | | | | | | | |
| Central Point | Non-District | | | | | | | |
| Central Point | District | 93754 | 1.13 | | 1-Apr | 1-Oct | 412.4 | \$30,677.22 |
| Central Point | District | 93755 | 1.13 | | 1-Apr | 1-Oct | 412.4 | |
| Central Point | District | T-10465 | 1.2 | 447.6 | 1-Apr | 1-Oct | 438.0 | |
| Central Point | District | | | | | | | |
| Central Point | District | | | | | | | |
| Central Point | District | | | | | | | |
| Eagle Point | District | 88552 | 0.9 | 321.3 | 1-Apr | 31-Oct | 321.3 | |
| Eagle Point | District | T-10527 | 0.5 | 181.5 | 1-Apr | 31-Oct | 181.5 | |
| Eagle Point | District | T-10614 | 1.15 | 273.7 | 1-Apr | 31-Oct | 273.7 | |
| Eagle Point | District | T-10960 | 1.77 | 520.3 | 1-Apr | 1-Oct | 520.3 | |
| Eagle Point | District | | | | 1-Apr | 31-Oct | | |
| Eagle Point | District | 89864 | 1.25 | 356.94 | 1-Apr | 31-Oct | 356.94 | |
| Eagle Point | District | T-12221 | 0.7 | 207.2 | 1-Apr | 1-Oct | 207.2 | |
| Eagle Point | District | | | | 1-Apr | 31-Oct | | |
| Totals | | | | | | | 3,123.7 | \$71,477.22 |

Table 5: Example Calculation of Average Annual Cost Per Acre Foot (See VII.B.5. and VII.C. in IGA)

| | Annual Costs (2020) | Water Volumes Associated with the Costs (AF) |
|--|--------------------------------|---|
| Total Annual O&M Cost For Storage Space | \$93,923.69 | 3,892 |
| 5-Year Rolling Average RR&R Cost for Storage Space | \$0.00 | |
| Total Annual Assessment Cost from Irrigation Districts | \$71,477.22 | 3,123.7 |
| Totals | \$165,400.91 | 7,015.70 |
| Annual Average Cost Per Acre Foot: (Divide Total Annual Cost by the Total Water Volume Associated with the Costs) | | \$23.58 |

Attachment 7

**Example Annual Summary Report of Water Sharing
Agreement**

**Intergovernmental Agreement for a Coordinated
Water Rights Management and Water Sharing Plan**

Table 1: Example - Volume of Water Use, Water Purchased, and Water Sold

| Partner City | Authorized Water Volume (AF/season) | Annual Metered Volume (AF) | Volume of Excess Use/ Excess Water Right Volume (AF) | Water Volume Purchased (AF) | Water Volume Sold (AF) | Authorized Water Volume Remaining After Purchase/Sale (AF) |
|----------------------|--|-----------------------------------|---|------------------------------------|-------------------------------|---|
| Central Point | 1928.8 | 2023.1 | -94.4 | 94.4 | 0.0 | 0.0 |
| Eagle Point | 1860.9 | 1050.5 | 810.5 | 0.0 | 18.9 | 791.6 |
| Ashland | 1000.0 | 0.0 | 1000.0 | 0.0 | 18.9 | 981.1 |
| Jacksonville | 600.0 | 529.4 | 70.6 | 0.0 | 18.9 | 51.7 |
| Phoenix | 1000.0 | 540.5 | 459.5 | 0.0 | 18.9 | 440.7 |
| Talent | 1292.0 | 559.3 | 732.7 | 0.0 | 18.9 | 713.9 |

Table 2: Example - Total Cost Paid and Received by each Partner City

| | Average Annual Cost (\$/AF) | Water Volume Purchased (AF) | Total Paid (\$) | Water Volume Sold (AF) | Total Received (\$) |
|----------------------|------------------------------------|------------------------------------|------------------------|-------------------------------|----------------------------|
| Central Point | \$23.58 | 94.4 | \$2,225.13 | 0.0 | \$0.00 |
| Eagle Point | \$23.58 | 0.0 | \$0.00 | 18.9 | \$445.03 |
| Ashland | \$23.58 | 0.0 | \$0.00 | 18.9 | \$445.03 |
| Jacksonville | \$23.58 | 0.0 | \$0.00 | 18.9 | \$445.03 |
| Phoenix | \$23.58 | 0.0 | \$0.00 | 18.9 | \$445.03 |
| Talent | \$23.58 | 0.0 | \$0.00 | 18.9 | \$445.03 |
| Total | | 94.4 | \$2,225.13 | 94.4 | \$2,225.13 |

Table 3: Example - Matrix of Costs Paid by and to Each Partner City

| | | Receives | | | | | | Total Paid |
|------|----------------|---------------|-------------|----------|--------------|----------|----------|------------|
| | | Central Point | Eagle Point | Ashland | Jacksonville | Phoenix | Talent | |
| Pays | Central Point | | \$445.03 | \$445.03 | \$445.03 | \$445.03 | \$445.03 | \$2,225.13 |
| | Eagle Point | \$0.00 | | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| | Ashland | \$0.00 | \$0.00 | | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| | Jacksonville | \$0.00 | \$0.00 | \$0.00 | | \$0.00 | \$0.00 | \$0.00 |
| | Phoenix | \$0.00 | \$0.00 | \$0.00 | \$0.00 | | \$0.00 | \$0.00 |
| | Talent | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | | \$0.00 |
| | Total Received | \$0.00 | \$445.03 | \$445.03 | \$445.03 | \$445.03 | \$445.03 | |



Memorandum

TO: Commissioners Bob Strosser, Michael Smith, John Dailey, Jason Anderson, and Daniel Bunn
FROM: Tanya Haakinson, HR Manager
DATE: Wednesday, March 2, 2022
SUBJECT: Item 6 - Resolution 1802, Adopting 2022 Section 9 Update of Personnel Manual, Drug and Alcohol-Free Workplace policy
OBJECTIVE: Board Approval

Issue

2022 Section 9 of the Personnel Manual – Drug and Alcohol-Free Workplace, provides updates to the current Drug and Alcohol policy. Previous version last updated in 2009.

Discussion

Personnel Manual updates to Drug and Alcohol section (Section 9). Updates made throughout all sections within sub-headings of 9.1 Purpose to 9.13 Policy Distribution. A clean copy is attached, as well as a redline copy.

Financial Impact

By maintaining compliance with updating the terminology, rules and regulations within the drug and alcohol policy, employees are properly informed of Medford Water expectations as they relate to this policy. This is impactful by helping to reduce future possible injuries related to drugs and/or alcohol use in the workplace.

Requested Board Action

Staff recommends approval of Resolution 1802 approving amendments to Section 9 of the Personnel Rules and Policies (Personnel Manual) for employees of Medford Water Commission.

RESOLUTION NO. 1802

A RESOLUTION Approving Amendments to Section 9, Drug and Alcohol-Free Workplace Policy, of the Personnel Rules and Policies (Personnel Manual) for Employees of Medford Water Commission, Effective March 2, 2022

WHEREAS, the Commission is committed to ensuring a safe workplace, and to be a good steward of public funds. All employees, contractors, and any others who represent or work with MWC must maintain the same commitment to a workplace free of the effects of drugs and alcohol; and

WHEREAS, Section 9 of the Personnel Manual – Drug and Alcohol-Free Workplace was last updated in 2009; and

WHEREAS, amendments have been made throughout all sections within sub-headings of 9.1 Purpose to 9.13 Policy Distribution, to maintain compliance with terminology, rules and regulations;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF WATER COMMISSIONERS OF THE CITY OF MEDFORD, OREGON, AS FOLLOWS:

That amendments to Section 9, Drug and Alcohol-Free Workplace Policy, of the Personnel Rules and Policies (Personnel Manual) for Employees of Medford Water Commission, as set forth in Exhibit A, attached and by reference made a part hereof, are hereby approved and effective March 2, 2022, and supersede all previous modifications adopted.

PASSED at a regular meeting of the Board of Water Commissioners of the City of Medford, Oregon, and signed by me in authentication thereof this 2nd day of March 2022.

ATTEST: _____
Yvette Finstad, Asst. Clerk of the Commission

Bob Strosser, Chair

SECTION 9

DRUG AND ALCOHOL FREE WORKPLACE

9 DRUG AND ALCOHOL-FREE WORKPLACE

9.1 Purpose

MWC recognizes that working while impaired by alcohol or drugs of any kind may reduce productivity and jeopardize the safety of co-workers and the safety of the public we serve. In addition, MWC is obligated to comply with ORS 654 (Oregon’s Occupational Safety and Health Act), the Department of Transportation’s drug and alcohol testing regulations under the Federal Motor Carrier Safety Administration, Oregon laws related to employees who are assigned work requiring a commercial driver’s license, and other relevant state and federal laws regarding drug and alcohol testing and workplace safety.

The Commission is committed to ensuring a safe workplace, and to be a good steward of public funds. All employees, contractors, and any others who represent or work with MWC must maintain the same commitment to a workplace free of the effects of drugs and alcohol.

9.2 Applicability and Notice

The policies in this Section 9 state the rights and obligations of all Commission employees, including employees who operate commercial motor vehicles or who are otherwise required to hold a commercial driver’s license, as established by the Department of Transportation (“DOT”) regulations and applicable Oregon law.

DOT regulations establish additional rules for all employees covered by the regulations, and those policies must be stated separately, those procedures must be conducted separately, and those records must be maintained separately, from non-DOT policies, procedures, and records.

The applicable collective bargaining agreement (“CBA”) also creates additional drug and alcohol testing rights and obligations for bargaining unit members covered by the CBA, and those are incorporated in this Section 9, as well, for ease of reference.

Finally, MWC has identified certain positions that are not subject to DOT regulations or the CBA, but which may nevertheless have a significant impact on public safety (“Safety Sensitive Positions”), and those positions are also subject to additional drug and alcohol testing policies.

Where a policy or procedure applies only to employees covered by DOT regulations, employees covered by the applicable CBA, and/or Safety Sensitive Positions, that is indicated below.

All job postings will generally describe MWC’s drug and alcohol testing policies and will ensure applicants are aware when a position is subject to drug and alcohol testing. Every applicant will receive a copy of these policies when receiving a contingent job offer that requires a pre-employment drug and alcohol test. The applicant will be required to acknowledge receipt, and acknowledge that: they understand the job offer is contingent on passing the test; and that they understand the consequences of a failed test, refusing to test, or attempting to falsify a test result.

All employees will receive this Personnel Manual containing these policies at hire. Any employee who is hired into, or transfers or is promoted into, a Safety Sensitive Position, Bargaining Unit position, or position covered by DOT regulations, will receive a separate copy of these policies at hire, transfer, or promotion, and will be required to sign acknowledgement of receipt. Employees will also be provided access to the policies when instructed to take a drug and/or alcohol test, and will be required to acknowledge receipt, and acknowledge that they understand the consequences of a failed test, refusing to test, or attempting to falsify a test result.

9.3 Definitions

For purposes of these Drug and Alcohol-Free Workplace policies, the following terms shall have the following meanings, unless specifically stated otherwise.

| | |
|---|---|
| Alcohol | Any alcoholic beverage liquor as defined in ORS 471.001 and/or applicable federal regulations |
| Bargaining Unit (“BU”) Member | An employee covered by the applicable CBA, as soon as coverage begins. Any and all policies listed in this Personnel Manual, and any revisions, changes, or new policies issued from time to time, that are specific to BU Members, have been the subject of bargaining with the applicable Union(s) prior to implementation, and the policies are stated in this Manual for ease of reference only. |
| Commercial Motor Vehicle (“CMV”) | A motor vehicle: with a gross combination weight or weight rating (GVWR) of at least 26,001 pounds, alone or inclusive of one or more towed units with a GVWR more than 10,000 pounds; that is designed to transport 16 or more passengers, including the driver, or; a vehicle of any size used to transport materials covered by the Hazardous Materials Transportation Act. Any employee who operates a CMV is required by law to have a Commercial Driver’s License (CDL). Most federal regulations applicable to those who regularly operate a CMV also apply to supervisors of such employees, if they are or may be called upon to operate a CMV. |
| Commission Property | Commission Property includes all premises, worksites, facilities, parking lots, garages, work places, storage facilities, pump stations, reservoir sites, MWC vehicles, pipeline locations, and treatment plant(s), including property assigned to or used by employees, such as desks, lockers, and any storage containers. |
| Controlled Substances | For purposes of DOT regulations, “Controlled Substances” refers <i>only</i> to the following: (a) Marijuana metabolites; (b) Cocaine metabolites; (c) Amphetamines; (d) Opiate metabolites; (e) Phencyclidine (PCP). <i>Note that MWC does not exempt cannabis, until/unless otherwise required by law.</i> |

| | |
|--|--|
| | MWC reserves the right to, and may, test for other substances not defined as Controlled Substances under DOT regulations, however all such testing will occur separately. |
| Covered Employee | An individual employed by MWC who is required by law to hold a CDL to perform the Safety Sensitive Functions listed on his or her job description. |
| | Where a policy does not specifically refer to “Covered Employees,” the policy is generally applicable to all MWC employees, including Covered Employees. |
| Designated Employer Recipient (“DER”) | The Designated Employer Recipient is the authorized person at MWC who receives drug and alcohol test results, either from the MRO (for Covered Employees and DOT tests), or directly from the Medical Facility (for non-Covered Employees, and/or non-DOT tests). The HR Manager is the DER for MWC. |
| Drug | Any substance (other than alcohol) that has or may have mind- or function-altering effects. This term specifically includes Controlled Substances as defined in these policies/DOT regulations, additional substances included in other Schedules of the federal Controlled Substances Act, all substances that are illegal for non-medical personnel to possess under federal and/or Oregon law (including cannabis), prescription medications, and/or over-the-counter medications. “Drug” also includes substances that are not normally considered drugs, but which are ingested with the intended effect of altering mental functions (such as “huffing”). |
| Illegal Drug | Any Drug which, when possessed by non-medical personnel, may subject an individual to criminal penalties under federal and/or Oregon law, <i>including cannabis</i> . |
| Impaired or Under the Influence | Employees will be considered Impaired/Under the Influence, in violation of these policies and applicable laws, when a confirmed drug or alcohol test, verified by the applicable MRO, indicates: <ul style="list-style-type: none"> - any detectable level of Controlled Substance, and/or - a blood alcohol content (“BAC”) of 0.04 or greater. <p>DOT regulations limit testing and consequences to the above standards, for Covered Employees. However, MWC is authorized to and does impose additional requirements on all employees (including Covered Employees), as long as all testing and records are separate.</p> <p>In general, an employee will be considered Impaired/Under the Influence if the employee’s motor skills, senses (<i>i.e.</i> sight, hearing, balance, reaction, reflex) and/or judgment are negatively affected by the use of alcohol and/or Drugs.</p> |

| | |
|-------------------------------------|--|
| Medical Facility | Hospital, clinic, physician's office or laboratory where testing samples can be collected according to recognized professional standards. MWC uses only Medical Facilities certified to provide testing compliant with federal regulations. |
| Medical Review Officer (MRO) | A Medical Review Officer is a physician licensed to work in Oregon who has been trained and qualified in (a) collection procedures; (b) chain of custody, reporting, and recordkeeping; (c) interpretation of drug and validity tests results; (d) the role and responsibilities of the MRO in the DOT drug and alcohol testing program; and (e) the interaction with other participants in the program. |
| On-Duty/ Working Time | For purposes of these policies, On-Duty/Working Time generally refers to the time between when the employee reports for his/her work shift or is required to be in readiness to work and when he or she leaves at the end of the shift. On-Duty/Working time also includes: waiting at the scene of an accident that occurred during while working; time spent repairing a MWC vehicle, obtaining assistance for or waiting with a disabled MWC vehicle; <i>and time at social or educational events which an employee attends in his or her capacity as an MWC employee.</i> |
| Possess | “Possess” refers to when an employee has items that may violate these policies on his or her person (including in clothing pockets or elsewhere), in his or her personal belongings (including backpack, purse, wallet, briefcase, etc.), in his or her personal vehicle, and/or stored in Commission equipment such as desks or MWC vehicles. |
| Post-Accident Test | <p>For Covered Employees, a test for alcohol and/or Controlled Substances will be ordered whenever there is an accident that occurred while the employee was performing a Safety Sensitive Function (with some exceptions, noted in the applicable policy below), if the accident meets the DOT criteria.</p> <p>For all employees, a Post-Accident Test for alcohol and/or drugs will be ordered whenever there is an accident during On-Duty/Working Time that meets the criteria in the policy below, if a Trained Supervisor has reason to believe Drugs and/or alcohol contributed to the accident.</p> <p>Non-DOT testing is conducted separately from DOT testing, and all DOT records are maintained separately.</p> |
| Pre-Employment Test | <p>A test of potential Covered Employees for Controlled Substances and alcohol that occurs after a conditional job offer has been relayed to an applicant for a position involving Safety Sensitive Functions.</p> <p>Bargaining Unit Members and Safety Sensitive Positions are also subject to Pre-Employment Testing; however, the tests are conducted separately, and the records are maintained separately, from DOT tests and records.</p> |

| | |
|----------------------------------|---|
| Random Test | <p>A test for Controlled Substances and/or alcohol that is based on a random selection from a pool of Covered Employees that has been established in compliance with applicable DOT regulations.</p> <p>MWC also imposes random drug and alcohol testing on Bargaining Unit Members and employees in Safety Sensitive Positions, however the pool from which the random selection is made is separate from the DOT pool, the tests are conducted separately, and the records are maintained separately.</p> |
| Reasonable Suspicion Test | <p>Per DOT regulations, a Reasonable Suspicion Test for Covered Employees refers to alcohol and/or Controlled Substances testing based on a Trained Supervisor's determination that an employee appears to be Impaired/Under the Influence just before, during, or after performing Safety Sensitive Functions. The supervisor's determination must be based on his or her own specific, contemporaneous, articulable observations.</p> <p>For all employees, a drug and/or alcohol test may be required whenever a Trained Supervisor determines there is evidence that the employee is Impaired/Under the Influence during On-Duty/Working Time. All such tests will be conducted separately from DOT tests, and all related records will be maintained separately from DOT records.</p> |
| Refusal to Test | <p>Refusal to Test refers to an express refusal to submit to a drug and/or alcohol test when ordered to do so, and per DOT regulations and MWC policies is also defined to include:</p> <ul style="list-style-type: none"> a) A refusal to provide a urine sample for a drug test; b) Failure to provide a urine sample, or failure to provide sufficient urine for a sample, without a valid medical explanation; c) Refusal to complete and sign the breath alcohol testing form, or otherwise to cooperate with the breath testing process in a way that prevents the completion of the test; d) Tampering with or attempting to adulterate the urine specimen or collection procedure; and e) Not reporting to the collection site when instructed to do so, within the time required. |
| Safety Sensitive Function | <p>As defined by federal regulations, "Safety Sensitive Function" work includes all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:</p> <ul style="list-style-type: none"> (1) All time at an employer's or customer's 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 or servicing a CMV;
 - (3) All time spent at the driving controls of a CMV in operation;
 - (4) All time, other than driving time, in or upon any CMV (except time spent resting in a sleeper berth);
 - (5) All time loading or unloading a CMV, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or giving or receiving receipts for shipments loaded or unloaded; and
 - (6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled CMV.

| | |
|---|---|
| Safety Sensitive Position | MWC defines certain positions that are not covered by the CBA and/or DOT regulations as “Safety Sensitive Positions” if a momentary lapse in attention could result in serious injury to co-workers or members of the public. Employees in Safety Sensitive Positions are subject to additional drug and alcohol testing consistent with DOT regulations. |
| | Examples of Safety Sensitive Positions include backhoe or crane operators, and Water Treatment Plant Operators, and BBS Operators. The list of Safety Sensitive Positions is reviewed periodically by HR and the Water Management Team and may be updated as needed. Any employee may review the list of Safety Sensitive Positions, upon request. |
| Substance Abuse Professional (“SAP”) | A counselor, healthcare practitioner, or treatment provider who is licensed to provide evaluation in compliance with DOT regulations, and who makes recommendations concerning education, treatment, follow-up testing, and aftercare. |
| Trained Supervisor | An MWC employee who has been assigned supervisory authority over an employee, including the authority to require the employee to report for an alcohol and/or drug test, and who has received the training required by Department of Transportation regulations. |
| Verified Positive Test | A test for alcohol and/or Controlled Substances that indicates the employee is Impaired/Under the Influence, as defined in these policies and applicable law, that has been confirmed by a second test of the same sample, and that has been verified by the MRO. |
| Workplace | “Workplace” means any and all Commission Property, and any place in which an employee is performing services for the Commission or is otherwise On-Duty/Working. As noted in the definition of On-Duty/Working, under certain circumstances these policies apply outside the normal MWC facilities and outside regular working hours. |

9.4 Prohibited Conduct; Drug Testing Policy Applicable to All Employees

All MWC employees must comply with the policies in this Section.

All MWC employees are subject to alcohol and drug testing based on Reasonable Suspicion, and Post-Accident testing.

1) Working while Impaired Prohibited. No employee may be Impaired/Under the influence of Drugs or alcohol while On-Duty/Working.

MWC holds all employees to the DOT standards related to alcohol and Controlled Substances as a minimum threshold, but reserves the right to test for additional substances, if the applicable Medical Facility provides for such additional tests. MWC also reserves the right to take appropriate employment action, even in the absence of a Verified Positive Test for Controlled Substances and/or a BAC of 0.04 or greater, if there are other indicia of impairment and a member of the Water Management Team determines that it is necessary to remove an employee from the workplace to ensure safe and effective operations.

Such action will not necessarily be disciplinary in nature and may include substitution of Safety Sensitive Functions and/or temporary reassignment, depending on the circumstances. For instance, an employee who is Impaired/Under the Influence of prescribed medication but was unaware the medication would affect his or her ability to work may need temporary adjustment of duties but will not be subject to discipline.

For Covered Employees, any non-DOT tests will occur separately from DOT tests, and the test results will not be maintained with DOT records or otherwise affect a Covered Employee's status per DOT regulations

2) Using Drugs or Alcohol Prohibited; Exceptions. No employee may use Drugs or alcohol while On-Duty/Working. Partial exceptions:

a) Alcohol at Social Functions. Where alcohol is served at work-related functions (such as conferences or parties), moderate consumption of alcohol by employees who are of legal drinking age is acceptable. However, employees must avoid becoming Impaired/Under the Influence, must comply with all Commission policies including policies related to confidential information, and policies prohibiting discrimination and harassment. Employees who must return to work after the event should not drink if the odor of alcohol or the fact of alcohol consumption is likely to impair the public perception of safety and/or public confidence and trust in the employee, even if he or she is not Impaired/Under the Influence.

Specific rules apply to Bargaining Unit Members, CDL-holders, and employees in Safety Sensitive positions, as noted below.

b) Prescribed and Over-the-Counter Drugs. An employee is not prohibited from taking prescribed or over-the-counter drugs to treat medical conditions. However, an employee using any medication that may affect his or her ability to safely perform assigned duties must report any restrictions to his or her supervisor before reporting to

work or beginning any Safety Sensitive Functions. It is the employee's responsibility to determine whether a medication may affect the employee's ability to work safely, after consultation with his/her healthcare provider, if necessary or appropriate.

The use of medications as part of a prescribed medical treatment program is not grounds for disciplinary action, however, failure to report restrictions may subject an employee to disciplinary action.

In the event MWC reasonably believes an employee is presently unable to perform the essential functions of his or her position, due to the use of medication, HR may require the employee to submit to a Fitness for Duty exam with his or her healthcare provider, consistent with applicable law.

3) Illegal Drugs Prohibited. No employee shall Possess, manufacture, sell, offer for sale, purchase, obtain, or distribute Illegal Drugs while On-Duty/Working, or in the Workplace.

4) Reporting Off Duty Use if Called Back to Work. If an employee who is off duty and is not on paid standby is called back to work and is Impaired/Under the Influence of Drugs and/or alcohol, the employee shall advise his/her supervisor, and another employee will be utilized. Employees are not subject to discipline for such an event and any information reported to the supervisor will remain confidential. Employees on paid standby, however, are prohibited from using Drugs or alcohol during that paid time, except for medications (but see the previous section about medical restrictions).

5) Drug and Alcohol Testing. Based on Reasonable Suspicion or following an accident that occurs during On-Duty/Working Time in which a Trained Supervisor has reason to believe that Drugs and/or alcohol was/were a contributing factor, an employee shall be directed to immediately report to a Medical Facility for a drug and/or alcohol test.

Covered Employees must follow DOT regulations regarding Reasonable Suspicion and Post-Accident testing (see applicable policies, below).

All employees must report to the Medical Facility immediately, unless unable to do so due to the need to seek medical care, lack of transportation, or other related reason. If an employee is unable to report for testing immediately after an accident, he or she must remain available for post-accident testing for at least 32 hours after the accident.

To ensure public safety, MWC reserves the right to remove an employee from all Safety Sensitive Functions until it is clear the employee is not Impaired/Under the Influence and can safely perform his or her duties, even in the absence of a Verified Positive Test. If there are no non-Safety Sensitive Functions the employee can perform, or if the Trained Supervisor determines the employee is significantly Impaired/Under the Influence, MWC may instruct the employee to go home on paid suspension, until a test can be performed, or pending the results of any tests.

MWC will typically apply only DOT-regulated testing procedures and employment actions to Covered Employees. Those regulations prohibit removal from Safety Sensitive

Functions until after there has been a Verified Positive Test. However, DOT regulations also allow an employer to take action under separate authority, so long as the procedures are conducted separately, and the records are maintained separately. Therefore, if a Trained Supervisor determines that it is likely a Covered Employee is Impaired/Under the Influence while On-Duty/Working, but there is no Verified Positive Test, MWC may remove the employee from Safety Sensitive Functions under its own authority. This may occur if, for example, the MRO has not yet had time to provide a Verified Positive Test result, the test was inconclusive, or the Medical Facility and/or DOT regulations do not provide for testing for the Drug that may be causing impairment.

As stated above, in the event an employee is removed from Safety Sensitive Functions and there are no non-Safety Sensitive Function duties that the employee may perform, the employee may be sent home on paid suspension, pending the results of the tests.

The Reasonable Suspicion and Post-Accident Testing policies in this Section are in addition to and separate from the rights and obligations for Covered Employees. No action taken under this policy as to any Covered Employee shall affect the Covered Employee's DOT records or eligibility for DOT-covered employment, and all non-DOT testing shall occur separately from DOT testing.

1) Reasonable Suspicion Testing

When determining that Reasonable Suspicion exists to test for non-Covered Employees, or for Covered Employees where the DOT criteria are not met, a Trained Supervisor may base the determination on the supervisor's own observations, or may base the determination on credible, substantiated reports that an employee is Impaired/Under the Influence while On-Duty/Working, such as the following:

- Slurred speech, apparent confusion, emotional outbursts or disruptive behavior, bloodshot eyes, and/or poor motor coordination, in the absence of other explanations for the behavior, and in conjunction with other indicia that alcohol or Drug use cause the behavior;
- Substantial loss of productivity at work, in conjunction with other indicia that alcohol or Drug use caused the loss of productivity;
- Repeated unexplained tardiness or absences from work, in conjunction with other indicia that alcohol or Drug use caused the tardiness or absences;
- Behavior that causes an on-the-job accident, in conjunction with other indicia that alcohol or Drug use caused the accident, if the accident resulted in death, injury requiring medical care, and/or property damage that was more than minor;
- Odor of alcohol or marijuana while On-Duty/Working;
- Unsafe handling of equipment or tools, in conjunction with other indicia that alcohol or Drug use caused the behavior; and/or

- Actual observation of alcohol or Drug use while On-Duty/Working.

Supervisors will document the basis of the Reasonable Suspicion determination at the time the determination is made.

2) Post-Accident Testing

Employees will be required to submit to Post-Accident Testing whenever the accident that occurred during On-Duty/Working Time resulted in death to any person, injury to any person that requires medical care, or anything other than minor property damage, and a Trained Supervisor reasonably believes there is evidence alcohol and/or drugs contributed to the accident.

9.5 Consequences for Violation of MWC's Drug and Alcohol-Free Workplace Policies; Last Chance Agreements

A non-Covered Employee who has a confirmed positive test for any Controlled Substance or any other Drug that has been the subject of a test ordered by MWC, or a confirmed BAC level at or above 0.04, will be suspended without pay for 24 hours.

In addition, any Non-Covered Employee who violates any of these policies, including Refusal to Test, Possessing Illegal Drugs, or other policies: (a) will not be allowed to perform any Safety Sensitive Functions until/unless MWC management is satisfied that the employee is not Impaired/Under the Influence and can perform those functions safely; and (b) may be subject to additional discipline, up to and including termination of employment.

As stated below, when MWC receives a Verified Positive Test as to a Covered Employee, the employee's employment may be terminated, or MWC may, in its sole discretion, allow the employee to return to work, but only if he or she has been evaluated by a Substance Abuse Professional, follows the SAP's recommended treatment plan, has passed a drug and/or alcohol test, and is subject to additional Return to Duty tests. If it appears a non-Covered Employee is struggling with addiction or otherwise could benefit from treatment, MWC may offer the same option.

In summary, if an employee who is not a Covered Employee fails a drug or alcohol test, or otherwise violates any of these policies, MWC may take whichever of the following steps is considered appropriate to the circumstances:

- (1) The employee may be subject to discipline (in addition to the 24-hour suspension);
- (2) The employee's employment with MWC may be terminated; or
- (3) The employee may be offered continued employment under a Last Chance Agreement that includes, at a minimum:
 - (a) A requirement that the employee pass a drug and alcohol test before returning to work, demonstrating that the employee is not Impaired/Under the Influence of any Drugs, and has a BAC of 0.02 or lower;

- (b) Agreement by the employee to submit to follow-up testing for at least the next twelve (12) months but no more than sixty (60) months, after returning to work;
- (c) Agreement by the employee to undergo an evaluation by an SAP, and comply with the SAP's recommended education and treatment plan;
- (d) A requirement that the SAP submit a written report to HR, certifying that the employee has complied with the recommended education and treatment plan, and outlining any recommended follow-up treatment and testing plan after the employee returns to work;
- (e) Notice that a failed drug or alcohol test at any time in the future will result in immediate termination of employment, with no investigative meeting or hearing; and
- (f) Notice that only one Last Chance Agreement is available to any employee.

Note that an employee who is participating in addiction treatment has a right to use all available paid leave (starting with sick leave), and to use all available medical leave under OFLA and/or FMLA, for treatment. Medical benefits may cover some of the costs for this treatment. Any costs accrued that are not covered by insurance are the sole responsibility of the employee.

9.6 General Drug Testing Provisions

MWC uses a certified Medical Facility that follows chain of custody, confirmatory retesting, and other state and federal requirements. All positive tests are subjected to a second, confirmatory test on the same sample.

MWC utilizes an MRO to review all drug and alcohol test results, including both DOT tests and non-DOT tests.

Covered Employees are subject to specific provisions under DOT regulations, as outlined below. For all other employees, the Medical Facility will send the results directly to HR.

Applicants may request test results from the Medical Facility or from HR.

9.6.1 Retesting at Employee's Request

An applicant who has failed a drug or alcohol test, may, at his or her expense, seek retesting of the original sample. Such a request must be made in writing to MWC's Human Resources Department within 30 days of the date of notification of the original test results. The applicant may request that another Medical Facility conduct the test, subject to approval by MWC. Accepted chain-of-custody procedures must be followed: at no time shall the applicant receive the original sample to transfer or hold until the retest may be conducted. If the retest gives a negative result, the applicant will be deemed to have passed the test. In such cases, applicants shall not be entitled to any position filled in the interim or to any other benefit except retention on an eligibility list.

9.6.2 Confidentiality

Samples will be tested by a licensed Medical Facility meeting the requirements of applicable state and federal law. All results are provided to Human Resources, who is MWC's Designated Employer Recipient ("DER").

All non-DOT test results will be maintained with an employee's confidential medical files, separately from his or her personnel file, and only authorized supervisory personnel with a need to know will have access.

For Covered Employees, DOT test results and other DOT records are subject to additional restrictions, and are maintained in separate files, as outlined below.

9.6.3 Refusal to Test/Tampering with the Test Specimen

1) As stated in the Definitions section of these policies, refusal to submit to a drug and/or alcohol test when instructed to do so is a violation of these policies and will result in discipline, up to and including termination. As also stated in the Definitions section, Refusal to Test includes a) refusal to provide a urine sample for a drug test; (b) failure to provide a urine sample, or failure to provide sufficient urine for a sample, without a valid medical explanation; (c) refusal to complete and sign the breath alcohol testing form, or otherwise to cooperate with the breath testing process in a way that prevents the completion of the test; (d) tampering with or attempting to adulterate the urine specimen or collection procedure; and (e) not reporting to the collection site when instructed to do so, within the time required.

2) Covered Employees must follow specific DOT regulations, outlined below. All other employees will be subject to the Consequences policies listed above.

3) If MWC has evidence that a non-Covered Employee intentionally tampered with the test results, that employee will usually not be offered a Last Chance Agreement, and will normally be barred from applying for or working with MWC for a period of at least twelve (12) months.

9.7 Management Responsibility/Drug Free Awareness Program

Management is responsible for (1) providing Reasonable Suspicion training to all supervisory personnel, and (2) establishing an educational program for all employees to make employees aware of a) the dangers of drug abuse in the workplace; b) MWC's Drug and Alcohol Free Workplace policies, and consequences for violations of the policies; c) available drug and alcohol counseling, rehabilitation, and employee assistance programs.

The training for supervisors will include, at a minimum, at least one (1) hour of training on alcohol misuse, and at least one (1) additional hour of training on Controlled Substances use, including the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of Controlled Substances, to assist in determining when there is Reasonable Suspicion to require an alcohol and/or drug test

9.8 Voluntary Disclosure

When an employee voluntarily self-identifies the existence of a drug or alcohol problem, MWC will provide a list of licensed Substance Abuse Professionals, as well as information about MWC's Employee Assistance Program provider.

MWC will not take any adverse employment action based on the disclosure alone.

If the disclosure occurs in conjunction with performance issues or counseling, or being Impaired/Under the Influence during On-Duty/Working Time, MWC will not impose discipline so long as:

- 1) The employee discloses the problem prior to engaging in Safety Sensitive Functions (if any are normally assigned to the employee);
- 2) The employee did not disclose the problem to avoid testing (for instance, disclosure did not occur right after being instructed to take a Reasonable Suspicion or Post-Accident test); and
- 3) The employee complies with the follow-up requirements listed below.

After voluntarily disclosing the problem, any Covered Employee, Bargaining Unit Member, or employee in a Safety Sensitive Position will not be allowed to perform Safety Sensitive Functions until: (a) the employee has been evaluated by a Substance Abuse Professional and has successfully completed education or treatment requirements recommended by the SAP; and (b) the employee has tested negative for Controlled Substances, and/or tested with a BAC of less than 0.02.

Any employee who is evaluated by an SAP under this Section must agree to submit to any follow-up treatment and testing recommended by the SAP.

Employees seeking evaluation and treatment have a right to use all available paid time off, beginning with sick leave, and all available medical leave under OFLA and/or FMLA will be applied.

The supervisor to whom a voluntary disclosure has been made will document the conversation. An employee's disclosure under this Section is a confidential medical record and may not be disclosed to anyone except to supervisory or management employees with a need to know, to the applicable federal agency (as to Covered Employees), or as otherwise required by law.

Alcohol and drug dependency are recognized disabilities protected under the ADA and Oregon disability laws. Participation in addiction treatment is also protected by such laws. No employee will be subject to discipline or retaliation because of disclosure of addiction and/or treatment.

However, no law requires an employer to permit or ignore violation of reasonable policies, including a prohibition on working while under the influence of drugs and/or alcohol.

Voluntary disclosure under this policy will not relieve an employee of the obligation to meet work standards or comply with work policies. An employee who has voluntarily disclosed a problem with misuse of alcohol or use of Drugs will continue to be subject to Reasonable Suspicion Testing, Post-Accident Testing, discipline for a confirmed positive test, and discipline for attendance issues related to Drugs and/or alcohol.

9.9 Bargaining Unit Members; Safety Sensitive Positions.

Under the applicable Collective Bargaining Agreement, Bargaining Unit members are subject to the same drug and alcohol policies as employees covered by Department of Transportation regulations, outlined in Section 9.10, including: Pre-Employment testing, Random testing, Reasonable Suspicion testing, Critical Incident testing, Stand Down provisions, MRO verification, referral to a Substance Abuse Professional, and Confidentiality.

In addition, MWC has identified several Safety Sensitive positions where even a momentary lapse in judgment could lead to substantial injury to others. Employees in these Safety Sensitive positions are subject to the policies and procedures applicable to all MWC employees, and in addition are subject to the following drug and alcohol testing applicable to employees covered by the Department of Transportation regulations, as outlined in Section 9.10: Pre-Employment Testing, and Random testing.

Drug test results for BU Members and employees in Safety Sensitive Positions are not maintained with DOT records, and neither BU Members nor employees in Safety Sensitive Positions are part of the Covered Employee Random Testing pool, per DOT regulations.

9.10 Commercial Motor Vehicle Drivers/Covered Employees

Federal law imposes specific restrictions and obligations on employees who operate or may be called upon to operate Commercial Motor Vehicles (“Covered Employees”), and on their employers. The law requires that these policies be stated separately and requires that all related records be maintained separately.

Under Department of Transportation and related regulations, Covered Employees are required to submit to Pre-Employment Testing, Random Testing, Reasonable Suspicion Testing, Post-Accident Testing, and Return to Duty Testing.

MWC pays the costs of all drug and alcohol testing required by law, including confirmatory tests. Follow-up testing or re-testing that occurs at the request of the employee is usually at the employee’s cost.

DOT-regulated employers are also required to provide educational materials to employees, provide training to supervisors, obtain DOT test records from past employers of each Covered Employee who is hired or promoted into a position involving Safety Sensitive Functions, conduct drug testing according to strict DOT regulations, maintain applicable drug test results according to specific confidentiality provisions, and relay certain information to the applicable federal agency (“the Clearinghouse”). In the event a Covered Employee’s employment with MWC ends, and he or she seeks employment performing Safety Sensitive

Functions with another employer, MWC must also relay his or her DOT records to the prospective employer, upon request.

9.10.1 Specific Prohibitions Related to Covered Employees

The following conduct is prohibited and will result in discipline, up to and including termination:

- 1) Reporting for duty or remaining on duty requiring the performance of Safety-Sensitive Functions while having a Blood Alcohol Concentration level of 0.04 or greater;
- 2) Performing Safety Sensitive Functions within 4 hours of using alcohol;
- 3) Using alcohol while performing Safety Sensitive Functions;
- 4) Reporting for duty or remaining on duty requiring the performance of Safety Sensitive Functions when the employee used any Controlled Substance, except if the use is pursuant to the instructions of a licensed healthcare provider who has advised the employee that the substance will not adversely affect the employee's ability to safely operate a CMV. The employee may be required to furnish the healthcare providers certification to that effect, to HR.
- 5) Reporting for duty or remaining on duty requiring the performance of Safety Sensitive Functions after a test demonstrating that the employee was Impaired/Under the Influence of Controlled Substances while On-Duty/Working;
- 6) Refusal to Submit to any alcohol or Controlled Substances test required by these policies. See Definitions Section for the types of conduct that constitute "Refusal to Submit."
- 7) Consuming alcohol during the eight hours immediately following an accident, or until the employee undergoes a post-accident alcohol test and is released from duty, whichever occurs first.

9.10.2 Pre-Employment Testing – Covered Employees

An offer of employment, or an offer of promotion or transfer, for any position performing Safety Sensitive Functions will be contingent on passing a drug and alcohol test. Specifically, the offer will be contingent upon receipt by MWC of test results from a Medical Facility that:
(a) there is no detectable level of any Controlled Substances and (b) the applicant or employee's BAC for alcohol is below 0.04.

Refusal to Test will disqualify the applicant for the position or promotion. A list of the Controlled Substances in the drug screen will be furnished upon request.

A Verified Positive Test will disqualify the applicant for any position with Safety Sensitive Functions for a period of six (6) months from the date of the test.

This policy shall be distributed to all new employees at the time of appointment and basic information about this program shall be made available to applicants for MWC jobs or positions through the job announcement.

9.10.3 Random Tests – Covered Employees

Random Testing for alcohol will be administered just prior to an employee performing a Safety Sensitive Function, while the employee is performing a Safety Sensitive Function, or just after the employee has stopped performing a Safety Sensitive Function. Random Testing for Controlled Substances may be administered at any time.

MWC's Random Testing program complies with all requirements of applicable federal law, including the following:

- 1) The selection process is a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with Covered Employees' Social Security numbers, payroll identification numbers, or other identifying numbers.

Note that because the selection process is truly random, each employee has an equal chance of being selected for each test, which means that some employees may be tested more than once in a year, while others will not be tested at all.

- 2) In order to ensure random selection, MWC must determine the average number of Covered Employees in a given year. That number is determined by adding together the total number of Covered Employees eligible for testing during each testing period and dividing that total by the number of Random Testing periods.
- 3) Only Covered Employees are in the Random Testing pool.
- 4) The random selection rates will comply with the minimum rates set by the Department of Transportation for the operation of vehicles covered by the Federal Motor Carrier Safety Administration (FMCSA).
- 5) Random testing will be unannounced and dates for testing reasonably spread throughout the calendar year.

When an employee is selected for random testing, his/her supervisor will ensure that the employee's duties are covered. The employee will then receive a written note indicating the time and location he/she is to report for testing.

Upon receiving instruction to report for Random Testing, the employee shall proceed to the test site immediately. Failure to report immediately shall be considered Refusal to Test.

9.10.4 Reasonable Suspicion Testing – Covered Employees

Covered Employees will be required to submit to Reasonable Suspicion Testing under the following circumstances:

Alcohol testing – based on the specific, contemporaneous, articulable observations of a Trained Supervisor concerning the appearance, behavior, speech or body odors of the employee that indicate current alcohol impairment; and/or

Controlled substance testing – based on the specific, contemporaneous, articulable observations of a Trained Supervisor concerning the appearance, behavior, speech or body odors of the employee that indicate current impairment by Controlled Substances. The observations may include indications of the chronic and withdrawal effects of controlled substances.

Reasonable Suspicion Testing is permissible only when the Trained Supervisor has made the observation during, immediately before, or immediately after the performance of Safety Sensitive Functions.

A Reasonable Suspicion test for alcohol should be administered within two (2) hours of the observation, but no later than eight (8) hours after the observation. If a Trained Supervisor has determined that Reasonable Suspicion exists, but a test has not been administered within 2 hours, or no test has been administered after 8 hours, MWC shall create and retain a record of the reasons for the delay or the failure to obtain a test.

DOT regulations do not impose a time limit for Reasonable Suspicion Testing for Controlled Substances. However, since the purpose of all testing is safety, it is MWC's policy to arrange for Reasonable Suspicion Testing for Controlled Substances as soon as possible after the Trained Supervisor has made the observation.

Testing occurs at a Medical Facility; MWC employees do not administer tests, including breathalyzer tests. In the event that changes, in no event shall the direct supervisor or the Trained Supervisor who made the observation conduct the breathalyzer test.

Employees who are required to submit to Reasonable Suspicion testing are prohibited from transporting themselves to the Medical Facility. A supervisor or management employee will arrange for transportation.

If a Trained Supervisor has determined Reasonable Suspicion exists, but for some reason an alcohol test cannot be conducted within the time allowed, or a Controlled Substances Test cannot be timely conducted, the Covered Employee is still prohibited from reporting for duty while Impaired/Under the Influence. Pursuant to federal law, MWC will not allow a Covered Employee to perform Safety Sensitive Functions until:

- 1) An alcohol test is administered and the employee measures less than 0.02; or
- 2) 24 hours have elapsed since the Reasonable Suspicion observation.

In the absence of a timely alcohol or Controlled Substances Test, no disciplinary action will be taken against an employee, except that he or she will be removed from performing Safety Sensitive Functions for the period stated above, and the Reasonable Suspicion determination will become part of the employee's DOT file.

A written record shall be made of any Reasonable Suspicion determination, within 24 hours of the observed behavior, or before the results of the alcohol or drug test are released, whichever is earlier.

To ensure that supervisors are trained to make Reasonable Suspicion determinations, supervisors with the authority to demand Reasonable Suspicion Testing will attend at least one hour of training on alcohol misuse and at least one hour of training on Controlled Substances use. The training will cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of Controlled Substances.

9.10.5 Post-Accident Tests – Covered Employees

A Covered Employee who is involved in an accident while engaged in Safety Sensitive Functions shall be subject to drug and/or alcohol testing under the following conditions:

For alcohol –

- (1) if the accident resulted in the loss of human life; and/or
- (2) if the driver receives a Moving Vehicle citation within 8 hours of the accident and the accident involved (i) bodily injury to any person requiring medical treatment away from the scene of the accident; or (ii) disabling damage to one or more vehicles, requiring that the vehicle(s) be towed away.

For Controlled Substances –

- (1) if the accident resulted in the loss of human life; and/or
- (2) if the driver receives a Moving Vehicle citation within 32 hours of the accident, and the accident involved (i) bodily injury to any person requiring medical treatment away from the scene of the accident; or (ii) disabling damage to one or more vehicles, requiring that the vehicle(s) be towed away.

A Covered Employee subject to Post-Accident Testing shall remain available for alcohol testing for up to 8 hours after the accident, and for Controlled Substances testing for up to 32 hours after the accident. A Covered Employee who is not readily available may be deemed to have engaged in a Refusal to Test, in violation of these policies.

However, nothing in this section shall be construed to require the delay of necessary medical attention for injured persons following an accident or prohibit the driver from leaving the scene of an accident if necessary, to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

MWC will attempt to obtain a Post-Accident alcohol and drug testing as soon as possible after the accident and will order both tests to occur at the same time, where possible and permissible. Post-Accident Testing is subject to the following additional restrictions:

1) MWC will attempt to obtain an alcohol test within two (2) hours following an accident. If no such testing occurs within that time, MWC document the reasons no such test occurred, and will continue to attempt to have the employee tested, for a period of an additional six (6) hours. No alcohol test may be administered more than eight (8) hours following the time of the accident.

2) A Post-Accident Controlled Substances test must be conducted within 32 hours following the accident.

3) If MWC is unable to obtain an alcohol and/or Controlled Substances test within the requisite time period, MWC will create and retain a record as to the reason the tests were not conducted.

The results of a breath or blood test for the use of alcohol, and/or the results of a urine test for 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, provided such tests conform to the applicable Federal, State or local testing requirements, and the results of the tests are obtained by the employer.

The Post-Accident Testing requirements do not apply to (1) an accident/injury involving only boarding or alighting from a stationary motor vehicle; or (2) an accident/injury involving only the loading or unloading of cargo; or (3) an accident/injury occurring in the course of operating a passenger vehicle, unless it is transporting persons for hire, or hazardous materials.

9.10.6 Return to Duty Testing – Covered Employees

A Covered Employee who has failed an alcohol or drug test must submit to a Return to Duty test before he/she may be returned to his/her position. The test result must indicate an alcohol concentration of less than 0.02 or a verified negative result on a Controlled Substances test in order to return to work. The type of test administered is based on whether the violation was drug or alcohol related.

After returning to work, Covered Employees will be required to submit to unscheduled follow-up testing, for a period of at least twelve (12) months but no more than sixty (60) months. Employees must submit to at least six (6) tests in the first 12 months. Refusal to Test during this period may result in immediate dismissal from employment. Follow-up testing is separate from the Random Testing obligation.

The Substance Abuse Professional (SAP) may terminate the need for follow-up testing at any time after the first 6 tests have been administered, if he or she determines that such testing is no longer necessary. Follow-up alcohol testing may only be administered when the employee is performing Safety Sensitive Functions, just prior to performing such functions, or just after the functions have been completed.

9.10.7 General Drug and Alcohol Testing Procedures – Covered Employees

Employees must report for testing immediately after being instructed to do so, or as soon as possible after an accident, for Post-Accident Testing. An employee who has been instructed to

submit to Reasonable Suspicion testing will be provided transportation to the Medical Facility and may not transport himself or herself.

As stated above, MWC utilizes a certified MRO to review the chain of custody and test results.

- 1) If there is a confirmed negative test, the MRO will verify that result to HR.
- 2) If the test is dilute or otherwise insufficient, or shows signs of tampering, the MRO will instruct HR to order a new test. The new test must be conducted under observation.
- 3) If there is a confirmed positive test, or a confirmed adulterated, substituted, or invalid test, the MRO will review the documentation and chain of custody. If the MRO determines the test results are invalid, the MRO will cancel the test results and relay that information to HR, with an order to immediately retest.
- 4) If the MRO receives a confirmed positive test, or a confirmed adulterated, substituted, or invalid test, and determines that the test results are valid, the following procedures will apply:
 - a) The MRO will contact or attempt to contact the employee within 24 hours. If the MRO is unable to make contact, the MRO will ask HR to contact the employee and instruct the employee to contact the MRO.
 - b) After a confidential in-person or telephone interview with the employee, the MRO will relay verification of the confirmed drug and alcohol tests to HR, along with any medical information relevant to Safety Sensitive Functions.
 - c) If the employee expressly refuses to provide an interview, fails to contact the MRO within 72 hours after HR has relayed instructions to contact the MRO, or neither HR nor the MRO has been able to reach the employee within ten (10) days of the test results, the MRO may verify the results to HR without an employee interview.

An employee who has a Verified Positive Test result will be immediately removed (“Stand Down”) from all Safety Sensitive Functions, and additional discipline may follow, up to and including termination of employment.

Under DOT regulations MWC may order a Covered Employee to Stand Down from Safety Sensitive Functions, pending the results of a Reasonable Suspicion Test, or in the absence of a Verified Positive Test ordered on a Reasonable Suspicion basis, so long as the action is not disciplinary in nature and the employee suffers no loss of pay.

MWC reserves the right to and may remove an employee from Safety Sensitive Functions pursuant to its obligation to protect public safety and ensure a safe workplace, even in the absence of a Verified Positive Test result, or before receiving a Verified Positive Test result. Any such action that is outside DOT regulations would occur under MWC’s own authority and would not be recorded with DOT records or otherwise affect the employee’s DOT status.

9.10.8 Referral to Substance Abuse Professional – Covered Employees

When a Covered Employee has a Verified Positive Test or violates any of the prohibitions applicable to Covered Employees, MWC is not required to allow the employee to return to working in any position involving Safety Sensitive Functions. MWC may, in its sole discretion, discipline (including demotion), transfer, or terminate a Covered Employee with a Verified Positive Test or other violation of the applicable policies.

However, if management decides to allow a Covered Employee to continue working after a Verified Positive Test, the following steps must be in place in order for the Covered Employee to return to work in any position that includes Safety Sensitive Functions, per DOT regulations:

- 1) The employee must be referred to a Substance Abuse Professional (SAP) for evaluation, must complete the evaluation, and must follow the SAP's recommendations for education and treatment, and aftercare. HR will provide a list of all local SAPs that are acceptable to MWC, with contact information.
- 2) The SAP must certify that the employee has been evaluated and provide a written report, with recommendations for education, treatment, and testing, to HR.
- 3) The SAP must conduct a follow-up evaluation to determine whether the employee has successfully complied with the SAP's recommended education and treatment, and must provide another written report to HR.
 - a. If the SAP concludes that the employee has not successfully complied with the SAP's recommended education and treatment plan, the employee may not return to work in any capacity involving Safety Sensitive Functions, and may be subject to discipline, according to MWC's ordinary policies (see above).
 - b. If the SAP concludes that the employee has successfully complied with the SAP's recommended education and treatment plan, but recommends ongoing treatment even after returning to duty, the employee must comply with that recommendation, and MWC is authorized to monitor and enforce those recommendations. Failure to comply with the follow-up plan will lead to removal from any Safety Sensitive Functions, as well as discipline, up to and including termination of employment.
- 4) The employee must pass a Return to Duty test that is negative for any Controlled Substance and is lower than 0.02 for alcohol.
- 5) After returning to work, the employee must submit to follow-up drug and/or alcohol testing for a period of at least 12 months (1 year), and up to 60 months (5 years), after returning to work. The follow-up testing must include at least 6 tests in the first 12 months, although the SAP may recommend more tests. The SAP may recommend discontinuing the testing at any time after the first 12 months.

- 6) A Verified Positive Return to Duty test, or any Verified Positive Test after returning to work, will lead to immediate termination, without an investigative meeting or hearing.
- 7) Any other violation of DOT regulations, after returning to work, or failure to follow the SAP's recommended plan, will also result in termination, however the employee will retain the right to an investigative meeting and hearing.

MWC rather than the SAP determines when the employee may safely return to Safety Sensitive Functions, however MWC will rely on the SAP's written reports and recommendations in making that determination.

Note that an employee who is receiving treatment from an SAP or otherwise participating in addiction treatment has a right to use all available paid leave (starting with sick leave), and to use all available medical leave under OFLA and/or FMLA, for treatment. Medical benefits may cover some of the costs for this treatment. Any costs accrued that are not covered by insurance are the sole responsibility of the employee.

9.10.9 Confidentiality – Covered Employees

MWC is required to request all DOT records from a Covered Employee's prior employer(s) for the past three (3) years, if the employee at any time during that period worked in a Safety Sensitive Functions. MWC is also required to provide its DOT records for any Covered Employee who leaves employment and is hired by another employer to perform Safety Sensitive Functions

All DOT test records, SAP reports, and other DOT records are confidential and may not be released to anyone other than:

- MWC's Human Resources Manager, as the DER of MWC;
- Prospective employers of former employees, upon written request by the employee, when the employee will be performing Safety Sensitive Functions with the new employer;
- Federal and state agencies, including the Federal Motor Carrier Safety Administration, and any state agency requiring such information related to state CDL-holders;
- A designated SAP for the employee;
- Pursuant to a legal demand for such information (such as in litigation, or an administrative agency claim). When information is released in response to a legal demand, written notice of the disclosure will be provided to the employee.

All DOT drug and alcohol tests must be conducted separately from non-DOT drug and alcohol tests; non-DOT tests may not be conducted on the same sample.

All DOT records are maintained separately from all other records related to a Covered Employee. Any non-DOT tests or records related to employment decisions that are based on authority other than DOT regulations will not be maintained with DOT records.

All DOT records must be retained for the period of time prescribed by DOT regulations. Covered Employees may request to view their own DOT records at any time.

9.11 Future Revision of Drug and Alcohol-Free Workplace Policy

The Commission may revise this policy when it deems appropriate. All employees will be notified of any changes, in advance of the effective date of such changes. Any changes which affect Bargaining Unit Members will generally occur after negotiation with the applicable Union, unless MWC is relying on a reservation of Management Rights.

However, the Commission's efforts to maintain a drug- and alcohol-free workplace are not limited exclusively to this policy. The Commission may take other steps not outlined in these policies, if necessary, under the circumstances, to ensure a safe workplace and protect the safety of the public MWC serves.

9.12 Contractors

It is the policy of MWC that, in order to attain or maintain a contract with the Commission, each contractor shall agree to the policies outlined below. For purposes of these policies, the definitions stated in MWC's Drug and Alcohol-Free Workplace policies apply.

While the contractor and/or its employees or agents are performing services for MWC under the applicable contract(s), using Commission equipment, and/or on Commission property or public or private property where MWC is present to perform work, the contractor and the contractor's employees or agents:

- 1) Shall not be Impaired/Under the Influence;
- 2) Shall not use, Possess, manufacture, sell, offer for sale, purchase, obtain, or distribute alcohol or Drugs. This prohibition does not apply to the possession of closed containers of alcohol in a contractor's (or contractor's employee's) personal vehicle parked in a Commission parking lot or on Commission property.
- 3) Each contractor must, prior to contract approval, provide to the Commission a copy of its Drug and Alcohol-Free Workplace Program or similar program, which must include drug-testing components equal to or greater than the Commission's Drug and Alcohol-Free Workplace Policy requirements for any employee or agent who will be performing Safety Sensitive Functions.

This policy, as it relates to contractors, shall be implemented by requiring appropriate contract provisions to be included in any contract between the Commission and a contractor, including contractor's employees and agents.

9.13 Drug and Alcohol-Free Workplace – Policy Distribution

The Drug and Alcohol-Free Workplace policies are published and distributed to each employee of the Commission as a part of the Commission’s “Personnel Manual,” and employees will be asked to acknowledge that they have received, read, understood and agree to abide by such policies.

SECTION 9

DRUG AND ALCOHOL FREE WORKPLACE

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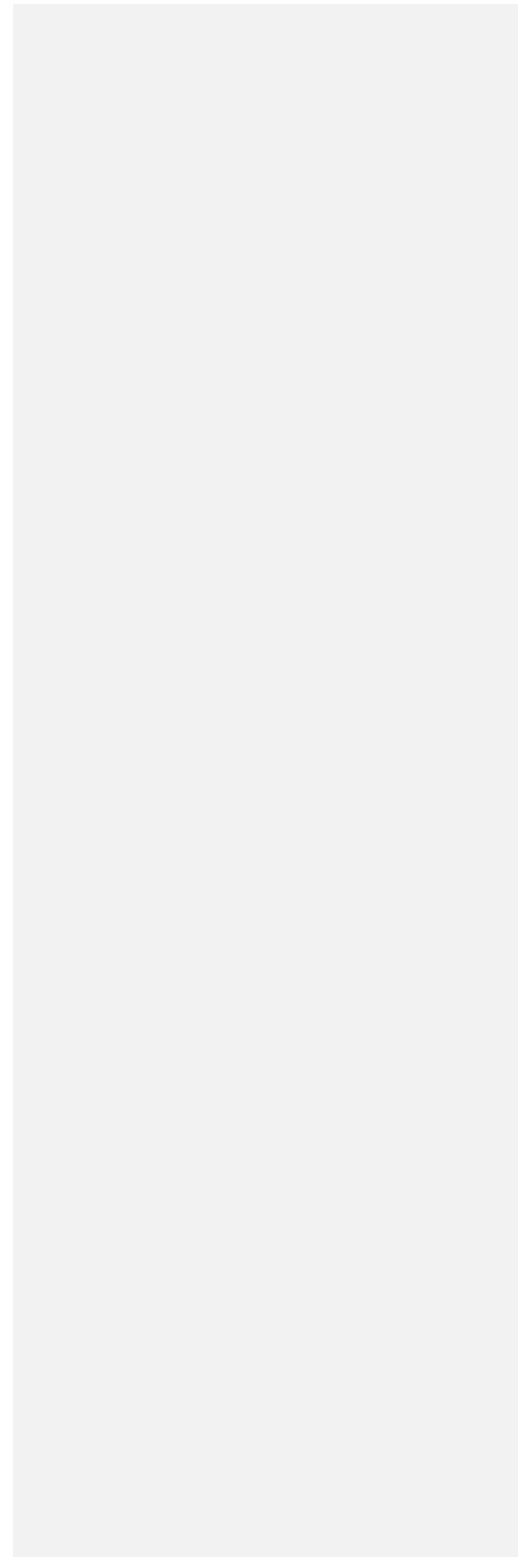
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9 DRUG AND ALCOHOL-FREE WORKPLACE

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9.1 Purpose

The Medford Water Commission considers its employees to be its most valuable asset and is concerned about their safety, health and well-being. Substance abuse (use of alcohol and drugs) can impair employee performance and general physical and mental health, and may MWC recognizes that working while impaired by alcohol or drugs of any kind may reduce productivity and jeopardize the safety of co-workers and the general safety of the public. The Commission recognizes it is in the best interest of both the Commission and its employees that any policy be rehabilitative and not punitive in either design or implementation.

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In recognition of the Commission's responsibility to maintain a safe, healthful and productive work environment and in recognition of the responsibility of each Commission official, officer, employee, recognized employee organization and contractor to perform services for the public as safely, effectively and efficiently as possible, the Commission, and all parties listed above commit that the work environment and the services performed shall not be adversely affected or impaired in any way by the use or presence of alcohol or drugs.

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The Commission currently has the right and responsibility to eliminate any circumstance or activity which might impair or reduce the safe and effective performance of Commission services, under ORS 659.225 and 659.227, and 279.213 and the Federal Drug Free Workplace Act of 1988, and the Federal Omnibus Transportation Employee Testing Act of 1991. The Commission must addition, MWC is obligated to comply with regulations of the Federal Highway Administration (FHWA), including adoption of a-ORS 654 (Oregon's Occupational Safety and Health Act), the Department of Transportation's drug and alcohol testing policy for drivers of regulations under the Federal Motor Carrier Safety Administration, Oregon laws related to employees who are assigned work requiring a commercial vehicles driver's license, and other relevant state and federal laws regarding drug and alcohol testing and workplace safety.

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The Commission recognizes that alcohol and drug abuse in the work place and on project sites is a major concern. The Medford Water Commission is committed to providing its customers ensuring a safe workplace, and to be a good steward of public funds. All employees, contractors, and any others who represent or work with a good return for their investment. The use of illegal MWC must maintain the same commitment to a workplace free of the effects of drugs and the abuse of alcohol can seriously impair performance. To that end, it will strive to hire a productive alcohol.

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9.2 Applicability and reliable work force which can deliver high quality service at a reasonable cost. There is no intent to waive any rights with respect to off-duty activities. This policy sets forth Notice

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The policies in this Section 9 state the rights and obligations of all Commission employees, including employees who operate commercial motor vehicles or who are otherwise required to hold a commercial driver's license, as established by the Department of Transportation ("DOT") regulations and applicable Oregon law.

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DOT regulations establish additional rules for all employees covered by the regulations, and those policies must be stated separately, those procedures must be conducted separately, and those records must be maintained separately, from non-DOT policies, procedures, and records.

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The applicable collective bargaining agreement (“CBA”) also creates additional drug and alcohol testing rights and obligations for bargaining unit members covered by the CBA, and those are incorporated in this Section 9, as well, for ease of reference.

Finally, MWC has identified certain positions that are not subject to DOT regulations or the CBA, but which may nevertheless have a significant impact on public safety (“Safety Sensitive Positions”), and those positions are also subject to additional drug and alcohol testing requirements/policies.

9.2 Objectives

The object of Medford Water Commission's Drug and Alcohol Free Workplace is to provide a safer and more healthful work environment for all employees; to cooperate with the owners of projects, their architects and consultants in maintaining a safe work environment; to comply with federal and state health and safety regulations and to prevent accidents. Therefore, in order to help achieve a drug free workplace, the Commission adopts the following drug testing policy:

- 1) To strengthen the leadership role for employees of the Commission, recognized employee organizations, and contractors in ensuring a drug free Commission work environment.
- 2) To provide a safe, productive and healthy work environment.
- 3) To provide efficient, safe and economical services to the public.
- 4) To provide a Commission work environment free of any adverse effects caused by drug or alcohol use or abuse.
- 5) To provide assistance toward rehabilitation for any Commission employee seeking help for a drug or alcohol related problem.

9.3 — Where a policy or procedure applies only to employees covered by DOT regulations employees covered by the applicable CBA, and/or Safety Sensitive Positions, that is indicated below.

All job postings will generally describe MWC’s drug and alcohol testing policies and will ensure applicants are aware when a position is subject to drug and alcohol testing. Every applicant will receive a copy of these policies when receiving a contingent job offer that requires a pre-employment drug and alcohol test. The applicant will be required to acknowledge receipt, and acknowledge that: they understand the job offer is contingent on passing the test; and that they understand the consequences of a failed test, refusing to test, or attempting to falsify a test result.

All employees will receive this Personnel Manual containing these policies at hire. Any employee who is hired into, or transfers or is promoted into, a Safety Sensitive Position, Bargaining Unit position, or position covered by DOT regulations, will receive a separate copy of these policies at hire, transfer, or promotion, and will be required to sign acknowledgement of receipt. Employees will also be provided access to the policies when instructed to take a drug and/or alcohol test, and will be required to acknowledge receipt, and acknowledge that they understand the consequences of a failed test, refusing to test, or attempting to falsify a test result.

9.3 Definitions

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For purposes of ~~this policy~~ these Drug and Alcohol-Free Workplace policies, the following terms shall have the following meanings, unless specifically stated otherwise.

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Alcohol Means ~~any~~ Any alcoholic beverage ~~or alcoholic~~ liquor as defined in ORS 471.001; ~~and/or applicable federal regulations~~

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Bargaining Unit ("BU") Member An employee covered by the applicable CBA, as soon as coverage begins. Any and all policies listed in this Personnel Manual, and any revisions, changes, or new policies issued from time to time, that are specific to BU Members, have been the subject of bargaining with the applicable Union(s) prior to implementation, and the policies are stated in this Manual for ease of reference only.

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Commercial Motor Vehicle ("CMV") A motor vehicle ~~or combination used in commerce to transport persons or property:~~

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- 1) ~~Vehicle;~~ with a gross combination weight ~~or weight rating~~ (GVWR) of at least 26,001 lbs. ~~pounds, alone or inclusive of one or more~~ towed ~~units~~ with a GVWR more than 10,000 lbs.;
- 2) ~~Vehicle has a GVWR greater than 26,000 lbs.;~~
- 3) ~~Vehicle~~ pounds; that is designed to transport 16 or more passengers, including the driver;
- 4) ~~Vehicle, or; a vehicle~~ of any size used to transport hazardous materials ~~found~~ ~~incorporated~~ by the Hazardous Materials Transportation Act.

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~~Drivers are~~
Any employee who operates a CMV is required by law to have a Commercial Driver's ~~License~~ License (CDL). Most federal regulations applicable to those who regularly operate ~~vehicles~~ meeting the above specifications a CMV also apply to supervisors of such employees, if they are or may be called upon to operate a CMV.

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Commission Any use of the word Commission shall refer to the Medford Water Commission.

Commission Property Commission ~~property~~ Property includes all ~~operative~~ premises, ~~work sites~~ worksites, facilities, parking lots, garages, work places, storage facilities, pump stations, reservoir sites, ~~Commission~~ MWC vehicles, pipeline locations, and treatment plant(s), including property assigned to or used by employees, such as desks, lockers, and any storage containers. All Commission property is subject to search at any time. Employees using personal locks to secure Commission property must issue the Commission, upon request, with a copy of the lock's combination or key.

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Contractor "Contractor" is defined as any person or entity that enters into a contract with the Commission to provide services.

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Controlled substances Substances Means any narcotic drug or immediate precursor which is specified or referenced in any provision of the ORS 475.005 which may subject an individual to criminal penalties. For purposes of DOT

regulations, "Controlled Substances" refers *only* to the following: (a) Marijuana metabolites; (b) Cocaine metabolites; (c) Amphetamines; (d) Opiate metabolites; (e) Phencyclidine (PCP).

Note that MWC does not exempt cannabis, until/unless otherwise required by law.

MWC reserves the right to, and may, test for other substances not defined as Controlled Substances under DOT regulations, however all such testing will occur separately.

Covered Employee. An individual employed by the Commission/MWC who operates any of the above is required by law to hold a CDL to perform the Safety Sensitive Functions listed commercial motor vehicles (CMV) to transport passenger on his or property, including buther job description.

Where a policy does not limited to:

- 1) Regular, full time employees;
- 2) Casual, intermittent or occasional drivers;
- 3) Pre-employment testing driver - Person applying to employer to drive a CMV - specifically refer to "Covered Employees," the policy is generally applicable to all MWC employees, including Covered Employees.

Critical Incident Designated Employer Recipient ("DER"). Defined as any incident that could have caused or caused injury to persons or property, while acting within the scope of employment with the Commission. The Designated Employer Recipient is the authorized person at MWC who receives drug and alcohol test results, either from the MRO (for Covered Employees and DOT tests), or directly from the Medical Facility (for non-Covered Employees, and/or non-DOT tests). The HR Manager is the DER for MWC.

Drug. Means any Any substance (other than alcohol) that has known or may have mind- or function-altering effects on a human subject and. This term specifically includes Controlled Substances as defined in ORS 475.005. Specifically these policies/DOT regulations, additional substances included in other Schedules of the federal Controlled Substances Act, all substances that are illegal for non-medical personnel to possess under federal and/or Oregon law (including any psychoactive substance and including, but not limited to, illegal drugs, cannabis), prescription medications, and/or over-the-counter medications.

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“Drug” also includes substances that are not normally considered drugs, but which are ingested with the intended effect of altering mental functions (such as “huffing”).

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Illegal Drug Means any substance, drug, narcotic or immediate precursor or Drug which, when possessed by non-medical personnel, may subject an individual to criminal penalties, or a legal drug which has not been legally obtained or is being used in a manner for which it was not prescribed or intended under federal and/or Oregon law, including cannabis.

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Illegal Drug Use Impaired or Under the Influence Means the use of drugs that are unlawful to possess or distribute under Oregon law or a legal drug that has not been legally obtained or is being used in a manner for which it was not prescribed or intended. This term does not include the proper use of a drug taken under the supervision of a licensed health care professional and in accordance with the prescribed directions for consumption, or other uses authorized by law. Employees will be considered Impaired/Under the Influence, in violation of these policies and applicable laws, when a confirmed drug or alcohol test, verified by the applicable MRO, indicates:

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- any detectable level of Controlled Substance, and/or
- a blood alcohol content (“BAC”) of 0.04 or greater.

DOT regulations limit testing and consequences to the above standards, for Covered Employees. However, MWC is authorized to and does impose additional requirements on all employees (including Covered Employees), as long as all testing and records are separate.

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In general, an employee will be considered Impaired/Under the Influence if the employee’s motor skills, senses (i.e. sight, hearing, balance, reaction, reflex) and/or judgment are negatively affected by the use of alcohol and/or Drugs.

Impaired Means under the influence of a substance such that the employee's motor senses (i.e. sight, hearing, balance, reaction, reflex) or judgment either are or may be reasonably presumed to be affected.

Legal Drug Means any over the counter drug or prescription drug which has been legally obtained and is being used in a manner, combination and quantity for which it was manufactured, prescribed, or intended.

Management Board of Water Commissioners, Manager, or other administrative personnel designated to carry out the policies of the organization.

Medical Facility Means hospital/Hospital, clinic, physician's office or laboratory where testing samples can be collected according to recognized professional

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| | standards. <u>MWC uses only Medical Facilities certified to provide testing compliant with federal regulations.</u> |
| Medical Review Officer (MRO) | <u>A Medical Review Officer is a physician licensed to work in Oregon who has been trained and qualified in (a) collection procedures; (b) chain of custody, reporting, and recordkeeping; (c) interpretation of drug and validity tests results; (d) the role and responsibilities of the MRO in the DOT drug and alcohol testing program; and (e) the interaction with other participants in the program.</u> |
| On-Duty/Working Time | <u>For the Commission means the span purposes of these policies. On-Duty/Working Time generally refers to the time between when the time employee reports for his/her work shift or is required to be in readiness to work including: 1) Waiting to be dispatched; 2) Inspecting equipment; 3) Driving and when he or she leaves at the end of the shift. On-Duty/Working time also includes: waiting at the scene of an accident that occurred during while working; time; 4) Time spent in repairing a MWC vehicle, not driving or in sleeper berth; 5) Supervising-obtaining assistance for or Assisting waiting with Loading / Unloading; 6) remaining in readiness to operate the a disabled MWC vehicle, 7) giving receipts for shipments loaded or unloaded; 8) Accident; 9) Time repairing vehicle.; and time spent obtaining assistance or remaining in attendance upon a CMV, or time spent in a disabled vehicle, through the time that social or educational events which an employee ends duty for the same shift, and also, while on paid standby duty-attends in his or her capacity as an MWC employee.</u> |
| Possess | <u>"Possess" refers to when an employee has items that may violate these policies on his or her person (including in clothing pockets or elsewhere), in his or her personal belongings (including backpack, purse, wallet, briefcase, etc.), in his or her personal vehicle, and/or stored in Commission equipment such as desks or MWC vehicles.</u> |
| Over the counter drugs Post-Accident Test | <u>Those which are generally available without a prescription from a medical doctor and are limited to those drugs which are capable of impairing the judgment of an employee to safely perform his or her duties. For Covered Employees, a test for alcohol and/or Controlled Substances will be ordered whenever there is an accident that occurred while the employee was performing a Safety Sensitive Function (with some exceptions, noted in the applicable policy below), if the accident meets the DOT criteria.</u> <u>For all employees, a Post-Accident Test for alcohol and/or drugs will be ordered whenever there is an accident during On-Duty/Working Time that meets the criteria in the policy below, if a Trained Supervisor has reason to believe Drugs and/or alcohol contributed to the accident.</u> |

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| | <u>Non-DOT testing is conducted separately from DOT testing, and all DOT records are maintained separately.</u> | Formatted: Body Text, bt, Space After: 0 pt |
| Pre-employment Test | Defined as a medical/physical examination of potential Covered Employees for Controlled Substances and alcohol that may be required of occurs after a conditional job offer has been relayed to an applicant for a position involving Safety Sensitive Functions. | Formatted: Font: 12 pt Formatted: Body Text, bt, Space After: 0 pt Formatted: Font: 12 pt, Bold |
| | <u>Bargaining Unit Members and Safety Sensitive Positions are also subject to Pre-Employment Testing; however, the Commission tests are conducted separately, and the records are maintained separately, from DOT tests and records.</u> | Formatted: Body Text, bt, Space After: 0 pt |
| Prescription drugs | Defined as those drugs which are used in the course of medical treatment and have been prescribed and authorized for use by a licensed practitioner/physician or dentist. | |
| Proper Medical Authorization Test | Any prescription or other written approval from a licensed practitioner/physician or dentist for the use of a drug in the course of medical treatment. It must include the name of the substance, the period of authorization, and whether the prescribed medication may impair job performance. This requirement also applies to refills of prescribed drugs. A test for Controlled Substances and/or alcohol that is based on a random selection from a pool of Covered Employees that has been established in compliance with applicable DOT regulations. | Formatted: Body Text, bt, Space After: 0 pt Formatted Table Formatted: Font: 12 pt, Bold |
| | <u>MWC also imposes random drug and alcohol testing on Bargaining Unit Members and employees in Safety Sensitive Positions, however the pool from which the random selection is made is separate from the DOT pool, the tests are conducted separately, and the records are maintained separately.</u> | Formatted: Body Text, bt, Space After: 0 pt |
| Reasonable Suspicion Test | “Reasonable suspicion” is defined as a good faith belief, based on facts or evidence, that a person may be under the influence of alcohol or drugs, while on duty with the Commission. Examples of suspect behavior include, without limitation: a) Short term indicators such as slurred speech, substantial change in appearance, apparent confusion in orientation, emotional outbursts, bloodshot eyes; b) Substantial loss of productivity at work; c) Repeated tardiness or absences from work; d) Behavior that causes an on-the-job accident resulting in death or injury which requires medical attention or time off from work; e) Within the 12-month period prior to a test, being under the influence of drugs or alcohol while on duty; | Formatted: Font: 12 pt Formatted: Body Text, bt, Space After: 0 pt Formatted: Font: 12 pt, Bold |

f) An admission by the individual that within the 12-month period prior to the test (s)he has illegally used drugs on duty;
 g) Odor of alcohol while on duty or in the workplace;
 h) Unsafe handling of equipment or tools; and/or
 i) Actual observation of alcohol or drug use while on duty or in the workplace. Per DOT regulations, a Reasonable Suspicion Test for Covered Employees refers to alcohol and/or Controlled Substances testing based on a Trained Supervisor's determination that an employee appears to be Impaired/Under the Influence just before, during, or after performing Safety Sensitive Functions. The supervisor's determination must be based on his or her own specific, contemporaneous, articulable observations.

For all employees, a drug and/or alcohol test may be required whenever a Trained Supervisor determines there is evidence that the employee is Impaired/Under the Influence during On-Duty/Working Time. All such tests will be conducted separately from DOT tests, and all related records will be maintained separately from DOT records.

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Reduction in Job Performance

Means the quality or quantity of an employee's performance on the job is less than should be expected or accepted, or less than his/her usual standard as judged against the past job performance of an individual employee.

Refusal to Test

Means a refusal to submit to any drug or alcohol test required by this policy. A refusal to test includes, but is not limited to:
 a) A refusal to provide a urine sample for a drug test;
 b) Failure to provide a urine sample without a valid medical explanation;

Refusal to Test

Refusal to Test refers to an express refusal to submit to a drug and/or alcohol test when ordered to do so, and per DOT regulations and MWC policies is also defined to include:
 a) A refusal to provide a urine sample for a drug test;
 b) Failure to provide a urine sample, or failure to provide sufficient urine for a sample, without a valid medical explanation;
 c) Refusal to complete and sign the breath alcohol testing form, or otherwise to cooperate with the breath testing process in a way that prevents the completion of the test;
 d) Tampering with or attempting to adulterate the urine specimen or collection procedure; and
 e) Not reporting to the collection site when instructed to do so, within the time required.

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d) Failure to provide breath, or to provide an adequate amount of breath, for alcohol testing without a valid medical explanation;

e) Tampering with or attempting to adulterate the urine specimen or collection procedure; and

Safety Sensitive Function

f) Not reporting to the collection site at the time allotted by the supervisor or manager who directs the employee to be tested. As defined by federal regulations, "Safety Sensitive Function" work includes all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

(1) All time at an employer's or customer's 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 or servicing a CMV;

(3) All time spent at the driving controls of a CMV in operation;

(4) All time, other than driving time, in or upon any CMV (except time spent resting in a sleeper berth);

(5) All time loading or unloading a CMV, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or giving or receiving receipts for shipments loaded or unloaded; and

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled CMV.

Safety Sensitive Position

MWC defines certain positions that are not covered by the CBA and/or DOT regulations as "Safety Sensitive Positions" if a momentary lapse in attention could result in serious injury to co-workers or members of the public. Employees in Safety Sensitive Positions are subject to additional drug and alcohol testing consistent with DOT regulations.

Examples of Safety Sensitive Positions include backhoe or crane operators, and Water Treatment Plant Operators, and BBS Operators. The list of Safety Sensitive Positions is reviewed periodically by HR and the Water Management Team and may be updated as needed. Any employee may review the list of Safety Sensitive Positions, upon request.

Substance Abuse Professional ("SAP")

A counselor, healthcare practitioner, or treatment provider who is licensed to provide evaluation in compliance with DOT regulations, and who makes recommendations concerning education, treatment, follow-up testing, and aftercare.

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| Substantial Loss of Productivity Trained Supervisor | Means the quality or quantity of an employee's performance on the job is substantially less than his/her usual standard as judged against the past job performance of that individual employee. An MWC employee who has been assigned supervisory authority over an employee, including the authority to require the employee to report for an alcohol and/or drug test, and who has received the training required by Department of Transportation regulations. |
| Under the Influence Verified Positive Test | Under the influence is defined as any detectable level of alcohol or drugs in an employee's bodily system above the level set forth in an applicable collective bargaining agreement, or where no collective bargaining agreement is applicable, a breath/blood alcohol content (BAC) of 0.02 or greater. In the case of employees required to have a Commercial Motor Vehicle driver's license, 0.02 or higher. The term "under the influence of" or "impaired by" drugs or alcohol covers not only all well-known and easily recognized conditions and degrees of impairment and intoxication, but any perceptible abnormal mental or physical condition which is the result of indulging to any degree in controlled substances, marijuana or alcoholic intoxicants which perceptibly tend to deprive the use of that clearness of intellect and control the employee would otherwise possess. Any behavior which, in the judgment of management, may limit an employee's ability to safely and efficiently perform his/her job duties, or poses a threat to the safety of the employee or others. A test for alcohol and/or Controlled Substances that indicates the employee is Impaired/Under the Influence, as defined in these policies and applicable law, that has been confirmed by a second test of the same sample, and that has been verified by the MRO. |
| Union | Refers to the bargaining unit for Medford Water Commission union employees, the Oregon and Southern Idaho District Council of Laborers, Laborers International Union of North America, Local #121. |
| Workplace | "Workplace" means any and all Commission property on which an employee is present. Property, and any place in which an individual employee is performing services for the Commission or is otherwise on duty/On-Duty/Working. As noted in the definition of On-Duty/Working, under certain circumstances these policies apply outside the normal MWC facilities and outside regular working hours. |

9.4 — Commission Policy —

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Prohibited Conduct

~~9.4 It is the policy of the Medford Water Commission that a Commission official, officer, agent or employee (all hereinafter referred; Drug Testing Policy Applicable to as employee) shall be responsible for the following: All Employees~~

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9.4.1 Workplace Regulations

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- ~~1) An employee's job performance or safety shall not be impaired or affected in any way by the use or abuse of alcohol or drugs.~~
- ~~2) An All MWC employees must comply with the policies in this Section.~~

All MWC employees are subject to alcohol and drug testing based on Reasonable Suspicion, and Post-Accident testing.

1) Working while Impaired Prohibited. ~~No employee shall not may be under Impaired/Under the influence of drugs/Drugs or alcohol while on duty/On-Duty/Working.~~

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MWC holds all employees to the DOT standards related to alcohol and Controlled Substances as a minimum threshold, but reserves the right to test for the Commission additional substances, if the applicable Medical Facility provides for such additional tests. MWC also reserves the right to take appropriate employment action, even in the absence of a Verified Positive Test for Controlled Substances and/or a BAC of 0.04 or greater, if there are other indicia of impairment and a member of the Water Management Team determines that it is necessary to remove an employee from the workplace, to ensure safe and effective operations.

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Such action will not necessarily be disciplinary in nature and may include substitution of Safety Sensitive Functions and/or temporary reassignment, depending on the circumstances. For instance, an employee who is Impaired/Under the Influence of prescribed medication but was unaware the medication would affect his or her ability to work may need temporary adjustment of duties but will not be subject to discipline.

For Covered Employees, any non-DOT tests will occur separately from DOT tests, and the test results will not be maintained with DOT records, or on paid standby. Performing any Commission otherwise affect a Covered Employee's status per DOT regulations

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2) Using Drugs or Alcohol Prohibited; Exceptions. No employee may use Drugs or alcohol while On-Duty/Working. Partial exceptions:

a) Alcohol at Social Functions. Where alcohol is served at work-related functions while (such as conferences or parties), moderate consumption of alcohol by employees who are of legal drinking age is acceptable. However, employees must avoid becoming Impaired/Under the Influence, must comply with all Commission policies including policies related to confidential information, and policies prohibiting discrimination and harassment. Employees who must return to work after the event should not drink if the odor of alcohol or the fact of alcohol consumption is likely to impair the public perception

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of safety and/or public confidence and trust in the employee, even if he or she is not Impaired/Under the Influence.

Specific rules apply to Bargaining Unit Members, CDL-holders, and employees in Safety Sensitive positions, as noted below.

b) Prescribed and Over-the-Counter Drugs. An employee is not prohibited from taking prescribed or over-the-counter drugs to treat medical conditions. However, an employee, using alcohol, or while having an alcohol concentration of .04 or greater, (or .02 in the case of those employees required to have a Commercial Motor Vehicle driver's license or at or above the limit set by ORS 659.225 or its successor, or within four hours after using alcohol is prohibited.

3) An employee shall not possess, manufacture, sell, offer for sale, obtain, or distribute alcohol or drugs while on duty, in the workplace or on paid standby. This prohibition does not apply to the possession of closed containers of alcohol in an employee's personal vehicle parked in a Commission parking lot.

4) An employee utilizing any prescribed medications any medication that may affect his or her ability to safely perform assigned duties must immediately report this treatment to his supervisor. report any restrictions to his or her supervisor before reporting to work or beginning any Safety Sensitive Functions. It is the employee's responsibility to determine whether a medication may affect the employee's ability to work safely, after consultation with his/her healthcare provider, if necessary or appropriate.

The use of medications as part of a prescribed medical treatment program is not grounds for disciplinary action. It shall be the employee's responsibility to determine from their physician whether a prescribed treatment may impair job performance. Failure, however, failure to report the use of a prescribed medication, which an employee has been informed may affect his abilities to safely perform assigned duties, restrictions may subject an employee to disciplinary action. In the event there is a question regarding an employee's ability to safely perform assigned duties, clearance from the employee's physician will be required.

In the event MWC reasonably believes an employee is presently unable to perform the essential functions of his or her position, due to the use of medication, HR may require the employee to submit to a Fitness for Duty exam with his or her healthcare provider, consistent with applicable law.

5) 3) Illegal Drugs Prohibited. No employee shall Possess, manufacture, sell, offer for sale, purchase, obtain, or distribute Illegal Drugs while On-Duty/Working, or in the Workplace.

4) Reporting Off Duty Use if Called Back to Work. If an employee who is off duty and is not on paid standby is called back to work, and is under Impaired/Under the influence Influence of drugs Drugs and/or alcohol, the employee shall advise his/her supervisor, and another employee will be utilized. Employees are not subject to discipline for such an event and any information reported to the supervisor will remain confidential. Employees on paid standby, however, are prohibited from using drugs Drugs, or alcohol during that paid time, except wherefor medications (bu

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see the employee takes a prescribed medication as directed by a health care provider (previous section about medical restrictions).

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6) — 5) **Drug and Alcohol Testing.** Based on reasonable suspicion Reasonable Suspicion or following an accident that occurs during On-Duty/Working Time in which a critical incident Trained Supervisor has reason to believe that Drugs and/or alcohol was/were a contributing factor, an employee shall complete a be directed to immediately report to a Medical Facility for a drug and/or alcohol test.

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Covered Employees must follow DOT regulations regarding Reasonable Suspicion and Post-Accident testing process when directed by (see applicable policies, below).

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All employees must report to the Medical Facility immediately, unless unable to do so due to the need to seek medical care, lack of transportation, or other related reason. If an employee is unable to report for testing immediately after an accident, he or she must remain available for post-accident testing for at least 32 hours after the accident.

To ensure public safety, MWC reserves the right to remove an employee from all Safety Sensitive Functions until it is clear the employee is not Impaired/Under the Influence and can safely perform his/ or her supervisor, department head, Commission Manager or designee, consistent with duties, even in the absence of a Verified Positive Test. If there are no non-Safety Sensitive Functions the employee can perform, or if the Trained Supervisor determines the employee is significantly Impaired/Under the Influence, MWC may instruct the employee to go home on paid suspension, until a test can be performed, or pending the results of any tests.

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MWC will typically apply only DOT-regulated testing procedures and employment actions to Covered Employees. Those regulations prohibit removal from Safety Sensitive Functions until after there has been a Verified Positive Test. However, DOT regulations also allow an employer to take action under separate authority, so long as the procedures are conducted separately, and the records are maintained separately. Therefore, if a Trained Supervisor determines that it is likely a Covered Employee is Impaired/Under the Influence while On-Duty/Working, but there is no Verified Positive Test, MWC may remove the employee from Safety Sensitive Functions under its own authority. This may occur if, for example, the MRO has not yet had time to provide a Verified Positive Test result, the test was inconclusive, or the Medical Facility and/or DOT regulations do not provide for testing for the Drug that may be causing impairment.

As stated above, in the event an employee is removed from Safety Sensitive Functions and there are no non-Safety Sensitive Function duties that the employee may perform, the employee may be sent home on paid suspension, pending the results of the tests.

The Reasonable Suspicion and Post-Accident Testing policies in this Section are in addition to and separate from the rights and obligations for Covered Employees. No action taken under this policy and applicable State and Federal laws. Refusing to be tested as to any Covered Employee shall affect the Covered Employee's DOT records or eligibility for DOT-covered employment, and all non-DOT testing shall occur separately from DOT testing.

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1) Reasonable Suspicion Testing

When determining that Reasonable Suspicion exists to test for non-Covered Employees, or for Covered Employees where the DOT criteria are not met, a Trained Supervisor may base the determination on the supervisor's own observations, or may base the determination on credible, substantiated reports that an employee is Impaired/Under the Influence while On-Duty/Working, such as the following-reasonable suspicion or a critical incident, or a violation of any other provisions of this policy will be treated as a disciplinary matter (which includes refusal to cooperate;

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- Slurred speech, apparent confusion, emotional outbursts or disruptive behavior, bloodshot eyes, and/or poor motor coordination, in the absence of other explanations for the behavior, and in conjunction with other indicia that alcohol or Drug use cause the behavior;
- Substantial loss of productivity at work, in conjunction with testing, failure to remain available following an accident, attempts to subvert, or attempts to adulterate specimens other indicia that alcohol or Drug use caused the loss of productivity;
- Repeated unexplained tardiness or absences from work, in conjunction with other indicia that alcohol or Drug use caused the tardiness or absences;
- Behavior that causes an on-the-job accident, in conjunction with other indicia that alcohol or Drug use caused the accident, if the accident resulted in death, injury requiring medical care, and/or property damage that was more than minor;
- Odor of alcohol or marijuana while On-Duty/Working;
- Unsafe handling of equipment or tools, in conjunction with other indicia that alcohol or Drug use caused the behavior; and/or
- Actual observation of alcohol or Drug use while On-Duty/Working.

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Supervisors will document the basis of the Reasonable Suspicion determination at the time the determination is made.

2) Post-Accident Testing

Employees will be required to submit to Post-Accident Testing whenever the accident that occurred during On-Duty/Working Time resulted in death to any person, injury to any person that requires medical care, or anything other than minor property damage, and a Trained Supervisor reasonably believes there is evidence alcohol and/or drugs contributed to the accident.

9.5 Consequences for Violation of MWC's Drug and Alcohol-Free Workplace Policies; Last Chance Agreements

A non-Covered Employee who has a confirmed positive test for any Controlled Substance or any other Drug that has been the subject of a test ordered by MWC, or a confirmed BAC level at or above 0.04, will be suspended without pay for 24 hours.

In addition, any Non-Covered Employee who violates any of these policies, including Refusal to Test, Possessing Illegal Drugs, or other policies: (a) will not be allowed to perform any Safety Sensitive Functions until/unless MWC management is satisfied that the employee is not Impaired/Under the Influence and can perform those functions safely; and (b) may be subject to additional discipline, up to and including termination of employment.

As stated below, when MWC receives a Verified Positive Test as to a Covered Employee, the employee's employment may be terminated, or MWC may, in its sole discretion, allow the employee to return to work, but only if he or she has been evaluated by a Substance Abuse Professional, follows the SAP's recommended treatment plan, has passed a drug and/or alcohol test, and is subject to additional Return to Duty tests. If it appears a non-Covered Employee is struggling with addiction, or otherwise affect testing results):could benefit from treatment, MWC may offer the same option.

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7) AnIn summary, if an employee shall notify the Commission, in writing, of any criminalwho is not a Covered Employee fails a drug or alcohol statute conviction, no later than five calendar days after such conviction.

—Employees convicted of an off-duty drug offense (including driving under the influence of intoxicants) must participate satisfactorily in a drug abuse assistance or rehabilitation program as directed by management, regardless of whether or not disciplinary action is taken.

—Failing to promptly report conviction, arrest or plea bargaining for an alcohol or drug related criminal offense will be considered to be a violation. All drug and alcohol related convictions, plea bargains and arrests must be promptly reported to the Commission. This obligation to disclose applies to all convictions, arrests or plea bargains which occur after the effective date of this policy.

To the extent a provision in an applicable collective bargaining agreement conflicts with this policy, the collective bargaining agreement governs.

9.4.2 Possession Prohibited

An employee shall not possess, manufacture, sell, offer for sale, consumetctst, or otherwise be in any contact with illegal drugs while employed by the Commission.

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1) An employee shall not possess, manufacture, sell, offer for sale, obtain, or distribute alcohol or drugs while on duty, in the workplace or on paid standby any quantity of any substance, drug or alcohol, lawful or unlawful, which in sufficient quantity could result in impaired performance, except for authorized substances (see 4 below). This prohibition does not apply to the possession of closed containers of alcohol in an employee's personal vehicle parked in a Commission parking lot.

2) "Work site" includes all operative premises (any office, building, vehicle, or property) owned or operated by the employer, or any other site at which an employee is to perform work for the employer.

3) "Possess" means to have either in or on an employee's person, personal effects, motor vehicle, tools, and areas substantially entrusted to the control of the employee such as desks, files and lockers.

4) Authorized substances include only (1) lawful over the counter drugs (excluding alcohol) in reasonable amounts; and (2) other lawful (prescription) drugs, the possession of which management has been advised and approved in advance. Any violation of this policyviolates

any of these policies, MWC may result in summary discipline, up to and including discharge.

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9.4.3 Commercial Vehicle Drivers - Prohibited Conduct

The take whichever of the following conduct is prohibited and may result in discipline, up to and including termination: steps is considered appropriate to the circumstances:

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- 1) Reporting for duty or remaining on duty requiring the performance of safety sensitive functions while having an alcohol concentration level of 0.02 or greater;
- 2) Performing safety sensitive functions within four hours of using alcohol;
- 3) Using alcohol while performing safety sensitive functions;
- 4) Reporting for duty or remaining on duty requiring the performance of safety sensitive functions when the employee used any controlled substance, except if the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a vehicle (the employee may be required to furnish a physician's statement of such non effect to the employee's supervisor);
- 5) Reporting for duty or remaining on duty requiring the performance of safety sensitive functions if the employee tests positive for controlled substances;
- 6) Refusing to submit to any alcohol or controlled substances test required by this policy. A refusal to submit to a required alcohol or controlled substances test includes, but is not limited to:
 - a) A refusal to provide a urine sample for a drug test;
 - b) Failure to provide a urine sample without valid medical explanation;
 - e) Refusal to complete and sign the breath alcohol testing form, or otherwise to cooperate with the testing process in a way that prevents the completion of the test;
 - d) Failure to provide breath, or to provide an adequate amount of breath, for alcohol testing without a valid medical explanation;
 - e) Tampering with or attempting to adulterate the urine specimen or collection procedure;
 - f) Not reporting to the collection site at the time allotted by the supervisor or manager who directs the employee to be tested; or
 - g) Leaving the scene of an accident without a valid reason as to why authorization was not obtained from a supervisor or manager responsible for determining whether to send the employee for a post accident drug and/or alcohol test.

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7) Consuming alcohol during the eight hours immediately following an accident, or until the employee undergoes a post-accident alcohol test and is released from duty, whichever occurs first.

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9.5 Who Will Be Tested

(1) 9.5.1 Pre-The employee may be subject to discipline (in addition to the 24-hour suspension);

(2) The employee's employment (i.e., Pre-placement) with MWC may be terminated; or

(3) The employee may be offered continued employment under a Last Chance Agreement that includes, at a minimum:

(a) A requirement that the employee pass a drug and alcohol test before returning to work, demonstrating that the employee is not Impaired/Under the Influence of any Drugs, and has a BAC of 0.02 or lower;

(b) Agreement by the employee to submit to follow-up testing for at least the next twelve (12) months but no more than sixty (60) months, after returning to work;

(c) Agreement by the employee to undergo an evaluation by an SAP, and comply with the SAP's recommended education and treatment plan;

(d) A requirement that the SAP submit a written report to HR, certifying that the employee has complied with the recommended education and treatment plan, and outlining any recommended follow-up treatment and testing plan after the employee returns to work;

(e) Notice that a failed drug or alcohol test at any time in the future will result in immediate termination of employment, with no investigative meeting or hearing; and

(f) Notice that only one Last Chance Agreement is available to any employee.

Note that an employee who is participating in addiction treatment has a right to use all available paid leave (starting with sick leave), and to use all available medical leave under OFLA and/or FMLA, for treatment. Medical benefits may cover some of the costs for this treatment. Any costs accrued that are not covered by insurance are the sole responsibility of the employee.

9.6 General Drug Testing for All Provisions

MWC uses a certified Medical Facility that follows chain of custody, confirmatory retesting, and other state and federal requirements. All positive tests are subjected to a second, confirmatory test on the same sample.

MWC utilizes an MRO to review all drug and alcohol test results, including both DOT tests and non-DOT tests.

Covered Employees are subject to specific provisions under DOT regulations, as outlined below. For all other employees, the Medical Facility will send the results directly to HR.

Applicants

9.5.1.1 Required Testing

- 1) An applicant for a position with the Commission may be required to participate in and successfully complete a drug analysis testing process as part of the Commission's medical/physical pre-placement process. Failure, inability, or refusal to complete the drug analysis testing process will constitute disqualification of the applicant for the position or promotion. A list of the drugs to be tested for will be furnished upon may request. Any applicant required to

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- ~~undergo a drug test will only be required to do so after a conditional offer of employment is made in writing. In compliance with the Americans with Disabilities Act, the drug test will not be required until the offer has been made.~~
- ~~2) This policy shall be distributed to all new employees at the time of appointment and basic information about this program shall be made available to applicants for Commission jobs or positions through the job announcement.~~
- ~~3) If an applicant is required, after a conditional offer of employment, to undergo a medical/physical examination, the Commission will pay for the costs of such examination, including the costs of a pre-employment drug test.~~
- ~~4) The Commission will employ no person until the Commission has been notified of the results of the medical/physical evaluation, including the drug screen if applicable. No person shall be employed who tests positive on a drug test or who refuses to take such test, and in such cases shall not be considered for employment in any other position until a period of 120 days has elapsed.~~
- ~~5) Drug test results will be kept with the applicant's pre-employment medical file.~~

~~Only those persons authorized by the Commission and with a need to know the results will be informed. An applicant may request test results in writing from the laboratory/medical facility or from HR.~~

9.5.1.2 Required Testing for Positions Requiring a Commercial Driver's License

~~Since January 1, 1996, the Medford Water Commission has been required to comply with the United State Department of Transportation regulations implementing the Federal Omnibus Transportation Employee Testing Act of 1991. Specifically, the Commission must comply with regulations of the Federal Highway Administration (FHWA), including adoption of a drug and alcohol testing policy for drivers of commercial vehicles. This policy sets forth the rights and obligations of employees covered by the drug and alcohol testing requirements.~~

~~Each candidate for employment in a job classification requiring a Commercial Vehicle Drivers License, including an employee transferring into such position, shall be required to submit to pre-employment/pre-duty controlled substance testing as required by Federal regulations (49 CFR Part 382). Applicants will not be hired or promoted into such position, or assigned to a safety sensitive function if they do not pass the required tests.~~

9.5.1.3 Contractor

~~It is the policy of the Medford Water Commission that, in order to attain or maintain a contract with the Commission, each contractor shall agree that while they or the contractor's employees or agents are performing services for the Commission, or using Commission equipment, that the contractor or the contractor's employees or agents:~~

- ~~1) Shall not, in any way be impaired or affected by the use or abuse of alcohol or drugs.~~
- ~~2) Shall not be under the influence of alcohol or drugs while in the workplace or on Commission property.~~
- ~~3) Shall not possess, manufacture, sell, offer for sale, distribute or otherwise be in any contact with alcohol or drugs while in the workplace or on duty for the Commission. This prohibition does not apply to the possession of closed containers of alcohol in a contractor's (or contractor's employee's) personal vehicle parked in a Commission parking lot or on Commission property.~~

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~~4) Each contractor must, prior to contract approval, provide to the Commission a copy of its Drug Free Workplace Program, which must include drug-testing components equal to or greater than the Commission's Drug Free Workplace Policy requirements pursuant to the provisions of ORS 279.213.~~

~~This policy, as it relates to contractors, shall be implemented by requiring appropriate contract provisions to be included in any contract between the Commission and a contractor, including contractor's employees and agents.~~

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~~**9.5.1.4 Tampering with Test Results**~~

~~Any person who attempts to produce a false test result or otherwise tampers with or interferes with the testing process will be permanently disqualified from employment with the Medford Water Commission. A sample that fails an integrity test because it is either too diluted or contains foreign substance will constitute a failed test; but in such instances, an additional test will be permitted. A second failed integrity test will constitute a positive test result.~~

9.5.1.5 — Appeal Rights

9.6.1 Retesting at Employee’s Request

An applicant who has failed a drug or alcohol test, may, at his or her expense, seek retesting of the original sample. Such a request must be made in writing to the Commission’s MWC’s Human Resources Department within 30 days of the date of notification of the original test results. The applicant may request that another licensed clinical laboratory Medical Facility, conduct the test, subject to the Commission’s approval of the lab by MWC. Accepted chain-of-custody procedures must be followed: at no time shall the applicant receive the original sample to transfer or hold until the retest may be conducted. If the retest gives a negative result, the applicant will be deemed to have passed the test. In such cases, applicants shall not be entitled to any position filled in the interim or to any other benefit except retention on an eligibility list. ~~In the event the test is negative, the Commission will pay the costs of the test.~~

9.5.1.6 — Confidentiality

~~Samples will be tested by a licensed laboratory meeting the requirements set forth in ORS 438.435. Drug test results will be kept confidential and only those persons authorized by the Commission and with a need to know will be informed. The Commission will receive the results from the testing site and inform the HR Department only that the applicant either passed or failed.~~

9.5.1.7 — Availability of Test Results

~~Applicants wishing to know the results may request them in writing from the lab. Every applicant subject to the Commission's drug-testing policy will receive a copy of this policy and be asked to sign a statement acknowledging receipt of the policy and that they agree to the test, the use of test results to make the decision whether or not to hire, and that they understand the consequences of refusing to test or attempting to falsify a test result.~~

9.5.1.8 — Retesting

~~An applicant failing a drug test may request in writing within 30 days of the date of notification a retesting of the original sample, and the applicant shall pay the cost of the retest by an Oregon licensed clinical laboratory. The Commission must approve the laboratory for retesting if other than the one performing the original test, and in such case the Commission will control the chain of custody of the specimen. If the retest gives a negative result, the applicant will be deemed to have passed the test, but shall not be entitled to any position filled in the interim or to any other benefit except retention on an eligibility list.~~

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Confidentiality

Samples will be tested by a licensed Medical Facility meeting the requirements of applicable state and federal law. All results are provided to Human Resources, who is MWC's Designated Employer Recipient ("DER").

All non-DOT test results will be maintained with an employee's confidential medical files, separately from his or her personnel file, and only authorized supervisory personnel with a need to know will have access.

For Covered Employees, DOT test results and other DOT records are subject to additional restrictions, and are maintained in separate files, as outlined below.

9.6.3 Refusal to Test/Tampering with the Test Specimen

1) As stated in the Definitions section of these policies, refusal to submit to a drug and/or alcohol test when instructed to do so is a violation of these policies and will result in discipline, up to and including termination. As also stated in the Definitions section, Refusal to Test includes a) refusal to provide a urine sample for a drug test; (b) failure to provide a urine sample, or failure to provide sufficient urine for a sample, without a valid medical explanation; (c) refusal to complete and sign the breath alcohol testing form, or otherwise to cooperate with the breath testing process in a way that prevents the completion of the test; (d) tampering with or attempting to adulterate the urine specimen or collection procedure; and (e) not reporting to the collection site when instructed to do so, within the time required.

2) Covered Employees must follow specific DOT regulations, outlined below. All other employees will be subject to the Consequences policies listed above.

3) If MWC has evidence that a non-Covered Employee intentionally tampered with the test results, that employee will usually not be offered a Last Chance Agreement, and will normally be barred from applying for or working with MWC for a period of at least twelve (12) months.

9.7 Management Responsibility/Drug Free Awareness Program

Management is responsible for (1) providing Reasonable Suspicion training to all supervisory personnel, and (2) establishing an educational program for all employees to make employees aware of a) the dangers of drug abuse in the workplace; b) MWC's Drug and Alcohol Free Workplace policies, and consequences for violations of the policies; c) available drug and alcohol counseling, rehabilitation, and employee assistance programs.

The training for supervisors will include, at a minimum, at least one (1) hour of training on alcohol misuse, and at least one (1) additional hour of training on Controlled Substances use, including the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of Controlled Substances, to assist in determining when there is Reasonable Suspicion to require an alcohol and/or drug test

9.8 Voluntary Disclosure

When an employee voluntarily self-identifies the existence of a drug or alcohol problem, MWC will provide a list of licensed Substance Abuse Professionals, as well as information about MWC's Employee Assistance Program provider.

MWC will not take any adverse employment action based on the disclosure alone.

If the disclosure occurs in conjunction with performance issues or counseling, or being Impaired/Under the Influence during On-Duty/Working Time, MWC will not impose discipline so long as:

- 1) The employee discloses the problem prior to engaging in Safety Sensitive Functions (if any are normally assigned to the employee);
- 2) The employee did not disclose the problem to avoid testing (for instance, disclosure did not occur right after being instructed to take a Reasonable Suspicion or Post--Accident test); and
- 3) The employee complies with the follow-up requirements listed below.

After voluntarily disclosing the problem, any Covered Employee, Bargaining Unit Member, or employee in a Safety Sensitive Position will not be allowed to perform Safety Sensitive Functions until: (a) the employee has been evaluated by a Substance Abuse Professional and has successfully completed education or treatment requirements recommended by the SAP; and (b) the employee has tested negative for Controlled Substances, and/or tested with a BAC of less than 0.02

Any employee who is evaluated by an SAP under this Section must agree to submit to any follow-up treatment and testing recommended by the SAP.

Employees seeking evaluation and treatment have a right to use all available paid time off, beginning with sick leave, and all available medical leave under OFLA and/or FMLA will be applied.

The supervisor to whom a voluntary disclosure has been made will document the conversation. An employee's disclosure under this Section is a confidential medical record and may not be disclosed to anyone except to supervisory or management employees with a need to know, to the applicable federal agency (as to Covered Employees), or as otherwise required by law.

Alcohol and drug dependency are recognized disabilities protected under the ADA and Oregon disability laws. Participation in addiction treatment is also protected by such laws. No employee will be subject to discipline or retaliation because of disclosure of addiction and/or treatment.

However, no law requires an employer to permit or ignore violation of reasonable policies, including a prohibition on working while under the influence of drugs and/or alcohol. Voluntary disclosure under this policy will not relieve an employee of the obligation to meet work standards or comply with work policies. An employee who has voluntarily disclosed a problem with misuse of

alcohol or use of Drugs will continue to be subject to Reasonable Suspicion Testing, Post-Accident Testing, discipline for a confirmed positive test, and discipline for attendance issues related to Drugs and/or alcohol.

9.9 Bargaining Unit Members; Safety Sensitive Positions.

Under the applicable Collective Bargaining Agreement, Bargaining Unit members are subject to the same drug and alcohol policies as employees covered by Department of Transportation regulations, outlined in Section 9.10, including: Pre-Employment Testing, Random testing, Reasonable Suspicion testing, Critical Incident testing, Stand Down provisions, MRO verification, referral to a Substance Abuse Professional, and Confidentiality.

In addition, MWC has identified several Safety Sensitive positions where even a momentary lapse in judgment could lead to substantial injury to others. Employees in these Safety Sensitive positions are subject to the policies and procedures applicable to all MWC employees, and in addition are subject to the following drug and alcohol testing applicable to employees covered by the Department of Transportation regulations, as outlined in Section 9.10: Pre-Employment Testing, and Random testing.

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Drug test results for BU Members and employees in Safety Sensitive Positions are not maintained with DOT records, and neither BU Members nor employees in Safety Sensitive Positions are part of the Covered Employee Random Testing pool, per DOT regulations.

9.10 Commercial Motor Vehicle Drivers/Covered Employees

Federal law imposes specific restrictions and obligations on employees who operate or may be called upon to operate Commercial Motor Vehicles (“Covered Employees”), and on their employers. The law requires that these policies be stated separately and requires that all related records be maintained separately.

Under Department of Transportation and related regulations, Covered Employees are required to submit to Pre-Employment Testing, Random Testing, Reasonable Suspicion Testing, Post-Accident Testing, and Return to Duty Testing.

MWC pays the costs of all drug and alcohol testing required by law, including confirmatory tests. Follow-up testing or re-testing that occurs at the request of the employee is usually at the employee’s cost.

DOT-regulated employers are also required to provide educational materials to employees, provide training to supervisors, obtain DOT test records from past employers of each Covered Employee who is hired or promoted into a position involving Safety Sensitive Functions, conduct drug testing according to strict DOT regulations, maintain applicable drug test results according to specific confidentiality provisions, and relay certain information to the applicable federal agency (“the Clearinghouse”). In the event a Covered Employee’s employment with MWC ends, and he or she seeks employment performing Safety Sensitive Functions with another employer, MWC must also relay his or her DOT records to the prospective employer, upon request.

9.10.1 Specific Prohibitions Related to Covered Employees

The following conduct is prohibited and will result in discipline, up to and including termination:

- 1) Reporting for duty or remaining on duty requiring the performance of Safety-Sensitive Functions while having a Blood Alcohol Concentration level of 0.04 or greater;
- 2) Performing Safety Sensitive Functions within 4 hours of using alcohol;
- 3) Using alcohol while performing Safety Sensitive Functions;
- 4) Reporting for duty or remaining on duty requiring the performance of Safety Sensitive Functions when the employee used any Controlled Substance, except if the use is pursuant to the instructions of a licensed healthcare provider who has advised the employee that the substance will not adversely affect the employee's ability to safely operate a CMV. The employee may be required to furnish the healthcare providers certification to that effect, to HR.
- 5) Reporting for duty or remaining on duty requiring the performance of Safety Sensitive Functions after a test demonstrating that the employee was Impaired/Under the Influence of Controlled Substances while On-Duty/Working;
- 6) Refusal to Submit to any alcohol or Controlled Substances test required by these policies. See Definitions Section for the types of conduct that constitute "Refusal to Submit."
- 7) Consuming alcohol during the eight hours immediately following an accident, or until the employee undergoes a post-accident alcohol test and is released from duty, whichever occurs first.

9.10.2 Pre-Employment Testing – Covered Employees

An offer of employment, or an offer of promotion or transfer, for any position performing Safety Sensitive Functions will be contingent on passing a drug and alcohol test. Specifically, the offer will be contingent upon receipt by MWC of test results from a Medical Facility that: (a) there is no detectable level of any Controlled Substances and (b) the applicant or employee's BAC for alcohol is below 0.04.

Refusal to Test will disqualify the applicant for the position or promotion. A list of the Controlled Substances in the drug screen will be furnished upon request.

A Verified Positive Test will disqualify the applicant for any position with Safety Sensitive Functions for a period of six (6) months from the date of the test.

This policy shall be distributed to all new employees at the time of appointment and basic information about this program shall be made available to applicants for MWC jobs or positions through the job announcement.

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9.10.3 Random Tests – Covered Employees

Random Testing for alcohol will be administered just prior to an employee performing a Safety Sensitive Function, while the employee is performing a Safety Sensitive Function, or just after the employee has stopped performing a Safety Sensitive Function. Random Testing for Controlled Substances may be administered at any time.

MWC’s Random Testing program complies with all requirements of applicable federal law, including the following:

- 1) The selection process is a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with Covered Employees’ Social Security numbers, payroll identification numbers, or other identifying numbers.

Note that because the selection process is truly random, each employee has an equal chance of being selected for each test, which means that some employees may be tested more than once in a year, while others will not be tested at all.

- 2) In order to ensure random selection, MWC must determine the average number of Covered Employees in a given year. That number is determined by adding together the total number of Covered Employees eligible for testing during each testing period and dividing that total by the number of Random Testing periods.
- 3) Only Covered Employees are in the Random Testing pool.
- 4) The random selection rates will comply with the minimum rates set by the Department of Transportation for the operation of vehicles covered by the Federal Motor Carrier Safety Administration (FMCSA).

- 5) Random testing will be unannounced and dates for testing reasonably spread throughout the calendar year.

The Medford Water Commission may conduct post-employment testing of any employee or a group of employees where reasonable grounds are determined to exist.

- 1) A test is not required to establish alcohol or drug impairment if there is other evidence sufficient to prove such impairment.
- 2) Test results which do not establish that the employee has engaged in prohibited conduct shall result in no further action against the employee related to an alleged violation. The employee shall be informed of such test results, and all documents related to the incident shall be removed from the employee's personnel file. The employee shall be given copies of the test results upon request.
- 3) Failure to report for post-employment testing as directed by management shall be considered insubordination and be grounds for disciplinary action up to and including termination of the individual concerned. Direction for testing shall include the time and place the employee must report. These directions may be verbal, but will be followed up in writing if so requested by the employee.

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9.5.3—When an employee is selected for random testing, his/her supervisor will ensure that the employee’s duties are covered. The employee will then receive a written note indicating the time and location he/she is to report for testing.

Upon receiving instruction to report for Random Testing, the employee shall proceed to the test site immediately. Failure to report immediately shall be considered Refusal to Test.

9.10.4 Reasonable Suspicion Testing – Covered Employees

Covered Employees are will be required to submit to an alcohol or drug test when a supervisor has reasonable suspicion (grounds) {see Reasonable Grounds definition} to believe the employee is Suspicion Testing under the influence of alcohol or following circumstances:

Alcohol testing – based on the specific, contemporaneous, articulable observations of a Trained Supervisor concerning the appearance, behavior, speech or body odors of the employee that indicate current alcohol impairment; and/or

Controlled substance testing – based on the specific, contemporaneous, articulable observations of a Trained Supervisor concerning the appearance, behavior, speech or body odors of the employee that indicate current impairment by Controlled Substances. The observations may include indications of the chronic and withdrawal effects of controlled substances. The observation must be based on short-term indicators, such as blurry eyes, slurring, or alcohol on the breath. The supervisor may not rely on long-term signs, such as absenteeism or tardiness, to support the need for a reasonable suspicion test.

Reasonable suspicion testing for alcohol or controlled substances is only Suspicion Testing is permissible if only when the observation was Trained Supervisor has made the observation during, just preceding immediately before, or just immediately after the performance of safety-sensitive functions Safety Sensitive Functions.

The reasonable suspicion A Reasonable Suspicion test for alcohol or controlled substances test should be administered within two hours of (2) hours of the observation, but no later than eight (8) hours after the observation. No test will be administered after eight hours following If a Trained Supervisor has determined that Reasonable Suspicion exists, but a test has not been administered within 2 hours, or no test has been administered after 8 hours, MWC shall create and retain a record of the reasons for the delay or the failure to obtain a test.

DOT regulations do not impose a time limit for Reasonable Suspicion Testing for Controlled Substances. However, since the purpose of all testing is safety, it is MWC’s policy to arrange for Reasonable Suspicion Testing for Controlled Substances as soon as possible after the Trained Supervisor has made the observation. If the test is not administered, the Commission shall maintain a record of why the test was not promptly administered.

Testing occurs at a Medical Facility; MWC employees do not administer tests, including breathalyzer tests. In the event that changes, in no event shall the direct supervisor or the Trained Supervisor who made the observation conduct the breathalyzer test.

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Employees who are required to submit to ~~reasonable suspicion~~ Reasonable Suspicion testing are prohibited from transporting themselves to the ~~collection site~~ Medical Facility. A supervisor or management employee will arrange for transportation.

~~Even if a reasonable suspicion alcohol or controlled substances test is not conducted, no employee may report for duty or remain on duty requiring the performance of safety sensitive functions while under the influence of alcohol, as shown by the behavioral, speech, and performance indicators, until:~~

If a Trained Supervisor has determined Reasonable Suspicion exists, but for some reason an alcohol test cannot be conducted within the time allowed, or a Controlled Substances Test cannot be timely conducted, the Covered Employee is still prohibited from reporting for duty while Impaired/Under the Influence. Pursuant to federal law, MWC will not allow a Covered Employee to perform Safety Sensitive Functions until:

- 1) ~~an~~ An alcohol test is administered and the employee measures less than 0.02; or
- 2) 24 hours have elapsed since the ~~reasonable suspicion determination~~ Reasonable Suspicion observation.

~~No~~ In the absence of a timely alcohol or Controlled Substances Test, no disciplinary action will be taken against an employee based solely on an employee's appearance and behavior in the absence of an alcohol test., except that he or she will be removed from performing Safety Sensitive Functions for the period stated above, and the Reasonable Suspicion determination will become part of the employee's DOT file.

A written record shall be made of the observations that lead to a reasonable suspicion drug test. The A written record shall be signed by the supervisor or Commission official who made the observations made of any Reasonable Suspicion determination, within 24 hours of the observed behavior, or before the results of the alcohol or drug test are released, whichever is earlier.

To ensure that supervisors are trained to make reasonable suspicion Reasonable Suspicion determinations, supervisors vested with the authority to demand a reasonable suspicion drug and/or alcohol test Reasonable Suspicion Testing will attend at least one hour of training on alcohol misuse and at least one hour of training on controlled substances Controlled Substances use. The training will cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances Controlled Substances.

9.5.3.1 Transportation of Employee's for Testing

- 1) ~~If it is necessary for an employee to take a drug or alcohol test based on reasonable suspicion or a critical incident, the employee shall be transported to the testing facility by a supervisor of the Commission, and shall not drive himself/herself.~~
- 2) ~~If the incident takes place during normal Commission hours of 8 a.m. to 5 p.m. Monday through Friday, the supervisor is to call Asante Occupational Health Services at (541) 608 4236, and then transport the employee to the testing site selected by Asante.~~
- 3) ~~If Asante is not open, the employee should be transported to the Rogue Valley Medical Center Emergency Services, 2825 E. Barnett Road; (541) 608 4144.~~

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9.5.3.2 Procedures to be Used When Sample is Given

9.10.5 1) Samples will be tested by a licensed clinical laboratory meeting Post-Accident Tests – Covered Employees

A Covered Employee who is involved in an accident while engaged in Safety Sensitive Functions shall be subject to drug and/or alcohol testing under the following conditions:

For alcohol –

- (1) if the accident resulted in the loss of human life; and/or
- (2) if the driver receives a Moving Vehicle citation within 8 hours of the accident and the accident involved (i) bodily injury to any person requiring medical treatment away from the scene of the accident; or (ii) disabling damage to one or more vehicles, requiring that the vehicle(s) be towed away.

For Controlled Substances –

- (1) if the requirements set forth in ORS Ch. 438.
- 2) An employee who is required to give a sample based upon reasonable suspicion or a critical incident shall be reassigned to a non safety-sensitive position or placed on leave with pay pending receipt of test results.
- 3) Drug test results will be kept accident resulted in the employee’s medical file.
- 4) The Manager loss of human life; and/or Human Resources Department will receive the results from the testing site. In the case of current employees, only the employee’s immediate supervisor, or other person with need to know, will be advised that the employee passed or failed. Only those persons authorized by the Commission and with a need to know the results will be informed. An employee may request results in writing from the laboratory.

9.5.3.3 Positive Tests for Employees

If an employee tests positive for drugs or alcohol, the following procedures will apply:

- 1) All positive tests will be subjected to a secondary, confirmatory test on the same sample.
- 2) If the secondary test confirms the initial positive test result:
 - a) Blood alcohol content (BAC) 0.02 or greater but less than 0.04: If the employee is under the influence of alcohol with a BAC of at least 0.02 but less than 0.04, they will be immediately suspended without pay, and will be allowed to return to work after 24 hours subject to a clearance test, as described under step 6 below, and will be referred to the Employee Assistance Program.
 - b) BAC of 0.04 or greater and/or positive drug test: Once a positive test result is received, an employee will be suspended 24 hours without pay. The employee may not return to work until a clearance test, as described under step 6 below is taken. An employee who tests positive for

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being under the influence of drugs or with a BAC of 0.04 or greater, shall either sign a Last Chance Agreement and seek treatment, or sever his/her employment relationship with the Commission. The Commission has sole discretion as to whether a Last Chance Agreement is offered, or whether the employee is to be dismissed from employment immediately.

- 3) Any employee required to test based upon reasonable suspicion, or following a critical incident, shall be transported home by the supervisor or designee.

9.5.3.4 Refusal to Test/Failed Integrity Test

- 1) Refusal to test following reasonable suspicion or a critical incident is a violation of this policy and may result in discipline, up to and including termination.

2) Any person who attempts to produce a false test result or otherwise tampers with or interferes with the testing process will be permanently disqualified from employment with the Medford Water Commission. A sample that fails an integrity test because it is either too diluted or contains foreign substance will constitute a failed test; but in such instances, one additional test will be permitted. (2) if the driver receives a Moving Vehicle citation within 32 hours of the accident, and the accident involved (i) bodily injury to any person requiring medical treatment away from the scene of the accident; or (ii) disabling damage to one or more vehicles, requiring that the vehicle(s) be towed away.

A second failed integrity test will constitute a positive test result.

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9.5.3.5 Appeal Procedure for Employees

An employee who has failed a drug or alcohol test, may, at his or her expense, seek retesting of the original sample. Such a request must be made in writing to the Commission's Human Resources Department within 30 days of the date of notification of the original test results. The employee may request that another licensed clinical laboratory conduct the test. Covered Employee, subject to the Commission's approval of the lab. Accepted chain-of-custody procedures must be followed: at no time shall the applicant receive the original sample to transfer or hold until the retest may be conducted. If the retest gives a negative result, the employee will be deemed to have passed the test. In such cases, the employee shall not be entitled to any position filled in the interim or to any other benefit except retention on an eligibility list. In the event the test is negative, the Commission will pay the costs of the test.

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9.5.4 Post-Accident Testing

Post accident drug and alcohol testing will be conducted when an employee is involved in a workplace/on-the-job incident or accident where:

- 1) The accident is severe enough to require medical attention; or
- 2) The employee is driving a vehicle involved in a "moving" vehicle traffic incident

An employee subject to post-accident testing Post-Accident Testing shall remain readily available for testing. The employee alcohol testing for up to 8 hours after the accident, and for Controlled Substances testing for up to 32 hours after the accident. A Covered Employee, who is not readily available may be deemed by the employer to have refused engaged in a Refusal to test. Test, in violation of these policies.

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The Commission will attempt to arrange for a post-accident alcohol test within two hours following an accident. If no such testing can occur within that time period, the Commission will continue for a period of an additional six hours to have the employee tested. No alcohol test may be administered after eight hours following the time of the accident. A post-accident test shall be conducted within 32 hours following the accident. If the Commission is unable to administer an alcohol or drug test within the requisite

2, 8, or 32 hour time period, the Commission will create and retain a record as to the reason the test was not conducted.

A driver subject to post-accident testing shall remain readily available for such testing. A driver who is not readily available may be deemed by the Commission to have refused to submit test.

Nothing ~~However, nothing~~ in this section shall be construed to require the delay of necessary medical attention for injured persons following an accident, or prohibit the driver from leaving the scene of an accident ~~for time if necessary, to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.~~

Results—MWC will attempt to obtain a Post-Accident alcohol and drug testing as soon as possible after the accident and will order both tests to occur at the same time, where possible and permissible. Post-Accident Testing is subject to the following additional restrictions:

1) MWC will attempt to obtain an alcohol test within two (2) hours following an accident. If no such testing occurs within that time, MWC document the reasons no such test occurred, and will continue to attempt to have the employee tested, for a period of an additional six (6) hours. No alcohol test may be administered more than eight (8) hours following the time of the accident.

2) A Post-Accident Controlled Substances test must be conducted within 32 hours following the accident.

3) If MWC is unable to obtain an alcohol and/or Controlled Substances test within the requisite time period, MWC will create and retain a record as to the reason the tests were not conducted.

The results of a breath or blood test for the use of alcohol, and/or the results of a urine test for ~~controlled substances~~ 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, ~~if provided such tests conform to the applicable Federal, State or local testing requirements, and~~ the results of the tests are obtained by the employer.

9.5.5 Random Testing

A random alcohol or drug test, or both, will be administered just prior to an employee's performing a safety sensitive function (e.g., driving), while the employee is performing a safety sensitive function, or just after the employee has stopped performing a safety sensitive function. The Commission will participate in a random selection program meeting the requirements of Federal regulations (49 CFR Part 382) for the number of covered employees to be tested for random alcohol and drug testing each year. Some employees may be tested more than once in a year, while others are not tested at all depending on the random selection.

On the date the employee is selected for random testing, his/her supervisor will ensure that the employee's duties are covered. The employee will receive a written note indicating the time and location he/she is to report for testing, and the employee shall proceed to the test site immediately.

1) Alcohol random selection will be conducted at a rate not less than the minimum rate determined by FHWA.

a) CMV driver shall only be tested for alcohol just before, or during the performance of safety functions, or just after the driver has ceased performing such functions.

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2) ~~Controlled substance random testing rates will be conducted at an annual rate not less than the percentage rate of 50 percent of the average number of driver positions.~~

~~1) 3) Random testing will be unannounced and dates for testing reasonably spread throughout the calendar year.~~

~~4) CMV drivers notified of a random test shall report to the test site immediately.~~

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9.5.6—The Post-Accident Testing requirements do not apply to (1) an accident/injury involving only boarding or alighting from a stationary motor vehicle; or (2) an accident/injury involving only the loading or unloading of cargo; or (3) an accident/injury occurring in the course of operating a passenger vehicle, unless it is transporting persons for hire, or hazardous materials.

9.10.6 Return- to- Duty Testing – Covered Employees

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Any employee ~~A Covered Employee~~ who has ~~violated any of the prohibitions of this policy~~ failed an alcohol or drug test must submit to a ~~return~~ Return to duty ~~Duty~~ test before he/she may be returned to his/her position. The test result must indicate an alcohol concentration of less than 0.04 ~~or less than the limit set forth in an applicable collective bargaining agreement, or, where no collective bargaining agreement is applicable, a blood alcohol level of .02 or greater (0.02 in the case of those employees required to have a commercial vehicle driver's license) or a~~ verified negative result on a ~~controlled substances~~ Controlled Substances test in order to return to work. The type of test administered is based upon whether the violation was drug or alcohol related.

Before returning to work, any employee who tested positive for drugs or alcohol will be required to submit to an alcohol and/or drug test. This test must show that the employee is drug free and not under the influence of alcohol in order to return to work. ~~After returning to work, the employee~~ Covered Employees will be required to submit to unscheduled ~~periodic~~ follow-up testing, at the Commission's discretion, for a follow-up period ~~not to exceed twenty-four (24) of at least twelve (12) months but no more than sixty (60) months.~~ Employees must submit to at least six (6) tests in the first 12 months. Refusal to ~~test~~ Test during this period may result in immediate dismissal from employment.

The employee will be subject to follow ~~Follow-up~~ testing which is separate from the ~~random testing~~ Random Testing obligation. The employee will be subject to at least six unannounced drug/alcohol tests during the first year back to the safety-sensitive function position following the violation. The substance abuse professional

The Substance Abuse Professional (SAP) may terminate the need for follow-up testing at any time after the first ~~six~~ 6 tests have been administered, if a ~~determination is made~~ he or she determines that such testing is no longer necessary. Follow-up alcohol testing may only be administered when the employee is performing ~~safety-sensitive functions~~ Safety Sensitive Functions, just prior to performing such ~~function~~ functions, or just after the functions have been completed.

9.5.7 Last Chance Agreement

1) A Last Chance Agreement is a contract between the employee and the Commission requiring certain conditions imposed by the employer, as a condition of the employee's continued employment. A Last Chance Agreement following a positive drug test must contain a commitment from the employee to remain drug free, attending at a reasonable cost to the employee, rehabilitation, an employee assistance program or other similar program; submitting to random or periodic drug testing to demonstrate that the employee remains drug

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free; and paying a reasonable amount toward the costs of required drug tests, considering the frequency and total number of such tests. A Last Chance Agreement for an employee who tests positive for alcohol shall not require the employee to cease consumption of alcohol outside of work hours when such consumption does not interfere with work; shall not require the employee to attend alcohol treatment absent a showing that they have a problem which currently requires treatment, and shall not require the employee to attend and pay for a particular treatment when other similar treatment is available at a lower cost.

9.10.7 2) – An employee who enters a Last Chance Agreement, and is subject to treatment is expected to meet with an accredited professional drug/alcohol counselor on a regular basis on a schedule to be determined by the counselor as part of a treatment program. Failure to complete the program or to cooperate with the counselor is considered a breach of the Last Chance Agreement, and will result in General Drug and Alcohol Testing Procedures – Covered Employees

Employees must report for testing immediately after being instructed to do so, or as soon as possible after an accident, for Post-Accident Testing. An employee who has been instructed to submit to Reasonable Suspicion testing will be provided transportation to the Medical Facility and may not transport himself or herself.

As stated above, MWC utilizes a certified MRO to review the chain of custody and test results.

- 1) If there is a confirmed negative test, the MRO will verify that result to HR.
- 2) If the test is dilute or otherwise insufficient, or shows signs of tampering, the MRO will instruct HR to order a new test. The new test must be conducted under observation.
- 3) If there is a confirmed positive test, or a confirmed adulterated, substituted, or invalid test, the MRO will review the documentation and chain of custody. If the MRO determines the test results are invalid, the MRO will cancel the test results and relay that information to HR, with an order to immediately retest.
- 4) If the MRO receives a confirmed positive test, or a confirmed adulterated, substituted, or invalid test, and determines that the test results are valid, the following procedures will apply:
 - a) The MRO will contact or attempt to contact the employee within 24 hours. If the MRO is unable to make contact, the MRO will ask HR to contact the employee and instruct the employee to contact the MRO.
 - b) After a confidential in-person or telephone interview with the employee, the MRO will relay verification of the confirmed drug and alcohol tests to HR, along with any medical information relevant to Safety Sensitive Functions.
 - c) If the employee expressly refuses to provide an interview, fails to contact the MRO within 72 hours after HR has relayed instructions to contact the MRO, or neither HR nor

the MRO has been able to reach the employee within ten (10) days of the test results, the MRO may verify the results to HR without an employee interview.

An employee who has a Verified Positive Test result will be immediately removed (“Stand Down”) from all Safety Sensitive Functions, and additional discipline may follow, up to and including termination of employment.

Under DOT regulations MWC may order a Covered Employee to Stand Down from Safety Sensitive Functions, pending the results of a Reasonable Suspicion Test, or in the absence of a Verified Positive Test ordered on a Reasonable Suspicion basis, so long as the action is not disciplinary in nature and the employee suffers no loss of pay.

MWC reserves the right to and may remove an employee from Safety Sensitive Functions pursuant to its obligation to protect public safety and ensure a safe workplace, even in the absence of a Verified Positive Test result, or before receiving a Verified Positive Test result. Any such action that is outside DOT regulations would occur under MWC’s own authority and would not be recorded with DOT records or otherwise affect the employee’s DOT status.

9.10.8 Referral to Substance Abuse Professional – Covered Employees

When a Covered Employee has a Verified Positive Test or violates any of the prohibitions applicable to Covered Employees, MWC is not required to allow the employee to return to working in any position involving Safety Sensitive Functions. MWC may, in its sole discretion, discipline (including demotion), transfer, or terminate a Covered Employee with a Verified Positive Test or other violation of the applicable policies.

However, if management decides to allow a Covered Employee to continue working after a Verified Positive Test, the following steps must be in place in order for the Covered Employee to return to work in any position that includes Safety Sensitive Functions, per DOT regulations:

- 1) The employee must be referred to a Substance Abuse Professional (SAP) for evaluation, must complete the evaluation, and must follow the SAP’s recommendations for education and treatment, and aftercare. HR will provide a list of all local SAPs that are acceptable to MWC, with contact information.
- 2) The SAP must certify that the employee has been evaluated and provide a written report, with recommendations for education, treatment, and testing, to HR.
- 3) The SAP must conduct a follow-up evaluation to determine whether the employee has successfully complied with the SAP’s recommended education and treatment, and must provide another written report to HR.
 - a. If the SAP concludes that the employee has not successfully complied with the SAP’s recommended education and treatment plan, the employee may not return to work in any capacity involving Safety Sensitive Functions, and may be subject to discipline, according to MWC’s ordinary policies (see above).

b. If the SAP concludes that the employee has successfully complied with the SAP's recommended education and treatment plan, but recommends ongoing treatment even after returning to duty, the employee must comply with that recommendation, and MWC is authorized to monitor and enforce those recommendations. Failure to comply with the follow-up plan will lead to removal from any Safety Sensitive Functions, as well as discipline, up to and including termination of employment.

4) The employee must pass a Return to Duty test that is negative for any Controlled Substance and is lower than 0.02 for alcohol.

5) After returning to work, the employee must submit to follow-up drug and/or alcohol testing for a period of at least 12 months (1 year), and up to 60 months (5 years), after returning to work. The follow-up testing must include at least 6 tests in the first 12 months, although the SAP may recommend more tests. The SAP may recommend discontinuing the testing at any time after the first 12 months.

6) A Verified Positive Return to Duty test, or any Verified Positive Test after returning to work, will lead to immediate dismissal from employment. The Human Resources Department shall be informed on a monthly basis whether the employee is in compliance with the termination, without an investigative meeting or hearing.

7) Any other violation of DOT regulations, after returning to work, or failure to follow the SAP's recommended plan, will also result in termination, however the employee will retain the right to an investigative meeting and hearing.

MWC rather than the SAP determines when the employee may safely return to Safety Sensitive Functions, however MWC will rely on the SAP's written reports and recommendations in making that determination.

Note that an employee who is receiving treatment program. An employee's failure to cooperate with the counselor is to be reported by the counselor to the Human Resources Department within a reasonable period of time, but no later than 10 days after a missed appointment, unless rescheduled by the employee during that 10 day period. A rescheduled appointment does not have to be within the 10 day period, as long as the counselor reports the employee in compliance with the from an SAP or otherwise participating in addiction treatment program. has a right to use all available paid leave (starting with sick leave), and to use all available medical leave under OFLA and/or FMLA, for treatment.

Medical benefits may cover some of the costs for this treatment. Any costs accrued that are not covered by insurance are the sole responsibility of the employee.

9.10.9 3) – An Confidentiality – Covered Employees

MWC is required to request all DOT records from a Covered Employee's prior employer(s) for the past three (3) years, if the employee under a Last Chance Agreement who tests positive for alcohol or drugs at any time during the 24-month follow-up that period shall be dismissed from worked in a Safety Sensitive Functions. MWC is also required to provide its DOT records for any Covered

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~~Employee who leaves employment. Only one Last Chance Agreement is allowed. After the expiration of and is hired by another employer to perform Safety Sensitive Functions~~

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~~All DOT test records, SAP reports, and other DOT records are confidential and may not be released to anyone other than:~~

- ~~• MWC's Human Resources Manager, as the 24-month follow-up period, if an DER of MWC;~~
- ~~• Prospective employers of former employees, upon written request by the employee tests positive for drugs or alcohol in violation of this policy, when the employee will not be offered a second Last Chance Agreement, and will be dismissed from performing Safety Sensitive Functions with the new employer;~~
- ~~• Federal and state agencies, including the Federal Motor Carrier Safety Administration, and any state agency requiring such information related to state CDL-holders;~~
- ~~• A designated SAP for the employee;~~
- ~~• Pursuant to a legal demand for such information (such as in litigation, or an administrative agency claim). When information is released in response to a legal demand, written notice of the disclosure will be provided to the employee.~~

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~~All DOT drug and alcohol tests must be conducted separately from non-DOT drug and alcohol tests; non-DOT tests may not be conducted on the same sample.~~

~~All DOT records are maintained separately from all other records related to a Covered Employee. Any non-DOT tests or records related to employment decisions that are based on authority other than DOT regulations will not be maintained with DOT records.~~

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9.5.8 Rehabilitation/Re-Testing

~~Upon successful or satisfactory completion of a rehabilitation program by a Commission approved certified and/or licensed drug and/or alcohol treatment program, as evaluated by the treatment staff, individual(s) must have completed treatment as certified by the treating facility, and present proof of satisfactory or successful completion to employer prior to re-testing eligibility being granted.~~

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~~Any individual that has retested negative and returns to work for the employer, agrees to be retested on an unannounced basis upon the request of the employer. The period of unannounced testing shall be a minimum of one year but not exceeding sixty (60) months or five (5) years.~~

9.6 Management Responsibility

~~Management is responsible for training the Commission's supervisory personnel to administer this policy in an equitable and consistent manner. Medford Water Commission will make available to its employees information on resources that will assist employees in resolving his/her difficulty.~~

~~Voluntary reports of drug and/or alcohol problems and company detected violations of this policy will be held in strict confidence by management. Only those persons within the organization with a "need to know" will be notified when management takes action in compliance with this policy.~~

9.7— Documented Substandard Performance

- 1) ~~Problems related to job performance, attendance and safety should be managed in accordance with existing Commission policy. Supervisors are encouraged to seek counsel from Commission resources such as the (EAP) or the Designated Representative in attempting to resolve these problems.~~
- 2) ~~When it is determined that substandard performance is not a result of deficiencies in employee knowledge and/or skill, supervisors should encourage the employee to seek assistance from the EAP or Designated Representative.~~
- 3) ~~Supervisors will record observations of substandard performance, corrective action taken, and the employee's subsequent performance.~~

9.7.1 Documented Substandard Performance Accompanied by Employee's Disclosure for Alcohol/Drug Problem

- 1) ~~Supervisors should not assume the accuracy of the employee's self diagnosis. The employee should be referred to the Commission's EAP who may recommend an alcohol/drug dependency evaluator.~~
- 2) ~~If the evaluation confirms the presence of a dependency, then the employee is expected to follow the EAP's recommended course of treatment.~~
- 3) ~~If there is not confirmation of an alcohol/drug dependency, then the appropriate disciplinary action should be carried out.~~
- 4) ~~Supervisors will document substandard performance, the employee's disclosure, and the actions taken in compliance with the policy.~~

~~Employees are entitled to the results of a drug or alcohol test upon written request.~~

~~When presented with a circumstance or situation not covered in these procedures, supervisors are expected to seek clarification from their immediate superior.~~

9.8— Employee Responsibilities

~~Each employee is responsible for managing his/her own behavior in compliance with this policy. Failing to fully cooperate with any aspect of our enforcement of this policy, including but not limited to refusing to promptly submit to required testing; giving false, diluted or altered urine samples; refusal to submit to searches to personal possessions required by this policy; failure to comply with rehabilitation conditions imposed by the Commission or rehabilitation counselors, etc.~~

~~An employee should inform his/her supervisor whenever they are taking prescription medication that might impose an on-the-job impairment. Employees taking prescription medication AS PRESCRIBED will not be considered in violation of the drug and alcohol policy. Employees who are medically authorized to use drugs or other substances which can impair job performance are responsible to determine from the physician whether or not the substance can impair job performance. If it can, the employee must report the use of the substance to his or her immediate supervisor and provide proper written medical authorization from a physician to work while using such authorized drugs.~~

~~If an employee suspects that he or she has an alcohol or drug problem, the employee is expected to seek assistance for the problem directly from the Commission's approved Employee Assistance Program (EAP) or to the HR Department who will refer them to EAP. An outline of the EAP is available to all employees—contact the MWC HR Department. In the event an employee, whose identity will be held as strictly confidential, is diagnosed to have an alcohol or drug dependency following a voluntary self referral,~~

he/she will be responsible for following the recommendations of the EAP counselor. Failure to complete an approved in-patient and/or out-patient drug and/or alcohol rehabilitation program, as well as the after-care plan, is just cause for termination.

9.9 Suspected Violation of Policy

Reporting for work having consumed alcohol or used illegal drugs or controlled substances at a time, or in such quantities, or in a manner that may impair work performance. For purposes of this policy, having any detectable level of an illegal or controlled drug in one's system while covered by this policy will be considered to be a violation.

No employee shall be permitted to report for work or continue to perform work while in possession of, or having consumed alcohol or drugs which in any way affect safe and efficient performance. Such circumstances include any employee involved in an incident on Commission premises or while on Commission business which causes or could cause injury to self or to others, or that involves damage to Commission property or the property of a customer, when there is reasonable cause to believe that drugs or alcohol contributed to the incident.

- 1) Any employee exhibiting such an apparent condition will not be permitted to start or to continue working. Examples of such condition include, but are not limited to:
 - a) The smell of alcohol on the breath.
 - b) Impaired gait.
 - c) Slurred or abnormal speech.
 - d) Disruptive behavior.
 - e) Sleeping on the job.
 - f) Frequent and unexplained absences from the work station.
 - g) Erratic work performance.
- 2) When an employee exhibits any of the above conditions or behaviors, the supervisor will direct the employee to stop work and ask the employee to explain his/her behavior.
- 3) If the supervisor believes the employee to be in violation of this policy, a blood, breath, or urine test will be administered by a substance abuse professional (SAP) if:
 - a) Management requires it or the employee requests it, and
 - b) The designated SAP is able to administer the test within a reasonable time after the determination of reasonable grounds.
- 4) If the employee refuses to follow the supervisor's directive, the employee will be subject to dismissal for insubordination. Refusal to submit to any required drug or alcohol testing will be treated in the same manner as an employee who tested 0.04, or greater than the limit set forth in an applicable collective bargaining agreement, or, where no collective bargaining agreement is applicable, a blood alcohol level of .02 or greater. In the case of an employee required to have a Commercial Vehicle driver's license, the employee will be treated in the same manner as an employee who tested 0.02 or greater on an alcohol test or tested positively on a controlled substances test. Failing to fully cooperate with any aspect of our enforcement of this policy, including but not limited to refusing to promptly submit to required testing; giving false, diluted or altered urine samples; refusal to submit to searches to personal possessions required by this policy; failure to comply with rehabilitation conditions imposed by the Commission or rehabilitation counselors, etc.

- 5) ~~If an employee is determined to be in violation of this policy, an appropriate disciplinary action, which could include termination, will be taken. In each case where a violation occurs but the employee is not discharged, the employee shall be required, as a condition of continued employment, to enter into a Last Chance Agreement.~~
- 6) ~~Failing to fully cooperate with any aspect of the Commission's enforcement of this policy, including but not limited to refusing to promptly submit to required testing; giving false, diluted or altered urine samples; refusal to submit to searches of personal possessions required by this policy; failure to comply with rehabilitation conditions imposed by the Commission or rehabilitation counselors, etc. will be considered to be a violation of this policy.~~

9.10 Consequences of Failing an Alcohol and/or Drug Test

~~A positive result from a drug or alcohol test will result in disciplinary action, up to and including termination. A positive drug test or test showing a blood alcohol level of 0.04 or greater (or, 0.02 in the case of employees required to have a commercial vehicle driver's license) will result in a decision by the Commission whether to offer the employee a Last Chance Agreement or to proceed with action to dismiss the individual from employment. All employees in violation of this policy shall be provided with information regarding resources available in evaluating and resolving problems associated with the misuse of alcohol and the use of controlled substances.~~

- 1) ~~If the employee is not to be terminated, he/she shall:~~
 - a) ~~Be immediately removed from performing any safety sensitive function upon notification to the Commission of a positive test.~~
 - b) ~~Submit to an examination by a substance abuse professional (SAP). Upon a determination by the SAP, the employee may be required to undergo treatment for his/her alcohol misuse or drug use. The Commission is not required to pay for this treatment, although the employee's insurance may cover a portion of the costs.~~
 - c) ~~Not be returned to his/her former safety sensitive position until the employee submits to a return to duty controlled substance and/or alcohol test (depending on which test the employee failed) that indicates an alcohol concentration level of less than 0.02 or a negative result on a controlled substance test.~~
 - d) ~~Be required to submit to unannounced follow up testing after he/she has been returned to his/her safety sensitive position. Follow up testing shall not exceed 60 months from the date of the driver's return to duty. Refusing to take a test during this period will be considered a breach of the Last Chance Agreement and will result in immediate dismissal from employment.~~

9.11 Voluntary Request for Assistance

~~When an employee self-identifies the existence of a drug or alcohol problem, the employee may do one of the following:~~

- 1) ~~Contact the Employee Assistance Program (EAP).~~
- 2) ~~Contact a company approved treatment or assessment resource.~~
- 3) ~~Request assistance from the employee's supervisor, who will help the employee contact the EAP or a commission approved chemical dependency specialist.~~

WHEN AN EMPLOYEE ASKS FOR ASSISTANCE FROM MANAGEMENT

- ~~1) The supervisor will support the employee for taking the first step in seeking help for a possible drug and/or alcohol problem.~~
- ~~2) The supervisor will excuse the employee to make contact with the EAP or approved chemical dependency specialist. Sick Leave may be used for this time off after the three (3) day vacation time requirement for the use of sick leave has been met. It is the Commission's expectation that the employee will comply with the treatment plan recommended. The employee may be required to complete a Last Chance Agreement.~~
- ~~3) The employee's disclosure will be kept confidential by company management.~~
- ~~4) The supervisor will document the employee's request and action taken in response.~~

9.12 – Searches

9.12.1 – Commission Property

The Commission reserves the right to conduct searches for any reason of Commission equipment or facilities generally and may search any physical thing or area directly connected to the Employer's operation in which the employee has an expectation of privacy (i.e. desk or locker) when the Commission has reasonable grounds to believe alcohol or drugs may be found.

9.12.2 – Personal Property

The Commission may require an employee to submit to a search of the employee's clothing or personal property (such as a car on Commission property) by legally authorized law enforcement personnel when the Commission has reasonable grounds to believe alcohol or drugs may be found.

The Commission reserves the right to inspect and/or search any employee's personal property on its premises if there is a reasonable belief that policy has been violated.

9.13 – Discipline

Any employee who is found to be in violation of this policy, or who refuses to submit to testing as required, or who refuses to cooperate or attempts to subvert the testing process will be subject to disciplinary action which could include immediate termination of employment. The Commission also reserves the right to involve law enforcement officials for any conduct which it believes might be in violation of state or federal law.

An employee whose alcohol test indicates an alcohol concentration level of 0.02 or greater and less than 0.04 will be suspended without pay from his or her safety sensitive function for at least 24 hours. The employee will receive a written reprimand indicating that a subsequent such violation of this policy will result in disciplinary action (up to and including termination), and will also be required to undergo follow up testing.

9.14 – Commission Manager Authorized Exceptions

During special, infrequent occasions, consumption of alcoholic beverages and, therefore, open containers of alcohol, may be allowed on Commission property, but only upon specific prior written authorization from the Commission Manager. On such authorized occasions, the consumption of alcohol must be limited to avoid any actual or perceived impairment or reduction in job performance if the person returns to work. This exception does not allow employees to become intoxicated or impaired to a point where it may become unsafe to the employee or others.

This exception does not apply to an employee who, upon returning to work, has a reasonable expectation of contact with the public wherein an odor of an alcoholic beverage on the employee's breath or clothing might impair the public trust and confidence in the sobriety of the employee.

9.15—All DOT records must be retained for the period of time prescribed by DOT regulations. Covered Employees may request to view their own DOT records at any time.

9.11 Future Revision of Policy Drug and Alcohol-Free Workplace Policy

The Commission may revise this policy when it deems appropriate. All employees will be notified of any changes, in advance of the effective date of such changes. Any changes which affect union employees must be done so with consent of the Bargaining Unit Members will generally occur after negotiation with the applicable Union, unless MWC is relying on a reservation of Management Rights.

However, the Commission's efforts to maintain a drug- and alcohol-free workplace are not limited exclusively to this policy. The Commission may take other steps it considers appropriate not outlined in these policies, if necessary, under the circumstances, to detect ensure a safe workplace and eliminate drug or alcohol abuse in its workforce protect the safety of the public MWC serves.

9.12 9.16 — Contractors

It is the policy of MWC that, in order to attain or maintain a contract with the Commission, each contractor shall agree to the policies outlined below. For purposes of these policies, the definitions stated in MWC's Drug and Alcohol-Free Workplace policies apply.

While the contractor and/or its employees or agents are performing services for MWC under the applicable contract(s), using Commission equipment, and/or on Commission property or public or private property where MWC is present to perform work, the contractor and the contractor's employees or agents:

- 1) Shall not be Impaired/Under the Influence;
- 2) Shall not use, Possess, manufacture, sell, offer for sale, purchase, obtain, or distribute alcohol or Drugs. This prohibition does not apply to the possession of closed containers of alcohol in a contractor's (or contractor's employee's) personal vehicle parked in a Commission parking lot or on Commission property.
- 3) Each contractor must, prior to contract approval, provide to the Commission a copy of its Drug and Alcohol-Free Workplace Program or similar program, which must include drug-testing components equal to or greater than the Commission's Drug and Alcohol-Free

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Workplace Policy requirements for any employee or agent who will be performing Safety Sensitive Functions.

This policy, as it relates to contractors, shall be implemented by requiring appropriate contract provisions to be included in any contract between the Commission and a contractor, including contractor's employees and agents.

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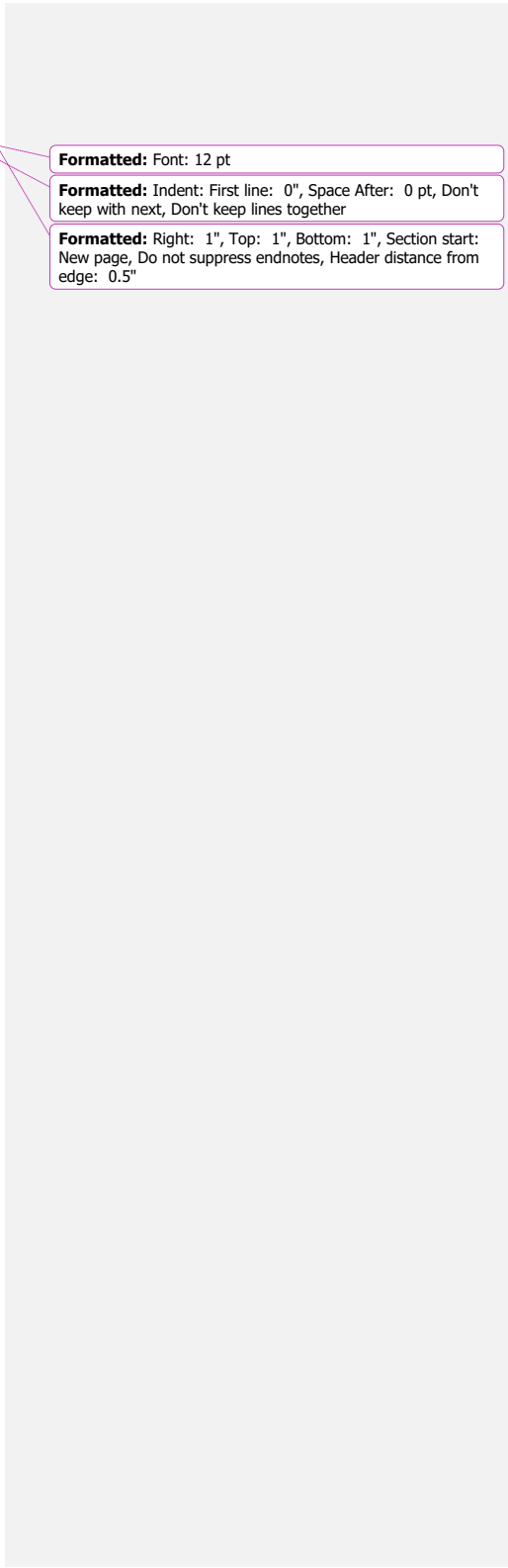
9.13 Drug and Alcohol-Free Workplace – Policy Distribution

~~The foregoing policy is~~The Drug and Alcohol-Free Workplace policies are published and distributed to each employee of the Commission as a part of the Commission’s “Personnel Manual,” and employees will be asked to acknowledge that they have received, read, understood and ~~agreed~~agree to abide by such ~~policy~~. ~~The Commission reserves the right to revise this policy at any time~~.~~policies.~~

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