

CONTRACT, LEASE, AGREEMENT CONTROL FORM

Date: 08/17/2023

Contract/Lease Control #: L16-0430-PS

Procurement#: NA

Contract/Lease Type: LEASE

Award To/Lessee: OKALOOSA COUNTY SCHOOL BOARD

Owner/Lessor: OKALOOSA COUNTY

Effective Date: 07/01/2023

Expiration Date: 06/30/2024

Description of: DIASTER TRANSPORTATION SERVICES

Department: PS

Department Monitor: MADDOX

Monitor's Telephone #: 850-651-7150

Monitor's FAX # or E-mail: PMADDOX@MYOKALOOSA.COM

Closed:

Cc: BCC RECORDS

**PROCUREMENT/CONTRACT/LEASE
INTERNAL COORDINATION SHEET**

Procurement/Contract/Lease Number: L16-0430-PS Tracking Number: 4956-23
Procurement/Contractor/Lessee Name: Okaloosa County School Board Grant Funded: YES ___ NO X
Purpose: Disaster Transportation Services
Date/Term: 6-30-24 1. GREATER THAN \$100,000
Department #: _____ 2. GREATER THAN \$50,000
Account #: _____ 3. \$50,000 OR LESS
Amount: \$70.00 per day
Department: PS Dept. Monitor Name: Maddox

Purchasing Review

Procurement or Contract/Lease requirements are met: DeRita Mason Date: 6-7-23
Purchasing Manager or designee: _____ DeRita Mason, Erin Poole, Amber Hammonds

2CFR Compliance Review (if required)

Approved as written; _____ Grant Name: _____
NA Date: _____
Grants Coordinator: _____ Suzanne Ulloa

Risk Management Review

Approved as written: _____ Date: 6-7-23
see email attached
Risk Manager or designee: _____ Lydia Garcia

County Attorney Review

Approved as written: _____ Date: 6-7-23
see email attached
County Attorney: _____ Lynn Hoshihara, Kerry Parsons or Designee

Department Funding Review

Approved as written: _____ Date: _____

IT Review (if applicable)

Approved as written: _____ Date: _____

DeRita Mason

From: Odessa Cooper-Pool
Sent: Wednesday, June 7, 2023 10:14 AM
To: DeRita Mason
Cc: Lynn Hoshihara; Jacqueline Matichuk; Patrick Maddox; Kelly Bird
Subject: FW: 2023-2024 Motor Vehicle Lease for Disaster Transportation Services
Attachments: 2023-2024 Motor Vehicle Lease - Okaloosa County Board of County Commissioners.docx; Exhibit A.pdf

Good morning DeRita,

The attached Motor Vehicle Lease agreement for disasters has been reviewed and is approved by Risk Management for insurance purposes.

Thank you,

Odessa Cooper-Pool
Public Records & Contracts Specialist
Okaloosa County BCC
302 N. Wilson Street
Crestview, FL 32536
Office: 1-850-689-4111



From: Kelly Bird <kbird@myokaloosa.com>
Sent: Wednesday, June 7, 2023 9:31 AM
To: Jacqueline Matichuk <jmatichuk@myokaloosa.com>; Odessa Cooper-Pool <ocooperpool@myokaloosa.com>
Subject: FW: 2023-2024 Motor Vehicle Lease for Disaster Transportation Services

Long story from years before... Please take a look and provide your comments to me only.

Kelly Bird
Human Resources & Risk Management Director
Okaloosa County Board of County Commissioners
302 N. Wilson Street, Suite 301
Crestview, FL 32536
www.myokaloosa.com
(w) 850-689-5874
(c) 850-758-2798

DeRita Mason

From: Lynn Hoshihara
Sent: Wednesday, June 7, 2023 10:21 AM
To: DeRita Mason; Patrick Maddox
Cc: Karen Thomas; Kelly Bird
Subject: Re: 2023-2024 Motor Vehicle Lease for Disaster Transportation Services

No, that's not necessary. This agreement is approved.

Lynn M. Hoshihara
County Attorney
Okaloosa County, Florida

Please note: Due to Florida's very broad public records laws, most written communications to or from County employees regarding County business are public records, available to the public and media upon request. Therefore, this written e-mail communication, including your e-mail address, may be subject to public disclosure.

From: DeRita Mason
Sent: Wednesday, June 7, 2023 10:47:12 AM
To: Patrick Maddox; Lynn Hoshihara
Cc: Karen Thomas; Kelly Bird
Subject: RE: 2023-2024 Motor Vehicle Lease for Disaster Transportation Services

Lynn,
With that being said should I have Suzanne add FEMA language to the agreement?

DeRita Mason



DeRita Mason, CPPO, CPPB, NIGP-CPF
Purchasing Manager
Okaloosa County Purchasing Department
5479A Old Bethel Road
Crestview, Florida 32536
Office: (850) 689-5960 Ext. 6966
Cell: (850) 826-8010
dmason@myokaloosa.com

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BOARD OF COUNTY COMMISSIONERS
AGENDA REQUEST

DATE: August 15, 2023
TO: Honorable Chairman and Distinguished Members of the Board
FROM: Patrick Maddox
SUBJECT: 2023-2024 Motor Vehicle Lease with the School Board of Okaloosa County
DEPARTMENT: Public Safety
BCC DISTRICT: All

STATEMENT OF ISSUE: Request approval of the Motor Vehicle Lease for Disaster Transportation Services between the Okaloosa County Board of County Commissioners and the School Board of Okaloosa County for the period July 1, 2023, through June 30, 2024.

BACKGROUND AND ANALYSIS: The lease establishes procedures for utilizing school buses for emergency transportation of special needs patients and other evacuees to hurricane shelters. The buses are to be provided to Okaloosa County Board of County Commissioners before and after a hurricane or other disaster at a cost of \$70 per day/per vehicle plus \$1.50/per mile for all mileage that the vehicle is driven. The lease with the School Board allows for possible reimbursement from the Federal Emergency Management Agency (FEMA).

FUNDING SOURCE, (If Applicable):

Department #0121 (Possible FEMA reimbursement.)
Account #544640

Amount \$70.00 per day/per vehicle plus \$1.50/mile (Amount will vary depending on the number of buses used and days rented.)

OPTIONS: Approve/Disapprove/Postpone

RECOMMENDATION: Approval of the lease and authorization for the Chairman to sign.

RECOMMENDED BY:


Patrick Maddox, Director Public Safety 7/25/2023

APPROVED BY:


John Hofstad, County Administrator 8/9/2023

**MOTOR VEHICLE LEASE
FOR
DISASTER TRANSPORTATION SERVICES**

THIS MOTOR VEHICLE LEASE is entered into effective the 1st day of July 2023, by and between **THE SCHOOL BOARD OF OKALOOSA COUNTY, FLORIDA** of 120 Lowery Place SE, Fort Walton Beach, Okaloosa County, FL 32548 (hereinafter referred to as "Lessor") and **OKALOOSA COUNTY BOARD OF COUNTY COMMISSIONERS** of 1250 N. Eglin, Shalimar, FL 32579 (hereinafter referred to as "Lessee").

SECTION ONE

DESCRIPTION OF VEHICLES AND PURPOSE

Lessor shall lease to Lessee and Lessee shall lease from Lessor up to one hundred twelve (112) motor vehicles during times of disaster when Lessee's facilities must be vacated (hereinafter referred to as the "Vehicle" or Vehicles"). These Vehicles will consist of a combination of sixty-five (65) passenger school buses and forty-seven (47) passenger buses equipped with a wheelchair lift, selected by Lessor from its rolling fleet.

SECTION TWO

LEASE PAYMENT

Lessee shall pay as lease payments for each of the Vehicles provided under this Lease the sum of \$70.00 per day per vehicle for each day that the Lessee has possession of the Vehicle plus One Dollar and 50/100 (\$1.50) per mile for all mileage that the Vehicle is driven from the point of delivery of the Vehicle to Lessee to the return site for the Vehicle which shall be Lessor's transportation facilities. All Lease payments are payable by the tenth day of the month following the Lessee's use of the Vehicle. All lease payments shall be made by Lessee to Lessor at Lessor's address herein set forth or to such other address as Lessor shall designate to Lessee in writing from time to time.

SECTION THREE

TERM OF LEASE /RENEWAL

This agreement will commence on July 1, 2023, and end on June 30, 2024, unless sooner terminated by either party as provided for under this section. This agreement may be extended, by mutual agreement of the parties, for two (2) additional one (1) year periods. Either party may terminate this agreement by giving to the other party thirty (30) days advance written notification of termination.

SECTION FOUR

PICK UP OF VEHICLES

In the event that inclement weather or other disaster should cause Lessee to have to evacuate its endangered population or to require the need for the Vehicles for an emergency circumstance, the Lessee shall notify Lessor of the need for the use of the Vehicles under this Lease. As part of that notice, the Lessee shall notify the Lessor of the number and type of vehicles that will be required. Lessor shall use all reasonable diligence to identify and prepare the leased Vehicles for pick up by Lessee within four (4) hours of notice from Lessee, but shall not be liable to Lessee for any failure or delay in the availability of the vehicles, if Lessor shall have exercised good faith and reasonable diligence in attempting to make such vehicles ready for pick up by Lessee. To the extent possible, the Lessor shall attempt to accommodate the request by the Lessee for the use of Vehicles by modifying or rescheduling of any prior obligation to the extent that it is possible. Notwithstanding the provisions of this Agreement, the Lessor shall have priority in the use of its vehicles for its own disaster evacuation purposes and shall have no responsibility to deliver any such vehicles to Lessee if the School District must use them for that purpose. However, the Lessor shall make any Vehicles that are not needed for its disaster evacuation, or that are not contractually obligated to another party for disaster evacuation purposes, available to the Lessee under this Lease.

SECTION FIVE

LICENSING AND REGISTRATION

The Vehicles subject to this lease shall bear license plates and the title shall be registered in the name of Lessor. Unless otherwise specified, Lessor, where required, shall register the Vehicle in conformance with the laws of the State of Florida.

SECTION SIX

ACCEPTANCE BY LESSEE

Any Vehicle accepted by Lessee for use under this lease, unless Lessee gives immediate written notice to the contrary, shall be conclusively presumed to be in neat and proper appearance, both inside and out, in good repair, mechanical condition, and running order when accepted by Lessee.

SECTION SEVEN

USE OF VEHICLE

Lessee shall not use or permit the use of the leased Vehicles in a negligent or improper manner, or so to avoid any insurance covering the Vehicles, or permit the Vehicles to become subject to any lien, change, or encumbrance.

SECTION EIGHT

COMPLIANCE WITH LAWS

The leased Vehicles, while in the possession, custody, or control of Lessee will not be operated more than their respective rated maximum passenger limit as specified in this lease. If any vehicle is damaged in any manner due to overloading, Lessee shall immediately pay to Lessor the amount of any and all damages and losses it may sustain.

The Vehicles subject to this lease shall not be used in violation of any federal, state, or municipal statutes, laws, ordinances, rules, or regulations, applicable to the operation of such vehicles. As to the use of operation of any such, Vehicles, Lessee will hold Lessor harmless from any and all fines, forfeitures, or penalties for traffic violations or for the violation of any statute, law, ordinance, rule, or regulation of any duly constituted public authority.

Lessee shall not use nor allow any Vehicle to be used for any unlawful purpose or for the transportation of any property or material deemed extra-hazardous by reason of being explosive, inflammable, or fissionable.

SECTION NINE

DRIVERS OF VEHICLES

(A) All Vehicles leased to Lessee under this lease shall be operated only by safe, careful, legally qualified, and properly trained and licensed drivers. Such drivers shall be paid by Lessee.

(B) Non-Lessor Employed Drivers.

1. The Lessee may employ or contract with drivers who are not employed by the Lessor. To the extent that these drivers are utilized, the Lessee shall implement the provision of School Board Policy Ch. 07-07, and any subsequent School Board policies, as requirements for all its drivers and shall enforce those provisions as employment standards for the drivers. (A copy of said policy is attached hereto and incorporated herein as Exhibit "A")

2. While such non-Lessor employed drivers are performing services for the Lessee under this Lease, they shall be conclusively presumed to be contract employees of Lessee only. Lessee shall provide worker compensation coverage for all drivers in accordance with the requirements of Florida law. Such workers' compensation shall be provided by an insurance company properly licensed to do business in the State of Florida. Lessee shall cause the insurer to furnish to Lessor prior to the day on which any Vehicle subject to this lease shall enter Lessee's service, a certificate of workers compensation insurance, and a certificate of renewal or replacement, evidencing coverage outlined in this Section. Such certificate shall provide that the insurance shall not be canceled or materially modified except on thirty (30) days advance written notice to Lessor.

3. Lessee shall cause the Vehicles subject to this lease to be used and operated with reasonable care and precaution to prevent loss and damage to such Vehicles due to negligent or reckless use, abuse, fire, theft, collision, or injury to persons or property.

4. Lessee's drivers shall comply with all reasonable regulations now or hereafter made by Lessor insofar as such regulations shall relate to the proper use, care, and operation of the Vehicles provided pursuant to this lease.

(C) Lessor Employed Drivers.

1. The Lessor shall assist the Lessee by allowing it to solicit the Lessor's drivers to determine if any of them are agreeable to volunteering, with compensation, to drive Vehicles in the event of inclement weather or other disaster should cause Lessee to have to evacuate its endangered population or to require the need for the Vehicles for an emergency circumstance. In the event that drivers employed by Lessor agree to drive any of the Vehicles leased by Lessee then Lessee shall reimburse Lessor for the actual personnel costs incurred by Lessor for the driver(s), including overtime pay if necessary. All other lease charges for the Vehicle(s) shall be payable by Lessee even if Lessor's employees drive the vehicles.

2. All employees of Lessor used as drivers shall remain at all times employees of Lessor and all employees of Lessee shall remain at all time employees of Lessee, and Lessor and Lessee agree to maintain medical and workers compensation insurance for their respective employees activated to carry out the duties and responsibilities under this Agreement.

SECTION TEN

REPORTS BY LESSEE'S DRIVERS

Lessee shall encourage each of its drivers, at the close of each day, or each time Vehicle is returned to Lessor's garage, to note on forms provided by Lessor, any and all faulty operation or other trouble that the driver had with that Vehicle. Except as so reported, it shall be conclusively presumed that the Vehicle operated satisfactorily.

SECTION ELEVEN

MAINTENANCE AND REPAIRS

Except as otherwise provided in this agreement, all labor, materials, and repairs in connection with the proper mechanical operation of the Vehicles during the lease term, including but not limited to batteries, repairs, maintenance, tires and towing necessary for its proper use and operation, shall be at Lessor's expense. Lessee shall take the Vehicles to the Lessor's designated bus maintenance facility for all service and repairs. Lessee shall be liable for all repairs or replacement of equipment due to damage caused by Lessee's passengers or the negligence of Lessee's employees. The Lessee shall be solely responsible for the routine costs of operations connected with Lessee's use of the Vehicles, including fuel and oil.

If any Vehicle shall be disabled, for any cause, Lessor shall promptly repair, or cause such Vehicle to be repaired, after receipt from Lessee or its agents of notice of such disability, specifying where the Vehicle is located, the nature of the disability, and its cause.

Lessee's drivers shall not make any repairs or adjustments to any Vehicle, but in all cases of trouble shall give prompt notice to Lessor by the most efficient means available describing the nature of the trouble and the location of the Vehicle. Lessee's drivers shall abide by Lessor's directions concerning emergency repairs.

Lessor shall have no liability for any repair or service to a Vehicle unless authorized by Lessor and supported by a receipted bill for the repair or service itemizing the cost of labor and materials.

SECTION TWELVE

AFTER HOURS STORAGE

It shall be the responsibility of Lessee to provide a safe and secure storage location for the Vehicles after hours of daily use. Any damage to the Vehicles due to vandalism shall be repaired or replaced at the sole expense of Lessee by Lessor's personnel or other assigned garage/repair facility.

SECTION THIRTEEN

OBLIGATION TO INSURE

Lessee, at its sole cost, shall provide and maintain during any period of time during the term of this lease, when Lessee is in actual possession of the Vehicles hereunder, a policy of automobile liability insurance containing the coverages, exceptions, and exclusions that are ordinarily contained in automobile liability insurance policies written in the State of Florida. Such policy shall insure Lessor and Lessee and their respective agents and employees with respect to liability as a result of the ownership, maintenance, use of operation of Vehicles furnished by Lessor to Lessee pursuant to this lease.

Such insurance shall be primary, and not excess or contributory, with respect to any accident involving the Vehicles. The Lessee shall also provide full collision coverage for Lessor's Vehicles based upon actual cash value. Such insurance shall be in a form acceptable to Lessor and shall be provided by an insurance company properly licensed to do business in the State of Florida and approved by Lessor. Lessee shall cause the insurer to furnish to Lessor's Risk Management Office, prior to delivery of any Vehicle subject to this lease to Lessee, a certificate of insurance, and a certificate of any renewal or replacement, evidencing coverage as outlined in this Section. Such certificate shall provide that the insurance shall not be canceled or materially modified except on thirty (30) days advance written notice to Lessor. Lessor shall be a named insured on the required insurance coverages.

SECTION FOURTEEN

REPORTS OF ACCIDENTS

If a vehicle furnished by Lessor to Lessee pursuant to this agreement is involved in any accident, Lessee shall cause its agents and employees to notify Lessor immediately by telephone. Thereafter, as soon as practicable, Lessee shall report to Lessor in writing, giving all information relative to the accident, including, but not limited to, the date, time, place, and circumstance of the accident, the names and addresses of persons injured, the owners of property damaged, and names and addresses of witnesses. Lessee, its agents, and employees, shall cooperate fully with Lessor and the insured in the investigation and defense of any claim or suit, and shall do nothing to impair or invalidate any applicable insurance coverage.

Lessee shall promptly deliver to Lessor, or to such other person or company as Lessor shall have designated in writing, any and all papers, notices, summonses, processes, and documents whatsoever served upon or delivered to Lessee or Lessee's agents or employees in connection with any claim, suit, action or proceeding at law or in equity commenced or threatened against Lessee or Lessor arising out of the ownership, maintenance, use, or operation of any vehicle subject to this lease.

SECTION FIFTEEN

OBLIGATION TO PAY MISCELLANEOUS CHARGES

Lessee agrees to pay all storage charges, parking charges, and fines incurred in connection with Lessee's use of the Vehicles. Lessee will pay any fees or taxes that may be imposed with respect to the Vehicles by any constituted governmental authority as the result of Lessee's use or intended use of the Vehicles.

SECTION SIXTEEN

LIABILITY FOR CONTENTS

Lessor shall not be liable for loss of or damage to any property left, stored, loaded, or transported in or upon any vehicle furnished by Lessor to Lessee pursuant to this lease, whether or not due to the negligence of Lessor, its agents, or employees.

Lessee, to the extent provided by law, shall hold Lessor, its agents, and its employees, harmless from and indemnify them from and against all claims based on or arising out of such loss or damage. This in no way, waives any of the immunities Lessee may have as provided in the law, including chapter 768.28, Florida Statutes.

SECTION SEVENTEEN

RISK OF LOSS AND DAMAGE

Lessee shall bear all risks of damage or loss of the Vehicles or any portions of the Vehicles not covered by insurance. All replacements, repairs or substitutions of parts or equipment due to any such damage shall be at the cost and expense of Lessee and shall be accessions to the Vehicles. The lease payments on the Vehicle shall not be prorated or abated while it is being serviced or repaired.

SECTION EIGHTEEN

RETURN OF VEHICLES

At the point in time when the disaster has passed and Lessee has completed its use of the Vehicles for that incident, Lessee shall return the Vehicles to Lessor in the same condition as when received, less reasonable wear and tear at the Lessor's South County Transportation facility or any other location mutually agreed on by the parties.

SECTION NINETEEN

ASSIGNMENT

Neither this lease nor any interest herein may be assigned by Lessee without the written consent of Lessor not by operation of law. No Vehicle may be sublet or encumbered nor possession or use given to other than Lessee's employees without Lessor's written consent.

SECTION TWENTY

WAIVER

The failure of either party in any one or more instances to insist on the performance of any of the terms, covenants, or conditions of this lease, or to exercise any right or privilege in this lease conferred or the waiver of any breach of any of the terms, covenants, or condition of this lease, shall not be construed as thereafter waiving any such terms, covenants, conditions, rights or privileges, but such terms shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

SECTION TWENTY-ONE

LIMITATION OF WARRANTIES

There are no warranties, expressed or implied, by Lessor to Lessee, except as contained in this agreement, and Lessor shall not be liable for any loss or damage to Lessee, nor to anyone else, of any kind and however caused, whether by any Vehicle, its repair, maintenance, or equipment, or its failure, or by interruption of service or use of any leased Vehicle.

SECTION TWENTY-TWO

CONSTRUCTION OF INSTRUMENT

This agreement is one of leasing only and Lessee does not acquire any right, title, or interest to the leased Vehicles other than the right of possession accorded a Lessee.

SECTION TWENTY-THREE

NOTICES

Any notice given under this lease by Lessor to Lessee shall be in writing and shall be given personally or by certified mail addressed as set out in this lease.

Any notice given under this lease by Lessee to Lessor shall be in writing and shall be given by sending such notice by certified mail to Lessor at its address as set out in this lease or such other address as Lessor shall have last furnished Lessee in writing, or by serving said notice personally on an executive officer of Lessor.

Notices so given by either party to the other shall be considered to have been delivered on deposit in the United States mail with registration fees and postage prepaid, addressed to the party for whom intended.

SECTION TWENTY-FOUR

GOVERNING LAW

This Lease shall be governed by the laws of Florida, and the parties hereto agree that any litigation between the parties hereto relating to this Lease shall take place in a court located in Okaloosa County, State of Florida. Each party waives its right to jurisdiction or venue in any other location.

SECTION TWENTY-FIVE

ADDITIONAL VEHICLES

During the term of this agreement the parties may, by mutual agreement, add additional vehicles to this lease for the remaining term of the agreement.

SECTION TWENTY-SIX

CANCELLATION OF LEASE

Either Lessor or Lessee shall have the right to cancel this lease with, or without cause, by giving to the other party written notice of its intention to cancel this agreement at least thirty (30) days prior to such cancellation date.

SECTION TWENTY-SEVEN

SEVERABILITY

In the event any part of this lease is held to be invalid, the remaining provision of this lease shall remain in full force and effect.

SECTION TWENTY-EIGHT


INTEGRATION; AMENDMENT

This lease sets forth all of the agreements for the lease of the Vehicles. There is no other agreement. This lease may not be amended or altered in any manner unless such amendment or alteration is in writing and signed on behalf of the parties.

IN WITNESS WHEREOF the parties have executed this Lease on the date indicated below with their respective signatures to be effective on the day and year first above written.

ATTEST:

THE SCHOOL BOARD OF OKALOOSA COUNTY, FLORIDA

By: 

Marcus Chambers
Superintendent and Secretary

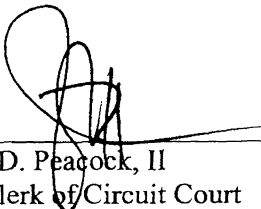
By: 

Diane Kelley, Chairman

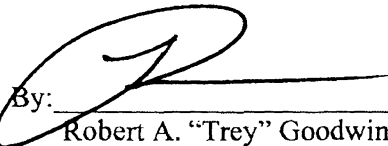
Date: June 26, 2023

ATTEST:

OKALOOSA COUNTY BOARD OF COUNTY COMMISSIONERS

By: 

J.D. Peacock, II
Clerk of Circuit Court

By: 

Robert A. "Trey" Goodwin III
Chairman, Board of County Commissioners



Date: August 15, 2023

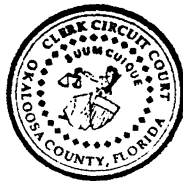


EXHIBIT A

07-07 DRUG AND ALCOHOL TESTING PROGRAM FOR COMMERCIAL DRIVER'S LICENSE HOLDERS

- (A) The purpose of this policy is to establish standard procedures for drug and alcohol testing designed to help prevent accidents and injuries resulting from the misuse of alcohol or the use of controlled substances by all employees who drive commercial motor vehicles and who are required to hold commercial driver's licenses.
- (B) This policy has been promulgated pursuant to the requirements of the Omnibus Transportation Employee Testing Act of 1991, regulations of the Federal Department of Transportation (DOT) contained in 49 CFR Part 40, regulations of the Federal Highway Administration contained in 49 CFR Parts 382 and 391, and *Fla. Stat. §1006.25*.
- (C) This policy applies to every district employee employed in a safety sensitive position who operates a commercial motor vehicle and is required to hold a commercial driver's license as a condition of employment, including volunteers and substitutes.
- (D) This policy shall take effect January 1, 1995.
- (E) For the purpose of construing the School District of Okaloosa County Drug and Alcohol Testing Policy, the following definitions apply:
 - (1) "Accident" means either:
 - (a) an accident involving a commercial motor vehicle resulting in the loss of life, or
 - (b) an accident where the driver receives a citation for a moving traffic violation and either a person is treated away from the scene or one of the vehicles involved must be towed from the scene of the accident.
 - (2) "Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl isopropyl alcohol.
 - (3) "Alcohol Use" means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
 - (4) "Breath Alcohol Technician" (BAT) means an individual who instructs and assists individuals in the alcohol testing process and operates an Evidential Breath Testing Device.

- (5) "Canceled or Invalid Test" means a drug test that has been declared invalid by the Medical Review Officer. A canceled test is neither a positive nor a negative test.
- (6) "Chain-of-Custody" refers to the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances and providing for accountability at each stage in handling, testing, storing and reporting of test results.
- (7) "Collection Site" means a place where individuals present themselves for the purpose of providing a specimen to be analyzed for the presence of drugs or alcohol.
- (8) "Commercial Driver's License" means a Class A, Class B, or Class C driver's license issued in accordance with the requirements of *Fla. Stat.* chapter 322.
- (9) "Commercial Motor Vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
 - (a) has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
 - (b) has a gross vehicle weight rating of 26,001 or more pounds; or
 - (c) is designed to transport 16 or more passengers, including the driver; or
 - (d) is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials regulations.
- (10) "Confirmation Test" for alcohol testing means a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration. For controlled substances testing "confirmation test" means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from the screen test in order to ensure reliability and accuracy. The

confirmation test for controlled substances will be gas chromatography/mass spectrometry (GC/MS).

- (11) "Controlled Substance" is synonymous with the term "drug" as defined herein.
- (12) "Driver" means any person who operates a commercial motor vehicle and who is required to hold a commercial driver's license. This includes, but is not limited to: full-time, regularly employed drivers; casual, intermediate or occasional drivers; leased drivers and independent, owner/operator drivers.
- (13) "Drug" means marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP).
- (14) "Drug Test" means any chemical, biological or physical instrumental analysis in conformity with this policy, administered for the purpose of determining the presence or absence of a drug or its metabolites.
- (15) "Evidential Breath Testing Device" (EBT) means a device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL), and identified on the CPL as conforming with the model specifications available from the National Highway Traffic Safety Administration, Office of Alcohol and State Programs.
- (16) "Employee" means a person employed by the district who is covered by the requirements of this policy.
- (17) "Employer" refers to the School District of Okaloosa County.
- (18) "GC" means gas chromatograph. "GC/MS" means gas chromatography/mass spectrometry.
- (19) "Job Applicant" means a person who has been offered a position with the district covered by this policy, conditioned upon meeting the requirements of the Drug and Alcohol Testing Policy. Job applicant includes a current employee moving into a position covered by this policy.
- (20) "Laboratory" means a facility, inside or outside the State of Florida, certified by the United States Department of Health and Human Services or licensed and approved by the Agency for Health Care Administration to analyze specimens for the detection of drugs or alcohol as defined herein.

- (21) "Medical Review Officer" (MRO) means a licensed physician, employed with or under contract to the employer, who has knowledge of substance abuse disorders, laboratory testing procedures, and chain-of-custody collection procedures, who verifies positive, confirmed test results, and who has the necessary medical training to interpret and evaluate an employee's confirmed positive test results in relation to the employee's medical history and any other relevant bio-medical information.
- (22) "Nonprescription Medication" means a medication that is authorized pursuant to state or federal law for general distribution and use without a prescription in the treatment of human disease, ailments or injuries.
- (23) "Prescription Medication" means a drug or medication obtained pursuant to a prescription.
- (24) "Reasonable Suspicion" means an articulable belief an employee possesses or uses drugs or alcohol in the workplace, is intoxicated or impaired by drugs or alcohol, based on specific and particularized facts and reasonable inferences drawn from those facts in light of experience.
- (25) "Refuse to Submit" to a drug or alcohol test means an employee:
- (a) fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing as provided in this policy;
 - (b) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing as provided in this policy;
 - (c) fails to remain readily available for testing when required.
 - (d) engages in conduct that clearly obstructs the testing process.
- (26) "Safety Sensitive Function" means any of the on-duty functions set forth in 49 CFR Section 382.107, Paragraphs (1) through (6).
- (27) "Screening Test/Initial Test" in alcohol testing means an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in his or her system. In controlled substance testing, it means an immunoassay screen to eliminate "negative" urine specimens from further consideration.

- (28) "Specimen" means a blood or urine sample of the human body capable of revealing the presence of alcohol or drugs or their metabolites.
- (29) "Threshold Detection Level" means the level at which the presence of a drug or alcohol reasonably can be expected to be detected by an initial and a confirmation test performed by a laboratory that meets the standards established herein. The threshold detection level indicates the level at which a valued conclusion can be drawn that the drug or alcohol is present in the employee's sample.

(F) Policy Notification

- (1) The implementation of the Drug and Alcohol Testing Policy, contained within the confines of this document, constitutes general notice to all covered employees of the School District of Okaloosa County that each covered employee is required, as condition of employment or continued employment, to fully comply with the provisions of the Drug and Alcohol Testing Policy, and to fully cooperate with the implementation and enforcement of the policy, including execution of the necessary authorization forms. All covered employees shall receive a copy of and be asked to read the drug and alcohol testing policy, and will be asked to sign a statement indicating their understanding of the policy.
- (2) The implementation of this policy further constitutes general notice that all covered employees of the School District of Okaloosa County may be required to submit to drug and alcohol testing, as provided herein, without further notice, at any time after January 1, 1995.
- (3) A copy of this policy is posted on the district website, and additional copies will be made available on request.

(G) Prohibited Conduct

- (1) **Controlled Substance or Drugs.** No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the employee uses any controlled substance, except when 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 commercial motor vehicle. No covered employee shall report for duty, remain on duty or perform a safety-sensitive function, if the employee tests positive for controlled substances.
- (2) **Alcohol.** No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an

alcohol concentration of 0.02 or greater. No covered employee shall use alcohol while performing safety-sensitive functions. No covered employee shall perform safety-sensitive functions within four (4) hours after using alcohol. No covered employee shall be on duty or operate a commercial motor vehicle while the employee possesses alcohol. No covered employee required to take a post-accident alcohol test shall use alcohol for eight (8) hours following the accident, or until he or she undergoes a post-accident alcohol test, whichever occurs first.

- (3) Refusal to Submit to a Drug or Alcohol Test. No covered employee shall refuse to submit to a controlled substance or alcohol test required under this policy. Any covered employee who does not remain readily available for testing under this policy will be deemed to have refused to submit to testing. The refusal to timely submit to required testing may be considered Just Cause for dismissal.

(H) Types of Testing

The School District of Okaloosa County will conduct Job Applicant Drug and Alcohol Testing and Current Employee Drug and Alcohol Testing.

- (1) Job Applicant Testing. All applicants for positions covered by this policy, including all employees seeking a transfer to positions covered by this policy, shall undergo testing for alcohol and controlled substances, prior to the first time the employee performs safety-sensitive functions for the employer. No applicant or employee seeking transfer will be allowed to perform safety-sensitive functions until the individual has been administered an alcohol test with a result indicating an alcohol concentration less than 0.02, and has received a controlled substance test result from the Medical Review Officer indicating a negative test result. An employee requesting a transfer into a safety-sensitive-position that has a confirmed positive drug test or alcohol test result of 0.02 or greater shall not be eligible for transfer.

All job applicants' prospects of employment with the School District of Okaloosa County will be conditioned upon their being qualified for work. Any job applicant who tests positive for controlled substances or alcohol will not be considered qualified for employment with the School District of Okaloosa County.

- (2) Post-Accident Testing. As soon as practicable following an accident involving a commercial motor vehicle, each surviving driver shall be tested for alcohol and controlled substances if the accident involves the loss of human life; or as soon as practicable following an accident involving a

commercial motor vehicle, a driver shall be tested if the driver receives a citation under state or local law for a moving traffic violation arising from the accident, and either a person is treated away from the scene for injuries or one of the vehicles involved must be towed from the scene of the accident.

With respect to alcohol testing, the district will make every effort to conduct the test within two (2) hours following the accident, and in no event will the test be administered beyond eight (8) hours following the accident. If the alcohol test is not administered within two (2) hours following the accident, the district will prepare and maintain a record stating the reason(s) the test could not be administered within two (2) hours.

With respect to controlled substance testing, the test will be administered within 32 hours following the accident. If the test cannot be administered within 32 hours, the district shall prepare and maintain a record stating the reason(s) the test could not be administered within this time frame.

Drivers who are subject to post-accident testing shall remain readily available for such testing. If they do not remain available for such testing, they will be deemed to have refused to submit for testing, as provided herein. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

- (3) **Reasonable Suspicion Testing.** All covered employees shall be required to submit to a controlled substance or alcohol test when the employer has reasonable suspicion to believe the employee has violated the provisions of Section G - Prohibited Conduct herein. The employer's determination that reasonable suspicion exists must be based upon specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. The observations may include indications of the chronic or withdrawal effects of controlled substances.

The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or district official who is trained in such observations as provided herein. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the employee.

With respect to alcohol testing, the observations required under this section must be made during, just preceding, or just after the period of the work day the employee is required to be in compliance with this policy. An employee may be required to undergo reasonable suspicion alcohol testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions. The district shall make all reasonable effort to administer an alcohol test under this section within two (2) hours following the determination of reasonable suspicion, and in no event will an alcohol test under this section be conducted beyond eight (8) hours of the determination of reasonable suspicion. If the alcohol test under this section is not administered within two (2) hours of the above determination, a record stating why the alcohol test was not administered within this time frame will be prepared and maintained. With respect to controlled substances reasonable suspicion testing, a written record shall be made of the observations leading to the test (signed by the supervisor or district official who made the observations) within 24 hours of the observed behavior or before the results of the controlled substance test are released, whichever is earlier.

- (4) **Random Testing.** Covered employees shall also be subject to random alcohol testing to the extent that a minimum of 25 percent of the average number of employee positions covered by this policy will be tested on an annual basis. The minimum annual percentage rate for random controlled substance testing shall be 50 percent of the average number of employee positions covered by this policy. A covered employee shall only be tested for alcohol while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

The selection of employees for random alcohol and controlled substance testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' social security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each employee shall have an equal chance of being tested each time selections are made. The test conducted under this provision will be unannounced, provided the dates for administering random alcohol and controlled substance tests will be spread reasonably throughout the calendar year.

- (5) **Return-to-Duty Testing.** Any covered employee who has engaged in conduct prohibited by Section G of this policy, and who has not been terminated from employment as provided herein, shall, before returning to

duty requiring the performance of safety-sensitive function, undergo a return-to-duty controlled substance or alcohol test. With respect to a return-to-duty controlled substance test, the result must indicate a verified negative result for controlled substance use.

- (6) **Follow-up Testing.** If the district determines an employee covered by this policy who has engaged in conduct prohibited by Section G, herein, should not be terminated, the employee, after being evaluated by a substance abuse professional, may be granted a one-time Leave of Absence Without Pay and be required to enroll in and successfully complete a drug and/or alcohol rehabilitation program at his or her own expense as a condition of returning to work. Should the district elect such an option and should the employee successfully complete a rehabilitation program, the employee, upon returning to work (if a position is available), shall initially be subject to return-to-duty testing as provided above, and thereafter shall be subject to unannounced follow-up alcohol and/or controlled substance testing as directed by the substance abuse professional herein, provided, at least six (6) tests shall be conducted within the first 12 months following the employee's return to duty. Before being allowed to return to work, the employee shall be evaluated by a substance abuse professional to determine whether the employee has properly adhered to and completed any rehabilitation program. The cost of evaluations by the substance abuse professional shall be borne by the employee. Follow-up testing may be continued for a period of up to 60 months from the date the employee returns to duty, but the employee shall not bear the cost of evaluation for more than ten (10) tests. Follow-up alcohol testing shall be conducted only when the driver is to perform safety-sensitive functions, or just after the employee has ceased performing safety-sensitive functions.

(I) **Penalties for an Employee's Positive Confirmed Test Results**

- (1) The School Board of Okaloosa County reserves the right to either discharge or otherwise discipline any employee covered under this policy who submits confirmed positive drug or alcohol test results. Further, the School Board of Okaloosa County reserves the right not to employ any applicant covered under this policy who submits confirmed positive drug or alcohol test results.

In addition, employees found to have engaged in conduct in violation of Section (G) of this policy, will be removed immediately from the

performance of all safety-sensitive functions, and will in no event be allowed to resume the performance of a safety-sensitive function unless and/or until the employee has successfully undergone return-to-duty testing as provided herein.

- (2) The threshold for positive alcohol test results shall be 0.02. This threshold may be considered Just Cause for dismissal. Ramifications of positive test results shall follow Board policy. If an employee's confirmed alcohol test result indicates an alcohol content of 0.02 or greater, the employee will not be allowed to perform safety-sensitive functions within 24 hours following administration of the test. The employee will be placed on Unpaid Personal Leave until the employee is deemed to be qualified to return to duty as provided herein.

(J) Specimen Collection and Laboratory Procedures

The School District of Okaloosa County is committed to following strict specimen collection and laboratory testing procedures to ensure the quality, integrity and authenticity of the specimen. Drug and alcohol testing procedures will be conducted in accordance with the procedures set forth in 49 CFR Part 40, and promulgated by the Federal Department of Transportation (DOT). Employees and job applicants covered under this policy have a right to consult a Medical Review Officer (MRO) for technical information regarding prescription and non-prescription medication. Further, employees and job applicants will be allowed to confidentially report the use of prescription or non-prescription medications to a Medical Review Officer before and/or after being tested, on forms to be provided. The district will utilize a laboratory approved and certified by the Department of Health and Human Services.

(K) Confidentiality/Employee Safeguards

- (1) All information, interviews, reports, statements, memoranda, and drug and alcohol test results, written or otherwise, received by the district through the Drug and Alcohol Testing Policy shall be treated in a confidential manner, unless otherwise required by law.
- (2) The district, any collection sites, laboratories, drug and alcohol rehabilitation programs, and their agents who receive or have access to information concerning drug or alcohol test results shall keep all information confidential, unless otherwise required by law.

(L) The School Board of Okaloosa County Commitment to Educating its Employees Regarding the Misuse of Alcohol and the Use of Controlled Substances.

The Board believes education and understanding can be powerful weapons in the fight against drugs and the misuse of alcohol. Employees armed with knowledge are better prepared to resist controlled substances and alcohol abuse and intervene when necessary. As such, the district maintains a current resource file of providers of employee assistance, including alcohol and drug abuse programs, mental health providers, and various other persons, entities or organizations designed to assist employees with personal and behavioral problems including, but not limited to, those referenced in the "Florida Comprehensive Directory, Drug Abuse and Mental Services", published by the Department of Health and Rehabilitative Services. The chief administrator of Human Resources or his/her designee has been designated as the individual responsible for providing information and answering any questions concerning this policy. The name, address, and telephone number of providers of assistance programs, substance abuse professionals, and local alcohol and drug rehabilitation programs are available upon request to the Human Resources Department or the Risk Management Department.

Statutory Authority: Sections 1001.41(2); 1012.23(1), *Florida Statutes*
Adopted: 11/16/99
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