

Nisqually Indian Tribal Housing Department Drug Policy



Adopted on: September 28, 2023

NISQUALLY TRIBAL COUNCIL

A handwritten signature in black ink, appearing to read "Will Frank".

William Frank III, Chairman

Section I. PURPOSE

- A. The Nisqually Indian Tribal Housing Department (NITHD) finds that the abuse of Drugs in and around the NITHD Premises it owns and manages and the Tribe's community creates a significant health and safety risk for the residents of these NITHD Premises, the staff of NITHD, and the Tribal community. A significant amount of criminal activity and other associated health and safety risks is correlated with Drug abuse in and around the Tribal community, and a reduction of such abuse results in a corresponding reduction in criminal activity and other associated health and safety risks. The NITHD's review of its own maintenance records also indicates that the cost to repair or otherwise maintain its NITHD Premises is substantially higher when a unit has been occupied by a person with a substance use disorder than the costs of repairing similar units occupied by families who do not have person(s) with a substance use disorder.
- B. The purpose of this Drug Policy is to address the health, safety, and maintenance concerns caused by Drug use, in order to provide for a healthy, safe, and peaceful environment for the Nisqually Tribal community and all persons residing in housing assisted by NITHD.
- C. It is the intent of this Policy to bar participation in NITHD Housing Programs, subject to the exceptions described herein, of all persons who engage in Drug-Related Criminal Activity, whether on or off NITHD Premises.
- D. This Policy is incorporated by reference into all NITHD leases, rental agreements, rental assistance agreements, Homeowner agreements, and all other NITHD Housing Program agreements.

Section II. APPLICABILITY

This Policy applies to all NITHD Housing programs, all NITHD Premises (including rental or Homeowner units), and all persons receiving assistance under NITHD Housing Programs, wherever situated.

Section III. DEFINITIONS

- A. "*Applicant*" means an individual or family that has applied to participate in any NITHD Housing Program.
- B. "*Baseline Composite Test*" means a Composite Tests conducted on dwelling unit used to establish a baseline for residue of a Controlled Substance in the unit.
- C. "*Composite Test*" means the process used to check for the presence of residue of a Controlled Substance.
- D. "*Controlled Substance*" is a substance included in Schedules I, II, III, IV or V of the Controlled Substance Act, 21 U.S.C., 801, *et seq.* These Controlled Substances include but are not limited to methamphetamines, marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP). A copy of the schedules of Controlled Substances as of December 20, 2018 is attached hereto. Any modifications to such schedules shall be

considered to be a modification of this Policy.

- E. *“Dilute Drug Test”* means a urine sample that has higher water content than the average specimen, which minimizes the drug levels visible in the urine, as established by the laboratory carrying out the drug test analysis, and which shows a negative result that may be incorrect.
- F. *“Drug-Related Criminal Activity”* means the illegal manufacture, sale, distribution, use, or possession with the intent to manufacture, sell, distribute, or use of a Controlled Substance, whether on or off NITHD Premises, and includes offenses for which only a civil penalty may be assessed.
- G. *“Drug”* means, for the purposes of this Policy, a Controlled Substance.
- H. *“Drug Paraphernalia”* means all equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, testing, analyzing, packaging, repackaging, storing, transferring, selling, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body an illegal Drug.
- I. *“Drug Policy”* means this Nisqually Indian Tribal Housing Department Drug Policy.
- J. *“Homeowner”* means any individual or family that owns their home and/or receives assistance from NITHD to repair, purchase, or otherwise obtain Homeownership of a dwelling unit, including but not limited to assistance provided through any NITHD downpayment assistance program, mortgage program, and Homeowner repair program. The term “Homeowner” does not include individuals or families renting or occupying dwelling units owned or operated by NITHD or the Tribe pursuant to a lease-to-own agreement (e.g. Mutual Help and Occupancy Agreements).
- K. *“Housing Board”* means the Nisqually Tribal Housing Board.
- L. *“Meth”* means methamphetamine.
- M. *“NITHD”* means the Nisqually Indian Tribal Housing Department.
- N. *“NITHD Premises”* means all dwelling units, common areas, administrative areas, lands, buildings, and grounds owned or operated by or leased to NITHD or the Tribe.
- O. *“NITHD Housing Program”* means all NITHD Housing Programs through which NITHD provides housing, housing assistance, and other program assistance to Participants.
- P. *“Participant”* means a Tenant, Homeowner, renter, or other individual or family participating in or receiving housing assistance under any NITHD Housing Program, including any individual or family receiving any form of NITHD rental assistance (e.g. Emergency Rental Assistance) or Rental Voucher Assistance Program.
- Q. *“Possession of Illegal Drug Paraphernalia”* means the unlawful use or possession with

the intent to use Drug Paraphernalia. The standard of proof used to determine whether an individual has “Possession of Illegal Drug Paraphernalia” is by a preponderance of evidence. A specific criminal conviction is not required.

- R. “*Personal Drug Test*” means a Drug test or testing of a person for any Controlled Substance.
- S. “*Positive Drug Test*” means verified positive results from a *Personal Drug Test* of a person indicating the presence of a Controlled Substance in the person being tested (other than as could have resulted from a legally prescribed medication as determined by a licensed physician), based on the Personal Drug Test procedures laid out in Section V of this Policy.
- T. “*Tenant*” means an individual or family renting or leasing a dwelling unit owned or managed by NITHD or the Tribe pursuant to a rental agreement or lease-to-own agreement, including Mutual Help and Occupancy Agreements.
- U. “*Termination*” means the termination of a Participant’s participation in any NITHD Housing Program.
- V. “*Tribe*” means the Nisqually Indian Tribe.

Section IV. GENERAL PROVISIONS

- A. NITHD has a zero-tolerance policy against drugs in NITHD and Tribal housing. Any Drug-Related Criminal Activity shall be grounds for ineligibility, Termination, or eviction. NITHD may, at its sole discretion, provide a waiver or forbearance for any Drug-Related Criminal Activity or other violation of this Policy, pursuant to Section VIII of this Policy.
- B. NITHD may determine that a person has engaged in Drug-Related Criminal Activity by a preponderance of evidence based on, but not limited to, a criminal conviction; arrest record; police reports; a Positive Drug Test pursuant to Section V (Personal Drug Tests) of this Policy; contamination of a Controlled Substance in a dwelling unit that occurred during the Tenant’s occupancy of that unit, pursuant to Section VI (Composite Test of Dwelling Units) of this Policy; or Possession of Illegal Drug Paraphernalia; provided that a criminal conviction is not required for NITHD to make such a determination.

Section V. PERSONAL DRUG TESTS

A. General Provisions.

- 1. This Section V describes the grounds and procedures for conducting Personal Drug Tests of Applicants, Participants, and their households.
- 2. Both the timing of the Drug testing and the specific Drug tests to be required shall be at the sole discretion of the NITHD.
- 3. *Confidentiality.* NITHD strives to maintain confidentiality regarding any Drug

testing conducted under these Policies. Only individuals with a need to know the test results, interviews, reports, statements, or other related documentation, written or otherwise, received by NITHD, will have access to such information, except that such information may be used or disclosed by NITHD as required or allowed by this Policy or by applicable law.

4. NITHD may use and disclose the results of any Personal Drug Test shared pursuant to the Authorization for Release of Information in any proceedings regarding eligibility, termination, eviction, or forbearance, including in a grievance hearing or Tribal Court.

B. Testing for All Participation in NITHD Housing Programs.

1. Drug Free Affidavit.

- a. All Participants and all members of a Participant's household eighteen years of age and older must sign a Drug Free Affidavit ("Drug Free Affidavit") as an addendum to their rental agreement or other NITHD Housing Program agreement, in the following circumstances):
 - (1) Prior to receiving any housing assistance through a NITHD Housing Program; and
 - (2) Annually, for Participants, for each year the Participant receives NITHD Housing Program assistance, in order to continue to receive NITHD Housing Program assistance.
- b. *Drug Free Affidavit.* The Drug Free Affidavit will provide that the Participant or the members of a Participant's household eighteen years of age and older agree to be subject to Personal Drug Tests , under the following circumstances: for new Applicants, transfers, and new household members, annually, and based on reasonable suspicion, as described in this Policy.
- c. Failure to sign a Drug Free Affidavit may be deemed to be a violation of this Policy and grounds for Termination or eviction, as applicable.

C. Circumstances for Personal Drug Testing. NITHD will conduct a Personal Drug Test of Applicants, Participants, and the households of Applicants and Participants under the following circumstances:

1. **Applicants.** A Personal Drug Test shall be required of the following persons prior to an Applicant being approved to receive assistance under any NITHD Housing Program:
 - a. Every Applicant applying for participation in an NITHD Housing Program; and
 - b. Every individual who is eighteen years of age or older who is part of the

Applicant's household.

2. Transfers and New Household Members.

- a. *Transfers.* A Personal Drug Test shall be required of a Participant and each member of a Participant's household who is eighteen years of age or older when the Participant applies for transfer to an NITHD Housing Program other than the program in which the Participant household is currently participating.
- b. *New Household Members.* A Personal Drug Test shall be required of every individual who is eighteen years of age or older who joins the household of a Participant.

3. Reasonable Suspicion.

- a. NITHD may require any Tenant and any household member of a Tenant who is eighteen years or older to take a Personal Drug Test, where the NITHD has reasonable suspicion to believe that such person is or has been engaging in Drug-Related Criminal Activity, whether on or off NITHD Premises.
- b. *Documentation.* The basis for a "reasonable suspicion" determination should be documented in writing by an NITHD staff person, which must be reviewed and confirmed by a supervisor or person of Department on the NITHD staff, whenever feasible.
- c. *Reasonable Suspicion.* NITHD will have reasonable suspicion to require any Tenant or household member of a Tenant who is eighteen years or older to take a Personal Drug Test under any of the following circumstances:
 - (1) An individual observing the person's appearance, speech, odor, activity, or behavior could objectively conclude that the person is or has been using Drugs.
 - (2) A Tenant or a Tenant's household member has engaged in documented Drug-Related Criminal Activity, whether on or off NITHD Premises. Documentation of such Drug-Related Criminal Activity can include but is not limited to arrest records and police reports.
 - (3) The Tenant's dwelling unit has been searched pursuant to a search warrant issued by a court of a competent jurisdiction, or has been searched by law enforcement under exigent circumstances not requiring a warrant, and Controlled Substances or Drug Paraphernalia were found in the dwelling unit during that search.
 - (4) An NITHD employee, including but not limited to housing maintenance staff or employees whose duties include protection of the

public health and safety, has observed circumstances that would cause a reasonable person to believe that Drug-Related Criminal Activity has taken place in the dwelling unit. By way of illustration only, and without intending to be exhaustive, examples of such observations include but are not limited to the presence of any of the following in or on the dwelling unit: Drug Paraphernalia; strong chemical odors or toxic fumes; installation of fans and blowers; windows open and fans operating in cold weather; suspicious traffic to or from the dwelling unit; or dead spots or burned areas in the grass and vegetation caused by dumping of toxic materials.

- (5) A court of competent jurisdiction enters a conviction or plea of no contest involving the Tenant or a Tenant's household member on any Drug-Related Criminal Activity offense.

d. If the supervisor is not certain whether the circumstances involved constitute reasonable suspicious, NITHD will seek and obtain the written concurrence of one of the following individuals before requiring a person to take a Personal Drug Test based on reasonable suspicion:

- (1) Legal counsel for the NITHD;
- (2) Legal counsel for the Tribe;
- (3) The Tribal prosecutor or a deputy or associate prosecutor for the Tribe; or
- (4) A judge of the Nisqually Tribal Court.

D. Personal Drug Test Procedures.

- 1. NITHD management at its sole discretion shall determine what Controlled Substances the tester must include in any Personal Drug Test performed under this Policy.
- 2. All testing for a Personal Drug Test conducted under this Policy shall be conducted by a State-certified company selected by NITHD for that purpose.
- 3. **Authorization for Release of Information.** Any person required to take a Personal Drug Test under this Policy must sign an Authorization for Release of Information ("Authorization for Release of Information"), which will authorize the applicable drug testing company or other applicable organizations to release information concerning the Personal Drug Test results to NITHD. Such Authorization for Release of Information will expressly provide that NITHD may use and disclose the information shared pursuant to the Authorization for Release of Information in any proceedings regarding eligibility, termination, eviction, or forbearance, including in a grievance hearing or Tribal Court.
- 4. NITHD will provide a referral form for the certified Drug testing company to any

Participant or Participant's household member who must complete any Personal Drug test required under this Policy.

5. The Participant or Participant's household member must complete any Personal Drug Test required under this Policy within two weeks of receiving a referral form from NITHD.

E. Consequences of Positive Drug Test.

1. Any person with a verified Positive Drug Test based on a Personal Drug Test shall be considered to have engaged in Drug-Related Criminal Activity. A Positive Drug Test shall further be considered a violation of this Policy.
2. **First Positive Drug Test.**
 - a. *Applicants.* The first time an Applicant or Applicant's household member receives a Positive Drug Test, the Applicant will be considered ineligible for NITHD Housing Programs. NITHD will encourage the Applicant or Applicant's household member to participate in a wellness program or Drug treatment program. NITHD may, at its sole discretion, grant the Applicant a waiver of ineligibility pursuant to Section VIII of this Policy. The Applicant's future eligibility for NITHD Housing Programs will be determined according to the applicable NITHD Housing Program policy.
 - b. *Current Participants.* The first time a Participant or Participant's household member receives a Positive Drug Test, NITHD may, at its sole discretion, grant forbearance pursuant to Section VIII of this Policy.
 - c. *Authorization for Release of Information.* If any Participant or Participant's household member enters into a chemical dependency, or other wellness program as an alternative to Termination or eviction, the Participant or Participant's household member must sign an Authorization for Release of Information, which will authorize the applicable chemical dependency treatment providers, medical health providers, wellness program and/or other applicable organizations to release information concerning the person's Drug use and/or Drug treatment to NITHD. Such Authorization for Release of Information will expressly provide that NITHD may use and disclose the information shared pursuant to the Authorization for Release of Information in any proceedings regarding eligibility, termination, eviction, or forbearance, including in a grievance hearing or Tribal Court.
 - (1) Failure or refusal to sign the Authorization for Release of Information will be grounds for NITHD to proceed with Termination or eviction.

3. Second Positive Drug Test.

- a. If within two years of the first Positive Drug Test, a Participant or Participant's household member receives a second Positive Drug Test while participating in the NITHD Housing Program, NITHD will proceed with

Termination or an eviction.

4. Dilute Drug Test Results.

- a. *First Dilute Drug Test.* A Participant or Participant's household member who receives a Dilute Drug Test will be asked to retake the Personal Drug Test. A Dilute Personal Drug Test is a urine specimen where the sample contains a higher concentration of water than average.
- b. *Second Dilute Drug Test.* A Participant or Participant's household member who receives a second Dilute Personal Drug Test will be asked to retake the Personal Drug Test, and the third Personal Drug Test will be an "observed" testing, meaning that the person submitting to the Personal Drug Test shall be observed in the act of providing the urine sample.
- c. *Third Dilute Drug Test.* If the Participant or Participant's household member receives a third Dilute Personal Drug Test, the Dilute Personal Drug Test will be considered a Positive Drug Test, and the Participant's household will be subject to the consequences outlined in Subsection V(E)(2).

F. Refused Test.

1. The following circumstances shall be considered a violation of this Policy and may be grounds for ineligibility, eviction, and/or Termination:
 - a. A person who is required to take a Personal Drug Test under this Policy refuses or fails to take any such test or tests or fails to cooperate with the testing procedures, or fails or refuses to authorize the testing firm to release the results to the NITHD.

Section VI. COMPOSITE TEST OF DWELLING UNITS

A. General.

1. This Section VI applies only to those dwelling units owned or operated by the Tribe or NITHD.
2. This Section VI establishes NITHD's policies and procedures for the following:
 - a. Grounds and procedures for testing dwelling units for Controlled Substance use or contamination;
 - b. Consequences for Tenants whose units test positive for Controlled Substance contamination; and
 - c. Tenant obligations for testing, cleanup, and other costs and damages.

B. Authorization to Conduct Composite Tests.

1. All Tenants will be required to sign an addendum to their rental agreement or other NITHD Housing Program agreement expressly authorizing NITHD and its employees, agents, or contractors to conduct Composite Tests for the presence of residue of a Controlled Substance under the following circumstances:
 - a. Baseline Composite Tests;
 - b. Unit Transfers;
 - c. Routine testing; and
 - d. Based on reasonable suspicion, as set forth in this Policy.
 2. Failure of a Tenant to sign the required addendum to their rental agreement or other NITHD Housing Program agreement and consent to the Composite Tests as set forth in this Policy shall be deemed a violation of this Policy and may constitute grounds for Termination and eviction.
- C. **Circumstances for Controlled Substance Composite Testing.** NITHD may conduct Composite Tests of dwelling units owned or operated by the Tribe or NITHD under the following circumstances:
1. **Baseline Composite Tests.**
 - a. *Baseline Composite Test for Vacant Units.* NITHD will conduct a Baseline Composite Test of all vacant dwelling units prior to any new Tenant household moving into the unit. The Baseline Composite Test will establish a baseline for residue of a Controlled Substance in the unit for comparison for future Composite Tests.
 - b. *Baseline Composite Test for Occupied Units.* If NITHD has not conducted a Baseline Composite Test for a particular dwelling unit currently occupied by a Tenant, NITHD will conduct a Baseline Composite Test during the Tenant's occupancy to establish a baseline for future Composite Tests.
 - (1) If a Baseline Composite Test results in a Positive Composite Test for a currently occupied unit for which a Baseline Composite Test has not previously been conducted, NITHD may conduct additional Composite Tests on appliances installed during the time of that Tenant's occupancy to determine whether Controlled Substance use, possession, or manufacture occurred in the unit during that Tenant's occupancy (*see* Section VI(F)(1) of this Policy).
 2. **Unit Transfer.** If a Tenant applies to transfer to a new dwelling unit, NITHD will conduct a Composite Test on the unit the Tenant will be vacating for Controlled Substance contamination before the Tenant is approved to transfer to a new unit.
 - a. *Denial of Unit Transfer.* If the Composite Test of the unit the Tenant will

be vacating results in a Positive Composite Test indicating that Controlled Substance contamination in the dwelling unit occurred in the unit during that Tenant's occupancy (*see* Section VI(F)(1) of this Policy), NITHD may deny the Tenant's unit transfer request.

- b. *Testing of Personal Belongings.* If the Composite Test of the unit the Tenant will be vacating results in a Positive Composite Test, NITHD will conduct a Composite Test of the personal belongings of Tenant and Tenant's household members in order to prevent Controlled Substance-contaminated belongings from further contaminating a new unit. The Tenant and all members of Tenant's household over eighteen years of age will be required to sign a consent form authorizing NITHD to test their personal belongings for Controlled Substance. If any of Tenant's household members refuses to sign such a consent form, NITHD may consider such refusal to be a violation of this Policy and grounds for denying a unit transfer request.
3. **Routine Composite Test.** NITHD may conduct routine periodic Composite Tests ("Routine Composite Tests") in each dwelling unit owned or managed by NITHD. NITHD will conduct Routine Composite Tests on an annual basis or as needed.
4. **Reasonable Suspicion.**
 - a. NITHD may conduct Composite Tests of dwelling units owned or operated by the Tribe, where the NITHD has reasonable suspicion to believe that the Tenant or a member of Tenant's household is or has been engaging in Drug-Related Criminal Activity, whether on or off NITHD Premises.
 - b. *Documentation.* The basis for a "reasonable suspicion" determination should be documented in writing by an NITHD staff person and supported by the corroboration of a supervisor or person of Department on the NITHD staff, whenever feasible.
 - c. *Reasonable Suspicion.* NITHD will have reasonable suspicion to conduct Composite Tests of dwelling units owned or operated by the Tribe under any of the following circumstances:
 - (1) An individual observing a Tenant's or Tenant's household member's appearance, speech, odor, activity, or behavior could objectively conclude that the person is or has been using Drugs.
 - (2) A Tenant or a Tenant's household member has engaged in documented Drug-Related Criminal Activity, whether on or off NITHD Premises. Documentation of such Drug-Related Criminal Activity can include but is not limited to arrest records and police reports.
 - (3) The Tenant's dwelling unit has been searched pursuant to a search

warrant issued by a court of a competent jurisdiction or has been searched by law enforcement under exigent circumstances not requiring a warrant, and Controlled Substances or Drug Paraphernalia were found in the dwelling unit during that search.

- (4) An NITHD employee, including but not limited to housing maintenance staff or employees whose duties include protection of the public health and safety, has observed circumstances that would cause a reasonable person to believe that Drug-Related Criminal Activity has taken place in the dwelling unit. By way of illustration only, and without intending to be exhaustive, examples of such observations include but are not limited to the presence of any of the following in or on the dwelling unit: Drug Paraphernalia; strong chemical odors or toxic fumes; installation of fans and blowers; windows open and fans operating in cold weather; suspicious traffic to or from the dwelling unit; or dead spots or burned areas in the grass and vegetation caused by dumping of toxic materials.
- (5) A court of competent jurisdiction enters a conviction or plea of no contest involving the Tenant or a Tenant's household member on any Drug-Related Criminal Activity offense.

D. Notice to Tenants of Composite Test.

1. For any Composite Tests of a unit that is currently occupied, NITHD will provide twenty-four hours written notice to the Tenant of the Composite Test.

E. Dwelling Unit Composite Test Procedures.

1. **Areas of Unit to be Tested.** Baseline Composite Tests will be conducted in at least four different areas of the dwelling unit, consists of field-sampling four different areas of the unit at the discretion of the NITHD staff. All other Composite Tests of dwelling units will be conducted in the same areas of a particular unit that were tested during the Baseline Composite Test for that unit.
2. **Testing Methods.**
 - a. Only properly trained NITHD maintenance staff or other certified contractors will be permitted to conduct Composite Test and perform Controlled Substance remediation activities.
 - b. The person conducting the Composite Test will use only a sealed Composite Test kit, and will ensure that the test kit has not been tampered with and that its seal has not been broken prior to being used to conduct the test.
 - c. All Composite Test samples will be sent to a certified Composite Test laboratory for confirmation.

- (1) When the presence of Controlled Substance contamination is confirmed, the level of contamination will be documented by the laboratory report, which will determine the extent of remediation needed to return the unit to a level safe for habitation.

3. **Documentation and Recording.**

- a. NITHD will accurately document all Composite Test results, whether positive or negative, including at a minimum photographs and documentation showing the following information:
 - (1) Unit address and Tenant name.
 - (2) The reason NITHD decided to conduct a Composite Test on that particular unit;
 - (3) The date and time the Composite Test was conducted;
 - (4) The identity of the individual(s) who conducted the Composite Test;
 - (5) The location(s) in the unit where the Composite Test was conducted;
 - (6) The methodology used to conduct the Composite Test;
 - (7) The results of the Composite Test, including the measurement of residue of a Controlled Substance detected.
- b. NITHD will clearly record the documentation above in the Tenant's file and will securely maintain the Composite Test results in accordance with applicable law and policy.

4. **Testing Results.**

- a. NITHD, in its monitoring and testing for Controlled Substance use and contamination, has adopted an established health-based standard ("Health-Based Standard") to determine whether exposure in a Controlled Substance contaminated housing unit poses a health risk. The Health-Based Standard for Meth surface residue is set at greater than or equal to 1.5 µg of Meth surface residue per 100 cm² of tested surface material. Health-Based Standards for other Controlled Substances will be based on Washington State Health-Based Standards for those Controlled Substances.
- b. *Negative Composite Test.* If the Composite Test result for a unit is below the Health-Based Standard, the Composite Test results shall be considered a Negative Composite Test, and the unit shall be deemed safe for habitation.
- c. *Positive Composite Test.* If any of the Composite Test results for a unit are above the Health-Based Standard, the Composite Test results shall be considered a Positive Composite Test.

- d. The results of Composite Tests may be used in any proceedings regarding eligibility, termination, eviction, or forbearance, including in a grievance hearing or Tribal Court.

5. Decontamination and Remediation.

- a. If a Composite Test of a unit results in a Positive Composite Test, NITHD shall conduct remediation and decontamination pursuant to established Controlled Substance remediation and decontamination procedures to return the unit to a level safe for habitation.
- b. *Vacant Units.* If a Baseline Composite Test results in a Positive Composite Test for a vacant unit, NITHD will not allow any Tenant to take possession of the unit until the unit is decontaminated pursuant to established Controlled Substance remediation and decontamination procedures and a Baseline Composite Test results in a Negative Composite Test.
- c. *Occupied Units.* If a Composite Test results in a Positive Composite Test for an occupied unit, the Tenant will be required to vacate the unit until the unit is decontaminated pursuant to established Controlled Substance remediation and decontamination procedures and a Baseline Composite Test results in a Negative Composite Test.
- d. Once the unit is vacated by the Tenant, or if the unit is already vacant, NITHD will board up the unit and restrict access until remediation is complete and the unit tests free of Controlled Substance contamination. NITHD shall post a statement on the entrance to the unit stating that the unit has tested positive for Controlled Substance contamination and that access is restricted. The Tenant will only be permitted to access the unit with the permission of NITHD and under the supervision of NITHD staff.

F. Controlled Substance Contamination during a Tenant's Occupancy.

- 1. **Drug-Related Criminal Activity.** The Tenant will be considered to have engaged in Drug-Related Criminal Activity if NITHD reasonably determines that testing and other circumstances demonstrate that Controlled Substance contamination in the dwelling unit occurred during the Tenant's occupancy of that unit.
- 2. **Costs and Damages.** If NITHD reasonably determines that testing and other circumstances demonstrate that Controlled Substance contamination in the dwelling unit occurred during the Tenant's occupancy of that unit, that Tenant will be responsible for the costs of testing, cleanup, and other costs and damages.

G. Refused Test: The following circumstances shall be considered a violation of this Policy and grounds for ineligibility, eviction, and/or Termination:

- 1. A person who is required to allow Composite Test of their dwelling unit refuses to allow NITHD or a Controlled Substance testing company or contractor to take

any such test(s), or fails to cooperate with the testing procedures.

Section VII. GROUND FOR INELIGIBILITY, TERMINATION, & EVICTION

- A. All of the following shall be considered violations of this Policy and grounds for NITHD Housing Program ineligibility, Termination, and/or Eviction:
1. A person receives a verified Positive Drug Test based on a Personal Drug Test;
 2. A person who is required to take a Personal Drug Test under this Policy refuses or fails to take any such test or tests or fails to cooperate with the testing procedures, or fails or refuses to authorize the testing firm to release the results to the NITHD.
 3. An Applicant, Applicant's household member, Participant, or a Participant's household member has engaged in a Drug-Related Criminal Activity, whether on or off NITHD Premises;
 4. Any visitor or any guest, or other person under a Tenant's control, has engaged in Drug-Related Criminal Activity in that Tenant's dwelling unit;
 5. NITHD reasonably determines that testing and other circumstances demonstrate that Controlled Substance contamination in the dwelling unit occurred during the Tenant's occupancy of that unit;
 6. A person required to allow a Composite Test of their dwelling unit refuses to allow NITHD or a Controlled Substance-testing company or contractor to take any such test(s), or fails to cooperate with the testing procedures;
 7. Failure to sign any authorization or consent form required for compliance with this Policy; or
 8. The Applicant, Applicant's household member, Participant, or a Participant's household member otherwise violates this Policy.

Section VIII. WAIVER AND FORBEARANCE FOR VIOLATIONS OF THIS POLICY

- A. The Housing Board may, in its sole discretion, waive the ineligibility of any Applicant, forbear in Terminating a Participant's agreement under an NITHD Housing Program, or forbear in evicting a Tenant for a violation of this Policy if:
1. The Applicant, Applicant's household member, Participant, or Participant's household member agrees to participate in, comply with and complete (at the person's own expense) a supervised Drug rehabilitation, chemical dependency, or other treatment program ("Drug Treatment Program") approved by the NITHD, including successful completion of any follow-up treatment plans or recommendations required by the Drug Treatment Program. If NITHD offers this alternative, the Participant or Participant's household member will be allowed to continue to participate in the NITHD Housing Program so long as the Participant or Participant's household member remains in compliance with all

recommendations of the Drug Treatment Program. If the Participant or Participant's household member at any time falls out of compliance with the Drug Treatment Program, including any Drug Treatment Program recommendations, NITHD may proceed with Termination or an eviction.

2. The circumstances leading to the ineligibility no longer exist (for example, the individual involved in Drug use is no longer in the household);
 3. The Tenant has acted promptly and continues to assist with efforts to remove the household member, visitor, or guest who engaged in Drug-Related Criminal Activity from the unit (e.g. contacting Tribal Police or NITHD to request assistance in removing the person); or
 4. The Housing Board determines that there are extraordinary circumstances (such as the welfare of a minor child) that warrant forbearance; and, the Applicant, Participant, or Participant's household member completes or agrees to complete any other requirements the Housing Board, at its sole discretion, may impose, including but not limited to periodic Drug tests or other tests.
- B. Any person desiring a waiver or forbearance regarding ineligibility, eviction, or Termination shall have the burden of demonstrating that the requirements for a waiver or forbearance have been met. It shall be the sole responsibility of the Participant or Participant's household member to provide full, complete, and accurate written documentation to NITHD to demonstrate compliance with the requirements for a waiver or forbearance, including but not limited to (a) monthly status reports from any Drug Treatment Program showing continued compliance with treatment, if such treatment is a condition of a waiver or forbearance, (b) documentation from such Drug Treatment Program showing successful completion of the program, and (c) any and all consents necessary for NITHD to obtain or receive such documentation. Failure to provide such documentation to NITHD within ten (10) business days of NITHD requesting it shall be deemed a violation of this Policy and grounds for ineligibility, Termination, or eviction.
- C. Nothing in this Policy shall obligate NITHD under any circumstances to provide a waiver or forbearance regarding ineligibility, Termination, or eviction.
- D. The Housing Board by separate resolution or board action, in its sole discretion, may delegate the Department to provide a waiver or forbearance regarding ineligibility, Termination, or eviction to the Executive Director of the NITHD, to any other suitable employee of the NITHD or to any combination of the foregoing.
- E. Any Applicant, Applicant's household member, Participant, or Participant's household member who is granted a waiver or forbearance must execute an addendum to their rental agreement or other NITHD Housing Program agreement acknowledging the benefit of the waiver or forbearance that they are receiving and agreeing to certain conditions of housing assistance in exchange for that benefit.
- F. If a Tenant, as a condition of waiver or forbearance, is going to attend inpatient Drug treatment requiring him or her to be absent from the unit for more than 48 hours, and if there are no other NITHD-approved adult members of the household who will continue

to reside in the unit during that time, the Tenant will give permission to NITHD to lock down and board up the unit during the time he or she is in treatment, and to trespass any person or persons who attempt to enter the unit during that time. The Tenant will also waive any claims against NITHD for loss or damage to his or her property during the time he or she is absent from the unit for treatment. The Tenant will still be required to pay rent due on the unit for the time he or she is in treatment.

- G. An Applicant, Applicant's household member, Participant, or Participant's household member may only be granted a waiver or forbearance for two violations of this Policy. A third violation, after a waiver or forbearance has been previously granted for two previous violations, shall automatically result in Termination and eviction.

Section IX. GRIEVANCES

- A. Except as specified in the Subparagraph (B) of this Sections, any grievance arising under this Policy shall be resolved in accordance with the applicable grievance procedures for NITHD.
- B. There shall be no right to a hearing other than a court hearing in the case of an eviction or Termination where there is an allegation regarding Drug-Related Criminal Activity on NITHD Premises; except that the Housing Board, at its sole discretion may provide a hearing to any such person who requests a hearing.
- C. In those instances where the Housing Board grants a waiver of ineligibility or forbearance under this Policy, the hearing before the Housing Board to grant the waiver or forbearance shall be deemed the grievance hearing. Notwithstanding the provisions of any other NITHD policy, as a condition of being granted a waiver or forbearance, any subsequent violation of this Policy or failure to abide by the terms of the waiver or forbearance shall result in automatic Termination with no further right to another grievance hearing.

Section X. MISCELLANEOUS PROVISIONS

- A. **Use as Evidence.**
 - 1. Any test results and any related materials used in or obtained from Drug testing under this Policy may be used as evidence in an eviction action in Tribal Court, or in any other legal action involving the NITHD where such evidence would be relevant. The test results shall be maintained in accordance with any applicable federal, state, and tribal law.
 - 2. It is critical that NITHD staff follow the necessary procedures to ensure the chain of custody for any test results and any related materials used in or obtained from Drug testing.
 - 3. Any testimony needed with regard to the test results and any related materials used in or obtained from Drug testing should be delivered, to the extent possible, by the trained personnel who conducted the sampling and testing in accordance with adequate training and this Policy. However, in certain instances, the person

who conducted the sampling and testing might not be available when a hearing is held. It is imperative, therefore, that clear and accurate records be kept of all testing and sampling so that they can be relied upon and presented as evidence by an authorized custodian of NITHD records.

B. Criminal History. Any criminal record (e.g., criminal conviction record information received from a law enforcement agency) received in order to administer this Policy must be:

1. Maintained confidentially;
2. Retained separate from all other housing records;
3. Kept under lock and key if stored physically, or protected digitally if stored in digital format;
4. Be in the custody and control of the NITHD Executive Director or his or her designee for such records;
5. Accessed only with the written permission of the NITHD Executive Director or his or her designee and used only for the purposes allowed under this Policy; and
6. Destroyed once the purpose for which it was requested is fully accomplished.

C. Copy of Criminal Conviction or Civil Penalty Record.

A certified copy of a criminal conviction record or of a civil penalty record shall be conclusive proof of the Drug-Related Criminal Activity identified in the record or of the Drug-related offense specified in the record; provided, that before any adverse action based on such a record can be taken, the person against whom the adverse action will be taken must be provided with a copy of the record and an opportunity to dispute the accuracy or relevancy of the record. In the case of an eviction or Termination for which no opportunity for a hearing is required prior to the court hearing, a copy of the record shall be filed with the court and served on the Participant with the Summons and Complaint.

D. No Requirement for Criminal Conviction or Civil Penalty.

In no instance shall a criminal conviction be required to have been entered or a civil penalty be required to have been assessed in order for an Applicant to be ineligible for admission to NITHD Housing Programs, be subject to Termination from an NITHD Housing Program, or be subject to eviction from a dwelling unit.

E. Other Requirements.

All Applicant, Applicant's household member, Participant, Participant's household members, or other persons covered by this Policy shall be required to sign such release and/or consent forms and to provide such other information as may be necessary to assure full compliance with this Policy.