

RESOLUTION NO. 2008-76

A RESOLUTION OF THE LODI CITY COUNCIL
AMENDING THE DRUG AND ALCOHOL TESTING
POLICY AND THE DRUG AND ALCOHOL
TESTING PROCEDURES TO MEET DEPARTMENT
OF TRANSPORTATION REQUIREMENTS

WHEREAS, the City of Lodi previously adopted a Drug and Alcohol Testing Policy and Procedure on April 26, 1995, and amended it on July 18, 2007; and

WHEREAS, due to Federal Transportation Administration requirements applying to employees who operate or maintain Department of Transportation funded equipment and machinery, an amendment to that policy is required.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby amend the Drug and Alcohol Policy and the Drug and Alcohol Procedures to meet Department of Transportation requirements, as shown on Exhibit A and B attached hereto and made a part of this Resolution; and

BE IT FURTHER RESOLVED that the effective date of this policy shall be May 8, 2008

Dated: May 7, 2008

I hereby certify that Resolution No. 2008-76 was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 7, 2008, by the following vote:

- AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Katzakian, and Mayor Mounce
- NOES: COUNCIL MEMBERS – None
- ABSENT: COUNCIL MEMBERS – None
- ABSTAIN: COUNCIL MEMBERS – None



CITY CLERK
H.L.

CITY OF LODI
ADMINISTRATIVE POLICY AND PROCEDURE MANUAL

SUBJECT DRUG AND ALCOHOL TESTING - *Policy*
DATE ISSUED: May 7, 2008
SECTION: D
REFERENCE: US DOT (FTA) 49 CFR Part 40;
49 CFR Part 655
49 CFR Part 382
49 CFR Part 29
Omnibus Transportation Employee Testing
Act of 1991

SECTION 1: PURPOSE

The City of Lodi is committed to providing safe and efficient public services in fulfilling our responsibilities to the citizens of our community. To achieve this purpose, it is the policy of the City to:

Provide a workplace free from the adverse effects of drug and alcohol abuse or misuse;

Assure that employees are not impaired in their ability to perform assigned duties in a safe and productive manner;

Encourage employees to seek professional assistance for drug and alcohol abuse or dependency;

Comply with all Federal and State regulations requiring a drug-free workplace.

Coverage under this policy does not exempt covered employees from compliance with the City's Drug-Free Workplace Policy and Procedure. The obligations and requirements set forth below are in addition to existing obligations and requirements set forth in the Drug-Free Workplace *Policy* and Procedure.

SECTION 2: EMPLOYEE ASSISTANCE PROGRAM

“he City has established a voluntary Employee Assistance Program (EAP) to aid those employees who voluntarily seek help for alcohol **or** drug problems. Employees should contact their supervisors, the EAP provider, **or** the Human Resources Division for additional information.

Employees who think they may have an alcohol **or** drug usage problem are encouraged to voluntarily seek confidential assistance from the EAP **or** other available resources. Employees who voluntarily come forward and seek assistance will not be disciplined solely for having **or** admitting a drug **or** alcohol problem. The City will take into consideration employees’ performance problems caused by such dependency. The voluntary seeking of treatment shall not provide immunity from disciplinary action which were proposed or in process. However, action on related problems may be postponed pending successful resolution of the usage problem. Successful completion of a drug **or** alcohol treatment program shall be considered when determining disciplinary actions. While the City will be supportive of those who seek help voluntarily, the City will be equally firm in identifying and disciplining those who continue to be substance abusers and do not voluntarily seek help or continue substance abuse even while enrolled in counseling or rehabilitation programs.

SECTION 3: **CITY ADMINISTRATOR**

The Human Resources Division is designated to administer this policy and procedure and to answer questions concerning its implementation. The Human Resources Division may be contacted as follows:

City of Lodi
P.O. **Box 3006**
Lodi, CA **95241-1910**
Phone: **(209) 333-6704**

SECTION 4: **COVERED EMPLOYEES**

Employees in classifications listed in Appendix A are “covered employees” because they perform “safety sensitive functions” as described in Section 6 below, and thus are subject to all of the provisions of this policy.”

An employee may be given a written exemption from this Policy by Human Resources, if the employee’s job duties do not include performing a “safety sensitive function.”

SECTION 5: **DEFINITIONS**

Accident: Means an occurrence associated with the operation of a vehicle, if as a result

- 1) An individual dies;
- 2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident;
- 3) One **or** more vehicles incur disabling damage as the result of the occurrence and are transported away from the scene by a tow truck **or** other vehicle. For purposes of this definition, “disabling damage” means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if *so* operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, **or** damage to headlights, taillights, turn signals, horn, **or** windshield wipers that makes the inoperative; **or**
- 4) When a State **or** local law enforcement authority issues a citation to the covered employee for a moving violation arising from the accident.

Alcohol: The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl and isopropyl alcohol.

Alcohol Concentration: The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test.

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

Breath Alcohol Technician (BAT): **An** individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT).

Chain of Custody: Procedures to account for the integrity of each urine **or** blood specimen by tracking its handling and storage from point **of** specimen collection to final disposition of the specimen.

Confirmation (or confirmatory) Test: For alcohol testing means a second test, following a screening test with a result **of** 0.01^{2[2]} **or** greater, that provides quantitative data of alcohol concentration. For controlled substances testing 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 that of the screen test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.

Controlled Substance (drug): Any illegal drug **or** any substance identified in schedules I through V of the Controlled Substances Act as they may be amended. This includes, but is not limited to: marijuana (THC metabolite), amphetamines, opiates (including Heroin), phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration **or** the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Substances for testing will only be added to the panel for testing only with agreement of the affected collective bargaining units **or** as required by the appropriate regulatory agency.

Evidential Breath Testing Device (EBT): 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).

Medical Review Officer (MRO): A licensed physician responsible for receiving laboratory results generated by the City's Drug-Free Workplace and Drug and Alcohol Testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his/her medical history and any other relevant biomedical information.

Performing a Safety-Sensitive Function: An employee is considered to be performing a safety-sensitive function during any period in which he **or** she is actually performing, ready to perform, **or** immediately available to perform any safety-sensitive function.

Screening Test (also **known** as initial test): In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen. Testing is only permitted just before, during, and just after the performance of safety-sensitive duties. In controlled substance testing, an immunoassay screen to eliminate "negative" urine specimens from further analysis.

Substance Abuse Professional(SAP): A *SAP*

SECTION 6:

SAFETY-SENSITIVE FUNCTIONS

A safety sensitive function is driving one of the following vehicles:

- A. a vehicle with a gross combination weight of at least 26,001 pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
- B. a vehicle with a gross vehicle weight of at least 26,001 pounds;
- C. a vehicle designed to transport 16 **or** more passengers, including the driver; **or**
- D. a vehicle used to transport those hazardous materials found in the Hazardous Materials Transportation Act.

SECTION 7:

PROHIBITIONS

The following conduct is prohibited and may result in disciplinary action, up to and including termination:

- A. Reporting for duty **or** remaining on duty requiring the performance of safety sensitive functions while having an alcohol concentration of 0.04 **or** greater;
- B. The use of alcohol within the four **(4)** hours preceding the performance of safety-sensitive functions, and the allowance of an employee to perform safety-sensitive functions with the knowledge that the employee has used alcohol within that time frame.

Employees who are in a “stand-by” status, shall not use alcohol **or** controlled substances while in such status. Employees who may be subject *to* “call-out” for emergency situations, and who may be the only qualified employee available for such duty, and who has used alcohol, may respond to such calls under the following guidelines:

(1) That the employee immediately notify the supervisor of the use of alcohol within the last four hours and the determination for the employee to respond is approved by the supervisor; (2) That the employee perform simple tasks of minimal risk to the safety sensitive functions(s); and (3) That the employee does not use alcohol after he/she has been notified to report for emergency duty.

- C. Being on duty **or** operating a vehicle described in Section 4 above, while possessing alcohol;
- D. Using alcohol while performing a safety sensitive function;

E. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions when the employee used any controlled substances, except if the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a vehicle; or DOT funded equipment and machinery.

F. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions if the employee tests positive for controlled substances;

G. Refusing to submit to any alcohol or controlled substances test required by this policy. Such refusal (see Section 8) shall be considered an act of insubordination. The consequences for a refusal to submit to a required test are the same as if the employee had tested at 0.04 or greater or had violated any of the other prohibitions in this policy.

H. The allowance of an employee to perform or continue to perform safety-sensitive functions after having knowledge of the employee's use of alcohol or controlled substances while on duty.

I. **An** employee who has actual knowledge of an accident in which his/her performance of a safety-sensitive function has not been discounted by the City as a contributing factor to the accident is prohibited from using alcohol for eight (8) hours following the accident. The prohibition ends eight (8) hours after the accident (i.e. when a test is no longer required), once the employee has taken a post-accident test, or once the City has determined that the employee's performance could not have contributed to the accident.

SECTION 8:

REFUSAL TO SUBMIT TO AN ALCOHOL
AND/OR DRUG TEST

A refusal to submit to an alcohol or controlled substances test required by this policy includes, but is not limited to:

A. A refusal to provide a urine sample for a drug test.

B. **An** inability to provide a urine sample without a valid medical explanation;

- C. A refusal to complete and sign the breath alcohol testing form, or otherwise to cooperate with the testing process in way that prevents the completion of the test;
- D. **An** inability to provide breath **or** to provide an adequate amount of breath without a valid medical explanation;
- E. Tampering with **or** attempting to adulterate the urine specimen **or** collection procedure;
- F. Not reporting to the collection site in the time allotted by the supervisor **or** manager who directs the employee to be tested;
- G. Leaving the scene of an accident without a valid reason as to why authorization from a supervisor or manager who shall make a determination whether to send the employee for a post-accident drug and/or alcohol test was not obtained.
- H. A failure to undergo medical examination.
- I. A failure to permit monitoring/observation.
- J.** A failure to take a second test.
- K. Providing a verified adulterated **or** substituted sample.
- L. A failure to remain until the testing process is complete.

SECTION 9: CONSEQUENCES FOR EMPLOYEES FOUND TO HAVE ALCOHOL CONCENTRATION LEVELS OF 0.01 OR GREATER BUT LESS THAN 0.04

An employee whose alcohol test indicates an alcohol concentration level between 0.01 and 0.04 will be removed from his or her safety sensitive position ~~for~~ at least twenty-four (24) hours.

SECTION 10: CIRCUMSTANCES UNDER WHICH DRUG AND ALCOHOL TESTING WILL BE IMPOSED ON COVERED EMPLOYEES

A. Pre-Employment Testing: All applicants for classifications which are covered by the appropriate Department of Transportation regulations (See Section 4 above), as well as all employees who transfer from classifications which are not covered to classifications which are covered, will be required to submit to pre-employment/pre-

duty drug and alcohol testing. Applicants/employees will not be assigned to a safety sensitive position until after a verified negative drug test result.

If the applicant has previously worked for a DOT employer and has previously failed or refused a pre-employment drug test administered under this part within the past two years, the applicant is not eligible for the position.

If a pre-employment drug test is canceled, the City shall require the covered employee **or** applicant to take another pre-employment drug test administered under this part with a verified negative result.

When a covered employee **or** applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the City's random selection pool during that time, the City shall ensure that the employee takes a pre-employment drug test with a verified negative result.

B. Post-Accident Testing: Post-Accident drug and alcohol testing will be conducted on employees following an accident where the employee's performance cannot be discounted as a contributing factor.

The decision as to whether or not to test the employee will be made by a supervisory and/or management employees. The presumption is for testing. The only reason an employee will not be tested following an accident is if a determination is made that the employee's performance *could not* have been a contributing factor. 49 CFR part 655 criteria for testing is a fatality, the need for medical attention away from the scene, and/or disabling damage to the vehicle. An employee must receive emergency medical care before being required to submit to a post accident drug and alcohol test.

Post-accident alcohol tests shall be administered within two (2) hours following an accident and no test may be administered after eight (8) hours. A post-accident drug test shall be conducted within thirty-two (32) hours following the accident. If the appropriate test is not administered within two (2) hours following the accident, the employee's supervisor shall immediately provide written documentation to the Human Resources Manager stating the reasons why the test was not promptly administered.

C. Random Testing: Covered employees will be subject to random alcohol and drug testing as follows:

(1) A random alcohol test will be administered during any period in which the employee is ready to perform, immediately available to perform, is actually performing, or just after the employee has ceased performing safety-sensitive functions. Please refer to the definition of "Performing a Safety-Sensitive Function" in Section 5 of this policy.

(2) Testing rates are determined by the appropriate regulatory agency.

(3) The selection of employees for random drug and alcohol testing shall be made by a scientifically valid method, such as a random number table **or** a computer-based random number generator. Each covered employee shall have an equal chance of being tested each time selections are made.

(4) On the day the employee is selected for random drug testing, his/her supervisor will ensure his/her duties are covered. The employee will receive a written notice indicating the time he/she is to report to the lab for testing.

(5) The City shall ensure that the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of day when safety-sensitive functions are performed.

(6) Random tests are unannounced and immediate. There is an equal chance of selection on each draw with no discretion on the part of management.

D. Reasonable Suspicion Testing: Covered employees are also required to submit to an alcohol or drug test when a trained supervisor has reasonable suspicion to believe the employee is under the influence of alcohol **or** controlled substances. The observation must be based on short-term indicators, such as blurry eyes, slurring, or alcohol on the breath.

A covered employee shall only be randomly tested for alcohol misuse 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.

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

SECTION 11:

CONSEQUENCES OF FAILING AN ALCOHOL AND/OR DRUG TEST

APPENDIX A
COVERED EMPLOYEES

Employees in the classifications listed below are covered under the applicable regulations for those employees. Covered employees are:

- A. Those who perform “safety sensitive” functions as defined in the City of Lodi *Drug and Alcohol Testing Policy*.
- B. Maintenance personnel, who perform various repairs to revenue vehicles (including repairs, overhaul and rebuilding)
- C. Employees with a commercial driver’s license that will operate a revenue service, or non-revenue service DOT funded transit vehicle (includes the operation of the Lifts or anyone who assists passengers to assure they are secured in the vehicles).
- D. Drivers operating a revenue service vehicle, including when not in revenue service.

Employees may be included in more than one listing below in accordance to the various regulatory agencies under which their work specification is assigned. **All** covered employees shall be managed **as** one pool for testing purposes and shall be tested in accordance with the highest level of testing required.

Federal Motor Carrier Safety Administration (FMCSA)
Alcohol testing administered at 10% of the total number of covered employees
Drug test administered to at least 50% of covered employees

(1) Public Works Department

Equipment Maintenance Division

Lead Equipment Mechanic
Welder Mechanic
Heavy Equipment Mechanic
Equipment Service Worker
Fleet Services Supervisor

Street Division

Street Supervisor
Street Maintenance Worker III
Laborer Maintenance Worker I/II

Water/Wastewater Division

Water/Wastewater Supervisor
Plant and Equipment Mechanic

Water/Wastewater Maintenance Worker III
Laborer/Maintenance **Worker** I/II

(2) Electric Utility Department

Apprentice Lineman
Electric Lineman/Linewoman
Electric Foreman/Forewoman
Electric Apparatus Mechanic
Utility Equipment Specialist

A covered employee includes regular and part-time/temporary employees in the above listed classifications.

Federal Transit Administration (FTA)

Alcohol testing administered at 10% of the total number of **covered** employees

Drug test administered to at least 25% of covered employees

(1) Public Works Department

Equipment Maintenance Division

Lead Equipment Mechanic
Welder Mechanic
Heavy Equipment Mechanic
Equipment Service Worker
Fleet Services Supervisor

United States Coast Guard (USCG)

No alcohol testing required per Coast Guard regulations

Drug test administered to at least 50% of **covered** employees

Small Vessel Operators

CITY OF LODI -
ADMINISTRATIVE POLICY AND PROCEDURE MANUAL

SUBJECT DRUG AND ALCOHOL TESTING -
Procedure

DATE ISSUED: May 7, 2008

SECTION: D

REFERENCE: US DOT (FTA) 49 CFR Part 40
49 CFR Part 655
49 CFR Part 382
49 CFR Part 29
Omnibus Transportation Employee Testing
Act of 1991

SECTION 1: PURPOSE

The purpose of this procedure is to delineate the application of the Omnibus Transportation Employee Testing Act under the regulations of the Federal Highway Administration (FHWA).

SECTION 2: EFFECTIVE DATE

This procedure shall be effective

SECTION 3: ALCOHOL TESTING CONTROLLED
SUBSTANCE COLLECTION. AND LABORATORY
SITES

The identity and locations of the alcohol testing, controlled substance collection, and laboratory sites and facilities shall be retained in the Human Resources Division and shall be made immediately available upon request.

SECTION 4: FORMS OF TESTING

2. Information of the employee's controlled substance test in which a positive result was indicated.
3. Any refusal to submit to a required alcohol or controlled substance test. (including verified adulterated or substituted drug test results)
4. Other violations of DOT agency drug and alcohol testing regulations.

SECTION 6:

RANDOM TESTING

All covered employees shall be subject to periodic random testing. In accordance with, and subject to modification by the DOT, employees shall be tested at the minimum annual percentage rate of ten percent (10%) of the average number of employees covered by this policy for random alcohol; and fifty percent (50%) of the average number of employees covered by this policy for random controlled substances.

A. Random generation. Covered employees shall be scheduled for unannounced alcohol and controlled substance tests and selected for testing by utilizing a random number generator. Each employee shall have an equal chance of being tested each time selections are made.

B. Employee notification. On the date the employee is selected for testing, the employee's supervisor shall be notified of the selection. The supervisor shall provide written notification of selection for testing to the employee. The supervisor shall arrange coverage of the employee's duties. The supervisor shall direct the employee to cease the performance of safety-sensitive functions, and to immediately proceed to the appropriate testing and/or collection site.

An employee shall only be tested for alcohol during any period in which he/she is actually performing, ready to perform, immediately available to perform, or just after the employee has ceased performing safety-sensitive functions.

SECTION 7:

REASONABLE SUSPICION TESTING

A. Reasonable suspicion is a belief based on objective facts sufficient to lead a reasonably prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform the job safely is reduced.

B. **As** currently provided in the City's *Drug-Free Workplace Policy and Procedure*, the City may require an employee to submit to an alcohol and/or controlled substance test whenever it has reasonable suspicion to

believe that an employee has violated the prohibitions of the *Drug and Alcohol Testing Policy*.

C. Alcohol testing is authorized only if the observations leading to reasonable suspicion are made during, just preceding, or just after the period of the work day that the employee is performing the safety-sensitive functions of his/her position.

D. Any supervisor or manager who has determined reasonable suspicion shall immediately prevent or direct the employee to stop performing the duties of his/her position, and inform the employee that he/she shall be referred to alcohol/drug testing on such basis.

E. The supervisor or manager shall immediately contact his/her supervisor and the Human Resources Manager with notification of the action taking place, and shall transport the employee to the testing/collection site.

F. The employee shall be immediately transported by the supervisor to the alcohol testing and/or collection site and said test shall be administered within two (2) hours following the determination of reasonable suspicion.

G. The supervisor or manager shall document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs.

H. Any supervisor or manager encountering an employee who refuses to submit to a drug and/or alcohol test shall remind the employee of the requirements and disciplinary consequences of this policy and procedure. The employee's refusal shall be documented in writing. Where there is reasonable suspicion that the employee is then under the influence of alcohol or drugs, the supervisor or manager should arrange for the employee to be safely transported home after the employee has undergone alcohol and controlled substance testing.

I. Upon completion of the testing, the supervisor is to contact the Human Resources Manager and report the status of such testing.

SECTION 8: POST-ACCIDENT TESTING

A. The employee's supervisor or manager shall make a determination to conduct post-accident testing in accordance with the City's drug/alcohol policies immediately after the accident. If a determination is not made and the appropriate test is not administered within two (2) hours following the accident, the employee's supervisor shall immediately provide written documentation

to the Human Resources Manager stating the reasons why the test **was** not promptly administered.

B. Where possible, the supervisor or manager should make every effort under the circumstances surrounding the accident to ensure that the employee, even one who has been permitted to leave **or** has had to leave the site, is available for a post-accident test. This, of course, does not mean that necessary medical treatment for injured people should be delayed or that an employee cannot leave the scene of an accident for the period necessary to obtain assistance in responding to the accident, materials to secure the accident site, or necessary emergency medical care. **An** employee who is seriously injured and cannot provide a specimen within the appropriate time frames of the accident shall provide the necessary authorization for obtaining hospital reports and other documents that would indicate whether there were any controlled substances in his/her system.

C. If a determination is made to conduct post-accident testing, the supervisor **or** manager shall provide documentation of the accident and as to his/her decision to the Human Resources Manager within one (1) working day of the accident.

D. The employee shall remain readily available for such testing or may be deemed to have refused to submit to testing.

E. The supervisor **or** manager shall transport the employee to the alcohol testing and/or controlled substance collection site, and if necessary, to the employee's home after completion of the testing and collection.

F. The employee shall be placed upon administrative leave with pay pending the outcome of the test(s).

SECTION 9:

**SUBSTANCE ABUSE PROFESSIONAL (SAP)
SERVICES**

Each employee who engages in conduct prohibited by this Policy and Procedure shall be referred to a *SAP* for treatment at their own expense.

SECTION 10:

SPECIFIED PROCEDURES

Specific procedures pertaining to the subjects listed below are attached to this Procedure as indicated

Alcohol Testing Methodology and Procedures
Controlled Substances Testing Procedure

Appendix A
Appendix B

Controlled Substance Testing Methodology
Test Results
Confidentiality and Recordkeeping

Appendix C
Appendix D
Appendix E

APPENDIX A
ALCOHOL TESTING METHODOLOGY AND PROCEDURES

I. ALCOHOL TESTING METHODOLOGY

- A. Breath Alcohol Technician (BAT): The City or its agent shall only utilize a BAT who meets the stringent training requirements of the DOT **or** is a law enforcement officer certified to use the EBT that is utilized.
- B. Alcohol Testing Devices: The City or its agent shall only utilize an EBT which meets the DOT requirements.
- C. Quality Assurance Plan (QAP): The City or its agent shall ensure that the EBT shall have a quality assurance plan developed by the manufacturer and that said plan is complied with for each EBT used for alcohol testing.
- D. Alcohol Testing Site: Alcohol testing shall be conducted in a location that affords visual and aural privacy to the employee being tested, sufficient to prevent unauthorized persons from seeing **or** hearing test results.

II. ALCOHOL TESTING PROCEDURES

- A. Preparation for Testing: Prior to being tested, the BAT shall require the employee to provide a photo identification and shall explain the testing procedure to the employee.
- B. Procedures for Screening Test: The following procedures shall be followed:
 - 1. The BAT and the employee shall complete their respective portions of the Breath Alcohol Testing Form from the DOT. Refusal by the employee to sign this form shall be regarded as a refusal to take the test.
 - 2. **An** individually-sealed mouthpiece shall be opened in view of the employee and attached to the EBT in accordance with the manufacturer's instructions.
 - 3. The BAT shall instruct the employee to blow forcefully into the mouthpiece for at least six **(6)** seconds **or** until the EBT indicates that an adequate amount of breath has been obtained.

4. a. If the EBT does not meet the DOT requirements, the BAT and the employee shall take the following steps:
 - (1) Show the employee the result displayed on the EBT. The BAT shall record the displayed result, test number, testing device, serial number of the testing device, time and quantified result in Step 3 of the form.
 - (2) Record the test number, date of the test, name of the BAT, location, and quantified test result in the log book. The employee shall initial the log book entry.
 - b. If the EBT provides a printed result, but does not print the results directly onto the form, the BAT shall show the employee the result displayed on the EBT. The BAT shall then affix the test result printout to the breath alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper-evident tape).
 - c. If the EBT prints the test results directly on the form, the BAT shall show the employee the result displayed on the EBT.
5. a. In any case in which the result of the screening test is a breath alcohol concentration of less than 0.01, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall sign the certification and fill in the date in Step 4 of the form.
 - b. If the employee does not sign the certification in Step 4 of the form or does not initial the log book entry for a test, it shall not be considered a refusal to be tested. In that event, the BAT shall note the employee's failure to sign or initial in the "Remarks" section of the form.
 - c. If a test result printed by the EBT (see paragraph 4b or 4c of this section) does not match the displayed result, the BAT shall note the disparity in the remarks section. Both the employee and the BAT shall initial or sign the notation. The test shall be invalid and the City and employee shall be so advised.
 - d. No further testing is authorized. The BAT shall transmit the result of less than 0.01 to the City in a confidential manner, and the City shall receive and store the information so as to ensure that confidentiality is maintained.
6. If the result of the screening test is an alcohol concentration of 0.01 or greater, a confirmation test shall be performed.

7. If the confirmation test will be conducted by a different BAT, the BAT who conducts the screening test shall complete and sign the form and log book entry. The BAT will provide the employee with Copy 2 of the form.

C. Procedures for Confirmation Test: The following procedures shall be followed:

1. If a BAT other than the one who conducted the screening test is conducting the confirmation test, the new BAT shall follow the procedures outlined above in Preparation for Testing.
2. The BAT shall instruct the employee not to eat, drink, put any object or substance in his or her mouth, and, to the extent possible, not belch during a waiting period before the confirmation test. This waiting period begins with the completion of the screening test, and shall not be less than 15 minutes. The confirmation test shall be conducted within **20** minutes of the completion of the screening test. The BAT shall explain to the employee the reason for this requirement (i.e. to prevent any accumulation of mouth alcohol leading to an artificially high reading) and the fact that it is for the employee's benefit. The BAT shall also explain that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instruction. If the BAT becomes aware that the employee has not complied with this instruction, the BAT shall so note in the "Remarks" section of the form.
3.
 - a. If a BAT other than the *one* who conducted the screening test is conducting the confirmation test, the new BAT shall initiate a new Breath Alcohol Testing form. The BAT shall complete Step 1 on the form. The employee shall complete Step 2 on the form, signing the certification. Refusal by the employee to sign this certification shall be regarded as a refusal to take the test. The BAT shall note in the "Remarks" section of the form that a different BAT conducted the screening test.
 - b. In all cases, the first three steps of the "Procedures for Screening Test" shall be followed. A new mouthpiece shall be used for the confirmation test.

4. Before the confirmation test is administered for each employee, the BAT shall ensure that the EBT registers 0.00 on an air blank. If the reading is greater than 0.00, the BAT shall conduct one more air blank. If the reading is greater than 0.00, testing shall not proceed using that instrument. However, testing may proceed on another instrument.
5. Any EBT taken out of service because of failure to perform an air blank accurately shall not be used for testing until a check of external calibration is conducted and the EBT is found to be within tolerance limits.
6. In the event that the screening and confirmation test results are not identical, the confirmation test result is deemed to be the final result upon which any action under operating administration rules shall be based.
7.
 - a. If the EBT provides a printed result, but does not print the results directly onto the form, the BAT shall show the employee the result displayed on the EBT. The BAT shall then affix the test result printout to the breath alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper-evident tape).
 - b. If the EBT prints the test results directly onto the form, the BAT shall show the employee the result displayed on the EBT.
8.
 - a. Following the completion of the test, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall sign the certification and fill in the date in Step 4 of the form.
 - b. If the employee does not sign the certification in Step 4 of the form or does not initial the log book entry for a test, it shall not be considered a refusal to be tested. In this event, the BAT shall note the employee's failure to sign or initial in the "Remarks" section of the form.
 - c. If a test result printed by the EBT (see paragraph 7a. or 7b. of this section) does not match the displayed result, the BAT shall note the disparity in the remarks section. Both the employee and the BAT shall initial or sign the notation. The test is invalid and the City and employee shall be so advised.
 - d. The BAT shall conduct an air blank. If the reading is greater than 0.00, the test is invalid.

9.
 - a. The BAT shall transmit all results to the City in a confidential manner. The Human Resources Manager or designee shall receive and handle alcohol testing results in a confidential manner. All communications by BATs to the City concerning the alcohol testing results of employees shall be to the designated City representative.
 - b. Such communication may be in writing, in person, or by telephone **or** electronic means, but the BAT shall ensure immediate communication to the City of the results that require the City to prevent the employee from performing a safety-sensitive function.
 - c. If the initial communication is not in writing, the City shall establish a mechanism to verify the identity of the BAT providing the information.
 - d. If the initial communication is not in writing, the BAT shall follow the initial communication by providing to the City the City's copy of the breath alcohol testing form. The City shall store the information so as to ensure that confidentiality is maintained.

D. Refusals to Test and Uncompleted Tests

1. Refusal by an employee to complete and sign the breath alcohol testing form (Step 2), to provide breath, to provide an adequate amount of breath, **or** otherwise to cooperate with the testing process in a way that prevents the completion of the test, shall be noted by the BAT in the remarks section of the form. The testing process shall be terminated and the BAT shall immediately notify the City.
2. If a screening or confirmation test cannot be **completed, or** if an event occurs that would invalidate the test, the BAT shall, if practicable, begin a new screening or confirmation test, as applicable, using a new breath alcohol testing form with a new sequential test number.

E. Inability to Provide an Adequate Amount of Breath

1. This section sets forth procedures to be followed in any case in which an employee is unable, **or** alleges that he **or** she is unable, to provide an amount of breath sufficient to permit a valid breath test because of a medical condition.

2. The BAT shall again instruct the employee to attempt to provide an adequate amount of breath. If the employee refuses to make the attempt, the BAT shall immediately inform the City.
3. If the employee attempts and fails to provide an adequate amount of breath, the BAT shall so note in the "Remarks" section of the breath alcohol testing form and immediately inform the City.
4. If the employee attempts and fails to provide an adequate amount of breath, the City shall direct the employee to obtain, as soon as practical after the attempted provision of breath, an evaluation from the MRO concerning the employee's medical ability to provide an adequate amount of breath.
 - a. If the MRO determines, in his or her reasonable medical judgment, that a medical condition has, or with a high degree of probability, could have, precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath shall not be deemed a refusal to take a test. The MRO shall provide to the City a written statement of the basis for his or her conclusion.
 - b. If the MRO, in his or her reasonable medical judgment, is unable to make the determination set forth herein, the employee's failure to provide an adequate amount of breath shall be regarded as a refusal to take a test. **The** MRO shall provide a written statement of the basis for his **or** her conclusion to the City.

F. Invalid Tests. A breath alcohol test shall be invalid under the following circumstances:

1. The next external calibration check of an EBT produces a result that differs by more than the tolerance stated in the *QAP* from the known value of the test standard. In this event, every test result of 0.01 or above obtained on the device since the last valid external calibration check shall be invalid;
2. The BAT does not observe the minimum 15-minute waiting period prior to the confirmation test;
3. **The** BAT does not perform an **air** blank of the EBT before a confirmation test, or an air blank does not result in a reading of 0.00 prior to **or** after the administration of the test;

4. The **BAT** does not sign the required form;
5. The **BAT** has failed to note on the remarks section of the form that the employee has failed or refused to sign the form following the recording or printing on or attachment to the form of the test result;
6. **An EBT** fails to print a confirmation test result; or
7. On a confirmation test and, where applicable, on a screening test, the sequential test number or alcohol concentration displayed on the **EBT** is not the same as the sequential test number or alcohol concentration on the printed result.

APPENDIX B
CONTROLLED SUBSTANCES TESTING PROCEDURE

- I. URINE SPECIMEN COLLECTION: The following procedures shall be followed:
- A. The actual collection site shall be a location having an enclosure with which private urination can occur, a toilet for completion of urination, and a suitable clean surface for writing. The site shall also have a source of water for washing hands, which, if practicable, shall be external to the enclosure where urination occurs.
 - B. The collection site shall be secure.
 - C. No unauthorized personnel shall be permitted in any part of the designated collection site where urine specimens are collected **or** stored.
 - D. Collection of urine specimens shall allow individual privacy, unless there is reason to believe that an employee may alter **or** substitute the specimen provided.
 - E. For purposes of this section, the following circumstances are the exclusive grounds constituting a reason to believe that the employee may alter **or** substitute the specimen.
 - 1. The employee has presented a urine specimen that falls outside the normal temperature range $32.5^{\circ}\text{C} - 37.7^{\circ}\text{C}$ ($90.5^{\circ}\text{F} - 99.8^{\circ}\text{F}$), and
 - a. The employee declines to provide a measurement of oral **body** temperature; **or**
 - b. Oral body temperature varies by more than $1^{\circ}\text{C}/1.8^{\circ}\text{F}$ from the temperature of the specimen;
 - 2. The last urine specimen provided by the employee (i.e. on a previous occasion) was determined by the laboratory to have a specific gravity of less than **1.003** and a creatinine concentration below $.2\text{g/L}$;
 - 3. The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in specimen presented, etc.); **or**

4. The employee has previously been determined to have used a controlled substance without medical authorization and the particular test was being conducted under a DOT agency regulation providing for follow-up testing upon or after return to duty.
- F.** A higher-level supervisor of the collection site person, **or** the Human Resources Manager, shall review and concur in advance with any decision by a collection site person to obtain a specimen under the direct observation of a same gender collection site person based upon the circumstances described herein.
- G.** The following minimum precautions shall be taken to ensure that unadulterated specimens are obtained and correctly identified:
1. To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl always remains blue. Where practicable, there shall be no other source of water in the enclosure where urination occurs. If there is another source of water in the enclosure, it shall be effectively secured **or** monitored to ensure it is not used as a source for diluting the specimen.
 2. When an individual arrives at the collection site, the collection site person shall ensure that the individual is positively identified as the employee selected for testing (e.g., through presentation of photo identification **or** identification by the City's representative). If the individual's identity cannot be established, the collection site person shall not proceed with the collection.
 3. The collection site person shall ask the employee to remove any unnecessary outer garments such as a coat **or** jacket that might conceal items **or** substances that could be used to tamper with **or** adulterate the employee's urine specimen. The collection site person shall ensure that all personal belongings such as a purse **or** briefcase remain with the outer garments. **The** employee may retain his **or** her wallet.
 4. The employee shall be instructed to wash and dry his/her hands prior to urination.
 5. After washing hands, the employee shall remain in the presence **of** the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent **or** any other materials which could be used to adulterate the specimen.

6. The employee may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for employee privacy. The collection site person shall provide the employee with a specimen bottle or collection container, if applicable, for this purpose.
7. The collection site person shall note any unusual behavior or appearance on the urine custody and control form.
8. The collection site person shall instruct the employee to provide at least **45** ml of urine under the split sample method of collection.
9. The donor shall urinate into a collection container **or** a specimen bottle capable of holding at least **60 ml**.
10. If a collection container is used, the collection site person, in the presence of the donor, pours the urine into two specimen bottles. Thirty (30)ml shall be poured into one bottle, to be used as the primary specimen. At least 15ml shall be poured into the other bottle, to be used as the split specimen.
11. If a single specimen bottle is used as a collection container, the collection site person shall pour 30 **ml** of urine from the specimen bottle into a second specimen bottle (to be used as the primary specimen) and retain the remainder (at least **15** ml) in the collection bottle (to be used as the split specimen).
12. Both bottles shall be shipped in a single shipping container, together with copies 1, 2, and the split specimen copy of the chain of custody form, to the laboratory.
13. If the test result **of** the primary specimen is positive, the employee may request that the MRO direct that the split specimen be tested at the employee's expense in a different DHHS-certified laboratory for the presence of the drugs for which a positive result was obtained in the test of the primary specimen. The MRO shall honor such a request if it is made within **72** hours **of** the employee having been notified of a verified positive test result.

14. When the MRO informs the laboratory in writing that the employee has requested a test of the split specimen, the laboratory shall forward to a different DHHS-approved laboratory, the split specimen bottle, with seal intact, a copy of the MRO request, and the split specimen copy of the chain of custody form with appropriate chain of custody entries.
15. The result of the test of the split specimen is transmitted by the second laboratory to the MRO.
16. Action required by this Policy and Procedure as the result of a positive drug test (e.g., removal from performing a safety-sensitive function) is not stayed pending the result of the rest of the split specimen.
17. If the result of the test of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall cancel the test, and report the cancellation and the reasons for it to the DOT, the City, and the employee.
18. Upon receiving the specimen from the employee, the collection site person shall determine if it has at least **30 ml** of urine for the primary or single specimen bottle and, an additional **15 ml** of urine for the split specimen bottle. If the employee is unable to provide such a quantity of urine, the collection site person shall instruct the employee to drink not more than 24 ounces of fluids and, after a period of up to two hours, again attempt to provide a complete sample using a fresh collection container. The original insufficient specimen shall be discarded. If the employee is still unable to provide an adequate specimen, the insufficient specimen shall be discarded, testing discontinued, and the City so notified. The MRO shall refer the employee for a medical evaluation to develop pertinent information concerning whether the employee's inability to provide a specimen is genuine or constitutes a refusal to test. (In pre-employment testing, if the City does not wish to hire the employee, the MRO is not required to make such a referral). Upon completion of the examination, the MRO shall report his or her conclusions to the City in writing.
19. After the specimen has been provided and submitted to the collection site person, the employee shall be allowed to wash his/her hands.

20. Immediately after the specimen is collected, the collection site person shall measure the temperature of the specimen. The temperature measuring device used must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measure is critical and in no case shall exceed **4** minutes.
21. **A** specimen temperature outside the range of 32.5°C - 37.7°C (90.5°F - 99.8°F) constitutes a reason to believe that the employee has altered or substituted the specimen. In such cases, the employee supplying the specimen may volunteer to have his/her oral temperature taken to provide evidence to counter the reason to believe the employee may have altered **or** substituted the specimen.
22. Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted on the urine custody and control form.
23. All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.
24. Whenever there is reason to believe that a particular employee has altered **or** substituted the specimen as described in paragraph I.E.1., a **or** b, of this section, a second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person.
25. Both the employee being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled. **As** provided below, the specimen shall be sealed (by placement of a tamper-proof seal over the bottle cap and down the sides of the bottle) and labeled in the presence of the employee. **If** the specimen is transferred to a second bottle, the collection site person shall request the employee to observe the transfer of the specimen and the placement of the tamper-proof seal over the bottle cap and down the sides of the bottle.
26. The collection site person and the employee being tested shall be present at the same time during the procedures outline in paragraphs I.G.19.-22 of this section.

27. The collection site person shall place securely on the bottle an identification label which contains the date, the employee's specimen number, and any other identifying information provided or required by the City. If separate from the label, the tamper-proof seal shall also be applied.
28. The employee shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him or her.
29. The collection site person shall enter on the drug testing custody and control form all information identifying the specimen. The collection site person shall sign the drug testing custody and control form certifying that the collection was accomplished according to the applicable Federal requirements.
30.
 - a. The employee shall be asked to read and sign a statement on the drug testing custody and control form certifying that the specimen identified as having been collected from him/her is in fact the specimen he/she provided.
 - b. When specified by DOT agency regulation or required by the collection site (other than an employer site) or by the laboratory, the employee may be required to sign a consent or release form authorizing the collection of the specimen, analysis of the specimen for designated controlled substances, and release of the results to the City. The employee may not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others.
31. The collection site person shall complete the chain of custody portion of the drug testing custody and control form to indicate receipt of the specimen from the employee and shall certify proper completion of the collection.
32. The urine specimen and chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, the collection site person shall ensure that it is appropriately safeguarded during temporary storage.

33. a. While any part of the above chain of custody procedures is being performed, it is essential that the urine specimen and custody documents be under the control of the involved collection site person. If the involved collection site person leaves his/her work station momentarily, the collection site person shall take the specimen and drug testing custody and control form with him/her **or** shall secure them. After the collection site person returns to the **work** station, the custody process will continue. **If** the collection site person is leaving for an extended period of time, he or she shall package the specimen for mailing before leaving the site.
- b. The collection site person shall not leave the collection site in the interval between the presentation of the specimen by the employee and securement of the sample with an identifying label bearing the employee's specimen identification number (shown on the urine custody and control form) and seal initialed by the employee. If it becomes necessary for the collection site person to leave the site during this interval, the collection shall be nullified and (at the election of the City) a new collection begun.

H. Chain-of-Custody: A chain-of-custody form shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on the form each time a specimen is handled **or** transferred and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling specimens.

APPENDIX C
CONTROLLED SUBSTANCE TESTING METHODOLOGY

I. APPROPRIATE LABORATORY

The City of Lodi shall utilize a DHHS certified laboratory for the processing of all controlled substance tests. The identification of such laboratory may be obtained by contacting the Human Resources Manager.

II. INITIAL TEST

A. The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following cutoff levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs:

Marijuana metabolites	100ng/ml
Cocaine metabolites	300 ng/ml
Opiate metabolites	*300 ng/ml
Phencyclidine	25 ng/ml
Amphetamines	1,000ng/ml

*25 ng/ml if immunoassay specific for free morphine.

B. The City shall use the lowest cut-off levels permitted by the appropriate regulatory agency. These cut off levels are subject to change by the Department of Health and Human Services as advances in technology *or* other considerations warrant identification of these substances at other concentrations.

III. CONFIRMATORY TEST

A. All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff levels listed in this paragraph for each drug. All confirmations shall be by quantitative analysis. Concentrations that exceed the linear region of the standard curve shall be documented in the laboratory record as “greater than highest standard curve value.”

Marijuana metabolite'	15ng/ml
Cocaine metabolite'	150 ng/ml
Opiates:	
Morphine	300 ng/ml

Codeine	300 ng/ml
Phencyclidine	25 ng/ml
Amphetamines:	
Amphetamine	500 ng/ml
Methamphetamine	500 ng/ml

¹Delta-9-tetrahydrocannabinol-9-carboxylic acid.
²Benzoyllecgonine.

- B. The City shall use the lowest cut-off levels permitted by the appropriate regulatory agency. These cutoff levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations.

IV. REPORTING OF TEST RESULTS

- A. The laboratory shall report test results to the MRO within an average of five (5) working days after receipt of the specimen by the laboratory. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by the responsible laboratory personnel. The report shall identify the drugs/metabolites tested for, whether positive or negative, the specimen number assigned by the City, and drug testing laboratory specimen identification number (accession number).
- B. The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive for a specific drug.
- C. The MRO may request from the laboratory and the laboratory shall provide quantitation of test results. The MRO shall report whether the test is positive or negative, and may report the drug(s) for which there was a positive test, but shall not disclose the quantitation of test results to the City.
- D. The laboratory may transmit results to the MRO by various electronic means (for example, teleprinters, facsimile, or computer) in a manner designed to ensure confidentiality of the information. Results may not be provided verbally by telephone. The laboratory and City must ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.

E. The laboratory shall send only to the **MRO** the original or a certified true copy of the drug testing custody and control form (part 2), which, in the case of a report positive for drug use, shall be signed (after the required certification block) by the individual responsible for day-to-day management of the drug testing laboratory of the individual responsible for attesting to the validity of the test reports, and attached to which shall be a copy of the test report.

F. The laboratory shall provide to the Human Resources Manager a monthly statistical summary of urinalysis testing of the City's employees and shall not include in the summary any personal identifying information. Initial and confirmation data shall be included from test results reported within that month. Normally this summary shall be forwarded by registered **or** certified mail not more than **14** calendar days after the end of the month covered by the summary. The summary shall contain the following information:

1. Initial Testing:

- a. Number of specimens received;
- b. Number of specimens reported out; and
- c. Number of specimens screened positive for:

Marijuana metabolites
Cocaine metabolites
Opiate metabolites
Phencyclidine
Amphetamine

2. Confirmatory Testing:

- a. Number of specimens received for confirmation;
- b. Number of specimens confirmed positive for:

Marijuana metabolites
Cocaine metabolites
Morphine, codeine
Phencyclidine
Amphetamine
Methamphetamine

Monthly reports shall not include data from which it is reasonably likely that information about individuals' test can be readily inferred. If necessary, in order to prevent the disclosure of such data, the laboratory shall not send a report until data are sufficiently aggregated to make such an inference unlikely. In any month in which a report withheld for the reason, the laboratory will *so* inform the employer in writing.

- G. Unless otherwise instructed by the City in writing, all records pertaining to a given urine specimen shall be retained by the drug testing laboratory for a minimum of 2 years.

V. SPECIMEN RETENTION

Long-term storage (-20°C **or** less) ensures that positive urine specimens will be available for any necessary retest during administrative **or** disciplinary proceedings. **Drug** testing laboratories shall retain and place in properly secured long-term frozen storage for a minimum of two (2) years all specimens confirmed positive, in their original labeled specimen bottles. Within this two-year period, the employer may request the laboratory to retain the specimen for an additional period of time, but if no such request is received the laboratory may discard the specimen after the end of two (2) years, except that the laboratory shall be required to maintain any specimens known to be under legal challenge for an indefinite period.

APPENDIX D
TEST RESULTS

I. MEDICAL REVIEW OFFICER (MRO) DUTIES AND QUALIFICATIONS

- A. An essential part of the drug testing program is the final review of confirmed positive results from the laboratory. A positive test result does not automatically identify an employee/applicant as having used drugs in violation of this Policy and Procedure. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. The review shall be performed by the MRO prior to the transmission of the results to the City.
- B. The **role** of the MRO is to review and interpret confirmed positive test results obtained through the employer's testing program. **The** MRO review shall include review of the chain of custody **to** ensure that it is complete and sufficient on its face. If the MRO finds that the documentation is unsatisfactory **or** if the information gives reasonable doubt about the lab analysis, the MRO may:
1. Request laboratory records regarding the specimen to see if correct procedures were followed; *and/or*
 2. Require a re-analysis of a specimen for accuracy **or** validity of the positive result. The MRO is the only one authorized to order a re-analysis **of** the original sample.

The MRO shall examine alternate medical explanations for any positive test result. This action may include conducting a medical interview and review of the individual's **medical** history and any other relevant biomedical information.

11. POSITIVE TEST RESULTS

- A. **Prior** to making a final decision to verify a positive test result **for an** individual, the MRO shall give the employee an opportunity to discuss the test result with him/her.
- B. The MRO shall contact the individual directly, on a confidential basis, to determine whether the employee wishes to discuss the test result. A staff person under the MRO's supervision may make the initial contact, and a medically licensed or certified staff person may gather information from the employee. Except as provided in paragraph II.E. of this section,

the MRO shall talk directly with the employee before verifying a test as positive.

- C. If, after making all reasonable efforts and documenting them, the MRO is unable to reach the individual directly, the **MRO** shall contact a designated City official who shall direct the individual to contact the MRO as soon as possible. If it becomes necessary to reach the individual through the designated management official, the designated management official shall employ procedures that ensure, to the maximum extent practicable, the requirement that the employee contact the **MRO** is held in confidence.
- D. If, after making all reasonable efforts, the designated City official is unable to contact the employee, the City may place the employee on leave without pay.
- E. The MRO may verify a test as positive without having communicated directly with employee about the test in three circumstances:
 - 1. The employee expressly declines the opportunity to discuss the
 - 2. The designated City representative has successfully made and documented a contact with the employee and instructed the employee to contact the MRO, and more than five (5) days have passed since the date the employee was successfully contacted by the designated City representative; or
 - 3. Other circumstances provided for in DOT agency drug testing regulations.
- F. If a test is verified positive under the circumstances specified in paragraphs **II.E.1-3**, of this section, the employee may present to the MRO information documenting that serious illness, injury, or other circumstances unavoidable prevented the employee from timely contacting the MRO. The MRO, on the basis of such information, may reopen the verification, allowing the employee to present information concerning a legitimate explanation ~~for~~ the Confirmed positive test. If the **MRO** concludes that there is a legitimate explanation, the MRO declares the test to be negative.
- G. Following verification of a positive test result, the MRO shall refer the employee to the City's employee assistance program and notify the City's Risk Manager of the test results.

test;

III. VERIFICATION FOR OPIATES: REVIEW FOR PRESCRIPTION MEDICATION

- A. Before the MRO verifies a confirmed positive result for opiates, he/she shall determine that there is clinical evidence, in addition to the urine test, of unauthorized use of any opium, opiate, **or** opium derivative (e.g., morphine/codeine). (This requirement does not apply if the City's GC/MS confirmation testing for opiates confirms the presence of 6-monocetylmorphine.)
- B. The MRO shall notify each employee who has a confirmed positive test that the employee has 72 hours in which to request a test of the split specimen, if the test is verified as positive. If the employee requests an analysis of the split specimen within 72 hours of having been informed of a verified positive test, the MRO shall direct, in writing, the laboratory to provide the split specimen to another DHHS-certified laboratory for analysis. If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, **or** if the split specimen is unavailable, inadequate for testing **or** untestable, the MRO shall cancel the test and report cancellation and the reasons for it to the DOT, the City, and the employee.
- C. If an employee has not contacted the MRO within 72 hours, the employee may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, **or** other circumstances unavoidably prevented the employee from timely contacting the MRO. If the MRO concludes that there is a legitimate explanation for the employee's failure to contact the MRO within 72 hours, the MRO shall direct that the reanalysis of the primary specimen **or** analysis of the split specimen, as applicable, be performed.

IV. DISCLOSURE OF INFORMATION

- A. Except as provided in this paragraph, the MRO shall not disclose **to** any third party medical information provided by the individual to the MRO as part of the testing verification process.
- B. The MRO may disclose such information to the City, a DOT agency **or** other Federal safety agency, **or** a physician responsible for determining the medical qualification **of** the employee under an applicable DOT agency regulation, as applicable, only if:
 - 1. An applicable DOT regulation permits **or** requires such disclosure;

2. In the MRO's reasonable medical judgment, the information could result in the employee being determined to be medically unqualified under an applicable DOT agency rule; or
 3. In the MRO's reasonable medical judgment, in a situation in which there is no DOT agency rule establishing physical qualification standards applicable to the employee, the information indicates that continued performance by the employee of his/her safety-sensitive function could pose a significant safety **risk.**
- C.** Before obtaining medical information from the employee as part of the verification process, the MRO shall inform the employee that information may be disclosed to third parties as provided in this paragraph and the identity of any parties to whom information may be disclosed.

APPENDIX E
CONFIDENTIALITY AND RECORDKEEPING

I. CONFIDENTIALITY AND ACCESS TO RECORDS

- A. Laboratory reports or test results shall not appear in an employee's general personnel file. Information of this nature will be contained in a separate confidential medical file that will be securely kept under the control of the Human Resources Manager. The reports **or** test results shall be disclosed to City management on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without consent, may also occur when:
1. the information is compelled by law **or** by judicial or administrative process;
 2. the information has been placed at issue in a formal dispute between the City and employee;
 3. the information is to be used in administering an employee benefit plan; **or**
 4. the information is needed by medical personnel for the diagnosis **or** treatment **of** the patient who is unable to authorize disclosure.
- B. Except as required by law **or** expressly authorized **or** required in this section, the City shall not release driver information that is contained in records required to be maintained by this Policy and Procedure.
- C. **An** employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol **or** controlled substances including any records pertaining to his/her alcohol **or** controlled substances tests. The City shall promptly provide the records requested by the employee.
- D. The City shall make available copies of all results for City alcohol and/or controlled substances testing conducted under the Policy and Procedure and any other information pertaining to the City's alcohol misuse and/or controlled substances use prevention program, when requested by the Secretary of Transportation, any DOT agency, **or** any State **or** local officials with regulatory authority over the City.
- E. When requested by the National Transportation Safety Board as part of an accident investigation, the City shall disclose

information related to the City's administration of a post-accident alcohol and/or controlled substance test administered following the accident under investigation.

- F. Records shall be made available to a subsequent employer upon receiving a written request from a former employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the former employee's request.
- G. The City may disclose information required to be maintained under this Policy and Procedure pertaining to an employee, the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol and/or controlled substance test administered under this part, or from the City's determination that the employee engaged in conduct prohibited by this Policy and Procedure (including, but not limited to, a workers' compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).
- H. The City shall release information regarding an employee's records as directed by the specific, written consent of the employee authorizing release of the information *to* an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

II. MAINTENANCE AND RETENTION OF RECORDS

- A. General Requirement The City shall maintain records of its alcohol misuse and controlled substances use prevention programs as provided in this section. Such records will be maintained confidentially and separate from employee personnel files.
- B. Period of Retention: The City shall maintain the records in accordance with the following schedule:
 - 1. Five (5) years. The following records shall be maintained for a minimum of five (5) years:
 - a. Records of employee alcohol test results with results indicating an alcohol concentration of 0.01 or greater,

- b. Records of employee verified positive controlled substances test results,
 - c. Documentation of refusals to take required alcohol and/or controlled substances tests,
 - d. Calibration documentation,
 - e. Employee evaluation and referrals shall be maintained for a minimum of five (5) years, and
 - f. A copy of each annual calendar year summary.
2. Two Years. Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices) and training shall maintained for a minimum of two (2) years.
 3. One year. Records of negative and canceled controlled substances test results and alcohol test results with a concentration of less than **0.01** shall be maintained for a minimum of one (1) year.

C. Types of Records: The following specific records shall be maintained:

1. Records related the collection process:
 - a. Collection logbooks, if used;
 - b. Documents relating to the random selection process;
 - c. Calibration documentation for evidential breath testing devices;
 - d. Documentation of breath alcohol technician training;
 - e. Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests;
 - f. Documents generated in connection with decisions on post-accident tests;

- g. Documents verifying existence **of** a medical explanation other inability **of** a covered employee to provide adequate breath **or** to provide a **urine** specimen **for** testing; and
- h. Consolidated annual calendar year summaries.

2. Records related to an employee's results:
 - a. The City's copy of the alcohol test form, including the results of the test;
 - b. The City's copy of the controlled substances test chain of custody and control form;
 - c. Documents sent by the MRO to the City;
 - d. Documents related to the refusal of any employee to submit to an alcohol or controlled substances test required by this Policy and Procedure; and
 - e. Documents presented by an employee to dispute the result of an alcohol or controlled substances test administered under this Policy and Procedure.
3. Records related to other violations of this Policy and Procedure.
4. Records related to evaluations:
 - a. Records pertaining to a determination by a substance abuse professional concerning an employee's need for assistance; and
 - b. Records concerning an employee's compliance with recommendations of the substance abuse professional.
5. Records related to education and training:
 - a. Materials on alcohol misuse and controlled substance use awareness, including a copy of the City's Policy of alcohol misuse and controlled substance use;
 - b. Documentation of compliance with the requirement *to* establish this Policy and Procedure, including the employee's signed receipt of education materials;

- c. Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion; and
 - d. Certification that any training conducted under this part complies with the requirements **for** such training.
6. Records related to drug testing:
- a. Agreements with collection site facilities, laboratories, medical review officers, and consortia;
 - b. Names and positions of **officials** and their role in the City's alcohol and controlled substances testing program(s);
 - c. Monthly laboratory statistical summaries **of** urinalysis; and
 - d. The City's drug testing policy and procedures.