



CITY OF LAS CRUCES

SUBSTANCE ABUSE PREVENTION/DETECTION POLICY

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1. INTRODUCTION:

The City of Las Cruces (City) has a long standing commitment to maintain the highest standards for employee environmental, safety, and occupational health. This Policy shall be entitled *Substance Abuse Prevention/ Detection Policy*.

2. PURPOSE:

The purpose of this policy is to assure employee fitness for duty and protect City employees, customers and the public from risk posed by workers misuse of alcohol and use of prohibited drugs. This policy is also intended to comply with applicable Federal, State and City regulations governing workplace drug and alcohol use.

It is the goal of this policy to prevent substance abuse and rehabilitate rather than terminate the employment of workers as detailed herein. However, all persons covered by this Policy should be aware that violations of the Policy may result in discipline, up to and including termination.

Additionally, the purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the *Drug-Free Workplace Act of 1988*, 41 USC 701, and is subject to drug and alcohol testing of a number of its employees In-Accordance-With (IAW) the regulations of the U.S. Department of Transportation (DOT) set forth in 49 CFR.

The drug and alcohol testing procedures contained herein and in Appendix A and B shall be complied with IAW the DOT 49 CFR and State Laws.

3. ADMINISTRATION:

This Policy shall be administered by the Risk Manager or designee who prepares operating procedures for carrying out the drug and alcohol tests set forth herein. These procedures shall be in conformity with requirements of the DOT, State and City policies.

4. APPLICABILITY:

This Policy sets forth terms and conditions upon which the City will detect and prevent substance abuse in the workplace and administer drug and alcohol tests for all City employees. Additional guidelines apply to pipeline safety, transit, commercial driver's license holders, safety sensitive, Special Weapons and Tactics Team and public safety positions will be covered by this Policy and the provisions set forth in DOT 49 CFR and State Laws.

5. POLICY:

- A. Employees will not use, possess, manufacture, sell or otherwise distribute any prohibited drug or any unauthorized prescription medication while on City premises, during work hours, while performing assigned duties (whether on or off City premises) or while operating any City vehicle or equipment. Employees shall not report for work while under the influence of a prohibited drug or unauthorized prescription medication.
- B. Employees will not consume alcohol (including medication which contains alcohol) during working hours, within eight hours prior to reporting for work, during meals if the employee is to return to work afterwards, or while on standby status.
- C. Employees subject to DOT testing requirements and Public Safety employees shall adhere to all provisions set forth in DOT 49 CFR and State Laws.
- D. Employees other than those in a Department of Transportation (DOT) or Public Safety Testing Pool, under this policy, will not consume cannabis products or products containing Tetrahydrocannabinol (THC) during working hours, within eight hours prior to reporting for work, during meals if the employee is to return to work afterwards, or while on standby status.
- E. In compliance with the New Mexico, Cannabis Regulation Act, employees other than those in a DOT or Public Safety Testing pool under this policy, who have a positive drug test result for cannabis, will not be subject to discipline, or follow-up testing unless it can be determined that the employee was impaired while working or in violation of 5D of this section.
- F. As a condition of employment all City employees are required to adhere to this policy and drug and alcohol testing provisions contained herein. To be in compliance with this policy with regard to drug or alcohol testing, an employee is expected to pass a drug or alcohol test as per guidelines from Part 40 when called upon to do so.

- G. No person shall be placed, hired or transferred to a pipeline safety, transit, commercial drivers license holder, safety sensitive position or public safety position unless that person has taken and not failed a pre-employment drug test, within two weeks prior to placement, hire or transfer.
- H. Law Enforcement may be tested for additional prohibited drugs in accordance with the New Mexico Department of Public Safety. These may include: barbiturates, methadone, methaqualone, propoxyphene, benzodiazepines, and anabolic steroids. In addition to the aforementioned drugs, it is the City's policy to prohibit any illegal controlled substance, as well as any drug not approved by the USDA or the USFDA. Illegal use includes use of, or impairment by, any illegal drug, misuse of legally prescribed drugs, misuse of over the counter drugs, shall include legal substances, which when ingested are metabolized into a prohibited substance, or illegally obtained prescription drugs.
- I. Public Safety Officers (Police and Fire Officers that are authorized to carry firearms by the City of Las Cruces) will be subject to a drug and alcohol test following any discharge of a weapon whether by accident or in the line of duty except during firearms training.
- J. It is the policy of the City of Las Cruces that all employees must report the use of medically authorized drugs that may impair job performance or mental function to the Risk Manager or the EAP. The Risk Manager will notify the employee's supervisor of any limitations concerning the employee's ability to work.
- K. Any employee who is convicted of violating any criminal drug statute shall notify his/her supervisor of such conviction within five City business days. The City shall notify the appropriate Federal agency of such conviction as required by the *Drug Free Workplace Act of 1988*.
- L. The City may not require an employee to sign a consent, release, or waiver of liability with respect to the drug or alcohol testing process.

6. DISCIPLINARY ACTION:

Disciplinary action for violations of this Policy shall be as follows:

- A. Failing a Pre-employment Drug Test: Applicants shall not be hired for that position and shall be disqualified from applying for employment by the City for a period of two years. If the applicant is a City employee, failure of a pre-employment drug test shall be subject to the same disciplinary action as failure of a random drug test in this policy.

B. Failing a Random, Reasonable Cause Drug or Alcohol Test, or Post Accident Drug Test for the first time shall result in the following:

- (1) A twenty work day suspension without pay;
- (2) Mandatory referral to the SAP for assessment, formulation of a treatment plan, and execution of a return to work agreement;
- (3) Failure to execute or remain compliant with the return-to-work agreement shall result in termination;
- (4) Compliance with the return-to-work agreement means that the employee has submitted to a drug or alcohol test immediately prior to returning to work; the result of that test is negative; in the judgment of the SAP the employee is cooperating with a recommended treatment program and the employee has agreed to periodic unannounced follow-up testing as defined in this Policy;
- (5) Refusal to submit to a periodic unannounced follow-up drug or alcohol test shall be considered as a positive test result and the employee shall be terminated;
- (6) Submitting to a periodic unannounced follow-up drug or alcohol test the result of which is a verified positive shall result in termination;
- (7) The cost of any treatment or rehabilitation services will be paid directly by the employee's insurance provider. If the SAP has not released the employee to return-to-duty at the completion of the twenty day suspension, the employee will be permitted to take accrued leave to participate in the prescribed treatment program. If the employee has insufficient leave balance they shall be placed on leave without pay in accordance with the personnel rules and regulations. Any leave taken, either paid or unpaid, shall be considered leave taken under the *Family and Medical Leave Act*;
- (8) A voluntary referral or participation in the City Employee Assistance Program does not shield an employee from disciplinary action or guarantee employment or reinstatement with the City; and**
- (9) Failure of an employee to report within five City business days a criminal drug statute conviction for a violation occurring in the workplace shall result in termination.

- C. Immediate termination of employment for any of the following violations:
- (1) Refusal to submit to a drug or alcohol test. Refusal, as per Part 49 is recognized as either
 - (a.) Unwilling to submit for a required drug or alcohol test,
 - (b.) Unwilling to follow explicit instructions of the Collection site staff with regard to an *observed test*,
 - (c.) Unable to provide an adequate sample within three hours of having arrived for a urine test, and unable to provide medical evidence that explains the difficulty (City will refer the employee to an appropriate medical specialist for examination in this instance) for lack of urine sample.
 - (d.) Unable to provide an adequate breath sample (City will refer the employee to an appropriate medical specialist for examination in this instance) for Evidential Breath Test.
 - (2) Diluting, degrading, altering, tampering, substituting or adulterating a drug specimen or alcohol test.
 - (3) Failure or refusal to contact the Employee Assistance Program Coordinator SAP after referral or to follow recommended treatment after a positive drug or alcohol test.
 - (4) Possession, sale, distribution and/or use of a prohibited drug or alcohol while either on City premises or during working hours, or while performing assigned duties (whether on or off City premises), or while operating any City vehicle or equipment.
 - (5) Failing a return to work drug or alcohol test.
 - (6) Failing any type of drug or alcohol test while on probation.
 - (7) The second instance of a verified positive result from a sample submitted under the random, reasonable suspicion, return-to-duty, post-accident or follow-up drug and/or alcohol tests.
 - (8) A verified positive post-accident (vehicle, property damage or personal injury) alcohol test shall result in termination.
 - (9) Certified Police and Fire Fighters shall be immediately terminated for failing any drug test.
 - (10) Leaving the assigned drug and alcohol test site without being

instructed to do so by the collector, MRO or DER.

- D. In the instance of a dilute sample, and if levels meet requirements outlined in Part 40, the employee may be retested under observation when ordered by the MRO. If the dilute sample is "dilute negative" and the second collection is also "dilute negative" the test will be ruled complete and the result will be recognized as a passed drug test. If the initial test is a "dilute positive" and the retest under observation is also a "dilute positive" the test will be ruled as complete and the result will be recognized as a failed drug test.
- E. Imposition of disciplinary action under this policy shall not prevent the imposition of disciplinary action for conduct, which violates any other City policy or work rules.

7. SUPERVISOR RESPONSIBILITIES:

- A. When a Probationary Employee or Public Safety Employee (Certified Police Officer or Fire Fighter) fails any drug test, or the Probationary Employee fails an alcohol test of .04 BAC or higher, the Supervisor notifies the employee that he/she is terminated from employment with CLC.
 - (1) Supervisor notifies Human Resource Representative of the termination.
 - (2) Supervisor is to complete the PAN Form necessary and forward it to appropriate individuals for processing.
 - (3) If the Probationary Employee or Public Safety Employee results in an Alcohol Test that demonstrates positive for alcohol at a level of .039 BAC or less, the employee is to be dismissed for the day on LWOP and must be able to return to work the following day demonstrating a negative BAC. However, each case is on an individual basis and an Employee may be terminated for a BAC content of .039 or less based on extenuating factors that are pertinent to the Employee conduct, productivity and history.
- B. Non-Probationary Employee: If the employee is a Regular Part-time or Full-time employee, the supervisor will notify the employee of the disciplinary action and immediately place the employee on Paid Administrative Leave.
 - (1) Supervisor notifies the Employee of a Pre-determination Hearing at which time the employee shall have the right to defend his/her reason for a

positive drug or alcohol test.

- (2) If a drug test was conducted under U.S. DOT Guidelines because the employee is in one of the FTA, FMCSA, or PHMSA drug test pools, the Supervisor will notify the Employee that they have the right to request a split-sample verification of the positive test.
 - a. The Employee is advised that they have the right to request the Split Sample and that they must make that request to the MRO, who will then have the Split-sample portion that is saved to be sent to a lab of the Employee choice for testing.
 - b. The Employee bears the cost of the test. If the Sample that is tested is negative, the Employee will be reimbursed and the Employee will be then allowed to return to safety their duties.

C. Pre-Determination Hearing: Employee is advised of the date of the Pre-Determination Hearing and is advised that the hearing can be waived upon decision of the Employee.

- (1) Upon completion of the Pre-determination Hearing, and if the Positive drug or alcohol test result is upheld as a violation of this Policy, the Employee is advised that they are placed on twenty work-day suspension without pay, and is reminded to contact the EAP/ SAP the soonest possible time for Return to Work processes.
- (2) Upon notification of LWOP the Employee is also notified that he/she must contact the Human Resource Department Benefits Coordinator, and must make arrangements for payment of the Insurance Premiums that are normally paid by the City but which become the Employee responsibility during any period of time the Employee is on LWOP.

D. Referral to SAP: Supervisor advises the Employee that they must contact the EAP/ SAP at the soonest possible time in order to set appointments for Assessment and Recommendation for any possible assistance that may be necessary.

E. Supervisor advises Employee that a Return to Wok process will be facilitated through the EAP/SAP.

F. Training: Supervisors must attend the Recognition of Signs and Symptoms of Possible on-the-job Impairment offered by the EAP/ SAP.

G. Identification: upon suspicion of an employee related problem of impairment in the workplace and upon the Employee engaging in job-related duties, the Supervisor will utilize the Problem Identification Guide developed by U.S. DOT and printed in the final three pages of the booklet provided to Supervisors who attend the Recognition of Signs and Symptoms of Possible Impairment class.

H. Intervention: Actions of the supervisor begin with consultation that is available from Risk Manager DER, EAP/SAP, and from the CLC Legal Department. Consultation begins with the objective and measurable concerns that are noted in the Employee related

Productivity and performance. The concerns shall include but are not limited to the following items.

- (1) Time and attendance problems
- (2) Completion of assignments.
- (3) Problems getting along with coworkers, peers or the public.
- (4) Negative changes in behavior compared to average related work behavior.
- (5) Noticeable changes in attire, hygiene or appearance.
- (6) Neurological signs that are noticeable such as unresponsive pupils during changes in room lighting, glassy eyes that remain longer than momentary natural changes, change in skin tone/color that last longer than momentary changes and that indicate possible changes in blood flow.
- (7) General performance concerns that have showed any pattern of decline over a period of time.
- (8) For Reasonable Suspicion of Alcohol, the odor of apparent alcohol as perceived by the Supervisor constitutes Reasonable Suspicion, and must be verified by another supervisor or the Risk Manager or

appointed Safety personnel.

- (9) Upon the decision to have a Reasonable Suspicion Drug or Alcohol Test, the Risk Manager will notify the Collection Site that the supervisor will be arriving within a reasonable time to have the Employee tested. Notify the Collection Site of the type of Test(s) to be performed.

8. TESTING PROCEDURES:

- A. All testing will be conducted in a manner which assures a high degree of accuracy and reliability consistent with DOT safeguards set forth in 49 CFR Part 40, as amended. Drug testing will be conducted in laboratories certified by the National Laboratory Certification Program as listed on the Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services (HHS). Collection may be observed if there is a reason to believe that a particular individual may alter or substitute the specimen to be provided. Collection shall be observed in Return- To-Work and all Follow-up drug tests. The processes for DOT and Non-DOT testing for both drug and alcohol are completely separate in all respects
- B. Evidential Breath Testing (EBT) devices will meet Model Specifications for Devices to Measure Breath Alcohol provided by the National Highway Traffic Safety Administration (NHTSA). Under direction of the Risk Management Section of City of Las Cruces, the Safety Staff shall be trained and shall continue all training necessary to maintain BAT Certification. Said staff of City of Las Cruces shall administer Evidential Breath Testing (EBT) on any employee when testing is required from a Random Test as it occurs with either FTA of FMCSA employees, or in the situation resultant from a Post-Accident, or Reasonable Suspicion for any City of Las Cruces employee.
 - (1) In the case of Post-Accident, Evidential Breath Testing (EBT) shall be administered at the site of the accident, and in the soonest possible time after an accident.
 - (2) The EBT Device shall be transported by the Safety Staff in the City of Las Cruces vehicle designated for this purpose.
 - (3) The vehicle for the purpose of EBT shall have the device and place for both staff and the employee to be tested in a confidential setting with windows shaded (law enforcement standard tinting), doors closed at the time of test and out of view of any other persons.

- (4) In any case of Random for FTA of FMCSA, and Reasonable Suspicion, the EBT may occur on site or in the most reasonable location away from view of any other persons.
- (5) In the case of *after regular hours* need for testing, the on-call technician shall perform the EBT at the work site of the employee to be tested.

9. REQUIRED REFERRALS AND EVALUATIONS FOR SAP EVALUATION:

City of Las Cruces offers the EAP/ SAP (Employee Assistance Program/ Substance Abuse Professional) for all employees wherein an employee can seek assistance for any substance use problems or other behavioral health related difficulties. The EAP/ SAP is free and easily accessible to employees for confidential assistance. No covered safety-sensitive or non-safety-sensitive employee who has violated the rules on drug and/or alcohol misuse can perform any covered function unless and until that employee has:

- A. Been evaluated by the SAP to determine whether the employee is in need of assistance in resolving problems related to drugs or alcohol;
- B. Completed all treatments recommended by the SAP, or has progressed sufficiently in the recommended treatment and is able to return to work while continuing the treatment that is in progress;
- C. Been evaluated by the SAP to ensure the employee has properly followed the treatment program; and
- D. Undergone a return-to-duty drug or alcohol test and passed (no concentrations of prohibited drugs and a concentration of less than 0.02 for alcohol).

10. EDUCATION AND TRAINING:

- A. The EAP/ SAP shall establish an employee education and training program for all covered City employees. The education process will comply with DOT regulations and policies. Supervisory personnel shall be trained on specific required indicators of probable use of drug (one hour minimum) and alcohol use (one hour minimum) at least once every five years.
- B. The EAP/SAP shall also provide training to employees regarding substance use problems that shall include information about signs and symptoms of problems and information regarding confidential community resources for assistance. Posters shall be placed in employee work areas

regarding basic information regarding access to EAP but is not exclusive to EAP should the employee wish to seek outside help. Employees are encouraged to self-refer for problems before problems become problematic and compromising of safety.

11. RECORD RETENTION:

The Risk Manager shall maintain records on the anti-drug and alcohol misuse program in a secured location with controlled access and establish a record retention program in compliance with DOT regulations.

Period of retention:

- A. Five years retention for records of covered employees verified positive drug or alcohol tests results, documentation of refusals to take required tests, and covered employee referrals to substance abuse professional and copies of Management Information Systems' reports.
- B. Three years retention for records related to the collection process and employee training.
 - (1) One year retention for records of negative drug and alcohol test results.
 - (2) Three years retention of records that demonstrate supervisors and employees have been trained as required in Part 199.
 - a. Information regarding an individual's drug testing results or rehabilitation must be released upon the written consent of the individual and as provided by DOT Procedures.
 - b. Statistical data related to drug testing and rehabilitation (not personal information specific) shall be made available to the Administrator or the representative of the New Mexico Public Regulation Commission Pipeline Safety Bureau upon request.
 - c. Training records shall be made available to the Administrator or the representative of the New Mexico Public Regulation Commission Pipeline Safety Bureau upon request.
 - d. The Laboratory must retain all records pertaining to each employee specimen for a minimum of two years and keeps employee specific data for two years.

12. MONITORING PROCEDURES TO DETERMINE COMPLIANCE OF ANY CONTRACTOR:

- A. The Risk Manager/DER will request of the potential contractor covered by DOT regulations, as it pertains to drug and alcohol testing policies/procedures, to submit a copy of its anti-drug and alcohol plan for review and compliance with DOT regulations. After review is completed, written correspondence to the contractor will advise whether or not the plan is acceptable.
- B. Contractor monitoring is required to provide information on personnel who will perform the analysis on covered functions for the City. They shall conform to DOT regulations as described in 49 CFR Parts 40, 199, 382, and 655.
- C. All contractors will be required to submit drug and alcohol testing statistical information on a periodic basis for the duration of the contract. Typically, this will be on a monthly or quarterly basis. The City may require a more frequent reporting schedule determined by the Risk Manager.
- D. The Risk Manager shall maintain a complete file on each contractor's statistical drug and alcohol testing reports.

13. THE CITY MUST CHECK ON THE DRUG AND ALCOHOL TESTING RECORDS:

- A. This requirement applies only to employees seeking to begin performing safety-sensitive duties for the City for the first time (i.e., a new hire, an employee transfers into a safety-sensitive position).
- B. The City must obtain written consent from the employee prior to requesting information about the employee listed in this section.
- C. If the employee refuses to provide written consent, the City must not permit the employee to perform safety-sensitive functions.
- D. The City must request the information listed below from DOT regulated employers who have employed the employee during any period during the two years before the date of the employee's application of transfer:

- (1) Alcohol tests with a result of 0.04 or higher alcohol concentration.
- (2) Verified positive drug test.
- (3) City must make a good faith effort to obtain information regarding past tests of a safety sensitive employee, and will not allow the employee to perform any safety sensitive work after 30 days of beginning if the documentation is not available. Documentation regarding a good faith effort to obtain the information is retained by City.

- E. Refusals to be tested (including verified adulterated or substituted drug test results). Other violations of DOT agency drug and alcohol test regulations.
- F. Other violations of DOT agency drug and alcohol testing regulations.
- G. The City will request information from the employee whether he or she has tested positive or refused to test, on any drug or alcohol test administered by an employer within the past two years. If the employee admits that he or she had a positive test or a refusal to test, the City must not use the employee to perform safety-sensitive functions, unless or until the employee documents successful completion of the return-to-duty process.

14. DRUG TESTING LABORATORY:

- A. The City shall use only use drug-testing laboratories certified by the Department of Health and Human Services under the DOT Procedures. The names and addresses of the laboratories that shall analyze specimens collected for drug testing for all but PHMSA employee related drug or alcohol test are: **SEE ADDENDA 1, pg. 19**

15. COLLECTION OF AND MRO REVIEW OF DRUG TESTING RESULTS:

- A. *MRO Appointment:* The City shall designate or appoint a medical review officer (MRO). If an operator does not have a qualified Individual on staff to serve as MRO, the operator may contract for the provision of MRO services as part of its anti-drug program.

- B. Principles that govern the interactions between the **MRO** and the City of Las Cruces Pipeline Safety Program DER.
- (1) **MRO** performs all duties independently and confidentially.
 - (2) **MRO is** contracted by the City of Las Cruces and is not a City of Las Cruces employee.
 - (3) **MRO** makes all decisions regarding drug test concerns as an independent provider with no other ties to City of Las Cruces Administration.
- C. *MRO Qualifications:* The name and address of the contracted operator charged with both collection and preparation (beginning the chain of custody) of a drug test sample and for delivery to the laboratory, as well as the Medical Review Officer is: **SEE ADDENDA 1, pg. 19**
- D. *MRO Duties:* The MRO shall perform the following functions for the operator:
- (1) Review the results of drug testing before they are reported to the operator.
 - (2) Review and interpret each confirmed positive test result as follows to determine if there is an alternative medical explanation for the confirmed positive test result:
 - a. Conduct a medical interview with the individual tested.
 - b. Review the individual's medical history and any relevant biomedical factors.
 - c. Review all medical records made available by the individual tested to determine if a confirmed positive test resulted from legally prescribed medication.
 - d. If necessary, require that the original specimen be reanalyzed to determine the accuracy of the reported test result.
 - e. Verify that the laboratory report and assessment are correct.
- E. *MRO Determination:* The following rules govern MRO determinations:
- (1) If the MRO determines, after appropriate review, that there is a legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO is not required to take further action.
 - (2) If the **MRO** determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the **MRO** shall refer:

- a. The individual tested to a personnel or administrative office for further proceedings in accordance with the operator's anti-drug plan; and
 - b. For evaluation by a SAP who shall determine what assistance, if any, the employee needs in resolving problems associated with drug misuse.
- F. The MRO must provide quality assurance, including insurance review of the CCF on all specimen collections. MRO must also perform review function by Sec. 40.127 for negative drug tests received from a Laboratory prior to verifying the result and releasing it to the DER. Reports are given in a confidential manner to the DER.
- G. For positive results, information is transmitted by the MRO to the DER on the same day that the test has been verified.
- H. MRO and Operator will ensure confidential transmittal of reports of any information and limit access to any storage or retrieval systems.

16. MIS REPORTS

- A. City of Las Cruces must submit an annual MIS Report for PHMSA in accordance with 40.26 no later than March 15th of each year for the prior calendar year.
- B. Beginning in March 15, 2010, the City of Las Cruces must verify that all contractors performing covered tasks have also submitted annual reports in the same timeframe. If there are less than 50 employees, statistical data will suffice.

ADDENDA 1 TESTING PROGRAMS

DRUG TEST LABORATORIES:

Medtox
402 W. Country Rd. D
St. Paul, MN 55112
800-832-3244
858-635-5843 fax

Alere
1111 Newton Street
Gretna, LA 70053
800-433-3823
504-361-8298 fax

Lab Corp
1904 Alexander Dr.
RTP, NC 27709 for PHMSA Employees

DRUG TEST COLLECTION SITES:

Work Med
2525 S. Telshor #16-108
Las Cruces, NM 88011

Central Medical Services of Southern New Mexico
141 Roadrunner Parkway, Ste 224
Las Cruces, NM 88011

Monte Bello Medical
3851 E. Lohman Avenue, Suite 4
Las Cruces, NM 88011

MRO:

Dr. Benito Gallardo, M.D. CIME
(Certification - AAMRO is in good standing)
Work Med
2525 S. Telshor #16-108 575-521-1919
Las Cruces, NM 88011

Brian Heinen, Sr., M.D.
151 Leon Street
Eunice, LA 70535
800-457-0493

Neil J. Dash, M.D.
Doctors Review Services
546 Franklin Avenue
Massapequa, NY 11758
800-526-9341
Fax 800-547-2966

ADDENDA2
RESPONSIBLE INDIVIDUALS

THE ADMINISTRATOR OF THE NEW MEXICO PUBLIC REGULATION COMMISSION:

Jason M. Montoya
New Mexico Public Regulation Commission
Transportation Division Director, Acting
Pipeline Safety Bureau
P. O. Box 1269
1120 Paseo de Peralta# 416
Santa Fe, NM 87504 - 1269
Tel. 505 476 0298

Mr. Montoya, or any of his designees or representatives of the Pipeline Safety Bureau shall have full authority to have the City of Las Cruces amend its plans, policy and procedures as necessary to provide a reasonable level of safety.

CITY OF LAS CRUCES DER:

Carl Conley, CIC, CRM, DER, CLC Risk Manager
City of Las Cruces Risk Management Office
Las Cruces, NM
575 528 3665

CITY OF LAS CRUCES SAP:

Joe Provencio, M.S., CEAP, LADC, SAP
City of Las Cruces EAP Coordinator
Wells Fargo Bank Tower, Office 930, 9th Floor
Las Cruces, NM
575 642 3378

APPENDIX A PIPELINE SAFETY

The provisions of this Appendix shall apply to all City pipeline safety positions that are subject to the drug and alcohol provisions of the United States Department of Transportation (DOT) 49 CFR Parts 199 and 40 (Attachment 2).

1. DEFINITIONS RELATED TO THE PIPELINE SAFETY DRUG AND ALCOHOL PROGRAM:

- A. *Accident* is defined as an incident reportable under 49 CFR Part 191 involving gas pipeline facilities or LNG facilities, or an accident reportable under 49 CFR Part 195 involving hazardous liquid or carbon dioxide pipeline facilities.
1. An event that involves release of gas from a pipeline of liquefied natural gas or gas from an LNG facility; and a death, or personal injury necessitating in-patient hospitalization; or estimated property damage, including cost of gas lost, or the operator or others, or both of \$50,000 or more.
 2. An event that results in an emergency shutdown of an LNG facility.
 3. An event that is significant, in the judgment of the operator, even though it did not meet the criteria of paragraphs (1) or (2).
- B. *Administrator* is defined as the Administrator of the Research and Special Programs Administration (RSPA), or any person to whom authority in the matter concerned has been delegated by the U.S. Secretary of Transportation.
- C. *Alcohol* is defined as the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol's including methyl or isopropyl alcohol.
- D. *Alcohol Concentration (or content)* is defined as the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this section.
- E. *Alcohol Use* is defined as the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
- F. *Confirmation Test* is defined as a second test, following a screening test with a result 0.02 or greater that provides quantitative data of alcohol concentration.

- G. *Consortium* is defined as an entity, including a group or association of employers, recipients, or contractors, that provides alcohol testing as required by this section or other DOT alcohol testing rules and that acts on behalf of the operators.
- H. *Covered Employee* is defined as a person who performs, on a pipeline or LNG facility, an operations, maintenance, or emergency-response function regulated by 49 CFR Parts 192, 193, or 195. This does not include clerical, truck driving, accounting, or other functions not subject to 49 CFR Parts 192, 193, or 195. The person may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor.
- I. *Covered Function (safety-sensitive function)* is defined as an operation, maintenance, or emergency-response function that is performed on a pipeline or LNG facility and the functions are regulated by 40 CFR Parts 192, 193, or 195.
- J. *DOT Agency* is defined as an agency (or operating administration) of the United States Department of Transportation administering regulations requiring alcohol testing (14 CFR Parts 61, 63, 65, 121, 135; 49 CFR Parts 199, 219, 382, and 654) in accordance with 49 CFR Part 40.
- K. *DOT Procedures* are defined as the "Procedures for Transportation Workplace Drug Testing Programs" published by the Office of the Secretary of Transportation in 49 CFR Part 40.
- L. *Employer or Operator* is defined as a person who owns or operates a pipeline or LNG facility subject to 49 CFR Parts 192, 193, or 195.
- M. *Failing a Drug Test* is defined as the confirmation of results showing positive evidence or the presence under DOT Procedures of a prohibited drug in an employee's system.
- N. *Operator* is defined as a person who owns or operates pipeline facilities subject to 49 CFR Parts 192, 193, or 195.
- O. *Passing a Drug Test* is defined as the initial testing or confirmation testing under DOT procedures that do not show evidence of the presence of a prohibited drug in a person's system.
- P. *Performing (a covered function)* is defined as an employee is considered to be performing a covered function (safety-sensitive function) during any period in which he or she is actually performing, ready to perform, or immediately available to perform such covered functions.

- Q. *Positive Rate* is defined as the number of positive results for random drug tests conducted under this section plus the number of refusals of random, tests required by this section, divided by the total number of random drug tests conducted under this section plus the number of refusals of random test required by this section.
- R. *Prohibited Drug* is defined as any of the following substances: marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP). In addition, for the purposes of reasonable cause testing, "*prohibited drug*" includes any substance in Schedule I or II. If an operator has obtained prior approval from RSPA, pursuant to the DOT Procedures in 49 CFR Part 40, to test for such substance, and if the Department of Health and Human Services has established an approved testing protocol and positive threshold for such substance.
- S. *Refuse to submit to an alcohol test* is defined as a covered employee who fails to provide adequate breath for testing as required by 49 CFR Part 40, without a valid medical explanation after he or she has received notice of the requirement to be tested in accordance with the provisions of this section, or engages in conduct that clearly obstructs the testing process.
- T. *Refuse to Submit to a drug test* is defined as a covered employee fails to provide a urine sample as required by 49 CFR Part 40, without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement to be tested in accordance with the provisions of this section, or engages in conduct that clearly obstructs the testing process.
- U. *Screening Test* is defined as an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in his or her system.
- V. *State Agency* is defined as an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under the pipeline safety laws (49 U.S.C. 60101 *et seq.*).

2. DRUG TESTING:

- A. This section requires operators of pipeline facilities subject to DOT 49 CFR Part 199 to test employees for the presence of prohibited drugs and provide an employee assistance program.
- B. Operators with more than fifty (50) employees subject to drug testing under this section need not comply with this section until April 20, 1990. Operators with fifty (50) or fewer employees subject to drug

testing under this section need not comply with this section until August 21, 1990.

3. **DRUG TEST REQUIRED:** The City shall conduct the following drug tests for the presence of a prohibited drug as per 49 CFR Part 199.5:
- A. *Pre-Employment Testing:* No operator may hire or contract for the use of any person as an employee unless that person passes a drug test or is covered by an anti-drug program that conforms to the requirements of this part. No person shall be placed, hired or transferred to a FPHMSA Safety Sensitive Covered position unless that person has taken and not failed a pre-employment drug test within two weeks prior to placement, hire or transfer.

 - B. *Post-Accident Testing:* As defined in 49 CFR Parts 191 and 195 shall occur as soon as possible but no later than thirty-two (32) hours after an accident, the City shall drug test each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. An operator may decide not to test under this paragraph but such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use. *Accident* is defined as an incident reportable under Part 191 involving gas pipeline facilities or LNG facilities, or an accident reportable Under Part 195 involving hazardous liquid pipeline facilities.
 - (1.) An event that involves release of gas from a pipeline of liquefied natural gas or gas from an LNG facility; and a death, or personal injury necessitating in-patient hospitalization; or estimated property damage, including cost of gas lost, or the operator or others, or both of \$50,000 or more.
 - (2.) An event that results in an emergency shutdown of an LNG facility.
 - (3.) An event that is significant, in the judgment of the operator, even though it did not meet the criteria of paragraphs (1) or (2).

 - C. *Random testing:* The selection of employees for random drug testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employee's Social Security numbers, payroll

identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

- (1) Percentages for Random Testing will comply with DOT 49 CFR Part 199, and shall be at a minimum of 25% (unless otherwise specified by the New Mexico Public Regulation Commission) of the number of employees subject to testing within the Pipeline Safety Regulations.
- (2) The City shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the Administrator rule.
- (3) The City shall ensure that random drug tests conducted under this section are unannounced and that the dates for administering random test are spread reasonably throughout the calendar year.

C. *Testing based on reasonable cause/ reasonable suspicion:* The City shall drug test an employee when there is reasonable cause to believe the employee is using a prohibited drug. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use. Supervisor must go through training provided by the City of Las Cruces EAP/ SAP that includes -See APPENDIX E regarding the steps necessary for a supervisor to initiate and follow through with a Reasonable Cause/ Suspicion Drug or Alcohol Test.

- (1) One hour related to signs and symptoms of specific, contemporaneous physical, behavioral, and performance indicators of probable drug use;
- (2) One hour related to signs and symptoms of specific, contemporaneous physical, behavioral, and performance indicators of probable alcohol use.

E. *Return to Duty Testing:* A covered employee who refuses to take or has a positive drug test may not return to duty in the covered function until the covered employee has been evaluated face-to-face by a the SAP, has properly followed any prescribed assistance, has passed a return-to-duty drug test administered under this part, and the SAP has determined that the employee may return to duty. As of August 31, 2009, all Return to Duty Testing must be performed under direct observation.

- F. *Follow-up Testing:* A covered employee who refuses to take a drug test, or has a positive drug test shall be subject to unannounced follow-up drug tests administered by the City following the covered employee's return to duty. The number and frequency of such follow-up testing shall be determined by the SAP for a period of sixty (60) months following the covered employee's return to duty.

5. DRUG TESTING COLLECTION AND LABORATORY SERVICES:

- A. Collection for Drug and Alcohol Testing for PHMSA employees shall be performed in accordance with U.S. DOT procedures. Collection and Chain of Custody is with: **SEE ADDENDA 1, pg. 19**
- B. The City shall use only use drug-testing laboratories certified by the Department of Health and Human Services under the DOT Procedures. The name and address of the laboratory that shall analyze specimens collected for drug testing is:
SEE ADDENDA 1, pg. 19
- (1) The drug-testing laboratory must permit inspections by the operator including examination of records, at any time, by the operator, the Administrator, and if the operator is subject to state agency jurisdiction, a representative of that state agency.
 - (2) Laboratory results are reported directly and only to the **MRO** at his or her place of business. Results are not reported to the DER by the Laboratory.
 - (3) The Laboratory must transmit an aggregate statistical summary to the employer on a semi-annual basis.
- C. The Administrator of the New Mexico Public Regulation Commission, responsible for current certification under pipeline safety laws (49 U.S.C. 60101 *et. seq.*) is recognized in this plan as having full authority to require any operator within this jurisdiction to amend plans and procedures such that reasonable level of safety is in place. The responsible party is: **SEE ADDENDA 2, PG.20**

6. MRO REVIEW OF DRUG TESTING RESULTS:

- A. Principles that govern the interactions between the MRO and the City of Las Cruces Pipeline Safety Program are:

- (1) MRO performs all duties independently and confidentially.
- (2) MRO has no financial or any other business arrangement with the Laboratory or with the City that would construe any possible actual or appearance of conflict of interest.
- (3) MRO makes all decisions regarding drug test concerns as an independent provider with no ties to City of Las Cruces Administration.

B. *MRO Qualifications:* The name and address of the contracted operator charged with Medical Review of a drug test sample for PHMSA employees is: **SEE ADDENDA 1, pg. 19**

C. MRO Duties shall be as outlined in the general provisions of the SUBSTANCE ABUSE PREVENTION/DETECTION POLICY 15.D - H of the City of Las Cruces Policy.

D. **MRO** Determination: The following rules govern **MRO** determinations:

- (1) If the **MRO** determines, after appropriate review, that there is a legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO is not required to take further action.
- (2) If the **MRO** determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the **MRO** shall refer:
 - a. The individual tested to a personnel or administrative office for further proceedings in accordance with the operator's anti-drug plan; and
 - b. For evaluation by a SAP who shall determine what assistance, if any, the employee needs in resolving problems associated with drug misuse.

C. The **MRO** must provide quality assurance, including insurance review of the CCF on all specimen collections. MRO must also perform review function by Sec. 40.127 for negative drug tests received from a Laboratory prior to verifying the result and releasing it to the DER. Reports are given in a confidential manner to the DER.

D. For positive results, information is transmitted by the MRO to the DER on the same day that the test has been verified.

E. MRO and Operator will ensure confidential transmittal of reports of any information and limit access to any storage or retrieval systems.

7. CONTRACTOR EMPLOYEES:

With respect to those employees who are contractors or employed by a contractor, an operator may provide by contract that the drug testing, education, and training required by this part be carried out by the contractor provided:

- A. The City remains responsible for ensuring that the requirements of this part are complied with; and
- B. The contractor allows access to property and records by the operator, the Administrator, and if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance with the requirements of this part.

8. ALCOHOL TESTING PROCEDURES:

The City shall ensure that all alcohol testing conducted under this section complies with the procedures set forth in 49 CFR Part 40 that address alcohol testing. Alcohol testing equipment must conform to 40.229 and 40.231 and 40.233. Evidential Breath Testing (EBT) devices will meet Model Specifications for Devices to Measure Breath Alcohol provided by the National Highway Traffic Safety Administration (NHTSA). Under direction of the Risk Management Section of City of Las Cruces, the Safety Staff shall be trained and shall continue all training necessary to maintain BAT Certification. Said staff of City of Las Cruces shall administer Evidential Breath Testing (EBT) on any employee when testing is required from a Random Test as it occurs with either FTA of FMCSA employees, or in the situation resultant from a Post-Accident, or Reasonable Suspicion for any City of Las Cruces employee.

- A. In the case of Post-Accident, Evidential Breath Testing (EBT) shall be administered at the site of the accident, and in the soonest possible time after an accident.
- B. The EBT Device shall be transported by the Safety Staff in the City of Las Cruces vehicle designated for this purpose.
- C. The vehicle for the purpose of EBT shall have the device and place for both staff and the employee to be tested in a confidential setting with windows shaded (law enforcement standard tinting), doors closed at the time of test and out of view of any other persons.

D. In any case of Random for FTA of FMCSA, and Reasonable Suspicion, the EBT may occur on site or in the most reasonable location away from view of any other persons.

E. In the case of *after regular hours* need for testing, the on-call technician shall perform the EBT at the work site of the employee to be tested.

9. REQUIREMENT FOR NOTICE:

Before performing an alcohol test under this section, the City shall notify a covered employee that the alcohol test is required by this section. No operator shall falsely represent that a test is administered under this section.

10. ALCOHOL CONCENTRATION:

The City shall prohibit a covered employee from reporting for duty or remaining on duty requiring the performance of covered functions while having an alcohol concentration of 0.04 or greater. No City supervisor having actual knowledge that a covered employee has an alcohol concentration of 0.04 or greater shall permit the employee to perform or continue to perform covered functions.

11. ON-DUTY USE:

The City shall prohibit a covered employee from using alcohol while performing covered functions. No City supervisor having actual knowledge that a covered employee is using alcohol while performing covered functions shall permit the employee to perform or continue to perform covered functions.

12. PRE-DUTY USE.

The City shall prohibit a covered employee from using alcohol within eight (8) hours prior to performing covered functions, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report for duty. No supervisor having actual knowledge that a covered employee has used alcohol within eight (8) hours prior to performing covered functions or within the time period after the employee has been notified to report for duty shall permit that covered employee to perform or continue to perform covered functions.

13. USE FOLLOWING AN ACCIDENT:

The City shall prohibit a covered employee who has actual knowledge of an accident in which his or her performance of covered functions has not been discounted by the operator as a contributing factor to the accident from using alcohol for eight (8) hours following the accident, unless he or she has been given a post-accident test or the City has determined that the employee's performance could not have contributed to the accident.

14. REFUSAL TO SUBMIT TO A REQUIRED ALCOHOL TEST:

No City supervisor shall permit an employee who refuses to submit to a reasonable suspicion alcohol test or a follow-up alcohol test to perform or continue to perform covered functions.

15. ALCOHOL TESTS REQUIRED:

The City shall conduct the following types of alcohol tests for the presence of alcohol:

A. *Post-accident.* (Accident is defined as an incident as described above in Section 3.B of this policy, and has the same meaning for a drug or alcohol test of this nature).

(4) As soon as practicable following an accident, the City shall test each surviving covered employee for alcohol if that employee's performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer a test under this section shall be based on the operator's determination, using the best available information at the time of the determination that the covered employee's performance could not have contributed to the accident.

(2) If a test required by this section is not administered within two (2) hours following the accident, the City shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a required test is not administered within eight hours following the accident, the City shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(3) A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the operator or operator representative of his/her location if he/she leaves the scene of the accident prior to

submission to such test may be deemed by the operator to have refused to submit to testing.

- (4) Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

B. *Reasonable Suspicion Testing.*

- (1) The City shall require a covered employee to submit to an alcohol test when the operator has reasonable suspicion to believe that the employee has violated the prohibitions in this policy.
- (2) The City's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. A supervisor who is trained in detecting the symptoms of alcohol misuse shall make the required observations. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee.
- (3) This section authorizes alcohol testing only if the observations required of this section are made during, just preceding, or just after the period of the workday that the employee is required to be in compliance with this section. A covered employee may be directed by the operator to undergo reasonable suspicion testing for alcohol only while the employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing covered functions.
- (4) If a test not administered within two (2) hours following the determination of this section, the City shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight (8) hours following the determination of this section, the City shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

Notwithstanding the absence of a reasonable suspicion alcohol test under this section, the City will not permit a covered

employee to report for duty or remain on duty requiring the performance of covered functions while the employee is suspected to be under the influence of or impaired by alcohol, as shown by the behavioral, speech or performance indicators of alcohol. The covered employee shall not perform or continue to perform covered functions, until:

- a. An alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or
 - b. The start of the employee's next regularly scheduled duty period, but not less than eight (8) hours following the determination under this section that there is reasonable suspicion to believe that the employee has violated the prohibitions in this section.
 - c. The City shall not take any action under this section against an employee based solely on the employee's behavior and appearance in the absence of an alcohol test. This does not prohibit an operator with the authority independent of this section from taking any action otherwise covered consistent with law.
- C. *Return-to-duty testing.* Each operator shall ensure that before a covered employee returns to duty requiring the performance of a covered function after engaging in conduct prohibited by 49 CFR Parts 199.215 through 199.223, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.
- D. *Follow-up testing:* a determination that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, the City shall ensure that the employee is subject to unannounced follow-up alcohol testing for the next twelve (12) months.
- G. *Re-testing of covered employees* with an alcohol concentration of 0.02 or greater but less than 0.04. Each operator shall retest a covered employee to ensure compliance, if an operator chooses to permit the employee to perform a covered function within 8 hours following the administration of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04.

16. OTHER ALCOHOL-RELATED CONDUCT:

The City shall not permit a covered employee tested under the provisions of this Policy, who is found to have an alcohol concentration of 0.02 or greater but less than 0.04, to perform or continue to perform covered functions, until:

- A. The employee's alcohol concentration measures less than 0.02. The start of the employee's next regularly scheduled duty period, but not less than eight (8) hours following administration of the test.
- C. Except as provided in this section, no operator shall take any action under this section against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an operator with authority independent of this section from taking any action otherwise consistent with law.

17. Immediate termination of employment for any of the following violations:

- A. Refusal to submit to a drug or alcohol test. Refusal, as per Part 49 is recognized as either
 - (1.) Unwilling to submit for a required drug or alcohol test,
 - (2.) Unwilling to follow explicit instructions of the Collection site staff with regard to an *observed test*,
 - (3.) Unable to provide an adequate sample within three (3) hours of having arrived for a urine test, and unable to provide medical evidence that explains the difficulty (City will refer the employee to an appropriate medical specialist for examination in this instance) for lack of urine sample.
 - (4.) Unable to provide an adequate breath sample (City will refer the employee to an appropriate medical specialist for examination in this instance) for Evidential Breath Test.
- B. Diluting, degrading, altering, tampering, substituting or adulterating a drug specimen or alcohol test.
- C. Failure or refusal to contact the Employee Assistance Program Coordinator SAP after referral or to follow recommended treatment after a positive drug or alcohol test.
- D. Possession, sale, distribution and/ or use of a prohibited drug or alcohol while either on City premises or during working hours, or while performing assigned duties (whether on or off City premises), or while operating any City vehicle or equipment.
- E. Failing a return to work drug or alcohol test.
- F. Failing any type of drug or alcohol test while on probation.

- G. The second instance of a verified positive result from a sample submitted under the random, reasonable suspicion, return-to-duty, post-accident or follow-up drug and/ or alcohol tests.
- H. A verified positive post-accident (vehicle, property damage or personal injury) alcohol test shall result in termination.
- I. Leaving the assigned drug and alcohol test site without being instructed to do so by the collector, MRO or DER.

18. In the instance of a dilute sample, and if levels meet requirements outlined in Part 40, the employee may be retested under observation when ordered by the MRO.

- A. If the dilute sample is "dilute negative" and the second collection is also "dilute negative" the test will be ruled complete and the result will be recognized passed drug test.
- B. If the initial test is a "dilute positive" and the retest under observation is also a "dilute positive" the test will be ruled as complete and the result will be recognized as a failed drug test.

19. Imposition of disciplinary action under this policy shall not prevent the imposition of disciplinary action for conduct, which violates any other City policy or work rules.

20. EAP/SAP SERVICES FOR CITY OF LAS CRUCES EMPLOYEES:

- A. City of Las Cruces of Las Cruces conducts Random Drug, Post-Accident and Reasonable Suspicion Drug and Alcohol Tests in accordance with the 49 CFR Part 199.5. Upon official notice of a positive drug or alcohol test in violation of the U.S. DOT regulations as stated, the employee will be referred to the City of Las Cruces EAP/ SAP (Substance Abuse Professional as Qualified by the DOT) for evaluation, development of a treatment plan and will be expected to follow through with all recommendations of the SAP that are as a result of the evaluation. The SAP will follow and monitor the employee in the process of recommended treatment that may include any of the following levels of treatment (or combination thereof)

(1) Education and support

(2) Outpatient Individual Counseling

(3) Intensive Outpatient Program Counseling

(4) Inpatient or Full-day Treatment Program

(5) Medical Assisted Detox and Inpatient Treatment Program

B. Because the EAP/ SAP is a full time employee of the City of Las Cruces and not a private contractor nor works for any private treatment program or private practice, nor has any financial interest in any treatment programs, the possibility exists that Level 1 or 2 assistance may be provided by the EAP/SAP. All assistance beyond Level 1 or 2 will be referred to community resources for treatment. Decisions related to level of Treatment are based on the Assessment Process that includes at a minimum:

(1) Clinical Interview

(1.) Mental Status

(2.) History of use

(3.) Present symptoms

(4.) Family Support

(5.) Appearance and possible health indicators

(6.) Level and frequency of use

(2) SASSI

(3) SOCRATES (A or D)

(4) AUDIT

(5) PHQ 9

(6) Length of service with City of Las Cruces in a Safety Sensitive Position

(7) Willingness or resistance to enter into appropriate level of treatment

- C. The Return to Work Process includes final Assessment of Compliance with treatment recommendations and willingness to return to work under the Follow-Up testing plan (specifics of testing dates or frequency are never given to the employee), successful completion of the Return To Work Drug or Alcohol Test, and Continued follow-up with the EAP/ SAP over a protracted period of time.

- D. The EAP is available to all City of Las Cruces employees and can be reached at the following: **SEE ADDENDA 2, pg. 20**

APPENDIX B TRANSIT

The provisions of this Appendix shall apply to all City of Las Cruces transit positions that are subject to the drug and alcohol testing provisions of the Federal Transit Administration of the Department of Transportation Regulations, 49 CFR Part 655.

GENERAL

1. PURPOSE:

The goal of the City of Las Cruces substance abuse policy is to (1) assure that employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthy manner; (2) create a workplace environment free from the adverse effects of drug and alcohol substance abuse or misuse; (3) prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances; and (4) encourage employees to seek professional assistance any time personal problems, including alcohol or drug dependency, adversely affect their ability to perform their assigned duties.

2. DEFINITIONS RELATED TO THE FEDERAL TRANSIT ADMINISTRATION DRUG AND ALCOHOL PROGRAM:

- A. *Accident* is defined as one of the following: (a) An individual dies; or (b) An individual suffers bodily injury and immediately receives medical treatment away from the scene or the accident; or (c) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle.
- B. *Covered Employee* is defined as a person, including an applicant or transferee, which performs or will perform a safety-sensitive function for an entity subject to this Policy.
- C. *DOT or The Department* is defined as the United States Department of Transportation.
- D. *DOT Agency* is defined as an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring drug and alcohol testing. See 14 CFR Part 121, Appendixes I and J; 33 CFR Part 95; 46 CFR Parts 4, 5, and 16; and 49 CFR Parts 199, 219, 382, and 655.

- E. *The City* is defined as a recipient or other entity that provides mass transportation service for which performs a safety-sensitive function for such recipient or other entity. This term includes sub-recipients, operators, and contractors.
- F. *FTA* is defined as the Federal Transit Administration, an agency of the DOT.
- G. *Performing (a safety-sensitive function)* is defined as a covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.
- H. *Positive rate* means the sum of the annual number of positive results for random drug tests conducted under this section plus the annual number of refusals to submit to a random drug test authorized under this section divided by the sum of the annual number of random drug tests conducted under this section plus the annual number of refusals to submit to a random drug test authorized under this Policy.
- I. *Test Refusal:*
As employee, you have refused to take a drug test if you:
- (1) Fails to appear for a test within reasonable time, as determined by the DER.
 - (2) Fails to remain at the testing site until the testing process is complete.
 - (3) Fails to provide urine or breathe specimen for any alcohol test required by 49 CFR Part 40 or DOT regulations.
 - (4) In the case of direct observation or monitoring collection in a drug test, fails to permit the observation or monitoring of your provision of a specimen, or fails to follow the instructions given by the observer.
 - (5) Fails to provide sufficient amount of urine or breathe when directed and it has been determined, through a required medical evaluation, that there is no adequate medical explanation for the failure.
 - (6) Fails or declines to take a second test the City or collector has directed.

- (7) Fails to undergo a medical examination or evaluation, as directed by the MRO as part of a verification process or as directed by the DER as part of a "shy bladder" or "shy lung" procedure.
- (8) Fails to cooperate with any part of the testing process. If the MRO reports that there is verified adulteration or substituted test result.
- (9) Possess or wear a prosthetic or other device that could be used to interfere with the collection process.
- (10) Admit to the collector or MRO that you adulterated or substituted the specimen.
- (11) Failure to sign Part 2 of the alcohol testing form.

J. *Safety-sensitive function* is defined as any of the following duties, when performed by employees of recipients, sub-recipients, operators, or contractors:

- (1) Operating a revenue service vehicle, including when not in revenue service;
- (2) Operating a non-revenue service vehicle when required to be operated by a holder of a Commercial Driver's License.
- (3) Controlling dispatch or movement of a revenue service vehicle.
- (4) Maintaining a (includes repairs, overhaul and rebuilding) revenue service vehicle or equipment used in revenue service.

(See Addendum A)

K. Violation rate means the sum of the annual number of results from random alcohol tests conducted under this section that have alcohol concentrations of .04 or greater plus the annual number of refusals to submit to alcohol tests authorized under this section, divided by the sum of the annual number of random alcohol tests conducted under this section plus the annual number of refusals to submit to a drug test authorized under this Policy.

3. STAND-DOWN FOR DRUG TESTING:

The City has no policy in place.

4. EDUCATION AND TRAINING PROGRAMS:

The City of Las Cruces shall establish an employee education and training program for all covered employees, including:

- A. Education. The education component shall include display and distribution to every covered employee of informational material and a community service hot-line telephone number for employee assistance, if available. The point of contact is the City's SAP.
- B. Training.
 - (1) Covered employees. Covered employees must receive at least sixty (60) minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.
 - (2) Supervisors. Supervisors and/ or other company officers authorized by the City to make reasonable suspicion determinations shall receive at least sixty (60) minutes of training on the physical, behavioral, and performance indicators of probable drug use and at least sixty (60) minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

5. NOTICE REQUIREMENT.

Before performing a drug or alcohol test under this Policy, the City shall notify a covered employee that the test is required under 49 CFR Parts 40 and 655. The City shall notify each covered employee when it is implementing elements of this Policy not required under 49 CFR Part 655. A city form explaining the type of testing to be done will be handed to the covered employee prior to being tested.

- 6. **DRUG TESTING:** No person shall be placed, hired or transferred to an FTA Safety Sensitive Covered position unless that person has taken and not failed a pre-employment drug test within two weeks prior to placement, hire or transfer.
 - A. The City shall establish a program that provides testing for prohibited drugs and drug metabolites in the following circumstances: pre-

employment, post-accident, reasonable suspicion, random, and return to duty/follow-up.

- B. The drugs the City of Las Cruces is testing for include marijuana, cocaine, opiates, amphetamines, and phencyclidine. Employees should know that the assertion of consumption or other use of a hemp or other non-prescription marijuana related product as a defense of a positive marijuana test will not be accepted by the Medical review Officer in accordance with Part 40-1.51(f).

An initial drug screen will be conducted on each specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts present are above the minimum thresholds established in 49 CFR Part 40. Consumption of these products is prohibited at all times.

- C. In the instance of a dilute sample, and if levels meet requirements outlined in Part 40, the employee may be retested under observation when ordered by the **MRO**.
 - a. If the dilute sample is "dilute negative" and the second collection is also "dilute negative" the test will be ruled complete and the result will be recognized as a passed drug test.
 - b. If the initial test is a "dilute positive" and the retest under observation is also a "dilute positive" the test will be ruled as complete and the result will be recognized as a failed drug test.

PROHIBITED ALCOHOL USE

1. ALCOHOL TESTING:

- A. The City shall establish a program that provides for testing for alcohol in the following circumstances: post-accident, reasonable suspicion, random, and return to duty/follow-up. Evidential Breath Testing (EBT) devices will meet Model Specifications for Devices to Measure Breath Alcohol provided by the National Highway Traffic Safety Administration (NHTSA). Under direction of the Risk Management Section of City of Las Cruces, the Safety Staff shall be trained and shall continue all training necessary to maintain BAT Certification. Said staff of City of Las Cruces shall administer Evidential Breath Testing (EBT) on any employee when testing is required from a Random Test as it occurs with either FTA of FMCSA employees, or in the situation resultant from a Post-Accident, or Reasonable Suspicion for any City of Las Cruces employee.

- (1.) In the case of Post-Accident, Evidential Breath Testing (EBT) shall be administered at the site of the accident, and in the soonest possible time after an accident.
- (2.) The EBT Device shall be transported by the Safety Staff in the City of Las Cruces vehicle designated for this purpose.
- (3.) The vehicle for the purpose of EBT shall have the device and place for both staff and the employee to be tested in a confidential setting with windows shaded (law enforcement standard tinting), doors closed at the time of test and out of view of any other persons.
- (4.) In any case of Random for FTA of FMCSA, and Reasonable Suspicion, the EBT may occur on site or in the most reasonable location away from view of any other persons.
- (5.) In the case of *after regular hours* need for testing, the on-call technician shall perform the EBT at the work site of the employee to be tested.

- B. The City shall prohibit a covered employee, while having an alcohol concentration of 0.04 or greater from performing or continuing to perform a safety-sensitive function.

2. ON DUTY USE:

The City shall prohibit a covered employee from using alcohol while performing safety-sensitive functions. No City supervisor having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.

3. PRE-DUTY USE:

- A. The City shall prohibit a covered employee from using alcohol within four (4) hours prior to performing safety-sensitive functions. No City supervisor having actual knowledge that a covered employee has used alcohol within four hours of performing a safety-sensitive function shall permit the employee to perform or continue to perform safety-sensitive functions.
- B. On-call employees. The City shall prohibit the consumption of alcohol for the specified on-call hours of each covered employee who is on-call. The procedure shall include:

- (1) The opportunity for the covered employee to acknowledge the use of alcohol at the time he or she is called to report to duty and the inability to perform his or her safety-sensitive function.
- (2) The requirement that the covered employee take an alcohol test, if the covered employee has acknowledged the use of alcohol, but claims ability to perform his or her safety-sensitive function.

4. USE FOLLOWING AN ACCIDENT:

The City shall prohibit alcohol use by any covered employee required to take a post-accident alcohol test for eight (8) hours following the accident or until he or she undergoes a post-accident alcohol test, whichever occurs first.

5. OTHER ALCOHOL-RELATED CONDUCT:

- A. The City shall not permit a covered employee tested under this Policy who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 to perform or continue to perform safety-sensitive functions, until:
 - (1) The employee's alcohol concentration measures less than 0.02; or
 - (2) The start of the employee's next regularly scheduled duty period, but not less than eight (8) hours following administration of the test.
- B. The City will not take any action under this section against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit the City with authority independent of this section from taking any action otherwise consistent with law.

6. TYPES OF TESTING:

- A. Direct Observation Collection

A direct observed collection procedure is the same as a routine collection with the additional requirement that an observer physically watches the employee urinate into the collection

container. The observer must be the same gender as the employee; there are no exceptions to this requirement.

B. The employer is required to conduct a directly observed when:

1. The laboratory reports an invalid specimen and the **MRO** reports that there was not adequate medical explanation for the result.
2. Because the split specimen test could not be performed (e.g. split lost, inadequate volume.)
3. The **MRO** reports a positive or negative-dilute result with a creatinine concentration greater than or equal to 2mg/dL but less than or equal to 5mg/dL.
4. The test is a return-to-duty or follow-up test.
5. If the collector observed materials brought to the collection site or an employees conduct clearly indicated an attempt to tamper with a specimen.
6. The temperature on the original specimen was out of range or the specimen appeared to have been tampered with.
7. Laboratory tests must retain the sample which was identified as positive, adulterated or invalid for a minimum of one year. The specimen must be kept in a secure, long term frozen storage in accordance with HHS requirements.

C. Pre-employment drug testing

- (1) Before allowing a covered employee or applicant to perform a safety-sensitive function for the first time, the City must ensure that the employee takes a pre-employment drug test administered under this section with a verified negative result. The City may not allow a covered employee, including an applicant, to perform a safety-sensitive function unless the employee takes a drug test administered under this section with a verified negative result.
- (2) When a covered employee or applicant has previously failed or refused a pre-employment drug test administered under this section, the employee must provide the employer proof of having successfully completed a referral, evaluation and treatment plan.
- (3) The City may not transfer an employee from a non-safety-sensitive function to a safety-sensitive function until the

employee takes a pre-employment drug test administered under this section with a verified negative result.

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

D. Pre-employment alcohol testing.

The City may, but is not required to, conduct pre-employment alcohol testing under this section. If an employer chooses to conduct pre-employment alcohol testing, the employer must comply with the following requirements:

- (1) The City must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions.
- (2) The City must treat all covered employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., it must not test some covered employees and not others).
- (3) The City must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.
- (4) The City must conduct all pre-employment alcohol tests using the alcohol testing procedures set forth in 49 CFR Part 40.
- (5) The City must not allow a covered employee to begin performing safety sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.02.

E. Reasonable suspicion testing.

- (1) The City shall conduct a drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse.
 - (2) The City's determination that reasonable suspicion exists shall be based on behavior, speech, or body odors of the covered employee. A supervisor(s) or other City official(s) who is trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations.
11. Alcohol testing is authorized under this section only if the observations required by paragraph (2) of this section are made during, just preceding, or just after the period of the workday that the covered employee is required to be in compliance with this section. An employer may direct a covered employee to undergo reasonable suspicion testing for alcohol only 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.
111. If an alcohol test required by this section is not administered within two (2) hours following the determination under paragraph (2) of this section, the City shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight (8) hours following the determination under paragraph (2) of this section, the City shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

F. Post-Accident Testing.

All surviving safety sensitive employees will be required to undergo urine and breath testing if they are involved in an accident that results in a fatality. In addition, safety-sensitive employees will be required to undergo urine and breath testing if they are involved in an accident while on duty for city unless the city official in charge at the time determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident.

This includes all employees that are on-duty in vehicles and any other, whose performance could have contributed to the accident. The FTA defines an accident as an occurrence associated with the

operation of a vehicle, if as a result:

- (a) An individual dies; or
 - (b) An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or
 - (c) With respect to an occurrence in which the mass transit involved is a bus, electric bus, van or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle.
- (1) Following an accident, the employee will be tested as soon as possible, but not to exceed eight hours for alcohol testing and 32 hours for drug testing. Any employee involved in an accident must refrain from alcohol use for eight hours following the accident and be readily available for testing until he/she undergoes a post-accident alcohol test. Post-accident alcohol testing is stayed while an employee assists in the resolution of the accident or receives medical attention following the accident.

In reference to an alcohol test, if the employee is not tested within two (2) hours, documentation must be submitted as to why the test was delayed, including documentation continuing attempts to obtain specimen. Attempts to obtain specimen must cease after eight hours.

Any employee who leaves the scene of the accident without appropriate authorization prior to submission to drug and alcohol testing will be considered to have refused the test and their employment will be terminated. Employees tested under this provision will include not only the operations personnel, but any other covered employees whose performance could have contributed to the accident. When a drug test result comes back as a negative dilute, it will result in retesting.

- (2) The decision not to administer a drug and/ or alcohol test under this section shall be based on the employer's determination, using the best available information at the time of the determination that the employee's performance could not have contributed to the accident. Such a decision must be documented in detail, including the decision-making process used to reach the decision not to test.
- (3) Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the

scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

G. Random testing.

The minimum annual percentage rate for random drug testing shall be 49 CFR 49 Part 655. The random alcohol testing rate shall be ten (10) percent. As provided paragraph (b) of this section, this rate is subject to annual review by the FTA Administrator.

- (1) The selection of employees for random drug and alcohol testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.
- (2) The City shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rates for random drug and alcohol testing determined by the FTA Administrator.
- (3) The City shall ensure that random drug and alcohol tests conducted under this section are unannounced and unpredictable, and 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.
- (4) The City shall require that each covered employee who is notified of selection for random drug or random alcohol testing proceed to the test site immediately. If the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site immediately.
- (5) 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. A covered employee may be randomly tested for prohibited drug use anytime while on duty.

(6) Refusal to submit to a drug or alcohol test.

The City shall require a covered employee to submit to a post-accident drug and alcohol test, a random drug and alcohol test, a reasonable suspicion drug and alcohol test, or a follow-up drug and alcohol test. When an employee refuses to submit to a drug or alcohol test, the employer shall follow the procedures outlined in the City's Substance Abuse Policy.

H. Substance abuse professional (SAP).

The SAP must perform the functions in 49 CFR Part 40 and City policies.

7. CONSEQUENCES:

Action when an employee has a verified positive drug test result or has a confirmed alcohol test result of 0.04 or greater, or refuses to submit to a test.

A. Immediately after receiving notice from a medical review officer (MRO) that a covered employee has a verified positive drug test result, the employer shall require that the covered employee cease performing a safety-sensitive function and follow City Policies.

B. Immediately after receiving notice from a Breath Alcohol Technician (BAT) that a covered employee has a confirmed alcohol test result of 0.04 or greater, the employer shall require that the covered employee cease performing a safety-sensitive function.

C. Before allowing the covered employee to resume performing a safety-sensitive function, the employer shall ensure the employee meets the requirements of 49 CFR Part 40 and City Policy for returning to duty, including taking a return to duty drug and/or alcohol test.

D. An employee who has a confirmed alcohol concentration of greater than 0.02 but less than 0.04 will be removed from his/her position for eight hours unless a retest results in a concentration measure of less than 0.02 and may be subject to disciplinary action under city policies.

H. Prior to an employee returning to a safety-sensitive position, they must take a return-to-duty test. This test cannot occur until after the SAP has determined that the employee has successfully complied with prescribed

education and/ or treatment. The employer must have a negative drug test result and/ or an alcohol test with an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive duties.

8. Contact person responsible for the Drug and Alcohol Testing Program is the DER (Designated Employer Representative) who shall be responsible for the drug and alcohol testing program for employees, and who shall manage all proceedings and information that come from or is directed to the MRO (Medical Review Officer). **SEE ADDENDA 2, pg. 20**

APPENDIX C

GENERAL POLICY DEFINITIONS FOR ALL EMPLOYEES

As used in this Policy, the following words shall have the following meanings. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, words in the singular shall include the plural, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory, and the word "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- A. *Accident* is defined as any unexpected and/ or unintended event involving a motor vehicle and/ or motorized City equipment, which comes in contact with something or someone, without regard to the amount of damage involved or the location of the incident.
- B. *Adulterated Specimen* is defined as the primary specimen characteristics that are outside the normal expected range of human urine.
- C. *Alcohol* is defined as the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl or isopropyl alcohol.
- D. *Alcohol Concentration* is defined as a covered employee having an alcohol concentration of .04 or greater.
- E. *Alcohol Screening Test* is defined as an analytical procedure, performed in accordance with 49 C.F.R. Part 40, to determine whether an employee may have a prohibited alcohol concentration in his or her system.
- F. *Alcohol Use* is defined as the drinking or swallowing of any beverage, mixture, or preparation, including any medication containing alcohol.
- G. *City of Las Cruces' Designated Employer Representative (DER)* is defined as the person designated by the City Manager to oversee the implementation of this Policy, to prepare procedures for carrying out this Policy, to receive test results from the Medical Review Officer (MRO) and to carry out provisions of the Policy. The DER for the City is the Risk Manager. (See Addendum B)
- H. *Collector* is defined as a person who instructs and assists employees at the collection site, who receives and makes initial inspection of the specimen, provided by those employees, and who initiates and completes the Chain of Custody Form.

- I. *Collection Site* is defined as a place selected by the employer where employees present themselves for the purpose of providing a urine or breathalyzer test.
- J. *Confirmation Test* is defined as a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy.
- K. *Covered Function* is defined as an operation, maintenance, or emergency-response function in the, pipeline safety, transit, commercial driver's license holders, safety sensitive positions or any function designated by the City Manager to fall within this Policy.
- L. *Covered Employee* is defined as a person mentioned herein by DOT or this Policy that is subject to Drug and Alcohol testing.
- M. *Diluted or Substituted Specimen* is defined as the primary specimen to be diluted if the creatinine concentration is greater than or equal to 2mg/ dL but less than 20 mg/dL, and the specific gravity is greater than 1.0010 but less than 1.0030 on a single aliquot.
- N. *DOT Procedures* are defined as the procedures for drug testing and Alcohol testing set forth by the Secretary of Transportation in 49 C.F.R.
- O. *Drug Test* is defined as an analysis of urine of an employee or applicant, pursuant to DOT procedures, to determine the presence or absence of a prohibited drug.
- P. *Employee* is defined as any person who receives wages from the City for performance of services, whether full-time or part-time, regular, or temporary contract and includes seasonal and provisional employees.
- Q. *Employee Assistance Program* is defined as the program provided by the City to provide assistance and counseling to Employees and their families with regard to chemical dependency and other personal and family problems.
- R. *Failing a Drug Test* is defined as the confirmation test result shows positive evidence of the presence, under any of the inclusive regulations in this Policy, of a **prohibited drug** in the employee/applicant's urine.

- S. *Failing an Alcohol Test* is defined as the results of an Alcohol Test show the presence of alcohol in the breath or blood of the employee at a level determined by the appropriate regulation.
- T. *Initial Test* is defined as an immunoassay screened to eliminate "negative" urine specimens from further consideration.
- U. *Medical Review Officer* is defined as a licensed physician with knowledge of drug and alcohol abuse disorders and will interpret each confirmed positive test result as follows to determine if there is an alternative medical explanation for the confirmed positive test results.
- V. *Prohibited Drugs* are defined as any of the following substances or their metabolites: marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP) or any substance within the regulations. In addition to the aforementioned drugs, it is the City's policy to prohibit any illegal controlled substance, as well as any drug not approved by the USDA or the USFDA. Illegal use includes use of, or impairment by, any illegal drug, misuse of legally prescribed drugs, misuse of over the counter drugs, shall include legal substances, which when ingested are metabolized into a prohibited substance, or illegally obtained prescription drugs. [In compliance with the NM Cannabis Regulation Act, for employees other than those in a DOT or Public Safety Testing Pool, Marijuana/Cannabis will not be included as a Prohibited Drug, unless in violation of Policy 5 C & D above.](#)
- W. *Refusal to Submit to a Drug and Alcohol Test* is defined as a refusal to take the test, inability to provide sufficient quantities of breath or urine to be tested without a valid medical explanation from a doctor acceptable to the City, tampering with or attempting to adulterate the specimen or collection procedure, not reporting to the collection site in the time allotted, refusal to sign the testing form, or leaving the leaving the collection site without permission from the collector, MRO or DER.
- X. *Safety Sensitive Position* is defined as a position with job functions, which have been determined that impairment by drug or alcohol abuse of an incumbent in that position would constitute a substantial, immediate and direct threat to the health, safety and welfare of the public, the employee or a fellow employee. The Risk Manager or designee shall determine which positions are safety sensitive and shall maintain a list of all such positions.
- Y. *Screening Test* is defined as an individual who has successfully completed an approved DOT non-evidential training course and whom will conduct drug or alcohol screening tests. Screening test technicians and breath alcohol technicians must meet the requirements of Section 40.213

- Z. *Substance Abuse Professional (SAP)* is defined as a licensed physician, licensed or certified psychologist, social worker, employee assistance professional or addictions counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of Alcohol and controlled substances-related disorders.

APPENDIX D

TESTING PROCESSES

1. DRUG AND ALCOHOL TESTS

Employees sent for drug and alcohol testing must be accompanied by a supervisor in their chain of command and remain at the collection site until given permission to leave by the collector, MRO or DER.

A. The following drug tests shall be conducted pursuant to this Policy:

Pre-Employment Drug Test: All safety-sensitive and non-safety-sensitive position applicants shall undergo drug testing following the offer of employment or transfer into a safety-sensitive position. Receipt by the City of Las Cruces of a negative drug test result is required prior to employment or transfer into a safety-sensitive position.

Post-Accident Drug Test: for any employee who has been involved in an accident and whose conduct cannot be discounted as a contributing factor to the accident. An employee's conduct will be a contributing factor to the accident if, under all the circumstances, the accident would not have occurred without such conduct. When an employee is involved in an accident, he/ she shall immediately notify his supervisor. The supervisor or employee shall then immediately notify the Joint Utilities Dispatch. The Risk Manager or Designee shall confer with the City Attorney's Office if there are any questions or concerns when determining if the employee's conduct was a contributing factor to the accident. If it is determined that the conduct was a contributing factor, the employee shall be required to take a post-accident drug test. Such test shall be taken as soon as possible, but not later than thirty-two (32) hours after the accident.

Reasonable Cause Drug Test: It is the City of Las Cruces' policy that all employees are subject to fitness-for-duty evaluations consisting of drug and alcohol test when there is a reason to suspect the employee is under the influence of drugs on duty. A referral for testing will be made when a trained supervisor can articulate and substantiate physical, behavioral and performance indicators of probable drug use or alcohol misuse by observing the appearance, behavior, speech, or body odors of the employee. The supervisor shall notify the Risk Manager, SAP or designee of the facts and circumstances giving rise to that belief and the Risk Manager, SAP or designee shall determine if facts and circumstances support a reasonable belief. If it is determined that they do, the employee shall be required to take a Reasonable Cause Drug Test. Two supervisors, one who is trained in

the detection of drug use, must substantiate and concur the decision to test an employee who is reasonably suspected of drug use.

Random Drug Test: All employees in pipeline safety, transit, commercial driver's license holders, public safety and safety sensitive employees of the City will be subject to random drug tests. Employees will be selected for testing by a computer-based random selection generator based upon employees' specified information. Random drug tests will be conducted periodically throughout the year in sufficient numbers established by CFR 49 part 40.

The DER may lower the rate to twenty-five (25%) percent IAW the DOT for all covered employees if the DER determines that the data received under the reporting requirements for two (2) consecutive calendar years indicate that the violation's rate is less than 1.0 percent but equal to or greater than 0.5 percent.

Return to Duty Drug Test: employees who fail a drug test must take and pass a return to work drug test not later than four (4) weeks (unless under a treatment provider or SAP) after receiving the failure notice on the first drug test before that employee can return to his position.

Any employee who returns to duty after passing a return to duty drug test shall be subject to reasonable drug testing, without prior notice, for up to sixty (60) months after his/her return to duty.

B. The following alcohol tests shall be conducted pursuant to this Policy:

Post Accident Alcohol Test: Whenever an employee has been involved in an accident and the employee's conduct cannot be discounted as a contributing factor to the accident and there are specific and contemporaneous physical, behavioral or performance indicators of probable alcohol use. The employee shall be required to take a post accident alcohol test. Employees whose behavior cannot be completely discounted as a contributing factor to an accident must remain available for alcohol testing and may not consume alcohol for up to eight (8) hours following an accident or until the alcohol test has been conducted. Every attempt will be made by the City to have this test performed within a two (2) hour period.

Reasonable Cause Alcohol Test: It is the City of Las Cruces' policy that all employees are subject to fitness-for-duty evaluations consisting of an alcohol test when there is a reason to suspect the employee is under the influence of alcohol on duty. A referral for testing will be made when a trained supervisor can articulate and substantiate physical, behavioral and performance indicators of probable alcohol

misuse by observing the appearance, behavior, speech, or body odors of the employee. The supervisor shall notify the DER, SAP or designee of the facts and circumstances giving rise to that belief, and the DER, SAP or designee shall confer with the Employee Assistance Coordinator or City Attorney's Office to determine if facts and circumstances support a reasonable belief. If it is determined that they do, the employee shall be required to take a Reasonable Cause Alcohol Test.

Random Alcohol Test: IAW FTA policies, only FTA and FMCSA employees are subject to random alcohol testing.

Return to Duty Alcohol Test: employees who fail an alcohol test must take and pass a return to duty alcohol test (must have .02 concentration or less) not later than three (3) days after receiving the failure notice unless the first alcohol test is extended due to medical treatment as determined by the Employee Assistance Program Coordinator.

Follow-up Alcohol Test: An employee who has passed a return to work alcohol test and returned to his position and who has been evaluated by a substance abuse professional as being in need of assistance in resolving problems associated with alcohol abuse will also be subject to follow-up alcohol testing. Such testing will be conducted on an unannounced basis and will consist of at least six (6) tests in the twelve (12) months following the employee's return to work. The substance abuse professional may elect to terminate follow-up testing after six (6) tests.

2. COLLECTION PROCESS:

The individual reporting to the test site must have some form of photographic identification to show to the collection site personnel. The individual will be asked to remove unnecessary outer garments, such as coats and jackets and to empty his or her pockets and display the items in them. Purses and briefcases remain with the outer garments, though wallets may be retained.

3. DIRECTLY OBSERVED COLLECTIONS

A directly observed procedure is the same as a routine collection with the additional requirement that an observer physically watches the employee urinate into the collection container. The observer must be the same gender as the employee; there are no exceptions to this requirement.

- A. An observation is required when: The employer or DER directs the collector to conduct a collection under direct

observation.

- B. The employer is required to conduct a directly observed when:

The laboratory reports an invalid specimen and the **MRO** reports that there was not adequate medical explanation for the result.

- (1) Because the split specimen test could not be performed (e.g. split lost, inadequate volume.)
- (2) The **MRO** reports a negative-dilute result with a creatinine concentration greater than or equal to 2mg/dL but less than or equal to 5mg/dL.
- (3) The test is a return-to-duty test or follow-up test.
- (4) If the collector observed materials brought to the collection site or an employee's conduct clearly indicated an attempt to tamper with a specimen.
- (5) The temperature on the original specimen was out of range or the specimen appeared to have been tampered with.

4. SPLIT SAMPLE:

- A. The collector will have only one urine specimen collection under his/her supervision at one time. The collector then divides the specimen into a 30ml primary and a 15ml split specimen (split sample). "Specimen A" bottle seal is placed over the 30ml bottle and the "Specimen B" seal is placed over the split sample bottle. The collection procedure is completed when the urine bottle has been sealed and initialed and the individual has departed the collection area. The individual initials both seals.
- B. If the sample tests positive or is determined by the laboratory to be adulterated or substituted and the **MRO** verifies the laboratory findings after review with employee, the employee may request a test of the split-specimen. Such a request must be made in writing or verbally to the **MRO** within seventy-two (72) hours of the time **MRO** provides the notification to the employee that the test is verified positive, adulterated, or substituted.
- C. The secondary laboratory is only required to run a confirmatory test for the specific substance, which appears in the primary sample. The **MRO** will notify the **DER** and employee of the result. If the split sample reveals no measurable presence of the drug in question, the former positive test will be canceled.

APPENDIX E COLLECTOR GUIDELINES

1. **RESPONSIBILITIES:** To be permitted to act as a collector in the DOT Drug testing program, you must meet each of the requirements of this section:
 - A. *Basic information.* You must be knowledgeable about this part, the current "DOT Urine Specimen Collection Procedures Guidelines," and DOT agency regulations applicable to the employers for whom you perform collections, and you must keep current on any changes to these materials. The DOT Urine Specimen Collection Procedures Guidelines document is available from ODAPC (Department of Transportation, 1200 New Jersey Avenue, SE, Washington DC, 20590, 202-366-3784, or on the ODAPC web site (<http://www.dot.gov/ost/dapc>)).
 - B. *Qualification training.* You must receive qualification training meeting the requirements of this paragraph. Qualification training must provide instruction on the following subjects:
 - (1) All steps necessary to complete a collection correctly and the proper completion and transmission of the CCF;
 - (2) "Problem" collections (e.g., situations like "shy bladder" and attempts to tamper with a specimen);
 - (3) Fatal flaws, correctable flaws, and how to correct problems in collections; and
 - (4) The collector's responsibility for maintaining the integrity of the collection process, ensuring the privacy of employees being tested, ensuring the security of the specimen, and avoiding conduct or statements that could be viewed as offensive or inappropriate;
 - C. *Initial Proficiency Demonstration.* Following your completion of training under paragraph (b) of this section, you must demonstrate proficiency in collections under this part by completing five consecutive error-free mock collections.

- (1) The five mock collections must include two uneventful collection scenarios, one insufficient quantity of urine scenario, one temperature out of range scenario, and one scenario in which the employee refuses to sign the CCF and initial the specimen bottle tamper-evident seal.
- (2) Another person must monitor and evaluate your performance, by a means that provides real-time observation and interaction between the instructor and trainee, and attest in writing that the mock collections are "error-free." This person must be a qualified collector who has demonstrated necessary knowledge, skills, and abilities by-
 - a. Regularly conducting DOT drug test collections for a period of at least a year;
 - b. Conducting collector training under this part for a year; or
 - c. Successfully completing a "train the trainer" course.

2. SCHEDULE for qualification training and initial proficiency demonstration. The following is the schedule for qualification training and the initial proficiency demonstration you must meet:

- A. If you became a collector before August 1, 2001, and you have already met the requirements of paragraphs (b) and (c) of this section, you do not have to meet them again.
- B. If you became a collector before August 1, 2001, and have yet to meet the requirements of paragraphs (b) and (c) of this section, you must do so no later than January 31, 2003.
- C. If you become a collector on or after August 1, 2001, you must meet the requirements of paragraphs (b) and (c) of this section before you begin to perform collector functions.
 - (1) Refresher training. No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c) of this section.

- (2) Error Correction Training. If you make a mistake in the collection process that causes a test to be cancelled (i.e., a fatal or uncorrected flaw), you must undergo error correction training. This training must occur within 30 days of the date you are notified of the error that led to the need for retraining.
 - a. Error correction training must be provided and your proficiency documented in writing by a person who meets the requirements of paragraph (c)(2) of this section.
 - b. Error correction training is required to cover only the subject matter area(s) in which the error that caused the test to be cancelled occurred.
 - c. As part of the error correction training, you must demonstrate your proficiency in the collection procedures of this part by completing three consecutive error-free mock collections. The mock collections must include one uneventful scenario and two scenarios related to the area(s) in which your error(s) occurred. The person providing the training must monitor and evaluate your performance and attest in writing that the mock collections were "error-free."
- (3) Documentation. You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use your services. Immediate supervisors must not serve as a collection site person unless there is no other person available.

3. WHAT STEPS MUST OPERATORS OF COLLECTION SITES TAKE to protect the security and integrity of urine collections?

- A. Collectors and operators of collection sites must take the steps listed in this section to prevent unauthorized access that could compromise the integrity of collections.
- B. As a collector, you must do the following before each collection to deter tampering with specimens:

- (1) Secure any water sources or otherwise make them unavailable to employees (e.g., turn off water inlet, tape handles to prevent opening faucets);
- (2) Ensure that the water in the toilet is blue;
- (3) Ensure that no soap, disinfectants, cleaning agents, or other possible adulterants are present;
- (4) Inspect the site to ensure that no foreign or unauthorized substances are present;
- (5) Tape or otherwise secure shut any movable toilet tank, or put bluing in the tank;
- (6) Ensure that undetected access (e.g., through a door not in your view) is not possible;
- (7) Secure areas and items (e.g., ledges, trash receptacles, paper towel holders, under-sink areas) that appear suitable for concealing contaminants; and
- (8) Recheck items in paragraphs (b)(1) through (7) of this section following each collection to ensure the site's continued integrity.

C. If the collection site uses a facility normally used for other purposes, Like a public rest room or hospital examining room, you must, as a collector, also ensure before the collection that:

- (1) Access to collection materials and specimens is effectively restricted; and
- (2) The facility is secured against access during the procedure to ensure privacy to the employee and prevent distraction of the collector. Limited-access signs must be posted.

D. As a collector, you must take the following additional steps to ensure security during the collection process:

- (1) To avoid distraction that could compromise security, you are limited to conducting a collection for only one employee at a time. However, during the time one employee is in the period for drinking fluids in a "shy

bladder" situation (see §40.193(b)), you may conduct a collection for another employee.

- (2) To the greatest extent you can, keep an employee's collection container within view of both you and the employee between the time the employee has urinated and the specimen is sealed.
- (3) Ensure you are the only person in addition to the employee who handles the specimen before it is poured into the bottles and sealed with tamper-evident seals.
- (4) In the time between when the employee gives you the specimen and when you seal the specimen, remain within the collection site.
- (5) Maintain personal control over each specimen and CCF throughout the collection process.

E. If you are operating a collection site, you must implement a policy and procedures to prevent unauthorized personnel from entering any part of the site in which urine specimens are collected or stored.

- (1) Only employees being tested, collectors and other collection site workers, DERs, employee and employer representatives authorized by the employer (e.g., employer policy, collective bargaining agreement), and DOT agency representatives are authorized persons for purposes of this paragraph (e).
- (2) Except for the observer in a directly observed collection or the monitor in the case of a monitored collection, you must not permit anyone to enter the urination facility in which employees provide specimens.
- (3) You must ensure that all authorized persons are under the supervision of a collector at all times when permitted into the site.
- (4) You or the collector may remove any person who obstructs, interferes with, or causes a delay in the collection process.

- F. If you are operating a collection site, you must minimize the number of persons handling specimens.

4. COLLECTION SITES, FORMS, EQUIPMENT AND SUPPLIES Used in DOT Urine Collections

- A. The Federal Drug Testing Custody and Control Form (CCF) must be used to document every urine collection required by the DOT drug testing program. The CCF must be a five-part carbonless manifold form. You may view this form on the Department's web site (<http://www.dot.gov/ost/dapc>) or the HHS web site (<http://www.workplace.samhsa.gov>).
- B. You must not use a non-Federal form or an expired CCF to conduct a DOT urine collection. As a laboratory, C/TPA or other party that provides CCFs to employers, collection sites, or other customers, you must not provide copies of an expired CCF to these participants. You must also affirmatively notify these participants that they must not use an expired CCF (e.g., that after September 30, 2011, they may not use an expired CCF for DOT urine collections).
- C. As a participant in the DOT drug testing program, you are not permitted to modify or revise the CCF except as follows:
 - (1) You may include, in the area outside the border of the form, other information needed for billing or other purposes necessary to the collection process.
 - (2) The CCF must include the names, addresses, telephone numbers and fax numbers of the employer and the MRO, which may be preprinted, typed, or handwritten. The MRO information must include the specific physician's name and address, as opposed to only a generic clinic, health care organization, or company name. This information is required, and it is prohibited for an employer, collector, service agent or any other party to omit it. In addition, a C/TPA's name, address, fax number, and telephone number may be included, but is not required. The employer may use a C/TPA's address in place of its own, but must continue to include its name, telephone number, and fax number.
 - (3) As an employer, in Step 1-D of the CCF you may preprint the box for the DOT Agency under whose authority the test will occur.

- (4) As a collector, you may use a CCF with your name, address, telephone number, and fax number preprinted, but under no circumstances may you sign the form before the collection event.

- D. Under no circumstances may the CCF transmit personal identifying information about an employee (other than a social security number (SSN) or other employee identification (ID) number) to a laboratory.

- E. As an employer, you may use an equivalent foreign-language version of the CCF approved by ODAPC. You may use such a non-English language form only in a situation where both the employee and collector understand and can use the form in that language.
[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001; 75 FR 59107, September 27, 2010]

Ifo Pili, City Manager

Date