CITY OF ALBUQUERQUE

Substance Abuse Policy

Personnel Rules and Regulations

Section 1100

Part 1

Effective: February 1, 2012

Human Resources Department

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Albuquerque, NM 87103

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TITLE HUMAN RESOURCES DEPARTMENT
CHAPTER Substance Abuse Policy
PART 1 City-Wide Policy

1. ISSUING AGENCY: The Human Resources Department and the Division of Risk Management, of the Department of Finance and Administrative Services.

2. SCOPE: These rules have general applicability to all prospective and current employees, classified and unclassified, including but not limited to interns, volunteers, and seasonal employees.

3. STATUTORY AUTHORITY: ROA, 1994, § 2-15-1, et seq.; Council Resolutions 65-1995 and 78-1995; 21 U.S.C. § 812; 41 U.S.C. § 701; 21 C.F.R. §§ 1300.11 through 1300.15; 49 C.F.R. §§ 40, 382 and 655; ROA, 1994, § 3-1-1; ROA, 1994, § 3-2-1.

4. DURATION: Until revoked.

5. EFFECTIVE DATE: February 1, 2012, unless a later date is specified at the end of a section.

6. PURPOSE: The purpose of this policy is to provide for a safer environment for all employees and the public and establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701).

7. DEFINITIONS:

A. Accident. An occurrence associated with the operation of City equipment, machinery or vehicles, if as a result (1) an individual dies; (2) an individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or (3) one or more vehicles incurs Disabling Damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle.

B. Adulterated Specimen. A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

C. Alcohol. The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including but not limited to methyl or isopropyl, contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.

D. Alcohol Concentration. The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.

E. Breath Alcohol Technician (BAT). A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.

F. Canceled Test. A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this part otherwise requires to be canceled. A canceled test is neither positive nor negative.

G. C.F.R. Any references herein to the Code of Federal Regulations (C.F.R.) shall refer to the most recent enactment, as it shall be from time to time.

H. Collection/Testing Site. A place selected by the employer where employees present themselves for the purpose of providing a urine specimen for a drug test and for the purpose of providing breath for an alcohol test.

I. Commercial Motor Vehicle. Any self-propelled or towed vehicle used when the vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 or more pounds, or the vehicle is designated to transport more than 15 passengers including the driver, or the vehicle is used in the transportation of hazardous materials in a quantity requiring placarding.

J. DOT. All Department of Transportation agencies, including, but not limited to, the US Coast Guard (USCG), the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Research and Special Programs Administration (RSPA) and the Office of the Secretary (OST). These terms include any designee of a DOT agency.

K. Designated Employer Representative (DER). An employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other communication for the employer, consistent with the requirements of 49 C.F.R. §§ 40, 382 and 655, as amended.

L. Dilute Specimen. A urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

M. Disabling Damage. Damage which precludes the departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs, which includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that makes them inoperative.

N. Evidential Breath Testing Device (EBT) is a device approved by the NHTSA for the evidential testing of breath at the 0.02 and greater alcohol concentrations. Approved devices are listed on the National Highway Traffic Safety Administration (NHTSA) conforming products list.

O. HHS. The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

P. Invalid Drug Test. The result reported by an HHS-certified laboratory in accordance with the criteria established by HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

Q. Medical Review Officer (MRO). A licensed physician (medical doctor or doctor of osteopathy) who responsible for receiving and reviewing laboratory results generated by the City's drug testing program and evaluating medical explanations for certain drug test results.

R. Negative Dilute. A drug test result which is negative for drug/drug metabolites but has a specific gravity value lower than expected for human urine.

S. Negative Drug Test Result. The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.

T. Negative Alcohol Test Result. The result from an EBT test when a Breath Alcohol Concentration (BAC) of less than 0.02.

U. Non-negative Test Result. A test result found to be adulterated, substituted, invalid, or positive for drug/drug metabolites.

V. Observed Collections. Consistent with 49 C.F.R. § 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if (1)the laboratory reports to the MRO that a specimen is invalid, and the MRO reports to the employer that there was not an adequate medical explanation for the result; (2)the MRO reports to the employer that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed; (3) the collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen; (4) the temperature on the original specimen was out of range; (5) the MRO reports a negative-dilute result with a creatine concentration greater than or equal to 2 mg/dL but less than or equal to 5mg/dL; or (6) The test is a return-to-duty or follow-up test.

W. Positive Drug Test Result. The result reported by an HHS-certifed laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations.

X. Positive Alcohol Test Result. The result for an alcohol test that confirms an alcohol concentration of 0.02 BAC or greater.

Y. Positive Test Result. A positive drug test result, a positive alcohol test result, or both.

Z. Prohibited Drug. Drugs including marijuana, cocaine, opiates, amphetamines, or phencyclidine at levels at or above the minimum thresholds specified in 49 C.F.R. § 40, as amended. For sworn members of the Albuquerque Police Department, members of Aviation Police, and Open Space Enforcement Officers, Prohibited Drug shall mean marijuana, cocaine, opiates, amphetamines, phencyclidine, barbiturates, benzodiazepines, methadone, methaqualone, and propoxyphene at levels at or above the minimum thresholds specified in Appendix A of Part 1.

AA. Public Safety Employees. Sworn members of the Albuquerque Police and Fire Departments, members of the Aviation Police, Open Space Rangers, animal services personnel, transport and security officers.

AB. Refusal to Test. A refusal to test includes, but is not limited to, the following circumstances:

- Failure to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer.
- Failure to remain at the collection/testing site until the testing process is complete;
- Failure to provide a urine or breath specimen for any drug or alcohol test required by 49 C.F.R. § 40, as amended or DOT agency regulations;
- In the case of a directly observed or monitored collection in a drug test, failure to permit the observation or monitoring of your provision of a specimen;
- Failure to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- Failure or decline to take an additional test the employer or collector has directed you to take;
- Failure to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the employer as part of the "shy bladder" or "shy

lung" procedures;

- Failure to cooperate with any part of the testing process (e.g. refusal to empty pockets when so directed by the collector, behaving in a confrontational way that disrupts the collection process, failure to wash hands have being directed to do so by the collector)
- Verbal or written refusal to provide a breath/urine specimen;
- For an observed collection, failure to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process;
- Possessing or wearing a prosthetic or other device that could be used to interfere with the collection process;
- Admission to the collector or MRO that the specimen was adulterated or substituted;
- If the MRO reports that there is a verified adulterated or substituted test result;
- Failure or refusal to sign Step 2 of the alcohol testing form.
- Failure to remain at the scene of an accident prior to submission to drug/alcohol tests without a legitimate explanation;
- Failure to refrain from consuming alcohol within eight (8) hours following involvement in an accident without first having submitted to post accident drug/alcohol tests;
- Providing false information in connection with a drug test; and
- Engaging in conduct that clearly obstructs the testing process.

AC. Revenue Service Vehicles. All transit vehicles that are used for passenger transportation service or that require a CDL to operate, and include all ancillary vehicles used in support of the transit system.

AD. Safety-sensitive Employee. A City employee who performs the duties of a safety-sensitive position as determined by the Director of the Human Resources Department.

AE. Safety-sensitive Position. A City position which the Director of the Human Resources Department has determined should be classified as safety-sensitive. At a minimum, under Part 1 of this policy all public safety employees and employees with access to Controlled Substances will be classified in a Safety-Sensitive Position. The following criteria shall be used as a guide for determining additional positions to be classified as safety-sensitive; the extent to which the job responsibilities impact upon the safety of the public; the extent to which the job responsibilities expose the employee or co-worker to hazardous conditions; and, the extent to which the job responsibilities require responsibility for the physical safety of others.

AF. Substance Abuse Professional (SAP). A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders and who is qualified to act as a SAP under 49 C.F.R. § 40.

AG. Substituted Specimen. A verified specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

AH. Validity Testing. The evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was dilute, or if the specimen was substituted.

AI. Verified Negative Test. A drug test result reviewed by a medical review officer and determined

not to contain prohibited drugs or their metabolites at or above the cutoff levels specified in 49 C.F.R. § 40, as amended or specified in Appendix A for SAFE 10 tests.

AJ. Verified Positive Test. A drug test result reviewed by a medical review officer and determined to contain prohibited drugs or their metabolites at or above the cutoff levels specified in 49 C.F.R. § 40, as amended or specified in Appendix A for SAFE 10 tests.

8. PURPOSE AND APPLICABILITY

A. Purpose

(1) The City has a vital interest in maintaining safe, healthful and efficient working conditions for its employees. Being under the influence of alcohol, or the presence of certain drugs in the body system, may pose serious safety and health risks not only to the user but to all those in contact with the user.

(2) By resolution, the City Council adopted an employee substance abuse and drug and alcohol testing policy and directed the Chief Administrative Officer to promulgate directives to implement that policy. This policy is adopted by the Chief Administrative Officer to provide a detailed explanation of the City of Albuquerque substance abuse policy and procedures. The purpose of this policy is to provide for a safer environment for all employees and the public and establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701).

(3) It is intended that this Substance Abuse Policy will be interpreted and implemented in a manner consistent with anti-discrimination requirements including the Americans with Disabilities Act. Consistent with the Drug-free Workplace Act of 1988, all employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the workplace including City premises, City vehicles, while in uniform or while on City business.

(4) All employees are required to notify the City Human Resources of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Such notice must be in writing. Failure to comply with this provision shall result in disciplinary action, up to and including termination.

B. Applicability

(1) Applicants for City employment in safety-sensitive positions are subject to pre-employment drug testing. City employees in safety-sensitive positions are subject to pre-employment, random, reasonable suspicion and post-accident drug and alcohol testing. All City employees are subject to reasonable suspicion drug and alcohol testing. It shall be the responsibility of the Director of the Human Resources Department to determine which positions are safety-sensitive and to notify the affected employees of their status. All safety-sensitive employees returning to duty after a suspension or termination, whether by decree or settlement, as well as any safety-sensitive employee returning to the workplace after any absence of ninety (90) days or more, will be required to take a drug test and have a negative result prior to the performance of safety-sensitive job functions.

(2) Part 1 of this policy applies to public safety (police, fire, aviation police, open space rangers, animal services personnel, transport and security officers) employees and all other employees who have been designated safety-sensitive pursuant to the City's own authority. Part 1 also requires reasonable suspicion testing for all City employees. Part 2 applies to employees who are safety-sensitive because they are required to hold a Commercial Drivers License in accordance with the regulations of the Federal Motor Carrier Safety Administration. Part 3 applies to Transit Department employees who are designated safety-sensitive by the

regulations of the Federal Transit Administration. Part 4 addresses the City's efforts to encourage employees to voluntarily seek assistance regarding substance abuse through the Employee Assistance Program.

9. EDUCATION AND TRAINING

A. This policy shall be provided to every City employee and training and education programs shall be made available. Employees will have access to the corresponding federal regulations including 49 C.F.R. § 40, as amended. Supervisors will receive a minimum of sixty minutes of drug and alcohol specialized training designed to promote the necessary skills to:

(1) Inform employees of this policy,

(2) Enforce this policy,

(3) Identify the signs of drug and alcohol use,

(4) Intervene constructively, and

(5) Integrate an employee effectively back into his work group following intervention and treatment.

B. Non-supervisory employees will receive a minimum of sixty minutes training on the effects and consequences of prohibited drug and alcohol use on personal health, safety, and the work environment.

10. PROHIBITIONS

A. Prohibited Substances. Prohibited substances addressed by this policy include the following:

(1) Illegally Used Controlled Substance or Drugs: Under the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701) any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. § 812), and as further defined by 21 C.F.R. §§ 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration and any drug cited in 49 C.F.R. § 40.85, as amended. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp related products, which cause drug or drug metabolites to be present in the body at or above the minimum thresholds is a violation of this policy. All employees will be tested for marijuana, cocaine, amphetamines, opiates, and as identified in 49 C.F.R. § 40.85, as amended, and may be tested for any drug or any substance identified in Schedule 1 through V of Section 202 of the Controlled Substance Act (21 U.S.C. § 812), and as further defined by 21 C.F.R. §§ 1300.11 through 1300.15. Illegal use of these drugs is prohibited at all times and thus, employees may be tested for these drugs anytime that they are on duty. In addition to the substances cited above sworn members of Albuquerque Police, Aviation Police and Open Space Officers will also be tested for barbiturates, benzodiazepines, methadone, methaqualone, and propoxyphene. Illegal use of these drugs is prohibited at all times and thus, employees may be tested for these drugs anytime that they are on duty.

(2) Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to supervisory personnel in accordance with the Personnel Rules and Regulations. The employee is required to provide a written release from their personal physician indicated that the employee can perform their job functions while under the

influence of the prescribed drug.

(a) A legally prescribed drug means that an individual has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. It must include the patient's name, the name of the substance, quantity/amount to be taken, and the period of authorization. The misuse or abuse of prescription and/or non-prescription drugs while performing City business is prohibited.

(3) Alcohol: The use of beverages containing alcohol or substances (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while on duty is prohibited. An alcohol test can be performed any time an employee is on duty.

B. Prohibited Conduct

(1) Employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body at or above the minimum thresholds defined in 49 C.F.R. § 40, as amended, or defined in Appendix A for SAFE 10 tests.

(2) Employees are prohibited from consuming alcohol while performing job functions or while on-call to perform job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. The employee will subsequently be relieved of his on-call responsibilities and may be subject to disciplinary action.

(3) The City shall not permit any employee to perform or continue to perform their job functions if it has actual knowledge that the employee is using or has used alcohol, has used a controlled substance, or has adulterated or substituted a test specimen for controlled substances.

(4) Employees are prohibited from reporting to work or remaining on duty while having an alcohol concentration of 0.02 or greater regardless of when the alcohol was consumed.

(5) Employees are prohibited from consuming alcohol for eight (8) hours following involvement in an accident or until he submits to the post-accident drug and alcohol test, whichever occurs first.

(6) No employee shall consume alcohol within four (4) hours prior to the performance of job functions.

(7) Employees are prohibited from possessing any amount of alcohol while on duty, unless the alcohol is manifested and is being transported as part of a shipment.

(8) The City under its own authority also prohibits the consumption of alcohol during lunch periods, rest breaks, split shift breaks, or anytime the employee is in uniform.

(9) Consistent with the Drug-free Workplace Act of 1988 (41 U.S.C. § 701) and the Personnel Rules and Regulations, all covered employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the workplace including City premises, City vehicles, while in uniform or while on City business.

11. DRUG STATUTE CONVICTION

A. Consistent with the Drug Free Workplace Act of 1988 (41 U.S.C. § 701), all employees have a duty to notify their immediate supervisor and the Human Resources Director of the City in writing of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action, up to and including termination.

12. TESTING REQUIREMENTS AND PROCEDURES

A. Testing Requirements. Reserved

B. Drug Testing Procedures

(1) All drug and alcohol testing shall be conducted in a manner to assure a high degree of accuracy and reliability. All City drug and alcohol testing will be conducted using techniques, equipment, and laboratory facilities which have been approved the U.S. Department of Health and Human Service (HHS). All testing will be conducted consistent with the procedures put forth in 49 C.F.R. § 40, as amended.

(2) Sworn members of the Albuquerque Police Department will be tested consistent with the SAFE TEN procedures in Appendix A.

(3) The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.

C. Alcohol Testing Procedures. Reserved.

13. TESTING

A. Pre-Employment Testing.

(1) All offers of employment for safety-sensitive positions shall be extended conditional upon the applicant passing a drug test. An applicant shall not be hired into a safety-sensitive position unless the applicant takes a drug test with a verified negative result.

(2) A non-safety-sensitive employee shall not be placed, transferred or promoted into a safety-sensitive position until the employee takes a drug test with a verified negative result.

(3) If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded. Failure of a pre-employment drug test will disqualify an applicant for employment with the City for a period of one year. Evidence of the absence of drug dependency from a Substance Abuse Professional that meets with 49 C.F.R. § 40, as amended, and the approval of the City and a negative pre-employment drug test will be required prior to further consideration for employment. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.

(4) When an employee being placed, transferred or promoted from a non-safety-sensitive position to a safety-sensitive position submits a drug test with a verified positive result, the employee shall be subject to disciplinary action in accordance with the Results and Appeals section herein.

(5) If a pre-employment, pre-transfer, or promotion test is canceled, the City will require the applicant to take and pass another pre-employment drug test.

(6) All applicants or employees being placed, transferred, or promoted from a non-safety-sensitive position to a safety sensitive position are required to execute an authorization form allowing the City to obtain past drug and alcohol test results, including any refusals to test, from each company for whom the employee worked for the previous two (2) years.

(7) In instances where a safety sensitive employee is on extended leave for a period of ninety (90)

days or more regardless of reason, the employee will be required to take a drug test and have a negative test result prior to the conduct of safety-sensitive job functions. A verified positive test will result in termination from City employment.

B. Reasonable Suspicion Testing

(1) An employee of the City shall be required to undergo a drug and alcohol test if there is reasonable suspicion that the employee's alcohol or drug use could impair job performance or safety or both.

(2) Reasonable suspicion shall mean that there is objective evidence, based upon known specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that would lead a reasonable person to believe that the employee:

(a) is under the influence of alcohol or drugs while on duty; or,

(b) is in possession of or using, transferring, selling or purchasing alcohol or drugs during work hours including lunch or break or while on City property or in a City vehicle; or,

(c) is a public safety employee who has recently illegally possessed, transferred, used or sold a prohibited drug.

(3) An employee's admission of abuse of alcohol or use of prohibited drugs to a supervisor in his chain of command, an EAP Counselor, or a provider of medical services under contract to the City shall constitute reasonable suspicion when the use or abuse could impair job performance, safety or both and the employee is not already a participant in a drug, alcohol, or drug and alcohol treatment program.

(4) The Department shall be responsible for transporting the employee to the testing site. Supervisors are to avoid placing themselves or others into situations which might endanger the physical safety of those present. The impacted employee shall be placed on leave with pay status in accordance with the Personnel Rules and Regulations. An employee who refuses an instruction to submit to a drug, alcohol, or drug and alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on leave with pay status pending disciplinary action in accordance with the Results and Appeals section herein.

(5) When an employee reports to the Employee Health Center for treatment or examination and the health care provider has a reasonable suspicion that the employee is a substance abuser, the health care provider shall refer the employee to the DER who shall refer the employee to the SAP for substance abuse testing and assessment. The DER shall notify the appropriate department director or his designee who shall place the employee on leave with pay status in accordance with the Personnel Rules and Regulations.

(6) A written record of the observations which led to a drug and alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation within 24 hours of the observation or prior to the release of the test results. This written record shall be submitted to the Substance Abuse Program Manager and the City's Medical Review Officer and shall be attached to the forms reporting the test results.

(7) A non-safety sensitive employee who submits a breath and/or urine sample for a reasonable suspicion drug and alcohol test which is determined to be a verified positive test result shall be subject to disciplinary action in accordance with the Results and Appeals section herein. A safety-sensitive employee who submits a breath and/or urine sample for a reasonable suspicion drug/alcohol test which is determined to be a verified positive test result will be terminated from City employment. Any employee who refuses to submit to a breath and/or urine sample for a reasonable suspicion drug and alcohol test will be terminated

from City employment.

C. Post-Accident Testing

(1) As soon as practicable following an accident as defined in these regulations, the appropriate department director or designee shall cause the drug and alcohol testing of any safety-sensitive employee whose performance could have contributed to the accident using the best information available at the time of the decision.

(2) If, during the course of the accident investigation, the supervisor has reasonable suspicion that the employee may be under the influence of alcohol or drugs, the supervisor will ensure that a reasonable suspicion drug and alcohol test is conducted as outlined in Section I of this policy. The employee shall be placed on administrative leave with pay in accordance with Personnel Rules and Regulations until the test result is available.

(3) The appropriate department director or designee shall ensure that an employee required to be tested under this section is tested as soon as practicable and within eight (8) hours of the accident. An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.

(4) Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit an 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.

(5) In the rare event the City is unable to perform a City drug and alcohol test (i.e. employee is unconscious, employee is detained by law enforcement agency), the City may use drug and alcohol post accident test results administered by State or local law enforcement officials in lieu of the City test. The State or local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with state and local law.

(6) An employee who submits a breath and/or urine sample for a post-accident drug and alcohol test which is determined to be a verified positive test result or a refusal to test will be terminated from City employment.

D. Random Testing

(1) Safety-sensitive employees are subject to random selection for drug and alcohol testing with no more than two hours notice.

(2) The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees.

(a) The dates for administering unannounced testing of randomly-selected employees shall be spread reasonably throughout the calendar year; and,

(b) The number of safety-sensitive employees randomly selected for drug/alcohol testing during the calendar year shall be not less than twenty-five (25) percent of the total number of employees in the pool.

(3) Each safety-sensitive employee shall be in a pool from which random selection is made. Each

safety-sensitive employee in the pool shall have an equal chance of selection and shall remain in the pool, whether or not the employee has been previously tested. There is no discretion on part of management in the selection and notification of the individuals who are to be tested.

(4) There shall be five (5) pools of safety-sensitive employees from which employees can be randomly selected. Each pool shall be maintained separately and no employee may be placed in more than one pool except as noted in subsection d below. The pools shall be designated as follows:

(a) Employees designated as safety-sensitive by Federal Transit Authority regulations;

(b) Employees required to operate a commercial class vehicle (other than Federal Transit Authority designated employees);

(c) Public safety employees;

(d) Police officers whose primary duty is the detection and suppression of drug law violations, who shall be the only employees whose names appear in two pools; and,

(e) All other employees whose position has been designated safety-sensitive by the Director of the Human Resources Department.

(5) An employee who submits to a breath and/or urine sample for a random drug and alcohol test which is determined to be a verified positive test result will be terminated from City employment. An employee who refuses to submit to a breath and/or urine sample for a random drug/alcohol test will be terminated from City employment.

E. Return-to-Duty Testing

(1) All safety sensitive employees who test positive on a drug and/or alcohol test or refuse to test as defined in this policy shall be terminated. However, in the event a safety sensitive employee returns to duty the provisions of this section apply. All safety sensitive employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the Substance Abuse Professional before returning to work. For an initial positive drug test a Return-to-Duty drug test is required and an alcohol test is allowed. For an initial positive alcohol test a Return-to-Duty alcohol test is required and a drug test is allowed. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP should schedule the return-to-duty test only when the employee is known to be drug- and alcohol-free and there is no risk to public safety. An employee who submits to a breath and/or urine sample for a return-to-duty test which is determined to be a positive test result or a refusal to test will be terminated from City employment. Return-to-duty testing is conducted when the employee is off duty. All return-to-duty testing will be conducted under direct observation.

F. Follow-up Testing

(1) All safety sensitive employees who test positive on a drug and/or alcohol test or refuse to test as defined in this policy shall be terminated. However, in the event a safety sensitive employee returns to duty, the provisions of this section apply. Safety sensitive employees will be required to undergo frequent, unannounced drug and alcohol testing following their return-to-duty. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to random, post-

accident, reasonable suspicion, and return-to-duty testing. An employee who submits a breath and/or urine sample for a follow-up drug/alcohol test which is determined to be a positive test result or a refusal to test will be terminated from City employment. All follow-up testing will be conducted under direct observation.

14. RESULTS AND APPEALS

A. Result of Drug/Alcohol Test

(1) All testing results shall be reported to the Medical Review Officer or his designee. If the test results are negative, the Medical Review Officer or designee will notify the appropriate parties to that effect.

(2) If the City's laboratory reports the results as non-negative, the City's Medical Review Officer shall determine the validity of the results and provide the employee with the opportunity to discuss the test results. If the Medical Review Officer finds a valid medical explanation (i.e., prescription, medical treatment) for the non-negative test result, the MRO will verify and report this test as negative and no action will be taken. If the MRO's assessment finds no valid medical explanation for the non-negative result, he will verify the test as positive or refusal to test, and copies of the testing records shall be provided to the Substance Abuse Program Manager and the department director.

(3) Upon notice of a verified positive drug and/or alcohol test result, or a refusal to submit to a test, the Department Director or designee shall place the employee on paid administrative leave and notify the Director of Human Resources.

(4) For non-safety sensitive employees a verified positive drug or alcohol test shall constitute just cause for discipline up to and including termination. The minimum discipline to be imposed for such an infraction by the Department Director or designee is a suspension without pay of thirty (30) calendar days. If a suspension of thirty (30) calendar days or more is imposed by the department director, the non-safety sensitive employee must be referred to the Substance Abuse Professional (SAP) for assessment, formulation of a treatment plan and the execution of a return-to-work agreement. An employee's failure to execute or comply with a return-to-work agreement or a positive test result on a drug or alcohol test or both in any scheduled or unscheduled follow-up testing, or if in the opinion of the SAP the employee is deemed to not be in compliance or not cooperating with the recommended treatment plan shall subject the employee to termination. Return to work drug tests and all subsequent follow-up testing for safety sensitive employees will be conducted under direct observation as described in 49 C.F.R. § 40.67.

(5) The second instance of a verified positive test result from a sample submitted under the pre-employment, random, or reasonable suspicion drug and alcohol test provisions herein shall result in termination from City employment.

(6) For public safety and safety sensitive employees, the first instance of a verified positive test from a sample submitted for a random, post-accident, transferor promotion or reasonable suspicion drug and/or alcohol test shall result in termination from City employment.

(7) Refusal to test shall be considered both a positive test result and a direct act of insubordination and shall result in termination.

(8) A voluntary referral or participation in the City Employee Assistance Program as described in Part 4 does not shield an employee from disciplinary action or guarantee employment or reinstatement with the City.

(9) Failure of an employee to report in writing to their immediate supervisor and the Human

Resources Director within five days a criminal drug statute conviction for a violation occurring in the workplace shall result in disciplinary action, up to and including termination.

B. Grievance and Appeal

(1) The determination by the Medical Review Officer that a drug test is a verified positive test or is a refusal to test is not a medical determination that is subject to appeal under the Personnel Rules and Regulations.

(2) An employee who is subject to termination or other disciplinary action pursuant to this policy may grieve the termination or other disciplinary action pursuant to the provisions of the Merit System Ordinance or applicable collective bargaining agreements.

(3) Any employee who questions the results of a required drug test may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory with no affiliation with the laboratory that analyzed the primary specimen. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. All costs for such testing are paid by the employee unless the result of the split sample test invalidates the result of the original test. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 C.F.R. § 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. The City will ensure that the cost of the split specimen is covered in order for a timely analysis of the sample; however, the City will seek reimbursement for the split sample test from the employee.

(4) An employee who has reason to believe he was not properly designated as a safety-sensitive employee subject to drug and alcohol testing shall appeal their safety-sensitive designation to the Director of the Human Resources Department within thirty (30) calendar days of notification that his position has been designated as safety-sensitive. The Director of the Human Resources Department shall make an inquiry into the claim and forward his determination along with the employee's appeal to the person or body as designated by the City Council from time to time. Such an appeal shall not be available to police officers, transport officers, security officers, animal services officers, firefighters, and those whose positions were designated safety-sensitive by Federal regulation.

(5) The person or body as designated by the City Council from time to time shall hear and decide objections to the designation of positions as safety-sensitive. This person or body may also review administrative policies concerning substance abuse and drug and alcohol testing and advise the Mayor and City Council regarding such policies.

15. PROPER APPLICATION OF THE POLICY

A. The City is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors and managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor or manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

16. INFORMATION DISCLOSURE

A. Drug and alcohol testing records shall be maintained by the Substance Abuse Program Manager and, except as provided below or by law, the results of any drug or alcohol test shall not be disclosed without

express consent of the tested employee.

B. Records of a positive drug test result, positive alcohol test result, or a refusal to test shall be released to the employee's department director or designee, Substance Abuse Program Manager, and SAP.

C. Records of an employee's drug and alcohol tests shall be released to the adjudicator in a grievance, lawsuit or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug and alcohol test.

D. The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including and drug or alcohol testing records. Employees have the right to gain access to any pertinent records such as equipment calibration records and records of laboratory certifications. Employees may not have access to follow-up testing plans.

17. INCORPORATION AND ENFORCEABILITY

A. Incorporation. This policy incorporated by reference the cited federal law and regulations as in effect at the time this policy is issued and this policy shall be deemed automatically modified by any amendment or modification to the cited federal law and regulations. Employees shall be given notice of the changes in the cited federal law and regulations.

B. Enforceability. The invalidity or unenforceability of any provision of this policy shall not affect any other provision hereof, and the policy shall be construed in all respects as if such invalid of unenforceable provision was omitted. If this policy in its entirety or a material portion of it is invalidated, then, and in that event only, the City's Substance Abuse Policy shall be as described in Administrative Instruction 7-1-2 as amended February 17, 2011.

History:
This Policy was adopted by the City of Albuquerque Chief Administrative Office, pursuant to City Council Bill No. R-237, on April 17, 1995;
The City enacted a Substance Abuse Policy in 1999; revised February 6, 2006 (retroactive to January 1, 2006); the Second Judicial District Court invalidated the discipline portions of the 2006 policy in New Mexico Transportation Union v. City of Albuquerque, No. CV-2005-0129; Administrative 7-1-2) effective November 3, 2009 (2-8-11, 2-17-11).

PART 1
Appendix A

Procedures for SAFE TEN tests for sworn members of
the Albuquerque Police Department

Positive Tests

1. A licensed physician shall be responsible for receiving laboratory results generated by the City's SAFE TEN drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant bio-medical information. The Medical Review Officer (MRO) contracted by the City to review the positive SAFE 10 drug tests shall be that licensed physician.

2. All procedures for the collection and verification of positive results in SAFE TEN tests will follow the same procedures as in DOT 49 C.F.R. § 40, as amended with the addition of the following:

A. When a police officer has a positive test for any one of the SAFE TEN Drugs, the MRO will contact the employee and verify the test. A verified positive test result will be delivered to Substance Abuse Program Manager, who will notify the Chief of Police.

B. If the MRO verifies that the officer has a valid prescription for a SAFE TEN drug, the test will be verified as negative, but the MRO will discuss with the officer the requirement that the officer needs to inform the department that a prescription medication covered under the SAFE TEN testing program is being used, as per APD policy #1-04-7.

C. The MRO will inform the officer that the Substance Abuse Program Manager will be notified of the use of medication under SAFE TEN and the possible need to inform the officer's supervisor as per APD policy #1-04-7.

D. The MRO will inform the Substance Abuse Program Manager that a police officer has been prescribed medication covered under the SAFE TEN testing program. The Substance Abuse Program Manager designee will contact the immediate supervisor regarding APD policy #1-04-7.

E. If appropriate, the supervisor may ask for an in-service physical in order to determine fitness for duty. Any one of the Employee Health Center's licensed physicians may conduct this physical. If necessary, the police officer may be assigned alternative duty.

3. Verification of positive results will be based on the levels in 49 C.F.R. § 40 unless the following cut off levels are more stringent than the federal requirements:

Substance Abuse Forensic Evaluation (SAFE/Non-DHHS)

Drug	Screening Cut-offs	GC/MS Confirmation Cut-offs
Amphetamines	< 500 ng/mL	250 ng/mL
Barbiturates	< 200 ng/mL	200 ng/mL
Benzodiazepines	< 200 ng/mL	200 ng/mL
Cannabinoids (Marijuana)	< 50 ng/mL	15 ng/mL
Cocaine	< 150 ng/mL	100 ng/mL
Methadone	< 300 ng/mL	qualitative tests*
Methaqualone	< 300 ng/mL	qualitative tests*
Opiates	< 300 ng/mL	300 ng/mL
Phencyclidine	< 25 ng/mL	25 ng/mL
Propoxyphene	< 300 ng/mL	qualitative tests*

*Presence only detected

Negative Tests

1. When a SAFE TEN test is negative, the Substance Abuse Program Manager will initial the results acknowledging receipt and forward the result to the Chief of Police or designee.

Revised 5/10

PART 1
Appendix B
SYSTEM CONTACTS

Any questions regarding this policy or any other aspect of the substance abuse policy should be directed to the following individual(s). Names and contracted vendors are as of the date of adoption and may change from time to time without a formal amendment of the rule.

City Substance Abuse Program Manager:

Name:	Lori Cruz
Title:	Manager of the Substance Abuse Program
Address:	1 Civic Plaza NW, 9th Floor Albuquerque, NM 87103
Telephone Number:	(505) 768-3080

Medical Review Officer

Name:	Dr. William Prickett
Title:	Medical Review Officer
Address:	400 Marquette NW, Room B-06 Albuquerque, NM 87103
Telephone Number:	(505) 768-4630

Substance Abuse Professional

Name:	Adam Stern
Title:	Substance Abuse Professional
Address:	The Solutions Group 1240 Pennsylvania NE, Suite C Albuquerque, NM 87110
Telephone Number:	(505) 254-3555

DHHS Certified Laboratory: Primary Specimen

Name:	SED Medical Laboratories
Certifying Scientist:	Director of Toxicology: Martin Brady
Address:	5601 Office Blvd, N.E. Albuquerque, NM 87109-5816
Telephone Number:	(505) 727-6300

DHHS Certified Laboratory: Split Specimen

Name:	Medtox
Address:	402 West County Rd, Suite D Saint Paul, MN 55112
Telephone Number:	(800) 832-3244