

BEFORE THE CITY COUNCIL OF THE CITY OF TURLOCK

IN THE MATTER OF RESCINDING }
RESOLUTION NO. 2009-138 AND }
ADOPTING THE AMENDED APPENDIX III }
OF THE CITY OF TURLOCK ANTI-DRUG }
AND ALCOHOL MISUSE PREVENTION }
PROGRAM POLICY AND PROCEDURES }
_____ }

RESOLUTION NO. 2011-157

WHEREAS, Appendix III of the City's Anti-Drug and Alcohol Misuse Prevention Program Policy and Procedures have been found to be outdated; and

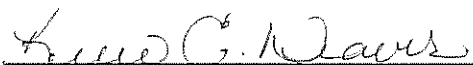
WHEREAS, the list of current supervisors identified in Appendix III of the attached Anti-Drug and Alcohol Misuse Prevention Program Policy and Procedures has been updated.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Turlock does hereby rescind Resolution No. 2009-138 and adopts the amended Appendix III of the City of Turlock Anti-Drug and Alcohol Misuse Prevention Program Policy and Procedures.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Turlock this 9th day of August, 2011, by the following vote:

AYES: Councilmembers Bublak, DeHart, Jackson, White and Mayor Lazar
NOES: None
NOT PARTICIPATING: None
ABSENT: None

ATTEST:



Kellie E. Weaver, Deputy City Clerk
City of Turlock, County of Stanislaus,
State of California



ANTI-DRUG AND ALCOHOL MISUSE PREVENTION PROGRAM

IN COMPLIANCE WITH FEDERAL HIGHWAY ADMINISTRATION (FHWA)
OF THE DEPARTMENT OF TRANSPORTATION (DOT) DRUG AND
ALCOHOL TESTING REGULATIONS FOR DRIVERS OF COMMERCIAL
MOTOR VEHICLES AND FEDERAL TRANSIT ADMINISTRATION (FTA)
REGULATIONS FOR PREVENTION OF ALCOHOL MISUSE AND
PROHIBITED DRUG USE IN TRANSIT OPERATIONS (49 CFR Part 655)

POLICY AND PROCEDURES

EFFECTIVE: JANUARY 1, 1996

AMENDED: DECEMBER 2000, JANUARY 2001, MARCH 2004, JANUARY 2007, JULY 2009,
AUGUST 2011

CITY OF TURLOCK
 DOT/FHWA (HIGHWAYS) AND FTA DRUG AND ALCOHOL TESTING PROGRAM

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CITY OF TURLOCK
DOT/FHWA (HIGHWAYS) AND FTA DRUG AND ALCOHOL TESTING PROGRAM

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CITY OF TURLOCK
ANTI-DRUG AND ALCOHOL MISUSE PREVENTION PROGRAM

IN COMPLIANCE WITH FEDERAL HIGHWAY
ADMINISTRATION (FHWA) DEPARTMENT OF
TRANSPORTATION (DOT) AND FEDERAL TRANSIT
ADMINISTRATION (FTA) DRUG AND ALCOHOL TESTING
REGULATIONS

EFFECTIVE: JANUARY 1, 1996 POLICY AND PROCEDURE AND POLICY STATEMENT (49 CFR 382, 392, 655,)

The City of Turlock (hereinafter referred to as "City" or "employer") has a strong commitment to provide a safe workplace and to establish high standards of employee health and safety. This policy supplements a citywide policy for a drug-free workplace for all employees regarding alcohol and drug use.

The purpose of the present policy is to establish procedures for administration of the Department of Transportation (DOT) anti-drug and alcohol misuse prevention program pursuant to the Federal Highway Administration (FHWA) Drug Testing Regulations as set forth in Title 49 Code of Federal Regulations (CFR) 382, , 392.4, and 392.5 for the FHWA, in addition to Procedures for Transportation Workplace Drug Testing Programs as set forth in 49 CFR Part 40, and Federal Transit Administration (FTA) Prevention Of Alcohol Misuse And Prohibited Drug Use In Transit Operations as set forth in 49 CFR Part 655.

The City has determined, if drivers operating commercial motor vehicles use alcohol or controlled substances, it creates a situation where their employment constitutes a direct threat to the property or safety of the City and citizens of Turlock. The City has further determined that the drug and alcohol testing and prevention program applies to all safety-sensitive employees (full or part-time) when performing any transit-related business. A safety-sensitive function is any duty related to the safe operation of mass transit service including the operation of a revenue service vehicle (whether or not the vehicle is in revenue service), and maintenance of a revenue service vehicle or equipment used in revenue service.

All employees and applicants covered in this policy will be requested, under DOT/FTA policy guidelines, to test for drug and alcohol misuse. Refusing to take or failing a drug test or alcohol test for trainees in a covered position or pre-employment drug and alcohol testing will prevent the person from being considered for the covered position. Any employee who refuses or fails a drug or alcohol test may not perform the duties of a covered position. (49 CFR 382.211, 49 CFR 655.46)

ALCOHOL AND DRUG TESTING POLICY AND PROCEDURES

1. Covered Employee Positions/Functions (49 CFR 382.103, 49 CFR 655.4). The employees in the classifications/positions attached to this policy as Appendix I, are subject to drug and alcohol testing as outlined herein. These are persons designated in 49 CFR 382, holding a commercial driver's license who operate commercial motor vehicles for the City in a safety-sensitive position, as defined below. Pre-employment applicants, trainees learning the duties of covered positions, and employees temporarily performing such duties are also subject to DOT/FTA testing regulations. Covered Employees also include employees, applicants and transferees performing safety-sensitive functions in transit operations as designated in 49 CFR 655.4.
2. Definitions. Words or phrases are as defined in 49 CFR 382.107, 386.2, 390.5, 40.3, 655.4, and 40.73 and set forth in the attached Appendix II.
3. Prohibitions and Other Related Conduct.
 - A. Alcohol use or possession. No driver or safety-sensitive employee performing any transit-related business shall:
 1. Report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. (49 CFR 382.201, 49 CFR 655.46)
 2. Use alcohol while performing safety-sensitive functions. (49 CFR 382.205, 49 CFR 655.32)
 3. Perform safety-sensitive functions within four (4) hours after using alcohol. (49 CFR 382.207, 49 CFR 655.33)
 4. Use alcohol for eight (8) hours following the accident or until undergoing required testing for alcohol consumption, whichever occurs first. (49 CFR 382.209, 49 CFR 655.34)
 5. Refuse to submit to alcohol testing required under Part 382 (49 CFR 382.211) or Part 655 (49 CFR 655.49).
 6. Perform any safety-sensitive functions including driving, until the start of that individual's next regularly scheduled duty period but not less than 24 hours following administration of the alcohol breath test, if the individual has received a prior alcohol test and was found to have an alcohol concentration of 0.02 or greater but less than 0.04 (49 CFR 382.505; 655.35)

B. Controlled substance (drug) use or possession. No driver or safety-sensitive employee performing any transit-related business shall:

1. Report for duty or remain on duty requiring the performance of safety-sensitive functions when the individual uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, as defined in 49 CFR 382.107 who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a commercial motor vehicle or perform safety-sensitive functions, and is approved by the MRO. Fitness for duty shall be determined by the MRO. (49 CFR 382.213(a))
2. Be on duty or operate a commercial motor vehicle when using any controlled substance pursuant to the instructions of a physician, without first informing the employer of any therapeutic drug use. The reporting shall be accomplished by advising the MRO of the use and providing the prescription bottle to the MRO prior to reporting for duty. Fitness for duty shall be determined by the MRO. (49 CFR 382.213(a))
3. Report for duty, remain on duty, or perform any safety-sensitive function while using controlled substances. (49 CFR 382.213(b))
4. Refuse to submit to controlled substance testing required under Part 382, or Part 655, a random alcohol or controlled substances test required under Part 382.305 or 655.45, a reasonable suspicion alcohol or controlled substances test required under 382.307 or 655.43, or a follow-up alcohol or controlled substances test required under 382.311 or 655.47. Employees who refuse to submit to such tests shall not be allowed to perform or continue to perform safety-sensitive functions. (49 CFR 382.211; 655.49)

C. Consequences of Prohibited Conduct. Under City policy, this prohibited conduct is grounds for removal from the covered position and possible termination, subject to the conditions in Section 14 of this policy.

4. Tests Required. Employees subject to testing are required to be tested as follows:

A. Pre-employment testing (including reassignment or transfer-voluntary and involuntary) (49 CFR 382.301; 655.41).

1. Prior to the first time an employee performs safety-sensitive functions, the employee shall undergo testing for alcohol and for the

presence of any of the following controlled substances: marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines in accordance with 49 CFR 382.301 and 655.41. No covered employee shall be allowed to perform safety-sensitive functions unless the employee has been administered an alcohol test with a result indicating an alcohol concentration less than 0.04 and has received a controlled substances test result from the MRO indicating a verified negative test result.

2. A pre-employment alcohol and drug test will be conducted when a current employee transfers from a position not covered by this policy into a position listed in this policy.
3. Applicants who are offered a position covered by this FHWA-DOT-FTA mandated policy will be tested before being employed. Pre-employment job applicants who test positive for alcohol or controlled substance use will not be hired. Employees transferring or reassigned into a position requiring alcohol or drug testing, and job applicants, who test positive for controlled substance use have the right to request retesting of the second split specimen at their expense. If the retest result is negative, the employee will be reimbursed the cost by the City. Employees or applicants who fail an alcohol or drug test will not be hired for the safety-sensitive position.
4. An employee who transfers from one position covered by this policy to another covered by this policy will not be required to undergo pre-employment testing.
5. Employees working in a position covered by this policy on the effective date who continue to work in a covered position will not be required to undergo a pre-employment test.

B. Random testing (49 CFR 382.305; 655.45)

1. All employees covered by this policy are subject to unannounced testing based on random selection. This includes trainees and employees temporarily performing work in a covered position.
2. Each calendar year, at least fifty percent (50%) of covered employees shall be randomly tested for controlled substance use, and at least ten percent (10%) shall be randomly tested for alcohol misuse. All persons will be subject to be randomly picked for alcohol and drug testing at each random testing date. A person may be randomly picked more than once or not picked at all during any annual period. This rate of testing by DOT/FHWA/FTA may

increase or decrease depending upon the number of industry-wide violations based upon reported data. 49 CFR 382.305(b)(c)(d), 49 CFR 655.45.

3. To assure that the selection process is random, the names of all employees covered by this DOT/FHWA/FTA policy will be placed in a common pool. This random common pool may, by election of the City for convenience of testing, be comprised of individuals subject to both drug and alcohol testing if the testing occurs at the same time. This is intended to allow as few covered employees as possible off work for testing.
 4. Random testing shall be spread reasonably through the calendar year.
 5. The selection procedure will select sufficient additional numbers/names to be used to reach the appropriate testing level of employees during each test period. These alternate numbers/names will be tested in order of selection only if persons selected are unavailable for testing due to vacations, medical leave, leave of absence, business travel, or other justifiable reason.
 6. The employee's work load will be adjusted to reflect the time spent in complying with random testing requirements.
- C. Post-accident testing (49 CFR 382.303, 49 CFR 655.44). An "accident" under DOT/FHWA/FTA regulations necessitating testing is defined in Appendix II of this policy.
1. As soon as practicable following an accident involving a commercial motor vehicle, each surviving driver shall be tested for alcohol and controlled substances as follows:
 - a. Each driver who was performing safety-sensitive functions with respect to the vehicle shall be tested, if the accident involved the loss of human life; or
 - b. Each driver who was performing safety-sensitive functions with respect to the vehicle shall be tested, if the driver receives a citation for a moving violation arising from the accident.
 2. Time for alcohol testing: If an alcohol test is required, the employee shall be alcohol tested within two (2) hours following the accident or otherwise the employer shall document the reasons the alcohol test was not promptly administered. If an alcohol test is not administered within eight (8) hours following the accident, the

employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test (49 CFR 382.303(a)(2);(d)(1), 49 CFR 655(a)(2)(ii)).

3. Time for drug testing: If a drug test is required, the employee shall be tested for controlled substance use by obtaining a split urine specimen as soon as possible, but no later than 32 hours after the accident. Because certain drugs or drug metabolites do not remain in the body for extended periods of time, testing should be as soon as possible. (49 CFR 382.303(b);(d)(2)).
4. All reasonable steps will be taken to obtain an alcohol test from an employee after an accident. In case of a conscious but hospitalized employee, the hospital or medical facility will be requested to obtain a sample and if necessary, reference will be made to the DOT/FTA alcohol testing requirements. If an employee is unconscious or otherwise unable to evidence consent to the procedure, the employer shall notify the hospital of the need for a test and wait until the treating physician determines the employee is able to understand and comply.
5. If an employee who is subject to post-accident testing is conscious, able to provide an alcohol test or urine specimen (in the opinion of a medical professional) and refuses to be tested, that employee will be subject to discipline, up to and including termination.
6. The results of a breath or blood test for the use of alcohol or a urine test for controlled substances, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of DOT/FHWA/FTA Parts 382 and 655 provided such results are obtained by the employer, and conform to the applicable Federal, State, or local requirements.
7. The potentially affected employee will not be allowed to proceed alone to or from the collection site. In addition to the safety concerns for the employee, accompanying the employee also assures that there is no opportunity en route to the collection site for the employee to ingest anything that could affect the test result or to acquire "clean" urine from another person.
8. An employee subject to post-accident testing must remain available, and refrain from drinking alcohol for 8 hours following an accident or until he/she submits to an alcohol test.
9. Documentation regarding the activity being performed by the employee that supports the determination to conduct post-accident

testing should be prepared and signed by the supervisor requesting the test within 24 hours of the accident or before the results of the drug test are released, if possible.

10. After returning from the collection site, the employee shall not be allowed to perform safety-sensitive functions pending the results of both the alcohol breath test and the drug test.

D. Reasonable suspicion testing (49 CFR 382.307, 49 CFR 655.43).

1. The employer shall require an employee to submit to an alcohol breath test when the employer has a reasonable suspicion to believe that a driver has violated the alcohol prohibitions of 49 CFR Part 382 or 655.43.
2. Reasonable Suspicion Testing will be conducted when a trained supervisor has a reasonable suspicion that an employee is under the influence of alcohol and/or drugs. Reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The observations of alcohol and/or drug use must be made by a trained supervisor during, just preceding or just after the work day. Examples of performance indicators of probable alcohol and/or drug use sufficient to lead a prudent supervisor to suspect that an employee is under the influence of alcohol and/or drugs, include, but are not limited to:
 - a. Mouth-alcohol smell;
 - b. Loss of equilibrium (unsteady standing, walking or movement);
 - c. Slurred speech, bloodshot eyes;
 - d. Observation of substandard performance;
 - e. Unusual behavior, driving, or altercations;
 - f. Following a serious accident or incident in which safety precautions were violated or unusually careless acts were performed;
 - g. A reliable tip of alcohol and/or drug use;
 - h. Actual observation of the possession or use of alcohol and/or drugs;
 - i. Discovery of evidence tending to support the suspicion of alcohol use and/or drug use;
 - j. An employee is found in possession of alcohol and/or drugs, or alcohol and/or drugs are found in an area controlled or used exclusively by the employee, such as the employee's locker, desk, or a vehicle;

- k. Absenteeism; and
 - l. Indications of the chronic and withdrawal effects of alcohol and/or drugs.
3. The supervisor who makes the determination of alcohol use shall not conduct the breath alcohol test.
 4. The employee shall be alcohol tested within two (2) hours following the determination made by the supervisor or otherwise the employer shall document the reasons the alcohol test was not promptly administered. If a test is not administered within eight (8) hours following the determination, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test (49 CFR 302.307(e); 655.43 (d)).
 5. After returning from the testing location, the employee shall not be allowed to perform covered functions unless the results of the alcohol screening and, if indicated, confirmation test (taken within 20 minutes of a screening test) indicates an alcohol concentration less than 0.02, or 24 hours has elapsed following the supervisor's determination there is reasonable suspicion to believe the employee has violated the prohibitions of use of alcohol. (49 CFR 382.307(e)(2)(i),(ii)).
 6. The employer shall require an employee to submit to a drug test when the employer has a reasonable suspicion to believe that an employee has violated the controlled substances prohibitions of 49 CFR Part 382, and 49 CFR Part 655.
 7. Reasonable suspicion testing will be conducted when a trained supervisor has a reasonable suspicion that an employee is under the influence of a controlled substance. Reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee with examples as set forth in section 4.D.2. above.
 8. The potentially affected employee will not be allowed to proceed alone to or from the collection site. In addition to the safety concerns for the employee, accompanying the employee also assures that there is no opportunity en route to the collection site for the employee to ingest anything that could affect the test result or to acquire "clean" urine from another person.
 9. Documentation to support the determination to conduct reasonable suspicion testing should be prepared and signed by the supervisor

within 24 hours of the determination or before the results of the test are released, whichever is earlier, if possible.

10. After returning from the collection site, the employee shall not be allowed to perform safety-sensitive functions pending the results of the drug test from the MRO.

E. Return-to-duty testing (49 CFR 382.309; 49 CFR 655.48).

1. Before an employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct concerning alcohol prohibited by DOT/FHWA/FTA, the employee shall undergo a return-to-duty drug test with a result indicating an alcohol breath concentration of less than 0.02, in addition to evaluation of fitness for duty.
2. Before an employee returns to duty requiring the performance of a safety-sensitive function after engaging in controlled substance use prohibited by DOT/FHWA/FTA, the employee shall undergo a return-to-duty drug test with an MRO verified negative result for controlled substance use, in addition to evaluation of fitness for duty by the MRO.
3. This test is in addition to the other types of tests stated in this policy.

F. Follow-up testing (49 CFR 382.311; 49 CFR 655.47)

1. Following a determination by a Substance Abuse Professional (SAP) that an employee is in need of assistance in resolving problems associated with alcohol misuse, the employee shall be subject to unannounced follow-up testing as directed by the SAP of at least six tests in the first 12 months following the employee's return to duty, and thereafter as determined necessary by the SAP. Follow-up alcohol testing shall be performed when the employee is performing safety-sensitive functions, or just before, or just after the employee has ceased performing safety-sensitive functions.
2. Follow-up alcohol testing may also include testing for controlled substance use to be performed in accordance with 49 CFR Part 40, as directed and determined by the MRO and/or SAP.
3. A employee having used controlled substances, who at the recommendation of the Medical Review Officer (MRO), returns to duty after successful completion of E.A.P. will be given unannounced follow-up drug tests, as scheduled by the MRO of at

least six tests in the first 12 months following the employee's return to duty and thereafter as determined by the MRO.

4. The time period for "follow-up" testing for alcohol or controlled substance use will be determined by the appropriate MRO or SAP subject to a reasonable minimum of 12 months, and never to exceed 60 months.
5. Follow-up testing may be on a daily, weekly, monthly or longer basis at the discretion of the MRO or SAP.
6. Follow-up testing is in addition to the other types of tests stated in this policy.

5. Dilute Specimen Results

- A. In the event of a negative dilute test result, the employer will require the employee to immediately provide another specimen for pre-employment, random, post-accident, reasonable suspicion, return-to-duty and follow up tests. This will be an unobserved collection unless directed by the MRO to be collected under direct observation.
- B. If the employee declines to take another test, this is considered refusal to test and is equivalent to a positive test.
- C. If a second test is administered and the result of that test is also negative and dilute, the employer will accept the second test result as negative and the result of the record.
- D. The collection cannot be observed, unless the MRO requests so as a result of the specimen having a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL.
- E. If the result is cancelled/invalid, (with no medical explanation) the employee will need to undergo an immediate observed collection as directed by the MRO.
- F. An MRO verified positive dilute test result will be treated as a positive drug test result.

6. Canceled Tests

If the test is cancelled, immediate recollections are required for pre-employment, random, post-accident, reasonable suspicion, return-to-duty and follow up tests. Only the laboratory or the MRO can cancel a test.

7. Supervisor Training Program (49 CFR 382.603, 49 CFR 655.14(b)(2)). Every person designated to determine whether reasonable suspicion exists to require an employee to undergo testing under 49 CFR 382.307 or 655.43 (reasonable suspicion testing) shall receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. See Appendix III for list of Supervisors of covered positions.
8. Alcohol Testing Procedures. Alcohol testing procedures are as defined in 49 CFR Parts 382, 386, 390, 655, and 40 and set forth in the attached Appendix IV.
9. Substance Abuse Professional (SAP) (49 CFR 382.605, 49 CFR 655.52)
 - A. The Substance Abuse Professional (SAP) is defined in Appendix II.
 - B. The name, address, and phone number of the SAP, and SAP responsibilities are listed in Appendix V.
10. Controlled Substance (Drug) Testing Procedures. Controlled substance (drug) testing procedures are as defined in 49 CFR Parts, 382, 386, 390, 655, and 40 and as set forth in the attached Appendix VI.
11. Medical Review Officer (MRO) (49 CFR 382.407, 49 CFR 655)
 - A. The Medical Review Officer is defined in Appendix II.
 - B. The name, address, and phone number of the MRO, and MRO responsibilities are listed in Appendix VII.
12. Testing Laboratory (49 CFR 40)
 - A. The DHHS certified testing laboratory for this policy is set forth in Appendix VIII.
 - B. The DHHS certified testing laboratory shall comply with all methods and procedures of 49 CFR Part 40.
13. Collection Agency (49 CFR 40.31)
 - A. The collection agent and address for this alcohol and controlled substance (drug) policy is listed in Appendix IX.

- B. The collection agency will comply with all methods and procedures of 49 CFR Part 40, as amended, for collection and chain of custody and provide documentation of compliance to the employer.
14. Employee Awareness Program (49 CFR 382.601). Employee Education and Training - Every employee covered by this policy will receive educational materials that explain the requirements of Part 382 and the employer's policies and procedures in meeting these requirements. This will include:
- A. Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem; and intervening evaluation including referral to EAP will be periodically distributed and displayed in the work areas.
 - B. Information will be provided as required in Part 382.303(d) by the employer to employees with necessary post-accident information, procedures and instructions, prior to the employee operating a commercial motor vehicle or engaging in safety-sensitive functions, so that employees will be able to comply with the requirements of Part 382.303 (See Appendix X).
 - C. A copy of this policy will be given to each covered employee and displayed in the work area.
 - D. Controlled substance abuse information will be periodically distributed and displayed in the work areas.
15. Employee Assistance Program (EAP) (49 CFR 382.601)
- A. The City-wide EAP program or a similar program will be maintained throughout the existence of this alcohol misuse and controlled substance abuse policy.
 - B. The hot-line telephone number for employee assistance will be given to each employee and displayed in the work area (See Appendix XI).
16. City Policy Concerning Retention of Employees Who Violate Prohibitions or Self-Identify. All permanent City employees performing covered safety-sensitive duties shall be subject to the provisions of this section. These retention provisions shall not apply to applicants, probationary, non-career, seasonal or temporary employees, employees in a training capacity, or any other form of non-permanent employment status employee performing safety-sensitive duties.

- A. Self-Identification. Self-identification means an employee who voluntarily, before drug or alcohol testing or conduct identifies the problem, admits the problem to the City's MRO/SAP and seeks rehabilitation assistance.
1. An employee who takes the initiative of voluntarily advising management that he/she has an alcohol or drug problem, before taking a test which results in a violation of this policy, shall be required to enroll in a rehabilitation program. Such an employee actively involved in a rehabilitation program recognized by the MRO/SAP, may use accumulated paid leave time, except for sick leave, during this period of absence, or the employee may request authorized leave of absence without pay.
 2. The employee will be eligible to return to work once he/she has been certified to do so by the MRO/SAP. Prior to returning to work, the employee must consent in writing to follow-up drug and/or alcohol testing as part of after-care treatment. This follow-up testing will be determined by the MRO/SAP, and shall be consistent with Section 4(F) Follow-up Testing.
 3. Such an employee shall not be subject to disciplinary action for having voluntarily acknowledged his/her problem. He/she must, however, provide a negative alcohol and/or drug test within 60 days of self-identification, and be certified as capable of returning to work by the MRO/SAP.
 4. Failure to complete a rehabilitation program, provide a negative test result and receive MRO/SAP certification for return to work (fitness for duty) will result in disciplinary action as described in section B.1.a. below.
- B. Random testing. Under City policy, a covered employee who tests positive for drugs and/or alcohol as a result of random testing, shall be subject to the following disciplinary action:
1. First positive random test
 - a. An employee who receives a positive test result to either drugs or alcohol shall be immediately suspended for 10 working days.
 - b. The employee who has tested positive must enroll in an alcohol or drug treatment/rehabilitation program which is approved by the MRO/SAP.
 - c. The employee shall instruct the program provider to release any and all medical records of the treatment plan to the MRO or

SAP. Such information shall be treated as confidential medical information by the MRO/SAP.

- d. After the completion of the 10 working day suspension, the employee may return to work as soon as medically certified by the MRO/SAP. The employee must, however, provide a negative test result and be certified for return to duty no later than 60 calendar days after notification of the positive random test result. Failure to be certified by the MRO/SAP or return to work shall result in termination.
- e. The employee may use accumulated vacation, personal leave, overtime or leave without pay while undergoing treatment/rehabilitation.
- f. The employee may use sick leave only when participating in a medically supervised/approved residential rehabilitation program.
- g. Upon return to work, this employee shall be subject to a minimum of 6 unannounced tests during the following 12 month period. Furthermore, the employee is subject to unannounced testing for up to 60 months upon return to work. Such testing shall be as determined by the MRO/SAP.
- h. An employee who previously tested positive for drugs and/or alcohol, but who has not tested positive during the preceding five (5) years, shall not have the first positive test considered for the purposes of progressive discipline under this policy.
- i. Any employee who is given an alcohol confirmation test according to 49 CFR 40 Subpart M by the BAT and the breath alcohol concentration level is 0.02 or greater, but less than 0.04, shall be requested to take leave without pay, or use vacation or personal leave but not sick leave time, until the employee's next regularly scheduled duty period, but less than 24 hours following administration of the test. Any employee who is given an alcohol confirmation test by the BAT and the breath alcohol concentration level is 0.02 or greater, but less than 0.04, on the second time shall be suspended without pay for three regularly scheduled work days. The employee shall be referred to the SAP for evaluation and assessment of fitness for duty.
- j. Any employee who has a breath alcohol concentration level that is 0.02 or greater, but less than 0.04, on the third time within a five (5) year period is subject to further disciplinary action. This

disciplinary action may be up to and including termination based upon a review of the employee's work history.

2. Second positive random test. Under City policy, and subject to Section 1.h. above, covered employees who fail a drug and/or alcohol test, after a previous test will be terminated whether the second test results from a random test or follow-up test.
3. Refusal to submit to tests for drugs and/or alcohol.
 - a. An employee is required to provide a specimen within two hours from the time requested to do so by the MRO. If the employee attempts and fails to provide an adequate amount of breath, the City shall proceed according to CFR 40.265 which requires evaluation by an approved physician with a written statement of the determination concerning the employee's failure to provide an adequate breath sample. An employee who refuses to submit to a random test shall be suspended for 30 calendar days without pay. Such an employee may be returned to work only upon certification by the MRO of fitness for duty and must test negative on a return-to-duty test.
 - b. An employee who refuses to submit to an alcohol and/or drug test a second time or who subsequently tests positive on a drug or alcohol test, shall be terminated.
 - c. If an employee refuses to submit to an alcohol and/or drug test citing medical conditions, such conditions require evaluation by the MRO/SAP. Alternative testing methods may be used by the MRO/SAP to determine the employee's fitness for duty.
- C. Other violations of policy. Under City policy, covered employees shall be subject to other such disciplinary action as is warranted for violations of rules, regulations, policies and procedures.
17. Recordkeeping (49 CFR Parts 40, 655 and 382). Records will be maintained in accordance with the requirements of 49 CFR Part 40, Part 655 and Part 382 et al. set forth in Appendix XII.
18. Confidentiality (Pursuant to 49 CFR Parts 382, 655 and 40)
 - A. Each individual's record of testing and results under this policy will be maintained private and confidential. With the exception of the testing laboratory, MRO, employee, designated departmental manager, DOT/FTA or upon request of FHWA or State agency officials as part of an accident investigation, the results of individual drug tests will not be

released to anyone without the express written authorization of the individual tested. Prior to testing, the individual will be informed about who will receive test data (e.g., testing laboratory, MRO, departmental manager).

- B. All written records will be stored in locked containers or in a secure location with access available only by the individuals listed above or as otherwise necessary or required by law for the implementation of the DOT/FTA program.
 - C. Unless an employee gives his or her written consent, the employee's drug testing and/or E.A.P. records will not be released to a subsequent employer.
 - D. An employer may disclose information required to be maintained under Part 382 pertaining to an employee, the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol and/or controlled substance test administered under this Part, or from the employer's determination that the employee engaged in conduct prohibited by Part 382 (including but not limited to a worker's compensation, unemployment compensation, or other proceeding related to a benefit sought by the employee) as set forth in 49 CFR 382.405(g).
 - E. An employee subject to DOT/FHWA/FTA testing may obtain copies of any employer records pertaining to the employee's use of alcohol or drugs and test results upon written request to the employer. 49 CFR 382.405(b).
19. Discipline Policy. Under City policy, consistent with an alcohol-free and drug-free workplace, every effort will be made to help the employee deal with an alcohol or drug problem. However, if this effort fails or is obviously inappropriate given the employee's conduct, the nature of the drug and/or alcohol use, and/or the employee's position, then appropriate disciplinary action will be instituted. The employee covered by this policy who refuses or fails an alcohol or drug test and then refuses assistance or fails to satisfactorily complete the E.A.P. may be disciplined up to and including termination.
20. Conformity to Law. In the event this policy is in violation of any applicable law or administrative regulation, the City will make such changes as are necessary to conform this policy to such law or administrative regulation.

APPENDIX I

COVERED POSITIONS/CLASSIFICATIONS DOT/FHWA/FTA (Highways and Transit Operations)

The following employee classifications/positions are subject to testing if the employee holds a commercial driver's license and operate commercial motor vehicles (as defined in Appendix II) in a safety-sensitive position, or works in a safety-sensitive function in transit operations. Additional positions may be subject to testing if the employee has a commercial driver's license and operates a commercial motor vehicle in safety-sensitive duties.

CLASSIFICATION TITLES

Utilities Division

Utilities Supervisor
Assistant Utilities Supervisor
Utilities Maintenance Worker, Sr.
Utilities Maintenance Worker II
Utilities Maintenance Worker I

Electrical/Mechanical Maintenance Supervisor
Electrical/Mechanical Technician, Sr.
Electrical/Mechanical Technician II
Electrical/Mechanical Technician I

Fleet Maintenance Supervisor
Fleet Maintenance Mechanic, Sr.
Fleet Maintenance Mechanic, II
Fleet Maintenance Mechanic, I

Public Facilities Maintenance Services Division

Public Maintenance Supervisor
Assistant Public Maintenance Supervisor
Maintenance Worker, Sr.
Maintenance Worker II
Maintenance Worker I

APPENDIX II

DEFINITIONS

Accident A vehicle accident under 49 CFR Part 382 involving either (1) a loss of human life, or (2) the employee receives a citation for a moving violation arising from the accident. Also, an accident as defined in 49 CFR Part 655.

Air blank A reading by an EBT of ambient air containing no alcohol.

Alcohol The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl or isopropyl alcohol. Alcohol (CH₃), Ethyl alcohol (CH₂OH), ETOH (C₂H₅OH)

Alcohol concentration 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 Part 382 and Part 40.

Alcohol use Alcohol use in DOT/FTA rules means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Blind sample A urine specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from employee specimens, and which is spiked with known quantities of specific drugs or which is blank, containing no drugs.

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

Chain of custody Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen at the DHHS certified laboratory.

Collection site A designated clinic/facility where applicants or employees may present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Commercial motor vehicle A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle: (1) has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or (2) has a gross vehicle weight rating of 26,001 or more pounds; or (3) is designed to transport 16 or more passengers, including the driver; or (4) is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR 172).

Confirmation test (alcohol) A second alcohol test that follows a screening test by BAT with EBT after 15 minute deprivation period. The confirmation test controls over the screening test (if different result). Results of alcohol concentration less than 0.02 are reported as negative. Result 0.02-0.039 require employee be removed from the safety-sensitive function (but no DOT violation) for 24 hours. Result 0.04 or more is a violation of the DOT/FTA rules and requires removal until further evaluation by SAP.

Confirmation test (controlled substance) 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. Gas chromatography/mass spectrometry (GS/MC) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine (PCP).

Covered employee Any person who performs functions classified by DOT/FTA as "safety- sensitive" functions and intended to be included and regulated by DOT/FTA-mandated drug and alcohol testing. This includes an applicant for employment in the covered classifications.

Controlled substance (commonly referred to as "drugs") Includes the following five prohibited drugs: Marijuana, Cocaine, Opiates, Phencyclidine (PCP), and Amphetamines. See also the definition of drug test.

Deprivation period The period of time after a screening test for alcohol which indicates a breath alcohol concentration of 0.02 or greater. The waiting period cannot be less than 15 minutes but must be within 20 minutes from the completion of the screening test.

DHHS U.S. Department of Health & Human Services (federal).

Drug Program Manager (DPM) The employer-designated individual responsible for the preparation of a drug testing anti-drug plan which complies with DOT/FTA regulations and requirements. The DPM provides oversight and evaluation of the plan; reviews all discipline applied under the plan for consistency and conformance to employer policies and procedures; schedules random drug testing and return-to-duty testing; and maintains locked files on drug testing results.

Drug test (also referred to as controlled substance test) Refers to the DOT/FTA-mandated testing for certain controlled substances by a DHHS certified laboratory of employee urine samples for five prohibited drugs as follows: Marijuana, Cocaine, Opiates, Phencyclidine (PCP), and Amphetamines.

EAP Abbreviation for "Employee Assistance Program." DOT/FTA requires each employer to have an EAP program to provide education and training on substance

abuse to all employees including informational material, a community service hot-line telephone number, and distribution of employer's policy regarding the use of prohibited drugs and alcohol to all new employees.

Employee Any person who operates a commercial motor vehicle including full or part-time employees, leased drivers and independent owner-operator contractors who operate a commercial motor vehicle at the direction of the City, and employees engaged in safety-sensitive functions in transit operations. For pre-employment/pre-duty testing, the term employee includes a person applying for employment which would require the applicant to drive a commercial motor vehicle or engage in a safety-sensitive function in transit operations.

Evidential Breath Testing (EBT) device The equipment required by DOT/FTA for alcohol testing and approved by the National Highway Traffic Safety Administration (NHTSA) and listed on their Conforming Products List. EBT must be capable of printing out the results, date and time, a sequential test number, and the name and serial number of the EBT, to ensure the reliability of the results and one which NHTSA has approved a quality assurance program submitted by the device manufacturer.

Management Information System (MIS) Employer must maintain a record keeping and reporting system to include the number of covered and tested employees for both DOT/FTA-mandated drug and alcohol testing, the number of alcohol screening and confirmation tests, the number of drug tests, the number of denied positions in pre-employment testing (for drug), and the number of return-to-duty tests.

Medical Review Officer (MRO) The MRO is a licensed physician with knowledge of drug abuse disorders. MRO reviews all negative and positive drug test results and interviews individuals tested positive to verify the laboratory report before the employer is notified. MRO recommends whether and when an employee who refused to take or did not pass a drug test may return to work and schedule follow-up unannounced drug testing for a period of up to 60 months.

Performing a safety-sensitive function The employee is considered to be performing a safety-sensitive function during any period in which he/she is actually performing, ready to perform, or immediately available to perform as a driver of a commercial motor vehicle, or who performs or will perform a safety-sensitive function for transit operations.

Positive alcohol test The confirmation test performed by the BAT with EBT recorded result of 0.04 or more which is a violation of the DOT/FTA rules and requires removal from the covered position until further evaluation by an SAP.

Positive drug test To have the presence of a drug or a drug metabolite in an employee's system as determined by appropriate testing of a urine specimen that is

equal to or greater than the levels allowed by DOT/FTA in the confirmation test, and which is determined by the MRO to be the result of the use of illegal drugs. An employee whose drug test is positive cannot perform in a covered position until MRO retests and treatment and/or EAP.

Quality Assurance Plan (QAP) Plan for EBT developed by the manufacturer and approved by NHTSA. Key elements of the Plan include: methods for external calibration checks, minimum intervals for calibration checks, tolerances for calibration checks, inspection, maintenance and calibration reports. Employer must maintain records of compliance with QAP including calibration checks.

Random sample DOT/FTA drug and alcohol testing of covered employees performed on an unannounced and random selection basis. The random tests are spread reasonably over a 12-calendar month period to test at least 25% of all covered employees for alcohol, and 50% of covered employees for drugs.

Refusal to submit (to alcohol or drug test) The persons (1) fails to provide adequate breath for testing without a valid medical explanation after he/she has received notice of the requirement for breath testing,(2) fails to provide adequate urine for drug testing without a valid medical explanation after he/she has received notice of the requirement for urine testing, or (3) engages in conduct that clearly obstructs the testing process.

Safety-sensitive position (function) An employee who drives, is ready to drive, or available to drive commercial motor vehicles for the employer is considered to be performing a safety-sensitive function according to DOT-FHWA/FTA regulations. Also, a safety-sensitive function includes any duty related to the safe operation of mass transit service including the operation of a revenue service vehicle (whether or not the vehicle is in revenue service), and maintenance of a revenue service vehicle or equipment used in revenue service.

Screening test (or initial test) In drug testing, an immunoassay screen to eliminate "negative" urine specimens from further consideration. In alcohol testing, an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in his/her system.

Substance Abuse Professional (SAP) A licensed physician, social worker, psychologist, EAP or certified NAADAC (National Association of Alcohol and Drug Abuse Counselors) addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

APPENDIX III

LIST OF SUPERVISORS RECEIVING TRAINING IN DRUG-DETECTION AND ALCOHOL MISUSE

The following list of supervisors presently supervise employees in covered positions listed in Appendix I for DOT/FTA/FHWA safety-sensitive functions. This list is subject to amendment without notice. To obtain a current list, contact the City's Personnel Office.

Sam Beevers, Utilities Supervisor

Jose Cantu, Fleet Maintenance Supervisor

Dave Funk, Electrical/Mechanic Maintenance Supervisor

Ray Garcia, Public Maintenance Supervisor

Larry Gilley, Utilities Manager

Allison Van Guilder, Parks, Recreation & Public Facilities Manager

Dan Madden, Municipal Services Director

Mike Murphy, Public Facilities Maintenance Supervisor, Assistant

Keith Humphres, Public Facilities Maintenance Supervisor, Assistant

APPENDIX IV

ALCOHOL TESTING PROCEDURES

Alcohol testing procedures are as defined in 49 CFR Parts 382, 386, 390, 655, and 40, and are outlined below:

- A. For alcohol testing, the employer shall use only EBTs which meet the requirements of 49 CFR 40.231.
- B. An EBT shall have a Quality Assurance Plan (QAP) developed by the manufacturer which designates the methods to be used to perform external calibration checks using devices on the NHTSA "Conforming Products List of Calibrating Units for Breath Alcohol Tests" and other requirements set forth in 49 CFR 40.233.
- C. Alcohol testing will be performed on breath only unless otherwise required by DOT/FTA under amended regulations.
- D. Alcohol testing shall be conducted in a location that affords visual and aural privacy to the individual being tested sufficient to prevent unauthorized persons from seeing or hearing test results. (49 CFR 40.221)
- E. Alcohol testing may be conducted in a mobile connection facility as permitted in 49 CFR 40.221(f).
- F. The employer shall use the breath alcohol testing form prescribed by DOT form and log book requirements in Part 40, and the BAT shall follow all procedures required in Part 40.
- G. Prior to testing, the BAT will require the employee to provide positive identification (such as a photo ID or ID by an employer representative).
- H. A screening test (initial test) shall be performed by the BAT, with printed results which the BAT will show to the employee.
 - 1. In any case in which the breath alcohol concentration is less than 0.02, the BAT shall date and sign the form and the employee shall sign the certification and fill in the date on the form. No further testing is required and the BAT shall transmit the result of less than 0.02 to the employer in a confidential manner.
 - 2. If the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test shall be performed (49 CFR 40 Subpart L).

- I. A confirmation test is performed according to 49 CFR 40 Subpart M, by the BAT after a 15 minute deprivation period (but not more than 20 minute after the screening test) while under BAT supervision at all times. The result of the confirmation test controls and overrules the screening test (if a different result). Results are recorded on required forms and reported to the employer by the EBT.
 - 1. Results of breath alcohol concentration less than 0.02 are reported as negative.
 - 2. Results of breath alcohol concentration of 0.02 or greater but less than 0.04 will prevent the employee from performing or continuing to perform safety-sensitive functions until: (a) the start of the employee's next regularly scheduled duty period, but not less than 24 hours following administration of the test (49 CFR 382.505, 49 CFR 655.35). Return to work is subject to the requirements of Sections 3(a)(6) and 14(b) of this City policy.
 - 3. Results of alcohol concentration of 0.04 or more is a violation of the DOT/FHWA/FTA rules and requires removal from the safety-sensitive functions until further evaluation by a SAP and retesting.
- J. Refusal to complete and sign the breath alcohol testing form, to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the testing process to prevent the completion of the test shall be noted by the BAT and communicated to the employer.
- K. Inability to provide adequate amount of breath because of a medical condition shall be immediately reported to the employer and require evaluation by a licensed physician acceptable to the employer according to Part 40.265.
- L. If a consent or release form is required by collection site, other than the employer's site, and the employee refuses to sign the form, thereby resulting in no test being taken, the refusal to sign the consent or release form for the collection site shall be considered a refusal to test.

APPENDIX V

SUBSTANCE ABUSE PROFESSIONAL (SAP)

- A. Substance Abuse Professional (SAP) is defined in 49 CFR 382.605, 49 CFR 655.52. See definitions in Appendix II.
- B. The SAP is a licensed physician, social worker, psychologist, EAP or certified NAADAC (National Association of Alcohol and Drug Abuse Counselors) addiction counselor with knowledge of and clinical experience in diagnosis and treatment of alcohol and controlled substances-related disorders. The name and address of the SAP is as follows:

Melvin M. Beckwith, CADC II, NCAC, ICADC, SAP
17 East Main Street
PO Box 2326
Merced, CA 95344
(209) 722-8791 office
(209) 722-0738 fax

- C. SAP functions include the following:
 - 1. Conduct evaluation of employee who has engaged in prohibited conduct
 - 2. Determine if employee needs assistance in resolving problems associated with alcohol misuse or controlled substance use
 - 3. Refer employee for treatment/rehabilitation as appropriate
 - 4. Conduct return-to-duty evaluation to determine if employee has complied with any recommendations for treatment/rehabilitation
 - 5. May establish follow-up testing regime
 - 6. May recommend drug testing for those employees who have poly-substance abuse problems
 - 7. Reject test results that do not comply with the Mandatory Guidelines
 - 8. Maintain the required records to administer this program
 - 9. SAP cannot conduct treatment or refer to affiliated facility except if assessment and treatment through public agency, or person for treatment is provided through the health care program or the SAP is the only person available.

APPENDIX VI

CONTROLLED SUBSTANCE (DRUG) TESTING PROCEDURES

Controlled substance (drug) testing procedures are as defined in 49 CFR Parts 382, 386, 390, 655, and 40 and as set forth in summary below:

- A. Applicants and employees required to participate in the controlled substance (drug) testing program will be notified that a drug test is necessary and the basis upon which the testing is performed (e.g., random, post-accident, return-to-duty, etc.).
- B. Drug testing will be performed utilizing split specimen urine samples. Split specimen requires collection of urine in a single container (minimum 45 ml) which is subdivided into two containers (30 ml primary; 15 ml secondary), labeled, sealed, and shipped in a single shipping container to the lab.
- C. Each urine specimen shall be tested for evidence of the following controlled substances: marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines. (49 CFR 40, 49 CFR 382.107, 49 CFR 655.21)
- D. An applicant who is offered a position covered by this policy will be required to report to the alcohol and drug testing collection site specified in Appendix IX of this policy and provide both an alcohol breath test and a urine specimen.
- E. Upon notification that a drug test is required, an employee will report as soon as possible after notification to the drug collection site and provide a urine specimen.
- F. The collection agency shall adhere to all requirements outlined in 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs, as amended.
- G. Retention of urine specimens and retesting shall be in accordance with 49 CFR 40, 655, and 382.
 - 1. The laboratory shall retain samples that yield confirmed positive results for one year in secured frozen storage. The laboratory may be requested to retain the sample for an additional reasonable period; however, if no request is received during the one year period, the sample will be discarded at the end of one year.
 - 2. If the MRO determines there is no legitimate medical reason for a confirmed positive test result other than the unauthorized use of a

prohibited drug, the MRO shall advise the employee of the positive test result. The determination of a positive test level is set out in Appendix XIII herein. The employee may request retesting, which will require the employee to submit a written request to the MRO for a GC/MS retest of the secondary urine specimen within 72 hours after notification of the positive test result from the MRO receipt of final test results from the MRO. Retesting will be performed at a different DHHS certified lab that is certified by the U.S. Department of Health and Human Services (DHHS) which shall be selected by the employee's collective bargaining agent and be inspected and approved by City's MRO (see Appendix VIII for laboratory name and collection location). The cost of shipment (if any) and reanalysis of the specimen must be paid in advance by the employee and will be reimbursed if the retest is negative.

3. If the employee specifies retesting by a second laboratory, the original laboratory must follow approved chain-of-custody procedures in transferring the split specimen.
 4. If the MRO is unable to contact the employee, the employer shall request the employee contact the MRO prior to dispatching the employee or within 24 hours, whichever is earlier.
- H. Intentional acts of the applicant or employee to contaminate or invalidate the urine specimen will be deemed a failed test result. If a consent or release form is required by collection site, other than the employer's site, and the employee refuses to sign the form, thereby resulting in no test being taken, the refusal to sign the form for the collection site is considered a refusal to test.
- I. A positive test for controlled substances (drugs) means to have the presence of a drug or a drug metabolite in an employee's system as determined by appropriate testing of a bodily specimen that is equal to or greater than the levels specified in the appendix for the confirmation test and is validated by the MRO as being positive (see Appendix V). An employee whose drug test is positive will be considered in violation of this policy.
- J. Blind Performance Test Procedures:
1. General:
 - a. The employer shall use blind testing quality control procedures as provided below.
 - b. The employer shall submit three blind performance test specimens for each 100 employee specimens submitted, up to a maximum of 100 blind performance test specimens submitted per quarter. DOT

may increase this per quarter maximum number of samples if doing so is necessary to ensure adequate quality control of employers or consortiums with very large numbers of employees.

2. Covered Employees: For employers with 2,000 or more covered employees, approximately 80 percent of the blind performance test samples shall be blank (i.e., containing no drugs or otherwise as approved by DOT/FTA) and the remaining samples shall be positive for one or more drugs per sample in a distribution such that all the drugs to be tested are included in approximately equal frequencies of challenge. The positive samples shall be spiked only with those drugs for which the employer is testing. This paragraph shall not be construed to prohibit spiking of other (potentially interfering) compounds, as technically appropriate, in order to verify the specificity of a particular assay.
3. Employers with fewer than 2,000 covered employees may submit blind performance test specimens as provided in the above paragraph. The employer may also submit only blank samples or may submit two separately labeled portions of a specimen from the same non-covered employee.

APPENDIX VII

MEDICAL REVIEW OFFICER (MRO)

A. Medical Review Officer (MRO) is defined in 49 CFR 40.121. The MRO is a licensed physician with knowledge of substance abuse disorders. See also Appendix II definition.

B. Medical Review Officer information:

Stephen J. Kracht, D.O.
Certificate # 0807863
P.O. Box 25902
Overland Park, KS 66225
Phone 800-881-0722 Fax 913-469-4029

C. The following is a partial listing of the MRO's specific responsibilities as defined in 49 CFR 40.123. Additional details of responsibilities may be found in the DHHS Medical Review Officer Manual.

1. Receive positive confirmed drug test results from laboratory.
2. Request, if needed, a quantitative description of drug test results.
3. Receive a certified copy of the original chain of custody.
4. Review and interpret positive drug test results according to the DOT/FTA-mandated standard set forth in Appendix XIII.
5. Inform the tested individual and provide drug test results.
6. Conduct a medical interview with the tested individual.
7. Review the individual's medical history, or any other relevant biomedical factors.
8. Give the individual an opportunity to discuss test results, and advise the individual that the original split urine specimen sample may be retested at a different DHHS certified laboratory upon the written request of the employee, if the written request is made within 72 hours from notification of the positive drug test result.
9. Order a reanalysis of the split urine specimen in a different DHHS certified laboratory, if necessary.

10. Consult with others if question of accuracy arises, consistent with confidentiality requirements.
11. Consult with laboratory officials.
12. Reject urinalysis results that do not comply with the Mandatory Guidelines.
13. Confirm an opiate-positive urine by "clinical evidence"; except for GC/MS confirmation of 6-monoacetylmorphine. (49 CFR 40.139)
14. Determine whether a result is scientifically sufficient.
15. Determine whether a result is consistent with legal drug use.
16. Forward results of verified positive tests to the employer.
17. Maintain the required records to administer this program.

APPENDIX VIII

NAME AND LOCATION OF DHHS CERTIFIED LABORATORY

The testing laboratory for this policy for primary testing will be a laboratory certified by DHHS and approved by the MRO. The name and location of the testing laboratory is as follows:

Clinical Reference Lab
11850 West 85th Street
Lenexa, KS 66214
(301) 443-6780

Retesting of the split sample will be performed by a different laboratory certified by DHHS and approved by the MRO. The name and location of the laboratory is as follows:

Quest Diagnostics
Corporate Headquarters
1290 Wall Street, West
Lyndhurst, NJ 07071
(800) 877-7484

Laboratory Procedures: The DHHS certified laboratories shall comply with all methods and procedures of 49 CFR Part 40, as amended, and will provide annual proof of certification and compliance to the City Occupational Health Services, MRO, and the employer.

APPENDIX IX

NAME AND LOCATION OF COLLECTION AGENT

Collection Agent:

Romeo Medical Work Wellness
Attn: Bonnie Fontana
1801 Colorado Ave. Suite 130
Turlock, CA 95382
(209) 216-3333

After Hours and Weekends:

Emergency Department (Emanuel Medical Center)
825 Delbon Avenue
Turlock, CA 95382

Open 24 Hours

APPENDIX X

POST-ACCIDENT PROCEDURES AND INSTRUCTIONS 49 CFR PART 382.303(D) AND 49 CFR PART 655.4 REQUIREMENTS

- A. If an accident involves (1) the loss of human life, or (2) the driver receives a citation for a moving violation arising from the accident, or (3) the accident involves a transit vehicle and an individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or (4) the accident involves a transit vehicle and one or more vehicles involved incurs disabling damage as the result of the occurrence, the driver must be tested for alcohol and drugs under the DOT/FTA-mandated policy. The testing should occur as soon as practicable following an accident.
- B. Alcohol testing. If an alcohol test is required, the employee shall be alcohol tested within two (2) hours following the accident or otherwise the employer shall document the reasons the alcohol test was not promptly administered. If an alcohol test is not administered within eight (8) hours following the accident, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test (CFR 382.303(d)(1), 49 CFR 655.44).
- C. Drug testing. If a drug test is required, the employee shall be tested for drug use by obtaining a split urine specimen as soon as possible, but no later than 32 hours after the accident. Because certain drugs or drug metabolites do not remain in the body for extended periods of time, testing should be as soon as possible.
- D. All reasonable steps will be taken to obtain an alcohol test from an employee after an accident. In case of a conscious but hospitalized employee, the hospital or medical facility will be requested to obtain a sample and, if necessary, reference will be made to the DOT/FTA alcohol testing requirements. If an employee is unconscious or otherwise unable to evidence consent to the procedure, the employer shall notify the hospital of the need for a test and wait until the treating physician determines the employee is able to understand and comply.
- E. If an employee who is subject to post-accident testing is conscious, able to provide an alcohol test or urine specimen (in the opinion of medical professional) and refuses to be tested, that employee will be subject to discipline, up to and including termination.
- F. Under the City-wide drug and alcohol policies, additional non-DOT/FTA testing may also be requested by the employer following any type of motor vehicle accident or incident in which safety precautions were violated or

unusually careless acts were performed, or which involve substandard performance by the employee, or related to unusual behavior, driving, altercations, or other indications of alcohol and/or drug usage.

APPENDIX XI

E.A.P. HOTLINE TELEPHONE NUMBER

E.A.P. HOTLINE TELEPHONE NUMBER: 1-800-234-5465

Operating Hours: 24 Hours

APPENDIX XII

RECORDKEEPING AND REPORTING PROCEDURES

Records will be maintained in accordance with the requirements of 49 CFR 382.401-409, et al. and 655.71 as outlined below:

A. Retention Period. The employer will keep the following records for the periods specified. These records will be maintained in a secure location with controlled access:

1. Five-Year Retention Period:

- a. Records of employee alcohol test results with results indicating an alcohol concentration of 0.02 or greater
- b. Records of employee verified positive drug test results
- c. Documentation of refusals to take alcohol/drug tests
- d. Calibration of Evidential Breath Testing (EBT) devices documentation
- e. Employee evaluation and referrals
- f. Copy of each annual calendar year summary required by 49 CFR 382.403
- g. Substance abuse professionals (SAP) evaluations and referrals will be kept a minimum of 5 years

2. Two-Year Retention Period:

- a. Records related to the alcohol and drug test collection process (except calibration of EBT devices).
- b. Records of BAT, supervisor and employee training after the individuals cease to perform those functions.

3. One-Year Retention Period:

- a. Records of negative and canceled drug test results
- b. Records of test results indicating a breath alcohol concentration less than 0.02
- c. Records relating to the collection process (except calibration) and required testing will be kept a minimum of two years.

4. Indefinite Retention Period

- a. Records related to the education and training of BATs, supervisors, and employees while the individuals perform the functions which require the training.

B. Types of Records Maintained. If a document is required to be prepared under these regulations, it must be maintained.

1. Records relating to the collection process include:

- a. Collection log books
- b. Documents related to the random selection process
- c. Calibration documentation for EBTs
- d. Documentation of BAT training
- e. Documentation of reasonable suspicion testing
- f. Documentation of reasoning for post-accident testing
- g. Documentation verifying a medical explanation for the inability to provide adequate breath or urine for testing
- h. Consolidated annual calendar year summaries required by 49 CFR 382.403

2. Records relating to employee's test results including:

- a. Employer's copy of alcohol test form including results of test
- b. Employer's copy of drug test chain of custody and control form
- c. Documents sent from MRO to employer
- d. Documents relating to refusal to test
- e. Documents presented by an employee to dispute the result of an alcohol or drug test
- f. Documents generated in connection with verifications of prior employers' alcohol or controlled substances test results that were obtained by the employer:
 - i. In connection with the exception in 49 CFR 382.301, and
 - ii. As required by 49 CFR 382.413.

3. Records related to other violations of DOT/FHWA/FTA

4. Records related to evaluations as follows:

- a. SAP determination of employee's need for assistance
- b. Records concerning employee's compliance with SAP recommendations

5. Records related to education and training as follows:

- a. Materials on awareness for alcohol misuse and controlled substance use including a copy of employer's policy

- b. Documentation of compliance with the requirements of 382.601 including employee's signed receipt of education materials and policy
- c. Documentation of supervisor training for alcohol and drug testing based on reasonable suspicion
- d. Certification of training for breath alcohol technicians as required by 49 CFR 40.213(a)
- e. Certification that any training conducted under 49 CFR 40 and 382 complies with the requirements for such training

6. Records relating to alcohol and drug testing as follows:

- a. Agreements with collection site, laboratory, and MRO
- b. Names and positions of officials and role in employer's testing program(s)
- c. Semi-annual laboratory statistical summaries of urinalysis required by 49 CFR 40.111(a)
- d. Employer's alcohol and drug testing policy and procedures
- e. Location of all records

C. Reporting for Management Information System (49 CFR 382.403)

- 1. When requested by the Federal Motor Carrier Safety Administration during the month of January, annual summaries of alcohol and drug testing results shall be completed for the calendar year just ended, by March 15 of the following year using the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at 40.26 and appendix H to part 40) or the electronic version of the MIS form provided by the DOT. The annual summary shall include the following:
 - a. The number of drivers subject to Part 382
 - b. Drivers subject to testing under alcohol or drug use rules of more than one DOT agency, identified by agency
 - c. Number of urine specimens collected by type (random, pre-employment, follow-up, etc.)
 - d. Number of positive verified by MRO by type of test
 - e. Number of negative verified by MRO by type of test
 - f. Number of drivers denied position following pre-employment positive drug or alcohol test of 0.04 or greater
 - g. Number of drivers with tests verified positive by MRO for multiple drugs
 - h. Number of drivers who refused to take alcohol and/or drug test
 - i. Number of supervisors receiving alcohol reasonable suspicion training
 - j. Number of supervisors receiving controlled substance reasonable suspicion training

- k. Number of screening alcohol tests by type of test
 - l. Number of confirmation alcohol tests by type of test
 - m. Number of confirmation alcohol tests indicating an alcohol concentration of 0.02 or greater but less than 0.04 by type of test
 - n. Number of confirmation alcohol tests indicating an alcohol concentration of 0.04 or greater by type of test
 - o. Number of drivers in this reporting period who were returned to duty (having complied with SAP recommendations) who previously: 1) had a verified positive drug test result, or 2) engaged in prohibited alcohol misuse
 - p. Number of drivers administered a drug and alcohol test at the same time with a verified positive drug test and an alcohol concentration of 0.04 or greater
2. Each employee shall be identified who is subject to more than one DOT/FTA agency alcohol or drug rule. The identification will be by the total number of covered functions. Prior to testing, the employer shall identify which DOT/FTA agency under which the employee performs more than 50% of his or her duties. and test result information shall be directed to the appropriate DOT agency. (49 CFR 655.45(j))

APPENDIX XIII

LEVELS OF CONTROLLED SUBSTANCES (DRUGS)
CONSIDERED TO BE POSITIVE

Positive levels for prohibited drugs:

<u>Drug and/or Metabolite</u>	<u>Initial Level</u>	<u>Confirmation Level</u>
Marijuana	50 n/ml	15 n/ml
Cocaine	300 n/ml	150 n/ml
Opiates (morphine and/or codeine)	300 n/ml	300 n/ml
Phencyclidine (PCP)	25 n/ml	25 n/ml
Amphetamines and/or Methamphetamines	1000 n/ml	500 n/ml