

**CITY OF MINNEAPOLIS
PRE-EMPLOYMENT APPLICANT DRUG AND ALCOHOL TESTING POLICY**

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Deleted: and it establishes a testing procedure to ensure that those standards are met.

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¶
A. *Confirmatory Test* and *Confirmatory Retest* mean a drug or alcohol test that uses a method of analysis allowed by the *Minnesota Drug and Alcohol Testing in the Workplace Act* to be used for such purposes.¶

¶
B. *Drug* means a controlled substance as defined in *Minnesota Statutes* §152.01, Subd. 4.¶

¶
C. *Drug and Alcohol Testing, Drug or Alcohol Testing, and Drug or Alcohol Test* mean analysis of a body component sample approved according to the standards established by the *Minnesota Drug and Alcohol Testing in the Workplace Act*, for the purpose of measuring the presence or absence of drugs, alcohol, or their metabolites in the sample tested.¶

¶
D. *Drug Paraphernalia* has the meaning defined in *Minnesota Statutes* §152.01, Subd. 18.¶

Deleted: *Applicant* means a person, independent contractor, or person working for an independent contractor who applies to become an Employee of the Employer and includes a person who has received a job offer contingent on the person passing drug and alcohol testing. Applicant does not include a current employee who transfers, demotes, or promotes into a new job. Applicant does not include persons who are subject to drug and alcohol testing under a separate City policy related to Department of Transportation testing requirements. ¶

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F. *Employee* means a person, independent contractor, or person working for an independent contractor who performs services for the City of Minneapolis for compensation, in [... [1]

Deleted: *Drug-Free Workplace* means a site for the performance of work done in connection with any federal grant or contract at which employees are prohibited from engaging in the unlawful manufacture, distribution, dispens [... [2]

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Applies to: Certain classified, appointed or temporary positions under the jurisdiction of the Mayor and City Council. This policy does not apply to the hiring of Election Workers, Student Interns and Summer Youth Workers.

Synopsis: Establishes policy, roles and responsibilities for conducting pre-employment drug & alcohol tests on prospective employees.

Council Approval Date: November 22, 2002 (Current Policy) **Effective Date:** November 1, 2008

Links to Related Regulations: 152.02, Minnesota Statutes 2007;181.951, Minnesota Statutes 2007; Drug-Free Workplace Act of 1988

Administering Departments: Human Resources and Finance **Contact:** Charles J. Bernardy and Ellen Velasco-Thompson **Phone Numbers:** (612) 673-3103 and (612) 673-3994

1. POLICY STATEMENT

Abuse of drugs and alcohol is a nationwide problem. It affects persons of every age, race, sex and ethnic group. It poses risks to the health and safety of employees of the City of Minneapolis and to the public. To reduce those risks, the City adopts this policy concerning drugs and alcohol in the workplace. This policy establishes standards concerning drugs and alcohol which all job applicants for positions covered by this policy must meet.

This drug and alcohol testing policy is intended to conform to the provisions of the *Minnesota Drug and Alcohol Testing in the Workplace Act (Minnesota Statutes, §§ 181.950 to 181.957)*, as well as the requirements of the federal *Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D)* and related federal regulations.

The Human Resources Director is directed to develop and maintain procedures for the implementation and ongoing maintenance of this policy and to establish testing procedures to ensure that the standards listed in this policy are met.

2. POSITIONS COVERED: This policy covers drug and alcohol testing for positions that meet one or more of the following criteria:

- a) A Driver's License is a minimum qualification; or
- b) Access to drugs and alcohol; or
- c) Operation of heavy and/or motorized equipment; or
- d) Direct interaction with children or vulnerable adults; or
- e) Dispatches or responds to life-threatening emergencies; or
- f) Handles cash, cash equivalents, checks, securities or has access to bank or investment accounts.

Any position that meets one or more of the above criteria will require drug and alcohol testing. It is possible that not all positions within a job classification will be subject to drug and alcohol testing.

3. ROLES & RESPONSIBILITIES

<u>Role</u>	<u>Responsibility</u>
<u>Hiring Authority</u>	<u>Understand and comply with all City policies and procedures with respect to hiring appointed, classified and temporary employees.</u>

Human Resources	<p>a) <u>Develop, implement, manage and update the policy.</u></p> <p>b) <u>Establish, manage and modify procedures necessary to carry out and comply with the policy in accordance with applicable laws, City ordinances, policies and rules.</u></p>
Medical Review Officer/Third Party Clinic	<p><u>Deliver services and conduct Pre-Employment Drug and Alcohol Tests in accordance with State and Federal Laws and as described in the contract between the Medical Review Officer/Third Party Clinic and the City of Minneapolis Finance Department.</u></p>

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- Deleted: C. **Identification of Samples** - Each sample shall be sealed into a suitable container free of any contamination that could affect test results, be immediately labeled with the subject's social security number, be initialed by the subject, and be signed and dated by the person witnessing the sample.¶
- ¶
- <#>**Chain of Custody** - The Employer shall ensure that a written record of the chain of custody of the sample is maintained and ensure the proper handling of the sample in compliance with the provisions of the Minnesota *Drug and Alcohol Testing in the Workplace Act* pertaining to chain of custody.¶
- ¶
- E. **Laboratory** - The Employer shall use the services of a testing laboratory which meets the criteria established by the Minnesota *Drug and Alcohol Testing in the Workplace Act* pertaining to testing laboratories; however, no test shall be conducted by a testing laboratory owned and operated by the City of Minneapolis.¶
- ¶
- F. **Methods of Analysis** - The testing laboratory shall use methods of analysis and procedures to ensure reliable d ... [3]
- Deleted: **Positive Test Results** - In the event any applicant tests positive f ... [4]
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4. PERSONS SUBJECT TO TESTING

Job applicants for positions covered by this policy are subject to pre-employment drug and alcohol testing. However, no job applicant will be tested for drugs or alcohol under this policy without the job applicant's consent. The Employer will request or require a job applicant to undergo drug or alcohol testing only under the circumstances described in this policy.

5. CIRCUMSTANCES FOR DRUG OR ALCOHOL TESTING

The Employer may request or require a job applicant to undergo drug and alcohol testing if: (1) the job applicant has been given a job offer contingent on providing a "valid sample with a certified result" as that term is defined in the Pre-Employment Drug and Alcohol Testing Policy and passing drug and or alcohol testing; and (2) the same test is requested or required of all job applicants conditionally offered employment for that position. The Human Resources Director or any designee of the Human Resources Director will determine if drug and or alcohol testing will be required for a position.

6. REFUSAL TO UNDERGO TESTING

- A. **Right to Refuse** - Job applicants have the right to refuse to undergo drug and alcohol testing. If an applicant refuses to undergo drug and or alcohol testing requested or required by the Employer, no such test shall be given.
- B. **Consequences of Refusal** - If any job applicant refuses to undergo drug and or alcohol testing requested or required by the Employer, the Employer may withdraw the job offer that was conditional upon passing drug and alcohol testing.
- C. **Refusal on Religious Grounds** - No job applicant who refuses to undergo drug and or alcohol testing of a blood sample upon religious grounds shall be deemed to have refused unless the applicant also refuses to undergo drug and or alcohol testing of a urine sample.

7. PROCEDURE FOR TESTING

- A. **Notification Form** - Before requesting a job applicant to undergo drug and or alcohol testing, the Employer shall provide the individual with a form on which to (1) acknowledge that the individual has seen a copy of the Employer's Pre-Employment Applicant Drug and Alcohol Testing Policy, and (2) indicate consent to undergo the drug and or alcohol testing.
- B. **Testing - Testing will be performed in accordance with the Minnesota Drug and Alcohol Testing in the Workplace Act. Test Sample** - The test sample shall be obtained in a private setting, and the procedures for taking the sample shall ensure privacy to applicants to the extent practicable, consistent with preventing tampering with the sample. All test samples shall be obtained by or under the direct supervision of a health care professional.

8. RIGHTS OF JOB APPLICANTS

Within three (3) working days after receipt of the test result report from the testing laboratory, the ~~Employer or the Employer's Agent~~ shall inform an applicant who has undergone drug and ~~or~~ alcohol testing, ~~in writing~~, of:

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A. A negative test result on an initial screening test or of a negative or positive test result on a confirmatory test;

B. The right to request and receive from the Employer a copy of the test result report;

C. The right to request within five (5) working days after notice of a positive test result a confirmatory retest of the original sample at the applicant's expense at the original testing laboratory or another licensed testing laboratory. ~~Within three (3) working days after receipt of the written notice from the job applicant, the Employer's Agent shall notify the original testing laboratory that the job applicant has requested the laboratory to conduct the confirmatory retest or transfer the sample to another licensed laboratory to conduct the confirmatory retest. The confirmatory retest must use the same drug or alcohol threshold detection levels as used in the original confirmatory test. If the confirmatory retest does not confirm the original positive test result, no adverse personnel action based on the original confirmatory test may be taken against the job applicant;~~

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D. The right to submit information to the ~~MRO~~ within three (3) working days after notice of a positive test result to explain that result; to indicate any over-the-counter or prescription medications that the applicant is currently taking or has recently (within the last month) taken; and to provide any other information relevant to the reliability of, or explanation for, a positive test result;

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E. The right not to have a job offer withdrawn based on a positive test result from an initial screening test that has not been verified by a confirmatory test.

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~~F. The right to appeal the withdrawal of a conditional job offer to the Minneapolis Civil Service Commission. Appeals to the Minneapolis Civil Service Commission must be made in writing within fifteen calendar days of the action or when the appellant would have reasonably been aware of the action. Appeals should be sent to Minneapolis Civil Service Commission c/o City of Minneapolis Human Resources Department, 250 South 4th Street – Room 100, Minneapolis, MN 55415.~~

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9. ACTION AFTER TEST

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The Employer will not discriminate against a ~~job~~ applicant solely on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test. Where there has been a positive test result in a confirmatory test, ~~confirmatory retest~~, unless the applicant has furnished a valid medical reason for the positive test result, the Employer will withdraw the job offer that was contingent on passing drug and alcohol testing. If the job offer is withdrawn based on a positive test result that has been verified by ~~any~~ confirmatory ~~retest~~, the Employer shall inform the applicant of the reason for the job withdrawal.

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10. DATA PRIVACY

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The purpose of collecting a body component sample of blood, breath, or urine is to test that sample for the presence of drugs and ~~or~~ alcohol. A sample provided for drug ~~and-or~~ alcohol testing will not be tested for any other purpose. The name, initials and social security number of the person providing the sample ~~may be~~ requested so that the sample can be identified accurately but confidentially. Information about medications and other information relevant to the reliability of, or explanation for, a positive test result is requested to ensure that the test is reliable and to determine whether there is a valid medical reason for any drug ~~and-or~~ alcohol in the sample. All data collected, including that in the notification form and the test report, is intended for use in determining the suitability of the applicant for employment. The applicant may refuse to supply the requested data; however, refusal to supply the requested data may affect the applicant's job offer.

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A laboratory may only disclose to the Employer ~~or the Employer's agent~~ test result data regarding presence or absence of drugs, alcohol, or their metabolites in a sample tested. The Employer, ~~the Employers agent~~ or laboratory may not disclose the test result reports and other information acquired in the drug ~~and-or~~ alcohol testing process to another employer or to a third party individual, governmental agency, or private organization without the written consent of the person tested, unless permitted by law, ~~court order, or subpoena~~. Evidence of a positive test result on a confirmatory test may be: (1) used in an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under ~~Minnesota Statutes~~, Chapter 43A or other applicable state or local law,

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or a judicial proceeding, provided that information is relevant to the hearing or proceeding; (2) disclosed to any federal agency or other unit of the United States government as required under federal law, regulation, or order, or in accordance with compliance requirements of a federal government contract; and (3) disclosed as required by law, court order, or subpoena. Positive test results may not be used as evidence in a criminal action against the employee or applicant tested.

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9. DEFINITIONS

- A. Confirmatory Test and Confirmatory Retest mean a drug or alcohol test that uses a method of analysis allowed by the Minnesota Drug and Alcohol Testing in the Workplace Act to be used for such purposes.
- B. Drug means a controlled substance as defined in Minnesota Statutes §152.01, Subd. 4.
- C. Drug and Alcohol Testing, Drug or Alcohol Testing, and Drug or Alcohol Test mean analysis of a body component sample approved according to the standards established by the Minnesota Drug and Alcohol Testing in the Workplace Act, for the purpose of measuring the presence or absence of drugs, alcohol, or their metabolites in the sample tested.
- D. Drug Paraphernalia has the meaning defined in Minnesota Statutes §152.01, Subd. 18.
- E. Job Applicant means a person, independent contractor, or person working for an independent contractor who applies to become an Employee of the Employer and includes a person who has received a job offer contingent on the person passing drug and alcohol testing. Job Applicant also includes, but is not limited to, an individual who applies for a temporary position, including a permit position.

“Job Applicant” does not include current employees of the City of Minneapolis.
- F. Employee means a person, independent contractor, or person working for an independent contractor who performs services for the City of Minneapolis for compensation, in whatever form, including any applicant directly engaged in the performance of work pursuant to the provisions of any federal grant or contract.
- G. Employer means the City of Minneapolis acting through a department head or any designee of the department head.
- H. Initial Screening Test means a drug or alcohol test which uses a method of analysis allowed by the Minnesota Drug and Alcohol Testing in the Workplace Act to be used for such purposes. An alcohol breath test is not an initial screening test; however, an alcohol breath test may be used to determine if an initial screening test of urine or blood will be performed.
- I. Positive Test Result means a finding of the presence of alcohol, drugs or their metabolites in the sample tested in levels at or above the threshold detection levels as determined by the City of Minneapolis in accordance with the Minnesota Drug and Alcohol Testing in the Workplace Act. recognized by the National Institute on Drug Abuse, the College of American Pathologists or the Department of Health, State of New York, as appropriate cutoff values or concentrations under the standards of the programs they administer. At the time this policy was published, each of the following levels was considered to be a positive test result

Substance	Initial Screening	Confirmatory
Alcohol (urine)	.02 gm/100 ml of urine	.02 gm/100 ml of urine
Alcohol (blood)	.02 gm/100 ml of blood	.02 gm/100 ml of blood
Alcohol (breath)	.02 gm/210 L of breath	.02 gm/100 ml of blood
Amphetamines	1,000 ng/ml	500 ng/ml*
Methamphetamine	1,000 ng/ml	500 ng/ml*
Barbiturates	300 ng/ml	300 ng/ml
Benzodiazepines	300 ng/ml	300 ng/ml

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Cocaine Metabolites	300 ng/ml	150 ng/ml
Fentanyl	5 ng/ml	5 ng/ml
Opiate Metabolites		
Opiates: 1) Morphine	2000 ng/ml*	2000 ng/ml*
Opiates: 2) Codeine	2000 ng/ml*	2000 ng/ml*
PCP (Phencyclidine)	25 ng/ml	25 ng/ml
Marijuana Metabolites	20 ng/ml	15 ng/ml
LSD (Lysergic Acid Diethylamide)	1 ng/ml	5 ng/ml
3,4-Methylenedioxy Amphetamine (MDA)	300 ng/ml	300 ng/ml

* Individually or in combination.

These levels are subject to change as advances in technology or other considerations warrant identification of these substances at other concentrations. Methods of analysis used and testing levels reported by laboratories who are certified or accredited by the organizations listed above for other drugs shall also be observed under this policy.

~~J. Gm means Gram.~~

~~K. L means liter(s).~~

~~L. ML means milliliter(s).~~

~~M. Ng/ml means nanograms per milliliter.~~

~~N. Under the Influence means having the presence of a drug or alcohol at or above the level of a positive test result.~~

O. Valid Medical Reason means (1) a written prescription, or an oral prescription reduced to writing, which satisfies the requisites of Minnesota Statutes §152.11, and names the applicant as the person for whose use it is intended; and (2) a drug prescribed, administered and dispensed in the course of professional practice by or under the direction and supervision of a licensed doctor, as described in Minn. Stat. §152.12; and (3) a drug used in accordance with the terms of the prescription. Use of any over-the-counter medication in accordance with the terms of the product's directions for use shall also constitute a valid medical reason.

P. Controlled Substance means a drug, substance, or immediate precursor in Schedules I through V of Minn. Stat. § 152.02, Section 202 of the Controlled Substances Act (U.S.C. 812), and as further defined by regulation at 21 CFR 1300.11 through 1300.15.

~~Q. Criminal Drug Statute means a federal or non federal criminal statute involving the manufacture, distribution, dispensing, use or possession of any controlled substance.~~

~~R. Drug-Free Workplace means a site for the performance of work done in connection with any federal grant or contract at which employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance.~~

S. Federal Agency or Agency means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

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T. Grant means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a federal agency directly to a grantee. The term *grant* includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management government-wide regulation (*Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*). The term does not include technical assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any Veterans' benefits to individuals, i.e., any benefit to Veterans, their families, or survivors by virtue of the service of a Veteran in the Armed Forces of the United States.

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U. Grantee means a person who applies for or receives a grant directly from a federal agency.

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V. Individual means a natural person.

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W. Valid Sample with a Certified Result means a body component sample that may be measured for the presence or absence of drugs, alcohol, or their metabolites.

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Applicant means a person, independent contractor, or person working for an independent contractor who applies to become an Employee of the Employer and includes a person who has received a job offer contingent on the person passing drug and alcohol testing. Applicant does not include a current employee who transfers, demotes, or promotes into a new job. Applicant does not include persons who are subject to drug and alcohol testing under a separate City policy related to Department of Transportation testing requirements.

F. **Employee** means a person, independent contractor, or person working for an independent contractor who performs services for the City of Minneapolis for compensation, in whatever form, including any applicant directly engaged in the performance of work pursuant to the provisions of any federal grant or contract.

G. **Employer** means the City of Minneapolis acting through a department head or any designee of the department head.

H. **Initial Screening Test** means a drug or alcohol test which uses a method of analysis allowed by the Minnesota *Drug and Alcohol Testing in the Workplace Act* to be used for such purposes.

I. **Positive Test Result** means a finding of the presence of alcohol, drugs or their metabolites in the sample tested in levels at or above the threshold detection levels recognized by the National Institute on Drug Abuse, the College of American Pathologists or the Department of Health, State of New York, as appropriate cutoff values or concentrations under the standards of the programs they administer. At the time this policy was published, each of the following levels was considered to be a positive test result:

	<u>Substance</u>	<u>Initial Screening</u>	<u>Confirmatory</u>
urine	Alcohol (urine)	.02 gm/100 ml of urine	.02 gm/100 ml of
blood	Alcohol (blood)	.02 gm/100 ml of blood	.02 gm/100 ml of
blood	Alcohol (breath)	.02 gm/210 L of breath	.02 gm/100 ml of
	Amphetamines	1,000 ng/ml	500 ng/ml*
	Methamphetamine	1,000 ng/ml	500 ng/ml*
	Barbiturates	300 ng/ml	300 ng/ml
	Benzodiazepines	300 ng/ml	300 ng/ml
	Cocaine Metabolites	300 ng/ml	150 ng/ml
	Fentanyl	5 ng/ml	5 ng/ml
	Opiate Metabolites		
	Opiates: 1) Morphine	2000 ng/ml*	2000 ng/ml*
	Opiates: 2) Codeine	2000 ng/ml*	2000 ng/ml*
	PCP (Phencyclidine)	25 ng/ml	25 ng/ml
	Marijuana Metabolites	20 ng/ml	15 ng/ml

LSD (Lysergic Acid Diethylamide)	1 ng/ml	5 ng/ml
3, 4-Methylenedioxy Amphetamine (MDA)	300 ng/ml	300 ng/ml

* Individually or in combination.

These levels are subject to change as advances in technology or other considerations warrant identification of these substances at other concentrations. Methods of analysis used and testing levels reported by laboratories who are certified or accredited by the organizations listed above for other drugs shall also be observed under this policy.

- J. **Gm** means gram(s).
- K. **L** means liter(s).
- L. **ml** means milliliter(s).
- M. **Ng/ml** means nanograms per milliliter.
- N. **Under the Influence** means having the presence of a drug or alcohol at or above the level of a positive test result.
- O. **Valid Medical Reason** means (1) a written prescription, or an oral prescription reduced to writing, which satisfies the requisites of *Minnesota Statutes* §152.11, and names the applicant as the person for whose use it is intended; and (2) a drug prescribed, administered and dispensed in the course of professional practice by or under the direction and supervision of a licensed doctor, as described in *Minnesota Statutes* §152.12; and (3) a drug used in accord with the terms of the prescription. Use of any over-the-counter medication in accord with the terms of the product's directions for use shall also constitute a *valid medical reason*.
- P. **Controlled Substance** means a controlled substance in Schedules I through V of Section 202 of the Controlled Substances Act (U.S.C. 812), and as further defined by regulation at 21 CFR 1300.11 through 1300.15.
- Q. **Criminal Drug Statute** means a federal or non-federal criminal statute involving the manufacture, distribution, dispensing, use or possession of any controlled substance.

- Drug-Free Workplace** means a site for the performance of work done in connection with any federal grant or contract at which employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance.
- S. **Federal Agency or Agency** means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.
- T. **Grant** means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a federal agency directly to a grantee. The term *grant* includes block grant and entitlement grant programs, whether or not

exempted from coverage under the grants management government-wide regulation (*Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*). The term does not include technical assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any Veterans' benefits to individuals, i.e., any benefit to Veterans, their families, or survivors by virtue of the service of a Veteran in the Armed Forces of the United States.

- U. **Grantee** means a person who applies for or receives a grant directly from a federal agency.
- V. **Individual** means a natural person.

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- C. **Identification of Samples** - Each sample shall be sealed into a suitable container free of any contamination that could affect test results, be immediately labeled with the subject's social security number, be initialed by the subject, and be signed and dated by the person witnessing the sample.

Chain of Custody - The Employer shall ensure that a written record of the chain of custody of the sample is maintained and ensure the proper handling of the sample in compliance with the provisions of the Minnesota *Drug and Alcohol Testing in the Workplace Act* pertaining to chain of custody.

- E. **Laboratory** - The Employer shall use the services of a testing laboratory which meets the criteria established by the Minnesota *Drug and Alcohol Testing in the Workplace Act* pertaining to testing laboratories; however, no test shall be conducted by a testing laboratory owned and operated by the City of Minneapolis.
- F. **Methods of Analysis** - The testing laboratory shall use methods of analysis and procedures to ensure reliable drug and alcohol testing results, including standards for initial screening tests and confirmatory tests. The testing laboratory shall perform each test analysis in accordance with the applicable standards of the licensing, accreditation or certification program listed in the Minnesota *Drug and Alcohol Testing in the Workplace Act* in which it participates.
- G. **Retention and Storage** - All blood and urine samples that produced a positive test result shall be retained and properly stored by the testing laboratory for at least six (6) months.
- H. **Test Report** - The testing laboratory shall prepare a written report indicating the drugs, alcohol, or their metabolites tested for, the types of tests conducted, and whether the test produced negative or positive test results, and the testing laboratory shall disclose that report to the Employer within three (3) working days after obtaining the final test result.

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Positive Test Results – In the event any applicant tests positive for drug use, the applicant will be provided, in writing, notice of his/her right to explain the test results. The applicant may indicate any relevant circumstance, including over the counter or prescription medication taken within the last thirty (30) days which may have biased the test.