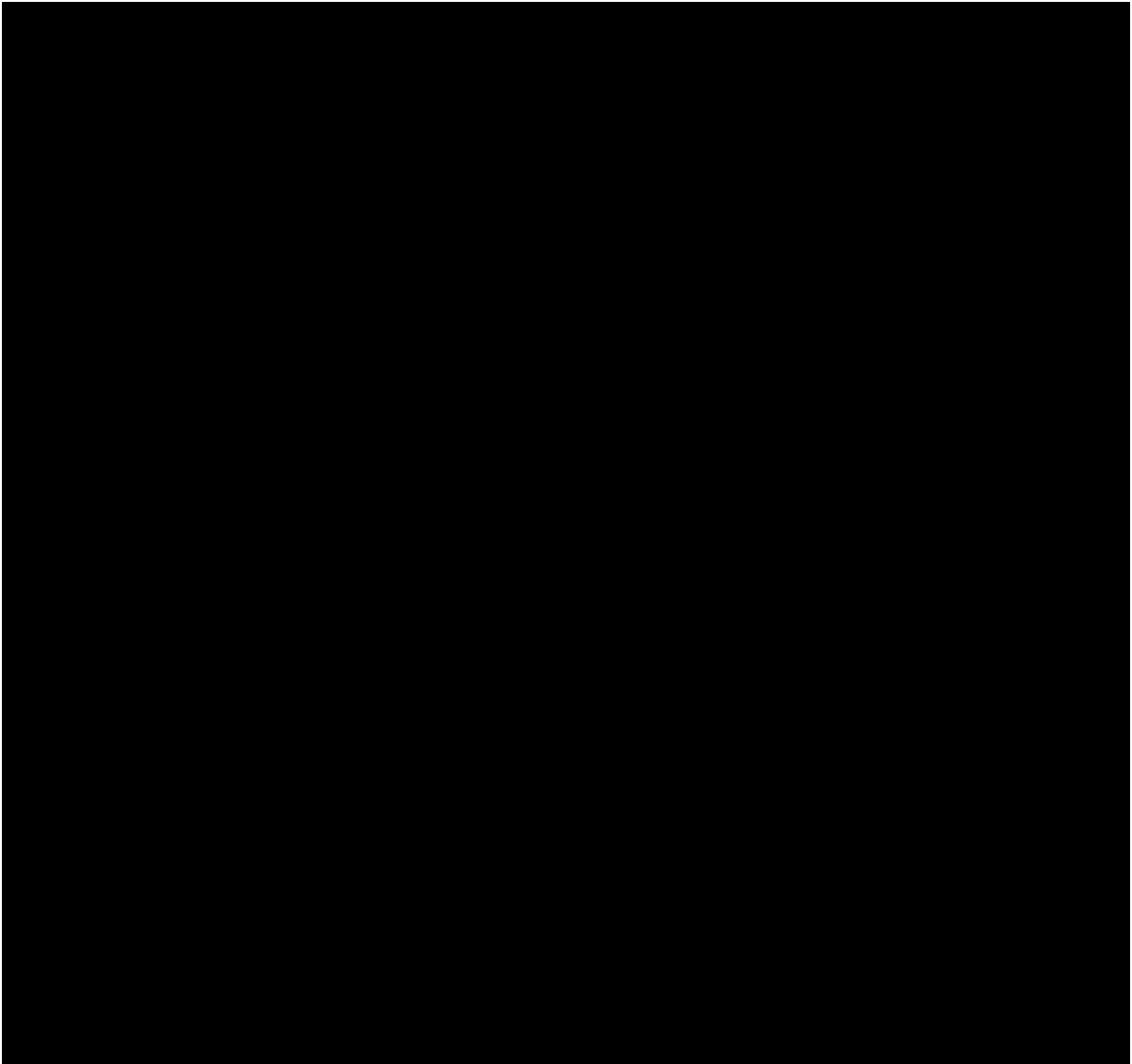


ATTACHMENT A



ARTICLE 32 - DRUG AND ALCOHOL TESTING

The City and the Association agree that police officers may be called upon in hazardous situations without warning, and that it is imperative to the interest of police officers and the public to ensure that police officers are not substance impaired. In order to further their joint interest in protecting police officers and the public, the City and the Association agree to mandatory random drug testing described in this section. During each calendar year, the Department shall conduct a number of random drug tests equal to forty percent (40%) of police officers of all ranks, including the Chief of Police, on a fair and impartial statistical basis as provided in the Police Department's Drug and Alcohol Policy. During each calendar year, an officer may be subject to one, more than one, or no drug tests as provided by the policy. Additional random testing of officers assigned to sections

that conduct narcotics, vice investigations and aviation activities (pilots and drone operators) may be requested at the discretion of the Chief of Police. The fair and impartial statistical basis (in which each police officer has an equal chance of being selected) shall be by a non-discriminatory computerized program operated and certified as non-discriminatory by an independent firm hired by the City, and the employee shall be tested upon being selected by the computer. The City shall notify the officer as to whether the test was post-accident, random or based upon reasonable suspicion.

For the purposes of this section:

- A. “drug testing” shall be defined as the compulsory production and submission of urine, blood, or hair follicle/strand by an officer for chemical analysis to detect the presence of prohibited drug usage.
- B. “random drug testing” shall mean drug testing of individuals selected by the method described in the prior paragraph.
- C. “reasonable suspicion” shall be defined as a judgment/conclusion that a person is unable to safely and/or effectively perform their duties due to the suspected influence of drugs, alcohol, or inhalants. Reasonable suspicion is based on specific, observable facts that an officer may be under the influence of drugs, alcohol, or inhalants. Reasonable suspicion testing is not limited by this article, except to the extent that any urine testing utilized shall be in accordance with the lab testing protocol below. Reasonable suspicion testing may involve urine, blood, or hair follicle/strand as determined under existing legal standards. An Officer may, but will not be required to, take more than one of the same tests.
- D. “SAMHSA/CAP FUDT” means Substance Abuse and Mental Health Service Administration, College of American Pathologists and Forensic Urine Drug Testing.

An employee’s mandatory random drug test results and related collection and diagnostic information shall be disclosed to the City to administer and enforce the Police Department’s Alcohol and Drug Policy and this Collective Bargaining Agreement to include the administration of disciplinary action. The City and the Association otherwise regard an employee’s mandatory random drug test results and related collection and diagnostic information as confidential as allowed by law unless a determination otherwise is made by the Attorney General or a Court. The City may use test results in a disciplinary hearing, but shall initially file that evidence under seal, and it shall not become public until a ruling has been made in its admissibility in the proceeding.

The City and the Association have a mutual interest in ensuring that drug impaired employees do not perform law enforcement duties. The City and the Association agree that the purpose of the mandatory random drug testing is not to punish an employee who has not violated the Police Department’s Drug and Alcohol Policy. The City and the

Association are committed to the principal that the mandatory random drug testing for employees is designed and will be administered to result in disciplinary action only against those officers who have violated the Police Department Drug and Alcohol Policy.

The City has developed a Police Department Drug and Alcohol Policy with procedures and protocols, which follow the requirements of SAMHSA/CAP FUDT. The Police Department Drug and Alcohol Policy currently in effect will remain unchanged during the life of the Agreement, except as modified herein, or if changes are necessary to comply with developments in the law or modifications of the Medical Review Officer Manual. The parties agree that the current police department policy is consistent with this Article, and contains additional procedural and substantive requirements.

The section of the Police Department Drug and Alcohol Policy dealing with mandatory drug testing and the consequences thereof is subject to amendment by the City only as the City determines is necessary to follow the requirements of SAMSHA/CAP FUDT. The City shall require and laboratory selected for collecting samples to conduct a background investigation on those laboratory personnel involved in collecting or handling an unsealed sample. In addition, the City shall require any laboratory selected for collecting samples to allow only employees who have not been arrested by members of the El Paso Police Department or convicted of a felony or misdemeanor crime involving dishonest conduct or possession of illegal drugs to be involved in the collecting or handling of an unsealed sample collected from an El Paso Police Officer.

The Association may file a grievance regarding the application, interpretation or enforcement of the language in this section, subject to mandatory arbitration if not resolved. A complaint of non-compliance which is related to an individual disciplinary matter shall be heard by the arbitrator or a hearing examiner, as elected by the subject officer.

The sample for testing shall be a split sample. The collector shall inform the officer of the size of the required sample, and shall use a chain of custody process to split, label and send the sample, which shall be forwarded for testing within twenty-four (24) hours of the sample being taken. When an officer appears unwilling or unable to give a urine specimen at the time of the test, laboratory staff will document the circumstances surrounding the inability or unwillingness. The officer will be permitted no more than four (4) hours to provide the sample during which time he will remain in the testing area under observation. Reasonable amounts of fluid may be given to the officer to encourage urination. Failure to provide a sample may be considered a refusal to submit to a drug test. Test results shall be inadmissible in any administrative disciplinary hearing if it is determined that the laboratory collecting samples has failed to conduct a background investigation on the laboratory personnel involved in collecting or handling the unsealed sample which resulted in a positive test result. The burden of showing that a background investigation was not conducted shall be on the party seeking to have the test results excluded from the administrative hearing.

The City shall use only a SAMHSA/CAP FUDT certified laboratory for mandatory drug testing and shall require that such laboratory comply with the requirements of SAMHSA/CAP FUDT. The results of the test or tests shall be sent by the laboratory to the Medical Review Officer (“MRO”) in accordance with the lab protocol or the MRO Handbook. The MRO may act separately on test results for each of the split samples from each lab. The specimens collected for testing shall be maintained in a secured area until picked up by the courier or otherwise forwarded for testing. The City shall use only a Medical Review Officer (MRO) for the City of El Paso who is a licensed physician and who is certified as a Medical Review Officer by the American Association of Medical Review Officers.

Nothing in this article shall be construed to abolish the existing authority and practice of the City to conduct drug tests for:

1. Pre-employment
2. Pre-assignment for Narcotics
3. Reasonable suspicion.
4. On return to duty after an absence of 30-calendar days or more.
5. Post - accident
6. Post - firearm discharge

Such test will be conducted under the same laboratory processes and protocols as mandatory random testing, except that laboratory protocols and provisions of the MRO handbook applicable to blood and other samples shall be followed where indicated.