ADMINISTRATIVE PROCEDURE

SUBJECT:  
DRUG AND ALCOHOL-FREE WORKPLACE

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PURPOSE:

To confirm the District's commitment to employee and public safety with a drug and alcohol-free workplace, and to comply with applicable state and federal laws.

POLICY:

The District has zero tolerance for employees being under the influence of illegal drugs and/or alcohol while at work, while otherwise performing work on or away from District property, or while using a District vehicle or equipment. Any detectable amount of drugs and/or alcohol in an employee’s system while on District time, or while using a District vehicle or equipment can be extremely harmful and disruptive to the workplace. The presence of a drug and/or alcohol in the employee’s system may impair the employee’s performance of his/her job duties safely, efficiently and/or effectively; cause excessive absenteeism and/or loss of productivity; pose serious safety risks for the employee, others who work at the District, and the public; create a risk of property loss or damage; and/or create a negative image of the District. For these reasons, the District will strictly enforce this Drug and Alcohol-Free Workplace Policy (Policy).

The District provides reasonable accommodations as required by law to those employees whose drug or alcohol problems qualify as a disability under the law. The District also provides a leave of absence to qualifying employees, consistent with the law, so they can obtain treatment for alcohol and/or drug abuse. While the District will be supportive of those who seek help voluntarily, it will firmly enforce this Policy and discipline, up to and including termination of employment, any employee whose drug and/or alcohol use violates this Policy, even when the employee is enrolled in a counseling or treatment/rehabilitation program.

Employees who drive commercial motor vehicles on behalf of the District and who are covered by the District’s Program of Alcohol and Drug Testing for Commercial Vehicle Drivers must comply with and are subject to both that program as well as this Policy, both of which prohibit employees from working while impaired by drugs and/or alcohol.
SECTION 1 DEFINITIONS:

a) “District property” means all District offices, facilities, buildings, grounds and parking lots.

b) “Illegal Drug” means any drug/controlled substance (including any of its metabolites) which is not legally obtainable under either California or federal law, including those identified in 21 U.S.C. section 812 (the Comprehensive Drug Abuse Prevention Control Act and any amendments thereto), and, including but not limited to recreational and/or medicinal marijuana, opiates, PCP (phencyclidine), cocaine, heroin, amphetamines, barbiturates, benzodiazepines, narcotics, hallucinogens, inhalants, designer drugs, and/or any substances and/or materials that are prohibited by federal or state regulations. Although California law permits use and possession of marijuana for medicinal or recreational purposes, federal law prohibits such use and possession. The District intends to comply with federal law and therefore marijuana and any of its derivatives are included within drugs/controlled substances deemed “illegal” under this Policy.

c) “Unauthorized Substance” means: (1) a prescription drug/medication that is not prescribed to the user employee under a valid prescription; (2) a prescription drug/medication that is used by the employee in a manner or quantity, other than set forth in a valid prescription to the user employee, such that it impairs the employee’s ability to perform his/her job or the ability to do so safely; (3) an over-the-counter drug/medication that is used in a manner or quantity other than set forth in the directions such that it impairs the employee’s ability to perform his/her job or the ability to do so safely; (4) an over-the-counter or prescription drug/medication that is otherwise used in an unsafe or excessive manner; and/or (5) the use or being under the influence of a product or substance that creates a mind-altering, intoxicating effect or high feeling (for instance, sniffing of aerosol paint or glue; or consuming excessive amounts of alcohol based mouth wash).

d) “Under the Influence” means: (1) having a detectable level of an illegal drug or any of its metabolites in the employee’s system; (2) having an alcohol concentration of .02% or more; or (3) an impairment of the employee’s normal use of mental or physical faculties, ability to perform his/her job, or ability to drive for work or use other equipment based on the introduction in any manner of alcohol, illegal drugs and/or unauthorized substance into the employee’s system. For instance, an employee’s alcohol concentration might be less than .02%, but because the employee’s use of alcohol has impaired the employee by causing, for instance, a staggering walk or loss of balance, the employee would be deemed “under the influence” of alcohol in violation of this Policy.
SECTION 2 PROHIBITED ACTIVITIES:

All employees are prohibited from:

a) Manufacturing, cultivating, possessing, distributing, dispensing, purchasing/selling, transporting, transferring or using in any way (including consuming or inhaling) any illegal drug or alcohol while on District property or while otherwise performing work on or away from District property, as well as any attempt to do any of these prohibited acts.

b) Possessing, distributing, dispensing, purchasing/selling, transporting, transferring or using in any way (including consuming or inhaling) any illegal drug or alcohol while operating or occupying a vehicle (including as a passenger) on District business or while on duty, while operating or occupying a District vehicle (including as a passenger) at any time, or while operating or occupying other potentially dangerous District equipment (including equipment leased by, rented by or otherwise made available to the District).

c) Using in any way (including consuming or inhaling) any unauthorized substance while on District property, while otherwise performing work on or away from District property, while operating or occupying a vehicle (including as a passenger) on District business or while on duty, while operating or occupying a District vehicle (including as a passenger), while operating/occupying other District equipment (including equipment leased by, rented by or otherwise made available to the District), as well as any attempt to do any of these prohibited acts.

d) Using a District vehicle or District equipment (including computer, email system, phone/cell phone, fax) to purchase, sell, transfer, or distribute any illegal drug, drug paraphernalia, or alcohol, as well as any attempt to do any of these prohibited acts.

e) Selling, transferring or dispensing a prescription medication/drug to another person, to whom it has not been prescribed, while on District property, while otherwise performing work on or away from District property, or with the use of a District vehicle or District equipment (including computer, email system, phone/cell phone, fax), as well as any attempt to do any of these prohibited acts.

f) Having any illegal drug or unauthorized substance in the employee’s system when reporting to work or while performing work. This also means an employee shall not report to work or perform work with any marijuana in his or her system, whether it is medicinal marijuana or recreational marijuana, or even when the employee has been subjected to second-hand exposure to marijuana. As to other prescription drugs/medications, the
employee should not report to work or work with such prescription drug/medication in his/her system unless the prescription drug/medication has been lawfully prescribed to the employee and the employee’s health care provider has verified that the prescription drug/medication will not impair the employee’s ability to perform his or her job duties safely, as set forth more fully below.

g) Reporting to work or performing work while under the influence of alcohol and/or an unauthorized substance. See the above definition section concerning “under the influence.” As a result, although this Policy does not preclude off-duty consumption of alcohol, employees who report to work or work while impaired by such off-duty use/consumption will be in violation of this Policy, even if their alcohol concentration is below .02%.

h) Testing positive for an illegal drug (including marijuana), alcohol or unauthorized substance under any drug/alcohol test arising out of an employee’s employment at the District, or an applicant’s pre-employment drug/alcohol test.

i) Tampering with or attempting to tamper with any drug or alcohol test conducted under this Policy.

j) Using over-the-counter or prescription drugs/medication (lawfully prescribed to the employee) in an unsafe or excessive manner that impairs the employee’s ability to perform his/her job duties or ability to do so safely.

SECTION 3 EXCEPTIONS/CLARIFICATIONS TO THIS POLICY:

a) This Policy does not apply to the authorized dispensation, distribution, or possession of legal drugs where such activity is a necessary part of an employee’s assigned duties.

b) Provided that the employee follows the notification procedures in Section 4(b) below, this Policy does not prohibit an employee’s possession and proper use of drug(s)/medication(s) which is/are lawfully prescribed to the employee, taken in accordance with the prescription(s), and do not impair the employee's ability to competently and safely perform assigned duties as determined by the employee’s health care provider.

c) As set forth previously, the use of marijuana falls within the above prohibitions of this Policy as it is considered an illegal drug based on federal law, even when the employee’s health care provider has authorized/prescribed such use. If an employee requires a reasonable accommodation as a result of a medical condition/disability for which the employee’s health care provider has prescribed medicinal marijuana to the employee, the employee should notify the Human Resources and Risk Manager or his/her designee of
the request for reasonable accommodation.

d) This Policy is not intended to prohibit an employee from giving another employee an alcoholic beverage as a gift on District property, provided that the alcohol container remains sealed and unopened while on District property or while transported in a District vehicle.

e) This Policy is not intended to prohibit an employee from purchasing an alcoholic beverage at the auction conducted as part of the District’s annual off-site holiday charity lunch event as long as: (a) the bottle(s)/container(s) remain sealed, unopened and not consumed during the event, or at any time between the time of the event and return to work that same day, or during any work time, or at any time when the employee is operating or occupying a District vehicle, or at any time when the employee is operating or occupying a vehicle for transportation after the lunch; and an employee (b) does not otherwise have it in his/her possession while at work except that an employee may transport the sealed/unopened bottle(s)/container(s) in a personal vehicle and store the sealed/unopened bottle(s)/container(s) in his/her vehicle on the day of the event without violating this Policy.

f) This Policy is not intended to prohibit the moderate consumption of alcohol outside of normal business hours while attending an off-site work-related conference, training, or social event.

SECTION 4 NOTIFICATION PROCEDURES:

a) Criminal Drug Statute Convictions

To carry out its obligations under the Federal Drug Free Workplace Act of 1988, the District requires any employee who is convicted (including a plea of nolo contendere) of any criminal drug statute for a violation occurring in the workplace (including violations that take place while performing work for the District at any location) to provide written notice of the conviction to the Human Resources and Risk Manager or his/her designee no later than five (5) days after the conviction. As required by the Act, if the employee performs work on any federal contract covered by the Drug Free Workplace Act, the District will notify appropriate federal contracting agencies of the conviction within ten (10) days after the District receives notice of the conviction.

b) Drug/Medication Reporting Requirements

When an employee’s health care provider prescribes a drug/medication or recommends an over-the-counter drug/medication to the employee, the employee must ask the health care provider whether the use of the drug/medication may impair: (1) the employee’s ability to
perform his/her job duties safely (i.e. without risking public safety or the safety of co-workers); and (2) his/her ability to drive safely (when the employee is required to drive as part of their job). The employee must promptly report any such safety restrictions to his/her supervisor or manager before reporting for duty. The employee is not required to report the employee’s underlying medical condition or the name of the drug/medication to the supervisor/manager, or any other protected information under the Health Insurance Portability and Accountability Act (HIPAA).

In addition, employees must carefully evaluate the warnings on over-the-counter drugs/medications they use. If the drug/medication has any warning against driving or operating heavy equipment and the employee’s job includes such duty; or includes warnings regarding a possible side effect(s) that would impair the employee’s ability to perform his/her job safely (i.e. without risking the safety of the public, co-workers, or District property), the employee must notify his/her supervisor or manager of the restriction(s) before reporting for duty. The employee is not required to report the employee’s underlying medical condition, or the name of the drug/medication to the supervisor/manager, or any other protected information under HIPAA.

The District will determine whether the employee will be allowed to work in light of the restrictions, including whether or not the restrictions can be accommodated. The District may ask the employee to provide written verification by the health care provider concerning whether or not the employee’s use of the drug/medication impairs the employee’s ability to perform his/her job duties safely.

Notices, communications, or documentation required by this section shall be maintained in a confidential medical file separate from the employee’s personnel file, and disclosed only to those with a need to know the information to carry out and/or enforce this Policy and/or to determine whether the employee may continue to work in light of the restrictions caused by the use of the drug/medication.

c) Employee Awareness of Another Employee’s or Contractor’s Violation of this Policy

Any employee who observes or has knowledge of another employee or contractor who is in a condition that impairs the employee/contractor in the performance of his or her job duties, who presents a hazard to the safety and welfare of self and/or others, or who is otherwise in violation of this Policy, is required to promptly report this to his or her immediate supervisor. An anonymous complaint is acceptable.
SECTION 5 PROCEDURES REGARDING VIOLATIONS OF THIS POLICY:

a) District employees who violate Sections 2 or 4 of this Policy, or who are convicted of a criminal drug statute violation resulting from conduct occurring in the workplace will be subject to disciplinary action consistent with the Administrative Procedure on Disciplinary Procedures, up to and including termination of employment.

b) The District shall continue to offer a confidential Employee Assistance Program to educate employees and to aid employees with substance abuse problems. Information concerning the Employee Assistance Program is available through the Human Resources and Risk Division.

c) The District will conduct regular periodic training for supervisors and employees on substance abuse prevention and education, including the dangers of drug use and alcohol abuse in the workplace, this Policy, the availability of drug/alcohol counseling/rehabilitation and employee assistance programs, and the penalties for violation of this Policy. In addition, the District will provide periodic reasonable suspicion training to supervisors.

d) When a supervisor/manager becomes aware that an employee or contractor may be impaired at work because of illegal drugs, alcohol and/or other unauthorized substance, the supervisor/manager should take whatever immediate action is deemed appropriate to ensure the safety of the workplace, employees, and the public. The supervisor/manager must consult with the Human Resources and Risk Manager or his/her designee before beginning any search or inspection of employee/contractor items on District property (except for these items in plain view), and before arranging for an employee to be tested under this Policy.

SECTION 6 DRUG AND ALCOHOL TESTING

a) Outside employment applicants for District safety sensitive positions will be tested for drugs and/or alcohol after receiving a conditional offer of employment.

b) Existing Employees promoted (or otherwise transferred) from non-safety sensitive positions to safety sensitive positions will also be tested after receiving a conditional offer of employment when the employee has been employed by the District for less than 6 months and the District determines it has not had sufficient time to evaluate whether or not the employee abuses alcohol and/or controlled substances. However, employees subject to the District’s Program for Alcohol and Drug Testing for Commercial Vehicle Drivers are subject to pre-employment and promotions/transfer testing consistent with that program.
c) Employees may be required to submit to drug and/or alcohol screening whenever the District has a reasonable suspicion (confirmed by two trained supervisors/managers) that an employee is under the influence and/or impaired by a drug, alcohol and/or an unauthorized substance when reporting to work or while at work. In the event of such testing, the employee may be placed on administrative leave with pay until such time as the District receives the confirmed test results. If the test result is negative, the District will notify the employee to return to work. If the test result is positive for a drug, alcohol and/or controlled substance in violation of this Policy, the District will determine the appropriate disciplinary action up to and including termination of employment.

d) In some circumstances, the District may require follow-up drug and/or alcohol tests as a condition for allowing an employee to return to work after being found to have violated this Policy.

e) All pre-employment, promotional/transfer, reasonable suspicion, and follow-up testing will be conducted through the Human Resources and Risk Division and in compliance with applicable state and federal laws, including those relating to the testing facility/laboratory used, the maintenance of the integrity and chain of custody of the samples, and the procedures for conducting the tests. Generally, the alcohol test is an evidential breath test, while the test for drugs is generally a urine test. Positive test results are subject to a confirmation test. All confirmed positive test results will be reviewed by a medical review officer (MRO), who will contact the employee/applicant to give him/her an opportunity to explain any alternative reasons why he/she tested positive. The MRO will evaluate whether other valid explanations exist for the positive test result. If the MRO determines that the positive test result is due to factors other than the presence of drug(s), alcohol and/or other unauthorized substance, the MRO will report to the District Human Resources and Risk Manager or his/her designee that the test result is negative. Otherwise, the MRO will report to the District Human Resources and Risk Manager or his/her designee whether or not the applicant/employee received a negative or positive test result. Within 72 hours of receiving notification of a positive test result for drugs or unauthorized substance, an employee can submit to the MRO a request to have a split sample re-tested at another testing laboratory (certified by the Substance Abuse and Mental Health Services Administration) selected by the employee. The employee must complete the appropriate forms required by the lab and/or MRO, and is also responsible for all costs relating to the re-testing of the split sample(s). The laboratory conducting the re-test must use the gas chromatography/mass spectrometry method of testing. Any other method of testing will be deemed invalid. The split sample test result will not be released to the District without the employee’s written consent.
SECTION 7 ENFORCEMENT:

District employees should not view as private any items and/or information in or on their desks, office/workstations, file cabinets, office/workstation furniture, lockers, District provided equipment (including but not limited to District provided computer, laptop, phone, cell phone, voicemail, electronic mail, other messaging system, facsimile machines or other technology or equipment), District vehicle, or personal vehicle on District property, even when such items have a lock or are password protected. Any such items and/or areas are subject to search by the District consistent with the law, including when the District has reasonable suspicion that an employee has violated this Drug and Alcohol-Free Workplace Policy. Before any such investigational search is conducted by the District, the supervisor or manager must consult with and obtain the permission of Human Resources and Risk Manager or his/her designee. Employees have the right to representation during an investigational search of desks, office/workstations, file cabinets, office/workstation furniture, lockers, and vehicles (District or personal), conducted by the District, as long as the representative arrives within a reasonable period of time.

SECTION 8 REHABILITATION

Each employee is responsible for seeking assistance before the employee’s use of alcohol, any illegal drug, and/or unauthorized substance leads to a violation of this Policy and before the employee is being evaluated for a reasonable suspicion test or subject to proposed discipline for a violation of this Policy.

Any employee with a drug and/or alcohol problem may voluntarily disclose the problem to the Human Resources and Risk Manager or his/her designee who will refer to employee to the Employee Assistance Program to learn of available treatment/rehabilitation options. If an employee needs time off or a leave to participate in a drug and/or alcohol rehabilitation/treatment program, the employee should contact the Human Resources and Risk Manager or his/her designee concerning available leave options. Generally, the District will provide time off/leave to participate in an alcohol and/or drug treatment/rehabilitation program consistent with the law; and employees may use accrued leave time for such time off. Otherwise the time off and/or leave is without pay. In some circumstances the time off and/or leave might qualify as leave under the Family Medical Leave Act (FMLA) and/or the California Family Rights Act (CFRA). The cost of any drug and/or alcohol treatment/rehabilitation is the responsibility of the employee, but some of the costs may qualify for coverage under the District’s medical insurance plan provided to eligible employees. The employee’s disclosure of the drug and/or alcohol use/abuse to the District will not terminate any investigation or disciplinary proceedings initiated prior to the disclosure.
SECTION 9 RESPONSIBILITY:

It is the responsibility of the Human Resources and Risk Manager, and other District managers and supervisors to comply with the procedures in this Policy.

It is the responsibility of each employee to adhere to this Policy and procedure.

APPROVED:

Jerry Brown
General Manager