

TITLE 4

6/2/10

PERSONNEL

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CHAPTER 4.01

GENERAL ADMINISTRATION

Sections:

- 4.01.010 Introduction
- 4.01.020 Personnel Administration and Delegation
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- 4.01.050 Coordination with Memorandum of Understanding
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4.01.010 Introduction It is the intent of the District to establish and maintain an equitable and uniform system for dealing with personnel matters. It is also the intent of the District to comply with applicable laws relating to the fair and equitable administration of a comprehensive personnel system. The rules and polices contained in this Title of the District Code reflect the principles and standards of the District's system of employment. The provisions of the personnel policies included in this Title do not constitute a contractual right to District employment. Each employee is responsible for knowledge of and compliance with these rules.

The District reserves the right to change or modify the terms and conditions set forth in this Title.

4.01.020 Personnel Administration and Delegation The Board of Directors authorizes the General Manager to administer, interpret, and implement the District personnel policies. The General Manager may delegate any of the personnel administration authority to other designees.

4.01.030 Personnel Records The District shall maintain a personnel file for each District employee, the contents of which meet the customary standards of good personnel practices and which fairly represent the employee's work history with the District. Such records shall only be accessible to the General Manager, Human Resources, the employee and such other persons as the District deems have a "need to know". Department heads and supervisors shall have access to performance evaluation records of subordinate employees in their department, as well as such other personnel records about which they have a "need to know".

Upon the employee's request, the District shall, at reasonable times and intervals, permit that employee to inspect his or her file. The review will be conducted in the presence of a Human Resources representative.

4.01.040 Medical Records Human Resources shall maintain all employee medical information in separate, confidential files. The District will not disclose employee medical information, except to District management personnel with a legitimate personnel need for access, without prior written authorization from the employee, or except as required by law, subpoena, or Court order.

4.01.050 Coordination with Memorandum of Understanding Where an employee is within the bargaining unit covered by a Memorandum of Understanding (MOU) in effect between the District and the Union, and the matter is specifically addressed in the MOU, the terms of the MOU shall govern. In all other cases, the policies included herein shall apply.

4.01.060 Release of Employee Information It is the policy of the District that all inquiries regarding current or former employees of the District should be referred to the Human Resources Department for response.

- a) Human Resources staff will release only the facts of current or former employment, the position held, and dates of employment, unless the employee or former employee has signed a written waiver authorizing the release of additional information,
- b) Human Resources staff will provide additional information concerning quality of work only with the prior written consent of the employee or former employee and a signed Release of Information Authorization form is on file in the HR Department.
- c) The Human Resources staff may authorize individual supervisors to respond to requests for detailed information when a signed release is on file in the HR Department.
- d) Home addresses or telephone numbers shall not be released except in the case of an emergency.

CHAPTER 4.02

EMPLOYMENT NON-DISCRIMINATION

Sections:

- 4.02.010 Equal Employment Opportunity Policy**
- 4.02.020 Discrimination, Harassment and Retaliation Policy**

4.02.010 Equal Employment Opportunity Policy It is the policy of the District to provide equal employment opportunity in all aspects of the employer-employee relationship, including recruiting, hiring, upgrading and promoting, training, education assistance, social and recreational programs, compensation, benefits, transfers, discipline, layoff, recall and all privileges and conditions of employment. The District will not unlawfully discriminate because of race, color, religion, national origin, ancestry, citizenship, sex, age, marital status, registered domestic partner status, physical or mental disability, medical condition, sexual orientation, veteran status or on any other protected basis as designated by applicable federal, state or local law, ordinance or regulation (referred to as the "Protected Bases").

The District provides employment-related reasonable accommodations to qualified individuals with disabilities within the meaning of the California Fair Employment and Housing Act and the Americans with Disabilities Act.

4.02.020 Discrimination, Harassment, and Retaliation Policy The District wishes to provide a business environment that is free of unlawful discrimination and harassment and has zero tolerance for this type of behavior. Individuals who engage in such behavior will be subject to disciplinary action up to and including termination.

Therefore, this policy is established by which persons who believe they have been subjected to discrimination or harassing behavior may have their concerns reviewed, addressed and corrected as appropriate.

Res. 2009-13 (5-6-09)

4.02.020.1 Discrimination prohibited: It is the express policy of the District to conduct its business such that no employee, applicant for employment, customer, supplier, contractor or any other person who does business with the District or interacts with the District in any manner is subjected to discrimination on any legally protected basis.

4.02.020.2 Harassment defined: Harassment is a form of misconduct which undermines the integrity of the employment relationship or the relationship with the public. Harassment is behavior which is unwelcome, which is offensive to a reasonable person, or lowers morale or interferes with work.

4.02.020.3 Sexual harassment defined: Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

- a) Submission to the conduct is made either explicitly or implicitly a condition of employment;
- b) Submission to or rejection of the conduct by an individual is used as the basis for an employment decision affecting such individual;
- c) Such conduct has the purpose or effect of substantially interfering with the individual's work performance or creates an intimidating, hostile or offensive work environment.

4.02.020.4 Other forms of prohibited harassment: Harassment because of any of the Protected Bases is expressly prohibited. Harassment includes any verbal, written, or physical act in which any of the Protected Bases is referred to or implied in a manner that would make another person uncomfortable in the work environment or that would interfere with another person's ability to perform his or her job. Examples of harassment include inappropriate comments or jokes; the display or use of offensive objects or pictures; use of offensive language; or any other inappropriate behavior which has the purpose or effect of discriminating on any of the Protected Bases.

- a) How to report instances of harassment or retaliation: The District cannot resolve matters that are not brought to its attention. Any employee, regardless of position, who has a complaint of or who believes he or she has witnessed harassment, discrimination or retaliation at work by anyone, including supervisors, managers, employees or even non-employees, has a responsibility to immediately bring the matter to the District's attention. If the complaint or observation involves someone in the employee's direct line of command, or if the employee is uncomfortable discussing the matter with his or her direct supervisor, the employee is urged to go to the General Manager or the Human Resources Administrator.
- b) How the District will investigate complaints: The District will thoroughly and promptly investigate all concerns or complaints under this policy. If an investigation confirms that misconduct has occurred, the District will take corrective action as appropriate, up to and including immediate termination of employment.

Complaints under this policy will be kept as confidential as possible. Information will be released only on a "need to know" basis, and no employee will be subject to retaliation by the District because he or she has made a report or complaint under this policy.

4.02.020.5 No retaliation: It is strictly against District policy to retaliate against anyone who reports or assists in making a complaint of prohibited harassment, or who participates in the investigative process under this policy. Prohibited retaliation may include, but is not limited to, withholding pay increases, negative evaluations, onerous work assignments, withdrawing friendly courtesies, demotion, discipline, or dismissal. The District does not tolerate retaliation, and violation of this Policy will result in discipline up to and including termination. Anyone who feels that he or she has been subjected to retaliation should bring this to the General Manager's attention.

CHAPTER 4.03
JOB DESCRIPTIONS

Sections:

4.03.010 Job Descriptions

4.03.010 Job Descriptions The General Manager shall ensure that for each employment position at the District, the District maintains a written job description summarizing the duties, responsibilities, and employment standards of the position. Each job description shall generally outline the main characteristics and qualification requirements of positions and give examples of duties which employees holding such positions are typically required to perform. Each job description shall contain minimum requirements for positions, including training, experience, knowledge, licenses, skills, and abilities. All job descriptions are subject to approval and signatures by the General Manager.

CHAPTER 4.04
RECRUITMENT AND EXAMINATIONS

Sections:

- 4.04.010 Recruitment of Department Heads**
- 4.04.020 Recruitment of Management Employees**
- 4.04.030 Bargaining Unit Employees**
- 4.04.040 Application Forms**
- 4.04.050 Examinations**

4.04.010 Recruitment of Department Heads When a vacancy occurs in a department head position, the General Manager shall review the job description to determine its continuing applicability and shall recommend a salary range to the Board of Directors.

The Board of Directors shall adopt a salary range for the position. The position will be publicized by such methods deemed appropriate by the General Manager or the Human Resources Administrator.

The Human Resources Administrator shall appoint an interview committee. The committee shall consist of the General Manager, one member of the Board of Directors, and three additional persons. The three appointed persons should include a department head of the District, an employee of the District who would be subordinate to the new department head, and a peer professional of the new department head from outside the District organization.

The initial screening of applicants will be performed by the interview committee. The committee may utilize various testing methods that they deem appropriate in screening applicants.

The District shall reimburse the candidates for reasonable costs to attend the interview.

The committee shall recommend the appointment of a successful candidate to the General Manager or, in the alternative, may recommend that no candidate be hired and that others be interviewed, or the process be initiated again. The committee shall set forth its recommendations in writing.

The General Manager shall appoint a person to fill the vacancy. In making the appointment, the General Manager shall give due consideration to the recommendation of the interview committee. The General Manager is not bound by the decision of the interview committee.

The General Manager shall report his decision to the Board of Directors.

4.04.020 Recruitment of Management Employees Selection and placement of all management level employees will be through a competitive and open process to select the most qualified candidate for the position. The process shall include:

- a) The hiring manager and Human Resources shall review the current job description to ensure that it is current and meets the needs of the District. The approval of the General Manager must first be obtained before any changes may be made to the job description.
- b) Advertise the open position for both internal and external candidates.
- c) Invite top candidates to an initial panel interview. The panel shall consist of one outside member and two District staff members in addition to the hiring manager. A uniform set of questions shall be used for all candidates.
- d) A second interview shall be conducted by the hiring manager.
- e) Selection of the successful candidate shall be made by the hiring manager/supervisor, subject to background and reference checks and physical screening. Approval of the General Manager is required before an offer of employment is made.
- f) Any deviations from this process must be approved in advance by the General Manager.

4.04.030 Bargaining Unit Employees Bargaining Unit positions will be filled in accordance with the provisions of the MOU.

If the position is not filled by a current employee, the District shall follow the same procedure as recruiting for management employees, except the panel interview will not include an outside member.

Any deviations from this process must be approved in advance by the General Manager.

4.04.040 Application Forms All applications for employment shall be made on forms provided by the District. Application forms shall require information covering training, experience, and other pertinent information. All applications must be signed and dated by the person applying.

4.04.050 Examinations The selection techniques used in the examination process shall be impartial, of a practical nature, and shall relate to those subjects that fairly measure the capability of applicants to perform duties assigned to the position for which they seek appointment.

CHAPTER 4.05

APPOINTMENTS AND PROBATIONARY PERIOD

Sections:

- 4.05.010 Pre-employment Physical Examinations**
- 4.05.020 Pre-employment Background Investigations**
- 4.05.030 Nepotism/Fraternization**
- 4.05.040 Probationary Period**

4.05.010 Pre-employment Physical Examinations A physical examination, including appropriate drug testing, will be required for all prospective employees after a contingent offer of employment is made and prior to starting work. The District will select the health-care provider and the examination will be at District expense.

4.05.020 Pre-employment Background Investigations An applicant who has received a conditional offer of employment shall be required to authorize the District to conduct a background check specifically related to the position offered.

4.05.030 Nepotism/Fraternization It is in the District's best interest to avoid conflicts of interest, favoritism or the appearance of favoritism, and to decrease the potential for inappropriate or illegal conduct in the workplace, including, but not limited to, sexual harassment.

Accordingly, no person will be considered for employment with the District who is closely related to a member of the District's Board or is closely related to an existing employee in positions that would create a conflict of interest. For purposes of this policy, a close relative is defined as spouse or domestic partner, children (stepchildren), parents (stepparents), siblings (step-siblings), grandparents or grandchildren, or in-laws of the Board member or employee. Persons who cohabit, but are not married, are considered close relatives for purposes of this policy and therefore subject to all restrictions and limitations.

In the event employees create a close relationship as described above after they are hired by the District, the following provisions apply:

- a) The related employees cannot have a supervisory or reporting relationship with

each other;

- b) Neither employee can work in a position in which District information is privileged or confidential and would present a conflict of interest on the part of either employee.

If the relationship of two employees is determined to create a conflict of interest, whether actual or potential, one of the employees will be required to terminate employment. If the affected employees cannot decide which of them shall resign, the employee with the shortest tenure with the District shall be terminated.

4.05.040 Probationary Period The probationary period shall be regarded as a part of the selection process. During the probationary period, the employee shall be considered in-training, and under careful observation and evaluation by supervisory personnel. This period will be used to train and evaluate the employee's effective adjustment to work tasks, conduct, observance of rules, attendance, and job responsibilities. Any probationary employee whose performance does not meet required standards of job progress or adaptation may be released from District employment.

All original and promotional appointments shall be subject to a probationary period of not less than six (6) months. The probationary period may be extended in circumstances where further evaluation of the employee is deemed necessary by the District.

At the conclusion of the employee's probationary period and if the employee's performance has been deemed satisfactory by the District, the employee shall be reclassified as a regular employee.

Probationary employees may be discharged at any time during the probationary period with or without cause and without the right of appeal.

CHAPTER 4.06

COMPENSATION

Sections:

4.06.010 Compensation Plan

4.06.020 Payment of Salary

4.06.010 Compensation Plan The General Manager shall maintain a compensation plan for all classes of positions. The plan shall establish a salary range or rate of pay, showing minimum and maximum rates for each class. The General Manager shall submit the compensation plan to the Board of Directors for approval.

4.06.020 Payment of Salary The calendar work week begins at 00:00 a.m. on Saturday and ends at 24:00 p.m. Friday. The pay period for all employees shall be based on a bi-

weekly period and will be paid not later than seven (7) days following the end of the pay period.

CHAPTER 4.07

EMPLOYMENT BENEFITS, HOLIDAYS, AND LEAVES

Sections:

4.07.010	General
4.07.020	Insurance Plans
4.07.030	Retirement Plan
4.07.040	Supplemental Income Plans
4.07.050	Post-Retirement Benefits
4.07.060	Longevity
4.07.070	Holidays
4.07.080	Vacation Leave
4.07.090	Administrative Leave
4.07.010	Sick Leave
4.07.011	Family and Medical Leave
4.07.012	Pregnancy Leave
4.07.013	Unpaid Personal Leave
4.07.014	Military Leave
4.07.015	Jury Duty
4.07.016	Bereavement Leave
4.07.017	Industrial Disability Leave
4.07.018	Limitations
4.07.019	Return-to-work Physicals
4.07.020	Donation of Accrued Vacation Leave

4.07.010 General The policies in Chapter 7 shall apply to all regular employees of the District who are not covered by a Union Memorandum of Understanding.

4.07.020 Insurance Plans

4.07.020.1 Group Medical Insurance Plan: The District will pay 100% of the premiums for employees and dependents. The NRECA Preferred Provider Organization (PPO) plan agreed upon includes a \$2,000/\$4,000 out-of-pocket annual maximum for Out-of-Network charges, a \$400/\$800/\$1200 deductible, utilization review/cost containment SHARE features, medical management provisions, generic drugs at \$10.00, brand name drugs at \$15.00, mail service prescription drug program.

4.07.020.2 Group Dental Plan: The District will furnish the NRECA Enhanced Dental Plan. This plan will pay 100% of the reasonable and customary charges for preventive and diagnostic services and 80% of the reasonable and customary charges for basic services. There is no deductible. The plan will also pay 50% of the reasonable and customary charges incurred for major services; however, each covered individual must first satisfy a \$50 annual deductible (the first \$50 of reasonable and customary charges

incurred for major dental services during a calendar year). This plan will not pay more than \$2,000 per person in a calendar year for all preventive, diagnostic, basic and major services received. (No orthodontic benefits are included in this plan).

4.07.020.3 Vision Plan: The District will provide an annual benefit up to \$400 per covered employee or dependent. The benefit will be to cover the expenses of examination, lenses, frames or contact lenses, Lasik or other vision improvement related procedures, when recommended by a physician or optometrist.

Any unused portion of the annual benefit or incurred cost (not exceeding \$400) may be carried over to the next subsequent year.

Res. 2009-36 (12-2-09)

4.07.020.4 Group Life Insurance Plan: The District will furnish "term insurance" equal to three (3) times the annual salary for each employee.

4.07.020.5 Long-term Disability Plan: The District will furnish long-term disability coverage of a monthly benefit equal to 66 2/3% of the employee's monthly base earnings, with a maximum monthly benefit of \$15,000 after the 13 week elimination period.

4.07.030 Retirement Plan The District will provide and maintain membership in the California Public Employees Retirement System (CalPERS) 2% @ 60 Plan, with all the optional benefits adopted on 8/24/2004.

4.07.040 Supplemental Income Plans The District will provide a 401(a) or 457 plan with employer match of 100% up to 3.65% of employee's wage.
Res. 2009-36 (12-2-09)

4.07.050 Post-Retirement Medical and Dental Benefits Employees who retire from the District may be eligible for post-retirement health benefits. The qualifying factors are the employee's age and length of employment at the District.

Years of Service	Percent of Premium Paid by District
10	50%
11	55%
12	60%
13	65%
14	70%
15	75%
16	80%
17	85%
18	90%
19	95%
20	100%

District will pay the percentages listed above of the retiree and dependent medical and dental premiums beginning at the retiree's age 60 based on years and months of service at the District. If a person retires earlier than age 60, the benefit will be reduced by 2% per year in the benefit paid by the employer. For example, a person retiring at age 58 with 19 years of service would have 91% of the retiree and dependent premiums paid by the District.

The benefit paid by the District is capped as listed below:

	Monthly Caps
Individual only	\$475
Spouse only	\$475
Child(ren) only	\$475
Spouse & child(ren)only	\$725
Medicare Rate	\$375

If the premiums increase above the monthly cap, the retiree will pay the difference between the new premium and their percent of benefit established upon retirement multiplied by the cap. Example: A person retiring at age 58 with 19 years of service would have 91% of the retiree and dependent premiums paid by the District. If initially the premium for individual only was \$340, the retiree would pay $340 - (91\% \times \$340) = \30.60 . If the premium increases to \$500 while the cap is \$475, the retiree would pay $500 - (91\% \times \$475) = \67.75 .

The post-retirement medical plan is the same as the active employees' medical plan except for a \$500 deductible per person compared to a \$400 deductible per person for employees. It is based on the NRECA PPO medical plan with \$500 deductible per person.

A retiree cannot leave the plan and then come back. Once time is broken on the plan, the employee or retiree cannot come back on the medical plan.

If the retiree is paying for part of the medical coverage it will be collected through an electronic fund transfer from the retiree's bank account on a monthly basis.

When the retiree is eligible for Medicare, it is mandatory that the retiree enroll for Part B coverage.

Should the District change insurance plans or coverage, those changes will also apply to retirees.

The vision benefit will remain the same without any monthly caps.

Board members are not eligible for this benefit.

4.07.060 Longevity In recognition of an employee's years of service, employees will receive a bonus of \$250 after completion of five (5) years of service. Continuing years of service shall qualify for a \$20 per year addition to this figure for the entire term of employment.

Longevity payments will be made as soon as possible after the first pay period of the calendar year, but not later than the last day of January of the calendar year for those employees who are eligible.

The date from which the employee was employed full time (regular and continuous employment) shall be the governing date for purposes of this Policy.

4.07.070 Holidays Following are the recognized paid holidays for all regular management employees:

New Years Day	January 1
Presidents Day	third Monday in February
Memorial Day	last Monday in May
Independence Day	July 4
Labor Day	first Monday in September
Veterans Day	November 11
Thanksgiving Day	fourth Thursday in November
Day after Thanksgiving	fourth Friday in November
Christmas Eve	December 24
Christmas Day	December 25

The Christmas Eve holiday shall be observed on the work day immediately prior to the date of observing the Christmas Day holiday.

Res. 2009-36 (12-2-09)

4.07.080 Vacation Leave Full-time regular employees will accrue vacation leave from the date of hire. Regular employees who work less than full time shall accrue vacation on a pro-rated basis.

Eligible employees shall earn vacation leave as follows:

<u>Rates of Accrual</u>	<u>Number of Days per year</u>
For the first five years of continuous service	10
After completing: 5 years of continuous service	15
10 years of continuous service	20
21 years of continuous service	21
22 years of continuous service	22
23 years of continuous service	23
24 years of continuous service	24
25 years of continuous service	25
30 years of continuous service	30

New employees will be given forty (40) hours of vacation leave at the start of employment, in addition to regular vacation leave accrual.

Employees who terminate their employment with the District for any reason will be paid for all accrued but unused vacation at their current rate of pay.

Vacation leave must be scheduled by mutual agreement between the Department Head or his/her designee and the employee.

Employees may accumulate up to a maximum of 360 hours of vacation leave, at which point the employee will not accrue additional vacation leave.

The District, at the employee's option, will compensate employees for accumulated unused vacation leave hours equal to the number of vacation hours actually taken during that calendar year. Vacation leave compensation will be paid at the employee's current rate of pay.

4.07.090 Administrative Leave Management employees shall be granted 8 days of administrative leave per calendar year. Administrative leave must be used by the end of the calendar year or it is forfeited without compensation. No Administrative leave shall be carried over the next calendar year, nor shall unused Administrative Leave be converted to compensation.

Employees are to schedule administrative leave in the same manner as vacation leave.

Employees appointed to an exempt position after the first of the year may be granted leave on a prorated basis. Administrative Leave balances shall be adjusted when employees separate employment prior to the end of the calendar year

4.07.010 Sick Leave The District provides paid sick leave to all regular employees for periods of temporary absence due to injuries or illnesses. Regular eligible employees will accrue unlimited sick leave benefits from the date of hire at the rate of one day per month for each month the employee remains in a pay status (12 days per year maximum). When an employee is no longer being compensated during the major portion of any month by regular pay, paid vacation, or any other form of paid leave the employee will no longer accrue sick leave.

Eligible employees may request to use paid sick leave for absence due to:

- a) The inability of an employee to be present or perform duties because of personal illness, off-duty injury, or medical treatments.
- b) The need for the employee to care for an illness or injury of an immediate family member (child, spouse, domestic partner, or parent). Employees may use their accrued sick leave, up to a maximum of six (6) days in a calendar year for this purpose. Employees can accumulate unused family sick leave not to exceed six days.

If an employee is absent for three or more consecutive days due to illness or injury, a physician's statement may, at the supervisor's discretion, be required verifying the employee's medical need to be off work, the beginning and expected ending dates of the absence, and confirming the date that the employee may safely return to work.

4.07.010.1 Sick Leave Incentive Plan Employees with low sick leave use who have worked a minimum of one full payroll year can exchange sick leave for its cash equivalent annually according to the following schedule:

<u>Sick Leave Usage</u>	<u>Sick Leave Conversion Credit</u>
Zero (0) days	Two (2) days
One (1) day	One (1) day, four (4) hours
Two (2) days or less	One (1) day
Three (3) days or less	Four (4) hour

4.07.011 Family and Medical Leave Any eligible employee may be granted a family and/or medical leave subject to the provisions of the California Family Rights Act and the Family Medical Leave Act in effect at the time the leave is granted. A family and/or medical leave may be granted for any of the following reasons:

- a) Birth of a child; to care for a newborn child;
- b) For placement of a child for adoption or foster care;

- c) To care for a child, parent, spouse or registered domestic partner with a serious health condition;
- d) The employee's own serious health condition that renders the employee unable to perform one or more of the essential functions of his or her job;
- e) If a family member is called to or is on active duty in the military, or;
- f) If a family member or next of kin is injured in the course of military service.

An eligible employee shall be entitled to family and medical leave up to a total of 12 workweeks during the 12 month period that begins on the first day of the qualifying leave. Health benefits will be continued under the same terms as prior to the leave.

To be eligible to request family and medical leave, an employee must have been employed with the District for at least 12 months, and have worked at least 1,250 hours in the 12 months preceding the leave.

If possible, employees requesting leave must provide 30 days' advance notice. For events that unforeseeable, employees must notify their supervisor and HR as soon as they learn of the need for leave. Employees who return to work following an approved family and medical leave will be reinstated to their same position, or a comparable position, to the extent required by law.

4.07.012 Pregnancy Leave Eligible employees who are disabled by pregnancy, childbirth, or related medical conditions are entitled to request a pregnancy disability leave of up to four months, depending on the period of medically-certified disability.

4.07.013 Unpaid Personal Leave An unpaid leave of absence may be granted to a regular employee for urgent substantial personal reasons provided that adequate arrangements can be made to perform the employee's duties without undue interference with the normal routine of work.

All applications for a personal leave of absence shall be made in writing to the employee's Department Head and include reasonable justification for approval of the request. The Department Head and the General Manager will evaluate the request. Employees on a personal leave of absence will become responsible for the full costs of District provided benefits beginning on the first day of unpaid leave. All District paid benefits will be suspended during the leave and will resume upon return to active employment.

4.07.014 Military Leave The District will provide military leaves of absence to employees who serve in the uniformed services as required by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and applicable state laws.

4.07.015 Jury Duty A regular employee will be paid his or her regular rate of compensation when summoned to jury duty or by a subpoena to appear as a witness, unless the employee's testimony is against the District's interest. The employee shall submit to the District any payment received for jury duty, except mileage reimbursement.

4.07.016 Bereavement Leave Regular employees will be granted three days bereavement leave with pay in the event of a death in their immediate families or of a member of the employee's immediate household at the time of death. For purposes of this policy, immediate family consists of an employee's spouse or registered domestic partner, or the parent, foster parent, sibling, child, step-child, half-sibling, or grandparent of either. In addition, such leave may be extended to cover the employee's step-parent, foster child, or grandchild.

4.07.017 Industrial Injury Leave The District will grant workers' compensation disability leave to employees with occupational injuries or illnesses in accordance with state law.

a) Notice Requirement

Employees must report all on-duty accidents, injuries and illnesses, no matter how small, to their immediate supervisor as soon as possible.

b) Compensation During Leave

If the employee is deemed eligible, Workers' Compensation benefits will begin with the first day of absence following the day of the work-related injury/illness. The combined amount of industrial disability and Workers' Compensation benefits paid by the insurance carrier shall not exceed 85% of each employee's daily basic wage.

c) Modified Duty

Temporary light duties may be assigned to industrially-injured employees when the District determines that the work is available and such work is within the employee's ability to perform. The duration of any such period of temporary work shall be determined by the District, but in any event, modified duty will last no longer than six months.

4.07.018 Limitations At no time shall the total combination of leave benefits, including payments from Workers Compensation, State Disability Insurance, Social Security Disability, or any other benefit to which the District contributes, exceed 100% of the normal straight-time earnings for any employee.

4.07.019 Return to Work Physical Prior to permitting an employee to return to work following any medical absence in excess of three days, the District may, at its discretion, require a physician's release stating that the employee is physically able to perform the duties of his or her job. At the District's discretion, it may require a medical release to return following a medical leave of shorter duration.

4.07.020 Donation of Accrued Vacation Leave An employee may, upon approval of the General Manager, transfer all or any portion of his or her accrued vacation leave hours to another employee of the District. Transfer of vacation leave from one employee to another shall be permitted only in unusual situations involving serious injury or illness of an employee or employee's family member.

CHAPTER 4.08

PERFORMANCE APPRAISALS

Sections:

4.08.010 Employee Performance Evaluations

4.08.020 Professional Development for Management Personnel

4.08.010 Employee Performance Evaluations Performance evaluations are an inherent part of the ongoing supervision process by which employees are informed of the performance expectations of them, and periodically informed of their progress and any performance deficiencies.

The performance of every employee shall be formally evaluated in writing at the end of the first three months and the first six months in a classification, and then annually thereafter. An employee's performance may also be formally evaluated at other than the scheduled times for specific reasons.

The formal evaluation process should include adequate time for discussion before the evaluation is finalized and the employee shall have an opportunity to respond to the supervisor's evaluation after it is finalized.

The employee's signature on the evaluation form indicates that the employee has seen the form and had the opportunity to discuss it with his/her supervisor, not necessarily that the employee is in agreement with its contents. The employee shall be given a copy of the evaluation, with the original being placed in the employee's personnel file.

An employee who is given a rating of less than satisfactory shall be given a written Performance Improvement Plan (PIP) by their supervisor. The employee will have five (5) working days to review the PIP, and will subsequently meet with the supervisor to provide his or her comments. The employee may provide an attached statement regarding the PIP. The PIP shall then be signed by the supervisor and the employee. Failure to comply with the PIP will lead to disciplinary action.

4.08.020 Professional Development for Management Staff Each member of the management staff is encouraged to prepare a plan of professional development aimed at establishing and maintaining professional competence. The General Manager shall review said plan with the relevant staff person and approve a plan of professional development. The approved professional development plan may be eligible for reimbursement by the District for up to 50% of the costs of tuition, fees and books.

CHAPTER 4.09

EMPLOYEE ACTIVITIES

Sections:

- 4.09.010 Code of Business Conduct**
- 4.09.020 Electronic Data**
- 4.09.030 Personal Communication Devices**
- 4.09.040 Travel and Expense Reimbursement**
- 4.09.050 Moving Expense Reimbursement**
- 4.09.060 District Vehicle Use**

4.09.010 Code of Business Conduct The District expects its employees to behave in a fair, honest and ethical manner in all activities conducted on behalf of the District. This Code of Business Conduct is intended to be a constant reminder of that expectation and a statement of how we will conduct ourselves on a daily basis. All employees are expected to know and understand the standards and expectations set forth herein.

The District believes that ethical standards are achieved not just through the publication and dissemination of this document, but through open and ongoing discussion about ethical issues related to the business and activities of this District. This District operates in an open-door climate where employees understand that they can openly raise questions and concerns without fear of retaliation. Further, this Code of Business Conduct is not exhaustive but designed only to provide summary guidance to employees in how they are expected to carry out their duties. When in doubt, employees are expected to use good judgment and to raise questions with their managers.

4.09.010.1 Standards of Conduct Employees are expected to uphold the values of the District and are required to report any situation where the individual reasonably suspects any activity that may be in violation of the law, board policies, the Memorandum of Understanding (MOU), or this Code. Standards of conduct include:

Employees are required to deal honestly and fairly with customers, co-workers, suppliers, public and others having dealings with the District.

Employees are required to conduct themselves in a professional, business-like manner while performing their jobs or representing the District in any manner.

Employees are prohibited from offering or accepting bribes, kickbacks or other forms of improper payment from anyone. They are prohibited from receiving gifts, paid trips or favors of more than nominal value from customers or suppliers. If in doubt, the employee is required to ask the General Manager if the proposed gift or favor is of more than "nominal value."

Employees are required to limit their reimbursable expenses to those that are necessary, prudent and business-related.

Employees are prohibited from taking unfair advantage of customers, suppliers or other third parties through manipulation, concealment, abuse of privileged information, or any other unfair-dealing practice.

4.09.010.2 Conflicts of Interest A conflict of interest exists when an employee is called upon to make or is involved in any decision that creates or appears to create a conflict between their personal interests, including the interests of their family members, and the business interests of the District.

Employees must not seek any personal or family member benefit through any arrangement with vendors, suppliers or other parties that have a business relationship with the District.

In any situation where it may reasonably be perceived that there is a conflict of interest, the employee is required to report that potential or actual conflict of interest to their supervisor or the General Manager.

In addition to these general standards on conflicts of interests, employees shall abide by the Conflict of Interest policy adopted by the Board of Directors, District Code Title 2.

4.09.010.3 Confidentiality of Information Employees are frequently entrusted with confidential information. This may include technical or financial information, personnel information, medical information, customer lists and records, and other information that, if disclosed, might be a violation of personal privacy, HIPAA laws, or could be potentially harmful to suppliers, customers, Board members, employees or otherwise to the operations or interests of the District. This information is the property of the District.

Employees shall not discuss District confidential information with or in the presence of unauthorized persons, including family members and friends.

Employees shall use District confidential information only for the District's legitimate business purposes and not for personal gain.

Employees shall not disclose District confidential information to third parties without authorization.

Employees shall not use District information or other property or resources for any personal gain or for the gain of any family member.

4.09.010.4 Customer Communications In communicating with our customers, the District is committed that it shall:

Provide all information to which customers have a legitimate right.

Provide information that is accurate and understandable.

4.09.010.5 Financial Reporting and Recordkeeping The District shall:

Follow generally accepted accounting principles and other prescribed rules and regulations of other applicable regulatory bodies having jurisdiction.

Maintain a system of internal accounting controls that will provide reasonable assurances that all transactions are properly recorded and that material information is available to management when required.

Maintain books and records that accurately and fairly reflect the District's financial health.

Maintain a record retention system that ensures the District's records and documents are properly retained and secured.

Conduct an annual financial audit to provide an independent, objective review of financial reports, and to identify any risks associated with the system of internal controls.

4.09.010.6 Legal and Regulatory Compliance The District will comply with all local, state and federal laws, rules and regulations applicable to the activities of the District. It will maintain a safe and healthy work environment free from harassment or discrimination per the District's policy.

4.09.010.7 Reporting of Violations Every employee is responsible for ensuring that violations of laws, rules and regulations, the MOU or this Code are reported promptly. Reports of suspected violations may be made in person or in writing, confidentially or anonymously, to the General Manager or Human Resources Administrator. All such reports will be promptly investigated and appropriate corrective action will be taken. Any employee who makes a report in good faith and on reasonable belief may do so without fear of retaliation or retribution.

4.09.010.8 Employee Education All employees will receive a copy of the Code of Business Conduct and will be required to sign a form indicating that he/she has received a copy of the Code of Business Conduct, read its contents, and understands his/her obligations under the Code.

4.09.010.9 Monitoring and Enforcement Every employee is responsible for monitoring compliance with the Code by reporting suspected violations in a timely manner (as discussed above) and cooperating with investigations of suspected violations. Employees that violate any laws, rules and regulations, the MOU or this Code may face appropriate, case-specific disciplinary action. Additionally, on a periodic basis, this Code of Business Conduct policy will be reviewed for effectiveness and appropriate modifications and/or enhancements will be recommended as deemed necessary.

4.09.020 Electronic Data It is the policy of the District that all electronic office data storage systems including, but not limited to, voice mail, computers, electronic mail, and facsimiles are the property of the District and are provided to employees for their use in conducting District business. The systems belong to the District and are accessible at all times by District management for any business purpose. Accordingly, employees should

not have any expectation of privacy in any information they create or receive on the District's systems.

Specific rules and procedures are detailed in the District's "Computer & Information Technology Standards of Practice.

4.09.030 Personal Communication Devices Personal communication devices may be issued to employees to enhance the efficiency and effectiveness of District communications. Department Heads shall be responsible for determining the employee's need for a District provided device based on the business needs of the District. Employees who are issued such devices are responsible for adhering to the following standards:

- a) Personal communication devices shall be used for appropriate business purposes.
- b) Personal usage should be kept to a minimum; employees shall reimburse the District for all personal usage that result in a charge to the District.
- c) District personal communication devices may not be used for commercial profit or secondary employment.

4.09.030.1 Use of Personal Communication Devices while operating a vehicle

California State laws prohibit the use of personal communication devices while driving unless using a hands-free device. Employees shall adhere to these laws.

4.09.040 Policy for Travel and Expenses

It is the District's objective to establish a policy governing employee travel and the payment of travel and out-of-pocket expenses incurred by employees while involved in official District business or while in attendance at authorized meetings or training.

Policy Content:

- a) It is the policy of the District to enable employees who are away from home on District business to travel comfortably and safely, in an efficient and economical manner;
- b) Employees must obtain pre-approval from the department manager for travel and expected business expenses before the expenses are incurred; and
- c) The District will reimburse employees for actual authorized travel expenses that are reasonable and necessary in the conduct of District business and upon the submission of an expense report with receipts attached, and upon approval of the appropriate supervisor. Employees should use good judgment when incurring business expenses. The employee is expected to use a reasonably economic means of lodging, meals and transportation that will meet the traveler's requirements with due consideration to safety and comfort.

4.09.040.1 Personal Automobile Use

Employees shall utilize District owned vehicles for business travel whenever possible. If a District owned vehicle is not available, employees must have prior approval from the General Manager before using their personal automobile. Drivers must have a valid driver's license and adequate liability insurance. Motorcycles will not be authorized for business travel.

Personal automobiles used on District business must be covered by liability insurance. It is the employee's responsibility to have adequate automobile insurance. A copy of the current Proof of Insurance must be furnished to the District by the employee indicating coverage before using a personal vehicle for District business. The District will not be responsible for any damage incurred to or by the employee's automobile in the course of conducting District business.

Employees will be reimbursed at a rate per mile equal to the current IRS standard mileage allowance. Such reimbursement cannot exceed the cost of air coach by the most direct route if plane service is available and practical.

Employees will be reimbursed for all business-related parking and tolls, but not for fines and penalties imposed for the violation of traffic and other laws.

4.09.040.2 Out of Town Travel When deciding on a mode of transportation, District staff should utilize the most cost effective means of transportation, while considering the travel time associated with the trip. Air travel must be by coach or standard class. Alternate routes or additional stops for the employee's benefit will be at the employee's expense, prorated to the most cost effective direct route.

Hotels selected should be those that are recognized as reputable, reasonable in price for the area, and conveniently located in relation to the employee's work assignment.

Rooms should be at the government rate (where available) for a single, standard room.

The District will not reimburse for alcoholic beverages or any expense considered personal entertainment, including in-room movies. While employees are traveling, the District will consider a telephone call to the employee's immediate family (spouse, registered domestic partner, children, and parents) to be a business expense. These calls are expected to be of reasonable length. Employees should use a cell phone or phone card, with the standard hotel long distance service as the last resort.

Employees must use good judgment as to the reasonableness of costs for meals. Gratuities should not exceed acceptable and customary practices. Employees are encouraged to take advantage of meals included in the price of a business seminar or conference, or in the cost of their hotel room. Meal reimbursements must include a detailed/itemized receipt.

4.09.040.3 Submitting Travel Expense Reports It is the responsibility of each employee to provide a complete and factual accounting of funds through the travel expense report or District credit card monthly statement. All reports must be submitted within 30 days to the immediate supervisor and approved by the Department Manager.

Actual receipts showing itemized charges must be attached for all expenses, including lodging, transportation, tolls, and meals.

4.09.040.4 District Issued Credit Cards District credit cards have been issued to designated employees. The use of District credit cards is only for District business expenses. No personal charges are to be placed on the District's credit card.

Itemized receipts must be attached to an employee's monthly credit card statement. The monthly statement must be signed by the employee and approved by the Department Manager and General Manager.

4.09.050 Moving Expense Reimbursement New employees who have been recruited by the District and are required to move their place of residence (more than 50 miles) as a result of accepting employment with the District may be reimbursed for qualified moving related expenses.

Eligible expenses shall be limited to documented costs to move furniture and household items and transportation for the employee and members of his/her immediate family based upon the current IRS mileage rate. Costs associated with the sale or purchase of a home, lodging, meals, temporary storage of personal items, or costs that are not directly necessitated by the move will not be included in the costs subjected to reimbursement.

The amount of reimbursement shall not exceed the amount equal to one-half of the employee's monthly salary and must be properly documented by receipts. The General Manager will make final decisions regarding the appropriateness of expenses for the reimbursement.

4.09.060 Vehicle Use Policy District owned vehicles are provided for official use only and are not to be used for private transportation or personal business. Vehicles will be parked at the District site when not in use and will be available to all personnel for any valid business-related purpose.

District employees who are required to drive as a part of their job responsibilities must possess a valid driver's license. All such employees are required immediately to advise District management of any driving violations, citations, or accidents resulting in a suspension or revocation of their driver's license.

If possible, the District will provide a vehicle for transportation to and from business meetings, conferences, or other events that employees attend located away from the office. If an employee drives his or her own personal vehicle, the District will pay the current rate for mileage as set by the Internal Revenue Service.

Smoking is prohibited in District owned vehicles.

Seat belts shall be worn while driving or riding in all vehicles used for District business. Employees that are subject to being called outside of normal work hours for emergencies or other District business will be assigned vehicles to be driven to and from their place of residence. These employees are:

- a) General Manager
- b) Assistant General Manager
- c) Electric Superintendent
- d) On-Call Lineman
- e) Electric Engineer
- f) Water Utility Manager
- g) Water Superintendent
- h) Water Engineer
- i) On-Call Water Technician

The General Manager can authorize any District employee, on occasion, to keep a pool vehicle at their residence overnight when the situation arises that requires the employee to conduct District business before or after regular work hours.

No employee shall be allowed to use an assigned vehicle for personal purposes other than commuting and de minimis personal use, such as a stop for a personal errand on the way home. Once at the employee's residence, District vehicles shall only be used for official District business or the return commute to place of business.

District vehicles shall be operated only by an authorized District employee. Employees may occasionally have passengers that are a necessary part of the District's operations.

The District will comply with Internal Revenue Service statutes in regards to reporting employee vehicle use as a taxable fringe benefit.

The general manager is authorized to rule on any unforeseen situation that might arise that is not covered in this policy.

Staff shall report to the Board annually of vehicle use and IRS compliance.

CHAPTER 4.10

DISCIPLINARY ACTIONS

Sections:

4.10.010 Disciplinary Procedures

4.10.010 Disciplinary Procedures The principal objectives of this policy are to promote orderly job conduct and the longer range development of a goal-oriented and productive personnel team, help ensure compliance with state and federal laws, and to establish the procedural means of protecting employment rights of employees.

The effect of this policy should be:

- a) The reduction of involuntary terminations.
- b) The avoidance or minimizing of misunderstandings between supervisory and non-

- supervisory personnel.
- c) Ensuring that personnel are provided with notice of unacceptable conduct in sufficient time to permit self-correction and improvements.
 - d) Ensuring that documentation is maintained and available to support management's position in the event of discriminatory charges.

It is recognized that this policy applies to all employees represented by IBEW Local Union 1245 (bargaining unit employees) as well as management employees (non-bargaining unit employees). The coverage of non-bargaining unit employees by this policy shall in no manner create any legal or other obligation of IBEW Local Union 1245 toward non-bargaining unit employees. IBEW Local 1245 shall have no obligation whatsoever to provide a defense, provide advice, or otherwise represent non-bargaining unit employees.

4.10.010.1 Definition The term discipline will be understood as meaning "a state of orderliness" such as in a "disciplined team" or in a "disciplined performance." Therefore, disciplinary action is action taken to maintain an orderly way of imposing sanctions to remedy unacceptable employee performance.

4.10.010.2 Causes for Disciplinary Action The following are examples of conduct for which discipline may be imposed. This list is merely a summary. It is not exhaustive and discipline may be imposed for misconduct not set forth below:

- a) Improper or unauthorized use or abuse of sick leave;
- b) Excessive absenteeism;
- c) Being absent without authorization; repeated tardiness or leaving without authorization;
- d) Violation of District policies, rules or procedures;
- e) Insubordination, disobedience, or failure to carry out any reasonable order;
- f) Acceptance of gifts or gratuities in connection with or relating to the employee's duties;
- g) Any conduct which is harmful to the orderly conduct of business, the safety of employees or equipment, or which adversely affects the employee's ability to perform his/her job;
- h) Falsifying information related to employment application, payroll or any other work related record or report;
- i) Discourteous or inappropriate treatment of the public or District employees;
- j) Violation or neglect of safety rules or common safety practices;
- k) Theft, dishonesty, or fraud;
- l) Physical altercations or acts of aggression;
- m) Engaging in discriminatory or harassing behavior in violation of state/federal laws and/or District policy;
- n) Substandard or inadequate job performance, including failure to perform assigned tasks or training, or failure to discharge duties in a prompt, competent, and reasonable manner;
- o) Violation of the District's policies regarding drugs, alcohol, and/or tobacco use;

- p) Careless, negligent, or improper use of District property, equipment or funds, including unauthorized removal, or use for private purpose, or use involving damage or unreasonable risk of damage to property.

4.10.010.3 Progressive Discipline Procedures - The actions identified below reflect a logical progression from the least serious to the most serious. In general, a supervisor's approach to matters requiring disciplinary action will follow this progressive approach. The first steps of the disciplinary procedure are to be regarded as corrective measures and are to be combined with appropriate instruction which, if followed, would make further steps unnecessary. The seriousness of the offense shall be taken into account by the supervisor, and the supervisor need not necessarily proceed to the next level of disciplinary action upon the repetition of the offense. In order for a supervisor to proceed to the next level of disciplinary action, the offense need not be a repetition of a prior offense.

A Skelly meeting (as defined below) will generally precede disciplinary action involving a loss of pay. However, suspensions of five days or less may be immediately implemented providing that the Skelly procedure (as defined below) is then promptly followed. Under certain conditions more severe disciplinary action may immediately occur.

4.10.010.4 Forms of Disciplinary Action:

4.10.010.4(A) Verbal Reprimand – The verbal reprimand is considered informal discipline and notifies the employee that his/her performance or behavior must be improved. This warning defines the areas in which improvement is required, sets up goals leading to this improvement and informs the employee that failure to improve will result in more serious disciplinary action.

This is the first official step of disciplinary action. It shall be used to deal with minor infractions of rules and practices. It is, in effect, a statement to the employee that he/she has (1) violated a District rule or work practice that he/she should have been aware of, (2) that he/she will be expected to abide by all such rules in the future.

The manager will summarize this action with written documentation concerning the conversation. This document is placed in the employee's personnel file and a copy is given to the employee. The employee shall be permitted to file a written response, the original being directed to the department head and a copy filed in the employee's personnel file.

4.10.010.4(B) Written Reprimand – The written reprimand is a written record of discipline, that is usually, but not always, issued after a previous verbal reprimand. The employee is advised that his/her behavior is below standard and that continuation or repetition of that behavior shall result in more serious disciplinary action. The written reprimand shall specifically cite the substandard conduct and, where appropriate, reference the particular Code or Policy that has been violated.

A copy of the written reprimand shall be provided to the employee and a copy placed in the employee's personnel file. The employee shall be permitted to file a written response, the original being directed to the department head and a copy filed in the employee's personnel file.

4.10.010.4(C) Suspension – The suspension is a District ordered absence from duty without pay for a specified period of time, and generally, but not always, follows a previous verbal and written warning.

4.10.010.4(D). Reduction in Pay – Reduction in pay is a temporary reduction in salary to a lower salary step for a specified maximum period of time. The employee does not have sudden stoppage of income and may be able to have the reduction lifted by good performance. The department does not lose the services of the employee. An individual should have been warned or reprimanded prior to taking this action to advise him or her that his or her performance is not acceptable.

4.10.010.4(E). Demotion – A demotion is a permanent change in classification of an employee to a position of lower responsibility and pay for unsatisfactory performance or disciplinary reasons. No employee shall be demoted to a position for which he or she does not possess the minimum qualifications; the employee’s new duties must be consistent with those described in the job description.

4.10.010.4(F). Last Chance Agreement – At the discretion of the General Manager, a last chance agreement may be entered into with the employee, the bargaining unit if appropriate, and the District. This agreement is a possible alternative to termination. The agreement, signed by all parties, will state the steps or conditions that the employee is required to follow or meet to continue his or her employment with the District.

4.10.010.4(G) Termination/Discharge

Termination is the most severe form of disciplinary action. This course of action may result, for example, from an employee’s violation of the District’s “Causes for Disciplinary Actions,” or due to an accumulation of various violations. This action is normally one of last resort, and shall only be taken when management is thoroughly satisfied that the employee has been given every reasonable opportunity to meet performance or behavior standards and clearly failed to do so.

4.10.010.5 Pre-Disciplinary Proceedings A public employee has certain procedural protections called “Skelly” rights before serious discipline (i.e., a reduction in pay or suspension of more than five (5) working days) may be imposed. Before such discipline is imposed, the employee has the option to request an administrative meeting with the District whereby the employee (with or without his/her representative) may respond to the charges with facts and/or other information which he/she wishes the District to consider in deciding whether or not to proceed with the proposed discipline.

The requirements of the Skelly procedure are satisfied as follows:

- a) The employee receives advance notice of the proposed disciplinary action.
- b) The notice states the reasons for the proposed action.
- c) The notice contains the charges upon which the proposed action is based.
- d) The employee is allowed access to any materials upon which the proposed action is based.

- e) The employee is afforded the right, either orally or in writing, or both, to respond to the proposed charge(s) and the proposed disciplinary decision.

4.10.010.5(A) Skelly Notice The notice requirements of Skelly are as follows:

- a) The Skelly notice shall be in writing.
- b) The letter shall set a date, time and place for the employee to respond to the charges if he/she elects to do so. In order to allow the employee time to seek advice and to prepare any oral or written response he/she may wish to make, the date set for his/her response should be at least five working days from the date the letter is sent. The letter shall contain a request that the employee give notice if he/she elects to waive his/her right to respond orally.
- c) The letter shall contain the notice of the proposed disciplinary action intended to be taken.
- d) The reasons for the proposed action must be set out. The part of the Skelly letter setting out the misconduct with which the employee is charged must be factual so that any person reading the letter will be able to determine the exact misconduct charged.
- e) The factual allegations of misconduct must specifically cite the District's particular policy and/or "Causes for Disciplinary Actions" that the employee is charged with violating.
- f) The notice must advise the employee of his/her right to respond to the charges, either orally or in writing.
- g) The notice must advise the employee of his/her right to representation if he/she elects to respond.
- h) The notice will advise the employee that discipline may be imposed whether or not he/she responds to the charges.

4.10.010.5(B) Skelly Meeting The Skelly meeting, if the employee elects to have a meeting, shall be conducted as follows:

- a) The General Manager (hereafter "Skelly Officer") shall chair the meeting.
- b) The Skelly Officer shall establish that the employee has received the Skelly notice and understands the charges set forth therein.
- c) The Skelly Officer shall make available any documents which were considered in determining the charges and proposed disciplinary action.
- d) The employee or his/her representative shall be given the opportunity to respond to the charges and proposed action.
- e) The employee or his/her representative shall be given the opportunity to make final comments regarding the proposed action.
- f) The Skelly Officer shall close the meeting by indicating that he/she will consider all statements and/or documents, which may have been presented prior to determining the final action.

The General Manager will determine whether the charges have been sufficiently established and the appropriateness of the level of the proposed disciplinary action.

4.10.010.5(C) Action Letter Following the Skelly meeting, the Skelly Officer will promptly prepare a letter containing all of the following:

- a) Factual Findings. Repeat the charges as set out in the Skelly notice letter, provided the Skelly Officer concludes they have been established. If a charge has not been established or if facts excusing or mitigating of the misconduct have been disclosed, the letter should so state.
- b) The specific District policy and/or particular portion of the “Causes for Disciplinary Action” which were violated should be cited.
- c) The discipline imposed may not exceed the maximum stated in the Skelly letter.
- d) A statement that the employee may appeal the action to arbitration consistent with the provisions of the Union contract or other District procedures, if applicable.

4.10.010.5(D) Appeal Process The following process applies to management positions (i.e., non-bargaining unit positions) only. The grievance/appeal process for bargaining unit members is set forth in the MOU.

If an employee wishes to appeal a disciplinary action, they may move the matter to arbitration by filing a request for arbitration in writing with the General Manager. To be timely, the request for arbitration must be received within fourteen calendar days of the date of the Skelly Officer’s decision.

As soon as reasonably possible after the matter has been referred to arbitration, the parties or their designated representatives shall confer regarding the selection of the arbitrator. If agreement cannot be reached, the parties shall request a panel of seven arbitrators from the California State Mediation and Conciliation Service (“SMCS”). The parties or their representatives shall alternately strike from the SMCS list until one name remains and that person shall serve as the Arbitrator.

At the Arbitration hearing, both sides shall be represented by the person of their choice and shall be solely responsible for the costs associated with the presentation of their case including but not necessarily limited to the costs associated with their representative and any witnesses. The costs and fees associated with the Arbitrator and court reporter shall be divided evenly between the parties.

The decision of the Arbitrator shall be final and binding, however, the Arbitrator shall have no authority to add to, modify or delete any provisions of the District’s codes or policies.

CHAPTER 4.11

GRIEVANCES

Sections:

4.11.010 Grievance Procedure

4.11.010 Grievance Procedure The District will recognize the grievance procedure as outlined in Title 14 of the Memorandum of Understanding. In connection with all grievances filed, it shall be the policy of the District that:

- a) Prompt attention be given to all grievances;
- b) That there will be freedom from reprisal against those filing a grievance;
- c) That reasonable efforts will be made to resolve the grievance at the lowest possible level within the District.

CHAPTER 4.12

EMPLOYEE SAFETY AND HEALTH

Sections:

- 4.12.010 Safety and Loss Control**
- 4.12.020 Injury and Illness Prevention Program**
- 4.12.030 Wellness Program**
- 4.12.040 Safety and Loss Committee**
- 4.12.050 Tobacco-Free Workplace**
- 4.12.060 Workplace Violence**
- 4.12.070 Driver's License Policy**
- 4.12.080 Drug and Alcohol Free Workplace**
- 4.12.090 DOT Testing Policy**

4.12.10 Safety and Loss Control The purpose of this policy is to:

- a) Protect human life from injury and preserve property of the District and the general public.
- b) To instill an awareness of the importance of safe work and loss control practices in the operation of District facilities, and to establish the desire and expectation in all employees to work safely.
- c) To educate and train District employees in proper job practices and procedures through a continuing on-the-job training program.
- d) To comply with applicable federal, state and local regulations.

A comprehensive set of basic operating and safety rules and safe work practices that address all aspects of District operation shall be developed, adopted and distributed to all employees of the District. Each employee shall sign a receipt of acceptance indicating they will follow and abide by the safety rules and work practices.

4.12.020 Injury and Illness Prevention Program The District will maintain a comprehensive and continuous occupational Injury and Illness Prevention Program (IIPP) for all employees. The health and safety of the individual, whether in the field or office, takes precedence over all other concerns. The District's goal is to prevent accidents and to eliminate personal injury and occupational illness and comply with all safety and health rules and standards.

4.12.030 Wellness Program To promote the wellness of its employees, the District will maintain an Employee Wellness Program. The program shall include Health Risk Appraisals and a variety of health and fitness related activities. Participation by employees in this program is voluntary.

4.12.040 Safety and Loss Committee A Safety and Loss Control Committee shall be established that will include District management and union employees and will meet at least monthly. The Committee will annually update the Safety and Loss Control program.

A program of regularly scheduled safety and job training meetings shall be held to educate District employees and maintain an awareness of job safety.

Supervisors shall be held accountable for implementation and enforcement of the safety and loss control program.

The General Manager shall submit to the Board of Directors an annual report summarizing the safety activities for the past year.

4.12.050 Tobacco-Free Workplace Policy The District's objective is to provide a healthful, comfortable and productive work environment for all District employees, directors, vendors and customers.

Accordingly, and in compliance with California law, it is the policy of the District to prohibit smoking or use of tobacco products of any kind within all District controlled and operated facilities, as well as District vehicles and worksites.

Smoking is prohibited within twenty (20) feet from entrances, exits, air intake vents, stairwells, breezeways, garage doors or operable windows. Littering of matches, cigarettes, cigars, chewing tobacco or any other substance is not permitted. Proper containers must be used for disposal of these items.

Signs acknowledging "Smoke-Free Building" shall be posted on entrance doors of the building and other locations as deemed appropriate.

All employees share in the responsibility for adhering to and enforcing to this policy.

4.12.060 Workplace Threats/Violence The District is committed to providing a safe and secure workplace for employees, customers, contractors and visitors. Threats, threatening behavior, or acts of violence against any individual on District property, at District controlled worksites or involved in the conduct of District business will not be tolerated.

4.12.060.1 Definition of Workplace Threats/Violence Workplace Threats/Violence may be conduct that causes an individual to fear for his or her personal safety or the safety of his or her family, friends and/or property, such that employment conditions are altered and/or a hostile abusive or intimidating work environment is created.

Specific examples of conduct prohibited by this policy include, but are not limited to:

- a) Threats or threatening behavior directed toward an individual or his/her family, friends, associates, or property;
- b) Harassing or threatening phone calls, written messages, videos, photographs or E-mails;
- c) Surveillance by any means;
- d) Stalking;
- e) Fighting or other physical violence or threat of physical violence;
- f) Threats of aggression or violence made "in-jest".

It is the responsibility of all District employees to immediately report any threatening or violent behavior they have witnessed or have knowledge of, occurring on District property, worksites or connected to District employment, to their supervisor or department head.

The incident will be investigated and documented by the appropriate management employee, with all necessary steps taken to intervene in and/or remedy any potentially hostile or dangerous situations.

4.12.070 Employee Driver's License Policy The purpose of this policy is to maximize the safety of the District employees and minimize potential liability exposures and District property damage potential connected with the operation of vehicles used in the course of District business. Another purpose of this policy is to assure that all employees operating vehicles while on District business meet all licensing and driving qualifications.

It is a requirement for continued employment for every position with driving duties that the employee maintains a valid driver's license. In addition, the District's policy is to verify, at least annually, the DMV motor vehicle record (MVR) for employees who drive for the District. This policy applies both to drivers of District owned vehicles as well as employees using personal vehicles in the course of District business.

The General Manager or his or her designee shall administer this policy. The following are minimum requirements:

- a) All employee positions that include operation of a motor vehicle as part of their duties for the District shall possess a valid state issued drivers' license;
- b) An employee shall not operate a District vehicle or a personal vehicle for District business if that employee's license is not valid for any reason; and,

All employees who drive for the District shall:

- a) Maintain the necessary license required by their job description;
- b) Authorize the District to obtain a MVR from the Department of Motor Vehicles from the state of the employee's drivers' license;

- c) Immediately report to the General Manager or his or her designee any suspension of driving privileges or other restriction on the employee's driver's license that affects the employee's ability to perform his/her job.

For employees who drive for the District, inability to operate a District because of an invalid drivers' license impairs an employee's ability to satisfactorily perform their job. Such circumstances are subject to review by the General Manager and corrective actions, including termination may occur as a result.

4.12.080 Drug and Alcohol-Free Workplace The District is committed to establishing and maintaining a high-quality, safe environment for employees and the public, and supports a drug and alcohol-free workplace. The unlawful use, possession, sale, distribution, dispensation, or manufacture of a controlled substance in the workplace or in a work-related situation, by District employees is prohibited, and will not be tolerated. Further, employees are prohibited from using or being under the influence of drugs or alcohol in the workplace. The normal use of over-the-counter medications and the legal use of prescription drugs as ordered by a physician are not prohibited by this policy, as long as the drugs do not interfere with the employee's ability to safely perform his or her job.

District employees who violate the District's policy will be subject to disciplinary action consistent with the District's Disciplinary Procedures.

The District will conduct periodic training for employees and supervisors on substance abuse prevention and education.

The District shall continue to offer a confidential Employee Assistance Program to aid employees with substance abuse problems.

Pre-employment Testing: All applicants, after receiving a conditional offer of employment, will be subject to a controlled substance screening test as part of a pre-employment physical examination.

Reasonable Suspicion Testing of Current Employees: Any current employee may be subject to drug or alcohol testing under certain circumstances. When an employee's observed behavior, involvement in an on-the-job accident or other circumstances raise reasonable suspicion that this Policy is being violated, the District may require the employee to undergo a test for controlled substances or alcohol when such testing is job-related and consistent with business necessity.

Reasonable suspicion under this Policy shall be based on specific, personal and observations concerning the appearance, behavior, actions, and speech or body odors of the employee.

4.12.090 Drug and Alcohol Testing Policy Applicable to Commercial Motor Vehicle Drivers (CDL) Only

4.12.090.1 Purpose It is the goal of the District to provide a healthy, satisfying work environment that promotes personal opportunities for growth. In meeting these goals, it is the District's policy to do the following:

- a) Assure that employees are not impaired by alcohol or prohibited drugs in their ability to perform assigned duties in a safe and productive manner.
- b) Create a workplace environment free from the adverse effects of alcohol and substance abuse or misuse.
- c) Encourage employees to seek professional assistance any time personal problems, including alcohol or drug dependency, adversely affect their ability to perform their assigned duties.

4.12.090.2 Included Persons This alcohol and drug testing policy applies to all District employees holding a commercial driver's license (CDL) and who operate a commercial motor vehicle (CMV) as defined below.

This policy applies to full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to the District or who operate a CMV at the direction of or with the consent of the District. For the purposes of pre-employment/pre-duty testing only, the term driver includes a person applying to the District for a position that entails the driving of a CMV for the District.

4.12.90.3 Prohibited conduct Alcohol - No driver shall:

- a) Report for duty or remain on duty requiring the performance of safety-sensitive functions while under the influence of alcohol (e.g., having an alcohol concentration of 0.04 or greater).
- b) Be on duty or operate a CMV while he or she possesses alcohol.
- c) Use alcohol while performing safety-sensitive functions.
- d) Perform safety-sensitive functions within 4 hours after using alcohol.
- e) After being required to take a post-accident alcohol test, the driver may not use alcohol for 8 hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

Drugs: no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any drug, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a CMV.

The following drugs or other substances are prohibited under this policy: Any drug or other substance identified in this chapter (Effects of Drugs and Alcohol); an amphetamine or any formulation thereof; a narcotic drug or any derivative thereof; or any other substance which may or does render the driver incapable of safely operating a CMV.

A driver must inform the District of any therapeutic drug use, including on-duty use and off-duty use which may affect on-duty performance.

No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive for controlled substances.

The Federal Department of Transportation (DOT) requires that the District implement an alcohol and drug testing program which complies with the applicable DOT rules under 49 Code of Federal Regulations Part 40.

Consent to alcohol and-or drug test: no CMV driver shall refuse to submit to a post-accident test, a random test, a reasonable suspicion test, return-to-duty test or a follow-up test as required by DOT regulations.

4.12.090.4 Definitions

4.12.090.4(A) Accident is an incident involving a commercial motor vehicle if the incident involved the loss of human life; or the driver receives a citation arising from the incident and an individual suffers a bodily injury and immediately receives medical treatment away from the scene (e.g. taken to the hospital by ambulance), or a vehicle is required to be towed from the scene.

4.12.090.4(B) Alcohol is the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol's including methyl and isopropyl alcohol.

4.12.090.4(C) Alcohol use is the consumption of any beverage, mixture, or preparation, including any medication (prescribed or over-the-counter, intentional or unintentional), containing alcohol.

4.12.090.4(D) Breath alcohol technician (BAT) is an individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT).

4.12.090.4(E) Commercial motor vehicle is a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- a) Has a gross combined weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds.
- b) Has a gross vehicle weight rating of 26,001 or more pounds.
- c) Is designed to transport 16 or more passengers, including the driver; or
- d) Is of any size and is used in the transportation of hazardous materials requiring placards.

4.12.090.4(F) Confirmation test, for alcohol testing, is a second test that provides quantitative data of alcohol concentration following a screening test with a result of 0.02 grams or greater of alcohol per 210 liters of breath. For controlled substances testing, it is a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principal from that of the screen test in order to ensure reliability and accuracy.

4.12.090.4(G) Controlled Substance, for the purpose of this policy is marijuana, cocaine, amphetamines, opiates, or phencyclidine (PCP).

4.12.090.4(H) Covered employee is an employee subject to the requirements of applicable Federal law, and this policy.

4.12.090.4(I) Driver is any person who operates a commercial motor vehicle, This includes, but is not limited to: full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to the District or who operate a CMV at the direction of or with the consent of the District. For the purposes of pre-employment testing, the term driver includes a person applying to drive a CMV for the District.

4.12.090.4(J) Employer is the District.

4.12.090.4(K) Evidential breath testing device (EBT) is a device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL).

4.12.090.4(L) Medical review officer (MRO) is a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program and who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

4.12.090.4(M) On-duty time, as that phrase is defined by Federal regulations and this policy, means all of the time beginning at the point a covered employee begins to work, and/or is required to be in readiness to work, until the time he or she is relieved from work and all responsibility for performing work.

4.12.090.4(N) Performing (a safety-sensitive function) is any period in which the driver is actually performing, ready to perform, or immediately able to perform any safety-sensitive functions.

4.12.090.4(O) Refusal to submit (to an alcohol or controlled substance test) is when a driver:

- a) Fails to provide adequate breath for alcohol testing, without a valid medical explanation, after he or she has received notice of the requirement for breath testing in accordance with this policy;
- b) Fails to provide adequate urine sample for controlled substances testing, without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement for urine testing in accordance with the provisions of this policy; or
- c) Engages in conduct that clearly obstructs the testing process.

4.12.090.4(P) Safety-sensitive function, for purposes of this policy, shall mean any of the functions defined in Title 49 of the Code of Federal Regulations. More specifically,

safety-sensitive functions include all functions performed by a covered employee during on-duty time and include:

- a) All time at the District or work site, unless the driver has been relieved from duty by the District.
- b) All time inspecting equipment or otherwise servicing or conditioning any CMV at any time.
- c) All driving time.
- d) All time, other than driving time, in or upon any CMV.
- e) All time loading or unloading a CMV, supervising or assisting in the loading or unloading, attending a CMV being loaded or unloaded, remaining in readiness to operate the CMV, or in giving or receiving receipts for shipments loaded or unloaded.
- f) All time repairing, obtaining assistance, or remaining in attendance upon a disabled CMV.

4.12.090.4(Q) Screening test (a.k.a. initial test) in alcohol testing is an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In controlled substance testing, it is an immunoassay screen to eliminate negative urine specimens from further consideration.

4.12.090.4(R) Substance abuse professional is a licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

4.12.090.5 Violation of the Policy Immediate Consequences of Violating this Policy

A driver who violates this policy shall not perform, and will not be permitted to perform, a safety-sensitive function for the District. A driver removed from performing safety-sensitive functions because of a rule violation occurring in a 26,001 pound or greater vehicle in interstate or intrastate commerce, also is prohibited from driving a 10,001 pound or greater vehicle in interstate commerce.

The driver violating this policy must be advised by the District of the resources available in evaluating and resolving the problem. This must include the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs. The District is not required to provide referral, evaluation, and treatment for applicants who refuse to submit to or fail a pre-employment test.

The driver violating this policy must be evaluated by a substance abuse professional (SAP) who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and drug use. The SAP who determines that a driver needs assistance shall not refer the driver to his/her private practice or any organization in which the SAP has a financial interest for assistance.

The driver may be subject to disciplinary action under the terms of the District's disciplinary procedure. An employee who tests positive for alcohol or drugs for the first time must comply with the administrative requirements of rehabilitation, but will not be disciplined solely on the basis of the positive test result. Absent extenuating circumstances, a second positive result within a five-year period will be grounds for disciplinary action, up to and including termination.

4.12.090.6 Out of Service Order Any driver who is found to be in violation of this policy shall be placed out-of-service immediately for a period of at least 24 hours.

Out-of-service means that the employee shall not perform, and not be permitted to perform, a safety-sensitive function.

The out-of-service period will commence upon issuance of an out-of-service order.

No driver shall violate the terms of an out-of-service order issued under this section.

Condition of Returning to Work after a Violation of this Policy - Before returning to duty, the driver must undergo a Return-To-Duty Test as set forth in this policy.

4.12.090.7 Testing Circumstances

4.12.090.7(A) Pre-Employment/Pre-Duty Testing - This type of testing applies to:

- a) All applicants for a District position requiring a CDL driver's license to operate a CMV, who have not been part of a drug program that complies with the Federal Highway Administration (FHWA) regulations for the previous 30 days; and
- b) District employees who usually drive vehicles for which a CDL is not required to operate, but then is required to obtain a CDL and drive CMVs for the District.

4.12.090.7(B) Exceptions - A pre-employment drug test is not required if the following conditions are met:

- a) The driver participated in a drug testing program meeting the requirements of the FHWA within the previous 30 days;
- b) While participating in the program, the driver either was tested for controlled substances in the previous 6 months, or participated in a random drug testing program for the previous 12 months; and
- c) No prior employer of the driver has a record of violations of any DOT controlled substance use rule for the driver in the previous 6 months.

In cases of exceptions, the District must contact the testing program prior to using the driver and obtain the following information:

- a) The name and address of the program, which is generally the driver's prior and/or current employer.
- b) Verification that the driver participates or participated in the program.
- c) Verification that the program conforms to the required procedures.

- d) Verification that the driver is qualified, including that the driver has not refused to submit to an alcohol or drug test.
- e) The date the driver was last tested for alcohol and drugs.
- f) The results of any drug or alcohol test administered in the previous 6 months, and any violations of the alcohol misuse or drug rules.

If the District uses a driver more than once a year, but does not employ the driver, it must assure at least once every 6 months that the driver does participate, or has participated, in a drug testing program that meets the requirements of these regulations.

4.12.090.7(C) Post-Accident

Testing is required as soon as practicable following an accident involving a CMV of each surviving driver when either:

- a) The accident involved a fatality; or
- b) The driver receives a citation under state or local law for a moving traffic violation arising from the accident and an individual suffers a bodily injury and immediately receives medical treatment away from the scene; or
- c) The driver receives a citation under state or local law for a moving traffic violation and the CMV is required to be towed from the scene of the accident.

Nothing in the regulations should be construed as to require the delay of necessary medical attention for injured people following an accident. Also, the driver is not prohibited from leaving the scene of an accident for a period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

In lieu of administering a post-accident test, the District may substitute a test administered by on-site police or public safety officials under separate authority. The District may substitute a blood or breath alcohol test and a urine drug test performed by such local officials, using procedures required by their jurisdictions. The District may obtain a copy of the test results pursuant to an employee signing a preauthorized consent form.

4.12.090.7(D) Random Testing

Alcohol Testing Rate: random alcohol testing shall be administered at a minimum annual rate of 25 percent of the average number of driver positions, or as changed by the FHWA and published in the Federal Register.

Drug Testing Rate: random drug testing shall be administered at a minimum annual rate of 50 percent of the average number of driver positions, or as changed by the FHWA and published in the Federal Register.

Appropriate time for random testing:

- a) Alcohol testing: A driver shall only be tested while the driver is performing safety-sensitive functions, immediately prior to performing or immediately after performing safety-sensitive functions.
- b) Drug testing: Drug testing may be performed at any time while the driver is at work for the District, regardless of whether such duties are safety-sensitive or not.

4.12.090.7(E) Selection and Notification:

Selection of drivers shall be made by a scientifically valid method such as a random number table or a computer-based random number generator that is matched with an identification number assigned to each driver. Under the selection process, each driver shall have an equal chance of being tested each time selections are made.

The random tests shall be announced and spread reasonably throughout the year. There will not be a period of time during which random testing will be “done for the year.”

The District shall ensure that drivers selected for random tests proceed immediately to the testing site upon notification of being selected.

For purposes of employee name selection for drug and alcohol testing, the District shall use the services of the Sierra DOT Consortium administered by Sinnett Consulting Services. By participating with the Sierra DOT Consortium, the District will meet the minimum selection requirements established by the Federal Department of Transportation.

In the event a driver, who is selected for a random test, is on vacation, lay-off, or an extended medical absence, the District will select another driver for testing. The District shall document that the driver was ill, injured, laid off, or on vacation and that the driver was in the random selection pool for that cycle.

4.12.090.7(F) Reasonable Suspicion

Drivers must submit to an alcohol or drug test when the District has reasonable suspicion to believe that the driver has violated the prohibited conduct as outlined in this policy. A trained supervisor or the General Manager are required to make the observations necessary to substantiate a reasonable suspicion and the observations must be further substantiated by the observations of a second trained supervisor unless extenuating circumstances apply.

Reasonable suspicion:

- a) The District’s reasonable suspicion shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver.
- b) The reasonable suspicion determination shall be made by a trained supervisor or the General Manager and substantiated by an opinion from a second trained supervisor.

- c) The mere possession of alcohol does not constitute a need for reasonable suspicion testing, which must be based on observations concerning the driver's appearance, behavior, speech, or body odor.

Reasonable suspicion must be determined during, just before, or just after the driver performs safety-sensitive functions.

Alcohol Test: If reasonable suspicion is observed but a reasonable suspicion test has not yet been administered, a driver shall not perform safety-sensitive functions until an alcohol test is administered and the driver's alcohol concentration measures less than 0.02, or 24 hours have elapsed following the determination of reasonable suspicion.

Drug Test: the documentation of the driver's conduct must be prepared and signed by the witness within 24 hours of the observed behavior, or before the results of the drug test are released, whichever is earlier.

4.12.090.7(G) Return-To-Duty Testing

Alcohol Test: after engaging in prohibited conduct regarding alcohol misuse, the driver shall undergo a return-to-duty alcohol test before performing a safety-sensitive function. The test result must indicate a breath alcohol concentration of less than 0.02.

Drug Test: after engaging in prohibited conduct regarding drug use, the driver shall undergo a return-to-duty drug test before performing a safety-sensitive function. The test result must indicate a verified negative result for drug use.

In the event that a return-to-duty test is required, the driver must also be evaluated by a SAP and participate in any assistance program prescribed and be subject to unannounced follow-up alcohol and drug tests administered by the District following the driver's return to duty.

The number and frequency of the tests are to be determined by the SAP, but must consist of at least six tests in the first 12 months following the driver's return to duty. Follow-up testing may be done for up to 60 months.

If the SAP determines that a driver needs assistance with a poly-substance abuse problem, the SAP may require an alcohol test to be performed along with the required drug tests after the driver has violated the drug testing prohibition.

The cost of return-to-duty alcohol and drug tests shall be paid directly by the employee and/or his or her insurance provider.

The cost of the services of the SAP for the initial evaluation and a return-to-duty evaluation shall be paid by the District.

An employee will be allowed to take accumulated vacation leave and/or personal leave time while participating in the prescribed treatment, rehabilitation services or assistance program.

4.12.090.7(H) Follow-up Testing

If a SAP determines that a driver needs assistance resolving problems associated with alcohol or drug use, the District shall ensure that the driver is subject to unannounced follow-up testing following the driver's return to duty.

The number and frequency of the tests are to be determined by the SAP, but must consist of at least six tests during the first 12 months following the driver's return to duty. Follow-up testing may be done for up to 60 months. The SAP can terminate the requirement for the follow-up testing in excess of the minimum at any time, if the SAP determines that the testing is no longer necessary.

Follow-up tests need not be confined to the substance involved in the violation. If the SAP determines that a driver needs assistance with a poly-substance abuse problem, the SAP may require, for example, alcohol tests to be performed along with the required drug tests after the driver has violated the drug testing prohibition.

Follow-up testing for alcohol shall only be performed when the driver is performing safety-sensitive functions, or immediately prior to performing or immediately after performing safety-sensitive functions.

4.12.090.7(I) Alcohol Testing Procedure

Preparation for Testing

- a) The employee is required to show positive identification when arriving at the test site.
- b) The employee may also request the Breath Alcohol Technician (BAT) to show positive identification.
- c) The BAT shall then explain the testing procedure to the employee.
- d) The BAT must supervise only one employee's use of the Evidential Breath Testing device (EBT) at a time.
- e) The BAT is not to leave the testing site while the test is in progress.

Administration of the Initial Test

Steps 1 and 2 of the Breath Alcohol Testing Form are to be completed. A refusal by an employee to sign the certification in Step 2 of the form shall be regarded as a refusal to take the test.

- a) Non-evidential screening devices may be used for the alcohol screening test, provided they are approved by the National Highway Traffic Safety Administration (NHTSA).
- b) Devices approved by the NHTSA are placed on the "Conforming Products List of Alcohol Screening Devices."
- c) Confirmation tests must be done using an evidential breath testing device.

Depending on whether the result is less than 0.02, or 0.02 or greater, the following shall be done:

- a) If the result is less than 0.02, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall sign the certification and fill in the date in Step 4 of the form.
- b) If the result is 0.02 or greater, a confirmation test must be performed. If the confirmation test will be performed by a different BAT, the BAT who conducted the screening test shall complete and sign the form and log book entry. The BAT is to give the employee Copy 2 of the form. If the confirmation test will be conducted at a different site, the employee must not drive there and must be observed by District personnel en route.

Administration of the Confirmatory Test

Waiting Period:

- a) The BAT shall instruct the employee not to eat, drink, put any object or substance in his or her mouth, and, to the extent possible, not belch during a waiting period before the confirmation test.
- b) This waiting time period begins with the completion of the screening test, and shall not be less than 15 minutes.

The confirmation test shall be conducted within 30 minutes of the completion of the screening test.

In the event that the screening and confirmation test results are not identical, the confirmation test result is deemed to be the final result upon which any action under operating administration rules shall be based.

Following the completion of the test, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall sign the certification and fill in the date in Step 4 of the form.

The BAT shall transmit all results to the District in a confidential manner.

4.12.090.7(J) Drug Test Procedures

i. Urine Specimen Collection

The test shall be conducted at an independent medical facility which complies with the DOT Guidelines.

The laboratory must be certified by the Department of Health and Human Services

Chain of Custody - The appropriate drug testing form shall be utilized from time of collection to receipt by the laboratory and that, upon receipt by the laboratory, an

appropriate laboratory chain of custody form(s) account(s) for the sample or sample aliquot within the laboratory.

ii. Preparation for Testing

Use of a clean, single use specimen bottle that is securely wrapped until filled with the specimen.

Use of a tamper proof seal system designed in a manner that the specimen bottle top can be sealed against undetected opening and the bottle allowing for identification of the test subject, either by number or by some other confidential mechanism.

Use of shipping container in which one or more specimens and associated paperwork may be transferred, and which can be sealed and initialed to prevent undetected tampering.

Written procedures and instructions for collection site person.

Initial Screen - Every specimen is required to undergo an initial screen followed by confirmation of all positive screen results. The initial screen process must use immunoassay.

Confirmatory Tests - All specimens identified on the initial screen must be confirmed by gas chromatography/mass spectrometry (GC/MS) at the cut-off levels shown in the next table. All confirmations must be quantitative in their analysis, which means that the specific, scientific level of drug contained in the collected specimen must be known.

iii. Reporting of Test Results

Both positive and negative test results must be reported directly to the District's Medical Review Officer (MRO) within an average of 5 working days.

- a) The MRO must be a licensed physician and possess knowledge of drug abuse disorders. The MRO, who may be an employee of the District or one contracted to provide the services required, principally services as an arbiter between the laboratory and the District.
- b) It is the primary responsibility of the MRO to review and interpret positive results obtained from the laboratory.

The report, as certified by the responsible laboratory individual, shall indicate the drug-metabolites tested for, whether the results are positive or negative, the specimen number assigned by the District and the drug testing laboratory identification number.

- a) The MRO may require that the laboratory provide quantitation of test results.
- b) The laboratory must report as negative all specimens which are negative on the initial test or confirmed negative by the GC/MS.
- c) Only specimens confirmed by GC/MS as positive are reported as positive.

The laboratory may transmit the test results to the MRO by various electronic means such as facsimile or computer, so long as those methods are designed to maintain confidentiality.

The MRO must assess and determine whether alternate medical explanations could account for the positive test results.

- a) To accomplish this task, the MRO may conduct medical interviews of the individual, review the individual's medical history and review any other relevant bio-medical factors.
- b) Additionally, the MRO must examine all medical records and data made available by the tested individual, such as evidence of prescribed medications.
- c) The MRO must not consider any specimen results that arise from collection or analysis which do not comport with the FHWA regulations.

The MRO must give the individual testing positive an opportunity to discuss the test results prior to making a final decision.

After a final decision is made, the MRO shall notify the District.

If, during the course of an interview with an employee who has tested positive, the MRO learns of a medical condition which could, in the MRO's reasonable medical judgment, pose a risk to safety, the MRO may, in his or her professional judgment, report that information to the DOT or to the District.

iv. Positive Test Result

The MRO shall notify each employee who has a confirmed positive test that the employee has 72 hours in which to request a test of the split specimen.

If the employee makes such a request, the MRO shall direct, in writing, the laboratory to provide the split specimen to another certified laboratory for analysis.

If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or un-testable, the MRO shall cancel the test and report cancellation and the reasons for it to the DOT, the District, and the employee. A canceled report is neither a negative nor a positive test. A sample that has been rejected for testing by a laboratory is treated the same as a canceled test.

v. Notification of Test Results

If an MRO, after making and documenting all reasonable efforts, is unable to contact a tested person, the MRO shall contact a designated management official of the District to arrange for the individual to contact the MRO prior to going on duty. The MRO may verify a positive test without having communicated with the driver about the results of the test if:

- a) The driver expressly declines the opportunity to discuss the results of the test, or

- b) Within 5 days after a documented contact by a designated management official of the District instructing the driver to contact the MRO, the driver has not done so.

The MRO must report the results to the District using any communication device, which maintains confidentiality, but in all instances, a signed, written notification must be forwarded within three business days of completion of the review.

4.12.090.7(K) Confidentiality and Record Keeping

- i. Record keeping

The District must maintain records of its alcohol and drug programs.

Records must be kept in a secure location with controlled access. The records may be included in personnel records that have controlled and secure access only by authorized personnel.

All records, except those requiring a signature, may be maintained through the use of computer technology. The District must be able to produce a computer printout of the required data on demand by the appropriate agency or the employee himself or herself. The records may be maintained anywhere, but the District must make them available at the District's principal place of business within two days of a FHWA, or other authorized agency, request.

The following records must be kept:

- a) Records related to the collection process: collection logbooks (if used); documents related to the random selection process; calibration documentation for EBTs; documentation of BAT training; documentation of reasoning for reasonable suspicion testing; documentation of reasoning for post-accident testing, documents verifying a medical explanation for the inability to provide adequate breath or urine for testing; and, a consolidated annual calendar year summary.
- b) Records related to the driver's test results: District's copy of the alcohol test form, including results; District's copy of the drug test chain of custody and control form; documents sent to the District by the MRO; documentation of any driver's refusal to submit to a required alcohol or drug test; and, documents provided by a driver to dispute the test results.
- c) Records including documentation of any other violations of drug use or alcohol misuse rules.
- d) Records related to evaluations: records pertaining to the SAP's determination of a driver's need for assistance and records concerning a driver's compliance with SAP's recommendation.
- e) Records related to education and training: materials on drug and alcohol awareness, including a copy of the District's policy on drug use and alcohol misuse; documentation of compliance with requirement to provide drivers with educational material, including driver's signed receipt of materials; documentation of supervisor training; and, certification that training conducted complies with all DOT requirements.

f) Records related to drug testing: agreements with collection site facilities, laboratories, MROs, and consortia; names and positions of officials and their role in the District's alcohol and controlled substance testing program; monthly statistical summaries of urinalysis from certified laboratories; the Memorandum of Understanding with any unions representing District employees; and the District's drug testing policy and procedures.

ii. Retention Period:

- a) Five years: alcohol test results indicating a breath alcohol concentration of 0.02 or greater; verified positive drug test results; refusals to submit to required alcohol or drug tests; required calibration of EBTs, SAP's evaluation and referrals; and, annual calendar year summary.
- b) Two years: records related to the collection process and training.
- c) One year: negative and canceled drug test results; and alcohol test results indicating a breath alcohol concentration less than 0.02.

iii. Confidentiality and Access to Records

Generally, the District shall maintain records under this policy with as much confidentiality as possible, and not release any driver drug and/or alcohol program information, except as required by law or authorized by the District policies.

An employee is entitled, upon written request, to any records pertaining to his/her drug or alcohol tests or other related matters. The records shall be provided promptly.

The District is required to permit access to facilities and records upon request of a DOT or other regulatory official with proper authority.

The District may disclose driver information to the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual resulting from an action taken under these regulations. This includes worker's compensation and unemployment compensation proceedings.

Records must also be made available in the following instances:

To a subsequent employer upon receipt of a written request from the driver, and then in accordance with the terms of the request.

To an identified person as directed by a specific, written consent of the driver.

The release of employee information is allowed in the following instances:

- a) An employee shall have access to any of his/her alcohol testing records upon written request.
- b) The District must allow any DOT-authorized agency access to facilities and records in connection with the District's alcohol misuse prevention program.

- c) When requested, the District shall disclose post-accident testing information to the National Transportation Safety Board as part of an accident investigation.
- d) The District shall make records available to a subsequent employer upon receipt of a written request from the employee.
- e) The District may disclose information to the employee or to the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual. This may include worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee.
- f) The District shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person.

iv. MRO Record Retention

The MRO shall maintain all dated records and notification for verified positive drug test results for five years.

The MRO shall maintain all dated records and notifications for negative and canceled drug test results for one year.

The MRO shall not release the individual drug test results of any driver to any person, without a specific, written authorization from the tested driver. This does not prohibit the MRO from releasing the results listed above to the District or regulatory officials with the proper authority.

Annual Calendar Year Summary - Only if notified by FHWA, or upon request of an official with proper authority, is the District required to prepare and maintain an annual calendar year summary of its alcohol and drug testing program.

Retention of Records - This section explains how long controlled substance and alcohol test records must be maintained, which records must be maintained, and where.

Required Period of Retention

Documents to Be Maintained

Five Years:

Alcohol test results indicating a breath alcohol concentration of 0.02 or greater

Verified positive controlled substance test results

Refusals to submit to required alcohol or controlled substance tests

Required calibration of Evidential Breath Testing Devices (EBT's)

Substance Abuse Professional's (SAP's) evaluations and referrals

Annual calendar year summary

Two Years:

Records related to the collection process (except calibration) and required training

One Year:

Negative and canceled controlled substance test results

Alcohol test results indicating a breath alcohol concentration less than 0.02

Types of Records required to be maintained:

Records related to the collection process:

- a) Collection logbooks (if used)
- b) Documents related to the random selection process
- c) Calibration documentation for EBT's
- d) Documentation of Breath Alcohol Technician (BAT) training
- e) Documentation of reasoning for reasonable suspicion testing
- f) Documentation of reasoning for post-accident testing
- g) Documents verifying a medical explanation for the inability to provide adequate breath or urine for testing
- h) Consolidated annual calendar year summaries

Records related to the driver's test results:

- a) The District's copy of the alcohol test form, including results
- b) The District's copy of the drug test chain of custody and control form
- c) Documents sent to the District by the Medical Review Officer
- d) Documentation of any driver's refusal to submit to a required alcohol or controlled substance test
- e) Documents provided by a driver to dispute results of test

Documentation of any other violation of controlled substance use or alcohol misuse rules.

Records related to evaluations and training:

- a) Records pertaining to substance abuse professional's (SAP's) determination of driver's need for assistance
- b) Records concerning a driver's compliance with SAP's recommendations

Records related to education and training:

- a) Materials on drug and alcohol awareness, including a copy of the District's policy on drug use and alcohol misuse
- b) Documentation of compliance with requirement to provide drivers with educational material, including driver's signed receipt of materials
- c) Documentation of supervisor training

- d) Certification that training conducted under this rule complies with all requirements of the rule

Records related to drug testing:

- a) Agreements with collection site facilities, laboratories, MROs, and consortia
- b) Names and positions of officials and their role in the District's alcohol and controlled substance testing program
- c) Monthly statistical summaries of urinalysis
- d) The District's drug testing policy and procedures

v. Location of Records

All required records shall be maintained in a secure location with limited access as selected by the District. Records shall be made available for inspection at the District's principal place of business within two business days after a request has been made by an authorized representative of the Federal Highway Administration or other authorized agency.

For example: Specific records may be maintained on computer or at a regional or terminal office, provided the records can be made available upon request from FHWA within two working days.

vi. Effects of Drugs and Alcohol

Marijuana - Marijuana is the common term used to describe the cannabis plant. Marijuana (also called pot, grass or dope) is usually smoked. Marijuana is both a narcotic and a hallucinogen. It produces increased heart rates, blood pressure, blood shot eyes, dilated pupils and dry mouth. Marijuana impairs the short term memory and the sense of time. It can reduce motor skills, coordination, reaction time and concentration.

Cocaine: Cocaine is a stimulant and can be taken through the nose in powder form, injected as a liquid or smoked. Cocaine is also found in a crystal form known as crack cocaine. Both cocaine and crack cocaine are addictive narcotics which can also produce hallucinogenic effects with long-term use. It causes increased heart rates, blood pressure, respiration, dilation of the pupils, and result in anxiety, restlessness, irritability and sleeplessness.

Opiates: - Opiates include narcotics such as opium, heroin, morphine and codeine. They appear as solids, pastes, powders, liquids, and can be smoked, ingested, or injected. Opiates are depressants and relaxants. Opiate users can become lethargic, becoming drowsy or going to sleep. Opiates are highly addictive and dangerous drugs. Some physical signs can be runny eyes and noses, nausea, and fainting.

Phencyclidine - Often called PCP or "angel dust" is a hallucinogenic. It is synthetically made and comes as a powder, tablet or capsule that can be ingested or smoked. The effects of the use of PCP include increased heart rates, blood pressure, dizziness,

numbness, and disorientation, slows reflex and body movements, and can impair vision and speech.

Amphetamines - Also known as methamphetamines are stimulants which can be ingested as tablets or capsules. They are also found in powder form that can be sniffed or injected as a mixed liquid. Some signs are elevated heart rates, blood pressure, respiratory rates, dilated pupils, sweating (with pungent odor), sleeplessness, mood swings, talkativeness and anxiety.

Metabolites from drug use can be found in urine for varying lengths of time after being used. Generally speaking, except for marijuana, which collects in fatty tissues, the above drugs stay in the body up to approximately one week.

Alcohol - Alcohol is a central nervous system depressant. Taken in large quantities it causes not only the euphoria associated with "being drunk" but also adversely affects the employee's judgment, his or her ability to think, and his or her motor functions.

Long term overuse of alcohol can cause liver damage, heart problems, sexual dysfunction, and other serious medical problems. In some cases, alcohol use can lead to physical and psychological dependence on alcohol. Alcoholism is a serious chronic disease. Left untreated it will inevitably get worse.

Resolution 2008 – 04, Adopting Amendments to the District Code Title 4, approved on May 7, 2008, replaces all contents of existing Title 4, and supersedes the following:
Resolutions: 77-21, 82-22, 83-42, 88-10, 90-14, 91-14, 93-15, 94-36, 04-15, 05-27, 07-10, and 07-23.
Minute Orders: 88-187, 88-199, 89-45, 91-35, 93-31, 94-74, 96-10, 97-119, 06-100, 07-04, 07-106, 07-147, and 07-148.
Ordinance: 02-05.

Revisions:

Res 2009-13 (5/06/09)

Res 2009-36 (12/02/09)

Res 2008-04, (5/7/08)

Res. 2010-09 (6/2/10)