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RESOLUTION NO. 2015-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
CULVER CITY APPROVING THE *CULVER CITY
TRANSPORTATION DEPARTMENT DRUG AND ALCOHOL
POLICY, UPDATED 2015* CONSISTENT WITH CULVER
CITY POLICY AND FEDERAL MANDATES.

WHEREAS, the United States Department of Transportation (USDOT), through its
respective agencies, has promulgated regulations which require drug and alcohol testing of
safety-sensitive employees (the "Federal Mandates"); and

WHEREAS, the Transportation Department, which includes the Transit
Operations Division (Culver City Municipal Bus Lines, aka Culver CityBus) and the Equipment
Maintenance & Fleet Services Division, is a recipient of Federal Transit Administration (FTA)
funding and, therefore, must comply with the Federal Mandates, which includes a requirement
to update its existing drug and alcohol policy; and

WHEREAS, the City has a Drug-Free Workplace Policy in effect which only
partially meets the requirements of the Federal Mandates.

NOW, THEREFORE, the City Council of the City of Culver City, DOES HEREBY
RESOLVE as follows:

1. Approves and adopts the *Culver City Transportation Department Drug &
Alcohol Policy, Updated 2015*, attached to this Resolution and incorporated herein by this
reference.

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2 2. Authorize the City Manager or designee to sign any Certifications of Policy
3 required by Federal regulations.
4

5 APPROVED and ADOPTED this _____ day of _____ 2015.
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8 MICHEÁL O'LEARY, Mayor
9 City of Culver City, California

10 ATTEST:

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12 MARTIN R. COLE, City Clerk

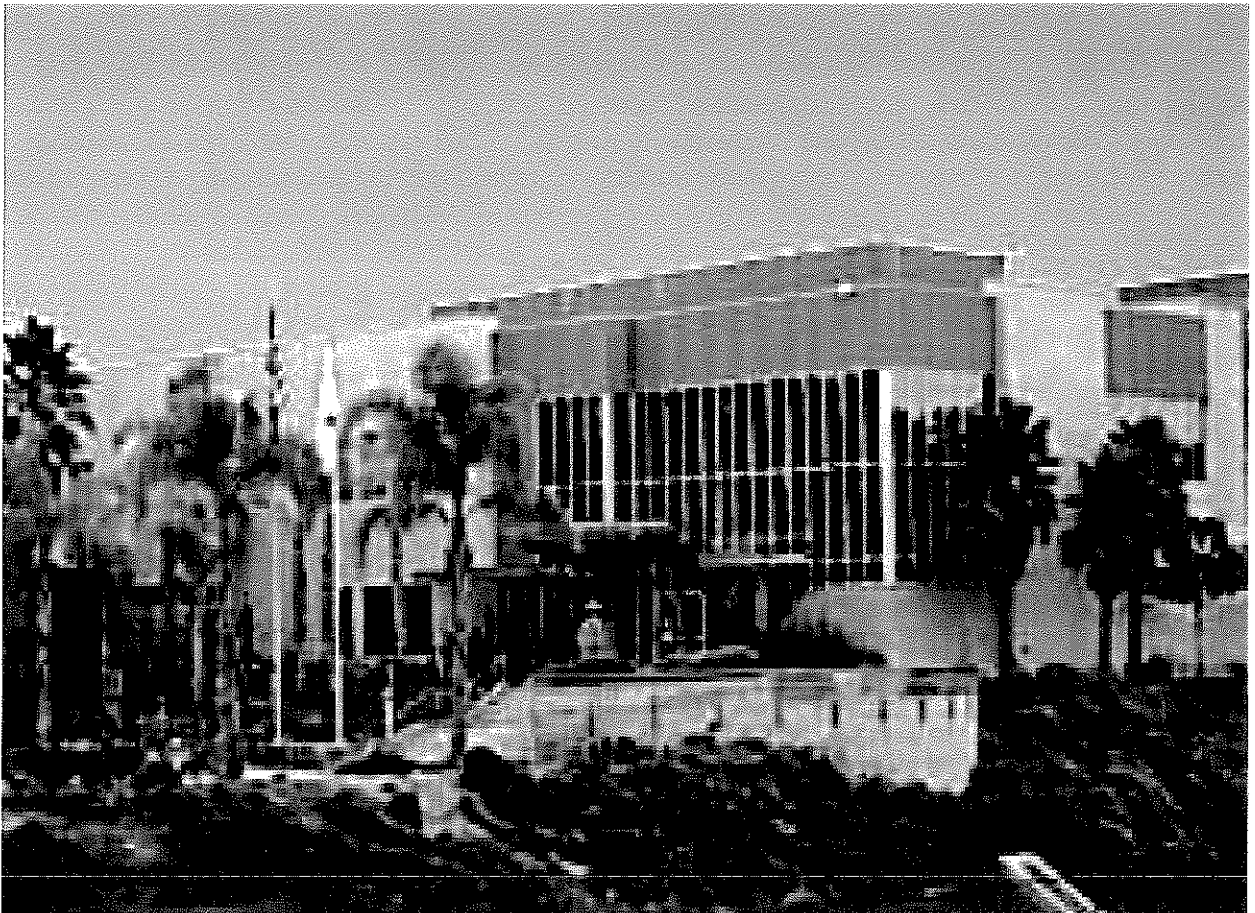
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15 APPROVED AS TO FORM:
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19 CAROL A. SCHWAB, City Attorney
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Culver CITY

Transportation Department Drug & Alcohol Policy



Updated 2015

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NOTE: Additional requirements and/or disciplinary actions established under the Transportation Department's authority are entered in **bold-faced type**. Requirements of the Drug-Free Workplace Act (DFWA) are in *Italics*.

1.0 POLICY STATEMENT

The Transportation Department, which includes Culver City Municipal Bus Lines (a.k.a Culver CityBus/Transit Operations Division) and the Equipment Maintenance & Fleet Services Division, is committed to achieving and maintaining a safe and productive workplace that is drug and alcohol free. The Transportation Department also is committed to providing safe, reliable and courteous service to the people who utilize our services. We recognize that employees affected by the use of illegal drugs, misuse of alcohol, or the inappropriate use of legal drugs jeopardize the integrity and safety of the workplace and our community by increasing the potential for accidents, absenteeism and substandard performance. In view of this, the Transportation Department has adopted this policy that is designed to:

- A. Create a work environment free from the adverse effects of drug abuse and alcohol misuse;
- B. Deter and detect employees' use of illegal drugs and misuse of alcohol;
- C. Prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances;
- D. Encourage employees to seek professional assistance anytime personal problems, including drug or alcohol dependency, adversely affect their ability to safely perform their assigned duties; and

2.0 CONTACT PERSON

Any questions about this policy or any aspect of the City's drug and alcohol-free program should be referred to the Drug and Alcohol Program Manager, the Transit Operations Manager, or his/her designee at (310) 253 – 6500.

3.0 PURPOSE

The Transportation Department has developed this policy in accordance with all applicable State and Federal regulations governing workplace anti-drug use and

alcohol misuse programs in the transportation industry. They include DOT 49 CFR Part 40, as amended ("Procedures for Transportation Workplace Drug and Alcohol Testing Programs"); FTA 49 CFR Part 655, as amended ("Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations"); DOT 49 CFR Part 29 ("Drug-Free Workplace Act of 1988"); and CA Govt. Code Section 8350 et seq. ("Drug-Free Workplace Act of 1990").

The basic assumption of this policy is that employees have the primary individual responsibility for managing their own behavior. Job misconduct or unsafe performance due to drug abuse or alcohol misuse will not be tolerated, and employees engaging in such misconduct will be disciplined up to and including termination.

Furthermore, the Transportation Department recognizes the valuable resource that it has in its employees and is committed to helping them stay or become drug and alcohol free. Therefore, employees who think they may have a drug and/or alcohol problem are urged to voluntarily seek confidential assistance from the Employee Assistance Program (EAP) through "Work n' Life Matters" at (310) 423-6447 or (800) 319-8111 (See Appendix B). While the Transportation Department will be supportive of those who seek help voluntarily, we will be equally firm in identifying and disciplining those who are substance abusers and do not seek help.

Implementation of this policy is the responsibility of everyone employed with the Transportation Department. Employees are responsible for remaining drug and alcohol free; supervisors/managers are responsible for its consistent enforcement. It is the Transportation Department management's goal that this policy will help create a positive, healthy and mutually beneficial work environment.

4.0 APPLICABILITY

This policy applies to all safety-sensitive employees of the Transportation Department (as described in Section 7.0 of this Policy) while on City owned or leased property, while off the premises conducting City business, or while operating a City vehicle. This includes employees who are off premises during lunch breaks or other break periods where the employee is scheduled to return to work afterwards and pre-shift periods. Visitors, invitees, and vendors are also governed by this policy while on City premises. As a consequence, visitors, contractors and vendors found to be in violation will not be allowed to continue to conduct business and their supervisor, if appropriate, will be notified.

5.0. PRE-EMPTION OF STATE AND LOCAL LAWS

If any conflict occurs between State and local laws and any requirement of the above-mentioned Federal regulations, the Federal regulations prevail. However, Federal regulations do not pre-empt provisions of State criminal laws that impose sanctions for reckless conduct attributed to prohibited drug use or alcohol misuse, whether the provisions apply specifically to transportation employees, employers, or the public in general.

6.0 EDUCATION AND TRAINING

The education and ongoing awareness component of this policy will include display of posters, distribution to all covered employees and representatives of employee organizations of the drug and alcohol policy and other informational materials, and periodic informational seminars. Each employee will be required to sign an acknowledgment form indicating that they received a copy of the current drug and alcohol policy.

As required by FTA regulations, the Transportation Department will provide to all safety-sensitive employees a minimum of 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment and on the signs and symptoms that may indicate prohibited drug use.

Supervisors or Managers who may make reasonable suspicion referrals shall receive an additional 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use, and at least 60 minutes of training on the physical, behavioral, speech and performance indicators of probable alcohol misuse.

7.0 COVERED EMPLOYEES

As a condition of employment, safety-sensitive employees of the Transportation Department are required to submit to drug and alcohol tests administered in accordance with 49 CFR Part 40 and Part 655. A refusal to submit to a required test will be considered to be a positive test result and the employee will be subject to all the attending consequences as stated in this policy. (Please refer to Appendix A - DEFINITIONS for specific circumstances or behaviors that are considered refusal to test).

As defined by FTA, safety-sensitive employees include those who perform, or may be called upon to perform, the following safety-sensitive functions.

- A. Operating a revenue service vehicle, even when it is not in revenue service;
- B. Operating a non-revenue service vehicle when required to be operated by a Commercial Driver's License (CDL) holder;
- C. Controlling dispatch or movement of a revenue service vehicle;
- D. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service.

Supervisors are considered safety-sensitive only if they perform, or may be called upon to perform any of the above safety-sensitive functions.

The Transportation Department has analyzed actual job duties performed, or may be called upon to perform, by all of its employees and has determined that the job classifications listed below are considered safety-sensitive for the purposes of this policy.

Training & Safety Instructor
 Transit Operations Supervisor
 Transportation Dispatcher
 Bus Operator
 Fleet Services Supervisor
 Senior Fleet Services Technician
 Fleet Services Technician
 Electronic Fleet Services Technician
 Fleet Services Welder
 Fleet Services Assistant
 Building Engineer (Transportation)

8.0 DRUGS (OR THEIR METABOLITES) TESTED FOR AND CONFIRMATORY CUT-OFF LEVELS

<u>Types of Drugs</u>	<u>Confirmatory Cut-Off (ng/ml)</u>
• Marijuana	15
• Cocaine	100
• Opiates	
- Codeine	2000
- Morphine	2000
- Heroin	10
• Amphetamines	
- Amphetamine	250
- Methamphetamine	250
- MDMA (Ecstasy)	250

Types of Drugs (cont'd)

- MDEA
- Phencyclidine (PCP)

Confirmatory Cut-Off (ng/ml) (cont'd)

250
25

8.1 PROHIBITED BEHAVIORS

A. Illegal Drugs

The prohibited drugs listed in Section 8.0 are always illegal and employees are prohibited from consuming any of them at all times. Employees may be tested for illegal drugs anytime they are on duty or subject to duty.

B. Prescription or Over-the-Counter Medications

Under this policy, the appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, safety-sensitive employees must notify their supervisor or manager prior to performing work, and may not perform any safety-sensitive function, if their medication carries a warning label that mental functioning, motor skills or judgment may be adversely affected, unless the medication is being used in accordance with the instructions of a physician who has provided a written determination that the substance will not adversely affect the employee's ability to safely perform safety-sensitive duties. Employees are required to use sick leave if they are prescribed medication that impacts his/her ability to perform their duties. An employee's failure to provide this notification in a timely manner is considered a violation of this policy and will be subject to discipline up to and including termination.

The employee is responsible for describing his/her safety-sensitive duties to the physician and obtaining from appropriate medical professional information on whether or not the drug might impair his/her ability to perform his/her duties safely and effectively.

A prescription is considered valid only if it is in writing and indicates the employee's name, date, the name of the substance, quantity or amount to be taken, and the period of authorization. Controlled substances obtained illegally outside the United States are not considered valid medical prescriptions under this policy. It is a violation of this policy to use any controlled substance in a manner that is inconsistent with the prescription.

C. Alcohol

Safety-sensitive employees are prohibited from consuming alcohol in any form:

- While performing safety-sensitive functions;

- Within four (4) hours prior to performing safety-sensitive functions;
- While they are on call; or
- Within eight (8) hours following an accident requiring a post-accident alcohol test, unless the test was completed within 8 hours.

In addition, the City prohibits the use of alcoholic beverages by any covered employee on City premises or while in a City vehicle whether or not the employee is on or off duty. Under the City's authority an alcohol test may be conducted anytime an employee is on duty.

An employee who is on City property, off duty, who has the odor of alcohol on his/her breath will be subjected to appropriate City and/or Transportation Department rules and regulations.

An alcohol test is considered positive if the employee's blood alcohol concentration (BAC) is at 0.04 or greater.

If a safety-sensitive employee tests positive for alcohol at a concentration equal to or greater than 0.02 but less than 0.04, he or she cannot continue to perform any safety-sensitive function until eight hours have passed, or the employee was re-tested and the result was less than 0.02.

9.0 CIRCUMSTANCES REQUIRING TESTING

A. PRE-EMPLOYMENT TESTING

The City of Culver City must obtain written consent from any potential candidate or employee requesting a transfer to a safety sensitive position in order to request drug and alcohol information from DOT regulated employers who have employed the potential candidate/employee for any period of time during the past two years before the date of the individuals application or request for transfer. If the individual refuses to provide the written consent, he or she will not be hired into the safety-sensitive position.

If feasible, the Transportation Department must obtain and review this information before the individual first performs safety sensitive functions. If this is not feasible, the Transportation Department must obtain and review the information as soon as possible. However, the Transportation Department must not allow the employee to perform any safety sensitive function after 30 days unless they have obtained or documented a good faith effort to obtain this information. If the Transportation Department receives information from the candidate or employee's previous employer that he/she has tested positive for

drugs or alcohol during the past two years, he/she will not be considered for employment unless they can provide documentation of successful completion of the return-to-duty process, which includes a Substance Abuse Professional (SAP) referral, evaluation and treatment plan.

It is the Transportation Department's policy that in the event an individual has a positive pre-employment drug test, or has refused such a test, he or she will not be hired. He/she will be referred to the City of Culver City's EAP provider (Work N' Life Matters) in order to be assigned a qualified SAP whose services will be paid for by the employee or candidate. The City of Culver City and the Transportation Department has no further obligation to the individual beyond that point.

All candidates for employment in safety-sensitive positions, or any employee transferring from a non-safety-sensitive to a safety-sensitive position, will be informed that they will be required to undergo a pre-employment drug test at a time and place designated by the Transportation Department. A verified negative drug test result must be received from the Medical Review Officer (MRO) before an employee or candidate can be allowed to perform any safety-sensitive function for the first time. If a pre-employment test is canceled, the individual will be required to undergo another test and successfully pass the test with a verified negative result.

An employee who has not performed any safety-sensitive function for at least 90 consecutive calendar days (regardless of the reason) and has been out of the random pool during that period of time also must receive a verified negative pre-employment drug test before he or she is allowed to return to safety-sensitive work.

B. REASONABLE SUSPICION TESTING

Whenever a supervisor or manager has reason to believe that a covered employee has used a prohibited drug and/or engaged in alcohol misuse, a drug and alcohol reasonable suspicion test will be conducted. A supervisor or manager who has been trained in detecting the signs and symptoms of drug use and alcohol misuse will make the referral based on the specific appearance, behavior, speech, or body odors of the employee observed at the time. The supervisor or manager who makes the referral need not be the employee's own supervisor or manager, as long as he or she has received the appropriate training. The supervisor or manager's observations will be documented and such documentation shall be kept in the employee's confidential drug and alcohol testing file.

FTA rule requires that a reasonable suspicion alcohol test be conducted only if the reasonable suspicion observation is made just before, during, or just after the employee's performance of safety-sensitive function. **However, under the City's**

own authority, a reasonable suspicion alcohol test may be performed anytime the employee is on duty. If the alcohol test is not conducted within two hours, the reason for the delay must be documented and kept in the employee's reasonable suspicion test file. All attempts to complete the alcohol test must cease after eight hours.

Once a supervisor or manager has made a reasonable suspicion determination, he or she must remove the employee from performing any safety-sensitive functions and arrange to have the employee accompanied to the testing site immediately. The Transportation Department will conduct both drug and alcohol reasonable suspicion tests. Following testing the Transportation Department will arrange to have the employee transported home if they test positive for alcohol. While awaiting the drug test result, both full-time and part-time employees will perform modified duty at the discretion of the Transportation Department until the drug test results have been provided. This policy does not apply to split testing. If all test results are negative, the employee will be promptly returned to his/her regular work.

C. POST-ACCIDENT TESTING

Any covered employee operating a public transportation vehicle (bus, van, or automobile also see Appendix A) at the time of an accident shall be required to submit to drug and alcohol testing as soon as possible after the accident. For purposes of this policy, "accident" is defined as an accident involving a public transportation vehicle where the result is:

- An individual dies (Fatality);
- An individual suffers a bodily injury and immediately receives medical treatment away from the scene;
- The public transportation vehicle or any other vehicle(s) involved in the accident suffers a disabling damage as a result of the accident and is transported away from the scene by a tow truck or other vehicle.

Under the Transportation Department's authority, the driver of any City vehicle involved in an accident where the total damage exceeds \$1,000 (regardless of fault) also will be tested.

1.) Fatal Accidents

Whenever there is a loss of human life, any surviving employee operating the Transportation Department vehicle at the time of the accident shall be tested for

drugs and alcohol. Any safety-sensitive employee not in the vehicle but whose performance could have contributed to the accident also shall be tested.

1.1) Non-Fatal Accidents

Following non-fatal accidents, the employee operating the vehicle at the time of the accident shall be tested unless his or her performance can be completely discounted as a contributing factor to the accident. Any other safety-sensitive employee whose performance could have contributed to the accident also shall be tested.

1.2) Other Post-Accident Testing Requirements

Employees involved in an accident that requires testing must remain readily available for testing, including notifying a supervisor or manager of their location if they leave the scene of the accident before testing to obtain emergency medical care, or to obtain assistance in responding to the accident. Failure to do so will be considered by the Transportation Department to have refused to submit to testing.

Employees are prohibited from using alcohol for eight hours following an accident or until the post-accident testing is completed, whichever occurs first. Every effort will be made to conduct alcohol testing within two hours after the accident. In the event the alcohol test is delayed beyond two hours, the supervisor or manager will prepare a record stating the reason(s) for the delay. If an alcohol test is not administered within eight hours following the accident, the Transportation Department will cease all efforts to administer the test and document the reason for the inability. In the event a drug test is not administered within 32 hours from the time of the accident, the Transportation Department will cease all attempts to administer the drug test. All documentation regarding delays or inability to test shall be maintained by the Designated Employer Representative (DER) and be made available to FTA representatives upon request.

If the Transportation Department is unable to perform post-accident tests within the required period of compliance, the City of Culver City will use the post-accident test results administered by State or local law enforcement personnel under their own authority, provided the City obtains the test results.

Post-accident drug and alcohol testing is not required under Part 655 if the covered employee is tested under the fatal accident testing requirements of the Federal Motor Carrier Safety Administration rule 49 CFR Part 382.303.

C2. Post Accident Testing for Other City Vehicles

For purposes of this policy and under the Transportation Department's own authority, drug and alcohol tests also will be conducted immediately after an accident involving any City owned vehicle where the result is:

- **The total damage exceeds \$1,000 (regardless of fault);**
- **An individual dies (Fatality);**
- **An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident;**

Following post-accident tests under either Federal or City authority, where the supervisor or manager determined based on the best information available the employee could have prevented the accident; the employee is not allowed to perform any safety-sensitive function until the Transportation Department has received negative drug and alcohol test results. While awaiting the drug test result, both full-time and part-time employees will perform modified duty at the discretion of the Transportation Department until the drug test results have been provided. This policy does not apply to split testing. If all test results are negative, the employee will be promptly returned to his or her regular work.

If the employee tests positive for alcohol the Transportation Department will arrange to have him/her transported home.

Nothing in this section of the policy shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

D. RANDOM TESTING

Safety-sensitive employees are required to undergo random drug and alcohol tests to deter use of prohibited drugs and misuse of alcohol. The random selection will be conducted using a scientifically valid method, such as a random number table or a computer-based random number generator that gives each covered employee an equal chance of being selected every time a selection is made. As is the nature of the random method, it is possible that some employees will be selected several times in one year, and other employees not for several years. Management does not have any discretion on who will be selected.

Every effort will be made by the Transportation Department to spread random testing reasonably throughout the calendar year, all days of the week, and all

hours when safety-sensitive functions are performed. The testing dates and times are unannounced and **employees are to be immediately escorted by a supervisor or manager to the designated collection site following notification.**

Random alcohol tests are authorized by the FTA only during, just before, or just after the employee's performance of safety-sensitive duties.

Once an employee is selected for random testing under the City's authority the employee will be tested for both drug and alcohol at or above the minimum rate required by the FTA.

E. RETURN-TO-DUTY TESTING

In general, the Transportation Department and the City of Culver City has a "zero tolerance" policy regarding employees who violate the drug and alcohol policy and the regulations (See Section 14.0 – Consequences). In the event that an employee who has refused a required test, has a verified positive, adulterated or substituted drug test result, or tests positive for alcohol at 0.04 or greater, is allowed to return to work, he or she must complete the return-to-duty process prescribed by the SAP prior to resuming any safety-sensitive duties. This includes evaluation by a SAP, successful completion of the rehabilitation, treatment or education program outlined by the SAP, and obtaining a verified negative return-to-duty drug test and/or alcohol test under 0.02.

F. FOLLOW-UP TESTING

In addition to the Return-to-Duty test described in Section D, the affected employee shall be subject to follow-up testing for drugs and/or alcohol, as prescribed by the SAP, for a minimum period of 12 months to a maximum of five years. The employee shall undergo at least six follow-up tests during the first 12 months of his or her return to work. Although they are both unannounced, follow-up testing is apart and separate from random testing. The SAP will designate the duration and frequency of testing, but the actual follow-up testing dates will be decided by the Transportation Department.

10.0 DRUG & ALCOHOL TESTING PROCEDURES

All DOT drug and alcohol tests required under this policy will be administered in accordance with the "Procedures for Transportation Workplace Drug and Alcohol testing Programs as amended (49 CFR Part 40).

Throughout the testing process, the privacy of the employee will be protected and the integrity and validity of the process will be maintained. The drug testing procedure will include a split specimen collection method and a federal Custody and Control Form with a unique identification number to ensure that the correct test result is attributed to the correct employee. An initial screening test using an immunoassay technique will be performed. If the specimen is positive for one or more of the drugs tested, then a confirmation test will be performed using the state-of-the-art gas chromatography/mass spectrometry (GC/MS) or liquid chromatography/mass spectrometry (LC/MS) analysis. If the test is confirmed positive, the MRO will conduct a verification process, which includes giving the employee an opportunity to provide a valid medical explanation for the positive test result.

Additionally, the laboratory may conduct analyses to determine if a urine specimen has been adulterated, tampered with, or diluted. Employees will be required to take a second test with no advance notice if the MRO reports a "negative-dilute" test result. Depending on the creatinine level reported by the laboratory to the MRO, the second test may be directly observed.

If the laboratory reports to the MRO an "Invalid Result" or "Rejected for Testing" (because of a fatal or uncorrectable flaw), a recollection may be required by the MRO. Depending on the circumstances, the recollection may be directly observed.

Tests for alcohol concentration will be conducted using an alcohol screening device and an evidential breath testing (EBT) device if the screen test is at 0.02 BAC or greater. A DOT Alcohol Testing Form will be used and a unique sequential number will be assigned to each test.

Detailed drug and alcohol specimen collection procedures are available upon request from the Contact Person identified in Section 2.0 of this policy.

11.0 DIRECTLY- OBSERVED URINE SPECIMEN COLLECTION

Under the following circumstances, the employee will be directed to undergo an immediate urine specimen collection under direct observation with no advance notice:

- If the laboratory reported to the MRO that a specimen is invalid and there was no adequate medical explanation for the result;
- If the MRO reported to the City of Culver City that the original positive, adulterated, or substituted test result had to be canceled because the split specimen testing could not be performed;

- If the drug test is a return-to-duty or a follow-up test;
- If the collector observes employee conduct that clearly indicates an attempt to tamper with a specimen;
- If the temperature on the original specimen was out of range;
- If the original specimen appeared to have been tampered with; or
- Initial test result was negative-dilute with creatinine between 2 – 5 mg/dl

The observer shall be the same gender as the employee, but need not be the collector. The collector must explain to the employee the reason for direct observation. The collector must complete a new Custody and Control Form. Prior to specimen collection, the observer must request employee raise his/her shirt, blouse, or dress/skirt as appropriate above the waist, lower clothing and underpants and to turn around to show that he/she is not wearing any type of device that could be used to interfere with the collection process. The observer is responsible for ensuring that the specimen goes from the employee's body into the collection container. If the employee declines to allow a directly observed collection when required or permitted under this policy, it is considered a refusal to test.

12.0 MONITORED URINE SPECIMEN COLLECTION

Under those circumstances when a multi-stall restroom has to be used for urine specimen collection and the facility cannot be adequately secured, the collector will conduct a monitored collection. The monitor shall be the same gender as the employee, unless the monitor is a medical professional. The monitor will not watch the employee void into the collection container. However, if the monitor hears sounds or observes attempts to tamper with a specimen, an additional collection under direct observation will be ordered. If the employee declines to permit a collection authorized to be monitored, it is considered a refusal to test.

13.0 SPLIT SPECIMEN TESTING

After notification by the MRO of a verified positive drug test or refusal to test because of adulteration or substitution, the employee has 72 hours to request (verbally or in writing) a test of the split specimen. After 72 hours have passed, the request can be considered only if the employee can present to the satisfaction of the MRO information that unavoidably prevented the employee from making a timely request. There is no split specimen testing if the initial test result is invalid.

Following the employee's timely request, the MRO shall send a written request to the primary laboratory to forward the split specimen to a second DHHS-certified laboratory for testing without regard to the cut-off concentration. If the second laboratory fails to reconfirm the substance detected in the primary specimen or the adulterant identified, or if the split specimen is unavailable for testing, the test shall be canceled. The MRO shall report the cancellation and the reasons for it to the DOT, the City of Culver City, and the employee. In the case of the split specimen being unavailable, the employee shall be directed, with no advance notice, to submit another specimen under direct observation.

All costs related to split specimen testing would be paid by the employee or the applicant. The Department will pay these costs up front in order not to delay testing. The Department will be reimbursed by the employee through payroll deduction from the first pay check issued within two weeks after the split test has been performed. The employee shall be reimbursed by the Transportations Department if the second test invalidates the original test or if the test was canceled.

14.0 CONSEQUENCES

As required by FTA regulations, any covered employee who has a verified positive drug test result, an alcohol concentration of 0.04 or greater, or refuses to submit to a drug or alcohol test (including adulteration or substitution) shall be:

- A. Immediately removed from safety-sensitive duty; and provided educational materials
- B. Referred to the City of Culver City's EAP provider, Work N' Life Matters that will assign an SAP for evaluation, education or treatment.

FTA regulation allows individual employers to determine the discipline to be imposed on employees who violate the federal rules or employer policy. **The Transportation Department and the City of Culver City has a "zero tolerance" policy with regards to employees who test positive for either drug(s) or alcohol, or who refuse to take a required test (including adulteration and substitution). This means that a covered employee who violates the policy will be subject to immediate termination after the first offense.**

15.0 REFERRAL, EVALUATION AND TREATMENT

If an employee (including an applicant) tests positive for drug(s) or alcohol or refuse to submit to a test when required, the Transportation Department shall advise the individual of the resources available for evaluating and resolving problems associated with prohibited drug use and alcohol misuse and document such referral. He or she shall be given the name, address and phone number of the City of Culver City's EAP provider, Work N' Life Matters, where he or she will be referred to SAPs acceptable to the City of Culver City. **The individual will be responsible for any costs associated with the SAP evaluation and recommendation(s).**

16.0 DRUG-FREE WORKPLACE ACT (DFWA) of 1988 REQUIREMENTS

Under the DFWA, employees are prohibited from the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace. Employees are required to notify management in writing of any criminal drug statute convictions he/she receives for a violation occurring in the workplace, no later than five calendar days after such a conviction. Within 10 calendar days of receiving such notice, the company shall provide written notification of the conviction to the FTA. Within 30 calendar days of receiving notice of the conviction, the City shall take appropriate disciplinary action, or require the employee to participate and successfully complete a drug rehabilitation program. Law enforcement shall be notified, as appropriate, where criminal activity is suspected.

APPENDIX A – DEFINITIONS

Adulterated Specimen: A urine specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine. This will constitute a refusal to test, which is equivalent to a positive test result.

Alcohol: The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol.

Alcohol Use: The drinking or swallowing of any beverage, liquid mixture or preparation (including any medication) containing alcohol. For purposes of this policy, alcohol is alcohol regardless of source.

Blood Alcohol Concentration (BAC): The blood alcohol concentration expressed in terms of grams of alcohol per 210 liters of breath.

Breath Alcohol Technician (BAT): An individual who instructs and assists employees or applicants in the alcohol testing process and operates an Evidential Breath Testing (EBT) device.

Canceled Test: A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which Part 40 requires to be canceled. A canceled test is neither a positive nor a negative test.

Collector: A person who instructs and assists individuals at a collection site, who receives and makes an initial inspection of the specimen provided by the individual, and who initiates and completes the Custody and Control Form (CCF).

Controlled Substances: Any drug classified by the U.S. Drug Enforcement Agency (DEA) into the five schedules or classes on the basis of their potential for abuse, accepted medical use, and accepted safety for use under medical supervision.

Designated Employer Representative: An employee or employees authorized by the City of Culver City and the Transportation Department to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, following a positive test, test refusal, or other policy violations.

DHHS: Department of Health and Human Services.

Disabling Damage: Damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs,

including damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

“Disabling damage” does not include:

- Damage, which can be remedied temporarily at the scene of the accident without special tools or parts.
- Tire disablement without other damage even if no spare tire is available.
- Headlamp or taillight damage.
- Damage to turn signals, horn, or windshield wipers, which makes them inoperative.

DOT: Department of Transportation.

Drugs: The drugs for which tests are required under DOT and FTA regulations. They are marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP).

Drug Abuse: Use of any illegal drug or controlled substance without a valid prescription, misuse of legally prescribed drugs, or use of illegally obtained prescription drugs. This includes use of prescription drugs legally prescribed to another individual.

Evidential Breath Testing (EBT) Device: A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath under DOT Part 40 and placed on the NHTSA’s Conforming Products List.

FTA: Federal Transit Administration.

Invalid Drug Test: The result of a urine drug test that contains an unidentified adulterant or an unidentified interfering substance, has abnormal physical characteristics, or has an originating substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.

Medical Review Officer (MRO): A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory drug test results, who has knowledge of substance abuse disorders, and has the appropriate medical training to interpret and evaluate an individual’s confirmed drug and/or validity test results together with the individual’s medical history and any other relevant biomedical information. This individual must meet the qualification requirements under Sec. 40.121.

Positive Alcohol Test: The presence of alcohol in the body at a concentration of 0.04 BAC or greater as measured by an EBT device.

Positive Drug Test: Any urine that is chemically tested (screened and confirmed), shows the presence of controlled substances at or above the confirmatory cut-off level, and is verified by the MRO.

Public Transportation Vehicles: Vehicles used for mass transportation or ancillary services.

Refusal to Test: Includes, but is not limited to, circumstances or behaviors such as:

- Failure to appear for any test (except a pre-employment test) at the collection site in the time allotted.
- Failure to remain at the collection site until the testing process is completed, except in pre-employment situations where leaving the site before the testing process begins is not deemed to be a test refusal.
- Failure to provide a urine, breath, or saliva specimen as required by DOT Part 40.
- Failure to permit the observation or monitoring of specimen collection when it is required.
- Failure to provide a sufficient amount of urine or breath specimen without a valid medical explanation.
- Failure or refusal to take a second test when required.
- Failure to undergo a medical evaluation when required. In the case of a pre-employment test, the individual is deemed to have refused to test only if the pre-employment test is conducted following a contingent offer of employment.
- Failure to cooperate with the testing process. (Examples: refusal to empty pockets when requested, or behaving in a confrontational manner that disrupts the collection process)
- For an observed collection, failure to follow the observer's instructions to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if individual is wearing any type of prosthetic device that could be used to interfere with the collection process.

- Possession or wearing of a prosthetic or other device that could be used to interfere with the collection process.
- Admitting adulteration or substitution of the specimen to the collector, **observer** or the MRO.
- In alcohol testing, refusal to sign Step 2 of the Alcohol Test Form.
- Leaving the scene of the accident without just cause prior to submitting to a test.
- If the MRO reports a verified adulterated or substituted test result.

Note: A refusal to test for any of the reasons described above is equivalent to a positive test result.

Split specimen: In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second DHHS-certified laboratory for testing upon employee request following a verified positive or a verified adulterated or substituted test result from the primary specimen.

Subject to Duty: An employee is subject to duty: 1) on his/her regularly scheduled duty days within four hours prior to sign on time; 2) when reporting for work; 3) during any split period between assignments whether on or off City property; 4) when informed in advance, while on duty, that he/she is expected to be on duty at some point in the future; and 5) when being tested under the return to duty provision of this policy.

Substance Abuse Professional (SAP): A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare. In order to be a qualified SAP, the individual must have certain credentials, possess specific knowledge, receive training, and achieve a passing score on an examination, as required under 49 CFR Part 40.281.

Substituted Specimen: A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

Vehicles: Includes buses, vans, automobiles, non-revenue commercial motor vehicles, and vehicles used by armed security personnel.

APPENDIX B – EMPLOYEE ASSISTANCE PROGRAM (EAP)

A. Voluntary Referral to EAP

Employees who voluntarily seek assistance in dealing with emotional distress, personal health problems or problems relating to drug or alcohol abuse will be immediately referred to Culver City's Employee Assistance Program without jeopardizing his/her employment with the Transportation Department. Employees or members of their immediate family may also refer themselves to the EAP by calling "Work n' Life Matters" at (310) 423-6447 or (800) 319-8111. Any employee voluntarily seeking help to refrain from drug or alcohol abuse is guaranteed confidentiality. Voluntary enrollment in EAP does not excuse or exempt an employee from discipline if they have drugs or alcohol in their system while on duty.

Following a voluntary referral, the affected employee must submit to a drug and alcohol test and produce a verified negative result from a Return to Duty test conducted under the Transportation Department's authority before he/she is allowed to return to work. The employee also must submit a Release to Work Statement from an approved treatment specialist(s).

B. Mandatory Referral to EAP

As required by FTA regulation, a mandatory referral to a Substance Abuse Professional (SAP) through the City of Culver City's EAP will be made for any employee who tests positive from any drug or alcohol test, or refuses to take a required test (including adulteration or substitution).

APPENDIX C - SEARCHES

The Transportation Department shall not physically search any employee for any illegal drugs or alcohol. The appropriateness of any physical search will be left to the determination of the proper legal authorities. Any search of an employee's personal belongings may be done only as permitted by law. The Transportation Department may search at any time and without notice to the employee any property or area which is partially or fully controlled by the Transportation Department. Employees are specifically notified that the following areas are not private unless agreed to otherwise in writing by the Transportation Department: desks, file cabinets, work areas, employee lunch rooms, restrooms, City vehicles and lockers.

APPENDIX D - CONFIDENTIALITY AND ACCESS TO FACILITIES AND RECORDS

Employees have a right to examine their own drug and alcohol testing records, provide information to dispute the results, and have access to any pertinent data such as EBT calibration or drug testing laboratory certification. They also have a right to obtain a copy of their own drug and/or alcohol testing results by submitting a written request to the Drug and Alcohol Program Manager identified in Section 2.0 of this policy.

The Transportation Department will do everything possible to safeguard the confidentiality of drug and alcohol testing records and protect the privacy of the individuals tested. Individual test results or medical information will be released to third parties (e.g. previous employers, unions) only with the employee's specific written consent, or to those parties authorized by the DOT or FTA to receive such information without the employee's consent. Specific written consent applies only to a particular piece of information released to a particular person or organization at a particular time. Blanket releases are specifically prohibited by DOT.

The employee's written consent is not required in administrative or legal proceedings such as:

- A lawsuit, grievance, or administrative proceeding brought by, or on behalf of the employee, resulting from a positive drug or alcohol test or a refusal to test; or
- A criminal or civil action resulting from an employee's performance of safety-sensitive duties where the alcohol or drug tests information is deemed relevant.

Access to the company facilities and drug and alcohol program records also must be provided, without the employee's consent, to DOT or FTA agency representatives; the National Transportation Safety Board as part of an accident investigation; a Federal, state or local safety agency with regulatory authority over the company or the employee; or State or grantee required to certify to FTA compliance with 49 CFR Parts 40 and 655.