



AGREEMENT FOR PARTICIPATION IN DIGITAL MAP  
PRODUCTS IRRIGABLE AREA PARCEL DATABASE

June 23, 2009

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participant has been asked to deposit \$ 10,000 that may or may not be refunded by DWR.

As part of the contract overview, DMP will utilize the existing County parcel database and extract area measurements for all residential parcels. They will also prepare estimates of irrigable area from existing state sources by overlying infrared imagery over the digital maps of the assessor's parcels. This will extract the types of land use classification needed to estimate the irrigable area. One of the main deliverables from DMP will consist of a web-delivered database for the participant.

FINANCIAL IMPACT

The study will be paid for with water funds and will have no impact on the General Fund.


COMMUNITY VISION IMPLEMENTATION

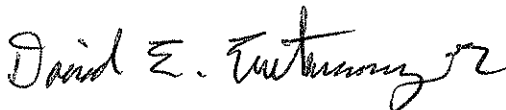
This agreement will help to ensure protection of long-term water supply to the benefit, health and safety of the community.

RECOMMENDATION

It is recommended that the City Council:

- Authorize the City Manager to sign the agreement with MWDOC for participation in Digital Map Products Irrigable Area Parcel Database.

  
KEITH G. JONES  
Public Works Director



By: David E. Entsminger  
Water Services Manager

**Recommended for Approval**

  
Matthew Ferial  
City Manager

Attachment: Agreement for Participation in Digital Map Products  
Irrigable Area Parcel Database

Final 5-14-09

**Agreement for Participation in  
Digital Map Products  
Irrigable Area Parcel Database**

THIS AGREEMENT ("Agreement"), dated this 24th day of April 2009, is made between the Municipal Water District of Orange County ("MWDOC") and the cities and special districts executing below ("Participants") for the purpose of initiating the process of obtaining irrigable area information while still reserving all rights of participation and local match funding under a grant program for developing and implementing water budget based tiered rate structures (Grant Study). MWDOC and the Participants are referred to herein individually as "Party" and collectively as "Parties."

**Recitals**

WHEREAS, the State of California is experiencing a water supply crisis due to a variety of factors, including naturally occurring drought conditions and judicial orders for decreased water deliveries to Southern California from the State Water Project; and

WHEREAS, water conservation in the form of budget based tiered rates is a proven method of water conservation and an important additional conservation measure that should be considered by all water providers; and

WHEREAS, a basic requirement for any consideration of budget based tiered rates by retail agencies is a reliable estimate of the irrigable area for each parcel in their service area, and development of such information on a collective basis allows pooling of resources and achievement of economies of scale; and

WHEREAS, MWDOC and the:

- City of Buena Park
- City of Dana Point
- City of Garden Grove
- City of Huntington Beach
- City of Newport Beach
- City of San Clemente
- City of San Juan Capistrano
- City of Tustin
- City of Westminster
- East Orange County Water District
- El Toro Water District
- Laguna Beach County Water District
- Mesa Consolidated Water District
- Moulton Niguel Water District
- Santa Margarita Water District
- Serrano Water District
- South Coast Water District
- Yorba Linda Water District

have all expressed the potential desire to pursue a contract with Digital Map Products (DMP) to develop estimates of the irrigable area for each parcel within their respective service areas and to present this information in a database format; and

WHEREAS, in anticipation of a possible delay in obtaining authorization from some of the cities and special districts that ultimately will execute this Agreement, and in order to ensure that the contract with DMP can commence as soon as possible for those Participants that have already authorized the work, this Agreement is designed to allow DMP to proceed upon execution by a minimum number of Participants and to allow additional identified Participants to execute the Agreement if and when authorization is obtained, all as described more fully below.

WHEREAS, while MWDOC and the Participants intend that the contract with DMP will ultimately be part of the Grant Study, the Parties wish to commence the contract immediately and to obtain the estimates developed by DMP irrespective of the availability of Grant Study funding.

NOW THEREFORE, the Parties agree as follows:

## **1. OVERVIEW/DIGITAL MAP PRODUCT CONTRACT**

The purpose of the Grant Study is to assist the Participants in examining various aspects of water budget based rate structures. A key aspect in setting water budgets for the outdoor use component is accurate estimates of the irrigable area for each parcel within each Participant's service area. Historically, this type of data has been difficult and costly to obtain; however, MWDOC recently requested a contract proposal from DMP that will enable the Parties to obtain this type of data at a lower cost. DMP will utilize the existing County parcel database and extract area measurements for all residential parcels. They will also prepare estimates of irrigable area by overlying infrared imagery, which they will obtain from existing State sources, over the digital maps of the assessors parcels to extract the types of land use classification needed to estimate the irrigable area.

In order to develop estimates of the irrigable area for all parcels within the service areas of the Participants, the Parties conducted due diligence and negotiations with DMP on a sole source basis because DMP is the only provider of the services known to the Parties to be operating in Orange County, California. Pursuant to these efforts, the Participants agree and hereby direct that MWDOC shall enter into an agreement with DMP to provide consulting services.

## **2. COST SHARING/INVOICING**

At least eight Participants are required to cover the cost of the DMP contract, and upon execution of the Agreement or deposit of funding by eight Participants, MWDOC is hereby authorized by those Participants to notify DMP to commence work. If eight Participants have not executed this Agreement within six months after the date of the first Participant's execution, all funds invoiced and paid will be refunded by MWDOC, without interest, and this Agreement will be terminated. After eight Participants have executed the Agreement, additional Participants identified in the recitals above may execute the

Agreement on the same terms. Each Participant will be invoiced by MWDOC upon execution of the Agreement for a \$10,000 deposit toward the costs of the DMP study effort ("Study Deposit Amount"). In the event the Water Budget Based Tiered Rate Grant from DWR is reinstated, MWDOC will endeavor to include all of this work and each of the Participants' deposits in the study effort so that local match credit is given. Any funding remaining will be used on the Grant Study when it proceeds.

### 3. DELIVERABLES

The main deliverable from DMP will be a web-delivered database for each Participant. The format of the database will be Excel. The database will include the following information:

- a. Assessor's Parcel Number
- b. Detailed Physical Address
- c. Type/Classification of Parcel
- d. Retail Water Agency Service Area
- e. Area measurement employing two methodologies
  - i. Assessor's Database Method
    1. Gross size of parcel
    2. Irrigated Area Method 1 = Gross size less (2 times the building) size
    3. Irrigated Area Method 2 = To Be Developed using existing data
  - ii. Remote Sensing Classification Information Method
    1. Parcel size
    2. Impervious Area
    3. Irrigated Turf Area
    4. Irrigated Shrubs & Tree Area
    5. Other Vegetated Area
    6. Pools (yes/no, area)
    7. Non-irrigated Vegetated
    8. Total irrigated area of parcel
- f. Tabulations summed per Participant for the two area measurement methodologies

A second deliverable from DMP will be for each of the Participants to have access to the Digital Map Products City GIS Product for a one-year period. This will allow time for the Participant to utilize the delivered database and make necessary decisions regarding implementation of budget based rates. Obtaining a continuation of these services or additional services from DMP thereafter must be by separate contract and at each

Participant's sole cost. The estimated cost for maintaining service for each additional year is \$1,000 per Participant.

#### **4. RESPONSIBILITIES OF THE PARTIES**

MWDOC's responsibilities include:

- a. Management and administration of the contract with DMP.
- b. MWDOC will also work to ensure that the efforts completed herein will be eligible for inclusion with the Budget Based Tiered Water Rate Grant from DWR that was to include this work, but subsequently was put on hold due to the State's budget crisis.
- c. Management and facilitation of the work and communication between the Participants and DMP.
- d. Invoicing the Participants for a \$10,000.00 Study Deposit Amount, paying DMP, and providing an accounting of the Study Deposit Amounts to the Participants. It is possible that the final cost of the project may be less than \$10,000.00 for each Participant, but the exact amount will not be known until the final number of Participants is determined and how much, if any, grant funding may offset some of the costs.

The Participants' responsibilities include:

- a. Provision of information as requested on a timely basis and participation and cooperation with MWDOC and DMP.
- b. Attendance at meetings.
- c. Payment of the Study Deposit Amount of \$10,000 upon receipt of an invoice from MWDOC.
- d. Integration of the final database into the Participants' billing and accounting systems. This only applies to Participant's proceeding into the implementation phase of changing their water rate structure.

#### **5. SCHEDULE**

DMP's proposed schedule calls for completion of the work within 4 months of a notice to proceed from MWDOC. Once MWDOC has received executed Agreements from a minimum of eight Participants to this Agreement, a Notice to Proceed will be issued to DMP.

## 6. INDEMNIFICATION AND HOLD HARMLESS

- a. General: Each Party agrees to indemnify, defend at its own expense, including attorneys' fees, and hold each other Party harmless from and against all claims, costs, penalties, causes of action, demands, losses and liability of any nature whatsoever, including but not limited to liability for bodily injury, sickness, disease or death, property damage (including loss of use) or violation of law, caused by or arising out of or related to any negligent act, error or omission, or willful misconduct of that indemnifying Party, its officers or employees, or any other agent acting pursuant to its control in the performance of this Agreement.
- b. As to MWDOC: The Participants, and each of them, agree to indemnify, defend at their own expense, including attorneys' fees, and hold MWDOC harmless from and against all claims, costs, penalties, causes of action, demands, losses and liability of any nature whatsoever related to an administrative or legal challenge to that Participant's action in adopting or failing to adopt any water budget based rate structure or to that Participant's application of a water budget based rate structure.
- c. Because this effort may eventually be added into the State DWR Grant Study, the following indemnification to the State has been included as required by the Grant: The Participants agree to indemnify the State and its officers, agents, and employees against and to hold the same free and harmless from any and all claims, demands, damages, losses, costs, expenses, or liability due or incident to, either in whole or in part, and whether directly or indirectly, arising out of the Grant Study.

## 7. WORKERS' COMPENSATION CLAUSE<sup>1</sup>

Each Participant affirms that it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and each Participant affirms that it will comply with such provisions before commencing the performance of the work under this Agreement and will make its contractors and subcontractors aware of this provision.

## 8. AMERICANS WITH DISABILITIES ACT

By signing this Agreement, each Participant affirms that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

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<sup>1</sup> Paragraphs 7 through 10 address issues that are required in contracts made under the grant program. Although this Agreement deals with funding issues between local agencies, these paragraphs are included in anticipation of future application of these funds to local match requirements under the grant program.

## **9. DRUG-FREE WORKPLACE CERTIFICATION OF COMPLIANCE**

By signing this Agreement, each Participant hereby certifies under penalty of perjury under the laws of the State of California compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees as required by Government Code Section 8355(a).
- b. Establish a Drug-Free Awareness Program, as required by Government Code Section 8355(a)(2), to inform employees about all of the following:
  - i. The dangers of drug abuse in the workplace,
  - ii. The Participant's policy of maintaining a drug-free workplace,
  - iii. Any available counseling, rehabilitation and employee assistance programs, and
  - iv. Penalties that may be imposed upon employees for drug abuse violations.
- c. Provide, as required by Government Code Section 8355(a)(3), that every employee who works under this Agreement:
  - i. Will receive a copy of the Participant's drug-free policy statement, and
  - ii. Will agree to abide by terms of the Participant's statement as a condition of employment.
- d. This Agreement and/or the DWR Grant may be subject to suspension of payments or termination, or both, and the individual Participants may be subject to debarment if the DWR determines that:
  - i. A Participant, its contractors or subcontractors have made a false certification, or;
  - ii. A Participant, its contractors or subcontractors violates the certification by failing to carry out the requirements noted above.

A copy of MWDOC's Drug and Alcohol Free Workplace Program is attached as **Exhibit A**.

## **10. NON DISCRIMINATION CLAUSE**

During the performance of this Agreement, the Participants shall not deny the Agreement's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, or sex. The Participants shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.



The Participants shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.5) and the regulations or standards adopted by DWR to implement such article.

The Participants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

The Participants shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under the Agreement.

The Participants' signatures on this Agreement shall constitute a certification under the penalty of perjury under the laws of the State of California that each signing Participant has, unless exempted, complied with the nondiscrimination program requirements of Government Code, Section 12990, and Title 2, California Code of Regulations, Section 8103.

## **11. TERM**

The Term of this Agreement shall commence when MWDOC has received executed Agreements or deposits of funding from a minimum of eight of the Participants. Any other Participant identified in this Agreement can add itself as a Participant by executing the Agreement at any time, prior to the termination of this Agreement, on the same terms and conditions. No approval for such execution is required from MWDOC or any other Participant. This Agreement may be modified by written agreement of the Parties, including modification to extend the term. This Agreement shall end at such time as MWDOC issues a notice of completion for the DMP work, with a copy to all Participants.

## **12. NOTICE**

Any notice, invoice, payment made pursuant to this Agreement shall be sent to the Parties at their respective addresses shown below.

If to City of Buena Park:      City of Buena Park  
6650 Beach Blvd.  
Buena Park, CA 90622  
Attn: Rick Warsinski, City Manager

If to City of Dana Point:      City of Dana Point  
33282 Golden Lantern St., Ste. 203  
Dana Point, CA 92629  
ATTN: Doug Chotkeys, City Manager

If to City of Garden Grove:      City of Garden Grove  
PO Box 3070  
Garden Grove, CA 92842  
ATTN: Matthew Fertil, City Manager

If to City of Huntington Beach: City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648  
ATTN: Penelope Culbreth-Grath, City Administrator

If to City of Newport Beach: City of Newport Beach  
PO Box 1768  
Newport Beach, CA 92663  
ATTN: Dave Kiff, Assistant City Manager

If to City of San Clemente: City of San Clemente  
100 Avenida Presidio  
San Clemente, CA 92672  
ATTN: George Scarborough, City Manager

If to City of San Juan Capistrano: City of San Juan Capistrano  
32400 Paseo Adelanto  
San Juan Capistrano, CA 92675  
ATTN: Dave Adams, City Manager

If to City of Tustin: City of Tustin  
300 Centennial Way  
Tustin, CA 92780  
ATTN: William A. Huston, City Manager

If to City of Westminster: City of Westminster  
8200 Westminster Blvd.  
Westminster, CA 92683  
ATTN: Ray Silver, City Manager

If to East Orange County Water District: East Orange County Water District  
185 N. McPherson Rd.  
Orange, CA 92869  
ATTN: Lisa Ohlund, General Manager

If to El Toro Water District: El Toro Water District  
PO Box 4000  
Laguna Hills, CA 92654  
Attn: Robert Hill, General Manager

If to Laguna Beach County Water District: Laguna Beach County Water District  
306 Third Street  
Laguna Beach, CA 92652  
ATTN: Renae Hinchey, General Manager

If to Mesa Consolidated Water District: Mesa Consolidated Water District  
1965 Placentia Avenue  
Costa Mesa, CA 92627-3420

If to Moulton Niguel Water District:	ATTN: Lee Pearl, General Manager Moulton Niguel Water District 27500 La Paz Road P.O. Box 30203 Laguna Niguel, CA 92607-0203 ATTN: Robert Gumerman, General Manager
If to Municipal Water District of Orange County	Municipal Water District of Orange County 18700 Ward St. P.O. Box 20895 Fountain Valley, CA 92728 ATTN: Kevin P. Hunt, General Manager
If to Santa Margarita Water District:	Santa Margarita Water District PO Box 7005 Mission Viejo, CA 92690 ATTN: John J. Schatz, General Manager and General Counsel
If to Serrano Water District:	Serrano Water District 18021 East Lincoln St. Villa Park, CA 92861 ATTN: Dave Noyes, General Manager
If to South Coast Water District:	South Coast Water District 31592 West Street Laguna Beach, CA 92651 ATTN: Michael P. Dunbar, General Manager
If to Yorba Linda Water District:	Yorba Linda Water District 1717 E. Miraloma Placentia, CA 92870 ATTN: Ken Vecchiarelli, General Manager

Parties may change their address for this purpose by giving written notice to the other Parties as provided herein.

**13. TIMELINESS**

Time is of the essence in this Agreement.

**14. AMENDMENTS**

The Agreement may be amended at any time by mutual agreement of all Parties set forth in a written instrument and executed by all Parties.

**15. ASSIGNMENT**

No Party may assign or otherwise assign or transfer any rights, interests or obligations under this Agreement without the written consent of all Parties. Once an assignment or transfer occurs with such consent, this Agreement and all of its provisions shall apply to and bind the successors and assigns of the Parties.

**16. SEVERABILITY**

The partial or total invalidity of one or more provisions of this Agreement will not invalidate the remaining provisions.

**17. GOVERNING LAW**

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California. Venue for any action filed by any Party or Parties related to this Agreement shall be Orange County, California.

**18. TERMINATION OF AGREEMENT**

This Agreement may be terminated by a majority of Parties by action of their respective governing boards or councils.

**19. COUNTERPARTS**

This Agreement and any amendment hereto may be executed in two or more counterparts, and by each Party on a separate counterpart, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

**20. SIGNATURES**

The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective agencies.

IN WITNESS WHEREOF, the PARTIES have executed this Agreement as of the date below.

<p>Date _____ By _____ Rick Warsinski City Manager <b>City of Buena Park</b></p> <p>Approved as to Form:</p> <p>Date _____</p> <p>By: _____ Steven L. Dorsey City Attorney</p>	<p>Date _____ By _____ Doug Chotkeys City Manager <b>City of Dana Point</b></p> <p>Approved as to Form:</p> <p>Date _____</p> <p>By: _____ Patrick Munoz City Attorney</p>
<p>Date _____ By _____ Matthew Fertal City Manager <b>City of Garden Grove</b></p> <p>Approved as to Form:</p> <p>Date _____</p> <p>By: _____ Thomas F. Nixon City Attorney</p>	<p>Date _____ By _____ Penelope Culbreth-Grath City Administrator <b>City of Huntington Beach</b></p> <p>Approved as to Form:</p> <p>Date _____</p> <p>By: _____ Jennifer McGrath City Attorney</p>
<p>Date _____ By _____ Dave Kiff Assistant City Manager <b>City of Newport Beach</b></p> <p>Approved as to Form:</p> <p>Date _____</p> <p>By: _____ David R. Hunt City Attorney</p>	<p>Date _____ By _____ George Scarborough City Manager <b>City of San Clemente</b></p> <p>Approved as to Form:</p> <p>Date _____</p> <p>By: _____ Jeffrey M. Oderman City Attorney</p>

<p>Date _____</p> <p>By _____ Dave Adams City Manager <b>City of San Juan Capistrano</b></p> <p>Approved as to Form:</p> <p>Date _____</p> <p>By: _____ Omar Sandoval City Attorney</p>	<p>Date _____</p> <p>By _____ William A. Huston City Manager <b>City of Tustin</b></p> <p>Approved as to Form:</p> <p>Date _____</p> <p>By: _____ Douglas C. Holland City Attorney</p>
<p>Date _____</p> <p>By _____ Ray Silver City Manager <b>City of Westminster</b></p> <p>Approved as to Form:</p> <p>Date: _____</p> <p>By: _____ Richard Jones City Attorney</p>	<p>Date _____</p> <p>By _____ Lisa Ohlund General Manager <b>East Orange County Water District</b></p> <p>Approved as to Form:</p> <p>Date _____</p> <p>By: _____ Joan Arneson Attorney</p>
<p>Date _____</p> <p>By _____ Robert Hill General Manager <b>El Toro Water District</b></p> <p>Approved as to Form:</p> <p>Date _____</p> <p>By: _____ Gil Granito General Counsel</p>	<p>Date _____</p> <p>By _____ Rena M. Hinchey General Manager <b>Laguna Beach County Water District</b></p> <p>Approved as to Form:</p> <p>Date _____</p> <p>By: _____ Paula E. Meyer General Counsel</p>

<p>Date _____</p> <p>By _____ Lee Pearl General Manager <b>Mesa Consolidated Water District</b></p> <p>Approved as to Form:</p> <p>Date _____</p> <p>By: _____ Robert E. Anslow General Counsel</p>	<p>Date _____</p> <p>By _____ Robert Gumerman General Manager <b>Moulton Niguel Water District</b></p> <p>Approved as to Form:</p> <p>Date _____</p> <p>By: _____ Patricia B. Giannone General Counsel</p>
<p>Date _____</p> <p>By _____ Kevin P. Hunt General Manager <b>Municipal Water District of Orange County</b></p> <p>Approved as to Form:</p> <p>Date _____</p> <p>By: _____ Daniel J. Payne General Counsel</p>	<p>Date _____</p> <p>By _____ John J. Schatz General Manager and General Counsel <b>Santa Margarita Water District</b></p>
<p>Date _____</p> <p>By _____ Dave Noyes General Manager <b>Serrano Water District</b></p> <p>Approved as to Form:</p> <p>Date _____</p> <p>By: _____ Joel D. Kuperberg General Counsel</p>	<p>Date _____</p> <p>By _____ Michael P. Dunbar General Manager <b>South Coast Water District</b></p> <p>Approved as to Form:</p> <p>Date _____</p> <p>By: _____ Betty Burnett General Counsel</p>

<p>Date _____</p> <p>By _____ Kenneth Vecchiarelli General Manager <b>Yorba Linda Water District</b></p> <p>Approved as to Form:</p> <p>Date _____</p> <p>By: _____ Arthur G. Kidman General Counsel</p>	
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## **Exhibit A**

### **MWDOC's DRUG AND ALCOHOL FREE WORKPLACE PROVISIONS**

#### **Section 1. Introduction**

Using, possessing, purchasing, selling, negotiating sale or purchase or being under the influence of drugs, or being under the influence of alcohol, during working time, or on District premises, including parking lots, or while operating a personal vehicle on company business, is absolutely forbidden and will result in discharge or other discipline as the District deems appropriate.

#### **Section 2. Prescription Drugs:**

The use of prescription drugs which would not alter an employee's work performance is acceptable, if prescribed to the employee by a licensed healthcare provider. In the event there is a question regarding an employee's ability to perform assigned duties safely and effectively while using such drugs, clearance from a licensed health care provider may be required before the employee is allowed to resume the employee's regular duties.

#### **Section 3. Employees Duties and Responsibilities**

- A. Notify their supervisor before beginning work when taking drugs (prescription or non-prescription), which the employee reasonably believes may interfere with the safe and effective performance of their duties;
- B. Not report to work, be at work, or work while under the influence of, or while his or her ability to perform job duties is impaired due to, on or off-duty alcohol or drug use;
- C. Not possess or use alcohol or impairing drugs or substances while on duty, at work, or working;
- D. Not directly, or through a third party, sell or provide drugs or alcohol to any person, including an employee, while either or both employees is on duty, at work, or working;
- E. Submit immediately to an alcohol or drug test when directed by a supervisor or manager;
- F. Provide, within 24 hours of request, bonafide verification of a current valid prescription for any potentially impairing drug or medication identified when a drug screen/test is positive. The prescription must be from a licensed health care provider and in the employee's name; and
- G. Report any conviction received pursuant to a criminal drug statute for violations for conduct occurring on or off District premises while conducting

District business. A report of conviction must be made to the Administrative Services Manager within five (5) days after conviction, as mandated by the Federal Drug-Free Workplace Act of 1988.

H. The unlawful manufacture, distribution, dispensing, possession or consumption of any controlled substance is prohibited anytime an employee is on duty, at work or working.

I. Any violation of this section and other provisions of this Policy may result in discipline, up to and including termination.

#### **Section 4. Alcohol at District Sponsored Events:**

With prior approval of Management and in Management's sole discretion, the District may allow employees to consume moderate amounts of alcohol at District sponsored social events outside of normal business hours where such use is appropriate in the circumstances. Employees who are found to be under the influence of alcohol, or who engage in misconduct at such events, are subject to discharge or discipline, in accordance with District processes and procedures.

#### **Section 5 Pre-Employment Testing:**

A. As a condition of every offer of employment or any promotion or new assignment, the District reserves the right to require any new hire to undergo and successfully complete a blood, urine, or other chemical test for drugs or alcohol.

B. The drug and/or alcohol test may test for any substance which could impair an employee's ability to perform the functions of their job effectively and safely, including, but not limited to, prescription drugs, alcohol, and other controlled substances.

C. All testing (including sample collection, chain of custody and laboratory services) shall be conducted in accordance with the approved procedures of the substance Abuse and Mental Health Services Administration, formerly NIDA. The results of testing shall be reviewed by a medical review officer, who shall be a licensed physician, possessing appropriate training, and knowledgeable about substance abuse disorders.

D. Pre-employment drugs and/or alcohol test result.

1. A positive result from a drug and/or alcohol analysis may result in the applicant not being hired where the applicant's use of drugs and /or alcohol could affect requisite job standards, duties or responsibilities.

2. If a drug screen is positive at the pre-employment physical, the applicant must provide, within 24 hours of the request, bona fide verification of a valid current prescription for the drug identified in the drug screen. If the prescription is not in the applicant's name or the applicant does not provide acceptable verification, or if the drug is one that is likely

to impair the applicant's ability to perform the job duties, the applicant may not be hired.

**Section 6. Reasonable Cause Testing:**

A. As a condition of continued employment, the District may require any employee to undergo and successfully complete a blood, urine, or other chemical test for drugs or alcohol whenever the District has reasonable suspicion to believe the employee is under the influence of or impaired by drugs or alcohol while on duty, at work, or working.

B. A determination that an employee is under the influence of or impaired by drugs or alcohol will be based on specific personal observations of any of the following, which alone or in combination, may constitute reasonable suspicion depending upon the circumstances in which the behavior is observed and/or reported:

1. Bloodshot eyes;
2. Glassy eyes;
3. Dilated pupils;
4. Slurred Speech;
5. Odor on breath;
6. Drowsiness;
7. Euphoria;
8. Mood swings;
9. Inattentiveness;
10. Excitement and confusion
11. Irritability;
12. Aggressiveness;
13. Shaking or erratic movement;
14. Disorientation;
15. Unsteady walking and movement;
16. An accident involving District property, where it appears the employee's conduct is at fault;
17. Physical altercation;
18. Verbal altercation;
19. Unusual behavior;
20. Use or possession of alcohol, drugs or paraphernalia; and/or
21. Information obtained from a reliable person with personal knowledge.

C. Any Manager or supervisor requiring an employee to submit to a drug/and or alcohol test should document in writing the facts constituting reasonable suspicion that the employee in question is impaired or under the influence. A manager or supervisor's failure to comply with this paragraph does not invalidate the directive to submit to testing.

D. All testing will be conducted at a clinic or laboratory selected by the District, with appropriate safeguards for privacy, confidentiality, and accuracy. Test results will be kept confidential to the fullest extent required by law, and will be maintained separate from the individual's personnel file. All testing (including sample collection, chain of custody and laboratory services) shall be conducted in accordance with the approved procedures of the Substance Abuse and Mental Health Services Administration, formerly NIDA. The results of testing shall be reviewed by a medical review officer, who shall be a licensed physician, possessing appropriate training, and knowledgeable about substance abuse disorders. The manager or supervisor may arrange for the employee to be transported to a testing facility, and then home afterwards. The manager or supervisor may also notify appropriate law enforcement agencies.

E. The reports or test results may be disclosed to District management on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without patient consent, may also occur when: (1) the information is compelled by law or pursuant to a lawfully issued subpoena; (2) the information has been placed at issue in a formal dispute between the employee and the District; (3) the information is to be used in administering an employee benefit plan; or (4) the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.

F. Managers and supervisors shall notify their department head or designee when they have reasonable suspicion to believe that an employee may have controlled substances in his or her possession or in an area not jointly or fully controlled by the District. If the department head or designee concurs that there is a reasonable suspicion of illegal drug possession, the department head shall notify the appropriate law enforcement agencies.

Employees are required to cooperate with the District and its clinic or laboratory in conducting tests. Employees who refuse to undergo testing or who interfere with the testing process, including but not limited to interference by unreasonable delay or contamination or tampering of the sample, will be subject to immediate discharge or discipline.

Employees who test positive, fail to cooperate with testing procedures, or otherwise violate this policy are subject to discharge or other discipline.

In any case involving unusual or extenuating circumstances, the District in its sole discretion may allow an applicant or employee who tests positive to commence or continue employment, subject to the condition that the employee undergo some form of treatment for addictions or abuse of drugs and alcohol as

determined by the District, in its sole discretion and submit to periodic or random testing as required by the District.

**Section 7. Accommodation for Drug and Alcohol Rehabilitation Programs:**

The District will reasonably accommodate any employee who comes forward before violating this policy and requests to enter voluntarily into a drug or alcohol rehabilitation program. Such requests will be kept confidential as provided by law. Once an employee violates this policy, however, any request to enroll in a rehabilitation program in lieu of discharge or discipline will be left to the sole discretion of the District, and will require random testing and other necessary follow-up measures. Employees who wish to enroll in drug or alcohol rehabilitation are encouraged to come forward before they are found in violation of this policy.