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STATEMENT OF POLICY

The Jose D. Leon Guerrero Commercial Port is committed to a drug-free work force to protect the safety of employees and public. The Authority administers a drug-screening program with strict policies and procedures in place to ensure its accuracy and integrity.

It is the policy of the Jose D. Leon Guerrero Commercial Port that applicants given conditional offer of employment shall submit to a drug screen. In order to protect the safety of the employees and the public, no applicant whose test shows illegal drug use will have his employment considered.

It is the policy of the Jose D. Leon Guerrero Commercial Port that employees may be required to take a drug screen to show they are drug-free if there is a reasonable suspicion or illegal drug use. The Authority will give current employees an opportunity to rehabilitate and return to their jobs as productive members of the work force, whenever applicable by law. Current employees who do not rehabilitate or who have a second confirmed test which shows illegal drug use may be disciplined in accordance with Civil Service Commission Adverse Action Procedures.

It is the policy of the Jose D. Leon Guerrero Commercial Port to inform applicants and employees of the drug screening program prior to being conducted. The Authority will consider the drug screening results and the medical information provided by applicants and employees as confidential.

I. PURPOSE AND GOAL

The Jose D. Leon Guerrero, Commercial Port Authority of Guam's (hereinafter "The Port") mission is to provide full services to ocean vessels in support of loading and unloading cargo for Guam and Micronesia. The Port is the main lifeline of consumer goods into the island, and as such, recognizes its responsibility to deliver these goods in a timely and efficient manner. In support of this mission the Port also provides land and infrastructure to private interests to further develop the maritime industries on Guam.

As a public corporation, the Board of Directors of the Port is committed to fulfilling its mission by protecting the health, safety and well being of all employees, customers and the public in the workplace. In addition, the Board recognizes

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that alcohol and drug use pose a significant threat to the Port's mission and therefore must protect the Port's assets from theft and destruction, maintain the integrity of our services to all and be in compliance with the requirements of the Federal Omnibus Drug Abuse Act of 1988 and federal and local statutes and applicable regulations.

Therefore, the Board of Directors of the Port has adopted this Drug-Free Workplace Program Policy that balances our respect for individuals with the need to maintain an alcohol and drug-free environment and encourages employees with drug and alcohol problems to voluntarily seek assistance.

This policy is implemented in accordance and compliance with all applicable statutes and regulations.

II. OBJECTIVES.

The objectives of the Port's Drug Free Workplace Program are as follows:

- A. Strengthen the leadership of the Port by promoting a safe, drug-free and alcohol-free work environment free of any adverse effects on job performance caused by drug or alcohol related problems and ensure the safety of all its employees, customers and the public.
- B. Ensure service quality and integrity by protecting the Port's assets from theft and destruction and providing for effective and efficient services to the Port's customers and users.
- C. Offer an Employee Assistance Program (EAP) that is totally confidential and available to all employees. The EAP provides professional services to employees whose performance is, or may be, adversely affected by emotional difficulties, alcoholism, drug dependence, family discord, or other personal problems.
- D. Satisfy and conform to the requirements of the Federal Omnibus Drug Abuse Act of 1988 and applicable Federal and local laws and regulations.

III. SCOPE AND APPLICABILITY

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- A. **Scope:** Any individual who conducts business for the Port, applies for a position vacancy, or conducts business on the Port's property is covered by the drug-free workplace policy. Our policy includes, but is not limited to, executive management, managers, supervisors, full-time employees, part-time employees, off-site employees, contractors, volunteers, interns and applicants. All are expected to comply fully with the Drug Free Workplace Program Policy as a condition of future and/or continued employment.

- B. **Applicability:** The Drug-Free Workplace Policy is intended to apply anyone representing or conducting business for the Port. Therefore, this policy applies during all working hours, whenever conducting business or representing the Port, while on call, paid standby, or while on Port property and at company-sponsored events.

IV. POLICY

- A. The Port is committed to providing a safe, efficient and productive work environment for all employees. The Port recognizes that the use and/or abuse of drugs or alcohol by employees presents a serious threat to the safety and health of the public and other employees. It is the policy of the Port that any employee, regardless of their status, should be free from the influence of drugs and alcohol. Reporting to work or performing work for the Port while impaired by or under the influence of illegal drugs or alcohol is prohibited.

- B. In order to further our goal of promoting a drug and alcohol-free work environment, the Port has implemented a controlled substance testing program. Each applicant, as a condition of employment upon selection, will be required to undergo and pass a pre-employment drug screen or test. Substance abuse is a significant public health problem, which has a detrimental effect on the Port and business community in terms of productivity, absenteeism, accidents, medical costs, theft, and workers' compensation costs.

- C. The illegal use, possession, dispensation, distribution, manufacture or sale of a controlled substance during work hours or while on duty, official Port

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business or stand-by duty, on Port premises and/or in its vehicles is prohibited. Employees are prohibited from being under the influence of any illegal drug or any drug not legally prescribed to them while on the job, on Port premises and/or in its vehicles. The consumption of alcoholic beverages or under the influence of alcohol while on duty and/or on Port premises is strictly prohibited at all times.

- D. Prescription and over-the-counter drugs are not prohibited when taken in standard dosage and/or according to a physician's prescription. Any employee taking prescribed or over-the-counter medications will be responsible for consulting the prescribing physician and/or pharmacist to ascertain whether the medication may interfere with safe performance of his/her job. If the use of a medication could compromise the safety of the employee, fellow employees or the public, it is the employee's responsibility to use appropriate personnel procedures (e.g., call in sick, use leave, request change of duty, notify supervisor, notify company doctor) to avoid unsafe workplace practices.

- E. The illegal or unauthorized use of prescription or misuse of over the counter drugs is prohibited. It is a violation of the Drug-Free Workplace Policy to intentionally misuse and/or abuse prescription or over the counter medications. Violations of this policy are subject to disciplinary action up to and including termination of employment.

- F. It is a violation of this policy for employees to inform or share with other employees, information related to the notification of drug testing for the purpose of evading, avoiding, or adulterating drug tests.

V. DRUG FREE WORKPLACE POLICY AND AMERICAN DISABILITIES ACT

A. Under the terms of the ADA:

- 1. Employers cannot fire, refuse to hire, or refuse to promote someone simply because he or she has a history of substance abuse.

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2. They also cannot fire, refuse to hire, or refuse to promote someone merely because he or she is enrolled in a drug or alcohol rehabilitation program.

- B. However, illegal use, possession, dispensation, distribution, manufacture or sale of a controlled substance during work hours or while on duty, official Port business or stand-by duty, on Port premises and/or in its vehicles is subject to disciplinary including and up to termination of employment.

VI. NOTIFICATION

In accordance with Port Rules and Regulations 3.400 CRIMINAL CHARGES OR CONVICTION:

- A. **Employee's Duty to Report:** An employee in service of the Port, who is charged by indictment, information or magistrate's complaint with any crime in any court or who is convicted of a crime in any court except Traffic Court shall provide the General Manager (or designee) with written notice of the charges or the conviction within 72 hours thereof.

An employee convicted of a criminal drug violation shall report such conviction within five (5) calendar days of the date of the conviction or, the effective date of the policy if conviction occurred within one (1) year prior to the effective date.

- B. **Failure to Report:** An employee's failure to provide notice as required is grounds for a separate Adverse Action. The 60 day limitation imposed by Title 4, GCA, section 4406 commences when the employee gives notice of the charges or conviction of a crime to the General Manager (or designee)

The Port will take appropriate action within 30 days of notification. Federal contracting agencies will be notified within 10 days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace as required by the Drug-Free Workplace Act of 1988.

VII. SEARCHES

Entering the Port's property constitutes consent to searches and inspections. If an individual is suspected of violating the Drug-Free Workplace Program Policy,

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he or she may be asked to submit to a search or inspection at any time. Searches can be conducted of pockets and clothing, lockers, wallets, purses, briefcases, lunchboxes, desks, work stations, vehicles, and equipment.

VIII. DRUG TESTING PROGRAM

The Port will institute a Drug Testing Program for its current employees as well as for newly hired employees. Upon initial implementation of this program, all employees of the Port will be required to submit to a drug test. The first drug test for all employees shall be conducted and scheduled by the General Manager (or designee) after the effective date of this policy.

To ensure the accuracy and fairness of the Port's testing program, all testing will be conducted according to Substance Abuse and Mental Health Services Administration (SAMHSA) guidelines where applicable and can include: a Drug Screen (On-site testing) test; a Federal DOT or Non - Federal mandated confirmatory test; review by a Medical Review Officer (MRO), including the opportunity for employees who test positive to provide a legitimate medical explanation, such as a physician's prescription, for the positive result; and a documented chain of custody.

A. Scope of testing:

The Drug Free testing program applies to all Jose D. Leon Guerrero Commercial Port employees and newly hired employees. Each employee, as a condition of employment, will be required to participate in the following testing program. The term **employee** means all classified and unclassified employees (see Section 4102 of Title 4, Guam Code Annotated).

B. Types of Testing:

Each employee, as a condition of employment, will be required to participate in pre-employment, random, post-incident/post-accident, reasonable suspicion/cause, return-to-duty, follow-up, and periodic testing upon selection or request of management as defined below:

1. **Pre-Employment:** Pre-employment testing is conducted for the prevention of hiring individuals who illegally use drugs. This test is required after a conditional offer of employment has been made.

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All individuals will be required to submit to a drug test by urinalysis to screen for the illegal use of drugs prior to employment.

Applicants agree to be tested as a condition of employment and the effective date of employment will be upon satisfactory completion and passing the drug test. Failure to report to drug testing as scheduled will result in rescinding the job offer and the applicant's name will be removed from the list of applicants.

Note: Americans with Disabilities Act (ADA) of 1990 prohibits the use of pre-employment testing for alcohol use. We have removed alcohol testing from the pre-employment test requirement.

2. **Random:** Random testing is performed on an unannounced, unpredictable basis on employees whose identifying information (e.g., social security number or employee number) has been placed in a testing pool from which a scientifically arbitrary selection is made. This selection is usually computer generated to ensure that it is indeed random and that each person of the workforce population has an equal chance of being selected for testing, regardless of whether that person was recently tested or not.

3. **Critical Incident/Post Accident:** A circumstance which occurs while on duty for the Port, on Port property, or using Port property that includes:
 - a. an accident involving Port equipment causing damage to property or injury to person; or
 - b. behavior or activity which could cause damage to property or injury to person; or
 - c. mental or physical impairment sufficient to raise doubt that job duties can be safely or effectively performed; or
 - d. possession, sale, or use of an illegal drug or drug paraphernalia or open container of alcohol; and
 - e. reasonable suspicion that an employee's action or

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behavior are caused by alcohol or illegal drugs.

Since property damage or personal injury may result from accidents, testing following a Post- Incident/Post-accident can help determine whether drugs and/or alcohol were a factor. Any employee directly involved in an accident and/or any employee directly involved in any incident even if an accident or injury was averted, involving equipment or material damage or physical injury of any individual affected by the accident or incident shall be required to submit to a drug and/or alcohol test within two (2) hours after the incident/mishap/accident or after medical attention or emergency care is rendered if such is required.

4. Reasonable Suspicion: The Port may require, at its sole discretion, any employee to submit to controlled substance testing as a condition of employment if it determines that reasonable suspicion exists for such testing. Reasonable suspicion testing is similar to, and sometimes referred to, as “probable-cause” or “for-cause” testing and is conducted when supervisors document observable signs and symptoms based on a reasonable and articulable belief that the individual is using a prohibited drug or abusing drugs on the basis of specific contemporaneous physical, behavioral or performance indicators of probable drug use.

5. Return-to-Duty: Return-to-duty testing involves a one-time, announced test when an employee who has tested positive has completed the required treatment for substance abuse and is ready to return to the workplace. Some employers also use this type of testing for any employee who has been absent for an extended period of time.

6. Follow-up testing or post-rehabilitation testing is conducted periodically after an employee returns to the workplace upon completing rehabilitation for a drug or alcohol problem. It is administered on an unannounced, unpredictable basis for a period of one (1) year.

7. Periodic: Periodic testing is usually scheduled in advance and uniformly administered. The Port may choose to conduct Periodic testing on an annual basis.

C. Frequency: The frequency of testing for random testing and follow up testing is specified in the Standard Operating Procedures (SOP). The

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Port reserves the right to increase or decrease the frequency of testing based on the needs of Port, availability of resources, and experience in the program, consistent with the duty to achieve a drug free workplace.

- D. Substances to be Tested:** The Port will test for the following drugs:
- 1) Marijuana Metabolites/THC , (*i.e. weed, grass, Mary Jane*)
 - 2) Cocaine metabolites (*i.e. coke, snow, crack*)
 - 3) Phencyclidine (*i.e. Angel dust, PCP*),
 - 4) Amphetamines, Methamphetamine and ethylenedioxymethamphetamine (*i.e. MDMA, Ecstasy*)
 - 5) Opiate metabolites (*i.e. Tylenol with Codeine, Morphine and Heroin*)
 - 6) Barbiturates (*i.e. downers, Nembutal, yellowjackets*)
- E. Standardized Procedures for Cut-Off Levels for Drugs:** The Port will conform with established standardized procedures and cut-off levels for these drugs by the Substance Abuse and Mental Health Services Administration (SAMHSA).
- F. How Drug Testing Will Be Performed**
1. Testing for the presence of alcohol will be conducted by analysis of saliva and/or breath.
 2. Testing for the presence of the metabolites of drugs will be conducted by the analysis of urine.

VIX. SHARED RESPONSIBILITIES FOR A DRUG FREE WORKPLACE:

A safe and productive drug-free workplace is achieved through cooperation and shared responsibility. Both employees and management have important roles to play.

A. EMPLOYEE RESPONSIBILITIES:

Be concerned about working in a safe environment and continue to observe public trust and confidence by personal support and compliance appropriate to the intent and provisions of the Port's Drug Free Workplace Program.

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An employee shall:

1. Notify an appropriate supervisor before reporting to duty, before using Port equipment, or before or immediately upon entering Port property:
 - a. When taking any medication or drug, either prescription or non-prescription, which might impair the effectiveness or safety of job performance;
 - b. When having taken alcohol which might impair the effectiveness of safety or job performance a minimum of four (4) hours prior to reporting for duty.
2. Report dangerous behavior to their supervisor.
3. Consider volunteering for and completing an education, rehabilitation or treatment program if the employee has an addiction to alcohol or drugs which compromises safety on the job and might impair their effectiveness of job performance; or consider participating in an education, rehabilitation or treatment program when directed by the General Manager(or designee).
4. Support fellow workers in seeking help. Encourage other employees, who use a drug or alcohol which compromises safety and might impair the effectiveness of job performance, to volunteer for and complete an education, rehabilitation or treatment program.
5. The employee must pay all costs, resulting from participation in education, rehabilitation or treatment program, which may not be paid by the employee's insurance carrier or other available community resources.
6. The employee must acknowledge that he has received and read the Drug Free Workplace Policy and understands its purpose, objectives and employee responsibilities.

B. SUPERVISORS RESPONSIBILITIES:

It is the supervisor's responsibility to:

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1. Attend all Port sponsored training on drug and alcohol awareness and prevention.
2. Ensure that each of his subordinate employees receives a copy of the Drug Free Workplace Program Policy and be available to explain the purpose, objectives and responsibilities under the Drug Free Workplace Program Policy to each employee he supervises.
3. Observe employee performance.
 - a. Counsel employees as to expected performance improvement and
 - b. document negatives changes and problems in performance.
4. Ensure employees selected for testing are sent immediately to the collection site without delay and advise employees of the confidentiality of notification so as not to disseminate such information to anyone.
5. Clearly state consequences of policy violations.
6. If "reasonable suspicion" exists that an employee's work performance is affected by a drug or alcohol problem, initiate procedures for reasonable suspicion.
7. If a "critical incident/post accident occurs, have the responsibility to:
 - a. Summon law enforcement personnel; and/or
 - b. Summon medical assistance; and/or
 - c. Refer employee for drug testing.
 - d. Notify the Division Head, the DER and/or the General Manager (or designee) of the incident and to confer if further action is necessary prior to allowing the employee to report back for duty if drug screen results non-negative.

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- e. Take necessary action based on agreed steps to be taken.
- 8. Submit recommendation to the General Manager (or designee) whether or not an employee should be directed to participate in an education, rehabilitation or treatment program or should be disciplined upon receipt of a confirmed positive test result.
- 9. Report all critical incidents immediately with seventy two (72) hours in writing to the General Manager (or designee). If a witness or witnesses are involved, make sure that the written reports are signed by such witness or witnesses.
- 10. Maintain the confidentiality, on a need-to-know basis of:
 - a. The advice or recommendations given to the General Manager (or designee).
 - b. Any education, rehabilitation or treatment program activity resultant from such advice or recommendation.
- 11. Promote the Port's Drug Free Workplace Program Policy.

C. DESIGNATED EMPLOYER REPRESENTATIVE/ PERSONNEL ADMINISTRATOR (DER/ADMINISTRATOR)

The DER/Administrator should have knowledge of and authority to make decisions about the testing process and answer questions about it.

- 1. The DER/Administrator or designee DER shall be responsible for implementing, directing, administering, and managing the Port's drug free program. The DER shall serve as the principal contact for collection activities in assuring the effective operation of the testing portion of the program.
 - a. The DER/Administrator shall appoint more than one DER: to ensure adequate coverage on all shifts and at all locations; to assist the DER/Administrator; to enforce the Port's Drug Free Workplace program; and to coordinate the entire program with consistency among DERs.
- 2. Ensure that all employees receive a copy of the Port's Drug Free Workplace Program Policy prior to implementation of the program,

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and that employees return a signed acknowledgment of receipt form;

3. Provide training and educational materials and training to managers, supervisors, and employees and oversee training and education on the Port's Drug Free Workplace.
 - a. Ensure that training is provided to assist supervisors in the recognition and documentation of facts and circumstances that support a reasonable suspicion that an employee may be using illegal drugs;
4. Coordinate DER duties wherever possible to conserve resources and to efficiently and speedily accomplish reliable and accurate testing objectives.
5. Arrange for all testing authorized under this order;
6. Receive all drug test results.
7. In the interest of safety, the primary job of the DER/Administrator is to receive drug and alcohol test results and take immediate action to remove employees from their duties when they violate drug and alcohol testing rules, i.e. test positive or refuse to test.
 - a. The DER/Administrator shall immediately inform the Division Head and General Manager (or designee) who shall make until the final determination on the formal action to be taken thereafter.
8. Coordinate with the General Manager (or designee), the Medical Review Officer (MRO), Collectors and supervisors, as appropriate;
9. Assist supervisors with performance and/or personnel problems that may be related to illegal drug use;
10. Refer employees to Employees Assistance Program, private EAP and or Substance Abuse Professionals (SAP).
11. Monitor the progress of referred employees during and after the rehabilitation period, and provide feedback to supervisors in

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accordance with 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records, and as updated from time to time;

12. Maintain a list of rehabilitation or treatment organizations which provide counseling and rehabilitative programs.
13. Periodically visit rehabilitative or treatment organizations to meet administrative and staff members, tour the site, and ascertain the experience, certification and educational level of staff, and the organization's policy concerning progress reports on clients and post-treatment follow-up.
14. Be consistent with confidentiality requirements, refer written determinations regarding all verified positive test results to the EAP Administrator, and the appropriate official, including a positive drug test result form indicating that the positive result has been verified, together with all relevant documentation and a summary of findings;

D. DIVISION HEAD RESPONSIBILITIES:

In addition to the employee and supervisor responsibilities, the Division Head shall:

- 1.. Have the responsibility to implement the Drug Free Workplace Program Policy and Standard Operating Procedures within the operating unit and ensure that the Plan is efficiently and effectively accomplished in accordance with this order and all other applicable regulations.
2. Maintain a process so that an employee can advise the General Manager (or designee), either orally or in writing, of any violation of the Drug Free Workplace Program Policy.
3. Maintain a process so that a supervisor can contact the General Manager (or designee) as soon as possible after a "critical incident" to receive recommendations pursuant to the supervisory procedures.
4. Have the discretion to direct employee to participate in an education, rehabilitation or treatment program in consultation with the General Manager (or designee).

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5. Maintain the confidentiality, on a need-to-know basis, of:
 - a. Such advice or recommendation received from an employee or supervisor.
 - b. Any recommendation or advice by the Administrator/DER.
 - c. Any recommendation or advice by the General Manager (or designee).
6. Take reasonable steps to ensure that no employee is intimidated or coerced or retaliated against for acting in compliance with or enforcement of the provisions of this policy.
7. Enforce the provision of the procedure.

E. EMPLOYEE ASSISTANT PROGRAM (EAP) COORDINATOR RESPONSIBILITIES:

The EAP Coordinator shall implement and operate the EAP for the Port. The exception would be the use of a private EAP provider or SAP (Substance Abuse Provider) as specified in DOT 49CFR part 40. The EAPC of the Port will be responsible for the following duties:

1. Provide assistance to counseling and treatment services to all employees referred to the EAP by their supervisors, by self-referral, or the Administrator/DER and otherwise offer employees the opportunity for counseling and rehabilitation.
2. Coordinate with the General Manager (or designee), the Medical Review Officer and supervisors as appropriate.
3. Provide educational materials and training to management, supervisors and employees on illegal drugs in the workplace.
4. Monitor the progress of referred employees during and after the rehabilitation period and provide feedback to DER/ Administrator in accordance with the Drug Free Workplace Program Policy for return to work purposes.

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5. Be consistent with confidentiality requirements of this policy and take steps to ensure that an employee's involvement in a drug/alcohol related EAP is kept in the strictest confidence and that information is released on a need to know basis only, or as regulated by federal or local statutes.

X. CONSEQUENCES FOR VIOLATION OF DRUG FREE WORKPLACE PROGRAM POLICY:

One of the goals of the Port's Drug-Free Workplace Program is to encourage employees with alcohol and/drug problems to voluntarily seek help. If, however, an individual violates the policy, the consequences are serious. Any employee violating the Drug Free Workplace Program Policy is subject to disciplinary action up to and including termination from employment for the first offense.

- A. In the case of applicants, if he or she violates the Drug-Free Workplace Program policy, or is found to test "non-negative" or positive in a pre-employment drug screen or test, the offer of employment will be withdrawn. The applicant may reapply after eighteen months and must provide a certification of successful completion of an approved rehabilitation or treatment program or submit a "negative" result for the presence of controlled substance(s).
- B. If an employee violates the policy, he or she will be subject to disciplinary action and may be required to enter rehabilitation as a condition of continued employment. An employee who is required to enter rehabilitation, who fails to successfully complete the rehabilitation program, and/or repeats the violation of this policy, will be terminated from employment. Nothing in this policy prohibits the employee from being disciplined or discharged for other violations and/or performance problems. **Be aware that:**
 1. Involvement in illegal activity pertaining to the illegal use, sale, purchase, offer, or possession of a controlled substance while on duty or while on Port property, or while using Port equipment shall be reported to the appropriate law enforcement agencies.
 2. Being under the influence of a drug or alcohol while on duty or while on Port property, or while using Port equipment may result in being reported to appropriate law enforcement agencies and/or ordered off Port property and placed on immediate suspension.

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3. Violation of the Drug Free Workplace Program Policy may result in:

- a. Direction to participate in an education, rehabilitation or treatment program by the General Manager (or designee), which may include direction to participate and complete a drug or alcohol analysis testing process, and/or
 - b. A disciplinary action, up to including, termination.(Section 4203 of Title 4, Guam Code Annotated) will be implemented without exception.
 - c. Participation in an education, rehabilitation or treatment program without any indication(s) of work problems shall not be used in a performance evaluation report or disciplinary action.
 - d. The General Manager (or designee) should be advised either within seventy two (72) hours orally or in writing, of any violation of the Drug Free Workplace Program Policy.
- C. Selling of Controlled Substances or attempts to sell a controlled substance and/or the sale of paraphernalia for a controlled substance at the Port's workplace shall not be allowed to participate in a rehabilitation program and be immediately discharged from employment. In addition, any employee who engages in such conduct and is discharged for the same, shall not be eligible for re-employment by the Port.
- D. Any employee who, on the basis of an event, e.g. the occurrence of an accident that requires a post accident, the findings of reasonable suspicion that lead to a reasonable suspicion test, will immediately be removed from duty and must submit to drug testing.
- E. Upon receipt of a confirmed positive test from an Medical Review Officer (MRO), the employee will be; removed from duty and referred to a substance abuse professional for assessment and recommendations, required to successfully complete recommended rehabilitation including continuing care, required to pass a Return-to-Duty test and sign a Return-to-Work Agreement, and be subject to ongoing, unannounced, follow-up

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testing for a period of one (1) year and terminated immediately if he/she tests positive this second time or violates the Return-to-Work Agreement.

- F. An employee will be subject to the same consequences of a positive test if he/she refuses the screening or the test, adulterates (*masking agents*) the specimen, substitutes the specimen with that from another person, sends an imposter in their place, or refuses to cooperate in the testing process in such a way that prevents completion of the test.
- G. A Positive test is in violation of this policy and is considered conduct detrimental to the Port's mission; to protect the health, safety, well being of its employees and patrons, and its services. This violation may result in disciplinary action, up to and including termination from employment, in accordance with the Port's Personnel Rules and Regulations.
- H. All drug-testing information will be maintained in separate confidential records. The willful exposure of drug-testing information or dereliction to keep drug-testing confidential on a need to know basis, is considered a violation of the Drug Free Workplace Program Policy and subject to disciplinary action up to and including termination from employment for the first offense.
- I. Any employee convicted of violating a criminal drug statute including (but not limited to) Chapter 67 of Title 9, Guam Code Annotated, must inform the General Manager (or designee) of such conviction within five (5) working days of the conviction, or the effective date of this Drug Free Workplace Program Policy, if the conviction occurred within one (1) year prior to the effective date of the policy.
 - 1. Failure to so inform the General Manager (or designee) subjects the employee to disciplinary action, up to and including termination from employment for the first offense.

XI. RETURN TO WORK AGREEMENTS

Following a violation of the drug-free workplace policy, an employee may be offered an opportunity to participate in a rehabilitation program. In such cases, the employee must sign and abide by the terms set forth in a Return-to-Work Agreement, sometimes known as "Last Chance Agreement", as a condition of continued employment. Any leave associated with participation in a

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rehabilitation program shall fall under the appropriate leave category in the Port's Personnel Rules and Regulations. Cases where an employee may be offered an opportunity to participate in rehabilitation program are as follows:

- A. Any employee who, on the basis of an event (e.g. the occurrence of an accident that requires a post accident test as defined by DOT), or the finding of reasonable suspicion that leads to a reasonable suspicion test, will immediately be removed from duty and submit to drug testing.
- B. Upon receipt of a confirmed positive test from an MRO, the employee will be, removed from duty and referred to a substance abuse professional for assessment and recommendations, required to successfully complete recommended rehabilitation including continuing care, required to pass a Return-to-Duty test and sign a Return-to-Work Agreement, subject to ongoing, unannounced, follow-up testing for a period of one (1) year and terminated immediately if he/she tests positive a second time or violates the Return-to-Work Agreement.
- C. An employee will be subject to the same consequences of a positive test if he/she refuses the screening or the test, adulterates (*masking agents*) or dilutes the specimen, substitutes the specimen with that from another person or sends an imposter or refuses to cooperate in the testing process in such a way that prevents completion of the test.
- D. All drug-testing information will be maintained in separate confidential records. The willful exposure of drug-testing information or dereliction to keep drug-testing information confidential on a need to know basis, is considered a violation of the Drug Free Workplace Program Policy and subject to disciplinary action up to and including termination, for the first offense.
- E. All port employees listed in GCA 10 Chapter 75, ss 75100 (Port Security, Police and Police Chief), and under ss 75107, are not eligible for continued employment under a Return-to-work Agreement.

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XII. COMMUNICATION

Communicating the Port's drug-free workplace policy to both supervisors and employees is critical to the success of the Drug Free Workplace Program Policy. To ensure all employees are aware of their role in supporting our drug-free workplace program:

- All employees will receive a written copy of the policy.
- The policy will be reviewed and issued in orientation sessions with new employees.
- The policy and assistance programs will be reviewed at safety meetings.
- Employee education about the dangers of alcohol and drug use and the availability of help will be made accessible to all employees.
- Every supervisor will receive training to help him/her recognize and manage employees with alcohol and other drug problems, as well as recognizing and documenting observations that constitute reasonable cause/suspicion recommendations for testing.

XIII. EDUCATION AND AWARENESS PROGRAM

To complement and achieve a drug-free work force, the Port shall establish and implement a Drug Education and Awareness Program to help employees understand and avoid the perils of drug and alcohol abuse. The Port will use the program in an ongoing educational effort to prevent and eliminate substance abuse that may affect the Port's workforce and its operations.

- A. The Drug Education and Awareness Program will include the following:
1. Dissemination of information to employees regarding the dangers of alcohol and drug abuse;
 2. A copy of the Port's Drug Free Workplace Program Policy .
 3. Availability of treatment and counseling information for employees who voluntarily seek such assistance; employee assistance programs (EAP's) and other community services that are available to those who have a drug and/or alcohol problem.
 4. Sanctions the Port will impose for violations of its Drug Free Workplace Policy.

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- B. The Drug Free Workplace Program policy applies to all Jose D. Leon Guerrero Commercial Port employees. The term employee means all classified and unclassified employees (see Section 4102 of Title 4, Guam Code Annotated).
- C. Top management and supervisory employees will be trained to assist in identifying and addressing the matter of unlawful use of alcohol and/or a controlled substances by employees, including the making of referrals to appropriate agencies.
- D. In connection with the above, employees will be encouraged to seek counseling and other assistance on a self-referral basis if they feel they have a need for it. An employee who voluntarily seeks help and undergoes treatment for drug or alcohol abuse prior to any violation of any provision of this policy will not be subject to disciplinary action because of admitted substance abuse, provided he or she thereafter remains drug and alcohol free after commencing treatment. Failure to remain drug or alcohol free shall be considered a violation of this policy and will subject the employee to disciplinary action up to and including termination.
- E. The Port shall also provide proper training for the Administrator/DER, DER's, Employee Assistance Program Coordinators (EAPC), and Management/Supervisors; on properly documenting and initiating drug/alcohol testing and screening, on applicable laws and regulations to comply with, and the duties their specific position requires of them in the enforcement of this Drug Free Work Place Program Policy.

XIV. PROCEDURES

- A. As part of the Port's drug-free workplace program, controlled substance testing will be conducted and shall involve urinalysis for the following Disposition of Drugs Tested for: Marijuana, Cocaine, Opiates (Heroin), Amphetamines/ Methamphetamines, Phencyclidine (PCP), and Barbiturates and any other drugs should Federal or Local statutes require the Port to do so. The Port reserves the right to test for alcohol and/or other illegal drugs for reasonable suspicion. Employees and job applicants subject to controlled substance testing pursuant to this policy shall be requested to provide urine, saliva and/or breath specimens at the collection site.

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- B. The Port recognizes that from time to time, statistics change regarding the popularity of drugs of abuse. The Port reserves the right to amend the Disposition of Drugs Tested for in its testing process or upon adoption of a new Drug Free Workplace Program Policy (or amendment), in efforts to be proactive in the prevention of abuse. Upon such a change from the Port's Board of Directors, the new testing disposition will take effect immediately or as specified in the new policy's guidelines. Employees may be given advanced notice of such a proposed change, but advanced notice is not required if not specified under current personnel rules and regulations or local statutes.. The following exemptions to the Disposition of Drugs Tested for are as follows:
1. When Federal Regulations and Governing Authorities require a specific panel of drugs to be tested for employees covered under their jurisdiction (ie. Dept. of Transportation or DOT 49 CFR Part 40) and no other disposition is allowed.
 2. The drug is not listed in Chapter 67 of Title 9 GCA or schedule I thru V of the Controlled Substances Act.
- C. Employees and candidates formally offered a position shall be required to sign a form consenting to submit to controlled substance testing, to provide urine, saliva and/or breath specimens as part of the testing process, and to release the test result to the institution and/or its MRO. All specimens identified as positive for illegal drugs on an initial drug screening shall be confirmed with a test using gas chromatography/mass spectrometry (GC/MS) techniques or other future acceptable techniques approved by the Dept. of Health and Human Services (HHS) and/or the Dept. of Transportation (DOT).
- D. All positive results of controlled substance testing shall be reviewed and verified by the MRO to ensure accuracy of results and consistency of testing methods and procedures. All questions regarding the accuracy or validity of positive test results must be directed only to the Company's Medical Review Officer. If you call the Company's Medical Review Officer, please identify yourself as an employee of The Port Authority of Guam. In the event a confirmatory validity test is advised between the MRO and employee, all costs associated with such a test shall be the responsibility of the individual and not covered by the Port Authority of Guam.

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D. All controlled substance testing conducted pursuant to this policy shall comply with applicable federal and local laws and regulations.

E. Refusal to Submit to Test

Refusal to sign an authorization to submit to a drug, controlled substance, or alcohol test, the refusal to undergo such a test, or the refusal to permit the physician or medical laboratory to provide the test result to the Port shall :

1. Be construed as a positive test result.
2. Constitute an act of insubordination and misconduct. This act shall be just and proper cause for termination. Employee may be placed on excuses absence specified in Port's Personnel Rules & Regulations chpt. 9, sec 9.414 if it is determined by the DER/Administrator to do so to ensure a safe working environment.

F. Tampering with the Drug Testing Process

Any applicant or employee who intentionally tampers with a sample provided for drug screening, who willfully adulterates a sample provided for drug screening, violates the chain of custody or identification procedures, or falsifies test results, shall have the offer of employment or appointment withdrawn and such actions shall be grounds of disqualification for the position and/or subject for discharge.

1. **Current Employee:** Any current employee who intentionally tampers with a sample provided for drug screening, who adulterates a sample provided for—drug screening, violates the chain of custody or identification procedures or falsifies test results shall be subject to discharge according to the Port's established Personnel Rules & Regulations.
2. **Applicant:** Any applicant who intentionally tampers with a sample provided for drug screening, who adulterates a sample provided for—drug screening, violates the chain of custody or identification procedures or falsifies test results shall have the job offer rescinded according to the Port's established Personnel Rules & Regulations.

XV. EMPLOYEE ASSISTANCE AND REHABILITATION

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- A. The Port supports education and treatment for substance abuse. Employees with a substance abuse problem are encouraged to seek professional help or contact the Department of Mental Health and Substance Abuse for information and confidential assistance in entering a treatment and/or rehabilitation program.
- B. Any employee with a substance abuse problem who voluntarily seeks assistance prior to being found in violation of any provision of this policy or to being required to submit to the Port's mandated substance abuse test shall be permitted a one-time opportunity to seek rehabilitation for their problem. Such employee shall not be disciplined under this policy unless the employee's action or conduct otherwise violates this policy or any other Port policy or guideline.
- C. Employees who seek rehabilitation shall be responsible for related expenses.
- D. Upon successful completion of a rehabilitation program, an employee shall ensure that the Port's Designated Employer Representative (DER) receives a written certification of his or her successful completion of the rehabilitation program from a Substance Abuse Professional and a negative drug test result for use of alcohol and illegal drugs. Upon receipt of such certification and test result by the institution, the employee shall be returned to active employment status. Wherever possible, the employee shall be allowed to return to his or her former position, if available. The Port however, shall not guarantee that the employee's former position or salary will be available.
- E. Rehabilitation and its costs are the sole responsibility of the employee. Employees who are enrolled in the Port's medical insurance plan and who seek or are directed to obtain rehabilitation for substance abuse may be entitled to benefits as provided by the plan. Such employee should consult their medical insurance plan regarding coverage.

XVI. CONFIDENTIALITY

The Port shall implement and administer this policy and its substance abuse testing procedures as privately as practicable and as allowed under federal and local statutes and laws. All information received by the Port through the drug-free workplace program is confidential communication. Access to this information is

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limited to those who have a legitimate need to know in compliance with relevant laws and management policies.

XVII. DEFINITIONS

The following are definitions used in the Port's Drug Free Workplace Program Policy or are used by the DER/Administrator, DERs', Supervisors, Managers, Division Heads, Human Resources Administrator, Employee Assistants Program Coordinator in the process of administering testing and compliance of this policy:

- A. **Alcohol or Alcoholic Beverage.** Any beverage with an alcohol content.
- B. **DER/Administrator.** The Personnel Services Administrator shall be the employee authorized by the Port to take immediate action(s) to remove employees from duties or cause employees to be removed from these covered duties and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of the Drugfree Workplace Policy of the Port. The DER/Administrator has the authority to designate other DER's. See Chpt. IX Section 1, subsection a, of the Policy
- C. **Adulterated Specimen.** A urine specimen containing a substance that is not a normal constituent for that type of specimen or containing an endogenous substance at a concentration that is not a normal physiological concentration or one that has been made an impure specimen by a masking agent (adulterants).
- D. **Adulterants.** A substance, which should not be contained within other substances for legal or illegal reasons, which may be added to other substances. For the purpose of this policy, adulterants will be defined as substances added to drug testing sample, such as urine, for the purpose of masking drug(s) usage, illegal or otherwise.
- E. **Applicant.** An individual offered employment in or being promoted, demoted or transferred to any position within the Port. For the purposes of this policy, an employee on probationary status is considered an applicant.

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- F. **Controlled Substance.** Any drug, narcotic or immediate precursor which is specified or referenced in Chapter 67 of Title 9, Guam Code Annotated, Uniform Controlled Dangerous Substance Act, which may subject a person to criminal penalties. Alternatively, any controlled substance which is listed in Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812).
- G. **Conviction.** A finding of guilt by any judicial body charged with the responsibility to determine violations of the Federal or local government criminal statutes.
- H. **Disposition of Drugs Tested.** For the purpose of Port, these are :
 Marijuana (i.e. weed, MJ, Mary Jane)
 Cocaine (i.e. coke)
 Opiates (i.e. crack)
 Amphetamines/ Methamphetamines
 Phencyclidine (i.e. PCP, angel dust)
 Barbiturates (i.e. downers, nembital)
 any or any other disposition as set forth under section B. part XII of the Port Authority of Guam's Drug Free Workplace Program Policy.
- I. **Division Head.** The head of a respective division of the port authority of Guam.
- J. **Drug-Free Workplace Program Operating Procedures (DFWPOP).** All parts of this Drug Free Work Place Policy, of the Jose D. Leon Guerrero Commercial Port Authority of Guam, as referenced in the Personnel Rules and Regulations for Maritime Positions Unique to Port Operations and Certified Technical & Professional Positions.
- K. **Employee Assistance Program (EAP).** The Port's counseling program that offers assessment, short term counseling, and referral services to employees for a wide range of drug, alcohol and mental treatment.
- L. **Employee Assistance Program Coordinator (EAPC).** The individual responsible for implementing and operating the EAP within the Port, by providing counseling, referral, and education services to employees and supervisors regarding the Port's EAP.
- M. **General Manager.** General Manager of the Jose D. Leon Guerrero Commercial Port. This position is empowered to appoint and exercise

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the power to discipline or discharge employees pursuant to Sections 4406 and 10112 of Title 4 and Section 10107 of Title 12, Guam Code Annotated.

- N. **Illegal Drug.** Any drug or controlled substance of which the sale, possession, or consumption is illegal. This includes, but is not limited to, marijuana, cocaine, opiates, amphetamines, methamphetamines, phencyclidine (PCP), and barbiturates.

- O. **Drug Paraphernalia.** Containers or other objects used, intended for use, or designed for use in storing or concealing illegal drugs, and objects, used, intended for use, or designed for use in consuming, inhaling or otherwise introducing any illegal drug into the human body.

- P. **Under the Influence.** Being in a physical or mental condition which affects work in any way; creates a possible risk to the safety and well-being of the individual, co-workers, the general public, and/or Company property; and/or having any detectable level of any illegal drug in the body; and/or having a blood-alcohol level that is considered to be under the influence pursuant to the local statutes.

- Q. **Vehicle.** Any motor vehicle, including but not limited to cars, vans and trucks.

- R. **Reasonable Suspicion.** A good faith belief, even if incorrect, that the actions and/or appearance and/or conduct of an employee are indicative of the use or under the influence of an alcoholic beverage and/or illegal drug. Factors to be considered when determining a reasonable suspicion include, but are not limited to, the following:
 1. Unsafe work habits or practices that endanger the employee himself/herself and/or other employees;
 2. Abnormal work performance;
 3. Physical conditions and/or symptoms such as unstable balance, alcohol on breath, glassy or reddened eyes;
 4. Frequent or unexplained absences from the workplace or jobsite during the employee's shifts;

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5. Abnormal personal behavior and/or poor inter-personal relations on the job;
6. Discovery of controlled substances, alcohol or controlled substance paraphernalia at the work area or on the jobsite, in the possession of or in the immediate proximity of an employee; and/or,
7. Objective evidence of unlawful use of a controlled substance or unlawful sale of a controlled substance as provided by a federal or local enforcement agency.

S. **Positive Drug Test.** The results of a urine sample which is positive.

XVIII. DEFINITIONS TO DETERMINE WHICH EMPLOYEES FALL UNDER DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) REQUIREMENTS

A. To determine which employees fall under HHS requirements, base identification on the following determinations.:

1. **Employee (Contract).** An employee of the contractor who is directly engaged in the performance of work under a government contract. "Directly engaged" is defined to include all direct-cost employees and any other contract employee who has other than minimal impact or involvement in contract performance.

2. **Employee (Grant).** Any person who is on the grantee's payroll and works in any activity under the grant even if not paid by grant funds. The definition includes all "direct charge" employees (those whose services are directly and explicitly paid for by grant funds) and "indirect charge" employees (those who perform support or overhead functions related to the grant and for which the Federal government pays its share of expenses under the grant program.) Those indirect charge employees whose impact or involvement is insignificant to the performance of the grant are not included.

XIX. PERSONNEL RULES AND REGULATIONS SHOWING REFERENCE TO THE DRUG FREE WORKPLACE PROGRAM POLICY

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PERSONEL RULES & REGULATIONS CHPT 3, SEC. 3, L.: Employees shall refrain from unlawful use of drugs and alcohol. Drugs shall mean those identified in the Drug-Free Workplace Program Operating Procedures (DFWPOP).

PERSONEL RULES & REGULATIONS CHPT 3, SEC. 3.4.

CRIMINAL CHARGES OR CONVICTION

- A. **Employee's Duty to Report.** An employee in the classified service who is charged by indictment, information or magistrate's complaint with any crime in any court or who is convicted of a crime in any court except Traffic Court shall provide the General Manager (or designee) with written notice of the charges or the conviction within 72 hours thereof.

- B. **Failure to Report.** An employee's failure to provide notice as required is grounds for a separate Adverse Action. The 60 day limitation imposed by Title 4, GCA, Section 4406 commences when the employee gives notice of the charges or conviction of a crime to the General Manager (or designee) as required in Rule 3.400.A.

PERSONEL RULES & REGULATIONS CHPT 4, SEC 4.302:

Drug Testing. Applicants selected for and offered employment with the Port shall undergo and pass a mandatory drug test before being employed. Failure to submit to, or pass such drug test shall be grounds for rescinding the offer of employment, unless the applicant is undergoing treatment through a rehabilitation program approved or recognized by the Department of Mental Health and Substance Abuse, in which case the applicant must successfully complete the program within the prescribed time before being employed.

Employees selected for any position within the Authority will be tested as provided in the Drug Free Workplace Program Operating Procedures (DFWPOP).

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PERSONEL RULES & REGULATIONS CHPT 9, SEC 9.414:

Absence Pending Formal Investigation. An employee, who is under formal investigation by the Port for misconduct, or violation of a rule or statute, may be placed on excused absence from duty without charge to leave, not to exceed twenty (20) work days when the employee's absence from the work location is essential to the investigation.

PERSONEL RULES & REGULATIONS CHPT 9, SEC9.6:

Leave Without Pay (LWOP). A temporary, unpaid absence from work granted at the employees' request.

Employees must request LWOP and have it approved in advance, except in the case of emergencies. Supervisors may grant up to a **30 day period** of LWOP **for any justifiable reason**. LWOP in excess of 30 continuous days is regarded as **extended** LWOP and is subject to the following provisions:

a form SF-52, Request for Personnel Action, must be completed in order to request, authorize, and process extended LWOP;

Initial grants of extended LWOP (and any subsequent extensions) are limited to one calendar year; supervisors must be reasonably sure that any employees taking extended LWOP will return to duty once the LWOP has expired (except in the case of disabled veterans and employees applying for disability compensation or retirement); and extended LWOP may be granted **only** if such leave will benefit the Port and advance the welfare of the employees.

PERSONEL RULES & REGULATIONS CHPT 10, SEC 10.104:

Termination of Employment. The General Manager (or designee) shall terminate the employment of those employees who become disabled as a result of an injury, accident or illness that is not a result of misconduct or found to be medically non-qualified for their present position only for the following reasons:

- A. If no suitable placement can be made or if the employee refuses placement in a suitable position.

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- B. If the employee refuses or is ineligible for retirement
- C. If the General Manager (or designee) has evidence that the employee is permanently disabled from performing the job, or will be disabled for a long time that termination is necessary in light of demonstrated business realities.
- D. Such termination shall be consistent with the Adverse Action Procedures, Chapter 11.

PERSONEL RULES & REGULATIONS CHPT 11:

Adverse Action Procedures. The General Manager derives its authority and responsibility for employee discipline under the provisions of Section 4105, Title 4, of the GCA. The General Manager has the responsibility to remove suspend, or demote to another position on a fair and equal basis, any employee in the classified service whose conduct or capacity is such that his removal, suspension or demotion will promote the efficiency of government service.

The General Manager may delegate responsibility for administration of day to-day discipline to his line-management, to include such progressive discipline, as oral admonitions, letters of warning, letters of reprimands, and recommendation of adverse actions.

Drug-Free Workplace Act of 1988

The Drug-Free Workplace Act Covers federal government agencies, federal contractors with contracts or purchase orders totaling \$25,000 or more, recipients of federal grants, and any individuals awarded federal contracts.

Definitions:

Employee(Contract) - An employee of the contractor who is directly engaged in the performance of work under a government contract. "Directly engaged" is defined to include all direct-cost employees and any other contract employee who has other than minimal impact or involvement in contract performance.

Employee(Grant) - Any person who is on the grantee's payroll and works in any activity under the grant even if not paid by grant funds. The definition includes all "direct

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charge" employees (those whose services are directly and explicitly paid for by grant funds) and "indirect charge" employees (those who perform support or overhead functions related to the grant and for which the Federal government pays its share of expenses under the grant program.) Those indirect charge employees whose impact or involvement is insignificant to the performance of the grant are exempted.

Substance Abuse and Mental Health Services Administration (SAMHSA)

DEPARTMENT OF HEALTH AND HUMAN SERVICES Mandatory Guidelines for

Federal Workplace Drug Testing Programs Effective 10/1/2010

Division of Workplace Program

SAMHSA and the Center for Substance Abuse Prevention urge employers to clearly encourage prevention, early intervention, and treatment rather than waiting for problems to escalate to the point where they require discipline or termination.

Under the Act, employers must (a) establish an employee drug awareness and education program, (b) publish and provide workers with an antidrug policy statement, and (c) meet other requirements. The DOT's Drug Testing Rules cover employers in the air, rail, trucking, and mass transit industries and employers with operations otherwise covered by DOT. Those rules require the testing of employees in safety-sensitive positions for alcohol and illegal drug use.

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Return to Work Agreement Form (Last Chance Policy Agreement)

In lieu of terminating employment of an employee who tests positive for illegal substances, the Port Authority of Guam provides the employee a final opportunity to agree to comply with all the Port's policies and practices.

[_____] and the Port Authority of Guam agree to the
(Name of Employee)

following:

The employee tested positive for an illegal substance, a serious violation of the Port's policy. Instead of immediately terminating employment, [_____] (Name of Employee) will be suspended from work without pay for five (5) work days.

The employee agrees to abstain from the use of illegal substances. The employee has received another copy of the employers drug and alcohol policy and agrees to comply with all provisions of this policy.

The employee will actively participate in the company's employee assistance program (EAP). The employee will schedule [his/her] first EAP appointment no later than one week from the date of this Agreement.

If instructed by the EAP counselor to seek medical advice or a Substance Abuse Provider, the employee will seek this assistance regarding [his/her] use of illegal substances and will comply with all of the medical professionals recommendations. Employee further agrees to sign the appropriate Medical Release Authorization to allow [Jose D. Leon Guerrero Commercial Port Authority of Guam] to receive information from the medical professional or Substance Abuse Provider.

The employee agrees that all costs of medical consultation and treatment will be the responsibility of the employee and [his/her] medical insurance (as applicable).

If absence from work is necessary as part of the treatment or rehabilitation, the employer will designate the absence as Family and Medical Leave (FMLA) as long as all FMLA requirements under the Port's policy, including medical certification, are met. Available accrued sick leave, vacation and personal leave will be used as part of the FMLA leave.

The employee agrees to unannounced periodic follow-up drug testing for a period of one (1) year from the date of this agreement.

