I. PURPOSE:

The Borough of Dunellen (the “Borough”) subscribes to the belief that the abuse of alcohol and/or drugs including controlled substances and cannabis items by Borough employees is incompatible with the Borough's obligation to endeavor to provide a safe and productive work environment for its employees and for its citizens to ensure their safety and trust in the Borough. The Borough further believes that healthy, drug-free employees are a greater asset to the Borough, to society and to themselves. The goal of the Borough Alcohol- and Drug-Free Workplace Policy (“Policy”) is to maintain a work force free from prohibited drugs and alcohol abuse. The possession, use or distribution of drugs/alcohol in the workplace poses an unacceptable risk to employees, the public and the Borough of Dunellen. Accordingly, the Borough of Dunellen hereby establishes the following policies and procedures, which shall apply to all Borough employees, inclusive of the Department of Public Works. This policy shall not apply to the Police Department, which is governed by its own separate policy.

II. AUTHORITY:

This Policy is intended to comply with all applicable federal and state statutes and regulations governing workplace and anti-drug testing including, but not limited to the following:


III. POLICY:

A. It is the responsibility of all employees to maintain personal health so that they are physically and mentally capable of performing in the workplace. The abuse of drugs or alcohol is an unsafe and counterproductive practice which will not be tolerated by the Borough. NOTE: In this Policy, the terms "abuse" and "substance abuse" will be used interchangeably to mean the use or abuse of or dependency on illegal drugs, alcohol or drugs that can be prescribed but are used in a manner inconsistent with the prescription.
B. Any employee of the Borough reporting for work and found to be under the influence of alcohol or drugs including controlled substances and cannabinoid metabolites or using drugs or alcohol while at work or in possession of alcohol or drugs, manufacturing, selling, offering for sale, trading or providing illegal drugs or alcohol will be subject to disciplinary action, up to and including termination. This Policy is in effect for all employees while on Borough property, which includes the parking lots, or while engaged in Borough business. The sale, possession, manufacture, distribution, dispensation, use or purchase of prohibited drugs and/or alcohol on Borough property or while conducting Borough business is prohibited. Borough property includes all areas in which the Borough operates its equipment, property owned or leased by the Borough, Borough vehicles and employee-owned vehicles in use on Borough time or property as well as lockers, desks, equipment, work space and storage facilities owned or leased by the Borough. (Borough-sponsored activities which may include the responsible service of alcoholic beverages are not included in this provision, provided that abuse does not occur.)

C. In an effort to ensure that the Borough is an alcohol and drug-free workplace and to comply with Department of Transportation (“DOT”) regulations, a drug testing program will be in effect for any person designated in a DOT regulation as subject to drug testing and/or alcohol testing including, by way of example and not limitation, individuals currently performing a safety-sensitive function, e.g. persons performing duties requiring a commercial driver’s license, and applicants for employment subject to pre-employment testing. This Policy will provide for pre-employment, random, post-accident, reasonable suspicion, return-to-duty and follow-up testing. The Borough has retained a Medical Review Officer or Agency (hereinafter referred to as the “MRO”) to manage and administer the testing program.

D. Any employee reporting for work impaired and unable to properly perform his/her required duties will not be allowed to work. If possible, the supervisor will first seek another supervisor's opinion regarding the employee's status. Also, where applicable, the supervisor will subsequently consult privately with the employee about the observation. If, in the opinion of the supervisor(s), the employee is considered impaired, the employee will be required to be tested for alcohol, drugs, and controlled substances including cannabinoid metabolites. Supervisors that observe behavior constituting reasonable suspicion are required to send the employee for alcohol, drug, or controlled substance testing and do not have the option of sending the employee home as an alternative. (Under no circumstances should an impaired employee be allowed to drive.) The Borough will make arrangements to have the employee driven to the test site and home.

E. Prescription drugs prescribed by the employee's licensed medical practitioner may be taken during working hours. The employee is, however, required to notify the supervisor if the use of properly prescribed prescription drugs may adversely affect the employee's work performance. The employee must provide a letter from the prescribing physician that states that the use of the medication will not adversely affect job performance. The abuse of prescription drugs will not be tolerated.
F. The Borough will provide an Employee Assistance Program (EAP) for its employees (including supervisory personnel), which will include a program of education and training on the effects of drug/alcohol abuse. The Borough will make available to all employees informational material related to the cause and effects of substance abuse and additionally will provide a community service hot-line telephone number, which can be used by its employees whenever assistance is required. Supervisory personnel, who will be in a position to determine whether an employee must be drug/alcohol tested pursuant to the policies herein, will receive a minimum of one hour of training on the specific physical, behavioral and performance indicators of probable drug/alcohol abuse. It is the responsibility of all employees to seek assistance from the EAP before drug/alcohol problems lead to violations of this policy and/or disciplinary action.

G. The Borough has determined to take action against its employees who unlawfully use, manufacture, distribute or possess alcohol, drugs and/or controlled substances during or outside assigned working hours in order to prevent illegal activities and to protect employees, the public and the Borough and its property from any danger which may result from the illegal use of alcohol, drugs and/or controlled substances.

H. The Borough has further determined that it will not employ or use the services of any employee who refuses to be tested for drugs/alcohol and will discipline any employee who fails a drug/alcohol test as permitted by law, which may include termination of employment.

I. All employees are required to acknowledge, in writing, their receipt of this policy. All employees will be provided with a copy of this Policy.

IV. DEFINITIONS:

As used in this Policy, the following terms shall have the respective meanings indicated below:

ADULTERATED SPECIMEN: A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

ALCOHOL CONCENTRATION: The quantity of alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under this Policy.

ALCOHOL CONFIRMATION TEST: A subsequent test using an Evidential Breath Test (EBT) following a screening test with a result of alcohol concentration level of 0.02 or greater, that provided quantitative data about the alcohol concentration.

ALCOHOL SCREENING TEST: An analytic procedure to determine whether an employee has a prohibited concentration of alcohol in a breath or saliva for an alcohol test.
CANCELLED TEST: A drug or alcohol test that has an identified problem that cannot be or has not been corrected, or which this Policy otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

CONFIRMATION (OR CONFIRMATORY) DRUG TEST: A second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite.

CONFIRMATION (OR CONFIRMATORY) VALIDITY TEST: A second test performed on a urine specimen to further support a validity test result.

DESIGNATED EMPLOYER REPRESENTATIVE (“DER”): An employee designated by the Borough to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation process. The DER also receives test results and other communications for the Borough, consistent with the requirements of this Policy. The Borough Administrator is the DER under this Policy.

DILUTED SPECIMEN: A specimen with creatinine and specific gravity values that are lower than expected for human urine.

EMPLOYEE: A person employed by the Borough, which includes those who require a commercial driver’s license to be maintained, employees in safety-sensitive positions, including all DPW employees, foremen and supervisors, police dispatchers, SLEO I, and Crossing Guards. CDL holders will be one pool and all other employees will be in the second pool.

FAIL A DRUG/ALCOHOL TEST: The confirmation test result shows positive evidence of the presence of a prohibited or legal drug/alcohol in an employee's system.

LEGAL DRUGS: Drugs prescribed by a licensed medical practitioner for the employee and over-the-counter drugs which have been legally obtained and are being used by the employee as directed and for the purpose for which they were prescribed or manufactured.

MEDICAL REVIEW OFFICER (“MRO”): A licensed medical practitioner who is responsible for receiving and reviewing laboratory results generated by the Borough of Dunellen drug testing program and evaluating medical explanations for certain drug test results.

PROHIBITED DRUGS: The drugs for which tests are required under 49 C.F.R., Part 40 and DOT Regulations including marijuana metabolites, cocaine metabolites, amphetamines, phencyclidine (PCP) and opioids, except when prescribed by a licensed medical practitioner. This exception applies only when the drug is used as prescribed or authorized by the individual to or for whom the drug was prescribed or where such use is otherwise permitted by law. In addition, specimens may be tested by the Borough’s testing agent at the Borough’s request for steroids as well as other currently abused chemicals.
SAFETY-SENSITIVE POSITION: A position where the presence of alcohol and/or drugs in an employee may place the employee, co-employees and the public in danger of injury to life or limb, such as, but not limited to, when operating a motor vehicle, power tools, heavy machinery, working in high places or at or near busy roads.

SPLIT SPECIMEN: In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the donor requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

SUBSTITUTED SPECIMEN: A specimen with creatinine and specific gravity that is so diminished that it is not consistent with human urine.

V. PRE-EMPLOYMENT TESTING:

A. All prospective employees selected for a position will be required to undergo post-offer, pre-employment testing for the presence of alcohol and prohibited drugs. A negative test result is a condition of employment and a positive test result will result in the individual being dropped from further consideration for employment with the Borough at that time or in the future.

B. The Borough shall not refuse to hire or employ any person because that person does or does not smoke, vape, aerosolize or otherwise use cannabis items.

C. Failure to keep an appointment with the MRO to undergo testing for the presence of alcohol and/or prohibited drugs, which was previously agreed to by both the prospective employee and the MRO, will be viewed as a refusal to submit to testing and will result in the individual being dropped from further consideration for employment with the Borough at that time or in the future. The drug test will be performed in accordance with Appendix D (Pre-Employment Drug Testing Policy & Procedure), which is attached hereto.

VI. RANDOM TESTING:

A. All employees who have commercial drivers’ licenses and those in safety-sensitive positions will be subject to random, unannounced alcohol and drug tests on an annual basis. Testing will be done during working hours, except under exigent circumstances. The Borough shall be responsible for the costs of the testing. Split-sample testing will be conducted as provided by this Policy. Selection criteria, number of tests and test frequency will be determined by the language of the applicable Federal Highway Administration (“FHWA”) regulations and will be communicated to employees by Borough management or the MRO. However, annually at least twenty percent (20%) of employees will undergo drug testing and twenty percent (20%) of employees will undergo alcohol testing. Monthly, but no later than quarterly, a prorated number of employees will be tested. This will ensure
that the ratios above are conducted over the calendar year. Any employee who is absent will go back into the random pool and another employee will be drawn.

B. Upon notification of selection, the employee must report to the designated collection site immediately. Failure to report immediately will be treated as a refusal to submit to the test and will result in disciplinary action, up to and including termination.

VII. REASONABLE SUSPICION TESTING AND EMPLOYEE PHYSICAL:

A. All employees are subject to a fitness-for-duty evaluation, to include urine and breath-testing, when there is reasonable suspicion to believe that the employee is in violation of this Policy. A reasonable cause referral for testing will be made on the basis of documented, objective facts and circumstances which are consistent with the long/short-term effects of substance and/or alcohol abuse.

B. Examples of reasonable suspicion include, but are not limited to, the following:

(1) Physical signs and symptoms consistent with substance and/or alcohol abuse.

(2) Evidence of the manufacture, distribution, dispensing, possession or use of controlled substances, alcohol, or drugs.

(3) See Appendix C (Prohibited Conduct), which is attached hereto.

C. Reasonable cause testing determinations will be made by a supervisor or other Borough official who is trained to recognize the signs and symptoms of drug and alcohol use and who can reasonably conclude that an employee may be adversely affected or impaired in his/her work performance due to intoxication, drug use, or controlled substance use. If another supervisor or Borough official is immediately available, he/she will verify that there is reasonable cause before the employee is transported to the MRO’s facility. At no time will this determination be made on the basis of third-party reports without verification.

D. The observations and the determination of the supervisor(s) shall be set forth in a written report, which should be completed prior to testing, but no later than 2 hours after the employee is sent to the testing facility. The written report shall be forwarded to the Administrator who shall keep the report confidential. The report is attached hereto as Appendix E (Supervisor’s Report).

E. NOTE: Employees are cautioned that various over-the-counter and prescribed medications can adversely affect ability to operate vehicles and other equipment. It is the employee's responsibility to report to work each day fit for his or her duties.
F. Employees who are deemed to require a fitness-for-duty evaluation based on reasonable cause will be sent to a health facility of the Borough's choice. The attending physician will make every attempt to determine the cause of the observed behavior, including authorizing, when his/her medical opinion dictates, an additional alcohol or drug test. Employees will be placed on unpaid medical leave of absence until the results of the examination are received by the Borough. Receipt of a negative drug test result and/or doctor's statement that the employee was and is fit for duty is required prior to return to duty and continued employment. Employees who are returned to duty by this means will be reinstated without prejudice and without loss of pay.

G. Employees who are medically determined to be temporarily unfit to perform their duties, but who test negatively for alcohol or drugs, will be returned to duty when they obtain the original examining doctor's written statement that they are fit for duty. Any fitness for duty examination will only determine whether the employee is fit for duty and no medical information shall be disclosed.

H. The drug test shall include scientifically reliable objective testing methods and procedures, such as testing of blood, urine, or saliva and may include a physical evaluation in order to determine an employee’s state of impairment conducted by a person certified to opine on the employee’s state of impairment, or lack thereof, designated by the related to the usage of a cannabis item. Such testing shall be done by a designated agent of the Borough, who shall follow the procedures set forth in this Policy.

VIII. POST-ACCIDENT TESTING:

A. Any employee involved in an accident, while on Borough property or while engaged in Borough business, will be required to submit to a post-accident alcohol and drug test if:

   (1) The employee-driver involved in a motor vehicle accident receives a citation for a moving violation; or

   (2) There is a fatality as a result of a motor vehicle accident; or

   (3) The accident meets the DOT criteria for a motor vehicle accident, including but not limited to: (a) bodily injury to any person who requires immediate medical treatment away from the scene of the accident; or (b) one or more vehicles are disabled at the accident scene and require towing or transport by another vehicle;

   (4) The employee is involved in any motor vehicle accident involving a Borough vehicle; or

   (5) Any incident or accident which suggests or appears to be the result of being under the influence of drugs, controlled substances, or alcohol.
B. When post-accident testing is required, the Borough will make every effort to have such testing performed within two (2) hours of notification of the accident. At no time will a period of more than eight (8) hours transpire between notification and testing. Documentation of the entire post-accident procedure should be made by all personnel involved in the notification and testing process.

C. Receipt by the Borough of a negative alcohol and drug test result is required prior to return to duty. A positive test result may disqualify an employee from further employment or reinstatement at that time or any time in the future and subject the employee to disciplinary action, up to and including termination of employment.

D. The drug test shall include scientifically reliable objective testing methods and procedures, such as testing of blood, urine, or saliva and may include a physical evaluation in order to determine an employee’s state of impairment conducted by a person certified to opine on the employee’s state of impairment, or lack thereof, related to the usage of a cannabis item.

IX. RETURN TO DUTY TESTING AND DISCIPLINE:

A. Any employee who tests positive for alcohol or prohibited substances will not be permitted to return to work, where applicable, until he/she has met the following:

(1) The employee must be evaluated by a substance abuse professional. This professional must meet the criteria outlined in the DOT’s Alcohol and Drug Rules for Substance Abuse Professionals; and

(2) The employee must comply and complete all recommendations made by the substance abuse professional and be able to document same; and

(3) The employee must submit to return-to-duty testing, and proof of a negative test result must be received by the Borough. Return-to-duty testing for employees holding CDLs will be conducted by direct observation. See Part X.B.

B. When the employee is cleared to return to work, he/she will be required to pass an alcohol and drug test. Upon receipt of a negative test result, if an employee is allowed to return to work, he/she will be subject to follow-up testing as required by applicable law and regulations and this Policy. The cost of the follow-up testing will be equally split between the Borough and the employee.

C. All employees are entitled to voluntarily participate in the Employee Assistance Program (“EAP”). However, if there is a positive test result (prohibited drug or alcohol), participation in the EAP or an alternate program approved by the Borough shall be a prerequisite to continued employment. Refusal to enroll in an EAP or alternate program, or to complete a full course of rehabilitation, shall be cause for immediate termination of employment with the Borough. A positive alcohol test is one with an alcohol concentration level of 0.040 or greater. Employees with a pattern of readings between 0.020 and 0.039
will also be subject to enrollment in a mandatory counseling program as a condition of continued employment with the Borough. Employees will be permitted to use accrued sick or vacation time, if available, to attend any counseling programs.

D. In addition to completing a mandatory course of rehabilitation, employees shall be subject to the following discipline(s):

(1) Following the confirmation of a positive test result, there shall be a suspension without pay of up to 30 days. In the case of an alcohol test result between 0.020 and 0.039, the penalty will be a suspension without pay for the remainder of that day's work shift unless a pattern of this type of abuse has developed. In either case, the suspension(s) shall remain in full force and effect until there is a negative retest provided to the Borough through a certified laboratory (all costs of testing to be borne by the employee), and failure on the part of the employee to present a negative test result within six weeks from the original incident date shall automatically result in his/her termination. After two weeks, the Borough reserves the right, for reasons of operational efficiency, to fill the suspended employee's position and, in such case, the suspended employee would be entitled to the next available opening for which he/she qualifies, provided that all other conditions (rehabilitation and negative test result) are met.

(2) Employees who test positive for alcohol or drugs on a second occasion or found to be in violation of this Policy (confirmation of a positive prohibited drug or alcohol test result) on a second occasion will be immediately dismissed and permanently barred from future employment with the Borough.

E. Except as provided by law regarding a positive test by a holder of a CDL, no employee shall be subject to any adverse action solely due to the presence of cannabinoid metabolites in the employee’s bodily fluid, but adverse action may be imposed where the employee’s work performance causes a reasonable suspicion that that employee is impaired due to current intoxication, drug or controlled substance use, following a work-related accident subject to investigation, or in cases where employment has been conditioned upon remaining alcohol, drug, or controlled substance free following treatment and the physical evaluation confirms that the employee was impaired during working hours due to the use of a cannabis item.

X. FOLLOW UP TESTING:

A. Any employee returning to work with the Borough after being disqualified for a positive alcohol or prohibited drug test or returning to work after a leave of absence for voluntary substance abuse treatment will be subject to random follow-up testing. The employee will be tested at least six (6) times in the first twelve (12) months after returning to duty and may be subject to follow-up testing without prior notice for up to thirty-six (36) months. However, the employee is not given a fresh start after this period; the verified positive result remains in his/her file. If any employee tests verified positive on a subsequent post-rehabilitation testing, or on any other test
during employment with the Borough, that employee shall be terminated from employment with the Borough immediately.

B. **The following paragraphs C-J apply only to employees who hold CDLs.**

C. In accordance with 49 C.F.R. § 40.67, an employee will be required to provide a specimen immediately under direct observation if:

   (1) The laboratory reported to the MRO that a specimen is invalid, and the MRO reported to the Borough that there was not an adequate medical explanation for the result;

   (2) The MRO reported to the Borough that the original positive, adulterated, or substituted result had to be cancelled because the test of the split specimen could not be performed; or

   (3) The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen to the Borough as negative-dilute and that a second collection must take place under direct observation (see §40.197(b)(1)).

D. Collection of specimens will be done under direct observation if the drug test is a return-to-duty test or a follow-up test.

E. Employees will be subject to direct observation when directed as required by paragraphs C and D of this section; or employees bring materials to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen; or the temperature on the original specimen was out of range; or the original specimen appeared to have been tampered with.

F. The Borough and/or the collector will explain to the employee the reason for a directly observed collection under paragraphs C, D or E of this section.

G. The observer under direct observation will be the same gender as the employee.

H. Under direct observation, the employee will be requested to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show the observer, by turning around, that they do not have a prosthetic device. After the observer has determined that the employee does not have such a device, the observer may permit the employee to return clothing to its proper position for observed urination.

I. The observer must watch the employee urinate into the collection container. Specifically, the observer will watch the urine go from the employee's body into the collection container.

J. If any employee declines to allow a directly observed collection (which is required or permitted under this section) to occur, it will be treated as a refusal to test.
XI. TESTING PROCEDURES:

Collection of the urine specimen shall be done in accordance with federal regulations, as described in 49 C.F.R. §§ 40.41-40.73, which are outlined in the instructions for employees attached to this Policy as Appendix B (Donor’s Checklist for Drug Testing). Collection will be done at a collection site designated by the MRO. A proper chain of custody shall be maintained. Should this chain be broken, the test shall be invalidated and a new collection made.

XII. DRUG TESTING:

A. All drug testing required by the Borough will be performed in accordance with DOT guidelines. Drug testing is by urinalysis using split samples. Split-sample testing requires the specimen be divided into two separate specimen containers during the collection process. These two containers are designated as: the primary specimen, which shall contain no less than thirty (30) milliliters of urine; and the split specimen, which shall contain no less than fifteen (15) milliliters of urine. Upon arrival at the laboratory, the primary specimen will be opened and tested. In the first screening test, immunoassay techniques are used to screen urine specimens for classes of drugs. In the second or confirmation test, any positive results found in the first screening will be confirmed using the tandem technique of gas chromatography/mass spectrometry (GC/MS), which positively identifies and quantifies the presence of specific drugs. No test result will be reported by the laboratory to the MRO as a positive drug test result unless both the initial screening test and the confirmation test are positive. The laboratory shall report the test results to the MRO, who shall evaluate the chain of custody, urine custody form and test results.

(1) All employees (or applicants for employment who have received a conditional offer of employment) selected or directed for drug testing (whether random, reasonable suspicion, post-accident, return-to-duty, or pre-employment) shall complete the Drug Testing Medication Form, which is attached hereto as Appendix F.

B. The MRO will perform the following duties for the Borough:

(1) The MRO will review the results of each drug test before it is reported to the Borough.

(2) The MRO will review and interpret each confirmed positive test result in the following manner to determine whether or not there is an acceptable medical explanation for the confirmed positive result:

(a) The MRO/ will conduct a medical interview with the employee, either in person or by telephone.
(b) The MRO will review the employee's medical history and relevant biomedical factors.

c) The MRO will review medical records made available by the employee to determine if a confirmed positive result could be attributed to the use of legally prescribed medication.

d) The MRO will require, if it is deemed necessary, that the original specimen be reanalyzed.

e) The MRO will verify that the laboratory report and assessment are accurate.

(f) If the MRO determines that there is a legitimate medical explanation for the confirmed positive result, he/she will take no further action other than informing the Borough of his/her determination that the test result is negative.

(3) If the MRO verifies that a confirmed positive test result is scientifically sufficient and that there is no legitimate medical explanation for the confirmed positive result, the MRO shall immediately contact the Borough's DER (who will instruct the employee's supervisor to immediately suspend the employee pending management review and determination of appropriate action) and the employee. For positive a test result for a cannabis item during working hours, the MRO will ensure that a physical evaluation is completed by an appropriately certified individual to determine whether the employee was impaired during working hours due to the use of a cannabis item.

(4) The MRO will determine whether and when a rehabilitated employee may return to work.

(5) The MRO will determine a schedule of post-rehabilitation testing, after consulting with the Borough's designated representative, for an employee returning to work after rehabilitation.

(6) The MRO will ensure that an employee is tested in strict compliance with the applicable DOT procedures before an employee may return to work after rehabilitation.

(7) If the MRO so determines, based upon a review of laboratory inspection reports, quality assurance and quality control data and other drug test results, that a particular drug test result is scientifically insufficient, the MRO will conclude that the test is negative, and no further action shall be taken. The MRO may request a reanalysis of the original specimen prior to making this determination. The MRO may request the reanalysis be performed by the same laboratory or that an aliquot of the original specimen be sent for reanalysis to an alternate laboratory certified
by the United States Department of Health and Human Services (USDHHS). The laboratory shall assist the MRO in making his/her determination by having its personnel available to the MRO for consultation upon request by the MRO.

(8) Reporting and review of results:

(a) Review by MRO.

The MRO will review all test results prior to the transmission of the results to the Borough to consider possible alternate medical explanations for confirmed positive test results. The MRO shall have the qualifications and responsibilities, including those pertaining to the investigation, confirmation and communication of verified positive and negative test results and the disposition of scientifically insufficient test results, as set forth in the Medical Review Officer section of this Policy.

(b) Positive test results.

1. If, after making all reasonable efforts and documenting them, the MRO is unable to reach the individual directly, the MRO shall contact the Borough's DER who shall direct the individual to contact the MRO as soon as possible. The Borough's DER shall employ procedures that ensure, to the maximum extent practicable, the requirement that the employee’s contact with the MRO is held in confidence.

2. If, after making all reasonable efforts, the Borough's DER is unable to contact the employee, the MRO may place the employee on temporary, unpaid leave.

3. The MRO may verify a test as positive without having communicated directly with the employee about the test in three circumstances:

   (a) The employee expressly declines the opportunity to discuss the test.

   (b) The Borough's DER has successfully made and documented a contact with the employee and instructed the employee to contact the MRO, and more than five (5) calendar days have passed since the date the employee was successfully contacted by the DER, without the employee contacting the MRO; or

   (c) If neither the DER nor MRO, after making and documenting all reasonable efforts, has been able to
contact the employee within 10 days of the date the MRO received the confirmed test from the laboratory.

4. Under the split-test method, and if the employee so chooses the split-test method, such test may be conducted, and if there is a positive result, the provisions/procedures and penalties of this Policy shall apply.

5. If a test is verified positive under the circumstances specified in this Policy, the employee may present to the MRO information documenting that serious illness, injury or other circumstances unavoidably prevented the employee from timely contacting the MRO. The MRO, on the basis of such information, may reopen the verification, allowing the employee to present information concerning a legitimate explanation for a confirmed positive test. If the MRO then concludes that there is a legitimate explanation, the MRO may declare the test to be negative.

6. Following verification of a positive test result, the MRO shall refer the case to the Borough's DER for other rehabilitation or administrative action.

(c) Verification for opiates.
Before verifying a confirmed positive test result for opiates, the MRO shall determine that there is clinical evidence other than, or in addition to, the urine test of unauthorized use of any opium, opiate or opium derivative, unless confirmation testing for opiates confirms the presence of 6-acetylmorphine.

(d) Authorized reanalysis.
Only the MRO may order a reanalysis of the original primary specimen. The employee may submit a written request for a retest of the original specimen to the MRO for a reanalysis of the specimen within sixty (60) days following the day the employee was informed by the MRO that he/she tested verified positive for drug use. The MRO shall then authorize the reanalysis at the Borough's expense.

(e) Disclosure of results.
Except as provided in this Policy, the MRO shall not disclose to any third party the results of the drug test or any medical information provided by the employee to the MRO as part of the testing verification process without the employee’s written consent, except as set forth in (e)1 below.

1. The MRO may disclose such information to the Borough, the DOT or other federal safety agency, law enforcement officials or a licensed medical practitioner responsible for determining the medical
qualification of the employee under an applicable DOT agency regulation, as applicable, only if:

(a) In the MRO’s reasonable medical judgment, the information could result in the employee being determined to be medically unqualified for employment; or

(b) In the MRO's reasonable medical judgment, the information indicates that continued performance by the employee of his/her safety-sensitive function could pose a significant safety risk.

2. Before obtaining medical information from the employee as part of the verification process, the MRO shall inform the employee that the information may be disclosed to third parties as provided in (e)(1) above and the identity of any parties to whom information may be disclosed.

3. In the event the MRO discloses information to any third party pursuant to paragraph (e)(1) above, the MRO shall notify the employee in writing of the disclosure, what information is being disclosed, to whom the information is being disclosed, and the reason for the disclosure.

4. Any third party to whom the MRO discloses information pursuant to this section shall maintain the confidentiality of the information consistent with the law.

C. The Borough will immediately remove the employee from his/her job as a result of a verified positive drug test and will suspend the employee pending management review and determination of appropriate disciplinary action as outlined in Article IX.D.

XIII. ALCOHOL TESTING:

A. The DOT Regulations require breath testing for alcohol. This testing must be done using an evidential breath-testing device (EBT) approved by the National Highway Traffic Safety Administration (NHTSA). This testing can only be performed by a Breath Alcohol Technician (BAT) that is certified in the equipment being used.

B. Two breath tests are required to determine if a person has a prohibited alcohol concentration. A screening test is conducted first. Any result less than 0.02 alcohol concentration is considered a negative test, and no further testing is required. If the initial screening shows an alcohol concentration of 0.02 or greater, a second or confirmation test is required. The confirmation test must be taken fifteen (15) minutes after the initial screening. During that fifteen (15)-minute period the employee being tested is to remain with the BAT and must refrain from eating,
drinking, smoking or belching. After the fifteen (15)-minute waiting period, a second breath test will be performed. The results of the second test stand and become the official test result.

C. If the confirmation test result shows an alcohol concentration of less than 0.02, the official test result is negative, and no action is required. If the result of the confirmation test is 0.02 or greater, action by the Borough is required pursuant to policies set forth herein.

D. As well as potential disciplinary action, the Borough will take the following actions in response to breath testing results which an alcohol concentration of 0.02 or greater:

1. If the tested employee's alcohol concentration is between 0.02 and 0.039, the regulations call for the removal of the employee from performing safety-sensitive functions for at least 24 hours and until a negative screen is revealed.

2. If the tested employee's alcohol concentration is 0.04 or greater, he/she must immediately be removed from any safety-sensitive duties until he/she has been evaluated by a substance abuse professional (DOT Regulations have specific guidelines for who qualifies as a substance abuse professional), has complied with any recommended treatment and has taken and passed a return-to-duty alcohol test (result must be less than 0.02). The employee is then subject to unannounced follow-up testing. (See Section X, Follow-up testing.)

3. All other actions as set forth in Section IX.D. above.

E. All applicants and employees are expected to report for alcohol and drug testing as required by this Policy and in accordance with the Borough’s testing procedures. Employees are to report to work with no alcohol or illegal drugs in their bodies. Any refusal to submit to alcohol breath testing or urinalysis drug testing as directed by supervisory personnel will be considered a refusal-to-test and will subject the employee to the consequences as set forth in Article XVI.B. below.

XIV. CONFIDENTIALITY OF TEST RESULTS:

The results of any drug test will be reported to the Borough and recorded in a confidential manner. A copy of the individual’s test results will be available to the individual upon his/her written request. The results and other medical information will not be reported to the Borough without an employee’s written authorization, except as provided for in Article XII, B(8)(e) above.
XV. QUALITY ASSURANCE OF TESTING PROGRAM:

A. The Borough of Dunellen, through its DER, will take steps in its arrangements for testing to ensure that the laboratory is certified by Substance Abuse and Mental Health Services Administration ("SAMHSA") and meets the requirements of the United States DOT.

B. The chain of custody for any urine sample shall be maintained at all times. If the chain of custody is broken, after the tamper proof seal is applied, the employee(s) shall be retested at the Borough's expense.

C. Any employee who receives a positive test result will have the right to ask the MRO to retest the sample at a National Institute on Drug Abuse ("NIDA") certified laboratory of the employee's choice at the employee's expense. Employees whose sample is retested with a negative test result will be reimbursed the cost of the test and returned to work.

D. The Borough, through its DER, will make every reasonable effort to ensure that the equipment being used for alcohol breath testing meets all the requirements of the DOT, and all testing is performed by a qualified BAT.

XVI. GROUNDS FOR DISCIPLINARY ACTION; INSPECTION; APPLICABILITY:

A. Any employee engaging in the manufacture, distribution, dispensing, possession or use of prohibited substances on Borough premises, in Borough vehicles or while on Borough business will face disciplinary action, up to and including termination. Any manufacture, distribution, dispensing, possession or use of prohibited substances by an employee in any manner which adversely affects the employee's job performance or which may cause the public or a government or corporate body to lose confidence in the Borough's ability to perform its responsibilities may result in disciplinary action, up to and including termination. Law enforcement officials could be notified, as appropriate, where criminal activity is suspected. Any employee convicted of violating a criminal drug statute or drunk driving law/statute must notify the Borough's DER within three (3) calendar days of any such conviction.

B. Any employee who refuses to comply with a request for drug testing shall be considered as having produced a positive test result and will be subject to disciplinary action, up to and including termination as set forth in Section IX.D. Any employee who provides false information, in connection with a test, or who attempts to falsify test results through tampering, contamination, adulteration or substitution shall face disciplinary action, up to and including termination. If the laboratory detects any substance which has been added to the sample to interfere with the normal testing process, this will be considered a refusal to test, and the
same sanctions and penalties, up to an including termination, as set forth in Section IX.D, will apply.

C. The Borough reserves the right to inspect, investigate and search for controlled substances at any time, without prior notice, on or in any and all Borough premises and vehicles. All coolers are subject to inspection. Refusal by any employee to cooperate with any inspection, investigation or search that is authorized by a Borough representative or by a court of competent jurisdiction shall result in disciplinary action up to and including termination.

D. This Policy applies to all employees, except for police officers, who are governed by their own policies.

XVII. EMPLOYEES VOLUNTARILY SEEKING HELP:

A. The Borough strongly encourages an employee with a drug/alcohol abuse problem to voluntarily step forward to tell the Borough.

B. The Borough will assist in referring the employee to community assistance programs. An unpaid leave of absence will be granted for a reasonable period for treatment. Employees with accumulated sick and vacation time will be required to use their accumulated time during a leave of absence.

C. It is crucial to note that the accommodations specified in this Section apply only when an employee voluntarily comes forward. If an alcohol or substance abuse problem is disclosed to the Borough after there has been a positive test, a violation of a Borough rule or standard, a violation of law, or a violation of this Policy, the same conditions outlined in Section IX.D. of this Policy apply. If an employee fails to remain drug or alcohol-free after the first voluntary rehabilitation, he/she will be discharged from employment with the Borough.

XVIII. TRAINING:

A. In an effort to educate employees about the dangers of drug use and the Borough's commitment to keeping drugs out of the workplace, each employee will receive information covering the dangers of substance abuse, the Borough's commitment to an alcohol- and drug-free workplace, and the penalties for violation of this Policy.

B. Supervisory employees will receive at least two hours of training on identifying individuals who might be impaired by the use of drugs.

XIX. EMPLOYEE ACKNOWLEDGMENT:

Each employee or prospective employee shall be given a copy of this Policy and he/she must acknowledge receipt of this Policy as a condition of (continued) employment. A sample of this acknowledgment is attached as Appendix A.
XX. **ADMINISTRATION:**

A. The Borough has designated the Business Administrator or his designee to administer the Borough’s anti-drug/alcohol program. The Borough, through its insurance carrier utilizes Dynamic Testing for specimen collection and alcohol/drug testing to be done under the Borough’s and Dynamic Testing’s standard procedures, as outlined above. Dynamic Testing conducts employee awareness and supervisory training program, as designed and administered by UMDNJ and Dynamic Testing, when available, as more particularly required by the Borough’s anti-drug/alcohol program.

B. The Medical Review Officer and Drug/Alcohol Testing Laboratory shall be those entities utilized by Dynamic Testing.
APPENDIX A

ACKNOWLEDGMENT

This will certify that I, ______________________, have been given a copy of the Borough of Dunellen’s Alcohol and Drug Free Workplace Policy addressing alcohol and drugs in the workplace, and I agree to comply with all terms and requirements set forth therein.

EMPLOYEE ____________________________
DATE ________________________________

WITNESS ____________________________
DATE ________________________________
APPENDIX B

Donor’s Checklist for Drug Testing

The collection of your urine will be conducted under procedures mandated by the DOT. The DOT regulations provide for your individual privacy unless there is reason to believe that you may have altered or substituted the urine specimen.

Please take a few minutes to read the following information, which describes your role in the collection process.

Present required photo identification to the collector. If you do not have a photo ID, a Borough of Dunellen representative will be asked to identify you.

You may ask the collector to show his/her identification.

Remove any unnecessary outer garments, e.g., coat, jacket. All personal belongings (e.g., purse and briefcase) must remain with your outer garments. You may ask for a receipt.

When instructed by the collector, wash and dry your hands.

You will be provided a sealed specimen bottle (or collection container) or the collector may unwrap it in your presence. You will be allowed to select your specimen kit from a box full of like, sealed specimen kits.

You may provide the specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy.

If you are being tested for Return-to-duty or Follow-up testing, specimens must be provided by direct observation.

After providing the specimen to the collector, he/she will divide the sample into two separate containers.

You should initial the security tape on the specimen containers to certify that it is your specimen. These sealed containers will then be placed in a security bag or security box. These will be sealed with security tape in your presence.

You should observe the entire collection procedure.

You should complete the information on copies 3 through 6 of the custody and control form. You will be given a copy of the completed form after the collector has completed his/her certification.

You should NOT list medications/prescriptions that you are or have taken in the past 14 days on
any other copy of the form except the copy which you are given for your records.

The results of the laboratory analysis will be forwarded to our Medical Review Officer (“MRO”). If the laboratory results are negative, the MRO will notify the Borough of Dunellen. If the laboratory results are positive, the MRO will contact you at the phone number you provided to give you the opportunity to discuss the test results.
APPENDIX C

PROHIBITED CONDUCT

The following conduct is specifically prohibited:

A. Alcohol concentration.
   
   (1) No employee shall report for duty or remain on duty while having an alcohol concentration of 0.02% or greater, and no employer having actual knowledge that an employee has a concentration of 0.02% or greater shall permit an employee to perform or continue his/her duties.

   (2) An alcohol concentration of 0.02 or greater means no functions can be performed for at least twenty-four (24) hours and another negative screen must be revealed to the employee's supervisor.

B. Alcohol possession. No employee shall be on duty or operate a motor vehicle while on duty with the Borough while possessing alcohol, unless the alcohol is manifested and transported as part of the shipment. No employer having actual knowledge that the employee possesses alcohol may permit the employee to drive or continue to drive a motor vehicle.

C. On-duty alcohol use. No employee shall use alcohol while performing his/her duties and, if the Borough of Dunellen has actual knowledge that an employee is using alcohol, the Borough shall not permit the employee to perform or continue to perform his/her duties.

D. Pre-duty alcohol use. No employee shall perform his/her duties within four hours after using alcohol if such use impairs the employee's duties. If the Borough of Dunellen has actual knowledge that an employee has used alcohol within the preceding four (4) hours, it shall not permit the employee to perform or continue to perform his/her duties if such use impairs the employee's duties.

E. Alcohol use following an accident. No employee, who is subject to a post-accident alcohol test, shall use alcohol for eight hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first.

F. Refusal to submit to a required alcohol or controlled substance test. No employee shall refuse to submit to an alcohol or controlled substance test under any circumstances in which the Borough rules require such a test. The Borough of Dunellen shall not permit an employee who refuses to submit to such test to perform or continue to perform his/her duties.

G. Controlled substances use. No employee shall report for duty or remain on duty when the employee uses any controlled substances, except when the use is pursuant to and in accordance with the instructions of a licensed medical practitioner who has advised the employee that the substance does not adversely affect the employee's ability to perform
his/her job duties. If the Borough of Dunellen has actual knowledge that an employee has used controlled substances, except where the use is pursuant to and in accordance with the instructions of a licensed medical practitioner who has advised the employee that the substance will not adversely affect the employee’s ability to perform his/her duties, the Borough shall not permit the employee to perform or continue to perform his/her duties. The Borough of Dunellen requires an employee to inform the Borough of the use of any prescription or nonprescription medication which may impair the employee’s ability to perform his/her duties safely.

H. Positive test for controlled substances. No employee shall report for duty or remain on duty if the employee tests positive for controlled substances. If the Borough of Dunellen has actual knowledge that an employee has tested positive for controlled substances the Borough shall not permit the employee to perform or continue to perform his/her duties.

I. Cannabis Use. Except as provided by law regarding a positive test by a holder of a CDL, no person shall be subject to any adverse action solely due to the presence of cannabinoid metabolites in the employee’s bodily fluid, but adverse action may be imposed where the employee’s work performance causes a reasonable suspicion that that employee is impaired due to current intoxication, drug or controlled substance use, following a work-related accident subject to investigation, or in cases where employment has been conditioned upon remaining alcohol, drug, or controlled substance free following treatment and the physical evaluation confirms that the employee was impaired during working hours due to the use of a cannabis item.
APPENDIX D

BOROUGH OF DUNELLEN

PRE-EMPLOYMENT DRUG TESTING POLICY and PROCEDURE

The Borough of Dunellen is dedicated to providing a safe workplace for its employees and residents. In continuation of this commitment, it is the policy of the Borough to conduct pre-employment and for-cause drug screening programs. Job applicants in the Borough will undergo testing for the presence of illegal drugs as a condition of employment.

Procedure:

1. Once a candidate is selected for a position and an offer of employment is accepted, the candidate will be required to undergo a pre-employment drug screen within forty-eight (48) hours of the job offer. All offers of employment will be made by Borough Administration and are conditional upon completion of a drug screening test.

2. Candidates will be instructed by the Administrator where the nearest testing centers are located.

3. Test results will be received by the Borough's Medical Review Officer (“MRO”) within three (3) business days. Results will be reported to the Administrator at the end of each business day.

4. If the result is a positive test, a confirmation test will then be conducted by the medical laboratory. If the results of the confirmation test also are positive, the offer of employment will be rescinded.

5. Supervisors will be notified by the Administrator of the candidate's employment status.

6. A minimum of one week will be required for the above actions to take place.
APPENDIX E

SUPERVISORS REPORT OF OBSERVED BEHAVIOR REASONABLE CAUSE SCREENING

Suspected individual: ____________________________________________________________

Title/Position/Supervisor.: ______________________________________________________

1. Reason to suspect Substance Abuse Includes: (Please check all that apply)

____ Speech – Slurred                       ____ Neglect of Duty
____ Speech – Rambling                      ____ Incompetence
____ Eyes – Dilated                         ____ Serious Mistake
____ Eyes – Red Rimmed                      ____ Chronic Tardiness
____ Eyes – Constricted                     ____ Chronic Illness
____ Eyes – Watery                          ____ Deteriorated Work Performance
____ Depression                             ____ Absenteeism
____ Panic                                  ____ Unusual Request to Quit Early
____ Confusion                              ____ Tremors
____ Dizziness                              ____ Anxiety
____ Hyperactive                            ____ Belligerent
____ Staggering, Swaying                    ____ Odor of Alcohol
____ Drowsiness                             ____ Other (Specify) __________________
____ Work Habits                            ____ Unexplained Work-Related Accident

2. REMARKS: __________________________________________________________________

____________________________________________________________________________

____________________________________________________________________________

3. Supervisor(s) Completing Form:
   Name(s): _________________________________________________________________
   Title/Position/Department.: ________________________________________________
   Date: ___________________________________________________________________
   Name(s): _________________________________________________________________
   Title/Position/Department: ________________________________________________
   Date: ___________________________________________________________________

4. Administrator_______________________________
   Name(s): ___________ Date: __________________
   Name(s): ___________ Date: __________________
APPENDIX F

DRUG TESTING MEDICATION FORM

As part of the Borough’s Drug and Alcohol Policy, it is essential that you inform us of all medications you have taken in the last thirty (30) days. This form will be utilized only by the MRO as part of his/her verification process and will not be released to the Borough of Dunellen, except when this form is requested in discovery or necessary for the defense or prosecution of disciplinary charges. Please carefully complete the information below.

☐ CHECK ALL THAT APPLY

☐ During the past thirty (30) days, I have taken the following medication(s) prescribed to me by a physician:

<table>
<thead>
<tr>
<th>Name of Medication</th>
<th>Prescribing Physician</th>
<th>Date Last Taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

☐ During the past thirty (30) days, I have taken the following nonprescription medications (cough medicine, cold tablets, aspirin, diet medication, nutritional supplements, etc.)

<table>
<thead>
<tr>
<th>Name of Medication</th>
<th>Prescribing Physician</th>
<th>Date Last Taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
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<td>5</td>
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<td></td>
</tr>
</tbody>
</table>

☐ During the past thirty (30) days, I have taken NO prescription or nonprescription medications.

_____________________________________
Name (Print)

_____________________________________
Signature

Date: _______________________________