

CITY OF CRIPPLE CREEK



FTA/FMCSA DRUG AND ALCOHOL POLICY

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I. INTRODUCTION

The City of Cripple Creek is committed to a safe, healthy and productive work environment for all Employees free from the effects of substance abuse. Drug or Alcohol use may pose a serious threat to health and safety. Abuse of alcohol, drugs, and controlled substances impairs Employee judgment, resulting in increased safety risks, injuries, and faulty decision-making, which may impact the entire organization.

Drug and alcohol testing is mandated by the Federal Transit Administration (FTA), the Federal Motor Carrier Safety Administration (FMCSA), and the U.S. Department of Transportation (DOT) in 49 CFR Part 40, Part 655 (FTA), and Part 382 (FMCSA) as amended. In addition, drugs are prohibited in the workplace by the "The Drug Free Workplace Act of 1988" located in 20 CFR part 29, see Appendix A of this policy. The purpose of this policy is to establish procedures to support a safety and health program and to comply with minimum federal safety standards for safety-sensitive functions regulated by the Federal Motor Carrier Safety Administration (FMCSA) and by the Federal Transit Administration (FTA).

The City's Drug and Alcohol Policy and Prevention Program have been created to protect both the public and the City's employees. It mandates discipline up to and including termination, depending upon circumstances. At the same time, it offers free substance abuse evaluation services (provided by Profile EAP) and a second (2nd) chance to employees who voluntarily come forward to the City and seek professional rehabilitation services PRIOR to being selected or notified of a pending drug and/or alcohol test. This applies only if the employee has never had a previous positive drug and/or alcohol test. This program is also intended to comply with all applicable federal regulations governing workplace anti-drug and alcohol abuse programs in the transit industry.

II. DRUG AND ALCOHOL FREE WORKPLACE

This Drug and Alcohol Free Workplace Policy is established pursuant to the authority granted by 49 CFR Parts 40, Part 382, 655 and the Omnibus Transportation Employee Testing Act of 1991, 49 U.S.C. § 31306, Chapter 440, as amended.

The City of Cripple Creek is committed to providing a safe work environment for our employees, our guests, our community and the public. The abuse of alcohol and drugs is a national problem that impairs the safety and health of employees, promotes crime and harms our community. In order to maintain the highest standards of morale, productivity and safety in our operations, we have instituted a drug and alcohol free workplace policy. Our desire and intent is to encourage any employee with alcohol or drug dependency to voluntarily enter a drug or alcohol rehabilitation program. It is the responsibility of each employee to initiate and obtain assistance before any difficulties with drugs or alcohol affect his or her work. Accordingly:

EMPLOYEES ARE HEREBY NOTIFIED THAT IT IS A CONDITION OF EMPLOYMENT FOR EACH EMPLOYEE TO REFRAIN FROM REPORTING TO WORK OR WORKING WITH THE PRESENCE OF DRUGS OR ALCOHOL IN HIS OR HER BODY. IF AN EMPLOYEE TESTS CONFIRMED POSITIVE OR REFUSES TO SUBMIT TO A TEST FOR DRUGS OR ALCOHOL, THE EMPLOYEE WILL BE TERMINATED.

III. APPLICABILITY

This policy applies to all City of Cripple Creek employees who hold a Commercial Driver's License (CDL) and utilize it within the parameters of their job description, whose job description includes safety sensitive functions, and all transit system employees performing safety-sensitive functions as defined in 49 CFR Part 40, and Part 655, as amended. The policy extends to include applicants and all other covered employees.

Certain portions, however, apply strictly to "safety-sensitive" employees (i.e. random testing). Employees may fall into either or both of two categories for safety-sensitive employees. The first applies to all employees who maintain a CDL, while the second applies to all transit system employees falling under the FTA definition of "Safety-Sensitive." Initiatives and policies that are in addition to or exceed the FTA and DOT policies are highlighted in bold and underlined.

City Definition of Safety-Sensitive for Employees holding a CDL. Under this policy performing a safety-sensitive function means all of the time after a driver begins to work or is required to be ready to work until the time the driver is relieved from work and all responsibility for performing work. Safety-sensitive functions include:(1) All time at the City of Cripple Creek, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the City of Cripple Creek; (2) All time inspecting equipment as required by the law or otherwise inspecting, servicing, or conditioning any city-owned motor vehicle at any time; (3) All time spent at the driving controls of a city-owned motor vehicle in operation; (4) All time, other than driving time, in or upon any city owned motor vehicle; (5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and (6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

- **FTA Definition of Safety-Sensitive Employees.** Refers only to employees who perform job duties related to the safe operation of mass transit service including:
 - 1) The operation of a transit revenue service vehicle even when the vehicle is not in revenue service.

- (2) The operation of a non-revenue service vehicle by an employee when the operation of such a vehicle requires the driver to hold a Commercial Drivers License (CDL).
- (3) Maintaining a revenue service vehicle or equipment used in revenue service.
- (4) Controlling the movement of a revenue service vehicle.
- (5) Carrying a firearm for security purposes.
- A list of “safety-sensitive” employee job titles are provided in Part V of this policy. The City is dedicated to ensuring the fair and equitable application of this substance abuse policy. Supervisors, managers and city officials are required to use and apply all aspects of this policy in an unbiased and impartial manner. **Any supervisor, manager and/or city official who knowingly disregards the requirements of this policy or who is found to be deliberately misusing the policy in regards to subordinates will be subject to disciplinary action up to and including termination.**

IV. POLICY STATEMENT

The City of Cripple Creek is committed to providing a safe work environment that is free from the effects of drugs and alcohol in order to operate and maintain a public works department and transportation system that is safe and efficient for our employees, passengers, and the general public. This policy covers both FTA and FMCSA guidelines, which are both federal programs. The Federal Government does not recognize the State of Colorado’s position on the legalization of marijuana, which remains a Schedule I drug and is therefore considered illegal within the framework of federally funded programs. Persons employed by the City of Cripple Creek who fall into either of these programs and/or persons applying for positions with City, are held to this standard when considering drug and alcohol testing.

The City has a policy that prohibits the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in the workplace or while on duty status.

The purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace and, to reduce the probability of accidents or incidents related to the use and/or abuse of alcohol and drugs by employees.

It is the employee’s responsibility to know and understand the City’s Drug and Alcohol Policy and Prevention Program. As a condition of employment, all employees must comply with the terms of this policy, as violation or failure to comply will result in termination of employment.

This policy incorporates all of the requirements and procedures set forth by federal regulations 49 CFR part 40, 655 of the Department of Transportation (DOT), 49 CFR part 382 of the Federal Motor Carrier Safety Administration (FMCSA), and the “Drug Free Workplace Act” as amended.

The City of Cripple Creek has established an Employee Assistance Program (EAP), as explained in Part XIII of this policy. The EAP, among the many other services, offers confidential treatment for drug and/or alcohol abuse.

V. SAFETY- SENSITIVE EMPLOYEES

The Department of Transportation and the Federal Transit Administration require all safety-sensitive employees to be tested for drugs and alcohol under the Omnibus Transportation Act of 1991. **Additionally, the City has extended this policy to include employees who hold a Commercial Driver’s License and/or perform safety-sensitive functions as defined in Section II of this policy.**

Safety-Sensitive function means any of the following duties as defined by FTA 49 CFR Part 655:

- Operating a revenue service vehicle, including when not in revenue service;
- Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver’s License (CDL);
- Controlling dispatch or movement of a revenue service vehicle;
- Maintaining a revenue service vehicle or equipment used in revenue service;
- Carrying a firearm for security purposes.

FTA Safety-sensitive employees are defined as:

- Bus-Operators
- Supervisors/Dispatchers of the transit program
- Radio Dispatchers
- Mechanics

Safety-Sensitive functions as defined by the City of Cripple Creek include:

- **Time spent at a City of Cripple Creek facility when ready for duty or awaiting instructions;**
- **All time spent working on City-owned vehicles;**
- **All time spent driving a City-owned vehicle;**

- All time, other than driving, that is spent on a City-owned vehicle;
- All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Safety-Sensitive employees as defined by the City of Cripple Creek include:

- Any employee who holds a CDL and utilizes it within the performance of his/her job duties;
- Any employee who holds a CDL and has begun his/her shift or who is in “ready” status with regard to beginning work.

VI. RESPONSIBILITIES

All employees are required to refrain from using illegal drugs as prescribed in the Federal Government’s schedule of illegal substances. In addition, employees must not consume alcohol while performing a safety-sensitive function, or up to four (4) hours prior to performing the safety-sensitive function, or while on-call, as explained in Part VII of this policy. Employees at all levels of the organization are responsible for ensuring adherence to this policy. Managers and supervisors will be accountable for both the application of the policy and the consistency of its enforcement. The Human Resources Director, who also serves as the Drug and Alcohol Program Manager (DAPM) or designee, will be responsible for answering questions and ensuring compliance to this policy.

VII. CONFIDENTIALITY

Confidentiality will be maintained throughout the drug and alcohol screening process. Centura Centers for Occupational Medicine shall employ a Medical Review Officer (MRO) who will receive the laboratory results of the testing procedure. The MRO shall be a licensed physician and have knowledge of substance abuse disorders and appropriate medical training to evaluate positive test results, medical history, and any other relevant biomedical information. The MRO shall review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication.

Test results are received and reviewed by the Certified MRO and then forwarded to the Designated Employer Representative (DER). In the case of positive drug and/or alcohol test results, the MRO immediately notifies the DER by phone so the employee may be removed from performance of safety-sensitive duties. Only authorized personnel who must be involved in a case will be given information

regarding test results, and then, only on a need to know basis. In grievance, hearing, lawsuit or other action involving the employee, the employer may release relevant information to the decision-maker, and to those who need to know the information to assist with the case. Such information may also be released to representatives from state or federal agencies when required.

VIII. PROHIBITED SUBSTANCES

The presence of any prohibited substances in an employee's system is forbidden during working time. "Prohibited Substances" addressed by this policy include the following:

Prohibited Substances

The use at any time of prohibited substances identified in Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 100.11 through 1300.15, is prohibited. This includes:

- Marijuana
- Phencyclidine (PCP)
- Cocaine
- Opioids
- Amphetamines

Alcohol

According to FTA rules alcohol use means the consumption of any beverage, mixture, or preparation, including any medication containing alcohol. The ingestion of alcohol up to four (4) hours before the performance of a safety-sensitive function, or while the safety sensitive employee is on-call is prohibited. The ingestion of alcohol for up to eight (8) hours following an accident by any employee involved in the accident is prohibited, unless the employee has already performed a post-accident alcohol test in accordance with this policy. Random and reasonable suspicion alcohol testing can only be conducted just before, during or just after performing a safety sensitive function.

IX. TESTING AND COLLECTION PROCEDURES

A prohibited substance may be detected through a drug and/or an alcohol test following the safeguards set forth by the Department of Transportation in 49 CFR Part 40, as amended. These safeguards are mandated to assure protection, integrity, validity and the accuracy of the results.

Testing requirements call for urine tests for five drugs (Marijuana, Phencyclidine (PCP), Cocaine, Opioids and Amphetamines) and breath tests for alcohol. A safety-sensitive employee may be randomly tested for these five prohibited drugs at any time while on duty. Other testing includes: post-accident, reasonable suspicion, return-to-duty/follow-up and pre-employment. This is subject to change consistent with alterations to 49 CFR Part 40, as amended. All testing will be conducted in a manner which assures a high degree of accuracy and reliability consistent with the DOT safeguards set forth in 49 CFR Part 40, as amended. Drug testing will be conducted in laboratories certified by the National Laboratory Certification Program as listed on the Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services (HHS) notice located at 59 FR 39774 (see Appendix B for specific laboratories used by the City). Collection may be observed if there is reason to believe that a particular individual may alter or substitute the specimen to be provided, or as required by the MRO, as further described in 49 CFR Part 40.25 (e) (2) (i) – (iv).

Drug and Alcohol Testing Collection Process & Procedures

The Drug and Alcohol Testing Collection Process and Procedures will follow all guidelines and regulations set forth in 49 CFR Part 40, as amended. A complete copy of the regulations is available for review through the City of Cripple Creek's Designated Employer Representative; refer to contact information in section XVII of this policy.

Split Sample

The collector divides the specimen into a 30 ml primary specimen and a 15 ml split specimen (split sample). "Specimen A" bottle seal is placed over the 30 ml bottle and the "Specimen B" seal is placed over the split sample bottle. The specimen donor then initials both seals. If the sample tests positive during the Gas Chromatography-Mass Spectrometry (GC/MS) process, or is determined by the laboratory to be adulterated or substituted, and the MRO verifies the laboratory findings after review with the employee, the employee may request a test of the split specimen. Such a request must be made in writing or verbally to the Certified MRO within 72 hours of the time the MRO provides the notification to the employee that the test is verified positive, adulterated or substituted.

The second laboratory is only required to run a confirmatory test for the specific substance, which appeared in the primary sample. The results of this test must be immediately forwarded to the MRO. The MRO will notify the City of Cripple Creek and the employee of the results. If the split sample reveals no measurable presence of the drug in question, the former positive test will be canceled.

Role of the Certified Medical Review Officer (MRO)

A Certified MRO is required to verify positive test results and facilitate the split sample process. A Certified MRO is defined by the FTA as: a licensed physician responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders. The Certified MRO shall communicate all verified positive test results to the employee and to the City.

Return To Work Pending Test Results

City policy requires that an employee must await his/her negative test clearance under the following circumstances: return to work after a positive or refused drug and/or alcohol test, reasonable suspicion, pre-employment and transfer to safety-sensitive position.

Positive Test

The City will be notified by the Certified MRO of a verified positive drug test result. A verified positive test means a prohibited substance appearing in the employee's urine specimen which surpasses the thresholds established by the Department of Health and Human Services (HHS) as adopted by the Department of Transportation (DOT) in 49 CFR Part 40, as amended. The City will be notified by the Breath Alcohol Technician (BAT) of an alcohol confirmation test result of 0.02 or more.

X. TYPES OF TESTING

Testing for drugs and alcohol will be conducted in the following circumstances:

Pre-Employment

All safety sensitive applicants are required to undergo pre-employment drug testing following the offer of employment with a verified negative result. This requirement includes all candidates for employment. Any employee who has not performed safety-sensitive functions for 90 days or more and was removed from the random testing pool during that time must also undergo a pre-employment drug screen with a verified negative result. Employees are required to undergo pre-employment drug testing prior to transfer into a safety-sensitive position.

A negative drug test result must be received and verified by the Certified MRO before the performance of any safety-sensitive function as defined by FTA or FMSCA. **Furthermore, the City requires that a negative drug test result must be received and verified by the MRO before employment begins.** If for any reason a test is cancelled, the candidate must retake and produce a verified negative result. An applicant with a dilute negative test result will be required to retest. If the covered employee or applicant has previously failed or refused testing,

the covered employee or applicant must present to the employer proof of successfully having completed a referral, evaluation and treatment plan as described in 49 CFR part 655.41. In addition, a verified negative drug test result must be received.

FMCSA Defines that a driver is not required to undergo a pre-employment test if:

- 1) The driver has participated in a DOT testing program within the previous 30 days; and
- 2) While participating in that program, either:
 - a. Was drug tested within the past six months (from the date of application with the employer), or
 - b. Participated in the random drug testing program for the previous 12 months (from the date of application with the employer); and
- 3) The City of Cripple Creek can ensure that no prior employer of the driver of whom the City of Cripple Creek has knowledge has records of a violation of this part or the controlled substances use rule of another DOT agency within the previous six months.

Reasonable Suspicion

All covered employees are required to submit to drug and alcohol testing when at least one supervisor or manager who is trained in detecting the signs and symptoms of drug use and alcohol misuse reasonably questions the employee's fitness for duty. Reasonable suspicion will be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, performance or odors of the employee. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety sensitive job function. A reasonable suspicion drug or alcohol test can be performed any time the covered employee is on duty. A confidential reasonable suspicion documentation form must be completed by a transit supervisor. These are available through the City's DER.

Return to Duty

All covered employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the Substance Abuse Professional before returning to work. For an initial positive drug test a Return-to-Duty drug test is required and an alcohol test is allowed. For an initial positive alcohol test a Return-to-Duty alcohol test is required and a drug test is allowed. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP will recommend the return-to-duty test only when the employee has successfully completed the treatment requirement and is known to

be drug and alcohol-free and there are no undue concerns for public safety. All DOT Return to Duty tests will be conducted under direct observation.

Return-to-duty testing may also be required when the City is made aware of an employee's treatment program as a result of self-referral.

Follow-Up

Covered employees that have returned to duty following a positive or refused test will be required to undergo frequent, unannounced drug and/or alcohol testing following their return-to-duty test. The frequency and duration of such testing will be solely determined by the SAP, however, the City will determine and schedule the days for follow-up testing. The duration could extend up to 60 months with a minimum requirement of at least 6 tests within the first 12-month period. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing. All DOT follow-up tests will be conducted under direct observation.

Post-Accident

FTA Procedures:

1) **FATAL ACCIDENTS** - A covered employee will be required to undergo urine and breath testing if they are involved in an accident with a transit vehicle, whether or not the vehicle is in revenue service at the time of the accident, that results in a fatality. This includes all surviving covered employees that are operating the vehicle at the time of the accident and any other whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

2) **NON-FATAL ACCIDENTS** - A post-accident test of the employee operating the public transportation vehicle will be conducted if an accident occurs and at least one of the following conditions is met:

a. The accident results in injuries requiring immediate medical treatment away from the scene, and the covered employee may have contributed to the accident.

b. One or more vehicles incurs disabling damage as a result of the occurrence and must be transported away from the scene, and the covered employee may have contributed to the accident.

In addition, any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision, will be tested.

As soon as practicable following an accident, as defined in this policy, the transit supervisor investigating the accident will notify the transit employee operating the transit vehicle and all other covered employees whose performance could have contributed to the accident of the need for the test. The supervisor will make the determination using the best information available at the time of the decision.

FMCSA Procedures:

Covered employees shall be subject to FMCSA post-accident drug and alcohol testing under the following circumstances:

- 1). FATAL ACCIDENTS - As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, and involving the loss of a human life, drug and alcohol tests will be conducted on each surviving covered employee who was performing safety-sensitive functions with respect to the vehicle.
- 2). NON-FATAL ACCIDENTS - As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, and not involving the loss of a human life, an alcohol test will be conducted on each driver who receives a citation within eight (8) hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if:
 - a. The accident results in injuries requiring immediate medical treatment away from the scene; or
 - b. One or more motor vehicles incur disabling damage and must be transported away from the scene by a tow truck or other motor vehicle.

As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, and not involving the loss of a human life, a drug test will be conducted on each driver who receives a citation within thirty-two (32) hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if:

- a. The accident results in injuries requiring immediate medical treatment away from the scene; or
- b. One or more motor vehicles incur disabling damage and must be transported away from the scene by a tow truck or other motor vehicle.

General Accident Procedures:

The appropriate supervisor shall ensure that an employee, required to be tested under this section, is tested as soon as practicable, but no longer than eight (8) hours after the accident for alcohol, and no longer than thirty-two (32) hours for drugs. If an alcohol test is not performed within two (2) hours of the accident, the Supervisor will document the reason(s) for the delay. If the alcohol test is not conducted within eight (8) hours, or the drug test within thirty-two (32) hours, attempts to conduct the test must cease and the reasons for the failure to test documented.

Any covered employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test.

An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.

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

Random Testing

Random testing for drugs and alcohol will be performed on all employees filling safety-sensitive positions within FTA, FMCSA, **and City of Cripple Creek guidelines.** Safety-sensitive employees are not combined with other City employees, as there is a separate non DOT drug and alcohol testing policy which covers them. The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates set each year by the FTA/FMCSA. The current year testing rates can be viewed online at <http://www.dot.gov/odapc/random-testing-rates>. Employees will be selected based on a computer-generated program. The selection of employees for random testing is made by a scientifically valid method and each covered employee has an equal chance of being tested each time selections are made. Random test dates are spread reasonably throughout the year (January-December) and are unannounced. Employees selected for random drug and/or alcohol testing are notified by a supervisor and must proceed immediately to the testing site. **Employees are on duty and will be compensated at their applicable rate for the time spent in undergoing such random testing.**

Please note: Random and reasonable suspicion alcohol testing may occur anytime during which an employee is performing a safety-sensitive function, just prior to performing a safety-sensitive function or just after the employee has ceased performing a safety-sensitive function. Random testing may occur anytime an employee is on duty so long as the employee is notified prior to the end of the shift. Employees who provide advance, verifiable notice of scheduled medical or child care commitments will be random drug tested no later than three hours before the end of their shift and random alcohol tested no later than 30 minutes before the end of their shift. Verifiable documentation of a previously scheduled medical or child care commitment, for the period immediately following an employee's shift, must be provided at the beginning of the shift, or at least before the end of said shift. Random and Reasonable Suspicion drug testing may occur anytime an employee is performing a safety-sensitive function or while on-duty.

In addition, there is no discretion on the part of management or supervision in the selection and notification of individuals for testing.

XI. PRESCRIPTION DRUG POLICY AND PROCEDURE

The following policy applies to all safety-sensitive employees as defined by the City of Cripple Creek and is in addition to FTA/USDOT regulations.

Reporting of Prescribed and Over the Counter Drugs

In the interest of protecting employees, customers and others, safety sensitive employees are required to ensure that any prescribed or over the counter drug or any combination of drugs being taken will not adversely impact their job performance.

Employees shall, when drugs are prescribed by a medical professional, inquire of the prescribing professional whether the drug prescribed has any side effects which may impair the employee's ability to safely perform the employee's job duties. If the answer from the medical professional is yes, the employee shall obtain a statement from the medical professional indicating any work restrictions and their duration. The employee shall present that statement to his/her supervisor before going on duty.

Employees shall, when using over the counter medications, read all warning labels and refrain from using medications that contain alcohol, cause drowsiness, and/or negatively impact the employee's ability to drive safely or operate equipment before beginning his/her shift. If there is any question as to the effects of the over the counter medicine on the employee's ability to carry out the safety function, the employee must contact his/her physician for further guidance.

XII. ZERO TOLERANCE POLICY

The penalty for any confirmed violation of this policy or the “Drug Free Workplace Act” is subject to immediate termination of employment.

XIII. POLICY ENFORCEMENT/CONSEQUENCES

All positive results and refusals to test require immediate removal from safety sensitive functions and referral to the SAP **and immediate termination of employment.** Violations include, but are not limited to the following:

Pre-Employment Testing

Any applicant who tests positive for drugs will not be eligible for hire and must wait one year to be reconsidered. To be reconsidered, an applicant must present to the City of Cripple Creek, proof of successfully completing any Certified SAP treatment requirement. **Any applicant who fails a second pre-employment test will be permanently banned from employment at the City of Cripple Creek.** A safety sensitive employee who has not performed a safety-sensitive function for 90 days or more, and has not been in the random testing pool for such period and tests positive for their pre-employment drug test will be given a SAP referral and will be terminated.

Reasonable Suspicion Testing

Any employee who tests positive for drugs and/or alcohol for reasonable suspicion will be immediately terminated.

Return to Duty/Follow-up Testing

Any employee who tests positive for drugs and/or alcohol for a return to duty/follow-up test will be terminated.

Post-Accident Testing

Any employee involved in an accident that tests positive for drugs and/or alcohol will be immediately terminated, regardless of the preventability of the accident.

Random Testing

Any employee who tests positive for drugs and/or alcohol for random testing will be immediately terminated from his/her safety sensitive position.

Negative Dilute Specimen

If the MRO is informed that a negative drug test was dilute, the employee will be directed to take another test with minimal advance notice and the result of the second test – not that of the original test becomes the test of record. No further testing is required unless requested by the Certified MRO.

Refusals/Test Tampering/Non-Compliance

1) Refusal to submit to a drug/alcohol test shall be considered to be equivalent to a positive test result **and a direct act of insubordination and shall result in termination** and referral to an SAP. A test refusal includes the following circumstances:

- a. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer.
- b. Fail to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
- c. Fail to attempt to provide a breath or urine specimen. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
- d. In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of your provision of a specimen.
- e. Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.
- f. Fail or decline to take a second test as directed by the collector or the employer for drug testing.
- g. Fail to undergo a medical evaluation as required by the MRO or the employer's Designated Employer Representative (DER).
- h. Fail to cooperate with any part of the testing process.
- i. Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.
- j. Possess or wear a prosthetic or other device used to tamper with the collection process.
- k. Admit to the adulteration or substitution of a specimen to the collector or MRO.
- l. Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
- m. Fail to remain readily available following an accident.

n. As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

Intoxication/Under the Influence

Reporting to work intoxicated or under the influence of alcohol or drugs (including all substances defined in this policy) is absolutely forbidden. **Any employee who reports to work intoxicated or under the influence will be terminated. An employee who is called into work unexpectedly has a responsibility to inform his/her supervisor immediately, if he/she is unfit for duty. Otherwise, he/she will be treated the same as any other regularly scheduled or on-call employee.**

Alcohol Concentration

An employee who is on duty, tested, and has an alcohol concentration of 0.02 - 0.039 will be immediately removed from duty for 8 hours. If the employee has a confirmed alcohol concentration of 0.04 or greater, the test will be considered a positive alcohol test and a violation of this policy. The employee will be given an SAP referral and **the employee will be terminated.** Employees are prohibited from performing safety sensitive functions while having an alcohol concentration of 0.04 or greater.

Any safety-sensitive employee required to take a post-accident alcohol test is prohibited from alcohol use for 8 hours **(24 hours for employees falling under the City definition of Safety-Sensitive and employees covered under FMSCA)** following the accident or until the employee undergoes a post-accident alcohol test, whichever occurs first. Any employee who is subject to post- accident testing yet fails to remain readily available for such testing (including notifying designated employer representative (DER) of his/her location if he/she leaves the scene of the accident prior to submission to such test) is deemed to have refused to submit to testing and will be terminated. Safety-sensitive employees are prohibited from consuming alcohol up to four (4) hours before their work shift. **Any employee found consuming alcohol within four (4) hours of his/her work shift will be subject to discipline up to and including termination. (This does not imply that an employee's system will be free of alcohol after four (4) hours of cessation).** Refer to Section V "Responsibilities" for applicability for Public Works Department employees, CDL holders, and bus drivers.

Manufacture, Trafficking, Possession and Use

The use, sale, manufacture, distribution or possession of drugs or alcohol while on the job, on City property, or while conducting City of Cripple Creek transit business will result in immediate termination.

Criminal Drug Conviction at Workplace

Any employee who fails to notify the City of Cripple Creek of any criminal drug conviction or drug-related offense will be subject to immediate termination. This notification must be provided by the fifth day after such offense. Any employee convicted of such an offense will be terminated.

Please note: Circumstances not covered under this policy will be dealt with on a case-by-case basis.

XIV. EVALUATIONS, REFERRALS AND REHABILITATION

Certified Substance Abuse Professional (SAP)

Any safety-sensitive employee who tests positive for the presence of illegal drugs above the minimum thresholds set forth in 49 CFR Part 40, as amended, or who tests at 0.04 or greater on an alcohol confirmation test or who refuses to be tested will be immediately terminated. Even though discharged, the employee will be given the number of a SAP and our EAP services. A SAP (Qualified SAP) is a licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed or certified marriage and family therapist, or drug and alcohol counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse (ICRC) or by the National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders. **Assessment by a qualified SAP does not shield an employee from termination.** See Appendix B for contact information for our Substance Abuse Professional and EAP Services.

Employee Assistance Program (EAP)

An Employee Assistance Program (EAP) is offered to City employees and their families at no cost to the employee. This program includes professionals qualified in the area of substance abuse evaluations and referrals. The EAP offers counseling, evaluations, and referrals to rehabilitation programs. Counselors are available 24 hours a day.

XV. EDUCATION, TRAINING AND LITERATURE

All safety-sensitive employees are required to attend at least 60 minutes of training on the effects of prohibited drug use and additional training on the affects of alcohol misuse. All managers responsible for covered employees are required to attend one hour of training for reasonable cause determinations for alcohol and

one hour of reasonable cause determination training for drugs, for a total of two (2) hours. All employees attending such training will be required to sign an attendance sheet/certification form.

Drug and alcohol substance abuse prevention literature is available at a number of different sources. Through the City, employees can receive substance abuse literature from our Human Resources Department and through the Employee Assistance Program. Additionally, all EAP Professional and Personal Workshop information will be posted on city bulletins. Additional materials will be made available at the drug and alcohol prevention courses and through our training programs as they occur.

Outside of the City, employees may access national or local hotlines and help-lines, support group phone directories, treatment facilities, and many other resources for substance abuse information and guidance. Any employee concerned about his/her substance or alcohol usage should immediately seek assistance.

XVI. RECORDS RETENTION

The City will maintain records of its Drug & Alcohol Program for a minimum period as follows:

Five (5) Years: All verified positive drug and alcohol test results, documentations of refusals to test, covered employees referral to substance abuse professional (Certified SAP), copies of the annual Management Information System (MIS) reports submitted to FTA, negative drug and alcohol testing results and all records related to the collection process and employee training. Such records will be kept in a secured area with controlled access.

All covered employees are entitled, upon written request, to obtain copies of his/her drug and alcohol testing records, provide information to dispute the results, and have access to any pertinent records such as equipment calibration records and laboratory certifications.

XVII. AT-WILL EMPLOYMENT

Nothing in this policy is to be construed to prohibit the City of Cripple Creek from maintaining a safe work environment or imposing disciplinary actions as it deems appropriate for reasons of misconduct or poor performance, regardless of whether the misconduct or poor performance arises from drug or alcohol use. Such disciplinary actions may include termination of employment. Employment is at-will and subject to termination by the City of Cripple Creek or the Employee at any time, with or without notice and with or without cause.

XVIII. CONTACT INFORMATION

Questions or for more information regarding this policy or any other aspect of the City's drug-free and alcohol-free workplace programs should be directed to the following Designated Employer Representative (DER):

Name: Carol Stotts, HR/Risk Management Director
Location: 337 E. Bennett Avenue, Cripple Creek, Colorado 80813
Phone: 719-689-3469
Fax: 719-689-3705
Email: cstotts@cripple-creek.co.us

XIX. POLICY APPROVAL AND ACCEPTANCE

Mark Campbell
City Administrator

City Council Acceptance

XX. APPENDICES

- A. POLICY ON A DRUG-FREE WORKPLACE
- B. COLLECTION SITES, CERTIFIED MRO, CERTIFIED SAP AND EAP CONTACT INFORMATION
- C. DRUG AND ALCOHOL TESTING NOTIFICATION FORM
- D. FTA SUBSTANCE ABUSE MANAGEMENT
- E. ACKNOWLEDGMENT AND RECEIPT

Appendix A:

POLICY ON A DRUG-FREE WORKPLACE

The City of Cripple Creek fully supports the Drug Free Workplace Act of 1988. The City of Cripple Creek, as a matter of operating policy, requires a workplace that is free from the effect, of drugs, alcohol or other job-impairing substances. This requirement is necessary in order that we operate and maintain a transportation system that is safe and efficient for our customers and our employees as well as motorists and pedestrians.

The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in the workplace or while on duty status is prohibited. Violation of this rule will result in discipline that may include dismissal. In certain circumstances, an employee may be required to participate in a rehabilitation program.

Because the City of Cripple Creek is a recipient of federal funds, employees are required to notify their department head or, in his/her absence, the human resources director of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such a conviction. The City of Cripple Creek is required to notify the federal sponsoring agency of any such conviction within ten days after being notified of the conviction. Within thirty days of the notice of conviction, the City of Cripple Creek is required to take one of the following actions with respect to any employee so convicted:

1. Taking appropriate personal action against the employee, up to and including dismissal; or
2. Requiring such an employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement or other appropriate agency.

An Employee Assistance Program (EAP) is available to all employees and family members on a free, confidential basis. The EAP will provide help in dealing with substance abuse problems. The City of Cripple Creek will provide, to the maximum extent practicable, a leave of absence for those who voluntarily enter a substance abuse treatment program through the EAP.

Appendix B:

Collection Sites, Certified MRO, Certified SAP, and EAP Contact Information

COLLECTION SITES

Centura Centers for Occupational Medicine
1263 Lake Plaza Dr., Suite 130 Colorado Springs, CO 80906
Ph: 719-776-3375

OR

Centura Centers for Occupational Medicine
6011 E. Woodmen Rd., Suite 100 Colorado Springs, CO 80923
Ph: 719-571-8888

OR

PENROSE HOSPITAL EMERGENCY ROOM

2222 N. Nevada Ave.
Colorado Springs, CO 80907
Ph: 719-776-5000

CERTIFIED MEDICAL REVIEW OFFICER (MRO)

Stephen J. Kracht, D.O.
PO Box 25903
7500 W 110th St Suite 500
Overland Park, KS 66225
Ph: 888-382-2281
Fax: 913-469-4029

CERTIFIED SUBSTANCE ABUSE PROFESSIONAL (SAP)

Profile EAP
2925 Professional Pl. Suite 101
Colorado Springs, CO 80904
Ph: 719-634-1825
Ph: 800-645-6571

CERTIFIED EMPLOYEE ASSISTANCE PROGRAM (EAP)

Profile EAP
2925 Professional Pl. Suite 101
Colorado Springs, CO 80904
Ph: 719-634-1825
Ph: 800-645-6571

Appendix C:

Drug and/or Alcohol Testing Notification Form Collection Site Request Form

GENERAL INFORMATION

Company Name: #: _____

Position: _____

Collection Site/Facility: _____

Test Authority: DOT FTA or FMCSA City (non-federal) Test

TYPE OF TEST

Pre-employment (drug only) Post-Accident (drug / alcohol)

Random (drug / alcohol) Return to Duty (drug / alcohol)

Reasonable Suspicion (drug / alcohol) Follow up (drug/ alcohol)

NOTIFICATION INFORMATION

Employee Notified: _____ Date: _____ Time: _____

Employee Transported: Yes No Site Arrival Time: _____

Name of Transport Supervisor:

Employee Tested: Date: _____ Time: _____

POST ACCIDENT INFORMATION

Date of Accident: _____ Time: _____

- Was there loss of life as a result of the accident?

Yes No

- Was medical treatment provided (away from the scene of the accident) as a result of the accident/incident?

Yes No

- Was there disabling damage to any of the involved vehicles?

Yes No

- Was the employee tested within two (2) hours of accident:

Yes No

If no, provide detailed explanation:

Can the employees' conduct be completely discounted as a contributing factor?

Yes No

Comments/Notes:

Supervisor's Signature

Date

Appendix D:

FTA SUBSTANCE ABUSE MANAGEMENT

Pursuant to Section 40.25(j)- “As the employer, you must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years.”

All Applicants:

During the last two years, have you tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which you have applied for employment, but did not obtain?

YES

NO

Name (Please Print)

Signature

Date

Human Resources Representative

Date

Appendix E:

ACKNOWLEDGMENT AND RECEIPT

I have received a copy of the City of Cripple Creek's FTA/FMCSA Drug and Alcohol Testing Policy and understand that in order to continue my employment with the City of Cripple Creek, I must abide by the terms of this policy.

I also verify that I have received information on the effects of alcohol and controlled substances on my health, work and personal life, signs and symptoms of a problem and available methods of intervening when a problem is suspected.

I UNDERSTAND THAT THIS POLICY IN NO WAY MODIFIES MY STATUS AS AN AT-WILL-EMPLOYEE AND IN NO WAY IMPLIES, INFERS, OR GUARANTEES MY CONTINUED EMPLOYMENT FOR ANY DEFINITE TERM AND THAT I MAY BE DISMISSED AT THE DISCRETION OF THE CITY FOR OTHER REASONS THAN FAILING TO FOLLOW THE TERMS OF THIS POLICY.

Employee's Signature

Date

Employee's Name Printed