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337 E. Bennett Avenue, Cripple Creek, CO 80813

**CRIPPLE CREEK CITY COUNCIL
SEPTEMBER 21, 2022**

**5:30 PM – REGULAR MEETING
IN-PERSON AND ONLINE VIA ZOOM**

Join City Council Meeting By ZOOM

Meeting ID: 828 0189 1463

Passcode: 568898

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

PUBLIC COMMENT

APPROVAL OF MEETING MINUTES from the September 7, 2022 meeting.

REPORTS

City Administrator

Finance Director

PUBLIC HEARINGS

NEW BUSINESS

- A.** Approve the Annual Certification to Taxes of Past Due Utility Bills; Melissa Beaty, Accountant
- B.** Approve the Proposed Changes to the Water/Sewer/Tap Fee Ordinance Chapter 13 Article 4 Section 13-4-30 Imposition of Fees.; Melissa Beaty, Accountant
- C.** Approve Resolution 2022-30 a Resolution Amending the FTA/FMCSA Drug and Alcohol Policy and Adopting Updated FTA/FMCSA Drug and Alcohol Handbook for the City of Cripple Creek, Carol Stotts HR/Risk Management Director
- D.** Approve the Renewal of Sublease of the Basement of the “Green House” on Bennett Ave. (Property Lots 1 through 10 inclusive, Block 22, Fremont) Between the City of Cripple Creek and Community of Caring. Paul Harris; Finance Director.

ADJOURNMENT

Posted Monday September 19, 2022 at Cripple Creek City Hall, the Cripple Creek Post Office
and on the City of Cripple Creek Website www.cityofcripplecreek.com



Real Fun. Real Colorado.

September 7, 2022, Regular Meeting Minutes

Mayor Ashworth called the regular meeting of the City Council to order at 5:30 PM. Loewenheim called roll. All Councilpersons were in attendance. Present in Council Chambers were: Frank Salvato, City Administrator; Malissa Gish, City Clerk; Charles “Bud” Bright, Police Chief; Ken Hartsfield, Building Official; Joe O’Conor, Fire Chief; Paul Harris, Finance Director; Don Kramer, Code Enforcement Officer; Lara Loewenheim, Deputy Clerk; and Erin Smith, City Attorney.

PUBLIC COMMENT:

Kurt Sorenson 2-Mile-High Club, thanks the community for the successful Donkey Derby Day Festival. **Sharron Monroe** expresses her dissatisfaction over the parking garage that obstructs her view. She states that at a meeting in 2018 she was assured the project would not obstruct her view. With the project nearing completion in 2023, and the newly stories, her view is now obstructed. Several other community members express the same the concern. **Karla Lyons owns 511 W Masonic** expresses her concern over the new STR Ordinances and how it might affect her.

Mayor Ashworth concurs.

Council Approved Meeting Minutes

Motion by Councilwoman Trenary and seconded by Mayor Pro Tem Litherland to approve the August 17, 2022 regular Meeting Minutes. **Motion** passed unanimously.

REPORTS

ADMINISTRATOR

Frank Salvato updates Council on the status of the grants submitted by AquaWorks to the DOLA and SRF fund for utility lines and infrastructure. Salvato recognizes Tes Pedersen for her 15 years of service with the city.

Chief O’Conor was awarded one grant for firefighter protective gear; wildland and structural by the state of Colorado for \$66,000 and one grant from the El Pomar Foundation for \$5000.

FINANCE DIRECTOR

Paul Harris updates on the gaming data. We are not beating 2021 numbers.

UPDATES & PRESENTATIONS

Newmont Mine gives a quarterly update on the status of some projects regarding water, donations, and evaluations.

PUBLIC HEARINGS

Mayor Ashworth opens the public hearing with the statement provided by Erin Smith, City Attorney. No objects were made to continue.

Consider Resolution 2022-28 for a Request by William Diment for a Variance to the Development Code for the Construction of a Third Accessory Building In the R ¾ zone District Where Only One (1) Accessory Building is Currently Allowed on Certain Real Property Legally Described as Lots 32-35 Block 3, Gold Valley Addition, also Known as 349 West Bennett Avenue, Cripple Creek, Colorado; Ken Hartsfield, Building Official.

Ken Hartsfield presents the applicant's request. Hartsfield addresses the conflict with the third accessory building being against the Development Code for the allowance of the third structure on the property being over the allowed 50% of the primary structure's square footage, and code allows for only ONE accessory structure. Hartsfield states an approval will set a negative precedence. Hartsfield recommends DENIAL of this variance for these reasons. William Diment stated his case and states he is willing to erect a more permanent structure in the future. Mayor Ashworth asks if there is any comment in favor of the application. Several residents comment in favor of the application. Mayor Ashworth asks if there are any comments in opposition of the application. Kathy Pilcher expresses her opposition of the application. **Motion** by Councilman Green and seconded by Mayor Ashworth to approve Resolution 2022-28 for a variance to the Development Code. **Motion** passed unanimously.

Consider Resolution 2022-29 for a Request by William Diment for a Variance to the Development Code for the Construction of a Storage Building in the R ¾ Zone Where No Other Buildings Have Been Constructed and the Proposed Building Cannot be Considered an Accessory Building, on Certain real Property, Legally Described as lot 13-44, Block 4, Gold Valley Addition, Cripple Creek, Colorado.

Ken Hartsfield presents the application for the request. Hartsfield addresses the conflict with the Development Code being the accessory structure being erected without a residential structure on the lot. Hartsfield recommends the DENIAL of the variance due to the fact it conflicts with the development code. Mayor Ashworth asks Mr. Diment if he is willing to erect a more permanent, "rectangular structure". Mr. Diment stated his case and agreed to erect another more permanent structure in the spring (2023) when the ground allows. Mayor Ashworth asks if there are any comments in favor of the application. There were a few comments in favor of the application. Mayor Ashworth asks if there are any comments opposed to the application. Kathy Pilcher speaks in opposition of the application. **Motion by** Councilwoman Trenary and seconded by Mayor Pro Tem Litherland to approve Resolution 2022-29 for a variance with the condition to erect a permanent structure in spring of 2023 when the ground allows; also make a correction to the Resolution changing the 200 square foot structure to a 600 square foot structure. City Clerk Gish verbally confirms the change will be made. **Motion** passed unanimously.

Mayor Ashworth calls for a 5-minute recess.

Consider Resolution 2022-27 for a Request by Maurice and Lois Woods to Modify the Conditional Use Permit to Construct a Residential Dwelling Units in the C1 Zone District at Certain Real Property Legally Described as Lot 6A, Block 5, Cripple Creek, First Addition to Fremont, Cripple Creek, Also Known as 309 South Second St, Cripple Creek, Colorado; Ken Hartsfield, Building Official

Ken Hartsfield presents the applicant's case, stating the applicants had a CUP for the property, there are some dimensional changes requested for the continuation of the construction. The Woods are not present, James Kroll, general contractor for the project has nothing to add to the presentation. Mayor Ashworth asks for any comments in support of the application. None was heard. Mayor Ashworth asks for any comment in opposition of the application. None was heard. **Motion** by Mayor Pro Tem Litherland and second by Councilwoman Trenary to approve Resolution 2022-27. **Motion** passed unanimously.

NEW BUSINESS

Approval to Enter into a Lease Agreement with Gold Camp Victorian Society to Store Three (3) Storage Sheds at the Public Works Yard; Frank Salvato, City Administrator

Frank Salvato explains the agreement was drafted to allow permission of the use of the land the sheds sit on at Public Works. It also addresses any future needs that may arise. **Motion** by Councilman Green and seconded by Councilman Solomone to approve the Lease Agreement with the GCVS to Store Three (3) Storage Sheds at the Public Works Yard. **Motion** passed unanimously.

SECOND READING to Adopt Ordinance 2022-09, an Ordinance of the City Council for the City of Cripple Creek, Colorado Extending a Temporary Moratorium on Opening and Operating a Short-Term Rental and Declaring an Emergency. Jeff Mosher; Special Projects Manager

Jeff Mosher explains this is the second reading for this Ordinance. It is to fill a gap created between the end of the extension and the Ordinance that will go into effect 30 days after publication. **Motion** by Councilwoman Trenary and seconded by Mayor Pro Tem Litherland to Adopt Ordinance 2022-09 an Ordinance of the City Council for the City of Cripple Creek, Colorado Extending a Temporary Moratorium on Opening and Operating a Short-Term Rental and Declaring an Emergency. **Motion** passed unanimously.

SECOND READING to Adopt Ordinance 2022-10, an Ordinance of the City of Cripple Creek, Colorado Amending Chapter 6 of the Cripple Creek Municipal Code to Add a New Article 10 Relating to Short Term Rentals; Jeff Mosher, Special Projects Manager

Jeff Mosher explains this is the second reading for the Ordinance. Staff has a change request, section 6-10-30. The addition of the text "nonrefundable" will be inserted. City Clerk Gish verbally confirms awareness of the change. Some public comment was heard, but most comments were related to the commercial water requirement for STR as business. **Motion** by Councilman Green and seconded by Councilwoman Trenary to Adopt Ordinance 2022-10, an Ordinance of the City of Cripple Creek, Colorado Amending Chapter 6 of the Cripple Creek Municipal Code to Add a New Article 10 Relating to Short Term Rentals to include the term, "nonrefundable" to Section 6-10-30. **Motion** passed unanimously.

SECOND READING to Adopt Ordinance 2022-11, an Ordinance Submitting to the Registered Electors Voting in the General Coordinated Election to be Held November 8, 2022, Ballot Questions Pertaining to Allowing and Taxing Marijuana. Erin Smith; City Attorney.

Erin Smith explains this is the second reading for adoption of the Ordinance. She explains the nature of the document and that Council has the power and authority to put the language in the ballot. The ballot questions are included in the ballot. An excise tax of 5% on the first sale or transfer of unprocessed retail marijuana with 25% of the taxes going to Destination Marketing and the remaining 75% of the tax will go into the General Fund. A sales tax is imposed up to 18% and an occupational tax is \$5 per transaction. Both measures need to pass in order for the measure to become effective. It will not be subject to the limitations of TABOR. Smith states medical is exempt from the 5% and the sales tax piece. Smith recommends the approval of this Ordinance due to deadlines. **Motion** by Councilwoman Trenary and seconded by Councilman Green to adopt Ordinance 2022-11, an Ordinance Submitting to the Registered Electors Voting in the General Coordinated Election to be Held November 8, 2022, Ballot Questions Pertaining to Allowing and Taxing Marijuana. **Motion** passed unanimously.

Consider a Request by Clayton Homes of Pueblo for the Waiving of Water and Sewer Tap Fees for in the Amount of \$48,000 for the Development of Six Single-Family Residence at 521 and 531 E. Carr Avenue, 201, 205 and 209 Main Street, and 302 El Paso Avenue and Per Ordinance 2021-09; Ken Hartsfield, Building Official.

Ken Hartsfield presents the applicant's case. The applicant will be responsible to pay a total of \$7740.00 for tap fees. **Motion** by Councilman Green and seconded by Councilman Solomone to approve Request by Clayton Homes of Pueblo for the Waiving of Water and Sewer Tap Fees for in the Amount of \$48,000 for the Development of Six Single-Family Residence at 521 and 531 E. Carr Avenue, 201, 205 and 209 Main Street, and 302 El Paso Avenue and Per Ordinance 2021-09. **Motion** passed unanimously.

Consider a Request by Robert and Laura Smith for the Waiving of Water and Sewer Tap Fees in the Amount of \$8,000 for the Development of a Single-Family Residence at 210 West Thurlow Avenue Per Ordinance 2021-09; Ken Hartsfield, Building Official

Ken Hartsfield presents the applicant's case and recommends approval. **Motion** by Councilwoman Trenary and seconded by Councilman Green to Approve a Request by Robert and Laura Smith for the Waiving of Water and Sewer Tap Fees in the Amount of \$8,000 for the Development of a Single-Family Residence at 210 West Thurlow Avenue Per Ordinance 2021-09. **Motion** passed unanimously.

ADJOURNMENT- No further business was presented before the Council. Mayor Ashworth adjourned the meeting at 7:47 PM.

Milford Ashworth, Mayor

Malissa Gish, City Clerk



TO: Mayor and Members of City Council

FROM: Melissa Beaty, Accountant

AGENDA ITEM: A. Approve the Annual Certification to Taxes of Past Due Utility Bills

DATE: September 14, 2022

REQUEST: To approve Certification to Property Taxes the Outstanding Water and Sewer Charges as of September 1, 2022.

OVERVIEW & ANALYSIS: Annual practice as allowed in Municipal Code, Chapter 13 Municipal Utilities, Article 5 Sec.13-5-150. - Late charges. "In the event any user of the City's system neglects, fails or refuses to pay the rates and charges fixed by this Article for the use of said water and sewer systems, the rates and charges due therefrom shall be certified by the City Clerk to the County Treasurer, and shall become a lien upon the real property so served by said water and sewer connection. The amount due shall be collected in the manner as though they were part of the taxes." (Ord. 1985-2 §4; Ord. 1990-2 §5; Ord. 1993-3 §5; Ord. 1993-16; Ord. 2002-02 §7; Ord. 2007-04 §1)

BUDGET IMPACT: Allow collection of \$4,332.27 in outstanding Water and Sewer fees.

STAFF RECOMMENDATION AND COUNCIL ACTION REQUESTED: Staff recommends approval.



TO: Mayor and Members of City Council

FROM: Melissa Beaty, Accountant

AGENDA ITEM: B. Approve the Proposed Changes to the Water/Sewer Tap Fee Ordinance Chapter 13 Article 4 Sec. 13-4-30 Imposition of fees

DATE: September 14, 2022

REQUEST: To change the language in the Municipal Code to direct individuals to the most recent Water and Sewer Tap Fee Schedule as approved by the City Council's adoption of the annual budget document.

OVERVIEW & ANALYSIS: Making this one-time language change will eliminate the need to come before the Council annually to change Municipal Code with each approved Budget adoption of the Water and Sewer Tap Fee Schedule.

This language change has been made to Sec. 13-5-30. - Water rates and Sec. 13-5-40. - Sewer rates. (Ord. No. 2016-02).

BUDGET IMPACT: None

STAFF RECOMMENDATION AND COUNCIL ACTION REQUESTED: Staff recommends approval to changes of Chapter 13 Municipal Utilities, Article 4 Water and Sewer Taps, Sec. 13-4-30. Imposition of fees as written.

ARTICLE 4 Water and Sewer Taps

Sec. 13-4-10. Purpose.

The purpose of this Article is to establish the fees charged for connection to the City's water and sewer system.

Sec. 13-4-20. Definitions.

Whenever the following words or phrases are used in this Article, they shall have the following meanings:

Fixture unit means the measure of consumption of various fixtures within buildings as defined in the as adopted by the City.

Tap fees means the connection fees charged by the City for the connection by its residents to its water and sewer service system.

Sec. 13-4-30. Imposition of fees.

- (a) Tap fees for all construction, renovations and/or additions requiring new water connection will be in accordance with the following schedule: ~~as approved by the City Council's adoption of the annual budget document.~~

Water Tap Fees

<i>Meter Size</i>	<i>Fee</i>
¾ inch	\$ 3,000.00
1 inch	3,500.00
1½ inch	5,200.00
2 inch	7,000.00
3 inch	14,000.00

Water tap fees for large meters will be set by the City Council, if necessary. Water tap fees for multi-family units shall be as above or one thousand seven hundred dollars (\$1,700.00) per residential unit, whichever is greater. Tap fees for nonresidential users shall be either as listed above or one hundred dollars (\$100.00) per fixture unit, whichever is greater. ~~as approved by the City Council's adoption of the annual budget document.~~

- (b) Tap fees for all construction, renovations and/or additions requiring new sewer connection will be in accordance with the following schedule: ~~as approved by the City Council's adoption of the annual budget document.~~

Sewer Tap Fees

<i>Unit or Use</i>	<i>Fee</i>
Single family detached units	\$3,000.00 per unit
Multi family units	\$1,700.00 per unit

Nonresidential uses	\$3,000.00 for up to 15 fixture units, plus \$100.00 for each fixture unit above 15 fixture units
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(Ord. 1991-1 §3.1; Ord. 2007-04 §1)



TO: Mayor and City Council

FROM: Carol Stotts, H.R./Risk Management Director

AGENDA ITEM: Consider Approval of Resolution 2022-30; Adopting Updated FTA/FMCSA Drug and Alcohol Handbook for the City of Cripple Creek

DATE: September 21, 2022

Request:

Staff is requesting adoption of the City of Cripple Creek FTA/FMCSA Drug and Alcohol Handbook.

Overview/Analysis:

Due to the City of Cripple Creek (transit department) continuing to receive grant funding through the State of Colorado, Colorado Department of Transportation (CDOT) is responsible for providing FTA drug and alcohol compliance oversight to ensure continued safe operations and to address compliance with the United States Department of Transportation (USDOT) FTA drug and alcohol regulations. As part of that effort, CDOT contracted with RLS & Associates, Inc. to conduct compliance review. As one part of the compliance review, RLS reviewed the existing city's FTA/FMCSA D&A policy. At the time of the review, the policy in place needed minor revisions and updates to be compliant with all USDOT regulations.

The Policy was also reviewed by City Attorney's Erin Smith and Charles Norton.

Applicable employees will be provided the new handbook and a copy of policy acknowledgments will be provided to RLS.

Budget Impact:

N/A

Action Requested:

Staff recommends that City Council adopt the FTA/FMCSA Drug and Alcohol Handbook as presented.

Attachment:

Attachment A – FTA/FMCSA Drug and Alcohol Handbook

RESOLUTION No. 2022-30

CITY OF CRIPPLE CREEK

A RESOLUTION AMENDING THE FTA/FMCSA DRUG AND ALCOHOL POLICY AND ADOPTING UPDATED FTA/FMCSA DRUG AND ALCOHOL HANDBOOK FOR THE CITY OF CRIPPLE CREEK.

WHEREAS, on February 6, 2019, the City Council pursuant to Resolution 2019-01, adopted the FTA/FMCSA Drug and Alcohol Policy for the City of Cripple Creek; and

WHEREAS, the Council has determined that certain updates to the FTA/FMCSA Drug and Alcohol Policy are in the best interest of the City, its employees and its residents.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CRIPPLE CREEK, COLORADO, THAT:

The updated FTA/FMCSA Drug and Alcohol Handbook for the City of Cripple Creek attached hereto is hereby approved and adopted by the City Council. It supersedes and replaces the FTA/FMCSA Drug and Alcohol Policy first approved on February 6, 2019, and subsequently amended.

ADOPTED at Cripple Creek, Colorado, this 21st day of September 2022.

CITY OF CRIPPLE CREEK, COLORADO

Milford Ashworth, Mayor

ATTEST:

Malissa Gish, City Clerk

APPROVED AS TO FORM:

Erin M. Smith, City Attorney

CITY OF CRIPPLE CREEK



FTA/FMCSA DRUG AND ALCOHOL HANDBOOK

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I. INTRODUCTION

The City of Cripple Creek is committed to a safe, health 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 Drug Free Workplace Act of 1988," 41 U.S.C.A. §§ 701 et seq., and codified in the regulations 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 functions 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 operation; (4) All time, other than driving time, in or upon any city-owned major 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 the 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 the 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, **a 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 XV of this policy. The EAP, among 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 III 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 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 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. Concentra Occupational Health 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 work 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 approved by the Department of Health and Human Services (HHS) (see Appendix B for specific laboratories used by the City).

Drug and Alcohol Testing Collection Process and 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 XIX of this policy.

The drugs that will be tested for include marijuana, cocaine, opioids, amphetamines, and phencyclidine. After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a HHS certified laboratory. An initial drug screen and validity test will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) or Liquid Chromatography/Mass Spectrometry (LC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS or LC/MS test are at or above the minimum thresholds established in 49 CFR Part 40, as amended.

The test results from the HHS certified laboratory will be reported to a Medical Review Officer. A Medical Review Officer (MRO) is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive, substitute, or adulterated test result. The MRO will attempt to contact the employee to notify the employee of the non-negative laboratory result, and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records as appropriate to determine whether there is a legitimate medical explanation for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to the

City of Cripple Creek. If a legitimate explanation is found, the MRO will report the test result as negative.

If the test is invalid without a medical explanation, a retest will be conducted under direct observation. Employees do not have access to a test of their split specimen following an invalid result.

Split Sample

Drug

- 1) Any covered employee who questions the results of a required drug test may request that the split sample be tested. The split sample test must be concluded at a second HHS-certified laboratory. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. The City of Cripple Creek will ensure that the cost for the split specimen analysis is covered in order for a timely analysis of the sample, however Cripple Creek will seek reimbursement for the split sample test from the employee.
- 2) If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be cancelled.
- 3) The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year. If the primary is positive, the primary and the split will be retained for longer than one year for testing if so requested by the employee through the Medical Review Officer, or by the employer, by the MRO, or by the relevant DOT agency.
- 4) Observed collections
 - a. Consistent with 49 CFR Part 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if:
 - i. The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to the City of Cripple creek that there was not an adequate medical explanation for the result;
 - ii. The MRO reports to the City of Cripple Creek that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed;
 - iii. 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 5mg/dL, and the MRO reported the specimen as negative-dilute and that a second collection must take place under direct observation (see §40.197(b)(1));

- iv. The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to temper with a specimen;
- v. The temperature on the original specimen was out of range;
- vi. Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with;
- vii. All follow-up-tests; or
- viii. All return-to-duty tests

Alcohol

- 1) Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). A list of approved EBT's can be found on ODAPC's web page for "Approved Evidential Breath Measurement Devices". Alcohol screening tests may be performed using a non-evidential testing device (alcohol screening device (ASD)) which is also approved by NHTSA. A list of approved ASDs can be found on ODAPC's web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids". If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must occur on an EBT. The confirmatory test will be conducted no sooner than fifteen minutes after the completion of the initial test. The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

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.

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 MRO before the performance of any safety-sensitive function as defined by FTA or FMCSA.

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 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. 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 drug tests will be conducted under direct observation.

NON-DOT 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.

- 1) In the instance of a self-referral or a management referral, disciplinary action against the employee shall include:
 - a. Mandatory referral for an assessment by an employer approved counseling professional for assessment, formulation of a treatment plan, and execution of a return-to-work agreement.
 - b. Failure to execute or remain compliant with the return-to-work agreement shall result in termination from the City of Cripple Creek employment.
 - i. Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to work; the result of that test is negative; the employee is cooperating with his/her recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as described in this policy; however, all follow-up testing performed as part of a return-to-work agreement required under the policy is under the sole authority of the City of Cripple Creek and will be performed using non-DOT testing forms.
 - c. Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination. **All tests conducted as part of the return to work agreement will be conducted under the City's authority and will be performed using non-DOT testing forms.**
 - d. **A self-referral or management referral to the employer's counseling professional that was not precipitated by a positive test result does not constitute a violation of the Federal regulations and will not be considered as a positive test result in relation to the discipline defined in this policy.**
 - e. Periodic unannounced follow-up drug/alcohol testing conducted as a result of a self-referral or management referral which results in a verified positive shall be considered a positive test result in relation to the progressive discipline defined in this policy.
 - f. A Voluntary Referral does not shield an employee from disciplinary action or guarantee employment with the City of Cripple Creek.
 - g. A Voluntary Referral does not shield an employee from the requirement to comply with drug and alcohol testing.
- 2) Failure of an employee to report within five days a criminal drug statute conviction for a violation occurring in the workplace shall result in termination.
- 3) FMCSA Procedures for Voluntary Self-Identification

In accordance with 49 CFR Part 382.121, any covered employee who has self-identified to alcohol misuse or prohibited drug use may voluntarily refer her or himself to the Human Resources Director, provided the employee makes the admission prior to performing a safety-sensitive function (i.e., prior to reporting for duty) and does not self-identify in order to avoid any testing under this policy. After an employee voluntarily refers her or himself to the employer, the DER will refer the individual to a substance abuse counselor for evaluation and treatment.

The substance abuse counselor will evaluate the employee and make a specific recommendation regarding the appropriate treatment. Employees are encouraged to voluntarily seek professional assistance before any use affects job performance.

Any safety-sensitive employee who self-identifies to alcohol misuse or prohibited drug use under this policy will immediately be removed from his/her safety-sensitive function until successful completion of an educational or treatment program, as determined by a drug and alcohol abuse evaluation expert. Prior to returning to a safety-sensitive function, the employee must also undergo a DOT return-to-duty drug test with a verified negative result and/or a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

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 unless the covered employee can be completely discounted as a contributing factor 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 unless the covered employee can be completely discounted as a contributing factor 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 incurs 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.

In the rare event that the City of Cripple Creek is unable to perform an FTA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), the City of Cripple Creek may use drug and alcohol post-accident test results administered by local law enforcement officials in lieu of the FTA/FMCSA test. The local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with local law.

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, reasonable suspicion and follow-up 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 drug testing may occur anytime an employee is on duty. Employees who provide advance, verifiable notice of scheduled medical or childcare 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 childcare 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. COMMERCIAL DRIVER'S LICENSE DRUG AND ALCOHOL CLEARINGHOUSE

Pursuant to regulations establishing requirements for the Commercial Driver's License Drug and Alcohol Clearinghouse ("Clearinghouse"), beginning as of January 6, 2020, the following personal information collected and maintained under this part shall be reported to the Clearinghouse:

- 1) A verified positive, adulterated, or substituted drug test result
- 2) An alcohol confirmation test with a concentration of 0.04 or higher
- 3) A refusal to submit to any test required by FMCSA regulations
- 4) An employer's report of actual knowledge:
 - a. On-duty alcohol use;
 - b. Pre-duty alcohol use;
 - c. Alcohol use following an accident; and
 - d. Controlled substance use.
- 5) A substance abuse professional (SAP) report of the successful completion of the return-to-duty process
- 6) A negative return-to-duty test
- 7) An employer's report of completion of follow-up testing

XII. 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.

XIII. ZERO TOLERANCE POLICY

Any employee who commits a confirmed violation of this policy or the “Drug Free Workplace Act” is subject to immediate termination of employment.

XIV. 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

If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded and the applicant will be provided with a list of at least two (2) USDOT qualified Substance Abuse Professionals. **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 SAP return to duty process. **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 an 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 is defined as 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 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 FMCSA)** 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.

XV. EVALUATIONS, REFERRALS AND REHABILITATION

Substance Abuse Professional (SAP)

Any safety-sensitive employee who has an MRO verified positive drug test, who tests at 0.04 or greater on an alcohol confirmation test, or who refuses to be tested will be immediately removed from safety-sensitive functions and will be terminated. Even though discharged, the employee will be provided with a list of at least two (2) USDOT qualified Substance Abuse Professionals (SAPs) for assessment 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 specialist, 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.

Outside of the City, employees may access national or local hotlines and helplines, 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. EDUCATION, TRAINING AND LITERATURE

- 1) For FMCSA Agencies: The City of Cripple Creek will provide educational materials that explain the requirements of Part 382 as well as this policy. The City of Cripple Creek will ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substances testing and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle.

The materials to be made available to drivers shall include what is provided in this policy document in addition to a detailed discussion the following:

- a. Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a co-worker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management; and
- b. The requirement that the following personal information collected and maintained under Part 382 and this policy shall be reported to the FMCSA Clearinghouse:
 - i. A verified positive, adulterated, or substituted drug test result;
 - ii. An alcohol confirmation test with a concentration of 0.04 or higher;
 - iii. A refusal to submit to any test required by subpart C of this part;
 - iv. An employer's report of actual knowledge, as defined at § 382.107;
 - v. On duty alcohol use pursuant to §382.205;
 - vi. Pre-duty alcohol use pursuant to §382.207;
 - vii. Alcohol use following an accident pursuant to §382.209; and
 - viii. Controlled substance use pursuant to §382.213;
 - ix. A substance abuse professional (SAP as defined in §40.3 of this title) report of the successful completion of the return-to-duty process;
 - x. A negative return-to-duty test;
 - xi. An employer's report of completion of follow-up testing

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 effects 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 helplines, 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.

XVII. RECORDS RETENTION

The City will maintain records of its Drug and 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.

- 1) Drug/alcohol testing records shall be maintained by the City of Cripple Creek Drug and Alcohol Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.
- 2) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP follow-up testing plans.
- 3) Records of a verified positive drug/alcohol test result shall be released to the Drug and Alcohol Program Manager, and other management personnel on a need-to-know basis.
- 4) Records will be released to a subsequent employer only upon receipt of a written request from the employee and the employee's execution of a release form acceptable to the City.
- 5) Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the proceeding.
- 6) Records will be released to the National Transportation Safety Board during an accident investigation.

- 7) Information will be released in a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information is relevant to the case and issues an order to the employer to release the information. The employer will release the information to the decision maker in the proceeding with a binding stipulation that it will only be released to parties of the proceeding.
- 8) Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.
- 9) Records will be released if requested by a Federal, state or local safety agency with regulatory authority over the City of Cripple Creek or the employee.
- 10) If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended, the City shall undertake any legally required steps to contest the issuance of the order. Any steps beyond those mandated by law shall be taken at the sole discretion of the City.
- 11) In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.

XVIII. 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.

XIX. CONTACT INFORMATION

Questions or 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

XX. POLICY APPROVAL AND ACCEPTANCE

Frank Salvato
City Administrator

City Council Acceptance

XXI. APPENDICES

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

Concentra Medical Center-Bijou
402 W. Bijou St. Colorado Springs, CO 80905
719-302-6942
OR

UC Health-Circle Square
1035 Garden of the Gods Rd. #120
Colorado Springs, CO 80907
719-365-3200

CERTIFIED MEDICAL REVIEW OFFICER (MRO)

Dr. Brian N. Heinen
151 Leon Ave.
Eunice, LA 70535
1-800-457-0493

CERTIFIED SUBSTANCE ABUSE PROFESSIONAL (SAP)

Robert L. Johnson
1510 W. Canal Ct. #2500
Littleton, CO 80120
303-798-2196

CERTIFIED SUBSTANCE ABUSE PROFESSIONAL (SAP)

Gene Henderson
Henderson Consulting & EAP Services
7750 N. Union Suite 102
Colorado Springs, CO 80920
719-380-1644

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:

Definitions:

Actual Knowledge: (For FMCSA Agencies) Actual knowledge by an employer that a driver has used alcohol or controlled substances based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee's admission of alcohol or controlled substance use, except as provided in §382.121. Direct observation as used in this definition means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing.

Accident (FTA): An occurrence associated with the operation of a vehicle even when not in revenue service, if as a result:

- a. An individual dies;
- b. An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or,
- c. One or more vehicles incur disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle. For purposes of this definition, *disabling damage* means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes them inoperative.

Adulterated Specimen: A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

Alcohol: The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.

Alcohol Concentration: Expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under 49 CFR Part 40.

Aliquot: A fractional part of a specimen used for testing, it is taken as a sample representing the whole specimen.

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

Clearinghouse: The FMCSA database that 49 CFR Part 382 requires employers and service agents to report information to, and to query, regarding CDL drivers who are subject to the DOT controlled substance and alcohol testing regulations.

Confirmatory Drug Test: A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or metabolite.

Confirmatory Validity Test: A second test performed on a different aliquot of the original urine specimen to further support a validity test result.

Covered Employee Under FTA/FMCSA Authority: An employee who performs a safety-sensitive function including an applicant or transferee who is being considered for hire into a safety-sensitive function (See Attachment A for a list of covered employees).

Designated Employer Representative (DER): An employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Parts 40 and 655.

DOT, The Department, DOT Agency: These terms encompass all DOT agencies, including, but not limited to, the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Office of the Secretary (OST). For purposes of 49 CFR Part 40, the United States Coast Guard (USCG), in the Department of Homeland Security, is considered to be a DOT agency for drug testing purposes. These terms include any designee of a DOT agency.

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

Disabling Damage: Damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes them inoperative.

Evidentiary Breath Testing Device (EBT): A device approved by the NHTSA for the evidential testing of breath at the 0.02 and the 0.04 alcohol concentrations, and appears on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" because it conforms with the model specifications available from NHTSA.

Initial Drug Test: (Screening Drug Test) The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

Initial Specimen Validity Test: The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid

Invalid Result: The result reported by an HHS-certified laboratory in accordance with the criteria established by the HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

Laboratory: Any U.S. laboratory certified by HHS under the National Laboratory Certification program as meeting standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.

Limit of Detection (LOD): The lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

Limit of Quantitation: For quantitative assays, the lowest concentration at which the identity and concentration of the measurand can be accurately established.

Medical Review Officer (MRO): A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history, and any other relevant bio-medical information.

Negative Dilute: A drug test result which is negative for the five drug/drug metabolites but has creatinine and specific gravity values that are lower than expected for human urine.

Negative Result: The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen. An alcohol concentration of less than 0.02 BAC is a negative test result.

Non-negative Test Result: A urine specimen that is reported as adulterated, substituted, invalid, or positive for drug/drug metabolites.

Oxidizing Adulterant: A substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or metabolites, or affects the reagents in either the initial or confirmatory drug test.

Performing (a safety-sensitive function): A covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

Positive Result: The result reported by an HHS- Certified laboratory when a specimen contains a drug or drug metabolite equal or greater to the cutoff concentrations.

Prohibited Drug: Identified as marijuana, cocaine, opioids, amphetamines, or phencyclidine as specified in 49 CFR Part 40, as amended.

Reconfirmed: The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.

Rejected for Testing: The result reported by an HHS- Certified laboratory when no tests are performed for specimen because of a fatal flaw or a correctable flaw that has not been corrected.

Revenue Service Vehicles: All transit vehicles that are used for passenger transportation service.

Safety-sensitive functions: (FTA) Employee duties identified as:

- (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 and
- (5) Carrying a firearm for security purposes.

Safety-sensitive functions: (FMCSA) All time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

- (1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- (2) All time inspecting equipment as required by §§392.7 and 392.8 of this subchapter or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- (3) All time spent at the driving controls of a commercial motor vehicle in operation;
- (4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of §393.76 of this subchapter);
- (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.

Split Specimen Collection: A collection in which the urine collected is divided into two separate bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

Substance Abuse Professional (SAP): 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 an organization listed at <https://www.transportation.gov/odapc/sap>) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

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

Test Refusal: The following are considered a refusal to test if the employee:

- (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer.
- (2) 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.
- (3) 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.
- (4) In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of your provision of a specimen.
- (5) Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.
- (6) Fail or decline to take a second test as directed by the collector or the employer for drug testing.
- (7) Fail to undergo a medical evaluation as required by the MRO or the employer's Designated Employer Representative (DER).
- (8) Fail to cooperate with any part of the testing process.
- (9) Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.
- (10) Possess or wear a prosthetic or other device used to tamper with the collection process.
- (11) Admit to the adulteration or substitution of a specimen to the collector or MRO.
- (12) Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
- (13) Fail to remain readily available following an accident.
- (14) 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.

Vehicle: A bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A public transit vehicle is a vehicle used for public transportation or for ancillary services.

Verified Negative Test: A drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use at or above the minimum cutoff levels established by the Department of Health and Human Services (HHS).

Verified Positive Test: A drug test result reviewed by a medical review officer and determined to have evidence of prohibited drug use at or above the minimum cutoff levels specified in 49 CFR Part 40 as revised.

Validity Testing: The evaluation of the specimen to determine if it is consistent with normal human urine. Specimen validity testing will be conducted on all urine specimens provided for

testing under DOT authority. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

Appendix D:

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)

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

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

Observed Collection Yes No

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: _____

a. Was there a loss of life as a result of the accident? Yes No

b. Was medical treatment provided (away from the scene of the accident) as a result of the accident/ incident? Yes No

c. Was there disabling damage to any of the involved vehicles? Yes No

d. 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 E:

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

Employee Name (Please Print)

Signature

Date

Human Resources Representative

Date

Appendix F:

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 Name (Please Print)

Date

Signature



TO: **City Council**
Frank Salvato, City Administrator

FROM: **Paul Harris, Finance Director**

AGENDA ITEM: **Sublease of Basement of the Green House to Community of Caring**

DATE: **9/14/2022** **MEMO 2022-4**

REQUEST:

Approval of an additional one-year sublease of the basement of the "Green House" to Community of Caring.

OVERVIEW & ANALYSIS:

- Renewal of existing sublease of the basement for storage for Community of Caring.

BUDGET IMPACT:

- None.

STAFF RECOMMENDATION AND COUNCIL ACTION REQUESTED:

- Staff recommends, and asks the Council for, the approval of the attached sublease agreement.

SUBLEASE AGREEMENT

This Sublease Agreement ("Sublease Agreement") is entered into on September 21, 2022, by and between the City of Cripple Creek, a municipal corporation, whose address is 337 East Bennett Avenue, Cripple Creek, CO 80813 (hereinafter "Sublessor" or "City") and The Community of Caring Foundation, a Colorado non-profit corporation, whose address is 166 E. Bennett Avenue, Cripple Creek, CO 80813 (hereinafter "Sublessee" or "Caring").

RECITALS

WHEREAS, Amory Properties, LLC and Amory Properties No. 2, LLC (collectively referred to herein as "Amory") as Landlord and the City as Tenant entered into that certain Lease Agreement for the premises situated in the City of Cripple Creek, County of Teller, State of Colorado, described as the property and improvements located on/at Lots 1 through 10 inclusive, Block 22, Fremont (now Cripple Creek) (the "Leased Premises"), effective November 1, 2020 through October 31, 2025 attached hereto as **Exhibit A**; and

WHEREAS, the Leased Premises is composed of a parking lot and a green house (the "House"); and

WHEREAS, pursuant to the Lease Agreement, Tenant (City) may sublet the premises with the prior written consent of the Landlord (Amory) and Amory has provided its written consent to the City.

NOW THEREFORE, in consideration of the mutual promises and covenants to be kept and performed by the parties, Sublessee desires to sublease from Sublessor the basement of the House upon the following TERMS and CONDITIONS.

TERMS AND CONDITIONS

ARTICLE I PREMISES AND TERM

1. **Subleased Premises.** Subject to the terms and conditions set forth herein City subleases to Caring, and Caring agrees to sublease from City, the basement of the House located at Lots 1 through 10 inclusive, Block 22, Fremont (now Cripple Creek) and commonly known as 166 E. Bennett Avenue, Cripple Creek, County of Teller, State of Colorado (the "Basement" or "Subleased Premises").
2. The term of the Sublease Agreement shall commence November 1, 2022 and end on October 31, 2023.
3. The Basement is subleased and accepted by Caring in an "as is" condition without warranties or representations of any kind.

**ARTICLE II
CONDITIONS PRECEDENT**

1. The commencement of the Sublease contemplated in this Sublease Agreement is expressly contingent upon Caring furnishing proof of the insurance requirements contained herein. Caring shall be granted possession of the Subleased Premises on execution of this Sublease Agreement and having the City and Landlord (Amory) covered as additional insureds per Article VIII of this Sublease Agreement.

**ARTICLE III
BASE RENT**

1. Base Rent shall be paid to the City by Caring in the amount of \$1.00 per year, with the rent due on November 5 each year during the term of the Sublease beginning November 1, 2022.

**ARTICLE IV
ADDITIONAL RENT**

1. [Reserved.]

**ARTICLE V
USE**

1. The Subleased Premises may be used by Caring for storage only and no other uses. Caring shall comply with all laws, ordinances, codes and regulations regarding the Subleased Premises and the operation of the permitted use upon the Subleased Premises and the Leased Premises.

**ARTICLE VI
CONSTRUCTION AND PERMITTING OBLIGATIONS**

1. Caring is not permitted to and shall not cause any remodeling or refurbishing of the Subleased Premises, with the exception of placing waterproof plastic on the ceiling of the basement to prevent leaks and placing plywood to cover the entrance door to the space.

2. The parties agree that the Landlord's (Amory's) property interest shall under no circumstances be subject to any mechanic's or material man's liens upon the Subleased Premises occurring as a result of any construction or other activities thereon.

3. Landlord shall have the right to post upon the Subleased Premises a notice that Landlord, as owner, is not responsible to contractors, material men, or laborers for any nonpayment for materials or work performed upon the Subleased Premises. Caring shall cooperate with Landlord in posting the notice and keeping it posted in a conspicuous place upon the Subleased Premises.

**ARTICLE VII
REPAIRS AND REPLACEMENT**

1. Caring, at its own expense, shall properly maintain and keep the Subleased Premises and all improvements in such order, condition, and repair as Caring shall deem appropriate. Caring in repairing or improving the Subleased Premises shall not allow any mechanic's liens to arise. Caring shall not permit any waste, damage, or injury to the Leased Premises, including the Subleased Premises.
2. Neither the City nor the Landlord (Amory) shall have any obligation for repairs, maintenance, or improvement to the Subleased Premises.

**ARTICLE VIII
INSURANCE**

1. During the term of the Sublease and any extension thereof, Caring, at its own expense, shall keep in full force and effect (1) a liability insurance policy, naming City and Landlord (Amory) as an additional insured, covering the Subleased Premises with minimum policy limits of \$1,000,000.00, and (2) such insurance policy as Caring shall desire to insure Caring's personal property in the Subleased Premises. Caring shall fully comply with all requirements of the insurance companies and policies and shall not do or omit to do anything upon the Leased Premises which could impair the insurance coverage. Each policy of insurance required of Caring by this Sublease Agreement shall be issued by endorsement requiring 30 (thirty) days written notice from the insurer to the City and Landlord (Amory) before cancellation, failure to renew, or change in the nature, scope or amount or commencement of the Sublease Agreement and maintained thereafter.

**ARTICLE IX
ASSIGNMENT AND SUBLETTING**

1. Caring shall not assign nor in any manner transfer this Sublease Agreement or any interest therein subsequent to commencement of the Sublease Agreement without the prior written consent of the City.

**ARTICLE X
ACCESS TO LEASED PREMISES**

1. City and City's authorized representatives shall have the right, upon reasonable notice, to enter upon the Subleased Premises during all business hours for the purpose of inspecting the same or of making repairs, additions, or alterations which the Caring has failed to perform. City shall not be liable to Caring in any manner for any expense, loss or damage by reason of such entry nor shall the exercise of such right be deemed an eviction or disturbance of Caring's use of possession.

ARTICLE XI ENVIRONMENTAL

1. Caring shall not knowingly during the term of this Sublease Agreement cause, permit or allow any hazardous materials or substances to be brought upon, treated, generated or used upon the Leased Premises by Caring, its agents, employees, contractors, invitees, or other third parties. Caring will promptly take all actions required by federal, state or local government to remediate the Subleased Premises or Leased Premises in the event of presence or release of any hazardous materials during the term of this Sublease Agreement as a result of the actions or omissions of Caring, its agents, employees, contractors, invitees or other third parties. Caring shall immediately notify City of the presence or release of any hazardous materials requiring such remedial action.

ARTICLE XI TITLE

1. City covenants that it has the full right and authority to enter into this Sublease Agreement for the full term thereof. Caring may at its expense, obtain and pay for a Leasehold Policy of Title Insurance insuring the Title to the Subleased Premises.

ARTICLE XIII REMEDIES

1. Time is of the essence in all matters concerning this Sublease Agreement.
2. The following events shall be deemed to be events of default by Caring under this Sublease Agreement:
 - (a) Caring shall have failed to pay any installment of rent within 10 (ten) days after the same shall be due and payable;
 - (b) If a mechanic's or material man's lien is placed upon the Leased Premises and is not removed or bonded over as required hereunder; or
 - (c) Caring shall have failed to comply with any other provisions of this Sublease Agreement and shall not cure such failure within 30 (thirty) days after City, by written notice, has informed Caring of such non-compliance. In the case of a default which cannot with due diligence be cured within a period of 30 (thirty) days, Caring shall have such additional time to cure same as may be reasonably necessary, provided Caring proceeds promptly and with due diligence to cure such default after receipt of said notice.
3. In the event of a default pursuant to subparagraph 2 above, City may, by serving 10 (ten) days written notice upon Caring, and Caring shall have failed to cure such default within 5 (five) days of receipt of the aforementioned notice, elect to cancel and terminate this lease. If City gives Caring notice of Caring's default and/or delivers to Caring a Notice of Demand for Payment or Possession pursuant to the applicable statute (either of which shall hereinafter be referred to as a "Notice of Default"), the Notice of Default shall constitute an election to terminate the Sublease Agreement.

4. In the event of any default hereunder by Caring, City may immediately, or at any time thereafter, cure such default for the account and at the expense of Caring. If City at any time by reason of such default is compelled to pay or elects to pay money, or is compelled to incur any expense, including reasonable attorney's fees, the sum or sums so paid by the City, with interest thereon at 12% (twelve percent) per annum from the date of payment thereof, shall be deemed to be due from Caring to City on demand.

5. Should City be in breach under the terms of this lease, Caring shall have the same cure rights provided to City hereunder.

ARTICLE XIV RIGHT TO TERMINATE

1. Subject to conditions contained herein, City may terminate this Sublease Agreement on six (6) months written notice to terminate. The notice to terminate and time to vacate shall commence on the first (1st) day of the next month after the notice is delivered, or the first (1st) day of the month if the notice is delivered on the first (1st) day of the month.

2. Subject to conditions contained herein, Caring may terminate this Sublease Agreement on two (2) months written notice to terminate. The notice to terminate and time to vacate shall commence on the first (1st) day of the next month after the notice is delivered, or the first (1st) day of the month if the notice is delivered on the first (1st) day of the month. Failure by the City to appropriate sufficient funds in any year to meet any of its fiscal obligations hereunder shall constitute written notice to terminate.

3. The City's right to terminate is provided in case of sale of the Leased Premises by Landlord (Amory), or for construction of a building on the Leased Premises.

4. The City's right to terminate cannot be applied to replace Caring with another tenant to use the Subleased Premises.

ARTICLE XV NOTICES

1. Any Notice required or permitted to be given by the parties hereto shall be deemed given when mailed by United States Postal Service Certified Mail, postage prepaid, return receipt requested, properly addressed to the recipient of the Notice at the address given below. The date the notice is given is deemed to be the date of the postmark upon the envelope in which the notice is mailed. In the event that either party should desire to change the address to which notices are to be sent, the change of address shall be sent to the other party as a notice in the manner set forth above.

LANDLORD'S ADDRESS: AMORY PROPERTIES, LLC
AMORY PROPERTIES #2, LLC
c/o ROBERT E. ISOLA, MANAGER
557 Wymore Road, Suite 202
Maitland, FL 32751

CITY'S ADDRESS: THE CITY OF CRIPPLE CREEK
c/o CITY ADMINISTRATOR
P.O. BOX 430
CRIPPLE CREEK, CO 80813

CARING'S ADDRESS: THE COMMUNITY OF CARING FOUNDATION,
c/o _____

CRIPPLE CREEK, CO 80813

ARTICLE XVI
GENERAL PROVISIONS

1. In the event of any dispute between the parties concerning this Sublease Agreement, or in the event of any action to enforce this Sublease Agreement or to collect damages on account of any breach of the obligations provided for herein, the prevailing party shall be entitled to recover from the other party, all costs and expenses, including reasonable attorney's fees, incurred in such litigation as well as "prevailing party" shall mean the party who receives substantially the relief requested, whether by settlement, dismissal, summary judgment, judgment, or otherwise.
2. Nothing contained herein shall be deemed or construed by anyone as the creating relationship of principal and agent, partnership, or joint venture between the parties hereto.
3. The various rights and remedies contained herein shall not be construed as exclusive of any other right or remedy, but shall be cumulative and in addition to every other remedy now or hereafter existing at law, in equity, or by statute.
4. No delay or omission of the right to exercise any power by either party shall impair any such right or power, or shall be construed as a waiver of default or as acquiescence therein. One or more waivers of any covenant, term or condition of this lease by either party shall not constitute a waiver of a subsequent breach of the same covenant, term, or condition. The consent or approval by either party to the act of the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent or approval of any subsequent similar act.
5. This Sublease Agreement represents the entire and only agreement between the parties with respect to the subject matter covered herein, and no oral statement or representation not contained herein shall be of any force or effect between the parties. All negotiations, considerations, representations and understandings between the parties are incorporated and merged herein. This

agreement may be modified or altered only by the parties' written agreement.

6. The covenants, agreements and obligations herein contained shall extend to, bind and inure to the benefit of the parties hereto, as well as their respective personal representatives, heirs, successors, and assigns.

7. Caring shall have no right to record a memorandum of this Sublease Agreement.

8. Unenforceability of any provision contained herein shall not affect or impair the validity of any other provision of this Sublease Agreement.

9. The laws of the State of Colorado shall govern the validity, performance and enforcement of this agreement.

10. Caring represents that it will provide proof of its status as a legal entity in good standing authorized to execute and perform this agreement prior to the commencement hereof.

11. The City shall not be responsible for any disruption of utility service.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, City and Caring have signed and sealed this Sublease Agreement as of _____, 2022.

CITY OF CRIPPLE CREEK

By: Milford Ashworth, Mayor

THE COMMUNITY OF CARING FOUNDATION

By: _____

EXHIBIT A

Lease Agreement by and between Amory Properties, LLC
and Amory Properties #2, LLC (Landlord) and
The City of Cripple Creek (Tenant) dated November 1, 2020

EXTENSION OF LEASE AGREEMENT

This Extension of Lease Agreement is between Amory Properties, LLC and Amory Properties #2, LLC, both Colorado limited liability companies, herein collectively referred to as "Landlord," and the City of Cripple Creek, a municipal corporation, herein referred to as "Tenant."

Recitals

- a. The parties entered into a Lease Agreement on November 1, 2016, which expires on October 31, 2020, herein referred to as the "Lease Agreement."
- b. The real property leased by Landlord to Tenant under the Lease Agreement is described as Lots 1 through 10 inclusive, Block 22, Fremont (now Cripple Creek), County of Teller, State of Colorado, herein referred to as the "Leased Premises."
- c. The parties wish to extend the Lease Agreement for five years. With Landlord's permission Tenant is currently subleasing a portion of the building on the Leased Premises to Community of Caring, a non-profit organization.

Agreement

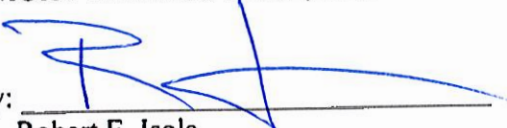
1. For a good and valuable consideration, Landlord and Tenant extend the Lease Agreement from November 1, 2020, through October 31, 2025. The Base Rent remains at \$1,000 per month with the rent due on the first day of each month, beginning November 1, 2020.
2. Landlord consents to Tenant's sublease of any portion of the building on the Leased Premises to the Community of Caring. The insurance furnished by Tenant under Article VIII of the Lease Agreement shall include Community of Caring as an additional insured.
3. Except for the changes in paragraphs 1 and 2 herein, all other terms of the Lease Agreement are reaffirmed.

In witness whereof Landlord and Tenant have signed this Extension of Lease Agreement, with an effective date of November 1, 2020.

LANDLORD

AMORY PROPERTIES, LLC
AMORY PROPERTIES #2, LLC

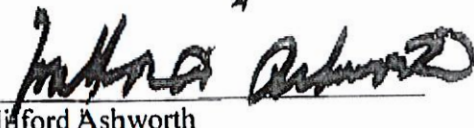
By:


Robert E. Isola
Manager

TENANT

CITY OF CRIPPLE CREEK

By:


Mifford Ashworth
Mayor