

## SITE USE LICENSE AGREEMENT

### **For Department of Human Services Buildings: Richard T. Castro and Montbello Office**

**THIS SITE USE LICENSE AGREEMENT (“Agreement”)** is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, (“City”), acting by and through the **Denver Department of Human Services** (“Agency”), and **MPOWERED**, a Colorado nonprofit corporation, whose address is 2009 Wadsworth Blvd, #100 Lakewood, CO 80214 (“User”), (together “the parties”).

### Recitals

- A. User is a non-profit organization that offers affordable financial services, and in partnership with the Denver Office of Strategic Partnerships (DOSP), Denver Department of Human Services (DDHS) and the Office of Economic Development (OED), provides one on one financial coaching services to Denver residents in an attempt to reduce poverty and promote self-sufficiency.
- B. The Agency desires to host a financial coaching program at its facilities located at 1200 Federal Blvd., Denver, CO and 4685 Peoria St., Denver, CO to benefit low-income people served by the Agency.

The parties enter into this Agreement and the City grants this License to User who accepts the same, all on the terms and conditions and subject to the promises and provisions set forth below.

### Terms

**1. SITE USE LICENSE:** User will fully coordinate its use of the Premises with the Executive Director of the Department of Human Services (“Executive Director”) or, the Executive Director’s Designee. The City hereby grants to User a revocable license to use the room/space designated by the Executive Director on **Exhibit A**, not to exceed Two Hundred Thirty-Five (235) square feet of usable space, in the Richard T. Castro Building, 1200 Federal Boulevard, Denver, CO, and One Hundred Fifty (150) square feet of usable space, in the Montbello Building, 4685 Peoria St., Denver, CO, including use of common hallways and restroom facilities (collectively referred to as the “Premises” or “Buildings”), to operate its financial coaching services program (the “Program”) only. User, its officers, employees, volunteers, or agents, shall have the following license rights under this Agreement:

(a) The right to enter and remain upon the Premises with personnel and equipment for the purpose of administering the Program during the term stated below. User will provide at its own cost and expense and at no cost or expense to the City or to individuals receiving services under the Program, all personnel, supplies, and materials necessary to provide the Program on the Premises.

**2. TERM:** The term of this Agreement shall begin on **June 1, 2015**, and end on **May 31, 2018**.

**3. FEE:** During the term of this Agreement, User shall pay the City Ten Dollars (\$10.00) for the Term. In addition, User shall reimburse the City for services, time and materials requested, required or necessitated by User's use of the Premises. The availability and amount of reimbursement shall be agreed upon in writing by User in advance of the performance by the City of the work eligible for reimbursement. The City will not be required to provide services, time, or materials without such an agreement.

**4. USE OF PREMISES:** User shall use and occupy the Premises in a safe and careful manner and, except where expressly waived by the City in writing, shall comply with all applicable City, State and federal laws, rules, and regulations, Executive Orders, and fiscal rules pertaining to the Premises promulgated by the City and all other rules and regulations prescribed by the Agency. User shall not do any act or suffer any act to be done during the term of this Agreement which will in any manner mar, deface, alter or injure any part of the Premises. User shall not interfere with any City operations in or about the Premises and shall not disturb any City fixtures, furniture, equipment, offices or agencies, documents, or files during such occupancy without the prior express approval of the City. User shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on or in the Premises by User, User's agents, employees, contractors, or invitees. If Hazardous Substances are used, stored, generated, or disposed of on or in the Premises, or if the Premises become contaminated in any manner due to the actions or inactions of the User, User shall be responsible for any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, User, and expert fees) arising during or after the term and arising as a result of those actions or inactions by User. This obligation includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision. Without limitation of the foregoing, if User causes or permits the presence of any Hazardous Substance on the Premises and that results in contamination, User shall promptly, at its sole expense, take any and all necessary actions to return the Premises to the condition existing prior to the presence of any such Hazardous Substance on the premises. User shall first obtain City's approval for any such remedial action. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of Colorado, or the United States Government. "Hazardous Substance" includes any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to state, federal, or local governmental law. "Hazardous Substance" includes but is not restricted to asbestos, polychlorobiphenyls ("PCBs"), and petroleum.

**5. INSURANCE**

**a. General Conditions:** User agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. User shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be

underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-”VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the above-described policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, User shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City’s contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the User. User shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the User. The User shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

**b. Proof of Insurance:** User shall provide a copy of this Agreement to its insurance agent or broker. User may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. User certifies that the certificate of insurance attached as **Exhibit B**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City’s contract number be referenced on the Certificate. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of User’s breach of this Agreement or of any of the City’s rights or remedies under this Agreement. The City’s Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

**c. Additional Insureds:** For Commercial General Liability, Auto Liability Professional Liability, and Excess Liability/Umbrella (if required) User and subcontractor’s insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

**d. Waiver of Subrogation:** For all coverages required under this Agreement, User’s insurer shall waive subrogation rights against the City.

**e. Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the User. User shall include all such subcontractors as additional insured under its policies (with the exception of Workers’ Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. User agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

**f. Workers’ Compensation/Employer’s Liability Insurance:** User shall maintain the coverage as required by statute for each work location and shall maintain Employer’s Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000

aggregate for all bodily injuries caused by disease claims. User expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the User's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date User executes this Agreement.

**g. Commercial General Liability:** User shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

**h. Business Automobile Liability:** User shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

**i. Additional Provisions:**

(i) For Commercial General Liability, the policy must provide the following:

(a) That this Agreement is an Insured Contract under the policy;

(b) Defense costs are outside the limits of liability;

(c) A severability of interests, separation of insureds provision (no insured vs. insured exclusion); and

(d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(e) No exclusion for sexual abuse or molestation.

(ii) For claims-made coverage:

(a) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

(b) User shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the User will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

## **6. DEFENSE AND INDEMNIFICATION**

**a.** User agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of User or its subcontractors either passive or active, irrespective of fault,

including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

**b.** User's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. User's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

**c.** User shall defend any and all Claims which may be brought or threatened against City and shall pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City will be in addition to any other legal remedies available to City and will not be the City's exclusive remedy.

**d.** Insurance coverage requirements specified in this Agreement in no way lessen or limit the liability of the User under the terms of this indemnification obligation. The User is responsible to obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

**e.** This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

**7. COLORADO GOVERNMENTAL IMMUNITY ACT:** In relation to the Agreement, the City is relying upon and has not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.*

**8. CLEANLINESS:** In the event that food, beverages, or materials are brought onto the Premises or opened or consumed on the Premises, then User shall be responsible for promptly cleaning any crumbs, spills or debris from such food, beverages, or materials and properly disposing of such debris to the satisfaction of the City.

**9. REPAIR AND MAINTENANCE:** User shall keep and maintain the Premises in as good an order, condition and state of repair as was their order, condition and state of repair on the commencement date of this Agreement. In no event and under no circumstances shall the City ever be required to provide, and it shall never be called upon or be responsible to provide, any upkeep, repair, maintenance, betterments or improvements to any part or portion of the Premises.

**10. LIEN PROTECTION:** User shall keep the Premises free and clear from any and all liens or claims of whatsoever type or nature, including mechanic's liens and materialman's liens.

**11. FIRE OR OTHER CASUALTY:** If any part of the Premises is damaged or destroyed by fire or other casualty, then this Agreement shall be terminated without any right in User to receive any compensation or proceeds of insurance resulting from such fire or other casualty.

**12. VACATION UPON EXPIRATION OR TERMINATION:** User shall vacate the Premises promptly upon the expiration, termination, or cancellation of this Agreement or upon an earlier direction of the Facility Executive Director.

**13. DAMAGE TO PROPERTY:** The City assumes no responsibility of any kind for any property placed in the Premises or in the outside areas of the Premises, and the City is hereby released and discharged from any and all claims or liabilities for any loss, injury or damages to User's property that may be sustained by reason of the occupancy of the Premises or the use or occupancy of the Premises under this Agreement, including those claims or liabilities based on negligence or breach of warranty.

**14. REMOVAL OF PROPERTY:** Any property left in the Premises by the User or its invitees, employees, or agents shall be deemed, after a period of forty eight (48) hours from the last time of use of the Premises provided for under this Agreement, to be abandoned and shall become the property of the City and County of Denver.

**15. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Agreement, User agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

**16. ASSIGNMENT AND SUBCONTRACTING:** User will not assign any of its rights or obligations, or subcontract performance obligations, without obtaining the Executive Director's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and shall be cause for termination of this Agreement by the City. The Executive Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the User shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any subconsultant, subcontractor or assign.

**17. GOVERNING LAW; VENUE:** The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District.

**18. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** User, its officers, agents, and employees, shall cooperate and comply with the provisions of Executive

Order No. 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring User from City facilities or participating in City operations.

**19. TOBACCO PRODUCTS:** User and its officers, agents, and employees shall cooperate and comply with the provisions of Denver Revised Municipal Code §24-304 prohibiting smoking in City owned and controlled buildings and facilities, and Denver Executive Order No. 13 dated October 19, 1995, prohibiting the sale or advertising of tobacco products in or on premises or in facilities owned or operated or controlled by the City and County of Denver. User agrees it will prohibit smoking by its employees and agents in or on the premises and will not sell or advertise tobacco products. "Sale" includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration. "Advertising" includes the display of commercial and non-commercial promotion of the purchase or use of tobacco products through any medium whatsoever but does not include any advertising and sponsoring which is a part of a performance or show or event displayed or held in City facilities.

**20. LEGAL AUTHORITY:** User represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of User represents and warrants that he has been fully authorized by User to execute the Agreement on behalf of User and to validly and legally bind User to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either User or the person signing the Agreement to enter into the Agreement.

**21. NO CONSTRUCTION AGAINST DRAFTING PARTY:** The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party

**22. ORDER OF PRECEDENCE:** In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

**23. SURVIVAL OF CERTAIN PROVISIONS:** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the User's obligations to provide insurance will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

**24. ADVERTISING AND PUBLIC DISCLOSURE:** The User shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the User's advertising or public relations materials without first obtaining the written approval of the Executive Director. Any oral presentation or written materials related to services performed

under the Agreement will be limited to services that have been accepted by the City. The User shall notify the Executive Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

**25. CITY EXECUTION OF AGREEMENT:** The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

**26. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

**28. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** User consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

***END***

***Signature Pages follow this Page***



**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** SOCSV-201522681-00

**Contractor Name:** Mpowered

By: 

Name: Andrew Burch  
(please print)

Title: Director of Programs  
(please print)

**ATTEST: [if required]**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



## EXHIBIT A

### I. Agencies involved

#### **Denver Department of Human Services:**

Denver Department of Human Services provides both assistance services and protection and prevention services to Denver's most vulnerable residents. Assistance programs are provided to eligible Denver residents in financial need and include federal food, cash and medical benefits, child care, child support, energy, and rental and burial assistance. All services are designed to help families and individuals toward financial self-sufficiency.

#### **Mpowered:**

Mpowered is a nonprofit organization that offers financial coaching. Mpowered, in partnership with the Denver Office of Strategic Partnerships (DOSPP), Denver Department of Human Services (DDHS) and the Office of Economic Development (OED), offer the Financial Empowerment Center (FEC) program, which provides one-on-one financial coaching to Denver residents. The program is designed to integrate one-on-one financial coaching into a number of key areas within DHS and also OED Workforce. Mpowered provides free, one-on-one, personalized financial coaching open to anyone interested in changing their financial behaviors. Coaches work with clients to decrease debt, improve credit, establish or increase savings, and open and maintain bank accounts. During the sessions, clients learn to set goals and create budgets, as well as receive links to other services as part of integrated service delivery. Better financial planning allows clients to build their own safety nets, reducing the need to utilize social services and other City and community programs.

### II. Roles and Responsibilities

#### Denver Human Services will:

1. Provide space in the physical facility at the Castro Building, 1200 Federal Boulevard, Denver, CO, (the "Premises") in which Mpowered may consult with clients Monday through Friday. That space shall not exceed two hundred thirty-five (235) square feet of usable space.
2. Provide space in the physical facility at the Montbello Building, 4685 Peoria Street, Denver, CO, (the "Premises") in which Mpowered may consult with clients every Monday and every other Thursday. That space shall not exceed one hundred fifty (150) square feet of usable space.
3. Allow Mpowered to replace DDHS office furniture with furniture owned by Mpowered, if desired. The original furniture shall be turned over to DHS and the substitute furniture will be maintained by Mpowered.

Mpowered will:

1. Provide direct service to clients by employing financial coaches at the Premises.
2. Accept all qualified clients interested in setting financial goals.
3. Maintain confidentiality regarding the services provided to clients and the financial information shared by clients, unless the client authorizes in writing, information sharing.
4. Provide signage for services rendered at each site which are removable without damage to the facilities.



**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
08/12/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b>  Teri Stary State Farm 12191 W 64th Avenue Suite 205 Arvada, CO 80004	<b>CONTACT NAME:</b> Teri Stary PHONE (A/C, No, Ext.): 303-425-0211 FAX (A/C, No): 303-425-6427 E-MAIL: teri@staryinsurance.com ADDRESS:	
	INSURER(S) AFFORDING COVERAGE INSURER A: State Farm Fire and Casualty Company	NAIC # 25143
<b>INSURED</b>  MPowered 2009 Wadsworth Blvd Ste 100 Lakewood, CO 80214	INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	

**COVERAGES**                      **CERTIFICATE NUMBER:**                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
<input checked="" type="checkbox"/>	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		96-G7-4505-8	05/27/2015	05/27/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 500 PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Business Property \$ 26,200
<input checked="" type="checkbox"/>	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		96-G7-4505-8	05/27/2015	05/27/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ 1,000,000 BODILY INJURY (Per accident) \$ 1,000,000 PROPERTY DAMAGE (Per accident) \$ \$
<input type="checkbox"/>	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
<input type="checkbox"/>	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A			PER STATUTE    OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

As required by written contract, the City and County of Denver, its Elected and Appointed Officials, Employees and Volunteers are included as Additional Insured as respects the Commercial General Liability.

<b>CERTIFICATE HOLDER</b>  City and County of Denver Department of Human Services 1200 Federal Boulevard Denver, CO 80204	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE: 
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PRODUCER  
Pinnacol Assurance  
7501 E Lowry Blvd  
Denver, CO 80230-7006

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURERS AFFORDING COVERAGE**

**NAIC#**

INSURED  
Mpowered  
2009 Wadsworth Blvd #100  
Lakewood, CO 80214

INSURER A: **Pinnacol Assurance**

**41190**

INSURER B:

INSURER C:

INSURER D:

INSURER E:

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE(MM/DD/YYYY)	POLICY EXPIRATION DATE(MM/DD/YYYY)	LIMITS
		<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR _____ GEN'L AGGREGATE LIMIT APPLIERS PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC				EACH OCCURRENCE DAMAGE TO RENTED PREMISES MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG
		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS _____				COMBINED SINGLE LIMIT (Ea Accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN EA ACC AUTO ONLY: AGG
		<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE _____ <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE AGGREGATE
<b>A</b>		<b>WORKERS COMPENSATION AND EMPLOYER'S LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, please describe under SPECIAL PROVISIONS below	4116505	08/01/2015	08/01/2016	<input checked="" type="checkbox"/> WC STATU- <input type="checkbox"/> OTHER TORY LIMITS E.L EACH ACCIDENT \$100,000 E.L DISEASE - EA EMPLOYEE \$100,000 E.L DISEASE - POLICY LIMIT \$500,000
		<b>OTHER</b>				

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS**

**CERTIFICATE HOLDER**

1634812  
City And County of Denver  
Deopratment of Human Services  
1200 Federal Boulevard  
Denver, CO 80204

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO NOTIFY 0 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO NOTIFY SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

**AUTHORIZED REPRESENTATIVE**

David Branch  
Underwriter

**ACORD CORPORATION 1988**

## CERTIFICATE HOLDER COPY

City And County of Denver  
Deopratment of Human Services  
1200 Federal Boulevard  
Denver, CO 80204

### **IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

### **DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

**EXECUTIVE ORDER NO. 94**

**TO: All City Agencies**

**FROM: Wellington E. Webb  
MAYOR**

**DATE: October 29, 2002**

**SUBJECT: CITY and COUNTY of DENVER EMPLOYEES' ALCOHOL and DRUG POLICY**

**PURPOSE:** As an employer, the City and County of Denver (City) is required to adhere to various federal, state, local laws and regulations regarding alcohol and drug use. The City also has a vital interest in maintaining a safe, healthy and efficient environment for its employees and the public. Being under the influence of, subject to the effects of, or impaired by alcohol or a drug on the job may pose serious safety and health risks to the user, the user's co-workers and the public. Additionally, the possession, use or sale of an illegal drug in the workplace may pose an unacceptable risk to the safe, healthy and efficient operation of the City.

The City maintains the Mayor's Office of Employee Assistance, provides Department of Safety psychologists and some outside contractors, who offer help to employees who seek assistance for alcohol and/or drug use and other personal or emotional issues.

**RESPONSIBLE AUTHORITY(S):** City Attorney

This executive order, effective on the above date, establishes and confirms the policy of the City concerning the problem of drug and alcohol use in the workplace. On the date it becomes effective, this executive order supersedes all previously enacted alcohol and drug executive orders.

**I. PROHIBITIONS FOR ALL CITY EMPLOYEES INCLUDING CLASSIFIED MEMBERS OF THE POLICE AND FIRE DEPARTMENTS.**

**A. Alcohol**

Employees are prohibited from consuming, being under the influence of, or impaired by alcohol while performing City business, while driving a City vehicle or while on City property.

**There are three exceptions to this prohibition.** (1) An employee is not on duty **and** attending an officially sanctioned private function, e.g., an invitation-only library reception. (2) An employee is not on duty **and** at a City location as a customer, e.g., playing golf on a City course. (3) An employee is a member of the Police Department **and** as a part of the employee's official duties, consumes alcohol in accordance with Police Department procedures.



The alcohol levels defined by the state legislature that may be amended from time to time for defining "under the influence of alcohol" and "impaired by alcohol" are adopted here for purposes of this executive order.

Employees holding Commercial Driver's licenses (CDL) are **also** subject to the alcohol levels defined by the Department of Transportation (DOT) regulations that may be amended from time to time for "under the influence" which are adopted here for purposes of this executive order.

Current alcohol level definitions are contained in the Addendum to this Order. If there is a conflict between the state legislature and the DOT regulation, alcohol level definitions and the ones contained in the Addendum to this Order, the state legislature and DOT regulation definitions will take precedence.

As part of official duties, members of the Police Department according to established procedures may consume alcohol. However, it is grounds for discipline, up to including immediate dismissal, if members of the Police Department consume alcohol in violation of their department procedures.

## **B. Legal Drugs**

1. It is the responsibility of the employees who work in positions operating vehicles or dangerous equipment or positions affecting the health or safety of co-workers or the public to advise their supervisors that they are taking prescription medication that may affect their performance.
2. Employees who work in positions operating vehicles or dangerous equipment or positions affecting the health or safety of co-workers or the public are prohibited from consuming, being under the influence of, subject to the effects of or impaired by legally obtained prescription drugs while performing City business, unless the following two determinations have been made:
  - a. It is determined by both the employee's supervisor **and** either the employee's Human Resource Specialist or Safety Officer, after consulting with the Occupational Health and Safety Clinic (OHSC) personnel, that the employee's job performance will not be affected **and** that the employee does not pose a threat to his/her own safety.
  - b. It is determined by both the employee's supervisor **and** either the employee's Human Resource Specialist or Safety Officer, after consulting with the OHSC personnel, that the employee will not pose a threat to the safety of co-workers or the public, **and** the employee will not disrupt the efficient operation of the agency.

If appropriate, the OHSC personnel may contact the employee's personal physician. Prior to making contact with the employee's personal physician, the OHSC personnel should obtain a medical release from the employee.

Employees may be required to use sick leave, take a leave of absence or comply with other appropriate non-disciplinary actions determined by the appointing authority until the above determinations can be made.

The OHSC shall keep the medical records that disclose the identity of the legal drug confidential in accordance with state and federal laws.

3. The DOT regulations prohibit employees with CDLs from using marijuana, even for approved medical reasons. If the federal and Colorado laws are in conflict on this issue, the federal law will take precedence. Therefore, a positive marijuana drug test will be treated as an illegal drug use for employees with CDLs, subjecting them to all rules contained herein for illegal drug use even if a physician has prescribed the marijuana for medical reasons.

### C. **Illegal Drugs**

1. Employees are prohibited from consuming, being under the influence of, subject to the effects, of or impaired by illegal drugs while performing City business, while driving a City vehicle or while on City property.
2. Employees are also prohibited from selling, purchasing, transferring or possessing an illegal drug.

**There is one exception to this prohibition.** An employee of the Classified Service of the Police and Fire Departments or the Denver Sheriff's Department as a part of the employee's official duties, may sell, purchase, transfer or possess illegal drugs in accordance with the employee's department procedures. However, it is grounds for immediate dismissal if members of the Classified Service of the Police and Fire Departments or Sheriff Department sell, purchase, transfer or possess illegal drugs at any time other than as a part of their official duties. It is also grounds for immediate dismissal if members of the Classified Service of the Police and Fire Departments or Sheriff Department sell, purchase, transfer or possess illegal drugs in violation of the employee's department procedures.

The illegal drug cut-off levels established by the DOT regulations, that may be amended from time to time, are adopted here for purposes of this executive order. Current illegal drug levels are contained in the Addendum to this Order. If there is a conflict between the DOT regulation, illegal drug levels and the ones contained in the Addendum to this Order, the DOT regulation definition will take precedence.

## II. **DRUG AND ALCOHOL TESTING**

### A. **Pre-Employment/Pre-Placement Testing**

1. The City may implement, with the City Attorney's approval, pre-employment screening practices designed to prevent hiring individuals for job positions:

- a. whose use of illegal drugs may affect the public health or safety and
- b. whose use of alcohol or legal drugs indicates a potential for impaired or unsafe job performance where the public health or safety may be affected.

The Civil Service Commission, Career Service Authority, OHSC or interviewing agency shall inform a job applicant of these pre-employment screening practices prior to such screening.

2. Employees who will be filling jobs defined as safety-sensitive or requiring a CDL, prior to the first time the employee performs a safety-sensitive function, shall be tested for controlled substances and may be tested for alcohol.
3. Refusal by an applicant to submit to a pre-employment test shall result in denial of employment.
4. Pre-employment/Pre-placement test results:
  - a. **Alcohol**

Where alcohol use is detected and it is determined to be a potential safety risk, employment shall be denied.
  - b. **Legal Drugs**
    - i. Where use of a prescription drug is detected, applicants may be required to offer proof that the drug has been prescribed by a physician for the applicant. If the applicant is unable to provide such proof, employment may be denied.
    - ii. Where the applicant's future or continued use of the drug poses a potential safety risk or would impair job performance, employment may be denied in accordance with the applicable state and federal laws.
  - c. **Illegal Drugs**
    - i. Employment shall be denied when the presence of an illegal drug is detected.
    - ii. Employment shall be denied when the presence of a known masking agent is detected.
    - iii. A second direct observation urinalysis test may be required prior to offering employment to an applicant whose drug test evidences the urine sample has been diluted.

**B. Reasonable Suspicion Testing**

1. When a supervisor has reasonable suspicion that any employee is in violation of this policy, after taking appropriate safety measures, i.e. removing the employee from any situation which may pose a safety risk to the employee, co-workers or the public, the supervisor shall immediately consult with his/her Human Resource Specialist, Safety Officer or the City Attorney's Office to determine further actions. However, if immediate consultation is not possible, it is the responsibility of the supervisor to promptly initiate alcohol and drug testing. The supervisor shall initiate testing as follows:

**a. Alcohol**

- i. Document in writing the specific reasons for the decision to initiate testing based on specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odors.
- ii. When possible, have a second supervisor confirm the specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odors.
- iii. Advise the employee that the supervisor is ordering the employee to go to the testing site for testing.
- iv. Escort the employee to the testing site as soon as possible. However, if the supervisor is unable to escort the employee, the supervisor should have another individual escort the employee for testing. The individual selected to escort the employee shall be of a higher grade/rank than the employee being tested.
- v. Require the employee to bring a picture identification card and proof of the employee's Social Security or employee number to the testing site.
- vi. If the employee refuses to go to the testing site, or refuses to participate in the testing process, the supervisor or the escort should tell the employee that the testing request is a direct order and that refusal to comply with the direct order might subject the employee to discipline, up to and including dismissal.
- vii. After the initial test results are known, the supervisor shall contact the appointing authority for further guidance. If the appointing authority is unavailable and the supervisor has a reasonable doubt about the employee's ability to satisfactorily and safely meet job requirements, the supervisor shall place the employee on investigatory leave pending results of testing or other administrative determination.

- viii. No supervisor or escort should allow an employee to drive to or away from the testing or the work site. However, if the employee does drive off, notify the Police Department immediately and provide them pertinent information, i.e., employee's car make; model and color; license plate number; direction of travel and reason for ordering the alcohol and/or drug testing.

During regular OHSC hours, the testing shall be conducted at one of the OHSC testing sites. After regular hours, the supervisor shall page the OHSC alcohol and drug testing personnel to arrange for immediate testing.

Testing should be administered within two (2) hours of making a reasonable suspicion determination. If this two (2) hour time frame is exceeded, the supervisor should document the reasons the test was not promptly administered. Supervisors who do not test employees within this established time frame may be subject to discipline, up to and including dismissal.

Supervisors and escorts shall keep the employee's name and identifying information restricted to persons who "need to know."

**b. Legal drugs**

- i. Document in writing the specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odors that provide reasonable suspicion that the employee's use of, or being under the influence of, subject to the effects of, or impaired by a legal drug poses a potential safety risk or would impair job performance.
- ii. When possible, have a second supervisor confirm the specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odors.
- iii. Advise the employee that the supervisor is ordering the employee to go to the OHSC for evaluation.
- iv. Escort the employee to the evaluation site as soon as possible. However, if the supervisor is unable to escort the employee, the supervisor should have another individual escort the employee for evaluation.
- v. If the employee refuses to go to the evaluation site, the supervisor or the escort should tell the employee that the testing request is a direct order and that refusal to comply with the direct order might subject the employee to discipline, up to and including dismissal.

- vi. If the clinic personnel determine that the employee's use of, being under the influence of, subject to the effects of, or impaired by a legal drug poses a potential safety risk **or** would impair job performance; the supervisor shall contact the appointing authority for further guidance.
- vii. If the appointing authority is unavailable and the supervisor has a reasonable doubt about the employee's ability to satisfactorily and safely meet job requirements, the supervisor shall place the employee on investigatory leave pending such consultation. However, no supervisor or escort should allow an employee to drive to, or away from, the evaluation site. If the employee does drive off, the supervisor or escort shall notify the Police Department immediately and provide them pertinent information, i.e., employee's car make; model and color; license plate number; direction of travel; and reason for ordering the evaluation.
- viii. If the clinic personnel determine that the employee's use of, being under the influence of, subject to the effects of, or impaired by a legal drug **does not** pose a potential safety risk **and does not** impair job performance, have the employee return to work.

**c. Illegal drugs**

Follow the steps listed above in Section B.1.a.

However, testing for illegal drugs should be administered within eight (8) hours of making a reasonable suspicion determination. If this eight-hour (8) time frame is exceeded, the supervisor must document the reasons the test was not promptly administered. Supervisors who do not test employees within the established time frame may be subject to discipline, up to and including dismissal.

The police **shall be** contacted when a supervisor has reasonable suspicion that an employee appears to be in possession of, selling or transferring illegal drugs.

**C. Post-Accident Testing**

- 1. As soon as practicable following a driving or other workplace accident, the supervisor shall ensure that driver-employee is tested for alcohol and drugs when the accident:
  - a. may have been the fault of the employee **and** the accident involves a fatality;
  - b. may have been the fault of the employee **and** any individual was injured severely enough to receive medical treatment immediately away from the scene of the accident;
  - c. may have been the fault of the employee **and** the accident resulted in disabling damage to any vehicle or any equipment; or,

- d. there is reasonable suspicion to test the employee.
2. Post-accident alcohol and drug testing should be administered within two (2) hours following the accident. Supervisors who do not test employees within the established time frames may be subject to discipline, up to and including dismissal.
3. "Disabling damage" for a vehicle accident is defined as precluding the departure of the vehicle from the scene of an accident in its usual manner. Vehicle damage that can be remedied temporarily at the scene without special tools or parts, i.e., replacing a tire with the spare, taping over a headlight or tying down the hood of a car, are not considered disabling.
4. "Disabling damage" for a workplace accident is defined as precluding the use of the equipment from its usual operation. Equipment that can be remedied temporarily at the scene without special tools or parts is not considered disabling.

**D. Return to Duty Testing**

If an employee has violated the prohibited conduct listed in Sections I (A) or I (C) of this Order, the employee shall not return to work unless the employee has taken an alcohol and drug test at the OHSC and both tests were verified negative.

**E. Unannounced Testing**

If an employee has been placed on a Stipulation and Agreement in accordance with this executive order, as a part of that Stipulation and Agreement, the employee may be tested for alcohol and/or drugs by the agency without prior notice of the testing date or time for at least 36 months from the last date in time that the stipulation and agreement is signed by the parties.

**F. Random Testing**

The City may implement, with the City Attorney's approval, random alcohol and drug testing for employees deemed to perform safety-sensitive functions for the City or any of its agencies.

**G. Commercial Driver's License Testing**

For those positions requiring a CDL, the City shall implement drug testing pursuant to applicable DOT regulations, as may be amended from time to time **in addition to** the testing described in Sections II (B), II (C) and II (D) of this Order.

**1. Pre-Employment Testing**

Prior to the first time a driver performs safety-sensitive functions for the City or any of its agencies, the driver shall be tested for illegal drug usage in compliance with the DOT and state regulations, as may be amended from time to time.

**2. Reasonable Suspicion Testing**

**a. Alcohol**

The procedures described in Section II (B)(1)(a) of this Order shall be followed.

**b. Legal Drugs**

The procedures described in Section II (B)(1)(b) of this Order shall be followed.

**c. Illegal Drugs**

The procedures described in Section II (B)(1)(c) of this Order shall be followed.

**3. Post-Accident Testing**

- a. As soon as practicable following an accident, the supervisor shall ensure that driver-employee is tested for alcohol and drugs when:
- i. the accident occurred while the vehicle driver was performing safety-sensitive functions with respect to the vehicle **and** the accident involved the loss of human life;
  - ii. the vehicle driver was cited under the state or local law for a moving violation arising from the accident **and** an individual was injured severely enough to receive medical treatment immediately away from the scene;
  - iii. the vehicle driver was cited under the state or local law for a moving violation arising from the accident **and** one or more of the vehicles involved in the accident sustained disabling damage. "Disabling damage" is defined in Section II (C)(2) and (3) in this Order;
  - iv. there is reasonable suspicion to test the employee.
- b. If the supervisor does not initiate alcohol testing within eight (8) hours of the accident or drug testing within thirty-two (32) hours of the accident, the supervisor shall cease attempts to administer the tests and shall state in writing for the record the reasons for not administering the tests. Supervisors who do not test employees within the established time frames may be subject to discipline, up to and including dismissal.



**4. Random Testing**

**a. Alcohol**

Pursuant to the DOT regulations, random alcohol testing shall be conducted annually on 25% of the average number of City commercial driver's license positions in existence. This percentage may be amended from time to time by the DOT. Alcohol testing shall be conducted on a random, unannounced basis just before, during or just after the employee performed safety-sensitive functions.

**b. Illegal Drugs**

Pursuant to the DOT regulations, random drug testing shall be conducted annually on 50% of the average number of City commercial driver's license positions in existence. This percentage may be amended from time to time by the DOT. Drug testing shall be conducted on a random, unannounced basis. There is no requirement that this testing be conducted in immediate time proximity to performing safety-sensitive functions.

**5. Return to Duty Testing**

**a. Alcohol**

If an employee has violated the prohibited conduct listed in Section I (A) of this Order, the employee shall not return to perform safety-sensitive duties unless the employee has completed a successful return to duty alcohol test.

**b. Illegal Drugs**

If an employee has violated the prohibited conduct listed in Section I (C) of this Order, the employee shall not return to perform safety-sensitive duties unless the employee has been cleared by a Substance Abuse Professional and has completed a successful return to duty drug test.

**6. Follow-Up Testing**

**a. Alcohol**

- i. The number and frequency of the follow-up alcohol tests shall be directed by the Substance Abuse Professional and shall consist of at least six (6) tests in the first twelve (12) months following the employee's return to work.
- ii. Follow-up testing shall be unannounced and shall be conducted just before, during or just after the employee performed safety-sensitive functions.

**b. Illegal Drugs**

- i. The number and frequency of the follow-up drug tests shall be directed by the Substance Abuse Professional and shall consist of at least six (6) tests in the first (12) twelve months following the employee's return to work.
- ii. Follow-up testing shall be unannounced. There is no requirement that this testing be conducted in immediate time proximity to performing safety-sensitive functions.

**H. Members of the Classified Service of the Police and Fire Departments and Deputy Sheriffs Testing**

For those employees who are members of the Classified Service of the Police and Fire Departments or Deputy Sheriffs, the City may implement drug testing pursuant to their respective department procedures, as may be amended from time to time **in addition to** the testing described in Sections II (A), II (B), II (C), II (D), II (E), II (F), and II (G) of this Order.

**III. EXECUTIVE ORDER 94 TRAINING**

**A. All City Employees**

All new City employees should be trained on this Order during their first year of employment. Training, at a minimum, should include study of the Order and instruction on the recognition of drug and alcohol impairment and use. Additionally, a copy of this Order should be given to each employee with each employee acknowledging, in writing, receipt of the policy and the training.

**B. All Employees With Supervisory Duties**

1. All employees with supervisory duties should be trained on this Order during the first six months following their promotion. This training, at a minimum, should include study of the Order, instruction on the recognition of drug and alcohol impairment and use, the proper documentation of the supervisor's reasonable suspicion, and the supervisor's responsibility for escorting employees to the testing sites and through the testing process.
2. Supervisors shall ensure that all drug and alcohol tests are accomplished immediately after the justification for testing is established. Timeliness for testing is outlined in this Order and its Addendum. Further, once a supervisor has reasonable suspicion that an employee appears to be under the influence of alcohol or drugs, the agency cannot condone the employee's driving of a motor vehicle. If the employee drives off in his/her own or a City vehicle, the Police Department must be notified immediately. Supervisors whom elicit the use of another individual to escort an employee to testing or evaluation sites shall educate the individual on the duties of the escort as provided herein prior to allowing that individual to escort the employee.

3. Supervisors are subject to discipline for failing to fulfill the responsibilities set forth for supervisors in this Order. However, although a supervisor's failure to fulfill his/her responsibility may result in disciplinary action being taken against the supervisor, up to and including dismissal, such failure does not, in any way, excuse the employee's violation of this Order or negate the agency's disciplinary action against the employee.

**CAUTION:** No physical force may be used against an employee to enforce any order under this policy. The employee must be advised that noncompliance with a supervisor's order will be viewed as refusal to obey the order of a supervisor and subject to discipline, up to and including dismissal.

**CAUTION:** Supervisors are to restrict communications concerning possible violations of this policy to those persons who are participating in the evaluation, investigation or disciplinary action and who have a "need to know" about the details of the drug/alcohol evaluation, investigation and disciplinary action. This restriction includes not mentioning the names of employees who are suspected of, or disciplined for, violating this policy.

#### IV. DISCIPLINARY ACTIONS

- A. If it is determined after the appropriate predisciplinary meeting that any of the following situations apply; the employee shall be dismissed even for the first offense for the following conduct.
  1. Members of the Classified Service of the Police and Fire Departments or Deputy Sheriffs that violate their respective departments' prohibitions regarding illegal use of controlled substances;
  2. Safety-sensitive members of the Department of Aviation that violate their department's prohibitions regarding alcohol or drug use;
  3. The employee has endangered the lives of others, or foresee ably could have endangered the lives of others;
  4. The employee refuses to submit to any testing under this Order including, but not limited to, pre-placement, reasonable suspicion, random, post-accident, return to duty, follow-up or unannounced testing;
  5. The employee uses, or attempts to use, a masking agent to alter the sample and/or drug and/or alcohol test results;
  6. The employee's disciplinary history compels dismissal as a matter of progressive discipline;
  7. The employee has refused to enter into a Stipulation and Agreement;
  8. The employee has violated the Stipulation and Agreement;

9. The employee violates Executive Order 94 for the second time in the employee's career with the City and County of Denver and/or its agencies.
- B. A first time violation of this policy, which does not result in a dismissal pursuant to Section IV (A) of this Order shall result in a lesser disciplinary action in conjunction with a Stipulation and Agreement for treatment.
1. Employee Assistance Counselors of the Mayor's Office of Employee Assistance, or such other substance abuse professional(s) as may be designated, shall conduct an assessment of the employee and create a treatment plan.
  2. Each such agreement shall be in writing and approved by the City Attorney's Office. The City shall offer no employee more than one such agreement during his or her employment with the City.
  3. Employees who participate in a supervisor-approved inpatient treatment plan shall be allowed to take one (1) day per month sick leave or vacation leave, or allowed to work one (1) day per month but not in safety-sensitive positions, to assure continued health coverage.

## V. MISCELLANEOUS PROVISIONS

### A. Driver's License

It is the responsibility of employees required to drive as part of their assigned duties or job specifications to report to their appointing authority any loss of a driver's license or the restriction of driving privileges, no later than the beginning of the employee's next scheduled shift. Every employee who is required to drive, as part of their assigned duties or job specifications, shall certify that they have a current valid driver's license in accordance with Executive Order 25 as may be amended from time to time.

### B. Searches

1. Before any search is conducted, supervisors shall contact the City Attorney's Office for guidance.
2. Management has the right to search City-owned property, e.g., a desk, storage cabinet or City vehicle, when the search is necessary for a non-investigatory work-related purpose such as retrieving a needed file. Additionally, management may search City-owned property, e.g., a desk, file cabinet, locker, or City vehicle, when predicated by reasonable suspicion that evidence of misconduct will be found. Finally, management may search an employee's personal property, e.g., their personal vehicle parked on City property, lunch boxes, briefcases, purses, tool kits, and backpacks, upon consent of the employee.

3. Clearly posted notices explaining the City's right to carry out search activities should be displayed in appropriate locations throughout the work area. The posted notices should contain the language listed above in paragraph V (B) (2) of this Order. Any deviation from this language must be approved by the City Attorney's Office prior to posting.

C. Contracts

1. This Executive Order is applicable to contract personnel. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring contract personnel from City facilities or from participating in City operations.
2. All City contracts shall inform contractors doing work for the City about this Executive Order.

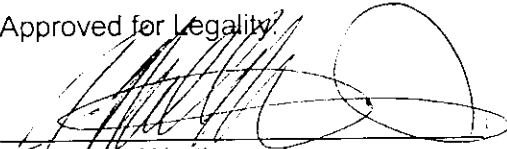
D. Mayor's Office of Employee Assistance and Department of Safety Psychologists

The City maintains the Mayor's Office of Employee Assistance (MOEA) and provides Department of Safety psychologists who offer help to employees who suffer from alcohol or drug use or other personal or emotional issues. It is the responsibility of each employee to seek help from the MOEA, Department of Safety psychologist or other appropriate health care professionals before alcohol and drug use leads to disciplinary actions.


E. Memorandum to this Order

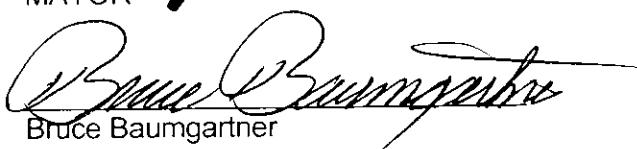
The City Attorney shall have the authority to amend definitions and drug testing cut-off levels contained in the Order's Memorandum, from time to time, consistent with Colorado statutes and the DOT regulations, without obtaining signatures of the Mayor or City Council. For purposes of this Executive Order, all references to Agency head, Department head or appointing authority will also include the designee of the Agency head, Department head or appointing authority.

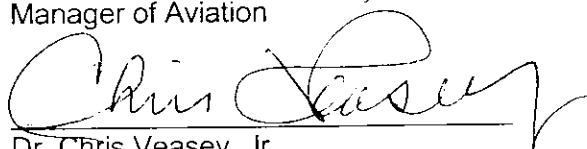
Approved for Legality

  
\_\_\_\_\_  
J. Wallace Wortham, Jr.  
City Attorney

Approved:

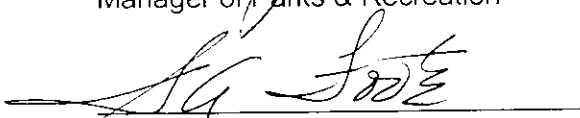
  
\_\_\_\_\_  
Wellington E. Webb  
MAYOR

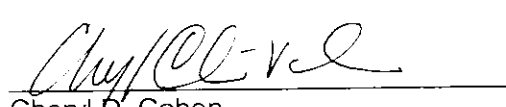
  
\_\_\_\_\_  
Bruce Baumgartner  
Manager of Aviation

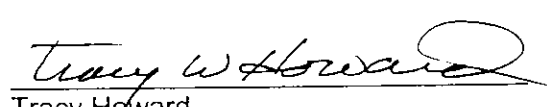
  
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Dr. Chris Veasey, Jr.  
Manager of Environmental Health

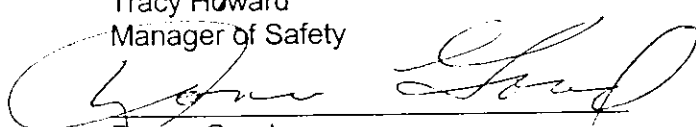
  
\_\_\_\_\_  
Thomas J. Migaki  
Manager of General Services

  
\_\_\_\_\_  
James Mejia  
Manager of Parks & Recreation

  
\_\_\_\_\_  
Stephanie Foote  
Manager of Public Works

  
\_\_\_\_\_  
Cheryl D. Cohen  
Manager of Revenue

  
\_\_\_\_\_  
Tracy Howard  
Manager of Safety

  
\_\_\_\_\_  
Donna Good  
Manager of Human Services

**MEMORANDUM NO. 94A**

**TO:** All Agencies Under the Mayor  
**FROM:** John W. Hickenlooper  
Mayor  
**DATE:** August 26, 2004  
**SUBJECT:** STATUTORY PROVISIONS

This memorandum to Executive Order 94 was originally referred to as an addendum, effective April 10, 1989, amended April 13, 1999, January 10, 2000, March 1, 2000, March 15, 2001 and is hereby continued in effect as amended and retitled as a memorandum this August 26, 2004. This Memorandum shall be attached to and become a part of Executive Order 94, dated, October 29, 2002, subject "City and County of Denver Employees' Alcohol and Drug Policy."

**I. ALCOHOL PROVISIONS**

- A. Under the Colorado statutes, as may be amended from time to time, "impaired by alcohol" is defined as having 0.05 grams of alcohol (per two hundred ten liters of breath or per one hundred milliliters of blood), but less than 0.08 grams of alcohol. Under the "influence of alcohol" is defined as having 0.08 or more grams of alcohol (per two hundred ten liters of breath or per one hundred milliliters of blood).
- B. Under the DOT regulations, as may be amended from time to time, "under the influence of alcohol" is defined as having 0.04 percent alcohol concentration, or more; as prescribed by state law; or in the event of refusal to undergo such testing as is required by the state or jurisdiction.

DOT regulations, as may be amended from time to time, state that post-accident alcohol testing should be administered within two (2) hours following the accident, but must be administered within eight (8) hours following the accident. **These DOT time frames shall also apply to testing under this Executive Order unless otherwise specified within this Order.**

**II. ILLEGAL DRUG PROVISIONS**

- A. Illegal drugs, including controlled substances, are defined in Colorado Revised Statutes §12-22-303.

B. "Subject to the effects of an illegal drug" is to be determined consistent with the confirmation test levels established by the DOT regulations, as may be amended from time to time:

Marijuana metabolites	-----	15 ng
Cocaine metabolite	-----	150 ng
Opiates:		
Morphine	-----	2,000 ng
Codeine	-----	2,000 ng
Phencyclidine	-----	25 ng
Amphetamines:		
Amphetamine	-----	500 ng
Methamphetamine	-----	500 ng

Drug testing shall be administered no later than thirty-two (32) hours after the accident. ***These DOT time frames shall also apply to testing under this Executive Order unless otherwise specified within this Order.***