

WASHINGTON CONSTRUCTION INDUSTRY SUBSTANCE ABUSE PROGRAM  
PLAN DOCUMENT

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## PLAN DOCUMENT

### WASHINGTON CONSTRUCTION INDUSTRY SUBSTANCE ABUSE PROGRAM

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#### 1. Purpose

The Employers and Unions participating in the Washington Construction Industry Substance Abuse Program (WCISAP) recognize that drug and alcohol abuse pose a direct and significant threat to the goal of a productive and efficient working environment in which all employees have an opportunity to reach their full potential. The participating Unions and Employers are committed to assuring a drug-free working environment for all employees.

This Plan and the related Trust Fund are established to pay for the services and procedures needed to detect, assess, and refer for appropriate medical treatment any alcohol, drug or other substance abuse by any covered employee of a participating Employer.

This Plan voluntarily utilizes the Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA), and Federal guidelines relating to drug-free workplace programs, including the U.S. Department of Transportation (USDOT).

#### 2. Creators

The creators of the Program are the following Employers and Unions:

- Associated General Contractors of Washington (AGC)
- Mechanical Contractors Association of Western Washington
- Pacific Northwest Regional Council of Carpenters (Carpenters)
- Washington & Northern Idaho District Council of Laborers (Laborers)
- Cement Masons Local #528 (Cement Masons)
- UA Local 32 Plumbers and Pipefitters (Plumbers and Pipefitters)

They recognize that all employees must be in a condition to perform their job safely and efficiently, free from any impairment caused by alcohol and drugs.

#### 3. Adoption and Amendments

Subject to the terms of applicable collective bargaining agreements and laws, the Trustees of WCISAP have adopted, and have the power to amend or terminate, this Plan and the related Trust Agreement.

#### 4. Documents

The governing documents for administering this Plan are:

Approved December 28, 2004  
Revised 26 June 2008

- a. This Plan Document
- b. The Trust Agreement for the WCISAP Trust.
- c. Such other policies, procedures and rules as the Trustees hereafter may adopt.

## 5. Covered Employees

Employees covered by this Plan include:

- 5.1 Bargaining Unit Employees (BU Employees) are those employees covered by a collective bargaining agreement in the construction industry in Western Washington and Central Washington between the participating Employers, and the Carpenters, Cement Masons, Laborers Unions and UA Local 32 Plumbers and Pipefitters, which provide for contributions to fund benefits under this Plan and which are accepted by the Plan and the applicants for such employment. An Employer must also sign certain documents as required by the Plan before testing can begin, including the Employer Compliance/Designated Representative form.
- 5.2 Non-bargaining Unit Employees (NBU Employees) are those employees of a participating Employer, not covered by an applicable collective bargaining agreement, who work within the same geographical area as the BU Employees and the applicants for such employment. The Employer has the option of covering NBU Employees under this plan or choose a separate plan, but the NBU Employees shall be subject to substance abuse testing.

## 6. Funding

- 6.1 BU Employees. Testing and benefits for BU Employees are funded by contributions from Employers under the applicable collective bargaining agreements. The contribution rate is **\$0.06** per hour for covered work hours during and after **June 1, 2004**. Any change of such contribution rate made under any applicable collective bargaining agreement shall be the applicable rate for purposes of this Plan without further amendment hereto. Such contribution for each applicable work month shall be made to the administrative office of the Health and Welfare Plan for such BU Employees, and that administrative office then shall forward the contribution to the Program Trust.
- 6.2 NBU Employees. Costs for NBU Employees participation are funded by the Employer paying the designated amounts directly to the Program Trust, in an amount as set from time to time by the Trustees.
- 6.3 Trust Fund. All sums paid to fund this Plan shall be held in the Program Trust, which is intended to be tax-exempt under IRC § 501 (c) (5), and disbursed as needed to cover Plan and Trust expenses for eligible employees.

## **7. Governance and Administration**

- 7.1 Substance abuse prevention is the responsibility of everyone involved in the construction industry. The participating Unions and Employers expect all parties to recognize and accept this responsibility and to do their part in assuring that, working together, we can achieve and maintain a drug-free environment for employers and employees.

The participating Unions and Employers have formed a Trust, composed equally of representatives from Labor and Management, to oversee this Program. The Trustees will hire the following independent providers:

- 7.2 Third Party Administrator (TPA)

The TPA is responsible for the day-to-day operations of the Program and all other Trust Fund related administration, as directed by the Board of Trustees, including education and program training for employers and employees.

- 7.3 Testing. Substance testing shall be done by a SAMHSA certified medical facility approved by the Trustees.

- 7.4 Medical Review Officer (MRO). The MRO approved by the Trustees shall interview each employee who tests positive and answer any questions about test procedures. The MRO will investigate possible medically authorized use of a controlled substance.

- 7.5 Employee Assistance Program (EAP). The EAP approved by the Trustees shall provide initial confidential assessment of individuals referred by the TPA and recommend appropriate education, counseling or rehabilitation.

- 7.6 Benefits and Health Plan

This Program does not provide diagnostic or treatment benefits beyond the testing, detection and treatment referral benefits described in this Plan. The Program's service providers will use their best efforts to inform and encourage any employee in need of further treatment to do so using the providers and benefits available under the employee's separate Health and Welfare Plan.

## **8. Prohibited Use Affecting Employment.**

- 8.1 General Prohibition. The use of alcohol or drugs by employees during working hours or on a job site or on company property (including company vehicles) is absolutely prohibited. Any employee who violates this Plan

may be required to undergo an educational or rehabilitation program and/or may be subject to discipline up to and including termination.

- 8.2. Use. The term “use” means consuming, possessing, selling, transferring, concealing, distributing or arranging to buy or sell, being under the influence, or reporting for duty under the influence of alcohol or drugs to any degree, or having illegal drugs in one’s possession or system.
- 8.3. Alcohol or Drugs. The term “alcohol or drugs” means any form of alcohol and/or other intoxicating substance, narcotic plant or similar substance whether illegal or not, including legal drugs obtained illegally.
- 8.4. Proper Medical Usage. Notwithstanding any other provision in this Plan, use of prescription and non-prescription medication is not a violation of this Plan if that medication is taken in accordance with a lawful prescription or standard medical dosage recommendation. The use of marijuana, which is a Schedule I controlled substance under federal law (Controlled Substances Act, 21 USC § 812), is expressly prohibited under this Plan even if its medical use is authorized under state law.
- 8.5. Employees. This Plan applies to all employees of the Employer governed by the terms of any bargaining agreement with the Carpenters, Laborers, Cement Masons and UA Local 32 Plumbers and Pipefitters, as well as all applicants for any such position. Probationary employees who fail pre-program testing are not eligible for employment unless they complete a state approved education or rehabilitation program at their own expense. It also applies to NBU employees of any Employer who signs an Employer Compliance Agreement with the Trust covering all employees who are within the geographic limits of the applicable bargaining agreement, including maintenance, sales, clerical, management, part-time, and applicants for any such position.
- 8.6. Working Hours. The term “working hours” means all the time during which employees are engaged in work duties or subject to the control of the Employer, and also includes scheduled breaks and travel from one workplace to another.
- 8.7. Employer Property. The term “Employer property” means all facilities, job sites, vehicles and equipment that are owned, leased, operated or utilized by the Employer or its employees for work-related purposes, including parking areas and driveways, as well as lockers, toolboxes or other storage areas used by the employees. It also includes other public or private property, facilities, vehicles and equipment located away from the Employer facility if the employee is present on such property for a work-related purpose.
- 8.8. Private Property. An employee’s private property may be inspected only for reasonable cause and shall include employee’s lunch boxes, tool

boxes, back packs, purses and the like that are brought by the employee onto Employer property or used for work-related purposes.

- 8.9 Voluntary Events. Events attended voluntarily are not considered to be covered under this Plan.

## 9. Privacy and Confidentiality.

- 9.1 Employer's Responsibilities. The Employer shall take reasonable measures to safeguard the privacy of employees in connection with this Plan and Policy, including maintaining the confidentiality of employees who come forward to discuss alcohol or drug abuse affecting them before any testing or disciplinary action. The Employer will be responsible to keep a locked file cabinet with results and information from the TPA. The Designated Representatives shall be the only persons designated by the Employer to be responsible for receiving information from the TPA notifying or arranging appropriate notification to affected employees, and handling any paperwork related to a positive test.

- 9.2 Release of Test Results. The results of the drug test analysis will be sent to the TPA by the MRO marked "Confidential". They will be opened only by the TPA. A positive test result will be made known only to the employee, the EAP, the current Employer and, when required by a collective bargaining agreement, the employee's union. Upon request, employees and applicants shall be provided the laboratory reports concerning his/her test results. The results of any positive test will not be released to any other third party or outside agency unless required by law or with written permission of the employee.

10. Scope of Detection and Testing. An employee shall submit to testing for alcohol or other intoxicating substances for, and only for, a circumstance described in this Section.

### 10.1 Program Entry and Pre-Program Testing

10.1.1 Program Entry Testing. Any individual who was tested, or subject to testing under a certified random program, in the last twelve months prior to WCISAP participation, and who has not had a break in employment since the last test, will be grandfathered into WCISAP.

The random programs must have provisions and requirements equal to or greater than those established by WCISAP. A copy of the Plan must be submitted to the Administrator for review. If the Administrator cannot make the determination, the matter will be referred to the WCISAP Trustees.

10.1.2 Pre-Program Testing. All applicants will be tested within twenty-four (24) hours under this Plan after a conditional offer of employment has

been made unless the applicant is currently in compliance with the Program. If an applicant refuses to submit to a test or if the applicant is not currently in compliance, it will be grounds for withdrawing a conditional offer of employment.

For U.A. Local 32 Plumbers and Pipefitters, see Addendum A.

- 10.2 Random Testing. All employees are required to abide by the systematic computer generated employee drug testing program provided under this Program. This computer drug testing selection procedure shall be administered by the TPA. All participating employees shall be entered into a pool and fifty percent (50%) of the pool shall be selected for urine drug and alcohol testing annually. Twenty percent (20%) of the fifty percent (50%) will also be selected for breath alcohol testing annually.

Employees shall have reasonable notice that they have been selected to be tested and the date upon which the test is to be completed. Employees shall be given 24 hours to present themselves for testing after the employee is notified by the Employer. If Employees do not present themselves for testing within 24 hours, the test shall be treated as a positive test result. See Section 12.2 and 15.5.

If a participant's name is drawn while he/she is unemployed, on vacation, or working out of the jurisdiction, he/she shall be considered out of compliance.

For U.A. Local 32 Plumbers and Pipefitters, see Addendum A.

- 10.3. Reasonable Suspicion Testing. "Reasonable suspicion" means aberrant or unusual behavior of a person which:

10.3.1 Is observed by the person's immediate supervisor or others and confirmed by the observation of a managerial employee or their trained designee, which observations shall be documented at or near the time of the observation; and

10.3.2 Is the type of behavior which is a recognized and accepted symptom of intoxication or impairment caused by controlled substances or alcohol or addiction to or dependence upon said controlled substances; and

10.3.3 Is not reasonably explained as resulting from causes other than the use of controlled substances (such as, but not by way of limitation, fatigue, lack of sleep, side effects of prescriptions or over-the-counter medications, reactions to noxious fumes or smoke, etc.).

10.3.4 For each incident a reasonable suspicion testing and documentation form will be completed and signed by the Employee.

10.3.5 The Employee will be transported to the hospital or laboratory by the Employer. After the test is completed, the Employee will be transported back to his/her residence.

10.3.6 If the test results are negative, the employee will immediately be reinstated in his/her previous position, with full back pay based on a project's regular schedule and no further action will be taken.

10.3.7 Should the test results be positive, the Employer may terminate the employee without pay except for actual time worked on the day that the test was conducted. Employees have the right to obtain test results.

The Employer must initiate the test for reasonable suspicion by notifying the TPA of the circumstance and identity of the employee(s). The employee must report for testing as directed by the Employer, but no later than two (2) hours after being directed by the Employer. All Employees required to test under this Section will be subject to Breath Alcohol testing.

#### 10.4 Post-Accident Testing.

10.4.1 Notwithstanding anything in this Plan, involvement in an on-the-job accident may require testing where an employee is judged to have caused or contributed to an accident requiring off site medical attention or property damage.

10.4.2 For each incident a post-accident testing and documentation form will be completed and signed by the Employee.

10.4.3 The Employee may be transported to the hospital or laboratory by the Employer. After the test is completed, the employee may be transported back to his/her residence, or the job site.

10.4.4 If the test results are negative, the employee will immediately be reinstated in his/her previous position, with full back pay based on a project's regular schedule and no further action will be taken.

10.4.5 Should the test results be positive, the Employer may terminate the employee without pay except for actual time worked on the day that the test was conducted. Employees have the right to obtain test results.

The Employer must initiate the test by notifying the TPA of the circumstances and identity of the employee(s). The employee must report for testing as directed by the Employer within two (2) hours after receiving any needed medical treatment, but, if the employee

does not need any medical treatment or the employee does not test within two (2) hours after receiving the medical treatment, then the employee must test no later than two (2) hours after being directed to test by the Employer. All Employees required to test under this Section will be subject to Breath Alcohol testing.

- 10.5 Follow-Up Testing. In addition to computer generated selection, employees, who have returned to work following a prescribed program through the EAP, shall be required to participate in follow-up testing at a minimum frequency of four times per year for two years. Employees do not receive a reimbursement check for any follow-up testing. If the EAP recommends more frequent follow-up testing, those recommendations shall be followed.

## 11. Testing Procedures

- 11.1 Medical Lab. Employees are tested by a qualified medical laboratory, under rules designed to assure the integrity of the sample, and provide an objective scientific analysis that is accurate and reliable. The purpose of the lab test is to determine a negative or positive result.

### 11.2 Testing Standards for Urine and Breath Alcohol

#### 11.2.1 Urine Testing

An Enzyme Immunoassay (EMIT) test will be performed on urine specimens. If any of the substances, listed below in 11.3.3, are detected above the Screening Cutoff thresholds, a Gas Chromatography/Mass Spectrometry (GC/MS) confirmation test will be performed.

#### 11.2.2 Breath Alcohol Testing

An approved evidential breath testing device (EBT) shall be used by a Trained Breath Alcohol Technician (BAT) to administer a breath alcohol test when required.

#### 11.2.3 Testing Thresholds

The following substances are tested for under this Program:

<u>Tests</u>	<u>Screening Cutoff</u>	<u>Confirmation Cutoff</u>	<u>Units</u>
Alcohol - Urine	0.03	0.03	g/dl
Alcohol - Breath	0.02	0.02	Gm Alc/ 210 l of Breath
Amphetamines	1000	500	ng/ml
Cocaine Metab.	300	150	ng/ml
Marijuana Metab.	50	15	ng/ml
Opiates	2000	2000	ng/ml
PCP	25	25	ng/ml

Drug testing and the chain of custody shall be conducted in accordance with the procedures of the U.S. Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs and the Department of Transportation. The cutoff value shall change upon change by such federal agency for those substances addressed by federal guidelines, and upon approval by Trustees.

Urine samples will be separated into two containers at the time of donation of the sample. One portion of the original urine sample shall be kept secure and chemically stable and made available for verification of laboratory testing results. The split sample is held for seven (7) days if the results are negative, and for one (1) year if the results are positive.

- 11.3 Employees Right to Independent Test: In the event of a positive test result, the employee may request, within ten days, a sample of his/her urine specimen from the medical facility for the purpose of retesting at a qualified drug testing laboratory. The chain of custody for this sample shall be maintained between the Program and the employee's designated qualified laboratory. Retesting shall be performed at the employee's expense. In the event of conflicting results, the employer may require a third test. Should the results of the test be positive, the employee may be terminated. In the event of a negative test result, the employee shall be reimbursed for testing costs.
- 11.4 Positive Test Levels. An unverified positive drug test result shall mean test levels, on both the screening test and the confirmatory test, are recognized as positive by the Program. No action shall be taken, however, unless the result is verified by the MRO as provided in this Plan.
- 11.5 Notification of Test Results. The TPA shall contact the Employer only through its designated representative with the results of an unverified positive test. In notifying an employee of a positive test, the Employer shall provide notification within five working days of receipt of the unverified positive test result; utilize the written standard form of information which provides notice of the result, consequences, and options available to the employee; and shall make certain that the notification is given to the employee in privacy at a reasonable break in the work day, such as lunch and/or after work. Neither the results of the test nor the fact of notification shall be communicated to any person who does not have a bona fide need to know.
- 11.6 Reasonable Time to Contact EAP. The employee will be given five working days to contact the EAP for assessment and consultation.
- 11.7 Reasonable Time to Contact Treatment Facility. The employee will be given reasonable time to contact the appropriate treatment facility as

prescribed by the EAP to schedule counseling and may return to work with written approval from the EAP.

- 11.8 Refusal to Test A refusal to participate in testing as outlined in the Plan shall be treated as a positive test.

## 12. Test Results.

- 12.1 Negative Specimen Test Result. A negative result means that no substance was detected in an amount above the cutoff levels described in Section 11.3.3. In the case of a negative test, the employee will continue to work, and will be confirmed as compliant with the Program. Bargaining unit employees will receive a reimbursement check for taking the test.
- 12.2 First or Second Positive Specimen Test Result. In the event of a first or second positive result, the positive test result shall not be the sole basis for termination, but the employee's compliance with the program shall be immediately revoked. However, unless other cause for termination exists, the employee shall be suspended from employment and required to participate in education, counseling or rehabilitation as determined by the EAP. An employee who has been properly removed from the job because of a positive result of their first or second time, may resume working only if he/she has been deemed to be in compliance with the Program by the EAP.
- 12.3 Adulterated or Substituted Specimen. Intentionally tampering with, or causing another person to tamper with, substituting for, or causing another person to substitute for a urine specimen, whether the employee's specimen or another employee's specimen, shall constitute cause for the discharge of the employee who engages in such activity. If the Medical Review Officer confirms that a specimen shows evidence of adulteration or substitution, the test shall be treated as a positive test result and an immediate collection under direct observation shall be required. See Section 12.2 and 15.5.
- 12.4 Diluted Specimen. A specimen is considered dilute when the creatinine concentration is greater than or equal to 2 mg/dL but less than 20 mg/dL, and the specific gravity is greater than 1.0010 but less than 1.0030. A diluted specimen is not valid for testing. The employee will be asked to refrain from excessive consumption of fluids and to return to the collection site to provide a second urine specimen within 24 hours. The Program pays for that second test, and will issue a reimbursement check for testing to a bargaining unit employee who tests negative on the retest.

If the second specimen is "dilute," it also is invalid and shall be treated as a positive. See Section 12.2 and 15.5. The employee will be referred to the EAP for assessment and cannot return to work until a valid specimen is provided, at the employee's expense, that produces either a negative or

a positive test result. If the test result is negative, the employee will be eligible for employment and will be issued a reimbursement check. If the test result is positive, the employee takes the recommended steps to receive a return to work release. If the employee fails to pay for the third or subsequent test, then the TPA may withhold the reimbursement check.

For UA Local 32 Plumbers and Pipefitters, see Addendum A.

12.5 Out of Temperature Specimen. When a specimen is not within the normal temperature range of 90 to 100 degrees Fahrenheit, the donor may provide a second specimen as long as they remain in view of collection personnel and do not leave the facility prior to providing a second specimen. If the donor refuses to provide a second specimen, or provides a second specimen, which is not within the normal temperature range, it shall be treated as a positive test result. See Section 12.2 and 15.5.

12.6 Inadequate Specimen. If a donor is unable to provide a minimum specimen of 45 ccs, that specimen will be discarded and the donor may provide a second specimen as long as they remain in view of collection personnel and do not leave the facility prior to providing a second specimen. The donor may consume up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until the individual has provided a sufficient urine specimen, whichever occurs first. If the donor has not provided a sufficient specimen within three hours of the first unsuccessful attempt to provide the specimen, the collection will be discontinued and the donor will be required to obtain an evaluation within five days from a licensed physician who has expertise in the medical issues raised by an individual's failure to provide a sufficient specimen.

If the donor refuses to make the attempt to provide a new urine specimen, or leaves the collection site, it will be considered a refusal to test and treated as a positive result. See Section 12.2 and 15.5.

12.7 Breath Alcohol Test Result. Each initial breath test indicating an alcohol concentration of 0.02 or above will undergo a confirmation test after a waiting period of fifteen (15) minutes, starting with the completion of the screening test. During working hours, if the results of the confirmation test are between 0.02 and 0.039, the employee will not be allowed to work for eight hours. If at anytime the results of the test are 0.04 or above it shall be considered a positive test. See Section 12.2 and 15.5.

13. Medical Review Officer Review Period. An employee, who has been notified of an unverified positive test result, may contest or explain the result to the Medical Review Officer (MRO) within two working days after receiving notification of the positive test result. It shall be the employee's responsibility to contact the MRO upon receiving notice. Failure to contact the MRO within two working days after receiving notification shall constitute a waiver of the right to contest or

explain. Unless the employee provides a medically satisfactory objection or explanation, the MRO shall provide the TPA with a positive test result.

The MRO reviews the test results, interviews the employee on a confidential basis, and determines whether the positive test result should be confirmed or canceled. For example, the MRO can inquire about prescription and nonprescription drug usage, and determine if there is a legitimate reason to cancel an unverified positive result. The MRO also determines if there has been an error in the custody and control of the urine specimen that would require cancellation.

#### **14. Employee Assistance Program**

For any positive result, the employee should contact the EAP. The EAP has a confidential interview with the employee, and recommends appropriate education, follow-up testing, counseling, or rehabilitation. For follow-up testing only, at the clinical determination and recommendation of the EAP, a specialized drug-test panel may be utilized. An employee who refuses to participate in the EAP recommended education, counseling or rehabilitation is subject to immediate termination pursuant to the requirements of Section 18. If an employee fails to attend the scheduled appointment with the EAP, for the assessment appointment, without notifying and rescheduling with the EAP at least 24 hours before the scheduled appointment time, then the employee must pay any rescheduling fee charged by the EAP before a new appointment will be set.

#### **15. Returning to Work After Testing**

15.1 General. This section describes when an employee may return to work after testing. Regardless of whether an employee has tested negative and is compliant with the Program, the Employer has the responsibility of ensuring compliance with the Program.

15.2 Returning To Work After Pre-Program or Random Testing. Following the test, the employee will return to work until notified of the results. However, the employee may be required to remain off work pending completion of any requirements imposed by the Program.

15.3 Returning to Work After First or Second Positive Test. The EAP may determine that an employee can return to work if in the judgment of the EAP, the employee is not likely to be a safety risk in the work environment. The EAP does this by reinstating the employee's compliance with the Program. The EAP can require that the employee provide follow-up testing as a requirement. The Program will pay for such follow-up tests, but the employee will not receive a reimbursement check for testing if the result is negative. In order for an employee to be eligible for employment the employee must have a negative test result and be compliant with the Program.

- 15.4 Continuation of Employment Agreement. The employee must participate in the EAP recommended education, counseling, or rehabilitation. The Program shall require that the employee sign a Continuation of Employment Agreement as a condition of reinstatement of their compliance with the Program and being allowed to return to work. (See Exhibit B)
- 15.5 Termination After Third Positive Result. If any employee has tested positive for a third time, the employee shall be immediately terminated and not subject to future hire, until the employee has satisfactorily completed an education, counseling, or rehabilitation program prescribed or accepted by the EAP. For employment in the State of Washington, such rehabilitation program must be approved by the State. The cost of the EAP assessment, education, counseling or rehabilitation, including follow-up tests, shall be borne by the terminated employee and not by the Program.
16. **Benefits.** The employee is responsible for obtaining any benefits that might be provided under his/her group health and welfare plan for such education, counseling, or rehabilitation. For any benefits not covered by the Program, the employee should consult his/her summary plan description booklet for the group health and welfare, and direct all inquiries to the administrative office of that group health and welfare plan. The Program pays only the costs of testing, notices, MRO, and designated EAP services.
17. **Reimbursement Check.** The Program will issue a \$40.00 reimbursement check for bargaining unit employees who receive a negative test result for a pre-program or random test.

For U.A. Local 32 Plumbers and Pipefitters, see Addendum A.

18. **Testing and Treatment Compliance - Refusal to Comply.**
- 18.1 Employee Refusal to Comply: An employee is subject to immediate termination and non-compliant status if:
- 18.1.1 The employee refuses to participate in the testing as outlined in the Plan; or
- 18.1.2 The employee's test results are positive and the employee refuses to seek education, counseling, rehabilitation or the completion of a rehabilitation program as prescribed by the Program's EAP;
- 18.1.3 Said termination and non-compliant determination will be subject to the notice and opportunity to comply procedures of 18.2, 18.3, 18.4 and 18.5

18.2 Opportunity to Comply:

18.2.1 If an employee refuses to take a drug test and is terminated, the employee must test and follow any Program requirements, in order for the employee to regain compliant status.

18.2.2 If the employee tests positive and is terminated for not following through with requirements prescribed by the EAP, the employee must return to the prescribed education, counseling, or rehabilitation in order to regain compliant status.

18.3 First Notice to Comply with Treatment Program: If the EAP determines that the employee fails to comply with the treatment program the Program will send the following notices:

18.3.1 First Notice to the Employee: The Program will send a written notice to the employee of such failure.

18.3.2 First Notice to Employer and Union (if required): If the employee does not get back in compliance within five days, a notice of non-compliance will be sent to the employee's employer and local union, which will result in disciplinary action up to and including termination and/or ineligibility for work.

18.3.3 Appeal: The employee may appeal the decision of the EAP to the Appeals Committee of the Board of Trustees for an expedited review under Section 27.1, and such review must occur before any notice is sent to the employee's employer or local union (but only so long as the appeal request is received by the Program before the five business days have expired).

18.3.4 Waiver of Five Day Notice Requirement: If the EAP determines that there is a safety risk, the five day notice requirement may be waived and the Employer and Union can be notified immediately. Furthermore, the EAP may grant an employee more than five business days but no more than ten business days to get back into compliance under this Section, if the employee can not be scheduled for the appropriate class(es) or other appointment(s) needed for the employee to be back in compliance.

18.4 Second Notice to Comply with Treatment Program: If the EAP determines that the employee continues to fail to comply with the treatment program after the first notice, the Program will send the following notices:

18.4.1 Second Notice to the Employee The Program will send a written notice to the employee of such failure;

- 18.4.2 Second Notice to Employer and Union (if required): The Program will send a written the notice to the employee's employer and union at the same time it is being sent to the employee, which will result in further disciplinary action up to and including termination and/or ineligibility for work.
- 18.4.3 Appeal: The employee may appeal the decision of the EAP to the Appeals Committee of the Board of Trustees for an expedited review under Section 27.1.
- 18.5 Third and Final Notice to Comply with Treatment Program: If the EAP determines that the employee continues to fail to comply with the treatment program after two notices, the Program will send the following third notice:
- 18.5.1 Third Notice to Employee, Employer & Union (if required): The Program will send a notice of non-compliance simultaneously to the Employee, Employer, and Union. Upon receipt of this notice from the Program, the employer may deliver this notice directly to the employee and terminate the employee immediately.
- 18.5.2 Appeal: The employee may appeal this decision to the Appeals Committee of the Board of Trustee for an expedited review under Section 27.1.
- 18.5.3 Benefits and Reinstatement Absent reversal by the Appeals Committee, the employee will not be eligible for any benefits under this Program and will not be eligible for rehire until the employee has completed a recommended education, counseling, or rehabilitation program as prescribed by the EAP at the employee's own expense.
- 18.6 Expedited Review: In the case of an appeal under Sections 18.3, 18.4, and 18.5, the TPA shall notify the employee of the Program's determination as soon as possible, but not later than three business days after receipt of the appeal by the Program, unless (1) the employee fails to provide sufficient information to review the appeal or the proper release forms access the necessary information or (2) the employer requests a hearing. In the case of a failure to provide information or releases, the TPA shall notify the employee as soon as possible, but not later than 24 hours after receipt of the appeal by the Program, of the specific information or releases necessary to complete the appeal. In the case of a request for a hearing, the hearing will be set as soon as possible, but no later than 30 days after receipt of the request for a hearing. The employee shall be afforded a reasonable amount of time, but not less than 48 hours, to provide the specified information. The TPA shall notify the employee of the Program's determination as soon as possible, but in no case later than 48 hours after the earlier of (1) the Program's receipt of the specified

information, (2) the end of the period afforded the employee to provide the specified additional information, or (3) the date of the hearing.

**19. Termination.**

- 19.1 Program Verification. When an employee has been suspended or terminated as a result of non-compliance with the Program the employee's status in the Program immediately becomes non-compliant.
- 19.2 First or Second Positive Result. The first or second positive result cannot be the sole basis for termination of employment. Unless other cause for termination exists, the employee with a positive result shall be suspended from employment and must participate in the education, counseling, or rehabilitation prescribed by the EAP in order to return to work.
- 19.3 Termination After Third Positive Result. If any employee has tested positive for a third time, the employee shall be immediately terminated and not subject to future hire, until the employee has satisfactorily completed an education, counseling, or rehabilitation program prescribed or accepted by the EAP. For employment in the State of Washington, such rehabilitation program must be approved by the State. The cost of the EAP assessment, education, counseling or rehabilitation, including follow-up tests, shall be borne by the terminated employee and not by the Program
- 19.4 Probationary Employees. Probationary employees will be terminated following a positive test result and are not eligible for rehire until they have completed a recommended education, counseling, or rehabilitation program as prescribed by the EAP at the expense of the Probationary employee.

**20. Continuation Agreement.**

The Program and the employee may enter into a Continuation Agreement. Employees who successfully complete an education, counseling, or rehabilitation as prescribed by the EAP shall be returned to the group of employees subject to computer generated selection for testing. The Continuation Agreement which will be prepared by the EAP, will require the employee to adhere to all education, treatment and rehabilitation recommendations, and will require the employee to authorize the program to notify the EAP should he/she not remain in substantial compliance with the recommendations.

**21. Employee Self Help.**

If an employee suspects that he/she has a substance abuse problem, the employee is expected to seek assistance for that problem, either from the Employee Assistance Program, the health and welfare plan or another competent source. The EAP is a private and confidential service that provides

information and referral services to covered individuals for drug and alcohol problems. Covered employees can obtain assistance by calling the TPA. Any person employed by an Employer who voluntarily seeks assistance or rehabilitation for alcohol or drug related problems before disciplinary action has commenced will not be subject to discipline so long as the person continues to participate satisfactorily in the education, rehabilitation, or counseling program and continues to perform and behave satisfactorily. However, a probationary employee is not eligible for benefits under this plan even though the probationary employee voluntarily submits to treatment under this self-help provision, and the probationary employee is also not eligible for employment until the probationary employee completes a state approved education or rehabilitation program prescribed by the Program's EAP at the probationary employee's own expense. (see Section 8.5 and Section 19.4)

**22. Consistent with Law.**

Nothing in this Plan or in any of the Program's other governing documents is intended, nor shall it be construed to authorize any action that is unlawful under federal or state law.

**23. Other Substance Abuse Policies.**

This Program is in addition to and separate from any substance abuse policies and procedures required by federal, state or local government organization, or mandated owner requirements.

**24. Project Waiver.**

The Trustees may waive the Program on a project basis if there is already a drug and alcohol program in place which the Trustees determine to be substantially equivalent to this Program.

**25. Controlling Documents.** In the event of any conflict between any of this Programs' controlling documents (i.e., this Plan, the Trust Agreement and any other policies, procedures or rules adopted by the Trustees) and any summary of the document, the controlling document itself, and not the summary, shall govern and be enforced.

**26. Construction and Determinations by Trustees.** The Trustees shall have full and exclusive authority to determine all questions of coverage and eligibility, methods of providing or arranging for benefits and all other related matters, and to construe the provisions of the Plan, Trust Agreement, and the rules, regulations, and resolutions issued thereunder. Any such determination and any such construction adopted by the Trustees in good faith shall be binding upon all the parties hereto and the participating employees, and shall be given the fullest deference allowed by law.

## 27. Review Procedure

27.1 Expedited Review: The Program is designed to answer all questions as soon as possible, to minimize disruption of work. An employee should seek expedited review before initiating the appeal procedure under 27.2. A request for review that includes a request for relief from a Program requirement or action adversely affecting the employee is referred to below as an appeal.

27.1.1 Procedures. Questions about drug and alcohol test procedures can be answered by referring to the Plan Document explaining the Program, or by contacting the TPA.

27.1.2 Test Results and Treatment. Questions about individual test results and treatment will be addressed on a confidential basis by contacting the MRO or EAP specified in the list of service providers.

27.2 Appeal Procedure: To assure confidentiality to the employee and handling by the persons who best know the specialized needs of the Program, all reviews of disputed or denied appeals regarding test procedures, results and recommended treatment must be handled by the Appeals Committee established by the Board of Trustees, and not by anyone involved in review of denied claims under the employee's separate health and welfare plan. The health and welfare plan's review procedure should be used for all claims involving treatments that are handled outside the services provided by the Program.

27.2.1 Notice of Denial: The TPA must notify the employee of the denial of any appeal submitted under 27.1 within a reasonable time, not to exceed 90 days after the appeal is filed with the TPA. The notice will state the reason(s) for denial, explain the applicable Plan provision(s), explain this review procedure, and state if the employee needs to submit any additional material or information. Failure of the TPA to give such notice within the 90-day period will be deemed a denial establishing the employee's right to review.

27.2.2 Request for Review: The appealing employee or his or her representative, must file with the TPA, within 60 days after receiving the denial notice under 27.2.1, or within 60 days of the date the 90-day period referred to in 27.2.1 expires, if no denial notice is received, a written request to have the denial reviewed by the Trustees' Appeals Committee. Failure to make such request by the 60<sup>th</sup> day ends a claimant's right to review by the Committee.

27.2.3 Review: The Trustees' Appeals Committee will conduct its review and issue its decision within 60 days after the request under 27.2.2 is received by the TPA. The employee and his/her representative will be notified of the time and place and may attend and present

evidence and argument. The time for review and decision may be extended beyond the 60<sup>th</sup> day if required by special circumstances, but not beyond the 120<sup>th</sup> day. The Committee's decision will be written, and set forth the reasons and Plan provision(s). A copy will be provided to the employee and his/her representative.

27.2.4 Appeal to Arbitration: If an employee is dissatisfied with the decision of the Trustees' Appeals Committee, he/she may appeal the matter to arbitration in accordance with the Labor Arbitration Rules of the American Arbitration Association and Article X, Section 3 of the Trust Agreement governing the Program, provided that the request for arbitration is made, in writing, within 60 days of the date the employee is notified of Committee's decision. The decision of the arbitrator shall be final and binding on the Trustees, the employee and all other parties whose interests are affected thereby. The expenses of the arbitration shall be borne equally by the employee and the Program unless otherwise ordered by the arbitrator.

27.2.5 Exclusive Remedy: The review procedure of 27.1 and 27.2 is the exclusive means to resolve claims and disputes involving the Program and its representatives. Claims and disputes involving conduct of the Employer are subject to dispute resolution procedures set forth in the applicable labor agreement.

**WASHINGTON CONSTRUCTION INDUSTRY  
SUBSTANCE ABUSE PROGRAM**

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**Definitions**

1. **“Alcohol”** means ethyl alcohol, hydrated oxide of ethyl or spirits of wine, from whatever source or by whatever process produced.
2. **“Alcohol test”** means a chemical, biological, or physical instrumental analysis administered for the purpose of determining the presence or absence of alcohol within an individual’s body system.
3. **“Chain of custody”** means the methodology of tracking specimens for the purpose of maintaining control and accountability from initial collection to final disposition for all specimens and providing for accountability at each stage in handling, testing, and storing specimens and reporting test results.
4. **“Collection site”** means a place where individuals present themselves for the purpose of providing a urine or breath specimen to be analyzed for the presence of drugs or alcohol.
5. **“Confirmation test”** or “confirmed test” means a second analytical procedure GC/MS (GAS CHROMATOGRAPHY/MASS SPECTROMETRY) test used to identify the presence of a specific drug or metabolic in a specimen.
6. **“Department”** means the Department of Health and Human Services.
7. **“Guidelines”** are Federal and State guidelines.
8. **“Drug”** means amphetamines, cannabinoids, cocaine, phencyclidine (PCP), methadone, methaqualone, opiates, barbiturates, benzodiazepines, propoxyphene, or a metabolite of any such substances, or any illegal substance.
9. **“Drug test”** means a chemical, biological, or physical instrumental analysis administered on a specimen sample for the purpose of determining the presence or absence of a drug or its metabolites within the sample.
10. **“Employee”** means a person who is employed for salary, wages, or other remuneration **by the Employer.**
11. **“Employee Assistance Program”** means a program designed to assist in the identification and resolution of job performance problems associated with employees impaired by personal concerns pertaining to substance abuse problems. A minimum level of core services must include consultation and professional, confidential, appropriate, and timely problem assessment services; short-term problem resolution; referrals for appropriate diagnosis; treatment, and

assistance; follow-up and monitoring; employee education; and supervisory training.

12. **“Initial test”** A reliable procedure to identify a negative and/or positive specimens. An initial drug test must use an immunoassay procedure or an equivalent procedure or a more accurate scientifically accepted method approved by the National Institute on Drug Abuse as more accurate technology becomes available in a cost-effective form.
13. **“Injury”** means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result and occurring from without, and such physical conditions as result therefrom.
14. **“Job applicant”** means a person who has applied for employment with an employer and has been offered employment conditioned upon successfully passing a drug test and may have begun work pending the results of the drug test.
15. **“Medical Review Officer”** means a licensed physician trained in the field of drug testing who provides medical assessment of positive test results, requests reanalysis if necessary, and makes a determination whether or not drug misuse has occurred.
16. **“Non-prescription medication”** means a drug or medication authorized under federal or state law for general distribution and use without a prescription in the treatment of human disease, ailments, or injuries.
17. **“Positive test result”** means a confirmed positive test result obtained by a laboratory meeting the standards specified, that has been reviewed and verified by a Medical Review Officer in accordance with Medical Review Officer guidelines promulgated by the State and Federal Guidelines, and the Department of Health and Human Services.
18. **“Prescription medication”** means a drug or medication lawfully prescribed by a physician or other health care provider licensed to prescribe medication for an individual and taken in accordance with the prescription.
19. **Probationary Employees** A probationary employee is an employee who has worked less than 250 hours as a craftsperson under a collective bargaining agreement with one of the unions participating in this Program (including hours as a journeyman and an apprentice) prior to the date of testing.
20. **Program Identification Card** is a card issued to all participating employees. The card provides an identification number for the employee to allow employers to verify the employee’s compliance with the Program.

21. **“Rehabilitation program”** means a program that is capable of providing expert identification, assessment, and resolution of employee drug or alcohol abuse in a confidential and timely service.
22. **“Specimen”** means breath or urine.
23. **“Substance”** means drugs or alcohol
24. **“Substance abuse test”** or “test” means a chemical, biological, or physical instrumental analysis administered on a specimen sample for the purpose of determining the presence of a drug or its metabolites or of alcohol within the sample.
25. **“Third Party Administrator” (TPA)** A firm that handles the administration of the Substance Abuse Program
26. **“Threshold detection level”** means the level at which the presence of a drug or alcohol can be reasonably expected to be detected by an initial and confirmation test performed by a laboratory meeting the standards specified. The threshold detection level indicates the level at which a valid conclusion can be drawn that the drug or alcohol is present in the employee’s specimen or breath.
27. **“Unverified Positive”** is a positive that comes from the laboratory as a positive result.

**POST-ACCIDENT/REASONABLE SUSPICION TESTING & DOCUMENTATION  
FORM  
WASHINGTON CONSTRUCTION INDUSTRY SUBSTANCE ABUSE PROGRAM**

Employee's Name	Social Security No.	Date
<p><b><u>Type of Test:</u></b>    <input type="checkbox"/> Post-Accident  <input type="checkbox"/> Reasonable Suspicion</p>		
<p><input type="checkbox"/> Accident causing a fatality</p> <p><input type="checkbox"/> Accident causing an injury requiring off-site medical attention</p> <p><input type="checkbox"/> Accident causing significant property damage</p>		
<p><input type="checkbox"/> Observed drug/alcohol use</p> <p><input type="checkbox"/> Difficulty maintaining balance</p> <p><input type="checkbox"/> Slurred speech</p> <p><input type="checkbox"/> Abnormal/erratic behavior</p> <p><input type="checkbox"/> Apparent inability to safely perform assigned work</p> <p><input type="checkbox"/> Additional observed behavior (Describe in detail)</p>		
<p><b>Comments</b> (<i>Describe the rationale for requesting testing, including observed facts and circumstances, any sources of information, date and time of observation or accident, other witnesses, actions taken, etc.</i>)</p> <p>_____</p> <p>_____</p> <p>_____</p>		
Requester's Printed Name & Signature	Title	Date
Reviewer's Printed Name & Signature	Title	Date
<p>I acknowledge that I have been informed of the company's reasons for requesting this drug and alcohol test and consent to the testing. Signing this form does not necessarily signify agreement with the above statements.</p>		
Employee's Signature _____		Date _____

## WASHINGTON CONSTRUCTION INDUSTRY SUBSTANCE ABUSE PROGRAM

### CONTINUATION OF EMPLOYMENT AGREEMENT

I, \_\_\_\_\_, understand that my continued employment is contingent upon compliance with all of the following terms of this agreement.

I will be evaluated for chemical dependency/alcohol abuse by the Employee Assistance Program (EAP).

I will comply with all of the EAP treatment and follow-up recommendations.

I authorize the Third Party Administrator (TPA) to receive all relevant information regarding my progress in my rehabilitation program.

I may be subject to unannounced testing (follow-up monitoring) for up to two years.

I recognize, accept, and agree that any future violation of the Substance Abuse Program (SAP) Policy by me may result in the termination of my employment.

I am responsible for meeting the same standards of performance and conduct that are set for other Employees.

I understand that failure to comply, in whole or in part, with all of the terms and conditions of this agreement will result in further disciplinary action, up to and including termination of employment.

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Employee Signature	Date
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Employee Assistance Program	Date
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**WASHINGTON CONSTRUCTION INDUSTRY SUBSTANCE ABUSE PROGRAM****ADDENDUM A****U.A. LOCAL 32 PLUMBERS AND PIPEFITTERS**

**Pre-Program Testing.** All applicants will be tested within twenty-four (24) hours under this Plan after a conditional offer of employment has been made unless the applicant is currently in compliance with the Program. If an applicant refuses to submit to a test or if the applicant is not currently in compliance, it will be grounds for withdrawing a conditional offer of employment.

All applicants test on company time per the Collective Bargaining Agreement.

**Random Testing.** All employees are required to abide by the systematic computer generated employee drug testing program provided under this Program. This computer drug testing selection procedure shall be administered by the TPA. All participating employees shall be entered into a pool and fifty percent (50%) of the pool shall be selected for urine drug and alcohol testing annually. Twenty percent (20%) of the fifty percent (50%) will also be selected for breath alcohol testing annually.

Employees must report to a fixed or mobile collection site and present themselves for testing upon notification by the Employer while on company time per the Collective Bargaining Agreement. If Employees do not present themselves for testing upon notification, the test shall be treated as a positive test result. See Section 12.2 and 15.5 of the Plan Document.

If a participant's name is drawn while he/she is unemployed, on vacation, or working out of the jurisdiction, he/she shall be considered out of compliance.

**Diluted Specimen.** A specimen is considered dilute when the creatinine concentration is greater than or equal to 2 mg/dL but less than 20 mg/dL, and the specific gravity is greater than 1.0010 but less than 1.0030. A diluted specimen is not valid for testing. The employee will return to the collection site to provide a second urine specimen immediately upon notification while on company time. The Program pays for that second test.

If the second specimen is "dilute," it also is invalid and shall be treated as a positive. See Section 12.2 and 15.5. The employee will be referred to the EAP for assessment and cannot return to work until a valid specimen is provided, at the employee's expense, that produces either a negative or a positive test result. If the test result is negative, the employee will be eligible for employment. If the test result is positive, the employee takes the recommended steps to receive a return to work release.

**Reimbursement Checks.** Employees who receive a negative test result for a Pre-Program or Random Test will not be issued a reimbursement check.