

THIRD RESTATED

MO-KAN CONSTRUCTION INDUSTRY SUBSTANCE ABUSE PROGRAM AGREEMENT

Preface

The Builders' Association ("Builders"), the Labor Organizations ("Unions"), and employer companies (singularly "Employer" or collectively "Employers") (collectively, the "Parties") signing or otherwise becoming bound to this Mo-Kan Construction Industry Substance Abuse Program Agreement ("Program Agreement" or "Agreement") are firmly committed to the safe and efficient performance of work in the building and construction industry. The Mo-Kan Construction Industry Substance Abuse Program ("CISAP" or "Program") established herein is intended to improve the safety and health of employees covered by this Program ("Participant Employees") and the quality of workmanship which are paramount concerns. The possession, distribution or use of controlled substances not prescribed to the user ("drugs") or alcohol ("alcohol") is inconsistent with the achievements of these objectives.

I. Program Mechanics

A. Non-DOT and DOT-Compliant Systems

This Program provides for both a non-DOT (Department of Transportation) system as well as a DOT-Compliant system. Participant Employees and/or Employers must advise the Program as to whether the Participant Employee is non-DOT or is required to be DOT-Compliant. The Program has no responsibility to make this determination and carries no liability to any person or entity for testing a Participant Employee on a non-DOT basis when the Participant Employee should be DOT-Compliant or visa versa. In addition, if the Employer wants to engage the Program to perform DOT Compliance, the Employer must request in writing for the Program Administrator to remove its Participant Employees from the Non-DOT random testing pool and place them in the DOT-Compliant random testing pool. Employers are notified that under current Federal Regulations their Participant Employees can be in only one DOT random testing pool at any point in time. DOT physical examinations are not provided by the Program, but such service may be separately retained by the Employer from the Program Administrator or other health care organization of the Employer's choosing.

B. Trust Fund

A trust fund ("Trustees") will be established and administered pursuant to the provisions of the Taft-Hartley / Labor Management Relations Act of 1947 in pursuit of the above objectives.

C. Labor Agreements

It is contemplated that this Program may be adopted by any number of collective bargaining agreements ("CBAs") between the Unions and the Builders, other employers, and other employer associations.

D. Future Signatories

Following the initial execution of this Program Agreement, additional Union organizations, Employer associations in conjunction with the Employers they represent and other Employers may become Parties (“Additional Parties”) by obtaining acceptance from the Trustees, adopting this Program, and becoming a signatory to a CBA incorporating this Program by reference..

E. Term

This Program will have a term as follows:

1. Participation through a CBA

This Program will have a term and termination provisions as governed by the applicable Parties’ CBA or other written agreement.

2. Participation for Employees Not Covered by a CBA

For Employers with union and non-bargaining unit employees, the Employer may elect to include non-bargaining unit employees in this Program. The non-bargaining unit Participant Employees will be covered by the Program for a term commencing on the date the Employer becomes a signatory to this Program and elects coverage of the non-bargaining unit employees and will continue thereafter until terminated by thirty (30) days’ prior written notice sent by the Employer to the Trustees or sent by the Trustees to the Employer.

F. Modifications of Program

This Program Agreement will be incorporated by reference into (1) CBA(s) between the Unions and the Builders and other Employers; and (2) any other written agreement whereby Employers or Additional Parties become bound to the Program. Changes to this Program Agreement may be made by a majority vote of the Trustees. Administration of the Program will be the responsibility of the Trustees.

G. Funding

This Program will be funded by Employers. It will be primarily funded by hourly contributions as set forth in the CBAs to which this Program is referred as well as by contributions for non-bargaining unit employees, if any, as agreed to between the Employer and the Trustees. Contributions shall be paid monthly to the Mo-Kan Construction Industry Substance Abuse Fund (“CISAP Fund”). Additional funding may also be received from voluntary contributions by the Parties, government grants, loans, and the like. The applicable CBA will specify the contribution rate necessary to administer the program. The initial funding by Employers effective April 1, 2003 was:

- Non-DOT Testing: \$.09 per hour worked
- DOT-Compliant Testing: \$.09 per hour worked

Subsequently, the contribution rate was reduced incrementally to the current

rate of \$.05 per hour worked.

Future funding requirements may result in modifications in the Employers' contribution rate. Contributions are due by the 15th of the month following the month work was performed. All matters regarding contributions including the contribution rates will be made or modified by the Trustees.

Funding for Participant Employees not covered by a CBA will be determined by the Trustees.

H. Third Restatement

As provided in Article 1(F) herein, this Program Agreement originally executed April 1, 2003, has been modified to this Third Restated Mo-Kan Construction Industry Substance Abuse Program Agreement by a majority vote of the Trustees. Modifications were made to the Program Agreement by a First Restated Mo-Kan Construction Industry Substance Abuse Program Agreement effective January 1, 2004 and Amendment No. 1 to the First Restated Program Agreement effective December 15, 2005. The modifications made by such First Restated Mo-Kan Construction Industry Substance Abuse Program Agreement and Amendment No. 1 through 6 were incorporated into a Second Restated Mo-Kan Construction Industry Substance Abuse Program Agreement effective December 12, 2006. Modifications to the Second Restated Program Agreement were made by Amendment No. 1 effective June 21, 2007, Amendment No. 2 effective June 23, 2008, Amendment No. 3 effective April 20, 2009, Amendment No. 4 effective August 24, 2009, Amendment No. 5 effective August 30, 2010 and Amendment No. 6 effective August 22, 2011. The modifications made by the Second Restated Program Agreement and Amendments 1 through 6 thereto are incorporated into this Third Restated Program Agreement and continue to be effective upon the date of original adoption. Notwithstanding any provision to the contrary contained herein, this Program is deemed to be amended and supplemented to comply with the mandates of federal law regulating the subject matter of drug and alcohol testing including but not limited to the applicable regulations promulgated by the Department of Transportation ("DOT") pursuant to Title 49 of the Code of Federal Regulations as amended from time to time.

II. Non-DOT Testing

A. Testing Guidelines

All drug testing will be conducted in accordance with procedures espoused by the U.S. Department of Transportation ("DOT") as outlined in the Procedures for Transportation Workplace Drug and Alcohol Testing Programs" as set forth by federal regulations at Title 49 of the Code of Federal Regulation (49 CFR Part 40) as amended from time to time except as expressly modified by this Agreement. The testing laboratory will be licensed or certified by the Department of Health and Human Services ("HHS") or any designee of the Secretary of HHS. Effective August 31, 2009

non-DOT drug testing pursuant to this Program shall not require direct observation of collections for return to work and/or follow up tests as required by the Procedures for Transportation work place Drug and Alcohol Testing Programs, specifically 49 CFR 40.67(b).

B. Specimen Procedures

Participant Employees will provide a urine specimen for the drug test (unless a less obtrusive testing procedure is implemented). The urine specimen will be collected at a facility selected by the Trustees, or as otherwise agreed to by the Trustees. The urine specimen will be separated into two containers at the time of collection. Urine specimen samples will be sealed in front of the person providing the sample, labeled and checked against the identity of the Employee to ensure the results match the tested specimen.

A blood specimen may be used in the event that a Participant Employee has been injured, taken to a medical facility, the specimen has been obtained in the course of medical care, and a urine sample is not available.

Strict chain-of-custody procedures and documentation for the specimen will be maintained by the collection facility and laboratory. Samples will be stored in a secure and controlled atmosphere until testing or delivery to the testing lab representative.

C. Alcohol Testing and Cut-Off Limits

The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath measured by a breath testing device. Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (“NHTSA”) approved evidential breath testing device (“EBT”) operated by a trained breath alcohol technician (“BAT”). If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the result of the initial test. An alcohol concentration of 0.04 or greater will be considered a positive test result.

D. Drug Classifications and Cut-Off Limits

Drug Testing and Gas Chromatography/Mass Spectrometry (“GC/MS”) confirmation for nine (9) categories will be required (said categories may be amended, increased or decreased at the discretion of the Trustees) with cutoff limits which currently are:

Drug Class	Testing Cut-Off Limit (ng/ml)	Confirmation Cut-Off Limit (ng/ml)
Amphetamines	1,000	500
Benzoyllecgonine (Cocaine Metabolite)	300	150
Cannabinoids (THC)	50	15
Opiates	2,000	2,000
Phencyclidine (PCP)	25	25
Barbiturates	300-1000	200
Benzodiazepine	300	300
Methadone	300	300
Propoxyphene	300	300

E. Hemp Foods

The trustees have elected to follow the guidance of the DOT and will not accept hemp foods as a legitimate explanation for the presence of marijuana metabolite in a specimen.

F. Initial Testing of Current Participant Employees

Participant Employees who are employed by or represented by organizations which become signatories to this Program prior to September 1, 2003, must be initially tested by December 31, 2003. Participant Employees who are employed by or represented by organizations which become signatories to this Program subsequent to September 1, 2003, must be initially tested (“Initial Test”) within 180 days of their organization becoming a signatory to this Program. An Initial Test will not be required if the Participant Employee has a Drug Card acceptable to the Trustees. Initial Tests will be done without payment of compensation by Employers to Participant Employees. A positive result from an Initial Test will be treated under this Program under the provisions regarding the effects of a positive result from a random drug test, including, but not limited to, the Participant Employee being placed in a Watch Block as described herein and the necessity of the Participant Employee obtaining a negative result from a Return to Work Test as described herein.

Effective September 1, 2010 Participant Employees reaching a cumulative work history of 200 hours who have not performed a CISAP drug test will be automatically included in the next random selection pool for testing. A refusal to comply with the random test shall result in the classification of the Participant Employee as “non-compliant.”

Effective January 1, 2012 a Participant-Employee classified as “non compliant” “never tested” or “union terminated” who has not worked or

completed a drug test within twenty-four (24) months of attaining such status, shall be classified as “inactive”. Any such Participant-Employee may return to compliant status by completing a negative result drug test..

G. Pre-Employment Drug Testing

A prospective Participant Employee will be drug tested on his or her own time pre-employment if such person is not in possession of a current Drug Card acceptable to the Trustees. A positive test result may result in an employment relationship not arising.

H. Post-Incident Drug and Alcohol Testing

1. Fatal Incident

Drug and alcohol testing will be done as soon as reasonably possible following any incident that involves loss of life.

2. Non-Fatal Reportable Incident

Drug and alcohol testing will be done as soon as reasonably possible (not to exceed twenty-four (24) hours) following any non-fatal incident reportable under the applicable state’s Workers’ Compensation Law.

3. Property Damage Incident

Drug and alcohol testing, if done, will be done as soon as reasonably possible (not to exceed twenty-four (24) hours) following in incidents that cause property damage in excess of one thousand dollars (\$1,000) fair market value as estimated by the Employer.

4. Safety Rule Violation

Drug and alcohol testing, if done, will be done as soon as reasonably possible (not to exceed twenty-four (24) hours) following the violation of a safety rule or practice which could have resulted in death, injury, property damage, or a citation or criminal charge under federal, state, or local law.

5. Access to Medical Records of Injured Participant Employees

A Participant Employee who is seriously injured and cannot provide a specimen at the time of the incident will provide the necessary authorization for obtaining medical records that would indicate the existence and/or level of alcohol or drugs in the Participant Employee’s body. If the medical records are silent to this issue, a drug test will be required prior to returning to work.

I. Reasonable Suspicion Drug and Alcohol Testing

1. Testing Methods

Drug and alcohol testing, if done, will be done as soon as reasonably possible (not to exceed twenty-four (24) hours) following an Employer's reasonable cause to suspect ("Reasonable Suspicion") the Participant Employee is under the influence of drugs or alcohol.

2. "Reasonable Suspicion" Defined

"Reasonable Suspicion" exists if certain objective facts and circumstances warrant rational inference that a person may be under the influence of alcohol or drugs. "Objective facts" are typically based on specific, contemporaneous, articulable observations concerning appearance, behavior, speech, or odor. Illustrative, but not all-inclusive of reasonable suspicion, are:

- a. A pattern of abnormal conduct or erratic behavior; a dramatic decline in work performance; or excessive absenteeism.
- b. Information provided by reliable and credible sources which is independently corroborated.
- c. Observation, such as direct observation of use and/or physical symptoms of being under the influence of drugs or alcohol.
- d. Difficulty walking, slurred speech, needle marks, glazed stare, etc.
- e. Possession of drugs or alcohol.

Generally, a person under the influence exhibits a combination of such criteria.

3. Documentation

The Employer will document the basis for Reasonable Suspicion prior to testing. Two (2) copies of a documented summary of the objective facts supporting Reasonable Suspicion testing will be made available to the Participant employee prior to testing.

J. Random Drug Testing

1. Testing Group Size

Through a process to be directed by the Trustees, one-twelfth (1/12) of fifty percent (50%) of the total Non-DOT population of Participant Employees, excluding the clerical exempt employees, if any, determined at the beginning of each month, will be randomly drug tested under the Program, monthly. No Participant Employee will be randomly drug tested more than twice during the Fund's fiscal year.

2. Delayed Drug Testing

Any Participant Employee in the Program who is selected for random drug testing but is unavailable because the Employee is (1) not working in the area, (2) under a physician's care, or (3) on vacation; or is unavailable for another legitimate reason as determined by the Trustees will be required to submit to drug testing within three (3) work days of notification to the Employee by the Program Administrator and before re-employment in the area. "Area" includes situations where the Participant Employee is working outside of the geographical jurisdiction of an applicable CBA adopting this Program.

K. Return to Work Testing

A Participant Employee will not be permitted to return to work until such time as he/she receives a negative test result from a testing facility selected by the Trustees. Effective September 1, 2010 and continuing thereafter Participant Employees notified of a positive drug screen will have a period of thirty (30) days to provide a Return to Work negative screen in order to have their status returned to compliant. If a Participant Employee does not complete a Return to Work negative screen within thirty (30) days his/her status will be modified to Watch Block and he/she will be subject to a first random test. The status will remain non-compliant until the first random negative screen is completed. This same procedure will be followed for post-suspension testing.

The expense of such testing (referred to as "Return to Work Testing") will be at the expense of the Participant Employee whether the testing result is negative or positive. Return to Work Testing will be subject to the provisions of this Program regarding suspension periods and revocations of Drug Cards.

L. Union Representative

Prior to Reasonable Suspicion testing, the Participant Employee, if a member of a bargaining unit, is entitled to request consultation with the Union Steward or Union Representative if such person is readily available. When the request is made, the Employer will permit the Steward or Representative a reasonable amount of time (not to exceed fifteen (15) minutes) to travel to and consult with the Participant Employee prior to testing. The consultation will be in confidence but within the view of the Employer representative.

M. Transportation

With respect to Reasonable Suspicion and Post Incident testing, the Employer will arrange and pay the cost of transportation of the Participant Employees to and from the testing facility.

N. Lost Time

With respect to Random testing, the Employer will compensate the Participant Employee for lost time necessary to take the testing. With respect

to Reasonable Suspicion and Post Incident testing, the Participant Employee will, at the Employer's option, be suspended pending the testing results, and if the Participant Employee passes the test, he/she will be made whole for all the work time missed for the testing process.

O. Responsibility for Cost of Testing

Except as otherwise provided in this Program, the Trustees will pay testing fees required under this Program.

III. DOT-Compliant Testing

Employees subject to DOT Compliance will be subject to all of the obligations and procedures of this Program for purposes of their CBA; however, such obligations and procedures will be preempted to the extent required to comply with DOT federal statutes and regulations, including, but not limited to, DOT regulations codified at 49 CFR Part 40 as may be amended from time to time. The provisions of Article II herein will apply to DOT-Compliant testing except as amended and supplemented as follows:

A. Random Drug Testing - Testing Group Size

Through a process to be directed by the Trustees, one-twelfth (1/12) of fifty percent (50%) of the total DOT-Compliant population of Participant Employees will be randomly drug tested under the Program, monthly. Contrary to Non-DOT random drug testing, under DOT-Compliant testing, Participant Employees may be randomly drug tested more than twice during a calendar year. The testing population percentage may be amended by federal regulations from time to time.

B. Alcohol Testing — Not Negative Result

If a Participant Employee tests between 0.02 — 0.04 on an alcohol test, the Participant Employee will be removed from work duty for eight (8) hours without pay or for the duration of the work day, whichever is longer.

C. Random Alcohol Testing - Testing Group Size

Through a process to be directed by the Trustees, one-twelfth (1/12) of ten percent (10%) of the total population of DOT-Compliant Participant Employees will be randomly alcohol tested under the Program, monthly. The testing population percentage may be amended by federal regulations from time to time.

D. Post-Accident Testing Under DOT

In addition to provisions of Article II of this Program for post-accident testing under the CBA, the following will apply for post-accident testing under DOT:

1. An individual who was performing safety sensitive functions with respect to the vehicle and the accident resulted in loss of life; or
2. Who receives a citation under State or local law for a moving traffic

violations arising from the accident, if the accident involved:

- a. Bodily injury to any person, as a result of the injury, immediately receives medical treatment away from the scene of the accident, or
- b. One or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

IV. Participant Employee Requirements

A. Procedure Compliance

All Participant Employees must have been drug tested in a manner acceptable to the Trustees. All Participant Employees must have a drug card issued by the Trustees which shall contain a photograph of the Participant Employee ("Drug Card"). As a condition of employment, an Employer shall require a Participant Employee to present a Drug Card, and the Employer shall make and retain a photocopy of the card. Participant Employees must sign the Trustees' testing authorization forms and comply with all testing procedures. Failure to do so (including but not limited to a refusal to test) 1) will result in the Participant Employee being treated as if they had a positive test result under this Program and 2) may subject the Participant Employee to discipline by the Employer up to and including termination of employment.

Effective April 20, 2009 and continuing thereafter Participant Employees must allow a photograph to be taken for inclusion on the Drug Card. A refusal to allow a photograph to be taken shall result in the classification of the Participant Employee as "non-compliant / no photograph" which non compliance can be cured by allowing a photograph to be taken.

Effective September 1, 2010 and continuing thereafter Participant Employees Drug Card will expire if no drug screen of any type has been performed in the last three (3) years. Upon expiration a Participant Employee will be required to submit to drug screen. If a Participant Employee is working, contact will be initiated through the current employer. If the Participant Employee is not working or the current employer is unknown, contact will be made to Participant Employee directly. A refusal to comply with the drug screen request shall result in the classification of the Participant Employee as "non-compliant".

B. Counterfeited CISAP Cards and Misrepresentations of Status

A Participant Employee possessing a counterfeit CISAP Card will be terminated from employment, the counterfeit CISAP Card will be confiscated, and the Participant Employee will otherwise be treated as having provided a positive test result. Likewise, a Participant Employee who willfully misrepresents his/her CISAP compliance status as being in compliance when, in fact, the Participant Employee is not will be treated as having provided a positive test result.

C. Adulterated and Substituted Specimens

A Participant Employee with an adulterated or substituted specimen will consult with a Medical Review Officer (MRO) in the Program. “Adulterated” or “substituted” will be defined pursuant to 49 CFR Part 40 as may be amended from time to time but will generally mean that the Participant Employee (or with the knowledge of the Participant Employee someone else) has tampered, interfered, or meddled with a specimen so as to damage, alter, or otherwise to make the specimen not genuine. The Participant Employee will be responsible for reimbursing the Program for all costs incurred for laboratory examination of specimens found to be adulterated or substituted. A Participant Employee with an adulterated or substituted specimen may be terminated from employment and otherwise treated as having provided a positive test result.

D. Diluted, Rejected, and Invalid Specimens

In the event that a specimen provided by a Participant Employee is designated as diluted or rejected by the testing facility or MRO, the Participant Employee will be required to submit to a second testing. The second testing will be conducted under strict, controlled, and observed conditions within a reasonable period of time following the initial testing result. The “reasonable period of time” will be extended by the lack of communication, availability, or cooperation by the Participant Employee. Participant Employees with invalid specimens will be subject to the observed retesting requirements of diluted and rejected specimens and/or the specimen may be further tested at the expense of the Program to determine if the specimen is adulterated or substituted and the MRO reports there is no acceptable medical explanation. If a medical explanation acceptable to the MRO is identified and a negative test result is not required by law or this Program, no further testing will be required. “Diluted”, “rejected”, or “invalid” will be defined pursuant to 49 CFR Part 40 as may be amended from time to time but generally means a specimen with content that cannot be adequately tested.

V. Positive Testing Results

In the event of positive testing results, the following Program provisions apply.

A. Communication to Participant Employee First

Prior to communicating a positive testing result to the Employer, the MRO (or other person(s) authorized by the Trustees) will perform the following tasks:

1. Review and verify the positive test result.
2. Contact the Participant Employee and advise of the positive testing result.
3. Afford the Participant Employee an opportunity to advise of circumstances, i.e., medications prescribed by the Participant Employee's physician, which may have affected the testing results.
4. Advise the Participant Employee of the "Additional Testing of Specimen" rights provided in the following Paragraph B of this Article.
5. Review the Participant Employee's medical records, if any, provided by the Participant Employee.

B. Non-Contact Positives

In the event that there is a lack of communication by the Participant Employee after specific attempts of contact are made, a positive, adulterated, or substituted result will be deemed verified by the MRO. The specifically required attempts to contact are set out in 49 CFR 40.133 as may be amended from time to time.

C. Additional Testing of the Specimen

Within a 72-hour period commencing when the MRO notifies a Participant Employee of a positive test result, a Participant Employee may have Bottle B of the original specimen collection independently tested at his/her expense by a laboratory selected by him/her within the guidelines of this Program ("Split-Specimen Testing"). If the independent re-testing process has a negative test result, the Trustees will reimburse the Participant Employee for the reasonable cost of the independent test.

Notwithstanding anything contained herein to the contrary, split-specimen testing will be governed by the regulations of Subpart H 49 CFR Part 40 as may be amended from time to time.

D. Communication with Employers and Others

Subject to restrictions under the law and as authorized by the Trustees, the MRO (or other person(s) authorized by the Trustees), may notify authorized individuals at the following organizations of a test result:

1. The Employer,
2. The Participant Employee's Union which is a party to this Program,
3. The Participant Employee's apprentice training program, if any, established by a CBA which also adopts this Program,
4. The Trustees and agents of the Trustees.

E. Non-DOT Treatment

The Participant Employee is encouraged, but not required, to enter recovery treatment, it being the Participant Employee's own desire for treatment that is needed. Treatment will be at his/her expense as may be defrayed by the Participant Employee's health insurance and/or Employee Assistance Program ("EAP") benefits, if any.

F. DOT-Compliant Treatment

Participant Employees with a positive test result for drug or alcohol will be suspended without pay from performing safety-sensitive functions and will be referred to a Substance Abuse Professional ("SAP"). Failure of the Participant Employee to obtain a SAP evaluation and/or failure to follow the SAP's recommended treatment plan will be cause for termination of employment. Treatment will be at his/her expense as may be defrayed by the Participant Employee's health insurance and/or Employee Assistance Program ("EAP") benefits, if any.

G. Watch Block

The Participant Employee will be placed in a watch-block category ("Watch Block") for twenty-four (24) months commencing with the most recent positive test results from any testing performed under this Program. During the Watch Block, the Participant Employee is subject to Watch Block Random Testing for drugs up to six (6) times, provided, however, that if federal regulations require other random drug testing procedures, DOT-Compliant Participant Employees will be subject to such requirements. Provided however that a positive Return to Work test pursuant to Section II, Paragraph K shall not be deemed a positive test for purposes of this Section V, Paragraph G.

Positive test results from any testing performed under this Program (including an initial test, a pre-employment test, a post incident test, a reasonable suspicion test, a random test or a DOT compliant test) during the Watch Block will have the following outcomes:

1. **First Positive Test Result During Watch-Block**
The Participant Employee will be ineligible for testing for 90 days and his/her Drug Card will be suspended for such period.
2. **Second Positive Test Result During Watch-Block**

The Participant Employee will be permanently expelled from this Program and his/her Drug Card will be permanently revoked.

H. Employment Discipline and Terminations

Except for Random Testing, in the event of a positive test result which initiates a Watch Block, the Employer may (but is not required to) discipline a Participant Employee up to and including termination of employment.

With respect to Random Testing, in the event of a positive test result which initiates a Watch Block, the Employer may not discriminate against the Participant Employee on the basis of such positive test result provided, however, that DOT-Compliant Participant Employees with a positive test result for drug or alcohol will be suspended without pay from performance of safety-sensitive functions and will be referred to a SAP. Such suspension will continue until the SAP approves a return to work. Failure of the Participant Employee to obtain a SAP evaluation and/or failure to follow the SAP's recommended treatment plan will be cause for termination of employment.

In the event a Participant Employee has a positive test result while in a Watch Block under this Program (including a Watch Block which is initiated by a Random Testing), an Employer may (but is not required to) discipline a Participant Employee up to and including termination of employment.

I. Grievances

All disputes relating to adverse action against a Participant Employee by an Employer, including but not limited to refusal to hire, suspension, termination or other disciplinary action based upon an alleged violation of this Program Agreement shall be subject to any applicable grievance and arbitration procedure set forth in the Parties CBA.

J. Appeal Procedures

All disputes relating to the interpretation, application or alleged violation of the provisions of the Program Agreement shall be resolved exclusively in accordance with the Appeal Procedures adopted by the Trustees of the Mo-Kan Construction Industry Substance Abuse Fund. Disputes subject to the Appeal Procedures include but are not limited to the following:

- Failure to comply with procedures and requirements of the Program Agreement
- Accuracy of test results
- Positive test for failure to comply with testing procedures (including but not limited to a refusal to test)
- Positive test for possession of counterfeit Drug Card
- Positive test and assessment of costs for adulterated or substituted specimens
- Positive test due to non contact by Participant Employee
- Positive test resulting in placement into watch block
- Positive test resulting in suspension of Drug Card for 90 days

- Positive test resulting in permanent revocation of Drug Card and permanent expulsion from Program
- Classification as “Non-compliant / No Photograph” due to refusal to allow a photograph to be taken

The Appeal Procedures shall be administered by an Appeal Committee appointed by a majority of the Trustees.

K. Readmission Procedure

A Participant Employee who has been permanently expelled from the Program and whose Drug Card has been permanently revoked may apply for readmission to the Program. Application for readmission shall be governed exclusively in accordance with the readmission Procedure adopted by the Trustees of the Mo-Kan Construction Industry Substance Abuse Fund and administered by a Readmission Committee appointment by a majority of the Trustees.

L. Confidentiality

All testing administered under this Program will be for the sole purpose of fulfilling the goals of this Program and will not be utilized for any other purpose. The Parties and the Trustees will maintain confidentiality to the extent required by law with respect to testing results.

“Confidentiality” means that only authorized and necessary employees and agents will be made aware of confidential information garnered about Participant Employees in the process of Program administration, and such information will be kept reasonable secure from disclosure to any unauthorized person.

“Confidential Information” means information which would link a Participant Employee with testing results, participation in Watch-Block testing, participation in the EAP treatment program, and any records of the EAP treatment program about a Participant Employee.

Information regarding a Participant Employee’s test results will be released only upon signed, written consent of the Participant Employee. However, signed consent will not be required in the following situations:

1. As permitted under this Program
2. If mandated by law, including a court order
3. Pursuant to a legally enforceable subpoena
4. In the case of an incident, when required by the Workers’ Compensation governmental agency, insurer, and/or other governmental agency

In the event a grievance is filed with respect to any matter arising under this Program, the subject Participant Employee will be deemed to have waived confidentiality as to the testing process and the documentation generated thereby. The sole exception to the waiver of confidentiality is when the identity of the Participant Employee is not required to be disclosed for the purposes of the grievance.

VI. General

A. Drug Card Management

The Trustees will have authority over matters regarding the issuance, suspension, and revocation of Drug Cards.

B. Employer Contribution Collections

In addition to any remedies available to the Trustees under this Agreement, the Trustees may institute and take any and all legal remedies available to them to collect delinquent employer contributions due the CISAP Fund.

Employers are hereby advised that the Trustees have broad powers to ensure the collection of contributions and the preservation of the CISAP Fund, including, but not limited to, legal remedies, imposition of assessments, interest and/or liquidated damages, requiring Employers to advance cash deposits and/or surety bonds, and recovery of costs. If it becomes necessary for the Trustees to file a lawsuit against an Employer for delinquent contributions due, the Employer agrees to pay, in addition to the contributions, liquidated damages, interest, audit costs, all litigation costs and a reasonable attorney fee.

Each Employer participating in this Program, upon request of an official designated agent of the CISAP Fund, shall permit such agent or designee during regular business hours to inspect and make copies of any and all records of the Employer pertaining to compensation paid to Participant Employees, hours paid for Participant Employees' work, monies withheld from Participant Employees for taxes paid on account of Participant Employees' work, and any and all records relevant to and of assistance in determining whether the Employer's obligations to the CISAP Fund for payment of contributions have been performed.

C. Participant Employees' Financial Compliance

In order to be eligible to receive and maintain a Drug Card and compliance with the Program, a Participant Employee must meet all of the financial obligations of this Program.

D. Document Retention

Documentation will be maintained by a Party, and agents of a Party, for at least the following specified periods:

1. Negative test results: One (1) year
2. Positive test results: Five (5) years
3. Recovery Treatment records: Five (5) years

E. Choice of Law

Except as preempted by federal law, the law governing disputes arising under the Program will be the law of the state where the applicable construction project is located; in the event there is not an applicable construction project, the law of the State of Missouri will govern this Program.

F. Effective Date

Commencing December 19, 2011, this Third Restated Mo-Kan Construction Industry Substance Abuse Program Agreement amends and restates the Second Restated Mo-Kan Construction Industry Substance Abuse Program Agreement dated December 12, 2006.

Effective December 19, 2011, it includes the building crafts of the following Unions pursuant to their CBAs with The Builders' Association or other entities and/or their having entered into the Mo-Kan Construction Industry Substance Abuse Program Agreement dated April 1, 2003 as amended:

- Bricklayers Local No. 15 (Kansas City Area)
- Bricklayers Local No. 15, Chapter 10 (Springfield Area)
- Bricklayers Local No. 15, Chapter 11 (Jefferson City Area)
- Carpenters' Local No.1925 (Columbia Area)
- Carpenters' Local No.945 (Jefferson City Area)
- Carpenters' Local No.978 (Springfield Area)
- Cement Masons and Plasters Local No.518 (Kansas City Area and Central Missouri)
- District Council No.3 of the Painters and Allied Trades (including Locals: No. 9; No. 76; No. 96; No. 98; No. 203; No. 229; No. 820; No. 861; No.1179; No 1594; and No. 1786) (Kansas City Area)
- Glaziers Local No.558 (Kansas City Area)
- I.B.E.W. Local No.124 (Pursuant to Participation Agreement with I.B.E.W. Local 124 and Kansas City Chapter, National Electrical Contractors Association, Inc. Labor-Management Cooperation Trust) (Kansas City Area)

- I.B.E.W. Local No.257 (Central Missouri Area)
- I.B.E.W. Local No.453 (Springfield Area)
- Ironworkers Local No.10 (Kansas City Area and Western Missouri)
- Ironworkers Local No.396 (Central Missouri Area)
- Laborers Local No. 579 (St. Joseph Area)
- Laborers Local No.1290 (Kansas City Area and the State of Kansas)
- Laborers Local No.264 (Kansas City Area and Western Missouri)
- Laborers Local No.319 (Joplin Area)
- Laborers Local No.662 (Jefferson City Area)
- Laborers Local No.663 (Springfield Area)
- Laborers Local No.955 (Columbia Area)
- Marble, Terrazzo and Tile / Bricklayers Local No.15 (Kansas City Area)
- Operating Engineers Local No.101 (Kansas City Area and Springfield Area)
- Painters Local No.1185 (Central Missouri Area)
- Teamsters Local No.541 (Kansas City Area)

This Third Restated Mo-Kan Construction Industry Substance Abuse Program Agreement was approved and adopted by the Trustees of the Mo-Kan Construction Industry Substance Abuse Fund at a Trustees' meeting held December 19, 2011.

**MO-KAN CONSTRUCTION INDUSTRY
SUBSTANCE ABUSE FUND**

Donald E. Greenwell, III, Chairman

Date

Steve Mullen, Secretary

Date