

ATTACHMENT B - SUBSTANCE ABUSE PREVENTION PROGRAM

Section 00 73 33

Revision: April 1, 2020

**LABOR COMPLIANCE MANUAL SUBSTANCE ABUSE
PREVENTION PROGRAM (SAPP)**

[Supersedes PLA Substance Abuse Program outlined in Attachment G of the PLA]

1. Purpose and Intent

The intention of this Program is to establish the Project as a drug- and alcohol- free workplace in order to assure safe and productive working conditions with due regard for the personal privacy interests of Project employees. It is not the intention of the parties that any Contractor intrude on off-duty activities of Project employees away from the Project site unless those activities may have a job-related impact. The circumstances permitting controlled substance and alcohol testing in this Program have been carefully defined and intentionally restricted.

2. Substance Abuse Prevention Program Development, Compliance and Guidelines

Beginning with the pre-construction submittals, the Contractor shall provide written certification that they will adhere to the Sound Transit Drug-Free Card Program, and acknowledge their responsibility to ensure that all Subcontractors will also adhere to the program requirements. In the pre-construction submittals, the Contractor shall specifically identify who will act as their Designated Employer Representative and how they intend to comply with the Sound Transit Drug-Free Card Program. The Contractor shall require Employees performing work on the Project covered under the Central Puget Sound Regional Transit Authority Project Labor Agreement to participate in the Sound Transit Drug-Free Card Program and shall make copies of the Sound Transit Drug Free Card Program Administrative Guide available to all new Employees during in-processing. Only Employees who are “Eligible” under the Sound Transit Drug-Free Card Program shall be allowed to perform work on the Project covered under the Central Puget Sound Regional Transit Authority Project Labor Agreement.

The only exception to exclude Employees performing work on the Project from any part of the Drug-Free Card Program is drivers holding a commercial driver’s license (CDL) who are already covered under a Department of Transportation Federal Motor Carrier Safety Administration compliant drug and alcohol testing program and whose work on the Project is limited to driving a commercial motor vehicle (e.g. dump truck driver, cement truck driver, etc.). These CDL drivers are exempt from the Pre-Employment, Random, and Periodic testing requirements of the Sound Transit Drug-Free Card Program contained herein. CDL drivers who also perform any work on the Project beyond solely driving must fully participate in the program.

The Sound Transit Drug-Free Card Program Administrative Guide prescribes Employee and Contractor obligations and specifics of the program. Contractors shall comply with the administrative obligations as required in the Labor Compliance Manual and Sound Transit Drug-Free Card Program Administrative Guide. Contractor’s shall utilize the Drug-Free Card Program website to keep employee lists, including subcontractor employees, up to date and verify the eligibility of Applicants/Employees. Sound Transit’s acceptance of the Contractor’s pre-construction submittals shall in no way relieve the Contractor from any obligations under the Project Labor Agreement, the Labor Compliance Manual, or the Sound Transit Drug-Free Card Program and its administrative guide. Even if the Contractor has its own Substance Abuse Prevention Policy, the Contractor shall strictly

adhere to Sound Transit's program and policies under this SAPP Attachment and Sound Transit Drug-Free Card Program Administrative Guide. Upon Sound Transit's acceptance of the Contractor's preconstruction submittals, the Contractor shall provide a copy of the compliance submittal to all of its Subcontractors and shall ensure that each Subcontractor also adheres to Sound Transit's requirements under this SAPP Attachment, the PLA, the Labor Compliance Manual, and Sound Transit Drug-Free Card Program Administrative Guide.

3. General Testing Requirements

In accordance with the provisions of the Sound Transit Drug-Free Card Program Administrative Guide, all Applicants to become an Employee eligible to work on the Project shall be Pre-Employment drug and alcohol tested and be reported as "Eligible" by the Drug-Free Card Administrator prior to reporting to work on the Project. Employees in the Program shall be subsequently tested at random, and, as the situation warrants, shall be subject to Reasonable Cause testing, Post-accident testing, and Return to Duty/Follow-up testing. All Employees must be tested at least once every twelve (12) months to remain part of the Program and will require a Periodic test if the Employee has not completed another test (e.g. random, post accident, reasonable suspicion, etc.) during a twelve (12) month period. Neither the Contractor, nor any of its subcontractors, will accept an Applicant as eligible for employment without verifying through the Drug-Free Card Administrator that the applicant is "Eligible" to work on the Project.

All testing performed in accordance with this substance abuse prevention program (Pre-employment, Post-accident, Random, Return to Work, etc.) shall be performed only by the Sound Transit Testing Administrator or their Sound Transit approved agent.

4. General Prohibitions, Minimum Penalties and Subsequent Eligibility for Violation of Policies

Unauthorized use, possession or sale of controlled substances or alcohol on the Project site is prohibited. Persons who violate this rule or who are convicted for selling, using, manufacturing, or possessing controlled substances off the job shall not be permitted to continue working on the Project and will be Ineligible to work on the Project on any Sound Transit project for twelve (12) months.

Any Applicant/Employee with a drug or alcohol test result determined to be positive or a "Refusal to Test" will be reported as "Ineligible" by the Drug-Free Card Administrator. Employees/Applicants reported as "Ineligible" by the Drug-Free Card Administrator shall not be allowed by the Contractor to work on the Project and the Contractor shall immediately remove any Employee from the Project if the Drug-Free Card Administrator reports them as "Ineligible". If an Employee/Applicant has a positive drug or alcohol test result or is reported as a "Refusal to Test," they shall be denied employment and will not be "Eligible" to work on the Project for any Contractor/Subcontractor until a period of not less than ninety (90) calendar days from the date of the test has passed.

Employees/Applicants who desire to return to work for a Contractor/Subcontractor on the Project after previously being reported "Ineligible" by the Drug-Free Card Administrator must complete an assessment by a professional with expertise in substance use disorders and have that professional submit a "Proof of Assessment" form (form provided by Drug-Free Card Administrator) on the Employee's/Applicant's behalf. Once the Drug-Free Card Administrator has verified that the assessment was completed, the Employee/Applicant must also pass Return to Duty drug and alcohol testing before

becoming “Eligible” and shall participate in ongoing Follow-up drug and alcohol testing after they return.

5. Contractors Assurance of a Drug-Free Workplace, Program and Testing Services by Sound Transit-Approved Administrators

Contractors shall comply with the Sound Transit Drug-Free Card Program including administrative functions as required in the Labor Compliance Manual and Sound Transit Drug-Free Card Program Administrative Guide. All substance abuse prevention program and testing services will be administered through vendors (Administrators) contracted by Sound Transit. Two Administrators have been contracted, a Testing Administrator to complete drug and alcohol test collections and a Drug-Free Card Administrator to provide laboratory drug testing services, Medical Review Officer services, and administrative aspects of the Program.

6. Prohibited Conditions

A. Controlled Substances—Drug Testing

Any Applicant/Employee with a confirmed positive drug test result will be reported “Ineligible” by the Drug-Free Card Administrator and shall be immediately removed from the Project by the Contractor. The controlled substances for which testing will be performed on the Project will at a minimum include the drugs listed in the U.S. Department of Transportation’s (DOT) rule, 49 CFR Part 40, using the published cutoff concentrations to determine a positive laboratory test result. The controlled substance testing list and the cutoff concentrations are published in the Sound Transit Drug-Free Card Program Administrative Guide and will be updated to reflect any changes published by the DOT. Sound Transit may include additional controlled substances in the drug test panel for which testing will be performed and will publish any additional controlled substances, including cutoff concentrations, in the Sound Transit Drug-Free Card Program Administrative Guide. Cutoff concentrations for any additional controlled substances will be set by the SAMHSA certified laboratory performing the drug tests in accordance with drug testing industry standards.

B. Workplace Impairment Including Prescription and Over-the-Counter Medication Abuse

Contractors shall not permit any employee impaired by the use of a prescribed medication, over-the-counter medication, or other substance to remain on the Project. Use of any substance, including medication by prescription or over the counter, which may alter or affect an individual’s motor function or mental capacity, is prohibited. This includes any drug or medication that is prescribed by a duly licensed health care provider, over-the-counter drugs or medications, health supplements, and any other substances.

Employees may use prescription and over-the-counter medications while working on the Project provided:

- a. The prescription medication has been prescribed by a duly licensed health care provider for current use by the person in its possession and the medication is in its original container and in the employee’s name.
- b. The prescribed or over-the-counter medication is not taken more often or in greater dosages than as prescribed by the employee’s health care provider or in

accordance with the instructions provided with the medication, and they must not allow any other person to consume the prescribed medication.

- c. The medication label does not advise that the medication may affect motor function or mental capacity, and does not advise against operating cars, other motor vehicles or machinery while taking the medication.
- d. The Employee has not experienced any side effects that alter or affect their motor function or mental capacity when taking the medication.

Where an employee has been informed that a medication may cause adverse side effects while working or where the medication, either prescribed or over-the-counter, indicates such a warning, the employee must inform their employer prior to using such substances on the job. The use of a medication prescribed by a duly licensed health care provider for the individual employee is permitted, provided that it will not affect work performance. However, the employer at all times reserves the right to have a licensed health care professional (e.g. licensed prescribing physician, licensed pharmacist, etc.) determine if use of a prescription medication by an employee may produce effects which may increase the risk of a workplace accident that could cause injury to the employee or others, or damage to property. If such a finding is made, the Contractor may refer the Employee back to the prescribing health care professional to see if a substitute medication is available which would not affect the employee's ability to work safely. If an appropriate substitute medication is not available, the Employer will have the option to 1) reassign the employee to a task such that there is not a potential safety risk to the employee, others or property; or 2) if no such appropriate task is available for this employee, then relieve the employee of duties until such time as the employee no longer requires that medication.

C. Alcohol Use—Alcohol Testing

The use, possession or sale of alcohol on the project site is prohibited.

Employees/Applicants with a breath alcohol confirmation test result of 0.04 or higher shall be removed immediately from the Project and will be reported "Ineligible" by the Drug-Free Card Administrator.

Employees/Applicants, who have a breath alcohol confirmation test result between 0.02 and 0.039, shall be immediately removed from the Project for a minimum of 8 hours and will only be eligible for work when a new breath alcohol test result is at a level below 0.02.

D. Refusal to Test

Any Employee/Applicant who's test result is determined to be a "Refusal to Test" shall be immediately removed from the Project and will be reported "Ineligible" by the Drug-Free Card Administrator. "Refusals to Test" will be determined according to the U.S. Department of Transportation's (DOT) rule, 49 CFR Part 40, for both drug and alcohol testing. More specifics on what is considered a "Refusal to Test" are published in the Sound Transit Drug-Free Card Program Administrative Guide.

7. Testing Requirements for Applicants and Employees

A. Applicants

All offers of employment for Project positions will be conditional and Contractors shall not allow an Applicant to perform work on the Project until the Applicant has satisfactorily completed a Pre-Employment drug and alcohol test, and the Drug-Free Card Administrator has received negative test results and have reported the Applicant as "Eligible." Contractors will schedule the Pre-Employment test collection to be completed by the Testing Administrator during in-processing. Applicants will be on the clock for all time spent in-processing, including Pre-Employment testing collection, with a minimum of four (4) hours paid show-up time.

Applicants for Project positions will be permitted conditional employment for in-processing activities (e.g. training, pre-employment paperwork, etc.) pending receipt of final Pre-Employment drug and alcohol test results and notification from the Drug-Free Card Administrator that the Applicant is "Eligible." Applicants granted conditional employment shall not be allowed to perform any safety sensitive functions (i.e., operating vehicles, heavy equipment, power tools or other dangerous instrumentalities, dangerous working conditions, or unescorted access to the Project)." If an Applicant is permitted conditional employment and is later reported "Ineligible" by the Drug-Free Card Administrator, the Contractor shall immediately remove the Applicant from the Project. Applicants permitted conditional employment by the Contractor shall be paid for all time spent in in-processing activities.

B. Employees

All Employees of the Project are subject to drug and alcohol testing while on the job, in a job status, at the jobsite or other Employer controlled site. Contractors shall require testing for the following reasons:

1. **Periodic Testing:** Any Employee who has not completed a drug and alcohol test (e.g. Random, Post Accident, Reasonable Cause, etc.) in the Sound Transit Drug-Free Card Program for a period of twelve (12) months shall be required to have a drug and alcohol test. Contractors shall schedule Periodic testing with the Testing Administrator. If the Employee is currently working on the Project the Contractor may have the Periodic test collected during the thirty (30) days before/after the twelve (12) month anniversary of the Employee's last test. Employees tested within this period may continue to work pending the Periodic test results. Contractors shall withhold any Employee from performing work on the Project who's Periodic test is not completed by the end of the 13th month from their last completed drug and alcohol test until their Periodic testing is completed and the Drug-Free Card Administrator reports the Employee as "Eligible." If an Employee is withheld for this reason and their Periodic drug and alcohol test results are negative, the employee shall be reinstated with full back pay for any lost time. If the Employee has been unemployed and is returning as an Applicant, the process in section 7.A, "Applicants," shall be followed.
2. **Reasonable Cause Testing:** Contractors shall require testing of any employee for reasonable cause when specific, articulable facts exist that would lead a reasonable person to believe that an employee may be impaired by drugs and/or alcohol. The decision to test shall be based on specific contemporaneous physical, behavioral, speech, body odors, or performance indicators of possible drug or alcohol use. These facts may include, but are not limited to:
 - a. An Employee showing signs of impairment such as difficulty maintaining balance, slurred speech, or otherwise appearing unable to perform assigned

work in a safe and satisfactory manner.

- b. An Employee exhibiting abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.
- c. An Employee who is exhibiting the odor of alcohol and/or drugs or who is found to be in the possession of alcohol and/or drugs.

When reasonable cause exists, two representatives of the Employer's supervision team must concur with the decision to test, with at least one of the representatives having made a firsthand observation of the facts on which testing is being required, and those representatives will endeavor to consult with the prime Contractor's Safety Representative or designee. Contractors shall schedule Reasonable Cause testing with the Testing Administrator. An employee shall be immediately removed from performing work on the Project once a decision to reasonable cause test has been made. The employee shall remain off duty until both drug and alcohol test results are received. If the employee's drug and alcohol tests are negative, the employee shall be reinstated with full back pay for any lost time. The Contractor shall complete a "Reasonable Cause Form" provided by the Drug-Free Card Administrator and submit the form to Sound Transit Labor Compliance within one (1) working day of directing the employee to obtain a drug and alcohol test for reasonable cause.

- 3. **Post-Accident Testing:** Contractors shall require testing of any employee who is involved in an accident in the course of job duties or while on a project site which involved use of vehicles, heavy equipment, power tools or other dangerous instrumentalities or working conditions and which resulted in injury to the employee or others, or property damage, and the Contractor's designated safety representative or designee or Sound Transit concludes that:
 - a. The accident may have been caused by human error or could have been avoided by reasonably alert action; and
 - b. The employee to be tested was an active participant in the accident circumstances.

Any employee directed to obtain a Post-Accident drug and alcohol test shall be entitled to request the presence of a Union steward in pre-test meetings with Contractor management, provided a Union steward is readily available and the circumstances allow. Contractors shall schedule Post Accident testing with the Testing Administrator immediately following a determination to test and every effort should be made to complete testing within two (2) hours from the time the accident occurred. An employee shall be immediately removed from performing work on the Project once a decision to post accident test has been made. The employee shall remain off duty until test results are received. If the employee's drug and alcohol test results are negative, the employee shall be reinstated with full back pay for any lost time. The Contractor shall complete a "Post Accident Form" provided by the Drug-Free Card Administrator and submit the form to Sound Transit Labor Compliance within one (1) working day of directing the employee to obtain a drug and alcohol test following an accident.

- 4. **Random Testing:** The Drug-Free Card Administrator will conduct random selections for drug and alcohol testing of Employees performing work on the Project. A number equal to at least fifty percent (50%) of the total number of Employees in the Drug-Free Card Program will be randomly selected annually for

testing. The Drug-Free Card Administrator will provide a list of Employees selected for testing to the Contractor Designated Employer Representatives. Contractors shall schedule Random testing with the Testing Administrator within the period designated by the Drug-Free Card Administrator. Employees tested within the designated period may continue to work pending test results. Contractors shall withhold any Employee from performing work on the Project who's Random test is not completed within the designated period until their Random testing is completed and the Drug-Free Card Administrator reports the Employee as "Eligible." If the employee's drug and alcohol test results are negative, the employee shall be reinstated with full back pay for any lost time. Employees who were selected for testing and are returning to the Project as Applicants must complete their Random testing and have the Drug-Free Card Administrator report them as "Eligible" before performing working on the Project.

5. **Return-To-Work/Follow-up Testing:** An Employee/Applicant who has been reported "Ineligible" by the Drug-Free Card Administrator as a consequence of a positive drug or alcohol test result or reported "Refusal to Test," shall not be allowed to perform work on the Project until a period of not less than ninety (90) calendar days has passed. Additionally, the Employee/Applicant shall complete an assessment by a professional with expertise in substance use disorders and that professional must submit to the Drug-Free Card Administrator a "Proof of Assessment" (form provided by Drug-Free Card Administrator) on the Employee's/Applicant's behalf. Once the Drug-Free Card Administrator has verified the "Proof of Assessment", the Employee/Applicant shall undergo Return-To-Work drug and alcohol testing, and shall not be returned to the Project unless the Drug-Free Card Administrator reports the Employee as "Eligible." If returned to the Project, the Employee shall also consent and submit to Follow-up drug and alcohol testing, which will occur six (6) times during the Employee's first year of continuous employment from the date of the Employee's return, as directed by the Drug-Free Card Administrator. Contractors shall schedule Follow-up testing with the Testing Administrator within the period designated by the Drug-Free Card Administrator when they provide the Contractor a list of Employees selected for testing. Employees tested within the designated period may continue to work pending test results. Contractors shall withhold any Employee from performing work on the Project who is not tested in the designated period until their Follow-up testing is completed and the Drug-Free Card Administrator reports the Employee as "Eligible." If the Employee's drug and alcohol test results are negative, the employee shall be reinstated with full back pay for any lost time. Employees who were selected for testing and are returning to the Project as Applicants must complete their Follow-up testing and have the Drug-Free Card Administrator report them as "Eligible" before performing work on the Project.

8. Conviction for Selling, Using, Manufacturing or Possessing a Controlled Substance

Any Employee/Applicant convicted in any court of law for selling, using, manufacturing or possessing a controlled substance shall notify his or her employer in writing within one (1) working day of the conviction. The conviction will be treated as a positive test result and the Employee/Applicant will be considered "Ineligible" and held to the same requirements set for this violation.

9. Drug and Alcohol Test Collections

Employees/Applicants shall report to the designated collection site for the collection of a drug test specimen and breath alcohol test. Employees/Applicants must present government-issued photo identification such as a current driver's license, passport, Native American Tribal ID card, Permanent Resident Card, or picture ID from a city, county or State (not a company or union photo ID). Employees/Applicants shall not leave the collection site for any reason until authorized by the Testing Administrator or their agent. Failure to follow all collection procedures will result in the Employee/Applicant being considered a "refusal to test."

All laboratory drug and breath alcohol test collections will be performed according to the procedures found in the U.S. Department of Transportation's (DOT) rule, 49 CFR Part 40 unless directed otherwise by the Drug-Free Card Program Administrative Guide. The Testing Administrator and their agents shall use trained collectors competent in drug and alcohol collection procedures.

An Employee/Applicant who cannot produce sufficient breath for an alcohol test or a sufficient specimen for a drug test within a three (3) hour time frame will be required to undergo a medical evaluation with a physician approved by the Medical Review Officer (MRO) to determine if there is a valid medical reason that would prevent the Employee/Applicant from providing a sufficient breath/specimen. If the MRO finds documented evidence of a valid medical reason for failing to provide a sufficient breath/specimen during the attempted test/collection, the MRO may authorize the Employee/Applicant to present him or herself for a new collection, which may be performed using an alternative method of collection. If a valid medical reason is not found for failing to provide a sufficient breath/specimen, the Employee/Applicant is responsible for all expenses pertaining to the medical evaluation and it will be considered a "Refusal to Test."

10. Drug and Alcohol Testing

Laboratory drug testing will be performed at a Substance Abuse and Mental Health Services (SAMHSA) certified laboratory contracted by the Drug-Free Card Administrator. All laboratory drug tests will be certified using an enzyme immunoassay (EMIT) screening test, and if positive, a Gas Chromatography/Mass Spectrometry (GC/MS) or Liquid Chromatography/Mass Spectrometry (LC/MS) confirmation test. If a Point of Collection Test (POCT) device is used at the time of collection, any specimens with non-negative/inconclusive drug test results will be sent for laboratory drug testing using the previously named methods.

Breath Alcohol testing will be performed using an evidential breath testing (EBT) device listed on the National Highway Traffic Safety Administration (NHTSA) Conforming Product List.

11. Medical Review of Drug Test Results

A Medical Review Officer (MRO) contracted/employed by the Drug-Free Card Administrator will review all positive, adulterated, substituted, rejected for testing, invalid result and dilute test laboratory results. The MRO will review these laboratory drug test results and attempt to interview the Employee/Applicant to determine if there is any physiological or medical reason why the result should not be confirmed as positive or "Refusal to Test." If a legitimate medical explanation is provided by the Employee/Applicant, in accordance with DOT, 49 CFR Part 40, the MRO shall report the

result as negative. If the Employee/Applicant cannot provide a legitimate medical explanation in accordance with DOT, 49 CFR Part 40, the MRO shall confirm the test positive or "Refusal to Test."

The MRO will make good faith efforts to contact the Employee/Applicant using the contact phone numbers provided by the Employee/Applicant on the drug testing custody and control form. Additional details on the medical review process can be found in the Drug-Free Card Program Administration Guide.

12. Confidentiality of Test Result Reports

The Testing Administrator and Drug-Free Card Administrator shall keep detailed test results in confidence.

A. Reports to the Contractor

The Drug-Free Card Administrator will only provide the Contractor with information that the Employee/Applicant is eligible or ineligible to work on the Project. The Contractor shall keep the information in confidence and only share on a need to know basis.

B. Reports to Sound Transit

The Drug-Free Card Administrator will provide testing information, including "Eligible" and "Ineligible" status, to the Sound Transit Labor Compliance. Under certain circumstances the Testing Administrator or Drug-Free Card Administrator may need to provide additional information specific to the drug or alcohol testing situation, but no personal medical information provided by the Employee/Applicant during the testing process or MRO review will be shared unless specifically necessary and directly relevant to the testing situation. Sound Transit will keep this information in confidence.

C. Reports to Union Representatives

If an Employee/Applicant is reported by the Drug Free Card Administrator as "Ineligible" to work on the Project, the Contractor shall notify the affected union within 48 business hours of notification of the ineligible result.

D. Reports to Other Interested Parties With a Legitimate Need to Know

If there is any other interested party with a legitimate need to know employment information about an Employee/Applicant, the Contractor is to only provide notification stating that the employee is "Ineligible" for employment on the Sound Transit Project as they were "in violation of the Sound Transit Link Light Rail and Sounder Commuter Rail Project PLA Policy / Labor Compliance Manual."

13. Consent Forms

Employees/Applicants must execute a written consent form during Contractor in-processing or at any time requested by the Testing Administrator, to consent to alcohol and drug testing, as well as the provisions of the Sound Transit Drug-Free Card Program. Failure to sign the consent form will result in the Employee/Applicant being "Ineligible" to work the Project for ninety (90) calendar days.

14. Supporting Documents and Forms

The following is a list of documents and forms referenced in this Substance Abuse Prevention Program attachment to the Labor Compliance Manual. Updates may occur periodically to these documents and forms. The most current versions are available at www.drugfreebusiness.org/sound-transit.html.

- a. Drug-Free Card Program Administrative Guide
- b. Drug-Free Card Program Consent Form
- c. Reasonable Cause / Post Accident Form