

THIRD-PARTY REIMBURSEMENT AGREEMENT

THIS THIRD-PARTY REIMBURSEMENT AGREEMENT (this “Agreement”) is entered into this ____ day of _____, 20___, by and between _____ (“Covered Person”), _____ (“Attorney for Covered Person”), if applicable, and the Montana Contractors’ Association Health Care Trust (the “Trust”).

WHEREAS, the Trust provides benefits for eligible covered persons under the Montana Contractors’ Association Health Care Trust (MCHACT) Benefit Plan (the “Plan”), which is an employee welfare benefit plan within the meaning of and governed by the Employee Retirement Income Security Act of 1974, as amended (“ERISA”); and

WHEREAS, the Plan’s benefits, terms, conditions, limitations and exclusions are set forth in the Plan Document and Summary Plan Description of the Montana Contractors’ Association Health Care Trust (MCAHCT) Benefit Plan (the “Plan Document and SPD”); and

WHEREAS, Covered Person has submitted or caused to be submitted to the Plan certain claims for medical expenses incurred by or on behalf of Covered Person arising out of an injury or illness for which he/she may have a lawful claim, demand, or right against a third party or parties (including an insurance carrier) for indemnification, damages, or other payment; and

WHEREAS, Covered Person was a “Covered Person” within the meaning of the Plan Document and SPD with respect to the period for which these claims have been incurred; and

WHEREAS, the Plan Document and SPD contains specific provisions, including, but not limited to, coordination of benefits and exclusions pertaining to claims for benefits for which a third party or parties (including an insurance carrier) is or may be responsible or liable to pay; and

WHEREAS, under the Section of the Plan Document and SPD called “Trust’s Rights of Recovery, Reimbursement, Subrogation and Off-Set” the Trust has rights, including, but not limited to, the right to reimbursement for its benefit payments from a recovery by the Covered Person, the right to be subrogated to Covered Person’s rights to recovery, and the right not to pay claims under the Plan unless the Covered Person and the Covered Person’s attorney, (if the Covered Person has retained counsel) sign a third-party reimbursement agreement, as described in that Section; and

WHEREAS, Covered Person desires to proceed against the third party or parties who may be liable in damages for the injuries to Covered Person and any responsible third party or parties; and

WHEREAS, Covered Person is represented by the Attorney in connection with injuries Covered Person received on or about _____, 200___, in _____, _____;

and

WHEREAS, any such action against a third party or parties may not conclude for a significant time into the future;

NOW, THEREFORE, in consideration of the foregoing and mutual agreements herein contained, the Trust and Covered Person agree as follows:

1. The following terms have the meanings ascribed to them:

(a) "Injuries" mean the injuries Covered Person received on or about _____, 200_____, in _____, _____.

(b) "Medical Expenses" mean the medical expenses incurred by or on behalf of Covered Person in connection with the Injuries.

2. Covered Person and the Attorney acknowledge and agree to be bound by the Covered Person's obligations under the Plan, and acknowledge and affirm the Trust's rights and responsibilities, in the Sections of the Plan Document and SPD entitled "Trust's Rights of Recovery, Reimbursement, Subrogation and Off-Set," "Coordination of Benefits" and "Exclusions and Limitations", a copy of which is Exhibit A to this Agreement, and is incorporated by this reference into this Agreement.

3. On the terms and subject to all the conditions, limitations and exclusions of the Plan Document and SPD, the Trust will pay the Medical Expenses, incurred and to be incurred, as they accrue as if the Injuries were not a result of actions by a third party or parties.

4. The Trust's agreement in Section 3 above to pay Medical Expenses before the conclusion of any action by or on behalf of Covered Person against a third party or parties constitutes and creates a value to Covered Person that is in addition to the value and rights that Covered Person has under the Plan Document and SPD, and such additional value constitutes valuable consideration for this Agreement. In exchange for the Trust's agreement to pay the Medical Expenses, Covered Person agrees to proceed by claim or appropriate legal action against the third party or parties (including insurance companies) believed to be liable in damages or to have financial responsibility for reimbursement of Covered Person's claims within a reasonable period of time not to exceed one year from the date hereof; and before any applicable statute of limitations expires, and will diligently pursue such action. Covered Person will advise the Trust of filing such action and will provide the Trust with appropriate information periodically concerning such action.

5. The Trust does hereby assign to Covered Person its right to recover from a third party or parties or insurance companies, subject to the following: if any recovery is made from any responsible party or parties or insurance companies by Covered Person, either by way of compromise, settlement, administrative agency order or judgment, regardless of how the recovery is identified or categorized, Covered Person and the Attorney shall hold

in trust for the exclusive benefit of the Trust, and shall pay over to the Trust, the full value of all Medical Expenses the Trust has paid or pays to or on behalf of Covered Person, reduced only as follows:

(a) The amount payable to the Trust shall be reduced by the Trust's pro rata share of the Attorney's fees and costs described in clauses (b) through (d) below; and

(b) If the Attorney is successful in obtaining a settlement or award prior to or after trial, the Attorney's fees are 33-1/3% of such settlement or award; and

(c) If the case is appealed, the Attorney's fees are 40% of any settlement or award; and

(d) The Attorney shall be reimbursed for all costs and expenses, including but not limited to, court costs, investigative costs, deposition costs, expert witness fees, travel expenses, photocopies, legal research expenses and long distance telephone call expenses, which may be incurred in representation of Covered Person in connection with the Injuries.

The Trust's right to reimbursement shall apply to all sources or forms of recovery to which Covered Person was entitled or will become entitled, regardless of whether the recovery was legal or equitable in nature and the Trust's right to reimbursement shall take priority over Covered Person's right to be made whole.

6. It is understood by the Trust, Covered Person and the Attorney that the Attorney represents Covered Person, and that the Attorney does not represent the Trust.

7. If Covered Person fails to reimburse the Trust as required by this Agreement and the Plan, the Trust shall be entitled to set-off the amount the Trust would be entitled to recover against any further claims for benefits under the Plan the Covered Person may have in connection with the Injury or for any other claims Covered Person may now or in the future have for benefits under the Plan. Until the credit amount has been recovered by offsets, the Trust will not pay any claims for any types of benefits provided to Covered Person. This right of off-set applies to all claims for reimbursement the Trust has, regardless of whether the Trust makes formal demand for reimbursement; and notwithstanding any anti-subrogation, "common fund," "made whole" or similar statutes, regulations, prior court decisions or common law theories.

8. Covered Person understands and agrees that this Agreement constitutes a legal and binding contract between Covered Person and the Trust, and Covered Person further acknowledges and states that he either has consulted an attorney to review this document, or has knowingly waived the right to consult such an attorney.

9. This Agreement represents the entire agreement between the parties. It is agreed that this Agreement will not be altered or any of its terms or conditions changed or waived, except by mutual agreement, which shall be in writing, and signed by the parties; and no representation made by any employee, attorney, or agent of either party relating hereto shall be binding upon the other unless contained in such further agreement in writing.

IN WITNESS WHEREOF, the parties have executed this Third-Party Reimbursement Agreement.

MONTANA CONTRACTORS' ASSOCIATION HEALTH CARE TRUST

By: _____

Printed Name: _____

Title: _____

Dated: _____, 20__

"COVERED PERSON" (or his or her legal guardian or parent)

By: _____

Printed Name: _____

Dated: _____, 20__

Address: _____

Telephone _____

"ATTORNEY" for Covered Person (if represented by Counsel)

By: _____

Printed Name: _____

Dated: _____, 20__

Address: _____

Telephone: _____