

Health Reimbursement Arrangement Appendix to the Minnesota and North Dakota Bricklayers and Allied Craftworkers Health Plan and Summary Plan Description

ARTICLE 1. INTRODUCTION

1.1 Establishment of HRA feature to Plan

The Minnesota and North Dakota Bricklayers and Allied Craftworkers Health Fund (the "Plan"), as Plan sponsor, established the Minnesota and North Dakota Bricklayers and Allied Craftworkers Health Reimbursement Arrangement ("HRA") as a feature of the Plan, effective January 1, 2005 (the "Effective Date"). Capitalized terms used in this Plan not otherwise defined shall have the meanings set forth in Article 2. The HRA is intended to permit an Eligible Employee to obtain reimbursement of Medical Care Expenses on a nontaxable basis from the HRA Account.

1.2 Legal Status

This HRA feature is intended to qualify as an employer-provided medical reimbursement arrangement under Code §§105 and 106 and regulations issued thereunder, and as a Health Reimbursement Arrangement as defined under IRS Notice 2002-45, and shall be interpreted to accomplish that objective. The Medical Care Expenses reimbursed under the Plan are intended to be eligible for exclusion from participating Employees' gross income under Code §105(b).

ARTICLE 2. DEFINITIONS

2.1 Definitions Applicable to HRA Feature

- **"Benefits"** means the reimbursement benefits for Medical Care Expenses described under Article 6.
 - "Compensation" means the wages or salary paid to an Employee by the Employer.
- "Contributing Employer" means an Employer that has signed a Collective Bargaining Agreement or Participation Agreement requiring contributions to the HRA account, which has been accepted by the Board of Trustees.
 - "Covered Individual" means a Participant, Spouse or Dependent.
- "Dependent" means any individual who is a tax dependent of the Participant as defined in the Internal Revenue Code of 1986, as amended, with the following exception: any child to whom Code §152(e) applies (regarding a child of divorced parents, etc., where one or both parents have custody of the child for more than half of the calendar year and where the parents together provide more than half of the child's support for the calendar year) is treated as a dependent of both parents.
- "Effective Date" of this Plan has the meaning described in Section 1.1, (January 1, 2005).
- **"Eligible Employee"** means an Employee eligible to participate in this Plan, as provided in Section 3.1.
- **"Employee"** means an individual that the Employer classifies as a common-law employee and who is on the Employer's W-2 payroll, but does not include the following: (a) any

leased employee including but not limited to those individuals defined as leased employees in Code §414(n)); (b) any individual who performs services for the Employer but who is paid by a temporary or other employment or staffing agency for the period during which such individual is paid by such agency, whether or not such individual is determined by the IRS or others to be a common-law employee of the Employer; (c) any employee covered under a Collective Bargaining Agreement, unless the agreement provides for contributions to this Plan; (d) any self-employed individual; (e) any partner in a partnership; and (f) any more-than 2% shareholder in a Subchapter S corporation, including those deemed to be a more than 2% shareholder by virtue of the Code §318 ownership attribution rules. The term "Employee" includes "former Employees' for the limited purpose of allowing continued eligibility for benefits in accordance with Section 3.2.

"Employer" means any Contributing Employer that has a signed Collective Bargaining Agreement or Participation Agreement required contributions to the HRA account and approved by the Board of Trustees.

"Employment Commencement Date" means the first regularly scheduled working day on which the Employee first performs an hour of service for a Contributing Employer for Compensation.

"Enrollment Form" means the form provided by the Plan's Third Party Administrator for the purpose of allowing an eligible Employee to participate in this feature of the Plan.

"Health FSA" means a health flexible spending arrangement as defined in Prop. Treas. Reg. §1.125.2, Q/A-7(a).

"HRA or Health Reimbursement Arrangement" means a health reimbursement arrangement as defined in IRS Notice 2002-45.

"HRA Account" means the HRA Account described in Section 6.3.

"Medical Care Expenses" has the meaning defined in Section 6.2.

"Participant" means a person who is an Eligible Employee and who is participating in this Plan in accordance with the provisions of Article 3.

"Period of Coverage" means the Plan Year, with the following exceptions: (a) for Employees who first become eligible to participate, it shall mean the portion of the Plan Year following the date participation commences, as described in Section 3.1; and (b) for Employees who terminate participation, it shall mean the portion of the Plan Year prior to the date participation terminates, as described in Section 3.2.

"Plan" means the Minnesota and North Dakota Bricklayers and Allied Craftworkers Health Plan as set forth herein and as periodically amended from time to time.

"Plan Administrator" means the Board of Trustees of the Minnesota and North Dakota Bricklayers and Allied Craftworkers Health Fund. The contact person is the Third-Party Administrator for the Plan who has the full discretionary authority to act on behalf of the Board of Trustees, except with respect to appeals, for which the Board of Trustees has the full authority to act.

"Plan Year" means the calendar year (i.e., the 12-month period commencing January 1 and ending on December 31), except in the case of a short plan year representing the initial Plan Year or where the Plan Year is being changed, in which case the Plan Year shall be the entire short plan year.

"Spouse" means an individual who is legally married to a Participant as determined under applicable state law (and who is treated as a spouse under the Code).

"SPD" means the Minnesota and North Dakota Bricklayers and Allied Craftworkers Health Plan Summary Plan Description, which includes this HRA appendix.

"Third Party Administrator" is the administrative agent of the Board of Trustees.

ARTICLE 3. ELIGIBILITY AND PARTICIPATION

3.1 Eligibility to Participate

An individual is eligible to participate in this feature of the Plan if: 1) the individual is an Employee covered by a Collective Bargaining Agreement or Participation Agreement requiring contributions to the HRA feature of the Plan, which has been approved by the Board of Trustees; and, 2) contributions have been received by the trust on behalf of the individual from a qualified employer. Once an Employee has met the Plan's eligibility requirements and an Enrollment Form has been submitted to the Third Party Administrator, the Employee's coverage will commence on the first day of the next calendar month.

3.2 Termination of Participation

A Participant will cease to be a Participant in this Plan upon the earlier of:

- (a) The termination of this Plan: or
- (b) The ten (10) years from the date on which the Employee ceases to have contributions made on his or her behalf (because of retirement, termination of employment, layoff, reduction in hours, or any other reason), provided that eligibility may continue beyond such date for purposes of COBRA coverage, as may be permitted by the Board of Trustees on a uniform and consistent basis under Section 6.6.

Reimbursements from the HRA Account after termination of participation will be made pursuant to Section 6.6 (relating to a run-out period for submitting claims incurred prior to termination and relating to COBRA).

3.3 FMLA and USERRA Leaves of Absence

Notwithstanding any provision to the contrary in this Plan, if a Participant goes on a qualifying leave under the FMLA or USERRA, then to the extent required by the FMLA or USERRA, as applicable, the Employer will continue to maintain the Participant's Benefits on the same terms and conditions as if the Participant were still an active Employee.

3.4 Non-FMLA and Non-USERRA Leaves of Absence

If a Participant goes on a leave of absence that is not subject to the FMLA or USERRA, the Participant will be treated as having terminated participation, as described above under Section 3.2.

ARTICLE 4. METHOD AND TIMING OF ENROLLMENT

4.1 Enrollment When First Eligible

An Employee who first becomes eligible to participate in the HRA feature of the Plan will commence participation on the first day of the month after the eligibility requirements have been satisfied, provided that an Enrollment Form is submitted to the Third Party Administrator before the first day of the month in which participation will commence. Once enrolled, the Employee's participation will continue from month to month and year to year until the Employee's participation ceases pursuant to Section 3.2. The Enrollment Form shall identify the Spouse and Dependents whose medical expenses may be submitted to the HRA. The Employee must promptly notify the Third Party Administrator if this information changes.

ARTICLE 5. BENEFITS OFFERED AND METHOD OF FUNDING

5.1 Benefits Offered

When an Eligible Employee becomes a Participant in accordance with Articles 3 and 4, an HRA Account will be established for such Participant to receive Benefits in the form of reimbursements for Medical Care Expenses, as described in Article 6. In no event shall Benefits be provided in the form of cash or any other taxable or nontaxable benefit other than reimbursement for Medical Care Expenses.

5.2 Employer and Participant Contributions

- (a) *Employer Contributions*. The Employer funds the full amount of the HRA Accounts. The Board of Trustees may allocate earnings to the HRA, in their discretion.
- (b) *Participant Contributions*. There are no Participant contributions for Benefits under the Plan.
- (c) No Funding under Cafeteria Plan. Under no circumstances will the Benefits be funded with salary reduction contributions, employer contributions over which an Employee exercises control (e.g., flex credits) or otherwise under a cafeteria plan, nor will salary reduction contributions or such employer contribution be treated as Employer contributions to the HRA feature of the Plan.

5.3 Funding This Plan Feature

All of the amounts payable under this Plan shall be paid from the general assets of the Trust. Nothing herein will be construed to require the Board of Trustees to maintain any fund or to segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in any fund, account or asset of the Trust from which any payment under this Plan may be made.

ARTICLE 6. HEALTH REIMBURSEMENT BENEFITS

6.1 Benefits

The Plan will reimburse Participants for Medical Care Expenses up to the unused amount in the Participant's HRA Account, as set forth and adjusted under Section 6.3.

6.2 Eligible Medical Care Expenses

Under the HRA Account, a Participant may receive reimbursement for Medical Care Expenses incurred during a Period of Coverage.

- (a) *Incurred.* A Medical Care Expense is incurred at the time the medical care or service giving rise to the expense is furnished, and not when the individual incurring the expense is formally billed for, is charged for, or pays for the medical care. Medical Care Expenses incurred before a Participant first becomes covered by the Plan are not eligible. However, a Medical Care Expense incurred during one Period of Coverage may be paid during a later Period of Coverage, provided that the Participant was a Participant in the Plan during both Periods of Coverage.
- (b) Medical Care Expenses Generally. "Medical Care Expenses" means expenses incurred by a Participant or his or her Spouse or Dependents for medical care, as defined in Code §213 (including, for example, amounts for certain hospital bills, doctor and dental bills and prescription drugs), but shall not include expenses that are described in subsection (c). Reimbursements due for Medical Care Expenses incurred by the Participant or the Participant's Spouse or Dependents shall be charged against the Participant's HRA Account.
- (c) Medical Care Expenses Exclusions. "Medical Care Expenses" shall not include the expenses listed as exclusions stated in the Plan document or this Appendix. Notwithstanding the foregoing, an HRA account may reimburse COBRA premiums that a Participant pays on an after tax basis under any other group health plan.
- (d) Cannot Be Reimbursed or Reimbursable from Another Source. Medical Care Expenses can only be reimbursed to the extent that the Participant or other person incurring the expense is not reimbursed for the expense (nor is the expense reimbursable) through other insurance, including any other accident or health plan (but see Section 6.9 if the other health plan is a Health FSA). If only a portion of a Medical care Expense has been reimbursed elsewhere (e.g., because the Health Insurance Plan imposes co-payment or deductible limitations), the HRA Account can reimburse the remaining portion of such Expense if it otherwise meets the requirements of this Article 6.

(e) *Nondiscrimination*. Reimbursements to Highly Compensated Individuals may be limited or treated as taxable compensation to comply with Code §105(h), as may be determined by the Board of Trustees in its sole discretion.

6.3 Establishment of Account

The Third Party Administrator will establish and maintain an HRA Account with respect to each Participant but will not create a separate fund or otherwise segregate assets for any individual participant for this purpose. The HRA Account so established will merely be a recordkeeping account with the purpose of keeping track of contributions and available reimbursement amounts from the Trust.

- (a) Crediting of Accounts. A Participant's HRA Account will be credited at the end of each month with an amount equal to the applicable rate specified in the Contributing Employers Collective Bargaining Agreement or Participation Agreement with the Plan, which has been actually received by the Plan. The Board of Trustees, in it's sole discretion, may credit earnings from the HRA account feature to HRA accounts.
- (b) Debiting of Accounts. A Participant's HRA Account will be debited during each Period of Coverage for all applicable reimbursements and those plan administrative expenses charged to the account by the Board of Trustees.
- (c) Available Amount. The amount available for reimbursement of Medical Care Expenses is the amount credited to the Participant's HRA Account under subsection (a) reduced by prior reimbursements debited under subsection (b).

6.4 Carryover of Accounts

If any balance remains in the Participant's HRA Account for a Period of Coverage after all reimbursements and administrative assessments paid for the Period of Coverage, such balance shall be carried over to reimburse the Participant for Medical Care Expenses incurred during a subsequent Period of Coverage. However, upon loss of eligibility, the Participant's coverage ceases, and expenses incurred after such time will not be reimbursed unless COBRA is elected as provided in Section 6.6. In addition, any HRA benefit payments that are unclaimed (e.g., uncashed benefit checks) by the close of the Plan Year following the Period of Coverage in which the Medical Care Expense was incurred shall be forfeited.

6.5 Reimbursement Procedure

(a) Timing. Within 30 days after receipt by the Third Party Administrator of a reimbursement claim from a Participant, the Plan will reimburse the Participant for the Participant's Medical Care Expenses (if the Third Party Administrator approves the claim), or the Third Party Administrator will notify the Participant that his or her claim has been denied. This time period may be extended for an additional 15 days for matters beyond the control of the Third Party

Administrator, including in cases where a reimbursement claim is incomplete. The Administrator will provide written notice of any Extension, including the reasons for the extension, and will allow the Participant forty-five (45) days in which to complete an incomplete reimbursement claim.

(b) Claims Substantiation. A Participant who seeks Benefits may apply for reimbursement by submitting an application in writing to the Third Party Administrator in such form as the Third Party Administrator may prescribe, by no later than March 31 following the close of the Plan Year in which the Medical Care Expense was incurred, setting forth:

the person or persons on whose behalf Medical Care Expenses have been incurred;

the nature and date of the Expenses so incurred;

the amount of the requested reimbursement; and

a statement that such Expenses have not otherwise been reimbursed and are not reimbursable through any other source.

The application shall be accompanied by bills, invoices, or other statements from an independent third party showing that the Medical Care Expenses have been incurred and the amounts of such Expenses, together with any additional documentation that the Third Party Administrator may request. Except for the final reimbursement claim for a Period of coverage, no claim for reimbursement may be made unless and until the aggregate claims for reimbursement is at least \$25.

(c) Claims Denied. For reimbursement claims that are denied, see the appeals procedure in the Summary Plan Description and Plan Document.

6.6 Reimbursements After Termination; COBRA

When a Participant ceases to be a Participant under Section 3.2, the Participant will not be able to receive reimbursements for Medical Care Expenses incurred after his or her participation terminates. However, such Participant (or the Participant's estate) may claim reimbursement for any Medical Care Expenses incurred during the Period of Coverage prior to termination of participation, provided that the Participant (or the Participant's estate) files a claim by March 31 following the close of the Plan Year in which the Medical Care Expense arose.

Notwithstanding any provision to the contrary in this Plan, to the extent required by COBRA, the Participant and his or her Spouse and Dependents (Qualified Beneficiaries), whose coverage terminates under the HRA Account because of a COBRA qualifying event, shall be given the opportunity to continue to receive reimbursement the same as if he or she had under the HRA Account the day before the qualifying event for the periods prescribed by COBRA

(subject to all conditions and limitations under COBRA). However, in the event that such coverage is modified for all similarly situated non-COBRA Participants prior to the date continuation coverage is elected, Qualified Beneficiaries shall be eligible to continue the same coverage that is provided to similarly-situated non-COBRA Participants.

6.7 Coordination of Benefits; Health FSA to Reimburse First

Benefits under this Plan are intended to pay benefits solely for Medical Care Expenses not previously reimbursed or reimbursable elsewhere. To the extent that an otherwise eligible Medical Care Expense is payable or reimbursable from another source, that other source shall pay or reimburse prior to payment or reimbursement from this Plan. Without limiting the foregoing, if the Participant's Medical Care Expenses are covered by both this Plan and by a Health FSA, then this Plan is not available for reimbursement of such Medical Care Expenses until after amounts available for reimbursement under the Health FSA have been exhausted.

ARTICLE 7. APPEALS PROCEDURE

7.1 Procedure If Benefits Are Denied Under This Plan

If a claim for reimbursement under this Plan is wholly or partially denied, claims shall be administered in accordance with the claims procedure set forth in the SPD. The Board of Trustees acts on behalf of the Plan with respect to appeals.

ARTICLE 8. PARTICIPANT INFORMATION

8.1 Reliance on Participant, Tables, etc.

The Board of Trustees may rely upon the information submitted by a Participant as being proper under the Plan and shall not be responsible for any act or failure to act because of a direction or lack of direction by a Participant. The Board of Trustees will also be entitled, to the extent permitted by law, to rely conclusively on all tables, valuations, certificates, opinions and reports that are furnished by accountants, attorneys, or other experts employed or engaged by the Administrator.

8.2 Inability to Locate Payee

If the Third Party Administrator is unable to make payment to any Participant or other person to show a payment is due under the Plan because it cannot ascertain he identity or whereabouts of such Participant or other person after reasonable efforts have been made to identify or locate such person, then such payment and all subsequent payments otherwise due to such Participant or other person shall be forfeited following a reasonable time after the date that any such payment first became due.

8.3 Effect of Mistake

In the event of a mistake as to the eligibility or participation of an Employee, or the allocations made to the account of any Participant, or the amount of benefits paid or to be paid to a Participant or other person, the Third Party Administrator shall, to the extent that it deems administratively possible and otherwise permissible under Code §105, the regulations issued thereunder or other applicable law, cause to be allocated or cause to be withheld or accelerated, or otherwise make adjustment of, such amounts as it will in its judgment accord to such Participant or other person the credits of the HRA Account or distributions to which he or she is properly entitled under the Plan. Such action by the Third Party Administrator may include withholding of any amounts due to the Plan.

ARTICLE 9. GENERAL PROVISIONS

9.1 Expenses

All reasonable expenses incurred in administering the Plan are currently paid by the Plan.

9.2 No Guarantee of Tax Consequences

Neither the Board of Trustees nor the Employers makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under this Plan will be excludable from the Participants gross income for federal state or local income tax purposes. It shall be the obligation of the Participant to determine when each payment under this Plan is excludable from the Participant's gross income for federal, state and local income tax purposes, and to notify the Board of Trustees if the Participant has any reason to believe that such payment is not so excludable.

9.3 Indemnification of Trust and Plan

If any Participant receives one or more payments or reimbursements under this Plan on a tax-free basis, and such payments do not qualify for such treatment under the Code, such Participant shall indemnify and reimburse the Trust for any liability it may incur for failure to withhold federal income taxes, Social Security taxes, or other taxes form such payments or reimbursements.

9.4 Non-Assignability of Rights

The right of any Participant to receive any reimbursement under this Plan shall not be alienable by the Participant by assignment or any other method and shall not be subject to claims by the participant's creditors by any process whatsoever. Any attempt to cause such right to be so subjected will not be recognized, except to such extent as may be required by law.

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