



**AMENDMENT
TO SPECIALTY AGREEMENTS BETWEEN**

SHEET METAL WORKERS LOCAL UNION NO. 28 AND EMPLOYER ASSOCIATION

DATED: November 21, 2008

Article 6, Section 1, is hereby amended to read as follows:

Section 1. The Employer shall be entitled to apply to Local Union No. 28 for its employment of Building Trades journeypersons and specialty workers on the following basis:

- The first employee hired shall be a Local 28 Building Trades Journeyperson.
- The second and third employees hired shall be Specialty Workers.
- These ratios shall be repeated until hiring is completed.

All other terms and conditions of this agreement remain in full force and effect.

**SHEET METAL AND AIR CONDITIONING CONTRACTORS ASSOCIATION OF NEW YORK CITY,
INC.**

By:

WILLIAM ROTHBERG, EXECUTIVE DIRECTOR

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL UNION NO. 28

By:

MICHAEL V. BELLUZZI, PRESIDENT AND BUSINESS MANAGER

DATE: 11/21/08

K# 9575

LOCAL UNION NO. 28

**SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION**

SPECIALTY AGREEMENT

Eff: 7-1-2008

LOCAL UNION NO. 28

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION

SPECIALTY AGREEMENT

AGREEMENT entered into as of the 1st day of July, 200B, by and between Sheet Metal and Air Conditioning Contractors Association of New York City, Inc., SMACNA of Long Island, Inc. (hereinafter referred to as the "Association" for and on behalf of its members, who, together with such other employers who may become parties to this Agreement, are hereinafter referred to as the "Employer") and Local Union No. 28 of Sheet Metal Workers' International Association (hereinafter referred to as "Local Union No. 28" and/or "Union").

ARTICLE I

SECTION 1. This Agreement covers the rates of pay, rules and working conditions of all employees of the Employer engaged in the manufacturing, fabrication, assembling, handling, installation, repairing and servicing of all work described in Article II herein.

SECTION 2. The Employer recognizes Local Union No. 28 as the only labor organization representing its employees who perform the work covered by this Agreement, and agrees to deal collectively only with Local Union No. 28 for and on behalf of said employees within the jurisdiction of Local Union No. 28 Sheet

Metal Workers' International Association.

SECTION 3. Local Union No. 28 agrees to furnish upon request by the Employer duly qualified workers in sufficient numbers as may be necessary to properly execute work contracted for by the Employer in the manner and under conditions specified in this Agreement.

SECTION 4. The Employer agrees to comply with the specifications of Local Union No. 28 in relation to the operation, maintenance, machinery and supervision of its shop(s)/plant(s) in the performance of all work described in this Agreement. All work described herein shall be performed only by Local Union No. 28 Building Trades journeypersons, specialty workers, and apprentices in accordance with the terms and conditions of this Agreement. An Employer shall maintain a total work force in the ratio set forth in Article VI, Section 1 of this Agreement. Further, as to each job site a Local Union No. 28 Building Trades journeyperson shall supervise the installation, erection, handling and/or field maintenance of all work described herein.

The Employer agrees to require membership in Local Union No. 28 as a condition of continued employment of all employees performing work described in this Agreement and the erection and installation of same. This Section 4 shall be considered by all parties as a material provision of this Agreement and by reason thereof, any breach of same shall be considered cause for termination of this Agreement as set forth in Article XII, Section 1, hereof.

SECTION 5. In the event Local Union No. 28 is unable to furnish upon written request specialty workers, the Employer may secure such from sources other than the Union. **All employees covered by this Agreement, who are members of the Union, shall maintain membership in good standing in the Union as a condition of continued employment. For all other employees,** within ten (10) days following the beginning of such employment or the effective date of this Agreement, **or the date of execution of this agreement,** whichever is the later, said employee shall become a member of Local Union No. 28 as a specialty worker.

SECTION 6. If during the term of this Agreement the Labor Management Relations Act of 1947 shall be amended by Congress in such manner as to reduce the time within which an employee may be required to acquire union membership, such reduced time limit shall become immediately effective instead of and without regard to the time limit specified in Section 4 of this Article.

ARTICLE II

SECTION 1. This Agreement shall cover all manufacturing, fabrication, assembling, handling, installation, repairing and servicing of any and all types of ceiling, decking, skylights, siding work and asbestos removal.

SECTION 2. This Agreement shall not be applicable to the installation, erection and/or field maintenance of any other work not covered herein. Such installation, erection and/or field maintenance in all respects shall be deemed

covered by the terms, conditions and provisions of Local Union No. 28's standard form of Union Agreement Sheet Metal Contracting Division of the Construction Industry* (Further, this Agreement does not cover work done in an air handling system).

ARTICLE III

SECTION 1. The Employer agrees that all work described in Article II, Section I, of this Agreement shall be performed only by Local Union No. 28 Building Trades journeyman(s) and specialty worker(s) employed in the bargaining unit covered by this Agreement.

ARTICLE IV

SECTION 1

- a) The Employer shall pay an hourly wage rate to each Building Trades journeyman and apprentice in accordance with the existing standard form of Agreement Sheet Metal Workers' International Association Local Union No. 28 and Sheet Metal and Air Conditioning Contractors Association of New York City, Inc., SMACNA of Long Island, Inc., and those Employers who subscribed thereto, in effect as of the date of this Agreement and any subsequent and superseding Agreement:

*Agreement between Sheet Metal Workers' International Association Local Union No. 28 and Sheet Metal and Air Conditioning Contractors Association of New York City, Inc., SMACNA of Long Island, Inc., and those Employers who subscribed thereto in effect as of the date of this Agreement and any subsequent and superseding Agreement.

b) **Effective February 1, 2008**, the Employer shall pay an hourly wage rate to each specialty worker as follows:

Base Wage	\$37.72
<i>non taxable</i>	
Health & Welfare Fund	\$11.74
Supplemental Unemployment Fd	\$0.47
National Pension Fd	\$4.50
SASMI Fd	\$1.69
National Training Fd	\$0.12
Local Education Fd	\$0.44
JLM	\$1.28
NEMI	\$0.05
Scholarship Fd	\$0.02
TOTAL HOURLY RATE	\$58.03

c) Effective August 1, 2008, an increase of \$1.23 will be given. The Union will determine the allocation of the increase.

d) Effective February 1, 2009, an increase of \$1.23 will be given. The Union will determine the allocation of the increase

e) In the event during the term of this Agreement the foregoing hourly wage rate is less than the federal/state minimum rate, then said wage rate shall be increased accordingly. Further, the Employer shall not reduce the present hourly wage rate being paid to its employees in the event said rate is higher than the foregoing minimum.

ARTICLE V

SECTION 1. The Employer shall make contributions for and on behalf of all specialty workers performing work described in Article II of this Agreement to the Sheet Metal Workers' Health and Welfare Fund in accordance with the annexed Addendum and any subsequent modifications thereto.

Further, any increase(s) in premium made by Magna-Care and/or any other provider shall be absorbed by the Employer.

SECTION 2. The Employer shall make contributions for and on behalf of all specialty workers performing work described in Article II of this Agreement to the Sheet Metal Workers' National Pension Fund in accordance with the annexed Addendum and any subsequent modifications thereto without deduction from the employee's salary, for all employees covered in the bargaining unit commencing from the first date of employment.

SECTION 3. The Employer shall further make contributions in accordance with the annexed Addendum and any subsequent modifications thereto to the following Trust

Funds:

- i. Sheet Metal Workers' (Local Union No. 28) Supplemental Unemployment Benefit Fund ("SUB.")
- ii. Sheet Metal Workers' (Local Union No. 28) Education Trust Fund ("Education Fund")
- iii. Sheet Metal Workers' (Local Union No. 28) Joint Scholarship Fund ("Scholarship Fund").
- iv. Joint Labor Management Committee and Trust ("JLM")

- v. National Stabilization Agreement for the Sheet Metal Industry ("SASMI Fund")
- vi. International Training Institute ("ITI")
- vii. National Energy Management Institute ("NEMI")

SECTION 4. The Employer shall make/submit contributions and a reconciliation report to the Local Union No. 28 Benefit Funds by the twentieth of the month following the month when covered employment was performed. Said reconciliation report form shall be furnished to the Employer by Local Union No. 28 Benefit Funds. Failure to file said report/contributions shall constitute a violation of the Employer's obligation under this Agreement and, among other available remedies, shall be subject to further penalties.

SECTION 5. All delinquent contributions shall bear interest of two percent (2%) per month, excluding interest on arrears in reconciliation, which are ten percent (10%) or less. There shall be a five (5) day grace period before interest shall commence to accrue. In addition to the foregoing, all delinquent Employers shall be charged with liquidated damages of one percent (1%) per month on the unpaid contributions.

The Fund and Trustees shall have the right and privilege of examining the payroll records of the Employer for the purpose of ascertaining whether the amounts received from the Employer are correct. The Employer shall not withhold from the Fund and Trustees or its representatives such payroll books and/or records. If the Employer refuses to permit an audit, the Trustees may take whatever action is necessary,

including but not limited to a lawsuit in Federal Court, to require that the audit be conducted; in which case, the Employer shall be assessed any legal fees and costs. If the compliance check reveals that inaccurate contributions or insufficient contributions have been made, the Employer agrees to pay all accountants fees incurred in making the audit and also all legal fees and costs incurred in collecting the delinquency.

SECTION 6. The Union shall have the right to withdraw its members from the Employer, in addition to all rights and remedies the Union and/or Trustees may have, after a thirty (30) day delinquency.

SECTION 7. The Employer shall make/submit contribution payments for and on behalf of all Local Union No. 28 Building Trades journeypersons to the Fringe Benefit Funds set forth and at the stated rate and manner, including the filing of remittance reports, provided in Local Union No. 28's Standard Form of Union Agreement Sheet Metal Contracting Division of the Construction Industry.

SECTION 8

a) The Employer agrees to be bound by the provisions of the Agreement and Declaration of Trust governing the various Trust Funds of Local Union No. 28 Benefit Funds and the National Benefit Funds, and the interpretations thereto by the respective Board of Trustees, as same may be amended from time to time and hereby acknowledge that such trust documents are incorporated

herein by reference and are adopted by the Employer.

b) Employer contributions are considered assets of the respective Funds and title to all monies paid and/or due and owing said Funds shall be vested in and remain exclusively in the Trustees of the respective trust funds. The Employer shall have no legal or equitable right, title or interest in or to any sum paid by or due from the Employer.

SECTION 9. Each Employer shall furnish a surety bond to the Trustees of the several Local Union No. 28 fringe benefit funds and of any Local 28 jointly administered funds which may hereafter be established in order to secure the payments of contributions to said benefit funds provided for in this Agreement. Each Employer is required to furnish a bond in the amount of three thousand dollars (\$3,000.00) per employee. The amount of manpower is to be determined by taking the highest number of journeypersons and specialty workers employed by the Employer for any three (3) month period **for the duration of this agreement.**

An Employer must furnish a minimum bond of twenty thousand dollars (\$20,000.00).

ARTICLE VI

SECTION 1. The Employer shall be entitled to apply to Local Union No. 28 for its employment of Building Trades journeypersons and specialty workers **and apprentices** on the following basis:

- The first employee hired shall be a Local 28 Building Trades journeyman.
- The second employee hired shall be a Specialty Worker.
- The third employee hired shall be a Local 28 Apprentice.
- The fourth employee hired shall be a Journeyman.
- The fifth employee hired shall be Specialty Worker.
- The sixth employee hired shall be an apprentice, *et al.*
- These ratios shall be repeated until hiring is completed.
- Further, the Union shall have the right to deny the Employer a specialty worker **and/or apprentice** if said Employer does not assign all work within the Union's jurisdiction, as set forth in Local 28's Standard Form of Union Agreement Sheet Metal Contracting Division of the Construction Industry, to Local 28 sheet metal workers.

ARTICLE VII

SECTION 1. The work week shall consist of forty (40) hour week divided into five (5) work days of eight (8) hours each running consecutively from Monday to Friday. The workday shall consist of eight (8) hours starting at 7:00 a.m. and ending at 5:00 p.m. with a thirty (30) minute lunch period. Overtime hours shall not be unreasonably withheld. All work performed outside the regular workday during the regular work week and/or on Saturday shall be compensated at one and one-half (1 ½) times the hourly wage rate (i.e., one and one-half (1 ½) times hourly wage rate plus fringe benefit contributions on all hours worked).

SECTION 2. All work performed on Sunday and the Holidays set forth in

this Article VII shall be compensated at Double the hourly wage rate (i.e., double the hourly wage rate plus fringe benefit contributions on all hours worked).

SECTION 3. The legal holidays provided in Local Union No. 28's Standard Form of Union Agreement Sheet Metal Contracting Division of the Construction Industry shall be recognized and observed within the territory covered by this Agreement. Further, the Union shall have the right/option to re-schedule any of its designated eleven (11) holidays prior to the commencement of the calendar year with input from the Employer.

SECTION 4. A Building Trades journeyman mechanic shall work an eight (8) hour day at the straight time rate of pay.

ARTICLE VIII

SECTION 1. Upon receipt of a signed individual authorization from any employee covered by this Agreement, the Employer shall withhold from such employee's earnings, payment for union dues and other obligations under the terms and conditions specified in the individual's authorization. Deductions shall be made from the first pay of each month of said employee and promptly remitted to the Financial Secretary of Local 28, together with a list of names of employees to whom said monies are to be credited. Should any employee have no earnings due him on the first pay of the month, deductions shall be made from the next succeeding pay of the employee.

SECTION 2. The Union shall have the right to withdraw its members from the Employer in addition to all other rights and remedies it may have after a fifteen (15) day delinquency in the payment of said monies.

ARTICLE IX

SECTION 1. Grievances of the Employer or the Union arising out of interpretation or enforcement of this Agreement shall be settled between the Employer directly involved and the duly authorized representative of the Union, if possible.

SECTION 2. In the event the subject grievance is not resolved by the parties as noted in Section 1 of this Article, then the dispute/grievance shall be referred to a Joint Specialty/Manufacturing Adjustment Board consisting of three (3) representatives appointed by Local 28 and three (3) representatives appointed by the Association whose decision shall be final and binding. Any deadlock of that Joint Specialty/Manufacturing Adjustment Board that is not taken to arbitration as set forth in Section 3 of this Article within seven (7) working days shall be considered withdrawn.

SECTION 3. Grievances not settled as provided in Section 1 and 2 of this Article may be resolved by either party submitting the matter for arbitration to the American Arbitration Association in New York City for final binding arbitration in accordance with the then prevailing Rules. Further, the parties shall share equally the costs of arbitration.

SECTION 4. Pending any meetings, procedures, or arbitration and the issuance of an award, there shall be no interference by either party hereto with the performance of the work provided for in this Agreement. There shall be no strike or lockout during the term of this Agreement, **except under Article V, Section 6.**

SECTION 5. Nothing contained in this Article shall apply to any controversy or dispute arising out of any notice of re-opening of this Agreement.

ARTICLE X

SECTION 1

- a) Employees entering the Armed Forces of the United States shall be re-employed in accordance with the terms of the Universal Military Training and Service Act of 1951, as amended.

- b) Employees entering the Military Service shall be entitled to pro-rated vacation.

ARTICLE XI

SECTION 1. There shall be no discrimination of any kind against any member of the Union for Union activity, race, color, creed, or nationality, by any person in the employ of the Employer.

ARTICLE XII

SECTION 1. This Agreement shall be summarily terminated at the discretion of Local 28, upon the occurrence of any one of the following events:

- (i) sub-contracting of the work described herein (See: Article II, Section 1 of this Agreement) to another contractor not in signed agreement with Local Union No. 28; or.
- (ii) purchasing of the items described herein (See: Article II, Section I of this Agreement) from a vendor/third party not in signed agreement with Local Union No. 28, it being understood that those items that had been traditionally purchased by Employers from other than a Local 28 Employer can continue to be purchased in accordance with past practices.
- (iii) any other material breach of this Agreement.

SECTION 2. The Joint Labor Management Fund may retain an area representative for the exclusive use of the Union and all contractors who are in signed agreement with Local Union No. 28 under the "Specialty Agreement".

SECTION 3. Where a predetermined wage rate has been established by a Federal, State, County or City Agency, **if such wage rate is higher it shall prevail.**

SECTION 4. The Employer agrees to provide safe and sanitary conditions in its shop. The Employer shall provide any and all additional clothing or equipment which are necessary to the safety and health of the employees.

SECTION 5. Local Union No. 28's representative may visit the Employer's premises for the purpose of investigating working conditions or conferring with the Employer of its employees.

SECTION 6. The Employer shall provide space for a Bulletin Board in a reasonably accessible place for Union notices.

SECTION 7. The Employer shall not subcontract or assign any of the work described herein outside of the bargaining unit.

SECTION 8. If any term, provision, or condition of this Agreement is held to be contrary to the law the parties will then confer in an effort to agree upon suitable substitutions therefore, and if they fail to agree, the same shall be considered a grievance and submitted to the grievance procedure in accordance with the provision of this Agreement.

SECTION 9. Stewards shall be appointed by Local Union No. 28 Business Manager.

SECTION 10. The Steward shall be a working steward and shall perform the duties of a Building Trades journeyman and shall report any violations of this Agreement to the Business Agent or to the offices of the Union.

SECTION 11. The Steward shall not be discriminated against in any manner

by the Employer because of his activities on behalf of the Union, or discharged for Union activity. Neither shall he be discharged or laid off for any reason prior to the Employer notifying the Business Manager Seventy-two (72) hours prior to said proposed lay-off or discharge, then the Union may continue its grievance in accordance with the procedures set forth in this Agreement.

SECTION 12. The terms, provisions and conditions of the Local Union No. 28 Standard Form of Union Agreement Sheet Metal Contracting Division of the Construction Industry referred to herein are incorporated in this Agreement by reference and shall be effective as if set forth at length and in their entirety. It is understood and agreed that said terms, provisions and conditions referred to herein are applicable exclusively to Building Trades journeypersons **and Apprentices** except where specifically stated in this Agreement to the contrary.

SECTION 13. The Union agrees that it will not heretofore enter into a "Specialty Agreement" with any Employer containing more favorable conditions than herein set forth. Should it be shown that more favorable conditions prevail, then the more favorable conditions or wages shall apply to all signatories to the Specialty Agreement.

ARTICLE XIII

The term of this Agreement shall become effective as of the ____ day of _____ 200____, and remain in full force and effect until July 31, 2009 and shall continue in full force from year to year thereafter unless written notice

