

K# 840372

768 prod.  
446  
resid. ground

~~400 workers~~  
400 workers  
5,116 -  
933 -  
4,183 - netices

4183 - active  
- 446 - resid.  
- 768 - prod. or  
2969 - comm.

**RESIDENTIAL HVAC  
LABOR AGREEMENT**

**Between**

**THE RESIDENTIAL SUBDIVISION  
of the  
METRO AREA DIVISION  
SMARCA, INC.**

**And**

**RESIDENTIAL HVAC EMPLOYEES  
LOCAL NO. 10 METRO AREA**

**EFFECTIVE**

**May 1, 2002 to April 30, 2005**



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## LABOR AGREEMENT

THIS AGREEMENT, entered into this 1st day of May, 2002 by and between the RESIDENTIAL SUBDIVISION OF the TWIN CITIES DIVISION OF SMARCA, INC., and those Contractors who assigned their bargaining rights to them (hereinafter referred to individually as the "Employer"), as well as any other Contractors signatory hereto (similarly referred to as "Employer"), and LOCAL UNION NO. 10, METRO AREA, of the SHEET METAL WORKERS INTERNATIONAL ASSOCIATION (hereinafter referred to as the "Union"), and its jurisdiction, consisting of ANOKA, CARVER, CHISAGO, DAKOTA, HENNEPIN, ISANTI, KANABEC, McLEOD, PINE, RAMSEY, RICE, SCOTT, SIBLEY, WASHINGTON AND WRIGHT COUNTIES and that portion of MEEKER COUNTY lying east of State Highway 22, excluding the corporate limits of the City of Litchfield.

It is understood that the Residential Subdivision of the Twin Cities Division of SMARCA, Inc. is hereby representing and acting on behalf of those Contractors who have assigned their bargaining rights to that Subdivision and because of that are as fully bound by the same as though each had executed the same individually.

### ARTICLE I WORK JURISDICTION

**Section 1. SCOPE.** This Agreement covers the rates of pay, rules and working conditions of all Residential HVAC employees of the Employer engaged in, but not limited to, the following Residential work: the (a) manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repairing and servicing of all ferrous or non-ferrous metal work and all other materials used in lieu thereof and of all airveyor systems and air-handling systems, regardless of material used, including the setting of all equipment and all reinforcements in connection therewith; (b) all lagging over insulation and all duct lining; (c) testing and balancing of all air-handling systems and duct work; (d) the preparation of all shop and field sketches used in fabrications and erection, including those taken from original architectural and engineering drawings or sketches; (e) the installation and service of all residential heating and equipment including but not limited to: Furnaces of all types, Air conditioning units, Humidifiers, Filter systems, Air to air exchangers, Fireplaces, Fire place inserts, Free standing gas stoves, Kitchen exhaust systems and toilet

exhaust systems and (f) all other Residential work included in the jurisdictional claims of Sheet Metal Workers International Association.

This Agreement, in all of its provisions, applies to all Employers signatory hereto, for the benefit of all of their Residential HVAC employees and all of said Employers constitute one (1) bargaining unit hereunder. The purpose of the foregoing is to make clear that each association of Employers, or individual non-association Employers, are not to be considered as separate bargaining units hereunder; and that this Agreement is for the benefit of all Residential HVAC employees of all Residential HVAC employers hereunder, not merely for members of the Union.

**Section 2. RESIDENTIAL DEFINITION.** Residential work shall be defined as applying to work on any single family dwelling or multiple family housing unit where each individual family apartment is individually conditioned by a separate and independent unit or system. It shall also include work on individual fan coils in individual air handlers and their connected duct work systems, in each individual family apartment or unit where these fan coils are hooked to a central boiler and/or a central chiller, provided that the structure is three (3) stories or less in height. Residential work shall also include all architectural sheet metal including metal roofing and gutters on any single family house, townhouse and/or apartment three (3) stories or less in height.

The term Residential HVAC employer or Residential HVAC employees shall also include Residential Architectural employer or Residential Architectural employees.

**Section 3. WORK PRESERVATION.** The Employer agrees that none but Residential HVAC employees, shall be employed on any work described in this Article except as herein provided; however, Commercial Building Trades journeymen, apprentices and applicants may be, voluntarily, employed on such work. Employers shall also have the option to pay the full Commercial Building Trades journeyman fringe benefits package to other Commercial Building Trades journeymen voluntarily doing Residential work.

Any Employer found using Residential HVAC employees and/or Commercial Building Trades journeymen being paid the residential rate on non-Residential work will be required to pay the difference between the residential

wage and benefit package and the commercial wage and benefit package for that classification of worker, and in addition, if the Joint Adjustment Board finds that the Employer's conduct was intentional, an additional five dollars (\$5.00) per hour worked will be assessed the Employer by the Joint Adjustment Board. This additional five dollars (\$5.00) per hour assessment will go to a mutually agreed charitable fund determined by the Local Joint Adjustment Board.

The Employer agrees to provide for the employees on each job all of the Residential work described in Section 1 above. The employees herein reserve the right to decline to commence work on any job where all of the Residential work described in Article I is not to be performed in accordance with this Agreement. It is understood that Article III does not apply where employees decline to commence work under this provision. The purpose of this provision is to preserve and protect all of said Residential described work for Residential HVAC employees who are employed by Employers signatory to this Agreement.

Further, for the purpose of proving jurisdiction, the Employer agrees to provide the Union with written evidence of assignment on the Employer's letterhead for certain specified items of work to be performed at a job site. A list of such specified items, which may be revised from time to time, as agreed to by the parties, shall be provided to the Employer.

## **ARTICLE II FABRICATION & SUBCONTRACTING**

As a primary working condition and to preserve and to protect the Residential work described in Article I for employees of the Employers signatory to this Agreement, the Employer agrees as follows:

**Section 1. FABRICATION.** As described in Article I, all of the Residential work requiring fabrication shall be performed by the employees hereunder, either in the shop or on the job site, excepting as to the items listed in Section 3 of this Article II.

**Section 2. SUBCONTRACTING.** No Employer shall subcontract any of the work described in Article I, excepting as to the items listed in Section 3 of this Article II. However, any Employer may subcontract any of said work to any other Employer signatory to either this Collective Bargaining Agreement or

the Commercial Collective Bargaining Agreement between the Twin Cities Division of SMARCA and the Union.

**Section 3. EXCEPTIONS.** Sections 1 and 2 of this Article II shall not apply to the following items:

- a. Ventilators
- b. Louvers
- c. Automatic & Fire Dampers
- d. Radiator & Air Conditioning Unit Enclosures
- e. Fabricated Pipe & Fittings For Residential Installation Only
- f. Mixing (Attenuation) Boxes
- g. Plastic Skylights
- h. Air Diffusers, Grilles, Registers
- i. Sound Attenuators
- j. Package Units Or Knocked-Down Units Normally Purchased

**Section 4. PLENUMS & AIR POLLUTION CONTROL SYSTEMS.**

The provisions of Section 3 of Article VII shall not be applicable to the manufacture for sale to the trade or purchase of plenums, double wall panels for use in construction of air housings, nor to residential air pollution control systems fabricated for the purpose of removing air pollutants, excluding air conditioning, heating and ventilating systems.

**Section 5. APPLICATION.** Except as provided in Article I, this Article shall not be circumvented by any arrangements such as a joint venture, the effect of which is to avoid its application directly or indirectly.

**Section 6. ENFORCEMENT.** Any alleged violation by the Employer of any provision of this Article shall be referred to the grievance procedure provided in Article XV of this Agreement.

**Section 7. PRE-BID CONFERENCE.** In order to ensure equality in the bidding procedure, the Employer is encouraged to hold a pre-bid conference with the Union herein to determine whether the provisions contained in Article II are serving to protect the Residential work described in Article I as intended. The Employer may have the Association present to act as its representative.

**Section 8. MODIFICATION.** The Local Joint Adjustment Board, provided for in grievance procedures herein, shall also act as a continuing committee with power to modify the exception list stated in Section 3 above.

### **ARTICLE III JOB REFERRAL**

**Section 1.** The Union shall be the exclusive bargaining representative for all Residential HVAC employees performing work described in Article I.

**Section 2.** The Union agrees to furnish at all times to the Employer, on request by the Employer, duly qualified Residential HVAC journeyman, registered apprentices and applicants in sufficient number as may be deemed necessary by the Employer to properly execute the Residential work contracted for by the Employer. It is understood that the Employer retains the right to refuse employment to any applicant.

**Section 3.** The Union agrees to encourage all Residential HVAC employees to acquire and maintain the necessary "competency" cards for the cities that require them.

**Section 4.** Retired Residential HVAC employees and Retired Residential HVAC employees receiving benefits from a Pension Plan under this Agreement or the Commercial Collective Bargaining Agreement shall be referred for work only after all other non-retired and available applicants hereunder have been referred for this work.

**Section 5.** Each Employer covered by this Agreement shall employ at least one (1) journeyman Residential HVAC employee who is not a member of the firm on all Residential work specified in Article I of this Agreement.

**Section 6.** Employers shall submit all requests for workers in writing to the respective Local Union and a copy of same shall be furnished to the Association. Said requests for workers will remain in effect for a period of five (5) working days only and thereafter will be considered as having expired. Cancellation of such request, if necessary, can be made by phone.

**Section 7.** Employers shall be entitled to recall a Residential HVAC employee from the Union layoff list as long as the worker is collecting unemployment compensation benefits chargeable to the Employer at the time the request is made. The Residential HVAC employee may elect to refuse employment and remain on the layoff list. The Union may, as a condition to referring a worker from the layoff list, require the Employer to provide written evidence that the worker is drawing unemployment compensation benefits chargeable to the Employer.

**Section 8.** Employment shall be without discrimination because of race, color, creed, age, religion, national origin, sex, marital status, status with regard to public assistance, sexual orientation, or other protected class as required by law. In addition, the Employer shall take affirmative action to provide equal opportunity in the placing of employees to the extent required under Title 29 of the Code of Federal Regulations, part 30, or other law or regulation duly enacted by the federal or state government or subdivision thereof.

**Section 9.** All Residential HVAC journeymen, apprentices and applicants dispatched to an employer by the union hall must be accompanied by a referral slip or will be refused employment.

**Section 10.** There may be a sixty day (60) trial period for every newly hired Probationary Residential HVAC journeyman. During this trial probationary period, the wage rate shall be the Residential HVAC journeyman base wage with no the only fringe benefit contributions being that required for the Local Training Fund. This probationary period is intended for newly hired personnel who have not been previously employed as a sheet metal worker by any of the Employers signatory to this Agreement.

#### **ARTICLE IV UNION SECURITY**

**Section 1.** The Employer agrees to require membership in the Union as a condition of continued employment of all employees performing any of the Residential work specified in Article I of this Agreement, within eight (8) days following the beginning of such employment or the effective date of this

Agreement, whichever is the later, provided the Employer has reasonable grounds for believing that membership is available to such employees on the same terms and conditions generally applicable to other members and that membership is not denied or terminated for reasons other than the failure of the employee to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.

**Section 2.** 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 1 of this Article.

**Section 3.** The provisions of this Article shall be deemed to be of no force and effect in any state to the extent to which the making or enforcement of such provision is contrary to law. In any state where the making and enforcement of such provision is lawful only after compliance with certain conditions precedent, this Article shall be deemed to take effect as to involved employees immediately upon compliance with such conditions.

## **ARTICLE V HOURS OF WORK & OVERTIME**

**Section 1.** The regular working day shall consist of eight (8) hours labor in the shop or on the job between eight (8:00) a.m. and four-thirty (4:30) p.m. however, individual residential construction jobs and/or shops may be approved to start as early as six (6:00am), if mutually agreed to between the Union and the Employer. All full-time or part-time labor performed during such hours shall be recognized as regular working hours and paid for at the regular hourly rate except as otherwise specifically provided in this agreement. Upon agreement on starting and quitting times, all work performed at such work sites outside the agreed upon hours shall be at the overtime rates. All overtime hours, Monday through Friday and all work on Saturdays, except as specifically stated otherwise in this agreement, shall be at one and one-half (1 ½) times the regular residential base rate.

The regular working week shall consist of five (5) consecutive eight-hour (8 hour) days labor in the shop or on the job, beginning with Monday and ending

with Friday of each week. On all Residential work, including new construction, four (4) ten (10) hour days may be worked at straight time on a voluntary basis, Monday through Friday, with Friday being a make-up day and the regular working day being ten hours between six (6:00) a.m. to six (6:00) p.m. For this provision to apply, the Union must be notified and the work week scheduled, both one (1) week in advance. On a voluntary basis by Residential HVAC employees on residential retrofit and sheet metal work (excluding new construction), the regular work week can be eight (8) hours per day for five (5) days, Monday through Saturday, at the regular residential base rate of pay. The following conditions must prevail: the union must be notified; the work week must be scheduled one (1) week in advance; and the hours worked must be (7:00am – 4:30pm) during the regular scheduled work day (7:00am – 4:30pm).

Employees shall be at the shop or project site at scheduled starting time each day and shall remain until quitting time.

During the school year, Residential HVAC pre-apprentices who are day school students in an HVAC or related service program such as St. Paul TVI and Dunwoody or Residential HVAC applicants who are day school students in programs such as Hennepin Tech, Century College, St. Paul TVI or Dunwoody shall be entitled to overtime pay after eight hours of work per day, Monday through Saturday, and after 40 hours per week. These day school students shall receive the Residential HVAC applicant rate of pay for their hours of employment and (and the applicant fringe benefit package) for Residential HVAC apprentices thereafter until they become indentured.

**Section 2.** New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day shall be recognized as holidays. Where the holiday falls on a Saturday, the Friday preceding it will be recognized as the holiday and where the holiday falls on a Sunday, the following Monday will be recognized as the holiday. All work performed on holidays and Sunday will be paid at the rate of two (2) times the regular base rate and the fringe benefit contributions shall be made pursuant to Section 1 herein, except as otherwise noted herein.

Labor Day will be a paid holiday for all Residential HVAC employees. Each employee shall receive eight (8) hours' pay at the employee's base rate provided that the employee is an employee of the Employer on the tenth (10th)

working day prior to Labor Day (including those who are on vacation, sick or disabled, but not including those on Workers Compensation). For the purpose of calculating the hourly cost of this paid holiday for both time and material work as well as for labor costs on change orders, the parties suggest taking eight (8) hours times (x) the present Taxable Base Rate and then dividing (÷) that by 1700 hours. So, for example using the July 1, 2002 taxable Residential HVAC journeyman rate of \$21.90 is multiplied by 8 which equals \$175.20. That result is then divided by 1700 hours yielding a 10 1/3 cents (\$.103) per hour as the estimated hourly cost for the Labor Day holiday for a Residential HVAC journeyman.

**Section 3. OVERTIME SCHEDULING.** Any Residential HVAC employer who is a member of the Association on the date of this Agreement, or any Residential HVAC employer who becomes a member hereafter, shall make joint application to the Union and the Association before scheduling overtime. The application shall set forth the dates and times when such work is proposed to be scheduled and the reasons why such scheduling is necessary. If mutually agreed to by both the Association and the Union, such work shall be so scheduled and, in the absence of such mutual consent, such work shall be prohibited.

All Residential HVAC employers who are not members of the Association must make application to and obtain consent from the Union before overtime work is scheduled and consent will be given only if an emergency exists. The Union will advise the Association of any case where emergency overtime has been approved and the reasons for the action taken as soon as possible. In an emergency that arises where time is such that application cannot be made in advance, overtime may be scheduled to remedy the emergency immediately, but notice shall be given of the fact within forty-eight (48) hours after the emergency arose. Mutual consent is necessary before any further overtime is worked on such job.

**Section 4.** Where any Residential shop requires more than one (1) shift on the same job site, or in the shop, or where a late shift is required and no first or second shift is possible because of the use or occupancy of the structure, the duration of which is to be longer than five (5) days, the following conditions shall prevail: It shall consist of an entirely new crew, the shift shall last at least eight (8) hours, any shift starting at or before six (6:00) p.m. shall be at the rate of one and one-quarter (1-1/4) times the regular base rate for the entire shift, any shifts starting after six (6:00) p.m. shall be at the rate of one and one-half (1-1/2) times

the regular base rate for the entire shift, the regular overtime rates shall be paid after eight (8) hours of labor.

On shifts of five (5) days or less, the rate of pay shall be the overtime rate, unless the Union and the Association approve such work in advance. It is the intent of the Union and the Association to approve this work at the shift rate of pay as long as all of the following are present: It is not possible for the shift to last more than five (5) days, it is necessary to do this work outside of the regular working hours, it is necessary to reduce the rate from the regular overtime rate because of a competitive situation and the shift will last at least eight (8) hours.

**Section 5.** Whenever overtime is required on a shift, the regular base rate and not the shift rate shall be multiplied by the applicable overtime rate. The Employer also agrees not to charge or bill the customer the applicable overtime rate for fringes on overtime work, except for the vacation pay.

**Section 6.** A premium pay of fifty cents (\$.50) per hour shall be paid for all hazardous work, such as any work performed from a boatswain's chair or a swing-scaffold, fifty (50) feet or more above the ground. All standard safety laws shall be complied with. Where there is doubt as to the hazardous nature of the work, the matter shall be referred to the Business Manager of the Union or his/her representative and to the Chief Executive Officer (CEO) of SMARCA, Inc., or his/her representative, for settlement.

## **ARTICLE VI TRAVEL & SUBSISTENCE**

**Section 1. FREE ZONE.** The free travel zone shall be within a thirty (30) mile radius of University Avenue and Emerald Street.

**Section 2. TRAVEL WITHIN THE FREE ZONE.** When employed in a shop or on a job within the free zone, as specified in Section 1, Residential HVAC employees shall be governed by the regular working hours specified herein and shall provide for themselves necessary transportation within the said zone from home to shop or job at starting time and from shop or job to home at quitting time, and the Employer shall provide or pay for all necessary additional transportation during working hours.

**Section 3. STARTING & QUITTING TIME.** When employed outside of the free zone and within the jurisdiction of the Union, Residential HVAC employees shall provide transportation for themselves which will assure their arrival at the boundary of the free zone at regular starting time, and the Employer shall provide or pay for all additional transportation for such jobs, including transportation from such job back to said boundary so as to assure arrival at such boundary at quitting time. As an alternative, when employed outside the free zone, the Employer may require the employee to provide transportation for himself/herself which will assure his/her arrival and departure from the job site at the regular starting and quitting times, in which case the Employer shall pay the employee sixty-five cents (\$.65) per mile from the boundary of the free zone to the job site and the same from the job site to the boundary of the free zone.

**Section 4.**

**(a) TRAVEL.** An employee furnishing his/her own transportation shall be reimbursed for travel outside of said free zone at the rate of thirty-five cents (\$.35) per mile.

Any travel during working hours between jobs, whether inside or outside of the free zone, shall be reimbursed at the rate of thirty-five cents (\$.35) per mile.

**(b) EMPLOYER TRANSPORTATION.** Employers reserve the right to provide transportation for employees to and from the job site, in which case employees shall leave to and from the shop as per the hours specified in Section 1, Article V.

**(c) EMPLOYER OPTION.** The Employer reserves the right to pay subsistence at the rate specified in sub-paragraph (e), Section 4, of this Article, in lieu of Section 2 of this Article, at any time he/she so desires, except that mileage will be paid to and from the job at the beginning and end thereof.

**(d) SAVINGS CLAUSE.** Nothing herein contained shall be construed to be a definition or description of this Union's territorial jurisdiction, as the language herein is intended only to relate to payment of travel expenses within and outside of certain areas.

**(e) PER DIEM.** The expenses per diem for any Residential HVAC

employees working out of this territory shall be set at a minimum of thirty dollars (\$30.00) per day for seven (7) days per week. If a job lasts for five (5) days or less, the per diem shall be thirty dollars (\$30.00) per day for each day worked. In cases where Residential HVAC employees claim they cannot cover expenses with this amount, they will be paid reasonable expenses upon turning in an itemized account to the Employer.

**Section 5. PARKING FEES.** In the event that free parking is not available within six (6) blocks of any job site, employees will be reimbursed up to nine dollars (\$9.00) per day upon submittal of receipts or claim.

**ARTICLE VII  
WAGES, BENEFITS, FOREMEN & GENERAL FOREMEN**

**Section 1.** The minimum rate of wages for Residential HVAC employees covered by this Agreement, when employed in a shop or on a job within the jurisdiction of the Union, to perform any work specified in Article I of this Agreement, shall be as follows (except as provided in Section 3 of this Article).

	<u>May 1, 2002</u>	<u>July 1, 2002</u>	<u>May 1, 2003</u>	<u>May 1, 2004</u>
These increases will be allocated prior to May 1 of each year				
Base Wage*	\$22.49	\$21.90	(+ \$2.30)	(+\$2.35)
(Deduct Vacation & Organizing Funds)	(\$1.10)	(\$1.15)		
Benefit Fund	\$3.60	\$3.60		
National Pension	\$.78	\$.78		
Local Pension	\$.50	\$1.26		
Supplemental Pension	\$1.68	\$1.43		
Int. Training Fund	\$.12	\$.12		
Loc Training Fund	\$.17	\$.22		
NEMI	\$.03	\$.03		
Scholarship Fund	\$.01	\$.01		
SMOHI	\$.02	\$.02		
Joint Labor Management Fund	\$.00	\$.06		
Local Industry Fund	\$.18	\$.18		
Nt'l Industry Fund	<u>\$.07</u>	<u>\$.07</u>		
	\$29.65	\$29.68	\$31.98	\$34.33

\* Taxable Income

Residential HVAC Foreman Pay is \$2.00 over base rate Residential HVAC. General Foreman pay is \$3.00 over base rate.

(a) The base wage rates include an amount of one dollars and ten cents (\$1.10) per hour for vacation pay and union organizing, as of May 1, 2002 for Residential HVAC employees with the vacation amount at ninety cents (\$.90) per hour, and twenty cents (\$.20) per hour for union organizing, which shall be deducted and paid as provided in Article VIII. Effective July 1, 2002 the union organizing contribution increased to \$.25 for a total of \$1.15 per hour.

(b) The allocations to the above Funds (except for Local and National Industry Funds) may be changed once in any year with two (2) months notice given to the Employer. In addition, the allocation to any one or more of these items may be increased or decreased by an equal reduction or increase of the base rate of pay. In any event, the change in allocation shall be made by the Union acting alone, but each such allocation to these Funds subject to a Trust Agreement shall be administered as therein provided. Also, the Union may make an allocation to Jury Pay and Funeral Pay provided each allocation is administered by an existing Trust and the two (2) month notice is given.

**Section 2. FOREMEN & GENERAL FOREMEN.** All Residential HVAC General Foremen shall be paid at least a minimum of three dollars (\$3.00) per hour in addition to the Residential HVAC journeyman's hourly base rate of pay and, further, that all Residential HVAC Foremen shall be paid a minimum of two dollars (\$2.00) per hour in addition to the Residential HVAC journeyman's base rate of pay. A crew of six (6) Residential HVAC employees on a job site shall have at least one (1) Foreman; a crew of twelve (12) Residential HVAC employees on a job site shall have one (1) Foreman and one (1) General Foreman; for each additional six (6) Residential HVAC employees thereafter, an additional Foreman shall be added.

**Section 3.** On all Residential HVAC work specified in Article I of this Agreement fabricated and/or assembled by Residential HVAC employees within the jurisdiction of this Union, or elsewhere, for erection and/or installation within the jurisdiction of any other local union affiliated with Sheet Metal Workers International Association whose established Residential HVAC wage scale is higher than the wage scale specified in this Agreement, the higher Residential HVAC wage scale of the job site union shall be paid to the Residential HVAC employee employed on such work in the home shop or sent to the job site.

**Section 4.** Except as provided in Sections 3 and 5 of this Article, the Employer agrees that Residential HVAC employees hired outside of the territorial jurisdiction of this Agreement shall receive the Residential HVAC wage scale and working conditions of the local Agreement covering the territory in which such work is performed or supervised.

**Section 5.** When the Employer has any Residential HVAC work specified in Article I of this Agreement to be performed outside the jurisdiction of Sheet Metal Workers Local No. 10 and within the area covered by another agreement with another union affiliated with the Sheet Metal Workers International Association, and qualified Residential HVAC employees are available in such area, he may send no more than two (2) Residential HVAC employees per job into such area to perform any Residential HVAC work which the Employer deems necessary, both of whom shall be from the Employer's home jurisdiction. All additional Residential HVAC employees shall come from the area in which the work is to be performed.

Residential HVAC employees covered by this Agreement who are sent outside of the area covered by this Agreement shall be paid at least the established minimum wage scale specified in Section 1 of this Article, but in no case less than the established Residential HVAC wage scale of the local agreement covering the territory in which such work is performed or supervised, plus all necessary transportation, travel time, board and expenses while employed in that area, and the Employer shall be otherwise governed by the established working conditions of that local agreement. If employees are sent into an area where there is no local agreement of the Sheet Metal Workers International Association covering the area, then the minimum conditions of the home local union shall apply.

**Section 6.** In applying the provisions of Sections 3, 4 and 5 of this Article VII, the term "wage scale" shall include the value of all applicable hourly contractual benefits, in addition to the hourly wage rates provided in said Sections.

**Section 7.** The Employer agrees to provide, at the request of the Union, information with respect to prevailing wage rates on forms supplied by the state and/or federal governments. Such forms shall be completed and returned to the Union within two (2) weeks of the date of such request.

**Section 8.** Wages at the established rates specified herein shall be paid in cash or check, upon permission, in the shop or on the job at or before quitting time on Friday of each week and no more than four (4) days pay shall be withheld. However, employees, when discharged, shall be paid in full, at or before quitting time on the day of discharge. Wages may be paid by mail or direct deposit with the consent of the employee.

**Section 9.** In the event an Employer fails to pay wages when due, in addition to all other remedies provided to the Union and the employee, the employee shall have six (6) years from the due date of said wages to commence legal action therefor.

**Section 10.** In addition to any and all other remedies provided by this Contract or by law either to the Union or to an employee, every employee covered by this Agreement shall have a lien upon the property and assets of the Employer as security for the payment of wages due to the employee that are not paid when due.

**Section 11.** Residential HVAC employees who report for work by direction of the Employer and are not placed at work shall be entitled to two (2) hours pay at the established rate. This provision, however, shall not apply under conditions over which the Employer has no control.

**Section 12.** The Employer shall provide each employee with a record of all hours worked and all deductions made from their wages with each wage check.

**Section 13.** All owner/members (Union members) shall pay a minimum of 1840 hours of fringe benefit contributions per year or 153.3 hours per month for their hours of work. The Union agrees to police the owner/member shops regarding all aspects of this Labor Agreement.

An "owner/member" shall be defined as an owner, agent, contractor, subcontractor, jobber, or any other person who is directly or indirectly financially interested in or who is an officer or otherwise involved in the management of a sheet metal shop, business or job. An "owner/member" includes but is not

limited to a person who meets all three (3) of the following requirements:

1. The person is an employee of:

(a) an incorporated business if the employee is an officer, director or an owner of the business; or

(b) any business enterprise, however organized, in which the business is owned or controlled by the employee and a member of the employee's family, (which shall include the employee's spouse and lineal ascendants and descendants and the spouse's lineal ascendants and descendants).

2. The person is a member of the Union in good standing.

3. The person performs work covered by the terms of this Agreement.

**Section 14.**

(a) The Employers covered by this Agreement shall contribute the amount specified in Article VII, Section 1 and Article XXIII, Section 7 into the Sheet Metal Workers' Scholarship Fund(s), either Local or National at the Union's option, for each hour worked by the Residential HVAC employees covered by this Agreement.

(b) Payment shall be made pursuant to Article XI and transmitted through the Twin Cities Sheet Metal Local 10 Control Board Office (Funds Office).

**ARTICLE VIII  
CREDIT UNION & VACATIONS**

**Section 1.** All Employers covered by this Agreement shall be obligated to deduct from the wages of each employee the amount specified in Article VII, Section 1, and Article XXIII, Section 7 for Residential HVAC employees, for each hour worked, and pay monthly to the Funds Office, as provided in Article XI, Section 2, the amount so deducted. Effective May 1, 2002, twenty-five cents (\$.20) per hour of the amount so deducted from the Residential HVAC employees pay rate shall be for Sheet Metal Workers Local 10s organizing fund. Effective July 1, 2002 this amount shall increase to twenty-five cents (\$.25) per hour. The

Fund Office shall, upon receipt of these deductions, which are made by the Employers after all withholding taxes including FICA are deducted, shall separate the organizing fund contribution from the vacation contribution and transmit the organizing contributions to the place designated by the Union and shall transmit the vacation contributions to the Credit Union designated by the Union, and that Credit Union shall deposit the proper amount to the account of each employee.

**Section 2.** In consideration of this automatic payroll deduction, reporting and transmittal by the Employer, the employee agrees to take a vacation each year of four (4) weeks, without pay (at one time or at separate times, provided that each time the employee takes at least seven (7) consecutive days of vacation) and the employee also agrees not to withdraw said deposits from the Credit Union until the time of taking his/her vacation.

**Section 3.** All Employers who are late in the remittance of Credit Union payroll deductions which results in either the payment of penalties or the loss of interest earned by its employee shall be responsible for the payment of such charges or losses. Failure to do so shall be grounds for the termination of this Agreement, as provided for in Section 4 of Article XI.

## **ARTICLE IX PENSION FUNDS**

**Section 1.** All Employers covered by this Agreement shall contribute into the National Sheet Metal Pension Fund and the Sheet Metal Workers Local No. 10 Pension Fund and Sheet Metal Workers Local No. 10 Supplemental Pension Fund (hereinafter, along with the other Pension Plans, referred to as "Pension Funds"), the amount per hour specified in Article IX, Section 1 2, Article XVII, Section 5 and Article XXIII, Section 7, for each hour worked by Residential HVAC employees covered by this Agreement. The contributions of the Employer shall be used to provide Pension Fund benefits to Residential HVAC employees covered by the applicable Agreements and Declarations of Trust and in the case of the Supplemental Pension Fund and the related SAFE Fund such other benefits as provided by the SAFE Fund.

**Section 2.** The following schedule shall govern the allocations to the above-named Funds:

**RESIDENTIAL HVAC EMPLOYEES**

<u>PENSION FUNDS</u>	<u>May 1, 2002</u>	<u>July 1, 2002</u>
Sheet Metal Workers Local 10 Pension Fund	\$ .50	\$ 1.26
Sheet Metal Workers Local 10 Supplemental/ and SAFE Fund	\$ 1.68	\$ 1.43
National Sheet Metal Pension Fund	<u>\$ .78</u>	<u>\$ .78</u>
<b>TOTAL</b>	<b>\$ 2.96</b>	<b>\$ 3.47</b>

\* May 1, 2003, and May 1, 2004, Total Package increases will be allocated at those times.

**Section 3.** The said Pension Funds and the SAFE Fund shall be administered pursuant to the provisions of the applicable Agreements and Declarations of Trust executed jointly by equal representation of the Union and representation of the Association and shall be considered as a part hereof, as if set forth in detail.

**ARTICLE X  
HEALTH FUND**

**Section 1.** All Employers covered by this Agreement shall contribute the amount per hour specified in Article VII, Section 1, into the Sheet Metal Workers Local # 10 Health Fund for each hour worked by the Residential HVAC employees covered by this Agreement on their payroll.

**Section 2.** The said Health Fund shall be administered pursuant to the provisions of the applicable Agreement and Declaration of Trust executed jointly

by equal representatives of the Union and representatives of the Association and shall be considered a part hereof, as if set forth in detail.

**Section 3.** In the event that a National Health Insurance Program is enacted, the Employer contribution to the current Health Fund, as described in Article X, shall be applied to any cost incurred by the Employer and/or the employees covered hereunder in connection with such National Health Program.

If the current Employer contribution is in excess of the cost of such National Health Program, then at the discretion of the employees covered hereunder, the difference shall become a contribution to either a supplemental health insurance plan and/or one of the existing Pension Plans and/or the base wage.

## **ARTICLE XI INDUSTRY FUND**

**Section 1.** All Employers covered by this Agreement shall contribute eighteen cents (\$.18) per hour for each hour worked by Residential HVAC journeymen and apprentices covered by this Agreement to the Sheet Metal and Roofing Industry Fund of the North Central Region (Twin City Trade Area Division) for purposes specified by the applicable Agreement and Declaration of Trust, which provides for the establishment and administration of the Sheet Metal and Roofing Industry Fund of the North Central Region (Twin City Trade Area Division). SMARCA shall have the right to unilaterally increase the contribution rate to this Fund by up to one cent (\$.01) during the term of this Agreement. In addition, in the event that a new Drug and Alcohol Testing Program is instituted and the employers elect to pay for this new Program through the Industry Fund, the Industry Fund would be paid and would be increased by the amount needed to administer that program. In addition, one hundred percent (100%) of the cost of administering any new Drug and Alcohol Testing Program would be paid by that Fund and not out of the current Total Package, set forth in Article VII.

The Local Union Business Manager shall be notified in advance of all Industry Fund Trustee Meetings and be allowed to attend such meetings, and shall be furnished copies of the annual audit and financial reports of said Trust.

**Section 2.** The Employer shall pay to the Sheet Metal and Air Conditioning Contractors' National Industry Fund of the United States (IFUS)

seven cents (\$.07) per hour for each hour worked on and after the effective date of this Agreement by all Residential HVAC journeyman and apprentice employees of the Employer covered by this Agreement. Payment shall be made on or before the tenth (10th) day of the succeeding month and shall be remitted, for the purpose of transmittal, through the Funds Office for both of the above stated Industry Funds.

**ARTICLE XII  
OTHER FUNDS**

**Section 1.** All employers covered by this agreement shall contribute into the following funds the amount per hour specified in Article IX, Section 1 for each hour worked by Residential HVAC journeymen, apprentices, and applicants covered by this agreement.

	<u>May 1, 2002</u>	<u>July 1, 2002</u>
International Training Fund (ITI)	\$.12	\$.12
Local Training Fund	\$.17	\$.22
National Management Institute (NEMI)	\$.03	\$.03
Scholarship Fund	\$.01	\$.01
Sheet Metal Occupational Health Institute (SMOHI)	\$.02	\$.02
Joint Labor Management Fund	\$.00	\$.06

**Section 2.** The contributions of the Employer shall be used to provide benefits pursuant to the applicable Agreements and Declarations of Trust. These funds shall be administered pursuant to the provisions of the applicable Agreements and Declarations of Trust executed jointly by equal representation of the Union and representation of the Association and shall be considered as part hereof, as if set forth in detail.

**Section 3.** The contribution currently set forth above to the National Energy Management Institute (NEMI) may, in the sole discretion of the Union

and after written notice to the Employers, be removed by the Union in the event the Sheet Metal Workers' International Association changes its constitution so that contributions to NEMI are no longer required by Local No. 10. In the event the SMWIA constitution is changed and the Union removes the contribution to the NEMI fund, the Union may allocate the NEMI contribution in any manner it desires.

### **ARTICLE XIII PAYMENTS DUE FUNDS**

**Section 1.** The contributions to the Funds designated in Articles VIII, IX, X, XI and XVII of this Agreement shall be paid in accordance with the applicable Trust Agreements. The contributions are to be stated on a form provided by the Funds Office. The Employer agrees to conform in all respects with the applicable Agreement and Declaration of Trust for each of said Funds and all amendments thereto, as well as the administrative rules promulgated from time to time by the Trustees of said Funds, as fully as if the same were set forth in detail herein.

**Section 2.** Contributions to the Funds designated in Section 1 shall be made monthly in the form of a single payment written payable to a suitable collection agency, bank or other institution designated by the parties. Payments to be made by the Employer shall constitute fulfillment of the Employer's obligation to make contributions to the Funds herein provided. Failure to make such payments in full, when and as due, constitutes a breach of contract on the part of such Employer and relief therefor shall be available as herein provided. Any administrative charge for this service shall be borne by the Employer.

**Section 3.** The Employer shall make available to the Funds designated in Section 1 any and all records of the covered employees that the said Funds may require in connection with the sound and efficient operation of said Funds.

**Section 4.** The payments provided in Articles VIII, IX, X and XVI of this Agreement are due in the Funds Office on the tenth (10th) day of the following month and Employers whose contributions are not received by the Funds Office within five (5) days after the 10th, or the first working day thereafter, shall be deemed delinquent.

Delinquent Employers shall become subject to a liquidated damages assessment equal to ten percent (10%) of the contributions due for the month. If these delinquent contributions, together with the liquidated damages assessment, are not received by the Funds Office on or before the tenth (10th) day of the next month, the liquidated damages assessment will increase to twenty percent (20%) of the delinquent contributions. In addition to the twenty percent (20%) assessment, the delinquent Employer shall, on that same date, become subject to interest on the delinquent contributions at the interest rate determined by the Internal Revenue Code under Section 6621. The interest charges will accrue on both the delinquent contributions and the liquidated damages assessments from their due dates. Any attorney's fees incurred in the collection of the preceding sums shall also be payable by the delinquent Employer. Where the Funds Office determines necessary, and the delinquent payment is not rendered when the Employer is contacted by the Funds Office, the Board may recall all employees of the delinquent Employer and the employees will be directed not to return to work until the obligation of the delinquent Employer is paid in full.

In addition to the foregoing, all such delinquent Employers may be required to either:

1. Make weekly payments to all Funds which payment shall be made by cash or certified check. These weekly payments will be hand delivered to the Funds Office on the delinquent Employer's regular pay day. If payment is not received on this date, the Funds Office may recall all the employees of the delinquent Employer and the employees will be directed not to return to work until such obligation is paid in full; or,

2. The delinquent Employer may post bond in an amount equal to the average monthly contribution of the delinquent Employer for the previous year.

In the event the delinquent Employer selects alternative number 1 and does not meet his weekly payments, bonding, as described in alternative number 2 will become mandatory. Such requirements may be relieved at the discretion of the Funds Office.

The Funds Office will meet the first (1st) day following the day the contributions must be received in the Funds Office in order not to be deemed

delinquent to review the delinquent list. All delinquent Employers will be contacted immediately by authorized representatives of the Funds Office.

#### **ARTICLE XIV FUNDS OFFICE**

**Section 1.** The Funds Office shall be administered pursuant to the provisions of the applicable Agreement and Declaration of Trust executed jointly by an equal number of representatives of the Union and representatives of the Association as well as the rules and regulations drawn up and executed jointly by said Trustees. The applicable Agreement and Declaration of Trust and said rules and regulations shall be considered a part hereof, as if set forth in detail.

**Section 2.** A Funds Office Trustee must be a current Trustee of at least one (1) of the following: The Sheet Metal Local 10, Pension, Health or Journeyman Apprentice Trust Funds.

#### **ARTICLE XV TOOLS & TRANSPORTATION**

**Section 1.** The Residential HVAC employees covered by this Agreement shall provide for themselves the following hand tools, which shall be kept in accordance with OSHA Standards: aviation snips (straight, left and right), chisels, combination square, drive turner, hack-saw frame, hammers, hand crimper, pliers, punches, screw driver, six-foot (6') folding rule, small-hand seamer, twenty-five foot (25') tape, tool pouch, whitney (small), wrenches, and such other tools as the parties may agree to in writing during the term of this agreement. The Employer shall furnish a proper enclosure or field box to safeguard the employee's hand tools on the job.

**Section 2.** Residential HVAC employees covered by this Agreement shall not be permitted or required, as a condition of employment, to furnish the use of automobile or other conveyance to transport workers, tools, equipment or materials from shop to job, from job to job or from job to shop; facilities for such transportation to be provided by the Employer. This provision shall not restrict the use of an automobile or other conveyance to transport its owner or personal tools from home to shop or job at starting time and from job to home at quitting time.

**Section 3.** All workers shall accept the responsibility for the proper care of all tools and/or equipment furnished by the Employer. Acknowledgment of receipt and return of said tools and/or equipment may be made on a form mutually agreed upon by the Employer and the Union. Any worker who abuses the provisions of this Section shall be subject to investigation by the Joint Adjustment Board and any disciplinary action it levies.

**Section 4.** Tool theft insurance shall be provided by the Industry Fund, in accordance with reporting criteria as established by the Trustees.

## **ARTICLE XVI SETTLEMENT OF DISPUTES**

**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. An Employer may have the Association present to act as his representative.

To be valid, grievances must be raised within thirty (30) calendar days following the occurrence giving rise to the grievance; or, if the occurrence was not ascertainable, within thirty (30) calendar days of first knowledge of the facts giving rise to the grievance.

**Section 2.** Grievances not settled as provided in Section 2 of this Article may be appealed by either party to the Local Joint Adjustment Board in the area in which the work is performed and such Board shall meet promptly on a date mutually agreeable to the members of the Board, but in no case more than fourteen (14) calendar days following the notice provided in the next paragraph, unless the time is extended by mutual agreement of the parties, to render a final and binding determination, except as provided in Section 3 of this Article. The Board shall consist of an equal number of representatives of the Union and of the Employer Association and both sides shall cast an equal number of votes at each meeting. The local Employer Association, on its own initiative, may submit grievances for determination by the Board, as provided in this Section.

Notice of appeal to the Local Joint Adjustment Board shall be given within thirty (30) days after termination of the procedures prescribed in Section 1 of this Article, unless the time is extended by mutual agreement of the parties.

**Section 3.** Grievances not disposed of under the procedures described in Section 2 of this Article, because of a deadlock or failure of such Board to act, may be appealed jointly or by either party to a Board of Arbitration within thirty (30) days after the termination of procedures prescribed in Section 2. The Board of Arbitration shall consist of three (3) persons, one (1) to be selected by the Union, one (1) to be selected by the Employer and the third, who shall act as an Impartial Chairman, to be selected mutually by the representative of the Union and the representative of the Employer.

The aggrieved party shall name one (1) member to the Board of Arbitration at the time of making its submission by registered or certified mail. The other party shall name one (1) member within three (3) working days after receipt of such notice.

If the two (2) members thus selected fail to agree on the selection of an Impartial Chairman within six (6) working days following receipt of the notice of submission by the aggrieved party to the other party, the State or Federal Mediation and Conciliation Service may be requested by either party to submit a list of five (5) persons from which the Impartial Chairman shall be selected by mutual agreement of the Employer and Union representatives.

In the event of failure to agree on any one of the names submitted, the Union and the Employer representatives shall each strike off the names of two (2) of the five (5) names as being unacceptable and shall indicate the order or preference of those remaining. If more than one name remains, the State or Federal Mediation and Conciliation Service shall then be requested to appoint an arbitrator from the names remaining on the list, with due consideration as to preference and availability.

No decision shall be made by the Board of Arbitration without the participation of the representatives of both the Union and the Employer, unless, in the judgment of the Impartial Chairman, either the Employer or the Union is unnecessarily delaying arbitration proceedings (and after due notice of such judgment by the Chairman to both parties hereto), in which case decisions may be

reached without the participation of the party causing the delay.

In the event either party refuses arbitration or fails to appoint its member to the Board of Arbitration, the other party may select an Impartial Chairman and proceed to arbitration independently.

**Section 4.** All fees and expenses of the Impartial Chairman shall be shared equally by the Union and the Employer.

All decisions of the Board of Arbitration shall be made and mailed to the parties within ten (10) days following the conclusion of the arbitration hearing, exclusive of the last day of such hearing.

All decisions of the Board of Arbitration made within the scope of the submission and within the authority of the Board, as defined herein, shall be final and binding on all parties concerned.

The Board of Arbitration shall have no right to require of the Employer, the Union, or any employee of the Employer, any act it or he is not required by law or by this Agreement to perform, nor to render any interpretation outside the scope of this Agreement.

In the event of a failure of the Board of Arbitration to reach a majority decision, the written decision and award of the Impartial Arbitrator shall constitute a majority decision and award within the meaning of this Article.

The requirements of Section 2, with respect to the selection of one (1) person by the Employer and one (1) person by the Union to serve as members of the Board of Arbitration, may be waived by the parties by written agreement in any given case, in which case the Impartial Chairman shall constitute the Board of Arbitration and his decision and award, subject to all other conditions herein, shall be final and binding upon the parties.

Working days, where used in this Article, shall include Monday through Friday. Time limits imposed in this Article may be extended only by written mutual consent of the parties.

**Section 5.** Failure to exercise the right of appeal at any step thereof within the time limit provided therefor shall void any right of appeal applicable to

the facts and remedies of the grievance involved. There shall be no cessation of work by strike or lockout during the pendency of the procedures provided for in this Article.

**Section 6.** Nothing contained in this Article shall apply in any controversy or dispute arising out of any notice of reopening of this Agreement, as provided in Article XXVI hereof.

## **ARTICLE XVII JURISDICTION DISPUTES**

**Section 1.** Agreements, national in scope, between Sheet Metal Workers International Association and other international unions covering work jurisdiction and the assignment, allocation and division of work among employees represented, for purposes of collective bargaining, by such labor organizations, shall be respected and applied by the Employer, provided such agreements have been consummated with the knowledge of and without objection from Sheet Metal and Air Conditioning Contractors National Association, Inc.

## **ARTICLE XVIII APPRENTICES**

**Section 1.** All duly qualified Residential HVAC apprentices shall be under the supervision and control of a Joint Apprenticeship Committee composed of an equal number of Employer representatives and Union representatives who shall be selected by the Employer and the Union respectively. Said Joint Apprenticeship Committee shall formulate and make operative such rules and regulations as they may deem necessary and which do not conflict with the specific terms of this Agreement, to govern eligibility, registration, education, transfer, wages, hours and working conditions of duly qualified apprentices and the operation of an adequate apprentice system to meet the needs and requirements of the trade for all parts of the Sheet Metal Construction Industry. Said rules and regulations, when formulated and adopted by the parties hereto, shall be recognized as a part of this Agreement.

**Section 2.** The Joint Apprenticeship Committee designated herein shall serve for the life of this Agreement, except that vacancies in said Joint

Apprenticeship Committee caused by resignation or otherwise, may be filled by either party hereto, and it is hereby agreed that both parties hereto will individually and collectively cooperate to the extent that duly qualified, registered apprentices be given every opportunity to secure technical and practical education experience in the trade, under the supervision of the Joint Apprenticeship Committee.

**Section 3.** It is hereby agreed that the Residential HVAC Employer shall be entitled to apply to the Joint Apprenticeship Committee on the basis of one (1) Residential HVAC apprentice for every two (2) Residential HVAC journeymen and said ratios shall govern the consideration and granting of apprentices by the Joint Apprenticeship Committee. The above ratios are not intended to require the Employer to maintain the established ratios on a particular job site or in the shop.

**Section 4.** All applicants for Residential HVAC apprenticeship shall be at least 18 years of age and each registered apprentice shall serve an apprenticeship of three (3) years; such apprentices shall not be put in charge of work on any job and shall work under the supervision of a journeyman until their apprenticeship term has been completed and they have qualified as Residential HVAC journeymen, except that apprentices may work alone on project Residential work with proper supervision after they have been indentured for two (2) months.

**Section 5.** A graduated wage scale for Residential HVAC apprentices shall be established and maintained on the following percentage basis of the established base wage rate of Residential HVAC employees:

Period 1.....	70%	Period 5.....	90%
Period 2.....	75%	Period 6.....	95%
Period 3.....	80%		
Period 4.....	85%		

Periods 1 through 6 shall be 1,000 work hours for each period.

**Section 6.** There shall be no mandatory rotation of apprentices employed in Residential HVAC work, including service work.

**Section 7.** Residential HVAC apprentice applicants who are day school graduates, from a one (1) year or longer HVAC or Service program from St. Paul TVI, Dunwoody, Hennepin Tech, Century College or the equivalent, shall serve no applicant period. They will also receive credit for 1,000 work hours upon their completion of Period 5.

All other Residential HVAC applicants shall serve up to a six hundred (600) hour applicant period prior to being indentured. After employing the applicant, the Employer may request that the Joint Apprentice and Training Committee (JATC) indenture the applicant prior to the end of the six hundred (600) hour period, and the JATC may approve or deny this request in accordance with its standards, rules, and regulations. At the end of the six hundred (600) one hours, the applicant will either be indentured or separated from employment. Applicants may be employed for more than 600 hours provided they are enrolled in and attending a day school HVAC Correlated service program.

Beginning with the first hour of employment, the applicant shall be paid a base wage of not less than \$12.50, and the Employer shall make contributions to the Local Training Fund at the rate set forth in Article VII, Section 1, of this Agreement on behalf of the applicant. Upon indenture, the entire fringe contributions set forth in Section 1 or Article VII shall be paid by the Employer.

When an Employer requests an Residential HVAC apprentice and is entitled to one and none is available, a applicant shall be supplied. Also, Residential HVAC employers are entitled to one (1) applicant for every three (3) regularly employed Residential HVAC journeymen in that phase of the industry. When laying off, an employer may choose to keep an apprentice in lieu of an applicant in which case that apprentice shall count as an applicant for purposes of this ratio.

Day school students enrolled in and attending an HVAC or related service program may be employed as Residential HVAC applicants. However, no Employer shall be allowed to lay off an apprentice and continue to employ a day school student as a applicant.

**Section 8.** Employers covered by this Agreement shall contribute the sum specified per hour in Section 1 of Article VII, to the Metropolitan Sheet Metal Journeyman & Apprentice Training Fund for each Residential HVAC employees

employed covered by this Agreement. The said Metropolitan Sheet Metal Journeyman & Apprentice Training Fund shall be administered pursuant to the provisions of the applicable Agreement and Declaration of Trust executed jointly by equal representatives of the Union and of the Association and shall be considered as a part hereof, as if set forth in detail.

**ARTICLE XIX  
WORKERS COMPENSATION &  
UNEMPLOYMENT INSURANCE CONTRIBUTIONS**

The undersigned Employer expressly agrees that, if he is exempt under any provision of the law from the statutory obligation of carrying Workers Compensation Insurance or exempt from the requirement to make Social Security and Unemployment Insurance contributions, at any time or under any circumstances, the undersigned Employer shall, nevertheless, carry the appropriate insurance and make the statutory contribution so that his employees shall be covered by Workers Compensation Insurance, Social Security and Unemployment Compensation benefits and specifically with respect to the Minnesota Unemployment Compensation Law, the Employer agrees that he will immediately elect to be covered, pursuant to Minnesota Statutes, Section 268.11, sub-division 3, and for that purpose will immediately send notice of his determination to so elect to the Director of the Department of Jobs and Training, State of Minnesota.

The Twin Cities Division of SMARCA, Inc. and the Union may request copies of any Employer's Certificate of Insurance for Workers Compensation Insurance and Unemployment Compensation Insurance. This information shall be supplied within ten (10) days following receipt of that request.

**ARTICLE XX  
CREDIT UNION PAYROLL DEDUCTIONS**

The Employer agrees to make deductions for each employee who authorizes such deductions and remit same to the applicable Credit Union for the purpose of crediting it to the employee's account at the Credit Union. This shall be done only in accordance with the following provisions: The employee will make such arrangements with the Credit Union for these deductions and the Credit Union shall duly notify his/her Employer, any termination of such arrangements shall be made through the Credit Union, which shall duly notify the Employer of such termination,

and the Employer assumes no responsibility for the cessation of these deductions, but will act only upon certification by the Credit Union.

The failure, refusal or neglect of an Employer to transmit and pay any deductions authorized to the Credit Union, on or before ten (10) days following the month in which such deductions were made, shall subject the Employer to having this Agreement terminated upon seventy-two (72) hours notice in writing being served by the Union.

#### **ARTICLE XXI UNION DUES DEDUCTIONS**

The Employer shall deduct from the wages of each employee, according to written authorization from the individual employee, the amount of the Union initiation fees and dues, which shall be deducted from the first pay period of each month and forwarded to the Union between the first (1st) and fifteenth (15th) day of each month.

#### **ARTICLE XXII SHOP STEWARDS**

A steward shall be a working journeyman, appointed by the business manager or business representative of the local Union. The steward will not be dismissed for protecting the jurisdiction and working conditions, as defined in this Agreement.

Any alleged violation of this Agreement shall first be brought to the attention of the steward and, if not resolved, shall then be brought to the attention of the business representative of the local Union.

Any dispute arising under this Article which cannot be settled, as provided above, shall be referred to the Joint Adjustment Board.

#### **ARTICLE XXIII LICENSES, PERMITS & CERTIFICATES**

Neither the Employer nor any of the Employer's officers, owners, part owners, stockholders, directors, managers or employees who have a license, permit or a certificate of competency in any of the fields of work covered by this Agreement,

issued by the State of Minnesota and/or any municipality, as a pre-requisite to performing any of the work described in Article I, shall furnish, lend or make such license, permit or certificate available to any other person or company not signatory to an agreement with Sheet Metal Workers International Association or one of its member Building Trades locals for any purpose. If this provision is violated, it will constitute a breach of this Agreement and the Union, in such case, shall have the right to any and all available remedies for such breach, including, but not limited to, picketing and refusal to work.

## **ARTICLE XXIV MISCELLANEOUS**

### **TRANSFER FROM RESIDENTIAL TO COMMERCIAL**

A Residential HVAC journeyman may apply to Sheet Metal Workers Local No. 10 to become a Commercial journeyman if the journeyman has completed each of the following:

1. Completed 10,000 work hours after April 30, 1999 as a Residential HVAC journeyman;
2. Maintains a competency card issued by the City of Minneapolis or the City of Saint Paul; and
3. Passed a competency test administered by the JATC.

Alternatively, the Residential HVAC journeyman may apply for admittance into the commercial apprenticeship program offered by the JATC. Upon acceptance and completion of all requirements, he or she will become a commercial journeyman.

## **ARTICLE XXV DRUG & ALCOHOL TESTING POLICY**

**Section 1. PREFACE.** Alcohol/substance abuse is recognized as a serious health and safety problem. The desired result is rehabilitation. The preferred procedure is through referral to a locally operated industry Employee Assistance Program (EAP). Currently, a program is available from TEAM, Inc., under the terms of the local health and welfare plan. The EAP should provide

employee and supervisor educational programming, individual and family counseling, as well as treatment referral services.

Workplace problems arising out of an employee's relationship with substance abuse may warrant a variety of management responses, including referral for treatment, testing, disciplinary action, or even termination of employment. This statement addresses the testing issues, only.

No substance testing program should be implemented unless there is an Employee Assistance Program (EAP) implemented to provide treatment for any bargaining unit employees.

**Section 2. GENERAL PROVISIONS.** The Union and the Employers regard blood/urine testing as problematic and do not advocate reliance on such procedures to identify individuals with an alcohol/chemical dependence. However, certain circumstances support substance testing as a warranted vehicle for determining possible impairment and/or a propensity for substance abuse. These include:

1. Pre-employment screening.
2. Probable cause testing.
3. Work opportunity mandated testing.

Whenever testing is utilized it shall be accomplished through dignified and humane procedures ensuring complete confidentiality of specimen custody and test results. The individual being tested and the EAP shall have access to the test results. The sheet metal employer (or JATC) and Union shall be notified of the positive or negative results, only.

For all testing, the Employer shall comply with the testing and notice requirements of Minnesota law, which may be set forth separately, and tests shall be conducted by qualified and accredited laboratories which comply with the Scientific and Technical Guidelines for Federal Drug Testing Programs and the Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies issued by the Alcohol, Drug Abuse and Mental Health Administration of the United States Department of Health & Human Services, or standards established by the applicable State having jurisdiction (Minnesota), whichever are the more stringent. The testing laboratories must also maintain high quality control procedures and follow manufacturer's protocols. All initial

positive tests shall be subject to a confirmation assay, such as a Gas Chromatography with Mass Spectrometry (GC/MS). The levels of detected substances for determining positive results shall be those established as legitimate by the Alcohol, Drug Abuse & Mental Health Administration of the United States Department of Health & Human Services, or those established by the State having jurisdiction (Minnesota), whichever are the more stringent.

**Section 3. PRE-EMPLOYMENT SCREENING.** The Metro Area Sheet Metal Joint Apprenticeship and Training Committee (JATC) shall require all persons who have applied to work as a applicant or apprentice to submit to a drug and alcohol test. The applicant or apprentice will be required to submit to testing only after an Employer has made a request for a applicant or apprentice from the Union hall and prior to the applicant or apprentice reporting to the Employer for work. The initial request for a applicant or apprentice shall be a conditional offer of employment. The costs of the test will be paid by the Employer making the request for the applicant or apprentice. The test will be performed and administered in accordance with the Program adopted by the JATC and hereby made a part of this Agreement.

**Section 4. PROBABLE CAUSE.** Substance testing may be implemented when there is "probable cause." Probable Cause shall be defined as those circumstances, based on objective evidence about the employee's conduct in the workplace, that would cause a reasonable person to believe that the employee is demonstrating signs of impairment due to alcohol or drugs. Examples of objective evidence include, when an employee shows signs of impairment such as difficulty in maintaining balance, slurred speech, erratic or atypical behavior, or otherwise appears unable to perform his/her job in a safe manner.

**Section 5. WORK OPPORTUNITY MANDATED TESTING.** In all situations where an Employer is required to agree to a testing program in order to qualify as a bidder on a project, testing may be required, but only if performed in accordance with these standards and applied uniformly to all personnel having access to the workplace.

**Section 6. PROVISIO.** Testing in any of the above situations shall be conducted and governed in accordance with the general provisions of this Policy Statement.

**Section 7. PROGRAM EXPENSES.** In the event this new Drug and Alcohol Testing Program is instituted and the employers do not elect to pay for its administration through the Industry Fund, then a new Fund will be started for this purpose. In addition, one hundred percent (100%) of the cost of administering this Program will be paid by the employer contributions to that Fund and those contributions will be over and above the then current Total Package set forth in Article VII.

**ARTICLE XXVI  
SEVERABILITY CLAUSE**

Should any provisions of this Agreement be declared illegal by any court of competent jurisdiction, such provision shall immediately become null and void, leaving the remainder of the Agreement in full force and effect, and the parties shall thereupon seek to negotiate substitute provisions which are in conformity with the applicable laws.

**ARTICLE XXVII  
EFFECTIVE DATES, SIGNATURES, AND WORK STOPPAGE CLAUSE**

This Agreement shall become effective on the 1st day of May, 2002, and shall remain in full force and effect until the 30th day of April, 2005, and shall continue in force from year to year thereafter, unless written notice of reopening is given not less than ninety (90) days prior to the expiration date. In the event such notice of reopening is served, this Agreement shall continue in force and effect until conferences relating thereto have been terminated by either party.

Upon reaching the expiration of this agreement, if no new agreement has been reached, either party may invoke the services of the National Joint Adjustment Board (NJAB) to resolve the non-agreed upon terms. The NJAB shall settle those unresolved items as hereinafter provided:

- (a) Should the negotiations for a renewal of this Agreement or negotiations regarding a wage/fringe re-opener become deadlocked in the opinion of the Union representative(s) or of the Employer('s) representative(s), or both, notice to that effect shall be given to the National Joint Adjustment Board.

If the Co-Chairmen of the National Joint Adjustment Board believe the dispute might be adjusted without going to final hearing before the National Joint Adjustment Board, each will then designate a Panel representative who shall proceed to the locale where the dispute exists as soon as convenient, attempt to conciliate the differences between the parties and bring about a mutually acceptable agreement. If such Panel representatives or either of them conclude that they cannot resolve the dispute, the parties thereto and the Co-Chairmen of the National Joint Adjustment Board shall be promptly so notified without recommendation from the Panel representatives. Should the Co-Chairmen of the National Joint Adjustment Board fail or decline to appoint a Panel member or should notice of failure of the Panel representatives to resolve the dispute be given, the parties shall promptly be notified so that either party may submit the dispute to the National Joint Adjustment Board.

In addition to the mediation procedure set forth above or as an alternate thereto, the Co-Chairmen of the National Joint Adjustment Board may each designate a member to serve as a Subcommittee and hear the dispute in the local area. Such Subcommittees shall function as arbitrators and are authorized to resolve all or part of the issues. They are not, however, authorized to deadlock and the matter shall be heard by the National Joint Adjustment Board in the event a Subcommittee is unable to direct an entire resolution of the dispute.

The dispute shall be submitted to the National Joint Adjustment Board pursuant to the rules as established and modified from time to time by the National Joint Adjustment Board. The unanimous decision of said Board shall be final and binding upon the parties, reduced to writing, signed and mailed to the parties as soon as possible after the decision has been reached. There shall be no cessation of work by strike or lockout unless and until said Board fails to reach a unanimous decision and the parties have received written notification of its failure.

- (b) Any application to the National Joint Adjustment Board shall be upon forms prepared for that purpose subject to any changes which may be decided by the Board from time to time. The representatives of the parties who appear at the hearing will be given the opportunity to

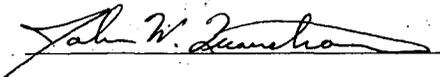
present oral argument and to answer any questions raised by members of the Board. Any briefs filed by either party including copies of pertinent exhibits shall also be exchanged between the parties and filed with the National Joint Adjustment Board at least twenty-four (24) hours in advance of the hearing.

- (c) The National Joint Adjustment Board shall have the right to establish time limits which must be met with respect to each and every step or procedure contained in this Section. In addition, the Co-Chairmen of the National Joint Adjustment Board shall have the right to designate time limits which will be applicable to any particular case and any step therein which may be communicated to the parties by mail, facsimile or telephone notification.
- (d) Unless a different date is agreed upon mutually between the parties or is directed by the unanimous decision of the National Joint Adjustment Board, all effective dates in the new agreement shall be retroactive to the date immediately following the expiration date of the expiring agreement.

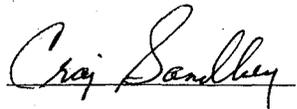
This Agreement is the entire Agreement between the parties. IN WITNESS WHEREOF, the parties hereto affix their signatures this 1st day of May, 2002.

EMPLOYER REPRESENTATIVE:

UNION REPRESENTATIVE:



John W. Quarnstrom  
Director of Labor Relations/General Counsel  
SMARCA, Inc.



Craig Sandberg  
President & Business Manager  
SMWIA, Local No. 10



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