

RESIDENTIAL  
LABOR AGREEMENT

Between

DULUTH AND IRON RANGE RESIDENTIAL SUBDIVISIONS  
SMARCA, INC.

And

DULUTH AND IRON RANGE UNITS, INTERNATIONAL ASSOCIATION of SHEET  
METAL, AIR, RAIL & TRANSPORTATION  
LOCAL Union No. 10 DULUTH & IRON RANGE AREAS

EFFECTIVE

May 1, 2014 – April 30, 2017

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## **2014 DULUTH/IRON RANGE RESIDENTIAL LABOR AGREEMENT**

THIS AGREEMENT is entered into this 1st day of May, 2014, by and between the RESIDENTIAL SUBDIVISION of the DULUTH AND IRON RANGE DIVISIONS 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 the “Employer”), and LOCAL UNION NO. 10, DULUTH AND IRON RANGE AREAS, (Union) of the INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL, and TRANSPORTATION (hereinafter referred to as “SMART”) and its jurisdiction. The Duluth Area includes Cook, Lake, the southern third of St. Louis, Carlton, and Aitkin counties in Minnesota and Ashland, Bayfield, Douglas, and Iron counties in Wisconsin, and the Iron Range Area includes Koochiching, Itasca, and the northern two-thirds of St. Louis, counties in Minnesota.

It is understood that the Residential Subdivision of the Duluth and Iron Range Divisions of SMARCA, Inc. is hereby representing and acting on behalf of those Contractors who have assigned their bargaining rights to those divisions 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 work conditions of all Residential journeymen and apprentices and 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 air-veyor systems and air-handling systems, regardless of material used, including the setting of all equipment and all reinforcements in connection therewith; (b) 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 fabrication and erection, including those taken from original architectural and engineering drawings or sketches; (e) the installation and service of all residential HVAC equipment including, but not limited to: furnaces of all types, air conditioning units, humidifiers, filter systems, air-to-air exchangers, fireplaces, fireplace inserts, free standing stoves, kitchen exhaust systems, toilet exhaust systems, in-floor heating systems, and residential architectural sheet metal.

This Agreement and 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.

**Section 2. RESIDENTIAL DEFINITION.**

(a) Residential work shall be defined as applying to work on any single-family dwelling or multiple family housing unit where each individual family unit is individually conditioned by a separate and independent heating and/or cooling system. It shall include work on individual fan coils in individual air handlers and their connected ductwork systems in each individual family unit where these fan coils are hooked to a central boiler and/or a central chiller. It shall also include work on in-floor heating systems in each individual family unit and back to the zone valve where those valves are located outside of the individual family unit. Residential work shall also include all architectural sheet metal including metal roofing, flashing and counter flashing and gutters on any single-family house, townhouse and/or apartment/condo.

The term residential HVAC Employer or residential HVAC employees shall also include residential architectural Employer or residential architectural employees.

(b) The term Light Commercial Service shall include work on commercial facilities where the HVAC systems are residential style systems and/or roof top units up to and including seven and one half (7½) tons but not on any industrial facilities. The rate for this work shall be as set forth in Article VII herein.

**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 or apprentice fringe benefits package to Building Trades' commercial journeymen and apprentices voluntarily doing residential work.

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 primary working condition and to preserve and to protect the residential work described in Article I for employees of 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 except the employer may choose to purchase any item for residential installation, including all duct work and fittings, from any source without regard to Article I or any wage equalization provision contained in this Agreement.

**Section 2. SUBCONTRACTING.** No Employer shall subcontract any of the work described in Article I except as set forth in Section I above. However, any Employer may subcontract any of said work to any other Employer signatory to a Construction Labor Agreement with Sheet Metal Workers' Local 10 (either a residential or commercial contract).

**Section 3. 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.

### **ARTICLE III JOB REFERRAL**

**Section 1.**

(a) The Union shall be the exclusive bargaining representative for all Residential journeymen and apprentices and all residential HVAC employees performing work described in Article 1. In the Duluth and Iron Range areas the hiring and referrals will be done as they are under that area's commercial agreement.

(b) All contractors performing Residential work in this contract area shall supply an employee roster of sheet metal workers employed by job site upon request by Sheet Metal Workers' Local 10.

**Section 2.** The Union agrees to furnish at all times to the Employer, on request in writing by the Employer, duly qualified Residential HVAC journeymen, 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. It is also understood that all Employers may refer people to make application for membership anytime within the trial period of Section 7 of Article III.

**Section 3.** In the event the Employer desires to hire employee(s) to perform work covered by this Agreement, without using the Union referral system in Section I of this Article, the Employer agrees to furnish the Union with name(s) of such individual(s) prior to actual hiring.

It is not permitted for Employers to hire new HVAC journeymen or HVAC apprentices if there is a Residential journeyman or Residential apprentice on the out-of-work list. However, if you have a new HVAC journeyman or apprentice employed, they will not need to be laid off should a Residential journeyman or apprentice become newly laid off, such as from another shop.

**Section 4.** The Union agrees to encourage all residential HVAC employees to acquire and maintain the necessary competency cards, certificates, and/or licensing required to perform residential HVAC work. The Union will assist in this endeavor through courses offered by the local area Joint Apprenticeship Training Committee.

**Section 5.** Each Employer covered by this Agreement shall employ at least one (1) Residential journeyman or apprentice or a Residential HVAC employee who is not an owner of the firm on all residential work specified in Article I of this Agreement. However, it will be permissible for an owner-member to be the journeyman sheet metal worker.

**Section 6.** Employers shall be entitled to recall a residential sheet metal 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. Each Employer is required to recall their laid off Residential journeymen before their HVAC journeymen. That Employer must be the most recent employer of the Residential journeyman. 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 7.** 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 8.** There may be a sixty (60) day trial period for every newly hired probationary Residential HVAC journeyman or tradesman. During this trial probationary period, the wage rate shall be the Residential HVAC journeyman base wage for perspective journeymen and the beginning tradesman base rate for perspective tradesmen with 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 sheet metal workers 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 (sixty-eight (68) days for probationary residential sheet metal workers) following the beginning of such employment or the effective date of this Agreement, whichever is 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.** On all residential work, including residential service work and light commercial service work, the regular workday shall consist of up to ten (10) hours labor in the shop or on the job between six (6:00) am and nine (9:00) pm. All full-time or part-time labor performed during such hours up to ten (10) hours per day and forty (40) hours per week shall be recognized as regular working hours and paid for at the regular hourly rate except as otherwise specifically provided in this Agreement. All work performed beyond ten (10) hours per day and forty (40) hours per week shall be at the overtime rate. All overtime hours, Monday through Saturday and Sundays and holidays shall be at one and one-half (1½) times the regular residential base rate.

The regular workweek shall consist of up to five (5) consecutive eight (8) hour days or four (4) ten (10) days labor in the shop or on the job, beginning with Monday through Saturday of each week. On all residential work, including new construction, retrofit, and residential and light commercial service work, Saturday, upon mutual consent of both parties, may be worked as part of the regular work week. Employees shall be at the shop or project site at the scheduled starting time each day and shall remain until quitting time.

**Section 2.** New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, 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 one and one-half (1½) times the regular base rate except as provided otherwise and the fringe benefit contributions shall be made based on hours worked except as provided otherwise.

## **ARTICLE VI TRAVEL & SUBSISTENCE**

**Section 1.** **FREE ZONE.** A free zone and travel provisions shall be the same as the Duluth or Iron range Commercial Agreements and the location of the Employer shall determine which applies.

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

**Section 1.** The minimum rate of wages for Residential journeymen and apprentices and 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).

**May 1, 2014**

**Residential Journeymen (all were hired prior to 5-1-07) - Family Plan A**

<b>Duluth Area</b>	Taxable Base*	SASMI	Health Fund	Natl Pension	Local 10 Pension	Supp Pension	Local T.F.	SMOHI/ NEMI & ITI	Local I.F. & Drug Testing	Total Package
Journeyman	\$23.56	\$1.06	\$8.57	\$1.63	\$0.23	\$1.44	\$0.31	\$0.17	\$0.25	\$37.22

  

<b>Iron Range Area</b>	Taxable Base*	SASMI	Health Fund	Natl Pension	Local 10 Pension	Supp Pension	SMOHI/ Scholar Local T.F.	NEMI & ITI	Local I.F. & Drug Testing	Total Package
Journeyman	\$22.36	\$1.13	\$8.57	\$6.60	\$0.23	\$0.00	\$0.28	\$0.15	\$0.25	\$39.61

**May 1, 2014**

**Duluth & Iron Range Areas**

**Residential HVAC Journeymen hired on or after 5-01-07 – Family Plan B**

	Taxable Base*	Health Fund	Natl Pension	Local 10 Pension	Supp Pension	Local T.F.	SMOHI/ NEMI & ITI	Local I.F. & Drug Testing	Total Package
Journeyman	\$22.28	\$5.89	\$1.63	\$0.00	\$1.72	\$0.31	\$0.17	\$0.25	\$32.25

**May 1, 2014**

**Duluth & Iron Range Areas**

**Residential HVAC Journeymen hired on or after 5-01-07 – Single Plan B**

	Taxable Base*	Health Fund	Natl Pension	Local 10 Pension	Supp Pension	Local T.F.	SMOHI/ NEMI & ITI	Local I.F. & Drug Testing	Total Package
Journeyman	\$25.68	\$2.49	\$1.63	\$0.00	\$1.72	\$0.31	\$0.17	\$0.25	\$32.25

**May 1, 2014**

**Duluth & Iron Range Areas**

**Residential HVAC Journeymen/Light Commercial Service Work hired on or after 5-01-07 – Family Plan B**

	Taxable Base*	Health Fund	Natl Pension	Local 10 Pension	Supp Pension	Local T.F.	SMOHI/ NEMI & ITI	Local I.F. & Drug Testing	Total Package
Journeyman	\$35.18	\$5.89	\$1.63	\$0.23	\$1.72	\$0.31	\$0.17	\$0.25	\$45.38



May 1, 2014

**Duluth & Iron Range Areas**

**Residential HVAC Journeymen/Light Commercial Service Work – Single Plan B**

	Taxable Base*	Health Fund	Natl Pension	Local 10 Pension	Supp Pension	Local T.F.	SMOHI/ NEMI & ITI	Local I.F. & Drug Testing	Total Package
Journeyman	\$38.58	\$2.49	\$1.63	\$0.23	\$1.72	\$0.31	\$0.17	\$0.25	\$45.38

NOTE: Please see the current wage rate sheets for all of the options or health coverage.

ALSO NOTE: Effective May 1, 2015 there is an increase of one dollar and ten cents (\$1.10) in the Total Package for residential journeymen and residential HVAC journeymen in the Duluth and Iron Range areas and on May 1, 2016 there will be an additional increase in this total package of one dollar and ten cents (\$1.10). The allocation of those raises will be made at those times.

When a residential service person is doing light commercial service work, they will be paid the total package listed above.

Note: SASMI and the National Pension Fund contributions will continue to be paid on existing Residential journeymen and apprentices, but not on the new HVAC journeymen, apprentices, tradesmen, or applicant classification.

Every Employer signatory to this Agreement hereby agrees to deduct, from the Taxable Base Wage Rate of all employees covered by this agreement, the applicable organizing fund/dues assessment for each hour worked in the amount specified in Article VII Section 1 of this Agreement and the applicable wage rate sheets. This assessment shall be established and administered solely by the Union to promote, support, and improve employment opportunities for members through organizing, market expansion, regulatory initiative, to include and all other legitimate purposes approved by the membership.

Payments pursuant to this Article shall be made in accordance with Article XIII herein.

**Section 2.** On all residential work specified in Article I of this Agreement fabricated and/or assembled by residential sheet metal employees with the jurisdiction of this Union, or elsewhere, for erection and/or installation within the jurisdiction of any other local union affiliated with International Association of Sheet Metal, Air, Rail, and Transportation (SMART) whose established residential wage scale is higher than the wage scale specified in this Agreement, the higher residential wage scale of the job site union shall be paid to the residential employee employed on such work in the home shop or sent to the job site.

**Section 3.** Except as provided in Sections 2 and 4 of this Article, the Employer agrees that residential sheet metal employees hired outside of the territorial jurisdiction of this Agreement shall receive the residential wage scale and working conditions of the local agreement covering the territory in which such work is performed or supervised.

**Section 4.** When the Employer has any residential sheet metal work specified in Article 1 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 International Association of Sheet Metal, Air, Rail, and Transportation (SMART), he is to contact the Business Managers of the respective jurisdictions for determination of manpower supply applicable to each job.

Residential sheet metal 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 sheet metal 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 International Association of Sheet Metal, Air, ail, and Transportation (SMART) covering the area, the minimum conditions of this agreement shall apply.

**Section 5.** In applying the provisions of Sections 2, 3, and 4 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 6.** 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 7.** Wages at the established rates specified herein shall be paid by check. No more than one (1) week of pay shall be withheld. Wages may be paid by mail or direct deposit. However, employees, when discharged, shall be paid in full, at or before quitting time on the day of discharge.

**Section 8.** Residential sheet metal 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 9.** The Employer shall provide each employee with a record of all hours worked and all deductions made from his/her wages with each wage check.

**Section 10.** All owner/members (Union members) shall pay a minimum of 145 hours of fringe benefit contributions per month for their hours of work. Both parties agree 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:

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 should include the employee’s spouse or legal partner.

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

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

**Section 11.**

(a) The employers covered by this Agreement shall contribute the amount specified in Article VII, Section 1 and Article XII, Section 1 into the Sheet Metal Workers’ Scholarship Fund(s), either Local or National, at the Union’s option, for each hours worked by the residential HVAC employees covered by this Agreement.

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

**ARTICLE VIII  
VACATIONS**

**Employee Monthly Vacation Accounts.** The Vacation and Organizing deduction listed on the applicable wage rate sheets shall be remitted to the Funds Office, which in turn shall forward the applicable Vacation amount to the “Credit Union” designated by the Union, hereinafter referred to as the “Credit Union,” and the Organizing amount to the Union. When transmitted by the Employer to the Credit Union through the Funds Office, the proper Vacation amount shall be deposited to the account of each employee. Each Employer shall include with the check for such remittance a report form indicating the name, Social Security Number, and amount transmitted on behalf of each employee. Each Employer agrees that such payments shall be transmitted no later than the tenth (10<sup>th</sup>) day of the month following the month in which the hours were worked by an employee on which said additional wage payment is due. This is subject to the one hundred eighty-four (184) hour maximum per month except for the National Pension Fund where all hours worked shall be contributed on.

The Union agrees to indemnify and hold the Employer harmless against all claims, suits, or other forms of liability arising out of the allocation of money for this Fund and any activities conducted under this Fund.

Each employer will have each employee, covered by this Agreement sign the attached authorization form.

## **ARTICLE IX PENSION FUNDS**

**Section 1.** All Employers covered by this Agreement shall contribute into the Sheet Metal Local 10 Supplemental Retirement Plan and the Sheet Metal Local 10 Pension Plan the amount per hour specified in Article VII, Section 1, for each hour worked by Residential journeymen and apprentices, Residential HVAC journeymen and apprentices, and tradesmen covered by this Agreement (subject to the one hundred eighty-four (184) hour maximum per month, except for the National Pension Fund where all hours worked shall be contributed on). The contribution rate for residential apprentices and residential HVAC apprentices and tradesmen shall be their applicable percentage multiplied by the applicable journeyman rate. On First Period HVAC apprentices there will be no pension contribution but instead the amount that would have otherwise been contributed will be added to the taxable base rate for that period only. 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.

**Section 2.** The said Pension 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 a part hereof, as if set forth in detail. There shall be no incorporation of or agreement to any term requiring Employer payments greater than the hourly contributions specified in this Agreement, actual interest and liquidated damages resulting from delinquent contributions and withdrawal liability provisions including in applicable federal law.

The Union shall not reduce or eliminate contributions to a pension if it could trigger withdrawal liability or excise taxes for any Employer. In the event Employer assessments or excise taxes are required to be paid to any pension fund (or the IRS in the case of an excise tax) for work performed under this Labor Agreement, the Employer shall be entitled to make an equal offset to the taxable base rate. As an example, if the Employer is required to pay an assessment of twenty-five cents (\$.25) per hour to the National Pension Fund, the Employer shall deduct an equal amount from the employee's taxable base pay.

## **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 #10 Benefit Fund for each hour worked. Subject to a maximum of one hundred eighty-four (184) hours per month by the Residential journeymen and apprentices and the Residential HVAC journeymen, apprentices and tradesmen on their payroll covered by this Agreement except for the National Pension Fund where

all hours worked shall be contributed on.

**Section 2.** The said Health Fund shall be administered pursuant to the provisions of the applicable Agreement and Declarations 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.

If the current Employer contribution is less than the cost of such National Health Program, both parties agree to reopen the contract to renegotiate this item only.

## **ARTICLE XI INDUSTRY FUND**

All Employers covered by this Agreement for the Duluth area and Iron Range area shall contribute the applicable amount per hour stated on the applicable wage rate sheets for each hour worked by (subject to the one hundred eighty-four (184) hour maximum per month, except for the National Pension Fund where all hours worked shall be contributed on). all Residential journeymen and apprentices and Residential HVAC journeymen, apprentices, and tradesmen covered by this Agreement to the Sheet Metal & Roofing Industry Fund of the North Central Region, the Duluth Sheet Metal and Roofing Contractors Industry Fund and to the Sheet Metal and Air Conditioning Contractors National Industry fund of the United States (IFUS) for purposes specified by the applicable Agreements and Declarations of Trust.

This amount includes the applicable amount for the Drug Testing program in each area.

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.

## **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 VII, Section 1 for each hour worked (subject to the one hundred eighty-four (184) hour maximum per month, except for the National Pension Fund where all hours worked shall be contributed on) by Residential journeymen and apprentices covered by this Agreement. The contribution amounts for Residential HVAC journeymen, apprentices, and tradesmen are set forth on the applicable wage sheets.

	<b><u>Duluth</u></b> <b><u>May 1, 2014</u></b>	<b><u>Iron Range</u></b> <b><u>May 1, 2014</u></b>
International Training Institute (ITI)	\$.12	\$.12
Local Training Fund	\$.31	\$.25
National Energy Management Institute (NEMI)	\$.03	\$.03
Scholarship Fund	\$.00	\$.01
Sheet Metal Occupational Health Institute (SMOHI)	\$.02	\$.02

**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 Employers and shall be considered as a 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 SMART 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.

**Section 4.** The allocations to the above Funds (the Health Fund, the Pension Funds, and the 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 except for the Local Industry Fund(s), in which case(s) any change will not increase or decrease the taxable base. Any increase or decrease will result in an equal increase or decrease in the total package. The contractors will bear the entire cost of any such increase or receive any such reduction.

## **ARTICLE XIII PAYMENTS DUE FUNDS**

**Section 1.** The contributions to the Funds designated in Articles III, VII, IX, X, XI, XII and XIX 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 (formerly called the Control Board). 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 to a suitable collection agency, bank or other institution designed 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 therefore shall be available as herein provided.

**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 III, VII, IX, X, XII and XIX of this Agreement are due in the Funds Office on the tenth (10<sup>th</sup>) day of the following month and Employers whose contributions are not received by the Funds Office within five (5) days after the tenth (10<sup>th</sup>), 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 (10<sup>th</sup>) 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 Control Board determines necessary, and the delinquent payment is not rendered when the Employer is contacted by the Control Board, 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 payday. If payment is not received on this date, the Control Board 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 selected 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 Control Board will meet the first (1<sup>st</sup>) 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 Control Board.

#### **ARTICLE XIV CONTROL BOARD**

**Section 1.** The Funds Office shall be administered by the Funds Office Control Board 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 Control Board Trustee must be a current Trustee of at least one (1) of the following: The Sheet Metal Local 10 Pension, Benefit or Journeyman & Apprentice Trust Funds.

#### **ARTICLE XV EMPLOYER 401(k) PLANS**

Any Employer covered by this Agreement may offer any or all employees covered by this Agreement (at the Employer's sole choice) the individual option to participate in the Employer's 401(k) Pension Plan. In the Employer's 401(k) Plan, any match by the Employer will be in its sole discretion to its sheet metal employees, and all other aspects of the Employer's 401(k) Plan shall not be the subject of collective bargaining or the grievance procedure under this Agreement.



## **ARTICLE XVI TOOLS AND TRANSPORTATION**

**Section 1.** The Residential journeymen and apprentices and the Residential HVAC journeymen, apprentices, and tradesmen covered by this Agreement shall provide for themselves the following hand tools, which shall be in accordance with OSHA Standards:

tool box or pail	combination square	dividers
tinner's hammer	drive turner	small hand seamer
25 ft. tape measure	tool pouch	hand crimper
wrenches (3/8 to 3/4)	pry bar (wonder bar)	utility knife
locking pliers (vice grips)	duct stretcher	scratch awl
torpedo level	claw hammer	3/8" ratchet set
9" adjustable pliers	duct hanger w/chains	10" crescent wrench
screwdrivers (Phillips & regular)	aviation snips (straight, left, & right)	

and such other tools as the parties may agree to in writing during the term of this Agreement.

**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.** No employees covered by this agreement shall be required as a condition of employment to furnish the use of their personal cell phone for company use. Where the employee agrees to use his or her personal cell phone for company use he or she will be reimbursed \$10/week. If the use of a company cell phone is offered and turned down there will be no reimbursement to that employee.

**Section 4.** 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.

## **ARTICLE XVII 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/her 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 1 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 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/she 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 therefore 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 XVIII JURISDICTIONAL DISPUTES**

Agreements, national in scope, between International Association of Sheet Metal, Air, Rail, and Transportation (SMART) 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 by all unions involved

in the claim work 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.

Where all the unions involved in the claim of jurisdiction do not agree, this clause shall be null and void.

## **ARTICLE XIX APPRENTICES**

**Section 1.** All duly qualified residential apprentices and 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 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 Employers shall be entitled to apply to the Joint Apprenticeship Committee on the basis of one (1) residential apprentice or residential HVAC apprentice for every one (1) residential journeyman or residential HVAC journeyman 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. Where there are not enough qualified Residential journeymen and/or Residential HVAC journeymen available, this ratio shall not apply.

**Section 4.** All applicants for residential HVAC apprenticeship shall be at least eighteen (18) years of age and each registered apprentice shall serve an apprenticeship of two (2) 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 apprentices and residential HVAC apprentices shall be established and maintained on the following percentage basis of the established base wage rate of the Residential journeymen and the Residential HVAC journeymen respectively:

Residential Apprentices:

Period	Percentage
1	45%
2	55%
3	65%
4	80%

Residential HVAC Apprentices:

Period	Percentage
1	55%
2	65%
3	75%
4	85%

Periods 1 through 4 shall be one thousand (1,000) work hours for each period of both of the above programs. When the residential HVAC apprentice completes Period 4 and the required NATE exams, then he or she will become a Residential HVAC journeyman. If these exams are not completed by the end of Period 4, the apprentice will advance to Period 5 until the exams have been completed and will then advance to journeyman.

The Employer shall make the fringe contributions to the applicable funds (in addition to the base wage rate set forth above) as set forth in the current residential wage sheets. The pension

contribution rates for residential apprentices and residential HVAC apprentices shall be at their applicable percentage rate above.

**Section 6.** Residential HVAC applicants shall serve an applicant period of five hundred (500) hours with no maximum number of hours. After employing the applicant, the Employer may request that the Joint Apprenticeship & Training Committee (JATC) indenture the applicant after the five hundred (500) hours, and the JATC may approve or deny this request in accordance with its standards, rules and regulations.

The Employer shall make contributions to the Local Training Fund and the Local Industry Funds at the rates set forth in Article VII, Section 1, of this Agreement on behalf of the applicant. Upon indenture, the apprentice fringe benefit contributions set forth in Section 1 of Article VII shall be paid by the Employer.

The starting minimum wage scale for applicants shall be fifty percent (50%) of the established base wage rate of Residential HVAC journeymen. The base wage rate may include an amount for union organizing. The actual amount shall be as listed on the applicable wage sheet. This amount shall be deducted and transmitted in accordance with Article VII, Section 1(a).

After five hundred (500) hours of work, the Employer must provide health insurance coverage for applicants by providing single Plan B coverage at the then current contribution rate. Health coverage may be provided prior to that at the election of the Employer.

When an Employer requests a residential HVAC apprentice and is entitled to one and none is available, an applicant may be employed. Also, residential HVAC Employers may also use up to two (2) applicants in place of apprentices in the apprentice ratio. 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.

**Section 7. RESIDENTIAL HVAC TRADESMEN**

(a) A new residential sheet metal worker employee who has never graduated from an approved apprentice program, who is not a residential apprentice or journeyman or a residential HVAC apprentice or journeyman, and who has three (3) or more years of residential sheet metal work experience shall be a tradesman.

(b) Wages & Fringe Benefits:

Stage 1 - 0-1500 hours	80% of residential HVAC journeyman taxable base rate plus pension contributions at that percent plus other fringe benefit contributions.
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Stage 2 - 1500-3000 hours	90% of residential HVAC journeyman taxable base rate plus pension contributions at that percent plus
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other fringe benefit contributions.

Stage 3 - 3001 hours

Advance to residential HVAC journeyman when work hours reach this point and all agreed upon related training has been completed.

(c) Related Training. After the initial thirty (30) days of employment, the employer and the Union will evaluate the tradesman and jointly determine what related training will need to be completed in each of the two (2) stages of this program. Where the residential tradesman fails to complete the agreed upon training at each step, that individual will be held at that stage until that training is successfully completed, but in no case for more than one (1) calendar year. If the training is not completed in that year, then the individual's employment must be terminated. This related training is not limited to the normal apprentice training: it can be customized to fit each residential tradesman's needs. The residential tradesman shall not count as an apprentice or journeyman in the ratios provided herein.

**Section 8. RESIDENTIAL HVAC SERVICE APPRENTICE TRAINING:**

1. The First year of training would be regular first year of sheet metal training for the required hours on Fridays and Saturdays.
2. The second year of Apprentice training where there are more than 2 Residential Apprentices taking service training will be 192 hours of Residential Service Training which would include but not limited to, Refrigeration components and applications, reclaiming theory, electricity, forced air furnace, CFC certifications, trouble shooting, NATE training and certification. This curriculum will be address regularly with the input of the Residential contractors.

If this above is not available because of the lack of more than two (2) second year residential HVAC apprentices in the program needed to facilitate the second year service class, then the employer would have the option as follows:

The second year of Service Apprentice training would be 144 hours of ride along service training with a journeyman serviceman. That would be eighteen eight hour days or less than once every other week. In addition to this these apprentice would attend the 40 hour service class that is taught each year by the JATC for a total of 184 hours of training.

The Apprentice Fund will reimburse the employer of the Service Apprentice for a maximum of 140 hours of ride along training for that year at the current total package rate for that apprentice.

**Section 9.** The Trustees of both the Duluth-Superior Sheet Metal Joint Journeymen and Apprenticeship Training Trust Fund and the Trustees of the Iron Range Sheet Metal Joint Journeymen and Apprenticeship Trust Fund may agree by a majority vote of each Trust to combine these two Trust Funds into a single Trust for both areas. This would still leave each area

with their own Joint Apprenticeship and Training Committee and it would be those two JATCs that would determine the training that each area's apprentices would be required to receive.

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

The undersigned Employer expressly agrees that, if he/she 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 contributions so that his employees, including the owner-member(s), 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, subdivision 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 Areas 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 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 (1<sup>st</sup>) and fifteenth (15<sup>th</sup>) day of each month.

**ARTICLE XXII  
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 International Association of Sheet Metal, Air, Rail, and Transportation (SMART) 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 XXIII MISCELLANEOUS**

**Section 1.** The parties agree that the Employer may use a Residential HVAC journeyman or apprentice, a Residential journeyman or apprentice, or a Residential HVAC tradesman in the place of or in the slot of a commercial apprentice, pre-apprentice or classified worker on commercial work when there is not enough residential work available. Open commercial apprentice slots can only be filled for a period of two (2) weeks. If there is a commercial apprentice available after two (2) consecutive weeks, the unemployed apprentice must then be used in the open apprentice slot. In that situation, only the open slots of pre-apprentices or classified workers may then be filled by these residential workers. The base rate of pay and fringe package for the residential worker shall remain the same as it was for residential work. This is not an additional slot, but only applies to slots available based on the current number of commercial journeymen employed.

### **Section 2. TRANSFER FROM RESIDENTIAL TO COMMERCIAL.**

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

1. Completed ten thousand (10,000) work hours as a Residential journeyman or a Residential HVAC journeyman and
2. Passed a competency test administered by the JATC. The Local JATC will develop this test.

Alternatively, the Residential journeyman or 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. The Joint Apprenticeship and Training Committee shall not grant any related training credit for the residential related training by the JATC and completed by the Residential journeymen or apprentices or Residential HVAC journeymen or apprentices.

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

Upon a sixty (60) day notice, the following Drug and Alcohol Testing Policy may be implemented.

**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 Benefit (Health) Fund. 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:

- (a) Following the sixty (60) day required notice of the implementation of this Program, all currently employed sheet metal workers (journeymen, apprentices, classified and all industrial sheet metal workers, including metal trades mechanics) shall be tested initially for the presence of drugs and/or alcohol.
- (b) Pre-employment screening.
- (c) Probable cause testing.
- (d) Work opportunity mandated testing.
- (e) Post-accident testing.
- (f) Random 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 (and Wisconsin law where required), 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 or Wisconsin), 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 or Wisconsin), whichever are the more stringent.

**Section 3. PRE-EMPLOYMENT SCREENING.** The Association and (in the cases of apprentices) the Sheet Metal Joint Apprenticeship and Training Committee (JATC) shall require all persons who have applied to work as an apprentice, classified worker, and metal trades mechanic to submit to a drug and alcohol test. The apprentice, classified worker, metal trades mechanic, and journeyman not previously tested will be required to submit to testing only after an Employer has made a request for a worker in that classification from the Union hall and prior to that person reporting to the Employer for work. The initial request for an apprentice, classified worker, metal trades mechanic or journeyman not previously tested shall be a conditional offer of employment. The costs of the test will be paid by the Association.

**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.

Where work opportunity mandated testing has taken place, the employee may elect (where permitted) to have the results of that testing transmitted to this drug-testing program. Those results could then be used in certain future work opportunity mandated testing so that those employees who had been tested recently could avoid being retested.

**Section 6. POST-ACCIDENT TESTING.** Employees shall be tested for the presence of drugs or alcohol if the employee sustains a personal injury, as that term is defined in Minn. Stat. §176.011, Subd. 16, or has caused another employee to sustain a personal injury or has caused a work-related accident or was operating or helping to operate power tools, machinery, equipment, or vehicles involved in a work-related accident.

**Section 7. RANDOM TESTING.** Under Minn. Stat. §181.950, Subd. 13, *Safety Sensitive Position means a job, including any supervisor or management position, in which an impairment caused by drug and alcohol usage would threaten the health or safety of any person.* By nature of our work, all work performed by employees under this Agreement is safety sensitive within the meaning of Minn. Stat. §176.011, Subd. 16 and thus, all employees

are subject to random testing. The Employer may conduct random testing on a total number of employees not to exceed twenty percent (20%) each year.

**Section 8. PROVISIO.** Testing in any of the above situations shall be conducted and governed in accordance with the general provisions of this Agreement. In addition, should this program not be accepted by the Employer customers who are currently requiring testing of the employees prior to allowing them to work on their property and/or equipment within one (1) year after its implementation, the parties agree to meet and negotiate a program that will meet the customer's requirements.

**Section 9. PROGRAM ADMINISTRATIVE COSTS.** The parties agree that the Local Industry Fund will be used to pay for the administration of this Drug and Alcohol Testing Program. One hundred percent (100%) of the cost of the administration will be paid for by the Employers over and above the current total package costs. The Employers may increase the total package to institute this Program so long as they give a sixty (60) day notice for both the initial cost increase and any subsequent cost increases.

## **ARTICLE XXV ALTERNATIVE DISPUTE WORKERS' COMPENSATION PROGRAM**

The parties agree to allow any contractor(s) signatory to this Agreement to participate in the jointly managed alternative dispute resolution workers' compensation program known as the Union Construction Craft Workers' Compensation Program or such similar program. Each signatory contractor, acting alone and at their sole option, may (1) decide to participate, (2) decide not to participate, and (3) if once participating, decide unilaterally to cease participation in said program.

It is the purpose of this alternative dispute resolution workers' compensation program to provide a system to ensure the timely and fair payment of workers' compensation benefits required by Minnesota law or the law of any other jurisdiction to participants who have suffered work-related illnesses or injuries while performing work under this Collective Bargaining Agreement.

The operation of the alternative dispute resolution workers' compensation program will be determined by the trustees in accordance with the Agreement and Declaration of Trust of the Union Construction Crafts Workers' Compensation Program (hereinafter the "Program"). This Program will be administered by an equal number of Employer Trustees and Union Trustees and will be funded from contributions from participating Employers on behalf of employees covered by this and other Collective Bargaining Agreements.

The parties hereto and any contractor deciding to participate in this Program agree to be bound by the Agreement and Declaration of Trust establishing the Program, together with any amendments thereto and rules and regulations established by the trustees. The parties hereby designate as their representatives on the Board of Trustees such trustees as are named pursuant to

the Trust Agreement, together with any successors who may be appointed pursuant to the Trust Agreement.

The participating contractors hereby agree to be bound by the delinquency collection procedures established by the trustees of the Fund. The amount of contributions to this Fund shall be established by the trustees and may be changed from time to time.

The parties and all participating contractors also agree that participation in this Program is specifically entered into based upon the "Indemnification Policy" that was agreed to by the Program's Board of Trustees on January 17, 2006, and the representations regarding that "Indemnification Policy" made by Kevin Gregerson; Bill Ecklund of Felhaber, Larson, Fenlon and Vogt; and Shaun Irwin of the Anderson Agency.

In the event that said "Indemnification Policy" is modified or terminated by the Program or its underlying insurance policy provided by Chubb is modified or terminated, this section (Section 3) is terminated effective that same date. This termination will be effective without any action necessary by the parties to this Agreement. In such an event, the parties may agree to reinstate this section, but any agreement to do so must be done in writing and signed by authorized representatives of Sheet Metal Workers Local No. 10 and the Duluth and Iron Range Divisions of SMARCA, Inc.

The parties also agree to participate in other such programs that have similar characteristics and that agree to similar terms as contained herein.

**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**

Parties agree to meet yearly to evaluate the residential industry and see if work is being recovered.

**ARTICLE XXVIII  
EFFECTIVE DATES, SIGNATURES &  
WORK STOPPAGE CLAUSE**

This Agreement shall become effective on the 1<sup>st</sup> day of May, 2014, and shall remain

in full force and effect until the 30<sup>th</sup> day of April, 2017, 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 serviced, this Agreement shall continue in force and effect until conferences relating thereto have been terminated by either party.

It is mutually agreed that SMARCA will produce the first draft of a new contract document within thirty (30) days of agreement. The Union will provide a response within ten (10) days of receiving the draft. Thereafter, the exchange between both parties will continue on the ten (10) day cycle until final approval is reached. Upon agreement of both parties changes to this agreement can take place during the term of the agreement.

This Agreement is the entire Agreement between the parties.

IN WITNESS WHEREOF, the parties hereto affix their signatures this 1<sup>st</sup> day of May, 2014.

SMARCA REPRESENTATIVE:

INTERNATIONAL ASSOCIATION OF  
SHEET METAL, AIR, RAIL AND  
TRANSPORTATION  
LOCAL UNION NO. 10, DULUTH/  
IRON RANGE AREAS

\_\_\_\_\_  
Jim Bigham  
CEO  
SMARCA, Inc.

\_\_\_\_\_  
Mike McCauley  
Financial Secretary/Treasurer

EMPLOYER:

\_\_\_\_\_  
Doug Christy  
Business Representative

Firm \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_