

HVAC (RESIDENTIAL), LIGHT COMMERCIAL AND SERVICE AGREEMENT

entered into between

**THE SHEET METAL AND ROOFING CONTRACTORS'
ASSOCIATION OF SOUTHEASTERN NEW YORK
(Referred to as SMACNA or Employer)**

And

**LOCAL UNION 38
OF THE INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL
AND TRANSPORTATION WORKERS (SMART)**

hereinafter referred to as the “*UNION*” for:

COUNTIES

New York:

Westchester

Putnam

Dutchess

Orange

Rockland

Sullivan

Ulster

Connecticut:

Fairfield

Litchfield

EFFECTIVE: May 1, 2019 TERMINATES: April 30, 2024

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FUNDAMENTAL PRINCIPLES

The Employers and the Union have a common interest in harmonious relations. All will benefit by a continuous peaceful operation of the industrial process and the devotion of the means of production for the common good. To these ends, this Agreement is made.

Gender Neutral. Wherever used herein, a pronoun in the masculine gender shall be considered as including the feminine gender, unless the context clearly indicates otherwise.

ARTICLE 1 – SCOPE AND DEFINITIONS

SECTION 1. – Term

This Agreement shall be effective May 1, 2019, and shall terminate on April 30, 2024.

SECTION 2. – Scope

This Agreement covers the rates of pay, rules and working conditions of all employees of the Employer engaged in, but not limited to, the fabrication, erection, installation, repairing, replacing, and servicing of all heating and air conditioning systems and food service equipment for light commercial and residential structures, Automatic Temperature Controls, Indoor Air Quality, Testing and Balancing and Architectural sheet metal work on such structures (sometimes hereinafter referred to as the “Work”). The terms set forth in this HVAC Agreement constitutes the entire Collective Bargaining Agreement between the parties governing the Work. The Employer agrees that none but Journeypersons, Apprentices and Classified Sheet Metal Workers shall be employed on any work described in Article I. Under no circumstances shall a contractor who is also signed with a UA local be required to use Local 38 employees for service work if service work is encompassed in the Employer’s UA Agreement.

SECTION 3. – Definitions

(a) HVAC (RESIDENTIAL). HVAC (Residential) is defined as applying to work on single family dwellings, multiple family housing units, apartments, and condominium homes where each individual family apartment is individually conditioned by separate and independent unit or system. Duct must be fabricated by or purchased from a signatory shop. When fabrication is other than by commercial rate workers, the Employer must maintain a separate shop or separate and distinct work area within the shop for residential or light commercial duct fabrication. Also refer to Section 5, Manufactured Items.

(b) Light Commercial refers to any job in single or multiple-tenant area not exceeding One Hundred Thousand (100,000) sq. ft., except where all trades are being bid under “Building Trades Rate”.

(c) Service Work refers to the installation, replacement and/or servicing of refrigeration, heating, cooling, and/or ventilation, mechanical equipment and related piping systems irrespective of the power source.

(d) HVAC Technician refers to Light Commercial and Residential workers and apprentices, including classified workers.

(e) Service Journeypersons must have practical working experience in his trade. He may be required to pass an examination as to his skills. The scope of work shall include all work necessary to keep existing systems of any type operating in an efficient manner. A Service Journeypersons may perform any work permitted under this Agreement for the purpose of further developing their technical skills.

(f) Service and HVAC Apprentices shall be governed by the local apprenticeship committee and shall be allowed to perform all work pursuant to this agreement, limited only by their capabilities. They shall be under the direction of an HVAC Technician or Service Journeyperson.

(g) Architectural Sheet Metal Work, as it relates to this Agreement, shall be defined as any interior and/or exterior work, either done for waterproofing or decorative purposes.

(h) Reference to any of the work encompassed under this Agreement includes the unloading, handling upon delivery to the job, erection and installation of piping, duct work, fixtures, appurtenances and appliances necessary to make a complete ventilating and/or air-conditioning installation.

(i) Applicable wage sheet refers to the wages and benefits paid to the respective trades covered under this Agreement (See Applicable Wage Sheets).

(j) Variable flow refrigerant systems are considered part of Light Commercial.

(k) Solar Panels

(l) Metal Roofing

SECTION 4. – Local Shop

Any local sheet metal contractor performing work described under this Agreement within the jurisdiction of Local Union (SMART) 38 is required to sign this Agreement (“Signatory Contactor”) and have a fabrication facility within the jurisdiction to manufacture duct. In lieu of having a manufacturing facility, a Signatory Contractor may purchase duct, but only from another Signatory Contractor. (See Section 5 below)

SECTION 5. – Manufactured Items

Flexible duct may be purchased and used in accordance with local building codes. Fabricated duct, round pipe and fittings for residential installation and light commercial work may be purchased with blue label.

SECTION 6 – Favored Nations Clause

The Union agrees that if, during the life of this Agreement, it grants to any other Employer in the Sheet Metal Contracting Industry on work covered by this Agreement, any better terms or conditions than those set forth in this Agreement, the Association may adopt such better terms and/or conditions. Such better terms or conditions shall become effective as terms and/or conditions of this Agreement immediately upon written notification to the Union of the adoption by the Association. Upon written request from the Association, the Union shall immediately provide copies of any bargaining agreement that it is party to, covering the performance of any work that falls within the scope of work covered by this Agreement, so that the Association may effectively utilize this provision.

ARTICLE II – NON-DISCRIMINATION CLAUSE

SECTION 1. The Employer and the Union agree there shall be no discrimination against any Employee because of race, color, religion, sex, national origin, age or disability.

SECTION 2. Wherever any words are used in this Agreement in the masculine gender, they shall be construed as though they were also used in the feminine gender in all situations where they would so apply.

ARTICLE III – MANAGEMENT RIGHTS

The management of the Employer's business, including but not limited to the direction of the working force, the right to hire, to plan, direct, control and schedule all operations (including the scheduling of the work force), the right to establish, eliminate, change or introduce new or improved methods, machinery, quality standards or facilities is the sole and exclusive prerogative and responsibility of the Employer. The need for, designation of and the determination of the number of Employees and foremen, if any, are solely the responsibility of the Employer. The Employer's salaried personnel may handle all dispatching and assignment of duties. The Employer retains all rights not specifically mentioned or referenced by this Agreement. The Employer may discipline or discharge employee for just cause.

ARTICLE IV – UNION SECURITY

SECTION 1. The Union agrees to furnish, upon request by the employer, duly qualified HVAC Technicians, Service Journeypersons, Apprentices and Classified Sheet Metal Workers in sufficient number as may be necessary to properly execute work contracted for by the employer in the manner and under the conditions specified in this Agreement.

SECTION 2. All members of the Union, now in the employ of the Employer, shall remain members in good standing in the Union during the term of this Agreement. Employees in all classifications covered by this Agreement, and hereinafter employed by the Employer, shall become members of the Union on the earliest date provided by applicable federal law after their employment, the date of signing of the contract by the Employer, or completion of any probationary period, whichever is later. This article shall be effective to the extent permitted by applicable state and federal laws.

SECTION 3. While Local 38 will continue to offer Journey person Training and Certifications to its members, it is mandated that all employers outside Local 38's jurisdiction, and not signatory to this Collective Bargaining Agreement, must assume the cost of additional training for any certifications required to complete a project.

ARTICLE V – UNION REPRESENTATION AND ACCESS TO JOBS

SECTION 1. Authorized representatives of the Union shall have access to the work where Employees covered by this Agreement are employed, providing they do not unnecessarily interfere with the Employer's employees or customers' employees or cause them to neglect their work and, further provided, such Union representative complies with customer requirements.

SECTION 2. The Union may request recognition as the exclusive collective bargaining agent for all employees employed by the Employer in the classifications and geographic jurisdiction covered by this Agreement, whether or not they are members of the Union. In determining whether the union has the support of a majority of the Employer's employees, such showing may be based upon either a majority of those employed at the time such recognition is requested, or, a majority of those eligible to vote under the National Labor Relations Board's Steiny-Daniel formula. No later than 10 days following the Union's request, the Employer shall review employees' authorization cards submitted by the Union in support of its claim to represent and have the support of a majority of such employees. If a majority of the employees has designated the Union as their exclusive collective bargaining representative, the Employer will recognize the Union as such majority representative of all employees in the classifications and geographic jurisdiction covered by this Agreement. The Employer shall not file or cause the filing of a petition for election or unfair labor practice charge with the National Labor Relations Board in connection with any demands for recognition provided for here. Article X of this Agreement shall be the sole and exclusive means of resolving any dispute concerning this provision.

ARTICLE VI – COMMON DUTIES

All tradesmen, irrespective of their classification pursuant to this Agreement, shall be allowed to perform the following duties:

- 1) Run and hook up line sets
- 2) Filter changing
- 3) Oiling and greasing
- 4) Belt adjusting or replacement
- 5) Cleaning of coils, evaporator and condenser tubes
- 6) Installation and replacement of all residential single unitary heating, air conditioning units
- 7) General housekeeping
- 8) Truck driving including pick-up and delivery of parts or equipment
- 9) Indoor Air Quality (IAQ) related work
- 10) Any other similar duties within the capability of the worker.

ARTICLE VII – HIRING AND USE OF EMPLOYEES

SECTION 1. The Employer will first request the local union for qualified personnel. The local union, upon such request, agrees to furnish at all times to the Employer duly qualified Employees, including HVAC Technicians and Service Journeypersons with special skills where applicable, in a sufficient number, as determined by the Employer, to properly execute all work covered by this Agreement. The Employer shall retain the right to reject any applicant referred by the Union with just cause, with no monetary consequences.

In the event the local union having jurisdiction is unable to supply the requested number of qualified and competent Employees, the Union, upon request by the Employer, agrees to notify its other local unions of the availability of work and will request these local unions to refer such qualified Employees to the Employer.

If neither the local union nor the Union is able to supply competent and skilled Employees satisfactory to the Employer within forty-eight (48) hours, the Employer may hire such persons wherever available and train such persons to perform the work required. It is understood that consideration for such employment and training shall be given to Employees with previous experience in the service and maintenance industry.

SECTION 2. For Service, the Employer shall be permitted a ratio of one Service Apprentice for each Service Journeyperson. For HVAC Technicians, the Employer shall be permitted a ratio of one HVAC Apprentice for two HVAC Technicians. All Apprentices shall be under the supervision of the Local Union Joint Apprentice Training Committee until their training is satisfactorily completed.

SECTION 3. The parties to this Agreement recognize the need to provide a drug-free and alcohol-free workplace. Therefore, if the local union, in the jurisdiction where the Employer is performing work, has in place a negotiated drug and alcohol policy with the recognized contractor group, this policy shall apply. Where the local union has no drug and alcohol policy in effect in the jurisdiction where the Employer is performing work, the Employer may implement a drug and alcohol policy. A copy of the drug and alcohol policy, including testing procedures, shall be furnished to the local union in the jurisdiction where the Employer is performing work.

ARTICLE VIII – SUBCONTRACTING

In order to protect wages and working conditions of Employees working for the Employer under this Agreement, the Employer shall make every reasonable effort to utilize Employees covered by this Agreement. However, the Employer reserves the right to subcontract any or all work referred to herein, after reasonable documented effort has been made to perform the work with Employees covered by this Agreement. The Union and the Employer understand the customer may, at his discretion, choose to perform or directly subcontract for any part or parts of the work herein described. The Employer's obligation under this Agreement refers only to work that the Employer has contracted to perform.

No employer shall subcontract or assign any of the work described herein which is to be performed at a jobsite to any contractor, subcontractor, or other person or party who fails to agree, in writing, to comply with the conditions of employment contained herein including, without limitations, those relating to union security, rates of pay and working conditions, hiring and other matters covered hereby for the duration of the project.

ARTICLE IX – WORKING HOURS

SECTION 1. Regular working days shall consist of eight (8) hours labor in the shop or on the job between 6:00 AM and 5:00 PM., and the regular working week shall consist of five (5) consecutive eight (8) hour days' labor in the shop or on the job, beginning with Monday and ending with Friday of each week.

SECTION 2. Employees shall work eight (8) hours between 6:00 AM and 5:00PM, with a one-half hour lunch period (unpaid) taken between 11:00AM and 2:30PM. Employees shall be entitled to a fifteen (15) minute paid break in the morning.

SECTION 3. Employees shall be at their job location prepared to start work at the designated starting time. If the employer requires the employee to come to the shop to pick up a vehicle at the beginning of the day or to drop off a vehicle at the end of the day, then the shop, for purposes of this Article, shall be considered a job location. When employed in a shop or on a job, employees shall be governed by the regular working hours specified herein and shall provide for themselves necessary transportation within the said limits from home to shop or job to be at their respective work stations at starting time and from shop or job to home at quitting time. Other than an employee initially reporting to his first job location or leaving his job location at the end of the day's work, the Employer shall reimburse the employee for use of his vehicle at the rate as established under applicable IRS rules or regulations for reimbursement of mileage costs, to travel between job locations.

SECTION 4. SHOW UP TIME

When employees report to work at employer's discretion and are not put to work, they shall be paid the following:

- (a) Show up at designated time and unable to start - 2 hours pay.
- (b) Inability to continue work after 2 hours - 2 hours additional pay.

Under no circumstances shall the contractor be responsible for payment of more than an additional two hours of compensation.

SECTION 5. When Service Employees are required to be on standby or on call, for a period of seven days, they will be reimbursed a total of \$130.00 per week for their obligation to be available. Members are to be paid portal/portal for work performed Monday through Saturday at time and one-half and double time for Sunday/Holiday hours.

ARTICLE X – GRIEVANCE & ADMINISTRATIVE PROCEDURES

The Union and the Employer, whether party to this Agreement independently or as a member of a multi-employer bargaining unit, agree to utilize and be bound by this Article.

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. Both parties may participate in conferences through representatives of their choice.

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 the 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 where the work was performed or in the jurisdiction of the Employer's home local 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 request for its services, unless the time is extended by mutual agreement of the parties or Local Joint Adjustment Board. The Board shall consist of representatives of the Union and of the local Employers' Association and both sides shall cast an equal number of votes at each meeting. The local Employers' Association, on its own initiative, may submit grievances for determination by the Board as provided in this Section. Except in the case of a deadlock, a decision of a Local Joint Adjustment Board shall be final and binding.

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

SECTION 3. Grievances not disposed of under the procedure prescribed in Section 2 of this Article, because of deadlock or failure of such Board to act, may be appealed jointly or by either party to a Panel, consisting of one (1) representative appointed by the Labor Co-Chairperson of the National Joint Adjustment Board and one (1) representative appointed by the Management Co-Chairperson of the National Joint Adjustment Board. Appeals shall be mailed to the National Joint Adjustment Board.* Notice of appeal to the Panel shall be given within thirty (30) days after termination of the procedures prescribed in Section 2 of this Article. Such Panel shall meet promptly but in no event more than fourteen (14) calendar days following receipt of such appeal, unless such time is extended by mutual agreement of the Panel Members. Except in case of deadlock, the decision of the Panel shall be final and binding.

Notwithstanding the provisions of Paragraph 1 of this Section, an Employer who was not a party to the Labor Agreement of the Area in which the work in dispute is performed, may appeal the decision of the Local Joint Adjustment Board from that area, including a

unanimous decision, and request a Panel hearing as set forth in Section 3 of this Article, providing such appeal is approved by the Co-Chairperson of the National Joint Adjustment Board.

SECTION 4. Grievances not settled as provided in Section 3 of this Article may be appealed jointly or by either party to the National Joint Adjustment Board. Submissions shall be made and such Board may prescribe decisions rendered under such procedures. Appeals to the National Joint Adjustment Board shall be submitted within thirty (30) days after termination of the procedures described in Section 3 of this Article. The Procedural Rules of the National Joint Adjustment Board are incorporated in this Agreement as though set out in their entirety. (Copies of the procedures may be obtained from the National Joint Adjustment Board*).

SECTION 5. The Local Joint Adjustment Board Panel and the National Joint Adjustment Board are empowered to render such decisions and grant such relief to either party, as they deem necessary and proper, including awards of damages or other compensation.

SECTION 6. In the event of non-compliance within thirty (30) calendar days following the mailing of a decision of a Local Joint Adjustment Board Panel or the National Joint Adjustment Board, a local party may enforce the award by any means including proceedings in a court of competent jurisdiction in accord with applicable state and federal law. If the party seeking to enforce the award prevails in litigation, such party shall be entitled to its costs and attorney's fees in addition to such other relief as is directed by the courts.

SECTION 7. 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 grievances involved. There shall be no cessation of work by strike or lockout during the pendency of the procedures provided for in this Article. Except in case of deadlock, the decision of the National Joint Adjustment Board shall be final and binding.

SECTION 8. In addition to the settlement of grievances arising out of interpretation or enforcement of this Agreement as set forth in the preceding sections of this Article, any controversy or dispute arising out of the failure of the parties to negotiate a renewal to this Agreement shall be settled 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 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-Chairpersons 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-Chairpersons of the National Joint Adjustment Board shall be promptly so notified without recommendation from the Panel representatives. Should the Co-Chairpersons 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, Co-Chairpersons 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 National Joint Adjustment Board shall hear the matter 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 a 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 that 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-Chairpersons 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, fax, e-mail, 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.

*** All correspondence to the National Joint Adjustment Board shall be sent to the following address: National Joint Adjustment Board, PO Box 220956, Chantilly, VA 20153-0956, or 4201 LaFayette Center Drive, Chantilly, VA 20151-1219.**

ARTICLE XI – PAYMENT TO FUNDS

SECTION 1.

(a) The Employer shall pay to the Sheet Metal Contractors' Industry Fund of Southeastern New York on each hour worked by each employee of the Employer covered by this agreement, at an amount set forth on the APPLICABLE WAGE SHEET. Payment shall be in accordance with Article XV, Section 1. Payment includes any amount required to be paid to the Sheet Metal and Air Conditioners' National IFUS. The Local Industry Fund has agreed that there will be no additional monies allocated to this Fund for the duration of this CBA.

(b) Contributions will be used to promote programs of industry, education, training, negotiation and administration of collective bargaining agreements, research and promotion, such programs serving to expand the market for the services of the Sheet Metal Industry, improve the technical and business skills of employers, stabilize and improve employer-union relations, and promote, support and improve the employment opportunities for employees. No part of any such payments, however, shall be used for any other purpose except as expressly specified above.

(c) Local Industry Fund shall furnish to the Business Manager of the Union, not less often than semi-annually, written reports describing, in reasonable detail, the nature of activities in which it engaged or which it supports, directly or indirectly, with any of its funds. One time per year, the local industry fund shall include in such written report, a statement attested to by a certified public accountant and containing its balance sheet and detailed statement of receipts and disbursements.

(d) Grievances concerning use of Local Industry Fund monies to which an employer shall contribute, or for violations of other subsections of this Section, shall be processed pursuant to Article X of this Agreement.

SECTION 2. Effective as of the date of this Agreement, the Employers will contribute to all National Funds per applicable wage sheets.

SECTION 3. – PAYMENT OF WAGES BY CHECK

An employer who pays wages by check or by electronic deposit shall have the work week end on Tuesday and payment must be given to the Employee by Thursday of the same week at or before quitting time. Otherwise, payment must be made in cash on Friday before 3:30 P.M. Electronic deposit shall be with mutual consent of the Employee. If a holiday falls on a Thursday, paychecks will be given to the Employees on a Wednesday.

All employees shall receive pay receipts with each pay, showing the employee's name, hours worked, hours paid, and all deductions from the gross wages.

SECTION 4. The Employer shall obtain applicable State Disability Benefits for each covered employee when working in Local 38's jurisdiction. Premiums for it may be deducted from employee's wages as allowed by State Law.

SECTION 5. Employer agrees that upon receipt by the Union of a validly executed authorization form from the Employee/Member, it will deduct from the authorizing Employee's pay, the amount of working assessments so indicated. Not later than the 20th day of each month for monthly payers, and within ten (10) days of the end of the pay week for weekly payers, the Employer shall remit to the Union, the Union working dues deducted for the prior month, including the hourly per capita dues owed to the Sheet Metal, Air Rail and Transportation Workers, together with a list of employees and their social security numbers for whom such deductions have been made.

ARTICLE XII – TOOLS SUPPLIED BY EMPLOYER & EMPLOYEE

SECTION 1. – TOOLS

HVAC Workers covered by this Agreement shall provide all necessary hand tools and the Employer shall provide any required power tools. Except as provided herein, Service Workers and Technicians are expected to provide all power tools, gauges and instruments necessary to perform the job. The Employer shall provide a service truck and is required to provide the following, as needed, to the Service Worker:

- 1) Nitrogen Tank & Regulator;
- 2) Acetylene Tank & Regulator;
- 3) Freon Reclaimer;
- 4) Recovery Tank;
- 5) Ladders;
- 6) Water Hoses;
- 7) Safety Equipment;
- 8) Shop Vacuum;
- 9) Vacuum Pump;
- 10) Radio or cell phone, if required by Employer;
- 11) Extension cords and drop lights.
- 12) Sawzall

The Employer, at his discretion can provide any other tool he deems necessary for the employees to perform his duties in a safe and efficient manor. Tools entrusted to the employee shall be maintained by employee and be brought back to the Employer at completion of the job in the condition given out, reasonable wear and tear accepted.

SECTION 2. – PROTECTIVE EQUIPMENT

The Employer shall furnish protective equipment, such as but not limited to, gloves, goggles for welding and burning, as well as rain gear, when employees are required to work in inclement weather.

SECTION 3. – EXPLOSIVE TOOLS

Explosive tools may be used only in accordance with all State, Federal OSHA and Industry Safety Requirements. A special training program conducted by the Craft Training Fund will certify all HVAC and Service Workers.

SECTION 4. – VEHICLES

All Employers shall have the name of the Corporation or Company clearly and legibly painted or stenciled on all of their vehicles bearing commercial license plates.

SECTION 5. – LOSS OF TOOLS

The Employer shall reimburse all Employees against loss of tools and clothing on the job site due to robbery, when locked in a gang box or secured in a room where forced entry can be proven, or loss through fire or explosion.

ARTICLE XIII – APPRENTICE TRAINING & CLASSIFIED WORKERS

SECTION 1. All duly qualified apprentices shall be under the supervision and control of a Joint Apprenticeship and Training Committee composed of six (6) members, three (3) of whom shall be selected by the Employer, and three (3) by the Union. Said Joint Apprenticeship and Training 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, working conditions of duly qualified apprentices and the operation of an adequate apprentice system to meet the needs and requirements of the trade. Said rules and regulations when formulated and adopted by the parties hereto shall be recognized as part of this Agreement.

SECTION 2. The Joint Apprenticeship and Training Committee designated herein shall serve for the life of this Agreement, except that vacancies in said Joint Apprenticeship and Training Committee caused by resignation or otherwise, may be filled by either party hereto and it is hereby mutually agreed by both parties hereto, that they will individually and collectively cooperate to the extent that duly qualified apprentices be given every opportunity to secure proper technical and practical education experience in the trade, under the supervision of the Joint Apprenticeship and Training Committee.

SECTION 3. It is the understanding of the parties of this Agreement that the funds contributed by signatory employers to the National Training Fund and any Local Joint Apprenticeship and Training Fund (Local JATC) will not be used to train Apprentices or Journeyperson who will be employed by Employers in the Sheet Metal Industry not signatory to a collective bargaining agreement providing for contributions to the National Training Fund and a Local JATC. Therefore, the trustees of the National Training Fund and Local JATC shall adopt and implement a Scholarship Loan Agreement Program which will require Apprentices and Journeyperson employed by signatory Employers to repay the cost of training either by service following training within the union sector of the industry or by actual repayment of the cost of training if the individual chose to work for a non-signatory Employer in the Sheet Metal Industry. The cost of training shall include the reasonable value of all National Training Fund and Local JATC materials, facilities and personnel utilized in training. If a Local JATC does not implement the Scholarship Loan Agreement, the Local JATC shall be prohibited from utilizing National Training Fund materials and programs.

SECTION 4. It is hereby agreed that the Employer shall apply to the Joint Apprenticeship and Training Committee and Joint Apprenticeship and Training Committee shall grant apprentices on the basis of one (1) Apprentice for each Two (2) HVAC (Residential) Technicians and one (1) Apprentice for each Service Journeyman regularly employed throughout the year. Provided, however, an Employer will not be entitled to a new apprentice if the Employer has an apprentice on layoff for lack of work.

SECTION 5. Apprentices shall work under the supervision of a HVAC Technician or Service Journeyman until apprenticeship terms have been completed and they have qualified as either a HVAC Technician or Service Journeyman. Apprentices shall be permitted to perform the common tasks pursuant to Article VI without supervision when deemed appropriate by the Employer.

SECTION 6. A graduated wage scale for Apprentices shall be established and maintained on a percentage basis of the established wages of the HVAC Technician and the Service Journeyman per the respective applicable wage sheets for the apprentices.

SECTION 7.

- (a) One (1) Classified Worker for any Employer who employs an Apprentice.
- (b) Two (2) Classified Workers for any Employer who employs at least three (3) Apprentices.
- (c) Thereafter, ratio of one (1) Classified Worker for each additional three (3) Apprentices.

Classified workers may perform any work covered by Article I and will work under the supervision of a HVAC Technician or Service Journeyman. (See applicable wage rate sheet).

In the event the Employer is entitled to a Classified Worker and the Union fails to comply with the Employer's written request to furnish such worker within forty-eight (48) hours, the Employer may directly hire such employees and refer them to the Union.

<u>HVAC Technician</u>	<u>Service Journeyman</u>
First Year Apprentice (Terms 1 and 2)	First Year Apprentice
Second Year Apprentice (Terms 3 and 4)	Second Year Apprentice
Third Year Apprentice (Terms 5 and 6)	Third Year Apprentice
Fourth Year Apprentice (Terms 7 and 8)	Fourth Year Apprentice

SECTION 8. It is agreed the Craft Training Fund Trustees will set forth the Concentrated Apprenticeship Training Program and that all first year Apprentices will be probationary.

**ARTICLE XIV – SHOP STEWARD, FOREMAN, OVERTIME PAY AND
OTHER UNION RULES**

SECTION 1.

(a) The Union shall have the right to appoint one Steward to the shop, during all working hours where three (3) or more employees are employed.

(b) The Employer, or duly authorized representative, shall notify the Union Business Office by fax or e-mail, and the Steward verbally, seventy-two (72) hours in advance (excluding weekends and holidays) of laying-off a duly-appointed Steward.

If a dispute arises as to the proper performance of a Steward's duties, the Steward will remain on the job until a L.J.A.B. hearing takes place within seventy-two (72) hours, whenever possible, excluding Saturdays, Sundays, and Holidays. Unless the dispute is promptly resolved, it shall be resolved in accordance with Article X of this Agreement.

If either party fails to meet, such party shall be liable for one day's pay to the employee for each working day lost and another meeting shall be scheduled within twenty-four (24) hours; above mentioned penalty to be imposed upon the party not showing up for the meeting. This procedure shall be followed until the meeting is held.

The Steward shall be the third from the last person in the shop. In the event of a temporary shutdown, if the Steward is not the third man rehired in the shop, the Union shall have recourse to a grievance hearing under Article X; such hearings shall be held seventy-two (72) hours (exclusive of weekends and holidays) of the time the Steward is not rehired.

SECTION 2. There shall be a Local Union 38 foreman in every shop where four (4) or more workers are employed. Such Foreman shall receive \$1.50 above HVAC Technician rate.

SECTION 3. – HOLIDAYS

New Year's Day
Memorial Day
Labor Day
Thanksgiving
Christmas Eve Day

Good Friday
Independence Day
Veterans' Day
Day after Thanksgiving
Christmas Day

Note: When a Holiday falls on a Thursday, the day after (Friday) shall be paid at the overtime rate.

SECTION 4. – LAYOFF PROCEDURE

(a) The Employer must notify the employee one hour before quitting time of the layoff and pay the employee prior to the end of the workday. The Union office is to be notified of the layoff by 12:00 Noon. The Union shall not notify the employee of the layoff. If required by State Law, employees covered by this Agreement, on the day of layoff shall be given a State Layoff Slip.

(b) Employees of local contractors on layoff shall have all fringe benefits paid in full as per Article XV, Section 1, not later than the 20th day of the month following layoff.

(c) Employees of “out-of-town” contractors shall have all fringe benefit payments paid in full at the time of layoff.

SECTION 5. – OVERTIME

(a) Work outside of the regular established workweek shall be paid at one and one-half times the total hourly rate during the regular work week, Monday through Saturday.

(b) Work performed on a Sunday or a Holiday shall be paid at two times the total hourly rate (see Applicable Wage Sheets).

(c) Work performed by Service Journeyperson ON CALL outside of the normal work day, shall be paid at one and one-half times the total hourly rate. All service work pertaining to service calls performed on a Sunday or on a Holiday, shall be paid at two times the total hourly rate.

SECTION 6. – SHIFT WORK

When so elected by the Employer, multiple eight (8) hour shifts may be worked on a temporary basis. When two (2) or three (3) shifts are worked, the first eight (8) hour shift shall be the day shift and shall be paid at the straight time hourly rate of pay. The second and third eight (8) hour shifts shall each be paid at a rate not to exceed Ten (10) % above the straight time hourly rate of pay. Temporary shifts shall be for a minimum of five (5) consecutive days.

All time worked before and after the regularly established shift hours in any twenty-four (24) hour period, Monday through Friday inclusive, shall be at a rate not to exceed time and one half of the Employee’s regular shift rate of pay.

When a contractor plans shift work, the Union business office must be notified prior to the commencement of work. Retrofit work performed outside the regular workday in occupied buildings may be performed under shift work conditions to be established by the Employer and the Union.

ARTICLE XV – FUNDS

SECTION 1. PAYMENT OF FUNDS

1. *OBLIGATION OF EMPLOYER TO CONTRIBUTE.* For all work performed pursuant to the terms of this Agreement, an Employer shall make contributions to the various Sheet Metal Workers' Local 38 Fringe Benefit Funds and other designated funds as described herein, including, but not limited to those National Benefits described in paragraph 3(h)-(m), below (hereinafter "National Benefits").
2. *SHEET METAL WORKERS' LOCAL 38 FRINGE BENEFIT FUNDS.* The Sheet Metal Workers' Local 38 Fringe Benefit Funds ("Local 38 Funds") are as follows: Sheet Metal Workers' Local 38 Individual Vacation Account; Sheet Metal Workers' Local 38 Insurance and Welfare Fund; Sheet Metal Workers' Local 38 Labor Management Committee & Trust Fund; Sheet Metal Workers' Local Union 38 Profit Sharing Fund; Sheet Metal Workers' Local 38 Craft Training Fund; Sheet Metal Workers' Craft Training Building Fund; and, SMACNA Industry Fund.

The Local 38 Funds shall be administered by an equal number of representatives of the Employers and Union, in accordance with the respective Agreements and Declarations of Trust pursuant to which they are established. Any Employer signatory to this Agreement, whether or not a member of the Association, authorizes the Association to enter into appropriate Trust Agreements necessary for the administration of the Local 38 Funds and agrees to accept the Trustees appointed by the Association (and their successors) as its representatives and hereby waives all notice of such appointments and ratifies all actions already taken or to be taken by such Trustees within the scope of their authority.

The Agreements and Declarations of Trust, establishing the Local 38 Funds and National Benefits, shall conform to all requirements by law. The parties agree that all of the terms and conditions of the Agreement and Declarations of Trust, and the Plans of the Local 38 Funds and National Benefits provided for in this Agreement, are incorporated as if fully set forth herein.

In compliance with Section 302 of the National Labor Relations Act, 29 U.S.C., Section 186, the Trustees of the Local 38 Funds shall accept contributions only from employers who are bound either to this collective bargaining agreement or to a written agreement with the Trustees of the respective Funds specifying the basis upon which contributions to the Local 38 Funds are to be made.

3. *CONTRIBUTIONS.* Employers shall contribute to the following funds on behalf of their Employees according to the wages and fringe benefits negotiated by the parties ("the applicable wage sheet").
 - (a) Sheet Metal Workers' Local 38 Individual Vacation Account
 - (b) Sheet Metal Workers' Local 38 Insurance and Welfare Fund
 - (c) Sheet Metal Workers' Local 38 Labor Management Committee & Trust Fund

- (d) Sheet Metal Workers' Local 38 Profit Sharing Fund
- (e) Sheet Metal Workers' Local 38 Craft Training Fund
- (f) Sheet Metal Workers' Local 38 Craft Training Building Fund
- (g) SMACNA Industry Fund
- (h) Sheet Metal Workers' National Pension Fund
- (i) International Training Institute (I T I)
- (j) National Energy Management Institute (NEMI)
- (k) Sheet Metal Occupational Health Institute, Inc. (SMOHIT)
- (l) Sheet Metal Scholarship Fund
- (m) Stabilization Agreement of the Sheet Metal Industry (SASMI)

Contributions, except for vacation, are based upon hours worked. The parties agree that in accordance with procedures adopted by the Sheet Metal Workers' Local 38 Individual Vacation Account ("Vacation Account") and Sheet Metal Workers' Profit Sharing Fund ("Profit Sharing Fund"), a participant may elect to forego contributions to the Individual Vacation Account to which he/she is otherwise entitled, and in return have such monies contributed on his/her behalf to the Sheet Metal Workers' Profit Sharing Fund, with the understanding that such contributions will be made on an after tax basis.

Employer contributions become vested plan assets at the time they become due and owing to the above-referenced Funds. Title to all contributions paid into, and/or due and owing such Funds, shall be vested in, and remain exclusively in, the Fund.

Employers shall also forward the Sheet Metal Workers Local 38 Work Assessments deducted from employees pay at the same time and in the same manner as the contributions to the fringe benefit funds.

The Employer expressly agrees to make available its books and records to any auditor appointed by the Trustees of all Funds set forth in Paragraph 3 above, in order to verify the correctness of the Employer's reporting and payment of contributions. The Employer agrees to pay all legal expenses and costs of collection for the cost of an audit in the event the Trustees are required to compel the Employer to submit to an audit, or if the audit reveals that the Employer failed to make contributions during the audit period in an amount greater than 20% of the total contributions paid during that audit period, The Employer also agrees to pay interest in the amount of 5% on delinquent contributions discovered during an audit.

4. *BILLING PROCEDURE.* The Employers must submit hours worked by bargaining unit employees directly to Local Union 38 for all Local Benefits and to the National Benefit Fund for National Benefits, on the Programs designated by the Local and the National Pension Fund, by the 7th day of the month following the month in which hours are worked for monthly contributors and within 2 days of the end of the work-week for those paying on a weekly basis. Until such time as deemed unnecessary by the Local, Employers must continue to submit hours to the Fund office on the contribution form as supplied by the Fund Office.

5. Employers must report all hours worked (or the absence thereof) by Employees under this Agreement. Upon input of the hours into the designated program, the invoice will be generated and the Employer must submit payment of National Benefits to the NBF, and Local Benefits to the designated Local Funds and Work Assessments to the Union, no later than the 20th day of the month following the month in which the hours were worked, for monthly payers, and within ten (10) days after the week ending for those Employers paying weekly. New Employers engaging in collective bargaining with Local 38 shall be required to submit benefits weekly for a period of one (1) year. Until such time that ACH is available, Employers shall submit eight (8) individual checks for all Local Benefits due and Work Assessments. National Benefits shall be paid by ACH through the National Pension Fund designated program. At the time that ACH is available for payment of Local Benefits, Employers may choose to continue to issue eight (8) separate checks or use ACH payments to each of the seven (7) Funds and one (1) check to the Union for Work Assessments, using the ACH system developed by the Local.

6. In the event the Employer's Local contributions and Work Assessments fail to meet the Employer's entire obligation and a shortage occurs, any moneys subsequently remitted and/or collected shall be applied as follows: first to 100% of the outstanding balance of the first below listed Fund (a), and then 100% to the outstanding balance of the second listed Fund (b). Any further monies remitted and/or collected shall be applied on a pro-rata basis for each successive Fund (c-h).
 - (a) Sheet Metal Workers' Local 38 Individual Vacation Account
 - (b) Work Assessment
 - (c) Sheet Metal Workers' Local 38 Profit Sharing Fund
 - (d) Sheet Metal Workers' Local 38 Insurance and Welfare Fund
 - (e) Sheet Metal Workers' Local 38 Craft Training Fund
 - (f) Sheet Metal Workers' Local 38 Craft Training Building Fund
 - (g) Sheet Metal Workers' Labor Management Committee & Trust Fund
 - (h) Sheet Metal Contractors' Industry Fund of Southeastern New York

In the event of a shortage in the payment of National Benefits, the allocation process will be determined by the National Pension Fund for the below Funds:

- (a) Sheet Metal Workers' National Pension Fund
 - (b) International Training Institute (I T I)
 - (c) National Energy Management Institute (NEMI)
 - (d) Sheet Metal Occupational Health Institute, Inc. (SMOHIT)
 - (e) Sheet Metal Scholarship Fund
 - (f) Stabilization Agreement of the Sheet Metal Industry (SASMI)
7. In the event an Employer fails to timely remit contributions as set forth in Article XV, Section 1 (4) Billing Procedure, or becomes delinquent in benefit payments, or delinquent in furnishing security for benefit payments, or is not compliant with Paragraph 9 below, the Union Business Manager shall have the right to remove all covered employees without notice to the Employer.

Each Employer agrees that if contributions are not received (postmarked by such date is not sufficient) by the Individual Funds and Local Union as of the last working day of the month in which such contributions were due, it will be assessed liquidated damages upon the delinquency at the rate of 5% of contribution for a default 5-15 days late from the date the delinquency first occurs (i.e., the due date set forth in Article XV, Section 1 (4) Billing Procedure), 10% of contributions for a default of payment for 16-30 days late; and, 12% of contributions for default of payment greater than 30 days late. The liquidated damages are based on the length of time contributions are overdue, the amount of delinquent contributions, the date payment is actually made, and the administrative and other office expenses required to collect the delinquent contributions. Liquidated damages hereunder are not a penalty. The liquidated damages shall be calculated in accordance with rules and regulations adopted by the Trustees of Local 38 Funds and Local Union, and are incorporated as if set forth herein. Acceptance of any contributions by the Individual Funds, Local Union, Trustees, or Administrator shall not constitute a waiver of the right to assess liquidated damages if such contributions were paid after the due date.

Each Employer agrees that if contributions are not timely remitted, as set forth in Article XV, Section 1 (4) Billing Procedure, it shall pay all legal expenses (including attorney's fees), accounting expenses, or other costs which can be calculated with reasonable certainty, incurred by the Individual Funds and Local Union in pursuing collection of delinquent contributions.

The above damages are cumulative and in addition to, and not in lieu of, any other legal rights and remedies available to the Funds under ERISA or other applicable law, whether or not legal action is commenced to collect the delinquent contributions.

Whenever either the Union or the Individual Funds seeks to collect delinquent Employer contributions, or seeks to require any Employer to submit to an audit, suit may be brought in a court of competent jurisdiction. In lieu of the foregoing, and in the sole discretion of the Individual Funds or the Union, either the Union or the Individual Funds may utilize the procedures of Article X when seeking to collect delinquent Employer contributions or when seeking to require any Employer to submit to an audit.

8. Out of town Contractors will pay Local and National Benefits weekly, submitting hours as outlined in Section 1 (4) above.
9. Employers shall make and keep available any and all records pertaining to covered Employees, for inspection, examination and/or copying by the Trustees.
10. Local Contractors shall timely remit contributions as set forth in Article XV, Section 1 (4) Billing Procedure and Section 1 (5), by any of the following means:
 - (a) Weekly payments directly to the Individual Funds and the Union.

- (b) Monthly payments to the Individual Funds and the Union, where payment has been secured by either:
- (1) Transferable savings account or Certificates of Deposit duly assigned to the Funds and/or Union in such form that it may be cashed or collected by the Funds, in amounts at least equal to the Surety Bonds under alternative 2.
 - (2) Surety Bond of the licensed insurance company, protecting all fringe benefits and work assessments, in form acceptable to the Funds and the Union, and containing the customary provision for cancellation only following reasonable notice to the Individual Funds and the Union, in the following amounts (subject to review by Labor/Management Committee) IN MULTIPLES OF \$30,000 FOR THE FIRST FIVE (5) EMPLOYEES, AND \$30,000 FOR EACH FIVE (5) ADDITIONAL EMPLOYEES
- (c) Employers whose Work Assessment check and/or Individual Funds' checks are returned twice in a course of six (6) months, or whose employees are removed for non-payment of benefits, shall make weekly payments of all individual funds and work assessment, for a period of six (6) months.

11. WAGE INCREASES

Effective:	HVAC	SERVICE
May 1, 2019	\$1.10 per hour	\$1.10 per hour
July 1, 2020	\$1.10 per hour	\$1.10 per hour
July 1, 2021	\$1.10 per hour	\$1.10 per hour
July 1, 2022	\$1.10 per hour	\$1.10 per hour
July 1, 2023 – April 30, 2024	\$1.10 per hour	\$1.10 per hour

SECTION 2. After due negotiation of the alternatives proposed by the Sheet Metal Workers' National Pension Fund (NPF) in its 2012 Alternative Schedule, the parties adopted the 2012 First Alternative Schedule for the Sheet Metal Workers' National Pension Fund's Rehabilitation Plan, which will require the following contributions during the term of this CBA, to be paid out of the previously negotiated annual wage increases set forth in Article XV, Section 1, Paragraph 11, above.

The Trustees determined that, barring any catastrophic event, there would be no mandated increase for 2018 or 2019.

Recently, the Trustees met to discuss increases beyond 2019. Many factors weighed into their decision such as successfully meeting the scheduled progress as required by the FIP, future projections, the tumultuous 2018 investment year, and the talk of potential legislation that could adversely affect multi-employer funds. The Trustees have determined that, again, barring any catastrophic event affecting the Fund, there will be no mandatory contribution rate increase for 2020.

Beyond 2020, the Trustees have determined that the following rate increases will be required for 2021 and 2022:

The First Alternative Schedule requires a 2% Contribution Rate increase for 2021 and 2022.

The Trustees, along with the Funds' actuaries, will continue to monitor funding to meet our scheduled progress. Although an increase is not required for 2019 and 2020, it is important to note that any change in an Allocation Date in a Collective Bargaining Agreement ("CBA") which has the effect of delaying or postponing a future increase, must be approved by the Trustees.

NPF increase effective 2023 and 2024 is to be determined.

ARTICLE XVI – WAIVER, ENTIRE AGREEMENT AND CAPTIONS

SECTION 1. If, pursuant to Federal or State law, any provision of the Agreement shall be found by a court of competent jurisdiction to be void or unenforceable, all of the other provisions of this Agreement shall remain in full force and effect. The parties agree to meet and negotiate a substitute provision. If negotiations are unsuccessful, either party pursuant to Article X, Section 8 of this Agreement, may submit the issue for resolution.

SECTION 2. Notwithstanding any other provision of this Article, or any other Article of this Agreement, whenever an amendment to the Standard Form of Union Agreement shall be adopted by the sponsoring national associations, any party to this Agreement, upon the service of notice to all parties hereto, shall have this Agreement reopened thirty (30) days thereafter, for the sole and only purpose of attempting to negotiate such amendment or amendments into this Agreement for the duration of the term hereof. There shall be no strike or lockout over this issue.

SECTION 3. Each Employer hereby waives any right it may have to repudiate this Agreement during the term of this Agreement, or during the term of any extension, modification or amendment of this Agreement.

SECTION 4. This Agreement shall become effective on the 1st day of May, 2019, and shall remain in effect until April 30, 2024, 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 by written notice, provided, however, that, if this Agreement contains Article X, Section 8, it shall continue in full force and effect until modified by order of the National Joint Adjustment Board or until the procedures under Article X, Section 8, have been otherwise completed.

SECTION 5. The undersigned Employer has examined and agrees to comply with all the existing terms and conditions of this Collective Bargaining Agreement. It is also agreed by the Employer that any notice given by the Union to the Association, pursuant to the provisions of this Collective Bargaining Agreement, shall be notice to the Employer and shall have the same legal force and effect as though it were served upon the Employer personally. The Employer additionally agrees that unless it notifies the Union at least 150 days prior to the termination date of this Collective Bargaining Agreement or any subsequent Agreements, the Employer will be bound by and adopt all Agreements reached by the Union and the Association during subsequent negotiations. Finally, the Employer will notify the Union a minimum of thirty (30) days prior to any change in company ownership or address, and will notify the Union within 24 hours of any formal change of company name.

SECTION 6. The captions herein are inserted only for convenience and are in no way to be construed as a part of this Agreement or as a limitation of the scope of any provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto affix their Signatures and seal to this **HVAC AGREEMENT** (RESIDENTIAL, LIGHT COMMERCIAL AND SERVICE), on this 11th day of March, 2019.

**Sheet Metal and Roofing Contractors' Association of
Southeastern New York (Known as SMACNA)**

By  _____ President
Officer's Signature Title

PRINT OFFICER'S NAME: Mark DiPasquale

ADDRESS: 330 Meadow Avenue
Newburgh, NY 12550

TELEPHONE: (845) 562-4280

E-MAIL: aseidman@cchhv.com

AND

**SHEET METAL LOCAL UNION NO. 38 OF THE SHEET METAL, AIR, RAIL
AND TRANSPORTATION WORKERS (SMART)**

BY:  _____ President/Business Manager
Officer's Signature Title

PRINT OFFICER'S NAME Nick Colombo SM

ADDRESS: 38 Starr Ridge Road
PO Box 119
Brewster, New York 10509

TELEPHONE: (845) 278-6868

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