

## AGREEMENT

AGREEMENT entered into this 1<sup>st</sup> day of February, 2011, by and between KINGS AIRE, INC. ("Employer" or "Company") and LOCAL 351, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO ("Union").

### ARTICLE I - RECOGNITION

**Section 1. Bargaining Unit.** The Employer recognizes the Union as the sole and exclusive collective bargaining representative in matters relating to wages, hours, and working conditions for all hourly employees including all full-time and part-time employees employed by the Employer who are performing work under the Department of Public Works & Logistics contract at Fort Bliss, Texas; excluding all other employees, office clerical employees and supervisors as defined in the Act, as certified by the National Labor Relations Board in Case No. 28-RC-6517.

**Section 2. Remodeling Work.** It is understood and agreed that this Agreement covers only the service and maintenance employees of the Employer as defined in Section 1. Work other than "service and maintenance" work, such as remodeling work, has been contracted by the U. S. Government to the Employer under the same contract covering service and maintenance work but a different group of employees are utilized to perform this work. Employees engaged in this remodeling work, as well as other non-service and maintenance work that may be contracted by the U. S. Government to the Employer at Fort Bliss, are excluded from this Agreement.

### ARTICLE II -MANAGEMENT RIGHTS

**Section 1. Reserved Rights.** The Employer retains and possesses all rights and powers

not expressly limited by some written provision of this Agreement, including but not limited to the exclusive right to direct the working force; the right to plan, direct, expand, reduce and control operations; to hire, transfer, discipline and discharge employees; to relieve employees of duty; the right to introduce any new or improved methods, procedures, equipment or facilities; to establish, modify and enforce rules and regulations for the operation of the business and for the orderly conduct of employees; determine or change methods of doing business; create new jobs or job classifications; discontinue, realign or consolidate existing job classifications and determine the particular jobs or occupations to be filled; terminate, merge, transfer, sell or otherwise dispose of the business in whole or in part, its assets or any part thereof; select and determine the number or type of employees required and their qualifications; establish and maintain job requirements, standards and schedules of production; to promote employees to positions outside the bargaining unit; to subcontract any work deemed advisable; and the right to take on work from whatever source is available.

**Section 2. Employees Assigned to Other Projects.** It is expressly recognized and understood that nothing in this Agreement shall limit the Employer's right to transfer or otherwise assign employees covered by this Agreement, without regard to seniority, to work on other projects or jobs, whether on Fort Bliss or at other locations. During such periods of work the wages, benefits, hours, and working conditions provided by this Agreement shall not be applicable. Disciplinary action taken against employees while assigned to another project or job shall not be subject to the grievance and arbitration provisions. In the event an employee covered by this Agreement is permanently transferred to a job not covered by this Agreement, the Employer agrees, upon request, to provide the Union with an explanation for the transfer. The

reason for the transfer, however, shall not be subject to the grievance and arbitration provisions of this Agreement.

**Section 3. Bargaining Unit Work.** The parties recognize that from time to time it is necessary for supervisors and other non-bargaining unit employees to perform work ordinarily performed by employees covered by this Agreement. Accordingly, nothing in this Agreement shall be construed to limit the Employer's right to make such assignments.

### **ARTICLE III -UNION MEMBERSHIP AND NON-DISCRIMINATION**

**Section 1. Membership Voluntary.** Membership in the Union shall be voluntary on the part of employees. Neither the Union, employees nor the Employer shall in any way, either directly or indirectly, threaten, coerce or intimidate employees into either joining or refusing to join the Union.

**Section 2. No Discrimination by Union.** The Union, its officers, representatives, members, and other employees covered by this Agreement, shall not discriminate against any employee because of his or her membership or non-membership in the Union or because of such employee's race, color, religion, national origin, sex, age or handicap.

**Section 3. No Discrimination By Employer.** The Employer shall not discriminate against any employee because of his or her membership or non-membership in the Union or because of such employee's race, color, religion, national origin, sex, age or handicap.

**Section 4. Relief Available.** In view of the non-binding nature of arbitration awards on courts and Governmental Agencies, the parties agree that any complaint or grievance based in whole or in part on alleged discrimination because of race, color, religion, national origin, sex, age or handicap, shall not be subject to the arbitration provisions of this Agreement.

## **ARTICLE IV -UNION REPRESENTATIVES**

**Section 1. Union Stewards.** The Employer agrees to recognize Stewards as designated by the Union, provided that no more than a reasonable number necessary to perform the duties are designated. Immediately upon the designation of such Stewards, the Union shall notify the Employer in writing of the employees' names and the Employer shall not be required to recognize any employee as Steward other than those whose names are furnished to the Employer as provided above.

**Section 2. Union Visitation.** The Union's Business Representative shall be granted access to the Employer's work site at Fort Bliss (subject to any requirements imposed by the U.S. Government) at times mutually agreeable and convenient to the Employer and Union. Requests for such access shall be made in advance to the Employer's Ft. Bliss Manager or his designated representative. The duration of visits by the Business Representative shall be limited to a reasonable amount of time. During any such visits, there shall be no interruption of work of any employee. The Employer may if it desires assign a representative to accompany such representative at all times while in the Employer's work area.

**Section 3. No Union Activity on Working Time.** There shall be no Union activity by any employee, including Union Stewards, on Company time except as provided in Section 4 below. The investigation of an alleged grievance shall be conducted by the Steward during his or her non-working time and the non-working time of the employee or employees involved.

**Section 4. Grievance Processing on Company Time.** One (1) Union Steward and the Grievant, who shall be required to attend, shall be permitted to present a grievance on Company time at the first step of the grievance procedure only. However, if in the opinion of the Employer

this privilege is being abused the Employer will give notice to the Union's Business Representative and thereafter if in the Employer's sole judgment the matter has not been corrected within thirty (30) days, first step grievances shall not be permitted on Company time. The Employer's exercise of this right is not subject to the arbitration provision of this Agreement. When processing first step grievances on Company time, Stewards shall not leave their work stations without first obtaining permission from their immediate supervisor.

### **ARTICLE V- DUES CHECKOFF**

**Section 1. Employee Authorization.** The Employer agrees to deduct from the wages of each employee covered by this Agreement, upon receipt of a voluntary, written authorization signed by the individual employee which shall be irrevocable for a period of not more than one year or until the termination date of this Agreement, whichever occurs sooner, Union initiation fees and periodic dues uniformly required as a condition of membership in the Union in such amounts as shall be certified to the Employer in writing by the Secretary-Treasurer of the Union.

**Section 2. Date of Deduction.** Such deductions will be made by the Employer from the wages of employees in two (2) equal amounts per month and will be transmitted to the Union once a month with a statement listing the employees whose dues and/or initiation fees have been checked off. For a deduction to be made in any month, the Employer must have received a written authorization no later than ten (10) days before the end of the first payroll period in the month.

**Section 3. Limitation of Liability.** It is expressly understood that the Employer assumes no liability in connection with the deduction of Union dues and/or initiation fees and that the Union shall indemnify and hold the Company harmless against any and all claims,

demands, suits or other forms of liability that arise out of the making of such deductions.

## **ARTICLE VI- SENIORITY**

**Section 1. Seniority Defined.** Seniority as used in this Article shall mean an employee's length of continuous employment with the Employer from his or her most recent date of hire. When two or more employees are hired on the same day their seniority shall be determined by the order of payroll numbers.

**Section 2. Probationary Period.** All new employees shall be on probation for the first ninety (90) days of actual work during which time they may be disciplined or discharged without a reason being assigned and without recourse by the employee or Union to the grievance and arbitration provisions of this Agreement. The probation period may be extended by the Employer for an additional thirty (30) days. Upon completion of the probationary period, new employees will be added to the seniority lists with a seniority date retroactive to their most recent date of hire.

**Section 3. Seniority List.** The Employer will maintain a seniority list for employees performing work at Fort Bliss covered by this Agreement showing each employee's name, payroll number, date of hire, and classification. Copies of such lists will be updated every six (6) months and provided to the Union upon request.

**Section 4. Job Classifications.** The existing job classifications are set forth in Appendix A to this Agreement. The Employer reserves the right to create new and additional job classifications, eliminate and/or consolidate existing ones, and the sole right to determine which jobs will be filled. When new jobs are created and/or existing job classifications are consolidated, the Employer agrees to notify the Union of the new rate for the job and, upon

request, meet and discuss the rate with the Union. Any disagreements regarding the wage rate shall be subject to mediation through the FMCS but shall not be subject to the arbitration provision. Nothing in this Agreement shall be construed as requiring the Employer to fill any of the job classifications listed in Appendix A.

**Section 5. Work Assignments and Filling Vacancies.** In assigning work, including filling job vacancies, the Employer will assign the employee to the job it believes is most qualified based upon the following factors: (1) skill and ability to perform the work without training; (2) previous experience, knowledge, and training; and (3) attendance and work record.

**Section 6. Transfers Out of Bargaining Unit.** When an employee covered by this Agreement is promoted to a supervisory position, the employee shall continue to accrue seniority. If the employee decides within sixty (60) days of actual work that he or she wants to return to the bargaining unit, the employee shall be returned to his or her former job. If an employee remains out of the bargaining unit for more than sixty (60) days of actual work, the employee may, in the Employer's sole discretion, be returned to his or her former job. The failure of the Employer to return an employee to the bargaining unit following sixty (60) days of actual work shall not be subject to the arbitration provision of this Agreement.

**Section 7. Layoff and Recall.** In the event the Employer determines that a reduction in force is necessary, whether in a job classification or across job classifications, employees will be selected for layoff based upon the following factors: (1) skill and ability to perform the available work at a level of efficiency acceptable to the Employer without training; (2) previous experience, knowledge and training; (3) attendance and work record; and, if the foregoing factors are relatively equal, (4) seniority. Seniority shall not accrue during layoff. During a

layoff it is the responsibility of the employee to keep the Employer informed of his or her current address and where he or she may be notified in the event work becomes available. Failure to do so will result in the forfeiture of recall rights. In the event work becomes available, employees will be recalled in accordance with the factors listed above. Any employee notified of recall shall have three (3) calendar days in which to report for work. Failure to report to work within such time shall result in a forfeiture of recall rights. An employee will be deemed to be notified on the date contact by telephone is made or the date a letter is mailed to his or her last known address.

**Section 8. Shift Assignments.** The Employer reserves the right to institute work shifts and if implemented, the Employer will determine the shifts to be worked and shift assignments.

**Section 9. Loss of Seniority.** The following will result in the loss of seniority and termination of employment:

- a. Voluntary quit
- b. Discharge for cause
- c. Layoff without recall for more than thirty (30) days
- d. Failure to return from layoff within three (3) days after being recalled
- e. Failure to report for work after the expiration of an approved leave of absence
- f. Absence for three (3) consecutive days without notification
- g. Absence in excess of twelve (12) weeks for any reason other than military service

## **ARTICLE VII -NO STRIKE OR LOCKOUT**

**Section 1. No Strikes.** (a) There shall be no strikes, slowdowns, stoppages, overtime boycotts, picketing, or any other form of cessation of or interference with the Employer's operations by the Union or employees during the term of this Agreement, regardless of whether

such conduct is based upon claimed or real unfair labor practices committed by the Employer or because of an alleged violation of this Agreement, whether or not subject to the grievance and arbitration provisions, or because of any other labor dispute whether or not the Employer is involved.

(b) **Picket Lines.** The parties recognize the competitive nature of the Employer's business and their responsibilities to insure that there is no interference with the operations of the Employer during the term of this Agreement. Therefore, the Union agrees that it will not refuse to handle the goods or merchandise or enter the premises of any employer whose employees are on strike, or any employer with whom any union has a dispute, or permit any member of the Union to picket the Employer for any reason or refuse to encourage its members to continue working in the event such picketing occurs.

(c) **Employee Violation of this Section.** Any employee or employees who violate the terms of this Section shall be subject to disciplinary action up to and including discharge. The Employer may discipline any or all employees violating the terms of this Section in varying degrees without such discipline being considered discriminatory. Any disciplinary action imposed by the Employer for a violation of this Section shall be subject to the arbitration provisions of this Agreement only with respect to the question of whether such employee or employees participated in a violation of this Section and not with respect to the penalty imposed.

(d) **No Lockouts.** There shall be no lockouts by the Employer during the term of this Agreement. The term "lockout" shall not include the laying off of employees because of lack of work, changes in production methods or procedures or because of a strike or picketing by non-bargaining unit employees or any other reason or reasons beyond the Employer's control.

**Section 2. Expedited Arbitration.** In lieu of, or in addition to, any other action at law or in equity, the Employer may institute the following procedure when a violation of Section 1 is alleged:

The Employer shall notify \_\_\_\_\_, or \_\_\_\_\_, who the parties agree will be the permanent arbitrators under this procedure. If none of the permanent arbitrators are able or available to serve in accordance with this Section, then the Regional Director of the American Arbitration Association in Dallas, Texas shall immediately upon notice from the Employer appoint a recognized arbitrator from the Texas-New Mexico area to serve. Notice to the arbitrator shall be by the most expeditious means available, with notice by telegram or otherwise in writing to the Union.

Upon receipt of said notice the Arbitrator shall set and hold a hearing at the Employer's office in El Paso, Texas within twenty-four (24) hours if such a hearing is necessary. The Arbitrator shall notify the parties by telephone or telegram of the time set for the hearing. Any hearing held shall be completed in one session. A failure of either party to appear for the hearing shall not delay the hearing of evidence or issuance of an award by the Arbitrator.

The sole issue at the hearing shall be whether or not a violation of Section 1 has occurred and the Arbitrator shall have no authority to consider any matter or argument in justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The Award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an opinion. If any party desires an Opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with or enforcement of the Award. The Arbitrator may order cessation of the violation of Section 1(a)

and other appropriate relief, and such Award shall be served on all parties by hand or registered mail upon issuance.

Such Award may be enforced by any court of competent jurisdiction. The party seeking enforcement of such an Award shall notify the other party by telephone or telegram. In the proceeding to obtain a temporary order enforcing such an Award, all parties waive the right to a hearing and agree that such proceedings may be ex parte. The Court's order or orders enforcing the Award shall be served on all parties by hand or by delivery to the last known address or by registered mail.

Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance therewith are hereby waived by the parties to whom they accrue.

The fees and expenses of the Arbitrator shall be divided equally between the parties.

### **ARTICLE VIII - HOURS OF WORK**

**Section 1. No Guarantee of Hours.** This Article defines the normal hours of work for all employees and provides a basis for calculating overtime pay. It shall not be construed as a guarantee of any number of hours of work per day or per week, or of any number of days per week.

**Section 2. Workweek and Workday.** The workweek is from 12:00 a.m. (Midnight) Wednesday to 11:59 p.m. of the following Tuesday.

**Section 3. Normal Working Hours.** The normal working hours shall be eight (8) hours per day, forty (40) hours per week.

**Section 4. Work Schedules.** The work schedules for each job classification, including

the number of hours to be worked and struting times, shall be determined by the Employer in its sole discretion based upon the needs of the business.

**Section 5. Lunch Periods.** The times and length of lunch periods shall be as determined by the Employer to avoid any interruption of work. Lunch periods shall be unpaid. Employees may not leave Ft. Bliss and the ranges during lunch periods. Lunch periods will be measured from the time an employee stops working on their assignment to the time the employee resumes working.

### **ARTICLE IX- OVERTIME AND OVERTIME PAY**

**Section 1. Overtime Required.** Employees shall work all hours scheduled or as directed by the Employer unless excused because of illness, disability or justifiable reasons. Failure to do so will result in disciplinary action.

**Section 2. Overtime Rate.** Overtime pay at the rate of one and one-half (1-1/2) times an employee's straight time hourly rate will be paid for all hours actually worked in excess of forty (40) hours in a workweek.

### **ARTICLE X- HOLIDAYS**

**Section 1. Holidays Observed.** The following days shall be observed as holidays:

New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day

**Section 2. Holiday Pay.** Employees eligible for paid holidays shall receive eight (8) hours pay at their straight time hourly rate of pay for each of the holidays listed in Section I.

**Section 3. Substitute Holidays.** The Employer reserves the right to substitute another day for any of the holidays listed in Section 1.

**Section 4. Not Counted for Overtime.** Time paid as holiday pay shall not be counted in determining if an employee has worked in excess of forty (40) hours in a workweek.

**Section 5. Weekends.** In the event a designated holiday falls on a weekend, it shall be observed on either Friday or Monday, as determined by the Employer.

## **ARTICLE XI- VACATIONS**

**Section 1. Length of Vacations.** All employees covered by this Agreement shall be eligible for the following paid vacation time off:

After One (1) Year of Service- Two (2) weeks  
After Five (5) Years of Service- Three (3) weeks  
After Fifteen (15) Years of Service- Four (4) weeks

**Section 2. Vacation Pay.** Vacation pay shall be based upon each employee's straight time hourly rate of pay at the time the vacation is actually taken and will be paid at least by end of the last work day before the start of each employee's vacation if requested in writing at least one (1) week in advance.

**Section 3. Vacation Schedule.** The vacation schedule will be determined by the Employer. Employees may inform the Employer of their preferred vacation periods in writing at least thirty (30) days in advance by filling out a form provided by the Employer for this purpose. The Employer may reschedule vacations as it deems necessary and may, at its sole option, pay an employee vacation pay in lieu of granting time off.

**Section 4. Vacation Pay Upon Termination.** Vacation time off or vacation pay shall not accrue during the year. Employees become entitled to paid vacation on their anniversary date each year based upon their length of continuous service. If an employee's employment is terminated for any reason after an anniversary date but before taking the vacation to which the

employee became entitled on their last anniversary date, he or she shall be paid the accrued vacation upon termination.

## **ARTICLE XII- WAGES AND HEALTH & WELFARE**

**Section 1. Wage Rates.** The wage rates that are to be effective for the duration of this Agreement for current job classifications are set forth in Appendix A.

**Section 2. Health & Welfare Rates.** The health and welfare rates that are to be effective for the duration of this Agreement are set forth in Appendix A. These rates are the maximum amounts and will be offset by the cost to the Employer of providing health and welfare benefits to covered employees.

## **ARTICLE XIII- HEALTH AND WELFARE**

**Section 1. Plans Provided.** The Employer currently has in effect certain benefit plans for employees covered by this Agreement, including a medical health plan, life insurance, and 401(k) plan. The benefits and terms provided under these plans shall be as set forth in plan documents.

**Section 2. Administration of Plans.** It is expressly understood that these benefit plans will continue to be unilaterally administered by the Employer and that the Employer may, in its sole discretion, change the form of administration, change insurance carriers, if any, and make other changes necessary to the administration of the plans.

**Section 3. Eligibility.** Employees covered by this Agreement will become eligible for participation in the benefit plans referred to in Section 1 on the first day of the month following date of hire.

**Section 4. Payment of Benefits.** Eligibility for and the payment of benefits under the

foregoing plans shall be determined solely by the Employer or insurance carrier, if any. No dispute, grievance, or question arising from the administration, application or interpretation of these plans is subject to the grievance and arbitration provisions of this Agreement.

**Section 5. Payment of Costs of Coverage.** The Employer will pay the monthly cost of individual employee coverage in effect on the effective date of this Agreement for full-time employees covered by this Agreement. The cost to the Company of this coverage will offset the health and welfare benefit cost in the applicable wage determination. Cost of dependent coverage, if elected, will be paid by the employee electing the coverage. In the event the cost of coverage increases to an amount in excess of the cost on the effective date of this Agreement, the Employer reserves the right to decrease or eliminate benefits so that the cost of coverage does not exceed the total cost of coverage in effect on the effective date of this Agreement.

#### **ARTICLE XIV- UNIFORMS AND SHOES**

**Section 1. Required.** All employees covered by this Agreement are required to wear uniforms specified by the Employer while on duty. Uniforms are strictly to be worn during working hours only. Employees working on non-Employer jobs cannot wear their uniforms while performing such work.

**Section 2. Number Provided By Employer.** The Employer will provided each employee with eleven (11) sets of uniforms. These uniforms are the property of the Employer and must not be abused by the employee. When torn or otherwise no longer presentable, the employee must return the uniform for a replacement set. Any abuse of uniforms determined by the Employer will result in a charge to the employee for the replacement set. Employees are responsible for turning in uniforms for laundering.

**Section 3. Safety Boots.** Each employee is required to wear safety boots with steel toes to protect their feet from injury. These boots must be provided by the employee and no employee will be allowed to work without safety boots.

## **ARTICLE XV- LEAVES OF ABSENCE**

**Section 1. Family/Medical Leaves of Absence.** Employees covered by this Agreement shall be entitled to leaves of absence as specified in the Federal Family and Medical Leave Act ("FMLA") and as explained in the Employer's Personnel Policies Manual, as it may be revised from time to time, provided they meet the eligibility requirements of the FMLA. Failure to return to work within the leave time allowed by FMLA shall be considered a voluntary quit. During such leaves of absence the Employer may require periodic reports from the employee and/or his or her doctor confirming the employee's inability to work. Seniority shall continue to accrue during the leave of absence. Employee's on approved FMLA leave shall be required to use any available paid time off, such as vacation time.

**Section 2. Personal Leaves of Absence.** The Employer may, in its discretion, grant employees a personal leave of absence of up to thirty (30) days for reasons and under conditions acceptable to it.

**Section 3. Military Leaves of Absence.** An employee who enters active service in the Armed Forces of the United States will be given a military leave of absence in accordance with applicable law. Seniority shall accrue during such leave and reinstatement upon expiration of the leave will be in accordance with existing law provided the employee makes application for re-employment within the time limits specified by law.

## **ARTICLE XVI -JURY DUTY**

**Section 1. Excused Time Off.** An employee called for jury duty shall be excused from work for such duty, provided a copy of the jury summons is presented to the employee's immediate supervisor at least three (3) days (not counting Saturdays, Sundays or holidays) in advance of the time the employee is to report for jury duty.

**Section 2. Unpaid Time Off.** Time spent by employees on jury duty shall be unpaid.

**Section 3. Reporting Back To Work.** Employee released from jury duty shall report to work on any day he or she is released from jury duty and four (4) hours or more remain in the employee's workday;

## **ARTICLE XVII -FUNERAL LEAVE**

**Section 1. Eligibility.** Employees who have completed their probationary period are eligible for up to two (2) consecutive days off, beginning with the date of death, in the event of a death in the employee's immediate family, which is defined as including the employee's husband, wife, son, daughter, father, mother, brother and sister. Requests for such time off must be approved prior to taking the leave.

**Section 2. Paid Leave.** Employees granted funeral leave shall be reimbursed for lost-time up to a maximum of eight (8) hours per day at their straight time hourly rate of pay.

**Section 3. Proof of Death.** Employees shall, upon request, list the names of their immediate family with the Employer and provide satisfactory proof of death to be eligible for funeral leave.

## **ARTICLE XVIII -DISCIPLINE AND DISCHARGE**

**Section 1. Probationary Employees.** The Employer may discipline or discharge an employee during the probationary period or any extensions thereof without assigning a reason and such discipline or discharge shall not be subject to the grievance and arbitration provisions of this Agreement.

**Section 2. After Probationary Period.** The Employer may discharge, suspend, demote, issue verbal or written reprimands, or take any other disciplinary action against any employee who has completed the probationary period for just cause. Just cause for immediate discharge shall include but not be limited to stealing, fighting, drinking on Employer's premises, falsification of application or other records, insubordination, failure to report an accident or injury, loafing, absenteeism, carelessness causing damage or injury, and violation of work or safety rules.

**Section 3. GPS.** The parties agree that the Company can use GPS for any and all lawful reasons, including discipline and discharge.

**Section 4. Driving License.** The ability to drive a motor vehicle is a term and condition of employment and continued employment. Employees who receive notice that their drivers license is in jeopardy are required to notify the Company of that fact within 24 hours of their receiving notice of a possible suspension or other action affecting their ability to lawfully drive. If an employee's drivers license is suspended or their ability to lawfully drive a vehicle is otherwise restricted, the employee will be allowed 30 days to correct the situation. If not corrected within 30 days in such a way that the employee can lawfully drive a vehicle, the employee will be terminated. Failure to notify the Company of the suspension of the employee's

drivers license, regardless of circumstances, or the operation of a Company vehicle while a license is suspended, are grounds for immediate discharge.

**Section 5. Monitoring of Employees.** The parties agree that the Company can electronically monitor employee work performance and use the recorded results (videos, photos, etc.) for any and all lawful reasons, including discipline and discharge.

### **ARTICLE XIX- GRIEVANCE AND ARBITRATION PROCEDURE**

**Section 1. Definition of Grievance.** The term "grievance" as used in this Agreement means only a dispute involving the proper interpretation or application of a specific provision of this Agreement or a claim that an employee has been disciplined or discharged without just cause. No complaint based upon facts or events occurring prior to the effective date of this Agreement shall be considered or adjusted under this Article.

**Section 2. Processing of Grievances.** The following procedure shall be followed in processing grievances:

Step 1 Any employee having a grievance shall first take the matter up orally with his or her supervisor within five (5) working days of the occurrence of the original event giving rise to the grievance. The employee or the Supervisor may request that the Union steward be present. The Supervisor shall give a verbal answer within five (5) working days.

Step 2 If the grievance is not settled in Step 1, the grievance shall be reduced to writing on a form provided by the Union and submitted to Mr. Joe Villa within five (5) working days following the Supervisor's answer in Step 1. Thereafter, a conference will be scheduled between Mr. Villa, the employee involved and a Union representative. Mr. Villa will give a written answer within five (5) working days following such conference.

Step 3 If the grievance is not settled in Step 2, the Union may within five (5) working days after receipt of the Employer's answer in Step 2, request in writing a meeting with Armando Reyes, President of the Employer or his designated representative. Upon such request, a conference will be scheduled within ten (10) working days between the Employer representative and an Official of the Union to discuss the grievance. The

Employer will give a written answer to the grievance within five (5) working days following such conference.

**Section 3. Time Limits.** Any grievance not submitted to the Employer within five (5) working days of the original event giving rise to the grievance shall be considered abandoned. Any grievance not appealed within the time limit specified in this Agreement shall be considered settled on the basis of the Employer's last answer and may not be further appealed or made the basis for any action either under this Agreement or otherwise.

**Section 4. Request for Arbitration.** If the decision of the Employer in Step 3 of the Grievance Procedure is unsatisfactory to the Union it may be appealed to arbitration provided that written notice of intent to arbitrate is given to the Employer within ten (10) calendar days after receipt of such decision. This written request must state the nature of the grievance, the issues involved, the specific contract provisions alleged to have been violated, the Union's position concerning its interpretation of the Agreement, and the remedy desired.

**Section 5. Selection of Arbitrator.** Simultaneous with the notice provided for in Section 4, the party desiring arbitration shall request a panel of seven (7) arbitrators from the American Arbitration Association. The selection of the arbitrator shall be in accordance with the Voluntary Labor Arbitration Rules then obtaining of the American Arbitration Association. The parties shall alternately strike names until only one name remains on the list, with the party requesting arbitration striking the first name.

**Section 6. Arbitration Hearing.** As soon after selection as is reasonably practicable, the neutral arbitrator shall set a time and place for hearing the parties, in El Paso County, Texas, and at the hearing both the Employer and the Union shall be permitted to have representatives

present and to present evidence and argument to the neutral arbitrator. Each party shall have the privilege of cross examining witnesses presented by the opposite party. The neutral arbitrator shall render a decision in writing within thirty (30) days after completion of the hearing, unless an extension of time is mutually agreed to by the Employer and the Union. A decision by the neutral arbitrator shall be final and binding upon both parties.

**Section 7. Scope of Arbitration.** The Employer agrees to submit to arbitration, under the terms of this Article, grievances which meet each of the following conditions:

- a. The grievance involves either (1) a specific claim of a violation by the Employer of an express provision of this Agreement, which raises a bona fide issue regarding the proper application or interpretation of such provision; or (2) a claim by an employee that he or she has been discharged or otherwise disciplined without just cause;
- b. The grievance designates specifically the express provision of this Agreement alleged to have been violated and the manner in which it allegedly was violated; and
- c. The grievance was filed in writing during the life of this Agreement and processed in the manner and within the time limits prescribed and duly signed by the grievant.

**Section 8. Authority of the Arbitrator.** The sole function of the neutral arbitrator shall be to interpret the express provisions of this Agreement and apply them to the specific facts of a grievance which is subject to arbitration. The arbitrator shall have no power or authority to change, amend, modify, supplement, fill in or otherwise alter this Agreement in any respect, to

render any decision or provide any remedy with respect to any grievance or alleged contract violation arising before the date of this Agreement or after its expiration; or to substitute his judgment for that of the Company in the absence of a clear abuse of discretion by the Company. The express terms of this Agreement shall be the sole source of rights and/or obligations adjudicated or declared by the arbitrator. In no event shall any award be made retroactive beyond the date the grievance was filed.

**Section 9. Expenses of Arbitration.** The party invoking arbitration shall bear all expenses incurred, including the cost of transcribing the hearing if requested by either party, unless they are awarded all relief sought from the arbitrator. If all relief sought is awarded to the party invoking arbitration, the expenses shall be paid by the other party.

**Section 10. Exclusive Remedy.** The grievance and arbitration procedure set forth in this Article shall be the sole and exclusive remedy available to employees for any alleged violation of this Agreement.

## **ARTICLE XX -DRUG FREE WORKPLACE**

**Section 1. Joint Cooperation.** The Employer and the Union recognize their mutual obligation to provide a safe workplace. The parties agree, therefore, to take all action necessary to eliminate the use of drugs and alcohol by employees in the workplace and the use of drugs and alcohol in a manner that affects the performance of an employee in the workplace.

**Section 2. Drug Testing.** The Employer current has in place a drug testing policy and programs. The Union agrees that this policy and program will continue. Employees who test positive on a drug or alcohol screen shall be subject to immediate discharge.

## **ARTICLE XXI - BULLETIN BOARD**

The Employer currently has a bulletin board in the warehouse area of its facility at Ft. Bliss. It agrees to designate a portion of this bulletin board as an area where the Union can post notices. All material to be posted by the Union, however, requires the approval of the Employer.

## **ARTICLE XXII- COMPLETE AGREEMENT**

**Section 1. Bargaining During Duration of Agreement.** It is expressly understood and agreed that both parties were presented with an opportunity to discuss and negotiate on all issues concerning the wages, benefits, hours and working conditions of employees covered by this Agreement. Accordingly, during the term of this Agreement, neither the Union nor the Employer shall be required to bargain on any change in any provision of this Agreement or any existing or new matter not specifically included in the Agreement.

**Section 2. Sole Source of Rights.** This Agreement constitutes the entire contract between the Employer and Union and shall be the sole source of any and all rights or claims which either party may assert against the other.

## **ARTICLE XXIII- DURATION OF AGREEMENT**

**Section 1. Duration.** This Agreement shall be effective as of February 1, 2011, and shall remain in full force and effect until midnight of January 31, 2014, and shall thereafter automatically renew itself from year to year unless written notice is given by one party to the other at least sixty (60) days prior to January 31, 2014, or any succeeding yearly termination date.

**Section 2. Notices.** Any notices given by either party under this Article shall be by registered mail, return receipt requested.

**Section 3. Termination of Agreement.** In the event the notice referred to in Sections 1

and 2 is given by either party, this Agreement shall expire on its expiration date.

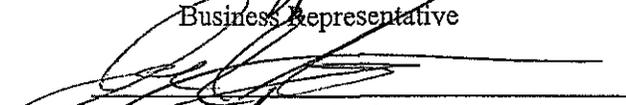
**XXIV- SAVINGS CLAUSE**

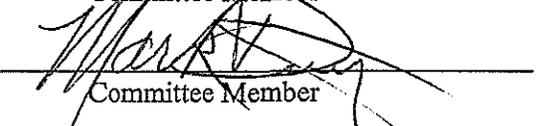
Should any part or provision of this Agreement be rendered invalid by reason of any existing or subsequently enacted legislation, such invalidation of any part or provision of this Agreement shall not invalidate the remaining portions hereof, and they shall remain in full force and effect.

Signed this 1--7 day of ITFR.L. '2011.

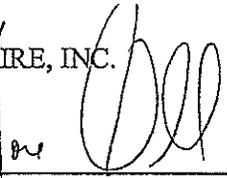
INTERNATIONAL UNION OF OPERATING  
ENGINEERS, C 351, AFL-CIO

BY:  \_\_\_\_\_  
Business Representative

  
\_\_\_\_\_  
Committee Member

  
\_\_\_\_\_  
Committee Member

KINGS AIRE, INC.

BY:  \_\_\_\_\_

## APPENDIX A

**Section 1: Health and Welfare:** In accordance with AWD. In the event the actual cost of the health insurance provided is less than this amount, the excess shall be paid directly to the employee.

<b>Section 2: Wages:</b>	<b>Current</b>
Boiler Technician I	\$17.17*
Boiler Technician III	\$19.49
Filter Technician	\$15.54
HVAC Technician I	\$17.17
HVAC Technician II	\$17.74
HVAC Technician III	\$18.61
HVAC Technician IV	\$19.49
Maintenance Trades Helper (includes Welder Helper)	\$11.86
Welder- Service and Maintenance	\$17.74
Filter Helper-Laborer	\$ 9.14

\* Subject to decision by Contracting Officer on applicable wage rate.

Effective October 1, 2011, the foregoing wage rates shall be increased by 2%. In addition, and in lieu of the three-day sick leave proposal by the Union, on October 1, 2011, the Company will increase the wages rates by an additional 15%. Effective October 1, 2012, and October 1, 2013, the wage rates for the foregoing classifications shall be increased by 2% or replaced by any higher amount set by AWD.

**Section 3: Subordination Clause:** In the event that any authorized governmental agency or court of competent jurisdiction determines that the wages and fringe benefits contained in this Agreement are improper, the Company shall be obligated to pay only the wages and fringe benefits specified in the appropriate Wage Determination.