

**WATER SUPPLY AGREEMENT**

This **Water Supply Agreement** (hereinafter "Agreement") is made and entered this 21st day of ~~October~~, 2003 by and between the **Kenton County Airport Board**, Cincinnati/Northern Kentucky International Airport, P.O. Box 752000, Cincinnati, Ohio 45275-2000 (hereinafter, the "Airport Board") and the **Northern Kentucky Water District**, 100 Aqua Drive, P.O. Box 220, Cold Spring, Kentucky 41076 (hereinafter, the "District"). Together, the Airport Board and the District will be referred to herein as the "Parties."

**WITNESSETH:**

WHEREAS, the Airport Board is a de jure public body politic and corporate and a political subdivision of the Commonwealth of Kentucky under Chapter 183 of the Kentucky Revised Statutes; and

WHEREAS, the Airport Board has jurisdiction and supervision of the Cincinnati/Northern Kentucky International Airport located on approximately 7,100 acres of land in Boone County, Kentucky, which area, together with additions, extensions and modifications thereof is hereinafter referred to as the "Airport"; and

WHEREAS, the District is a public water district organized and operating under Chapter 74 of the Kentucky Revised Statutes; and

WHEREAS, the District and its predecessor, Kenton County Water District No. 1, have planned, installed and maintained necessary infrastructure and have continuously served the Airport as a customer since 1945; and


WHEREAS, the Airport Board and the District desire to continue their relationship as customer and water supplier;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Parties hereby agree as follows:

**ARTICLE I**  
**PURCHASE OF WATER**

The Airport Board shall purchase from the District and the District shall use reasonable efforts to supply to the Airport Board all potable water needed by the Airport Board for use within the area of the Airport outlined in red and designated with parallel diagonal lines (the "District Supply Area") on attached Exhibit A. The District shall be the exclusive supplier of potable water to the Airport Board for use in the District Supply Area, but the Airport Board may purchase water from another supplier, and another supplier may provide water to the Airport Board, to the extent the District is not able to meet the Airport Board's demand for water for use in the District Supply Area. In order to accommodate such purchase of water from another

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By   
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supplier, the Airport Board may provide, in cooperation with another supplier, for the installation of connecting lines and meters between the lines of the Airport Board and such other supplier. Should the Airport Board need potable water for use in a portion or portions of the Airport not included within the District Supply Area, the Airport Board shall notify the District and allow the District an opportunity to present a proposal for supplying such portion or portions before contracting for the supply of water from another supplier of water.

The Airport Board shall be a retail customer of the District and shall be subject to all of the rights, privileges, duties and obligations of retail customers as set forth in the District's Rates, Rules and Regulations, as the same may be amended from time to time.

## **ARTICLE II** **EFFECTIVE DATE AND TERM**

This Agreement will take effect on November 1, 2003 and will continue in full force and effect until November 1, 2023, unless earlier terminated as provided in the remainder of this Article II.

If the Airport Board can demonstrate that the total water rates and charges it has paid to the District over any period of twelve (12) consecutive months exceed by ten percent (10%) or more the total water rates and charges it would pay another supplier of water (which is physically capable of supplying water to the Airport Board) for the same quantity of water over a succeeding period of twelve (12) consecutive months, the Airport Board may provide the District with written notice of the proposed rates and charges of the other supplier of water (hereinafter, the "Proposed Rates and Charges") and of its intention to terminate this Agreement on a date not earlier than eighteen (18) months after such written notice. The Airport Board may terminate this Agreement after the expiration of such eighteen (18) month notice period unless the District, at that time, provides the Airport Board with water rates and charges equal to or lower than the Proposed Rates and Charges. The Airport Board may seek termination of this Agreement under the provisions of this paragraph one or more times during the term of this Agreement.

This Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between the Airport Board and the United States Government, the United States Department of Transportation, the Federal Aviation Administration, or their agencies or successors, relative to the financing, operation, or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of rights, money or property to the Airport Board for Airport purposes, or the acquisition or expenditure of funds for the improvement or development of the Airport.

In the event the United States Government, the United States Department of Transportation, the Federal Aviation Administration, or their agencies or successors, require modifications, or changes to this Agreement, including modifications or changes to the rates and charges paid by the Airport Board to the District hereunder, as a condition precedent to the granting, receipt or expenditure of funds for the financing, operation, improvement, development or maintenance of the Airport, or otherwise, such amendments, modifications, revisions,

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supplement, or deletions of any of the terms, conditions, or requirements of this Agreement shall become effective ninety (90) days after the giving of written notice thereof by the Airport Board to the District unless the District shall within such ninety (90) day period terminate this Agreement by giving written notice to the Airport Board of such termination.

**ARTICLE III**  
**POINT OF DELIVERY**

The District shall provide water to the Airport Board at the discharge side of the master meter located near the intersection of Mineola Pike and Donaldson Road in Boone County, Kentucky and at such other location or locations as may be agreed to by the Parties.

**ARTICLE IV**  
**QUALITY OF WATER**

All water supplied by the District shall be potable, treated water meeting all applicable quality and purity standards of all appropriate state and federal regulatory agencies. The water shall be of the same quality as that furnished to the District's other retail customers.

**ARTICLE V**  
**WATER RATES**

The Airport Board shall pay the District's water rates and charges for retail customers, as such rates and charges may be adjusted from time to time. The District may, from time to time, increase its water rates and charges but as long as the Kentucky Public Service Commission (hereinafter, the "PSC") has jurisdiction over the District's rates and charges, no rate or charge increase will take effect unless and until it has been reviewed and approved by the PSC.

**ARTICLE VI**  
**FLOW MEASUREMENT**

The District shall own, operate and maintain the master meter located near the intersection of Mineola Pike and Donaldson Road in Boone County, Kentucky. The District shall make annual tests and inspections of the meter and such other tests and inspections as the District may deem necessary. No correction will be made in the billing to the Airport Board unless a test or inspection shows that the metering is more than two percent (2%) slow or fast. If any test or inspection shows that the metering is inaccurate by more than two percent (2%) slow or fast, correction will be made in the billing to the Airport Board for the period during which the District and the Airport Board agree that the inaccuracy existed. If no such agreement is reached, it will be assumed that the error developed progressively from the date of the last meter test and an appropriate adjustment to billings will be made.

**ARTICLE VII**  
**BILLING AND PAYMENT**

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The District will bill the Airport Board on a monthly basis for the full amount due to the District for the prior month. All bills will be due and payable to the District within thirty (30) days of the date of mailing. The Airport Board shall be subject to the same remedies and penalties for nonpayment as other retail customers of the District.

The Airport Board will not be charged for water used for fire fighting and prevention, which includes all water used for extinguishing fires and for testing and maintaining fire fighting and prevention facilities and equipment. As a condition to receiving this exemption from billing, the Airport Board shall, for each twelve (12) month period of the term of this Agreement, provide the District with a written estimate of all water used for fire fighting and prevention. Such written estimate shall be provided on or before the fifth (5<sup>th</sup>) day of the second month next following the end of each twelve (12) month period and shall be certified by an appropriate official of the Airport Board's fire department. Subject to District review and approval, the charges applicable to such usage shall be rebated to the Airport Board by the District or a credit will be given to the Airport Board on its next billing(s) under this Agreement.

#### **ARTICLE VIII** **AUDITS**

The District will cause its accounts to be audited by a firm of certified public accountants on an annual basis. A copy of the certified public accountants' audit report will be supplied to the Airport Board upon the Airport Board's written request. The District will make its accounts and records available to the Airport Board for examination at reasonable times and locations.

#### **ARTICLE IX** **FORCE MAJEURE**

Except for the payments required of the Airport Board under Article VII above, either Party may suspend its performance under this Agreement if such Party's performance is prevented or delayed by a cause or causes beyond the reasonable control of such Party which could not have been avoided by the exercise of reasonable diligence by such Party. Such causes may include, but shall not be limited to, acts of God, acts of war, acts of terrorism, riot, fire, explosion, lock-outs or other labor disturbances, breakage or damage to machinery or pipelines, and partial or entire failure of water system. The Party asserting a right to suspend performance must, within a reasonable time of acquiring knowledge of the cause requiring the suspension, notify the other Party in writing of the cause for suspension, the performance suspended and the anticipated duration of the suspension. Performance will be suspended only during the time that it is prevented or delayed by the type of cause or causes described in this Article IX, and the Party whose performance is prevented or delayed shall endeavor to remove or overcome the cause or causes with all reasonable dispatch.

In the event of a system-wide shortage of water in the District's system, the Airport Board's supply of water will be reduced in the same ratio or proportion as the reduction in supply to the District's other retail customers.



**ARTICLE X**  
**RESPONSIBILITY AND INDEMNIFICATION**


The Airport Board shall be responsible for the construction, operation and maintenance of all waterlines and appurtenances of the Airport distribution system, which consists of all waterlines and appurtenances on the Airport side of the master meter located near the intersection of Mineola Pike and Donaldson Road in Boone County, Kentucky. The District shall be responsible for the construction, operation and maintenance of its water production and distribution system.

The District agrees to provide to the Airport Board emergency maintenance to the waterlines and appurtenances of the Airport distribution system located within the District Supply Area, as needed from time to time and as requested by the Airport Board during the term of this Agreement. It is understood that the Airport Board may request such emergency maintenance at any time on a twenty-four (24) hour/seven (7) days per week/three hundred sixty-five (365) days per year basis. The District shall exercise the same care and diligence in responding to such emergency maintenance requests as it does in responding to the emergency maintenance needs of its own distribution system. It is understood that the services performed by the District shall be only emergency maintenance requested by the Airport Board and shall not include routine or general maintenance of the Airport Board's distribution system. All work performed by the District in providing emergency maintenance under this Article X will be billed on a monthly basis at the rates and charges set forth in the District's Rates, Rules and Regulations (currently Section XII – Invoice Billing Policy) as the same may be amended or increased from time to time with the approval of the PSC. All bills for emergency maintenance will be due and payable to the District within thirty (30) days of the date of mailing.

The Airport Board shall indemnify, hold harmless and defend the District, including all commissioners, members, officers, agents, servants and employees thereof, from and against any and all liabilities, losses, suits, judgments, fines, penalties, costs, damages, expenses (including costs of suit and reasonable expenses of legal services), claims, demands and causes of action claimed by anyone by reason of injury to or death of any persons or property sustained as a result of the acts or omissions of the Airport Board, its agents, servants, employees, contractors, suppliers or invitees arising out of or in any way related to the construction, operation or maintenance by the Airport Board of its internal water system, excepting such liability as may result from the sole negligence of the District.

The District shall indemnify, hold harmless and defend the Airport Board, including all directors, members, officers, agents, servants and employees thereof, from and against any and all liabilities, losses, suits, judgments, fines, penalties, costs, damages, expenses (including costs of suit and reasonable expenses of legal services), claims, demands and causes of action claimed by anyone by reason of injury to or death of any persons or property sustained as a result of the acts or omissions of the District, its agents, servants, employees, contractors, suppliers or invitees arising out of or in any way related to the construction, operation or maintenance by the District of its water production and distribution system, excepting such liability as may result from the sole negligence of the Airport Board. In addition, the District shall indemnify, hold harmless and

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**SECTION 9 (1)**

By   
Executive Director



defend the Airport Board, including all directors, members, officers, agents, servants and employees thereof, from and against any and all liabilities, losses, suits, judgments, fines, penalties, costs, damages, expenses (including costs of suit and reasonable expenses of legal services), claims, demands and causes of action claimed by anyone by reason of injury to or death of any persons or property to the extent such injury or death is caused by the negligence of the District, its agents, servants, employees, contractors, suppliers or invitees in performing emergency maintenance as provided for in the second paragraph of this Article X.

**ARTICLE XI**  
**APPROVAL OF AGREEMENT**

The Parties understand and agree that this Agreement may require submission to the PSC for approval. If such submission is required, this Agreement shall still take effect on the date first above written but shall be subject to any lawful order of the PSC.

**ARTICLE XII**  
**ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding and agreement between the Parties and supercedes all other understandings and agreements between the Parties with respect to the subject matter of this Agreement. There are no understandings, representations or warranties of any kind, expressed or implied, not expressly set forth in this Agreement. No modification of this Agreement shall be effective unless in writing and executed on behalf of both Parties.

**ARTICLE XIII**  
**WAIVERS**

The failure of any Party at any time to enforce any provision of this Agreement, to exercise its rights under any provision or to require a certain performance of any provision shall not be construed as a waiver of any such provision or in any way affect the validity of this Agreement or the right of the Party thereafter to enforce each and every provision.

**ARTICLE XIV**  
**ASSIGNMENT**

This Agreement shall not be assigned by either Party without the written consent of the other Party.

**ARTICLE XV**  
**AUTHORITY TO EXECUTE AGREEMENT**

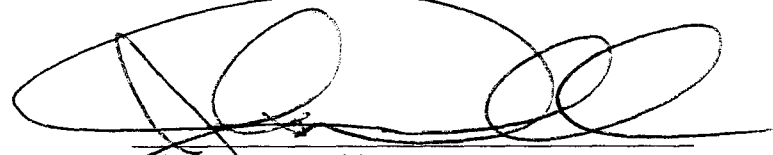
The Airport Board possesses full authority to enter this Agreement as indicated by the lawful resolution attached hereto as Exhibit B. The District possesses full authority to enter this Agreement as indicated by the lawful resolution attached hereto as Exhibit C.

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By   
Executive Director

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed in two originals, one for each Party.

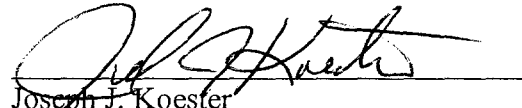
**KENTON COUNTY AIRPORT BOARD**

  
\_\_\_\_\_  
John S. Domaschko  
Chairman

Attested:


  
\_\_\_\_\_  
Sheila R. Hammons  
Secretary/Treasurer

**NORTHERN KENTUCKY WATER DISTRICT**

  
\_\_\_\_\_  
Joseph J. Koester  
Chairman

- Exhibit A - Diagram of District Supply Area
- Exhibit B - Resolution of the Kenton County Airport Board
- Exhibit C - Resolution of the Northern Kentucky Water District

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By   
\_\_\_\_\_  
Executive Director

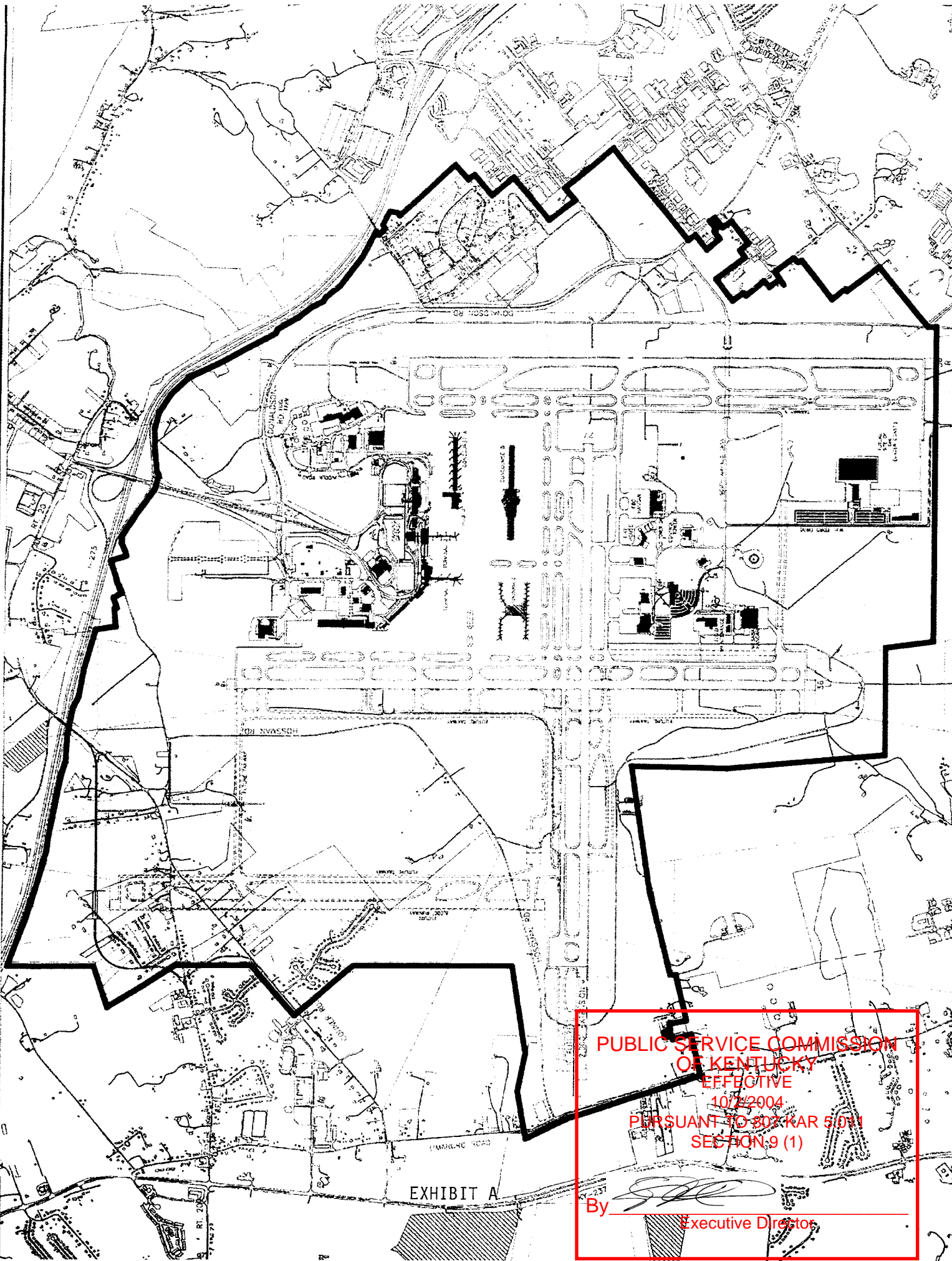


EXHIBIT A

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10/7/2004  
PURSUANT TO KY KAR 5011  
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By *[Signature]*  
Executive Director



RESOLUTION

WHEREAS, the Kenton County Airport Board (the "Board") desires to provide for the long term supply of potable water for its use in the operation of Cincinnati/Northern Kentucky International Airport (the "Airport"), to provide a supply of water to be used for fire fighting purposes and further to provide for repair services of its internal water distribution system on an emergency basis as needed, and

WHEREAS, the Northern Kentucky Water District (the "District") is able and willing to provide to certain areas of the Airport such water and emergency services for a term of twenty (20) years and to grant to the Board certain rights to terminate such agreement in the event that potable water may otherwise be available to the Board at a more competitive rate;

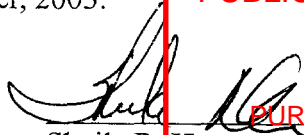
NOW, THEREFORE, it is hereby resolved by the Kenton County Airport Board as follows:

1. It is hereby found, determined and declared that the recitals set forth in the preambles to this resolution, which are hereby incorporated in this resolution by reference, are true and correct;
2. The Board ratifies and approves the agreement between the Board and the District whereby the Board for a term of twenty (20) years will purchase its potable water supply for certain areas of the Airport from the Northern Kentucky Water District, said Agreement providing for the furnishing of a potable water supply to such areas, for the furnishing of water for fire fighting purposes and for the furnishing of emergency repair purposes, all at rates and charges to be paid by the Board based upon the District's filings with the Kentucky Public Service Commission for retail customers and for the furnishing of emergency services, all as specifically set forth in the Agreement;
3. The Chairman of the Board be and is hereby authorized to execute the agreement with the District, and such other documents as approved by legal counsel to the Board necessary to carry out the foregoing resolution.

**CERTIFICATION**

I, Sheila R. Hammons, the duly qualified and Secretary-Treasurer of the Kenton County Airport Board, do hereby certify that the foregoing Resolution was adopted at a Meeting of the Kenton County Airport Board, held September 22, 2003, at which a quorum was present, and said Resolution has not been rescinded, altered or amended.

IN TESTIMONY WHEREOF, I have hereunto set my hand and

  
Sheila R. Hammons  
Secretary/Treasurer

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EXHIBIT B

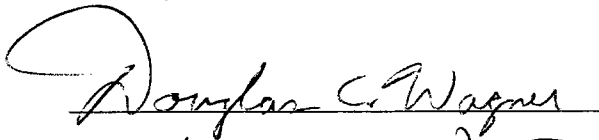
**RESOLUTION  
OF  
THE NORTHERN KENTUCKY WATER DISTRICT**

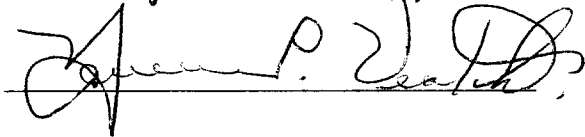
**A RESOLUTION REGARDING THE EXECUTION OF A  
WATER SUPPLY AGREEMENT WITH THE KENTON  
COUNTY AIRPORT BOARD**

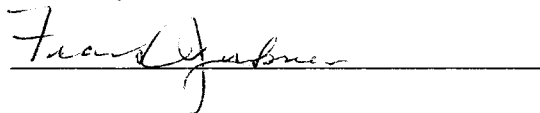
BE IT RESOLVED by the Board of Commissioners of the Northern Kentucky Water District (the "District") that the District enter the proposed Water Supply Agreement with the Kenton County Airport Board (the "Airport Board") for the sale and purchase of water to and by the Airport Board for a term of twenty (20) years.

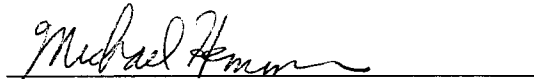
BE IT FURTHER RESOLVED that the Chairman of the Board of Commissioners of the District is authorized and empowered to execute the Water Supply Agreement by and on behalf of the District.

AGREED, DETERMINED and RESOLVED this 21st day of October, 2003 at a regular meeting of the Board of Commissioners of the District at Aqua Drive, Cold Spring, Kentucky.

  
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By   
\_\_\_\_\_ Executive Director