

## Memorandum

To: Programs, Projects, Operations Subcommittee  
Subject: NRD /Blair Airport Authority Water Supply Agreement  
Date: July 1, 2009  
From: Dick Sklenar

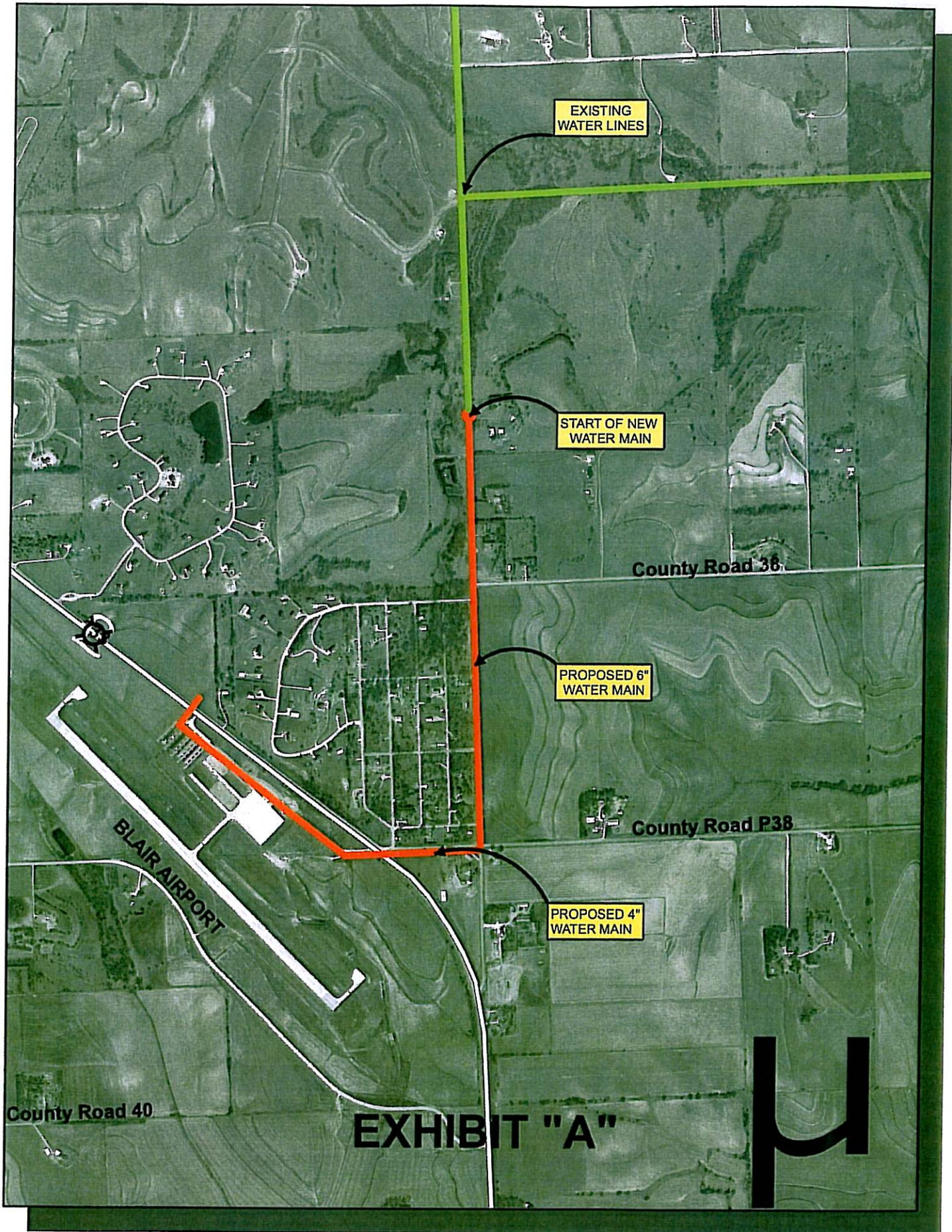
Attached is a draft agreement with the Blair Airport Authority (BAA) regarding provisions for the construction of a waterline from Washington County Rural Water #2 (WCRW#2) to the airport located along Highway 133.

Some of the following points in the agreement are as follows;

1. The Blair Airport Authority, and an adjacent property owner, will finance the waterline project.
2. WCRW#2 will compensate BAA only for over sizing a portion of the waterline project along County Rd. 37. Compensation will be in the form of rebates. Such rebates shall amount to \$1000 per hookup for all future hookups along the proposed route.
3. BAA will hire, and pay for all, consultants and inspection services.
4. BAA will acquire Nebraska Dept. of Roads permit for highway crossings. BAA will also provide necessary right-of-way on the lands for the waterline project. WCRW#2 will acquire all other right-of-way and permits.

The anticipated construction of the waterline is expected to be accomplished no later than 2011. The rural water system currently has enough capacity to serve the area in question.

- **It is recommended that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the Agreement among the District, the Blair Airport Authority and Simmonds in the form as presented to this meeting, with such changes as deemed necessary by the General Manager and approved as to form by the District's Legal Counsel.**



**COOPERATIVE AGREEMENT**

---

**PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT,  
BLAIR AIRPORT AUTHORITY  
AND  
JANA JOAN SIMMONS**

---

**WASHINGTON COUNTY RURAL WATER PROJECT EXTENSION**

---

**THIS AGREEMENT** (“**This Agreement**”) is made by and among the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, a subdivision of the State of Nebraska (“**the NRD**”); the **BLAIR AIRPORT AUTHORITY**, a municipal corporation of the State of Nebraska (“**the Authority**”); and, **JANA JOAN SIMMONS** (“**Simmons**”). The NRD, the Authority and Simmons are hereinafter referred to collectively as “**the Parties**” and individually as a “**Party**.”

**WHEREAS**, the Parties desire to cooperate in a project (“**the Project**”) to extend the NRD’S water supply pipeline as depicted on the diagram attached hereto as Exhibit “A” and incorporated herein by reference, from a point of connection to the NRD’S system near 3304 County Road 37 (“**the Point of Connection**”), thence south to County Road 38, thence westerly on County Road 38 and across State Highway 133 to a point on the Authority’s airport property, thence northwesterly on said airport property to a point on said airport property immediately northerly of said airport’s driveway, thence northeasterly and across State Highway 133 to a point on the parcel of real estate owned by Simmons that is described in the written legal description attached hereto as Exhibit “B” and incorporated herein by reference (“**the Simmons Property**”).

**NOW, THEREFORE, IN CONSIDERATION** of the foregoing recitals and their mutual covenants, the Parties hereby agree as follows:

1. **PURPOSE OF AGREEMENT.** The purpose of This Agreement is to set forth the terms under which the Project will be designed, constructed, operated, maintained, repaired, replaced and regulated, and to specify the rights, duties and obligations of the Parties in connection therewith.

2. **NO ENTITY.** The Project will be undertaken without any separate legal entity being created.

3. **TERM AND TERMINATION.** It is the intention of the Parties that the water supply hereby contracted for shall be supplied continuously as long as the consumers served by the Project are dependent thereon. This contract may be terminated by mutual agreement of the Parties, or by the giving of two years written notice by one of the Parties to the other Parties; provided, however, the NRD shall not terminate the water supply unless there is available to the other Parties an adequate alternate source of water which can be developed or purchased feasibly.

4. **THE ENGINEERS.** Prior to March 31, 2010, the Authority, as the lead Party for the Project, shall retain one or more engineering consultants ("**the Engineers**"), pursuant to a written contract approved in writing by the other Parties ("**the Engineering Contract**") (such approval to not be withheld or delayed unreasonably) to design the Project, prepare plans and specifications and contract documents for the Project, and to administer construction of the Project. Failure of any of the Parties to approve the Authority's selection of the Engineers may be cause for termination of this Agreement, at the election of one of the remaining Parties, upon written notice to the other Parties.

5. **PRELIMINARY PLANS AND SPECIFICATIONS.** The Engineering Contract shall require that the Engineers complete the preparation of preliminary plans and specifications ("**the Preliminary Plans**") for the Project, in accordance with the following:

a) Except as hereinafter specified, the Preliminary Plans shall be drawn in accordance with design criteria provided by the NRD after consultation with the other Parties;

b) The Preliminary Plans shall be drawn in accordance with applicable Nebraska state and federal statutes, rules and regulations;

c) The Preliminary Plans shall specify a six inch (6") diameter water pipeline extending from the Point of Connection to County Road P38 and shall specify a four inch (4") diameter water pipeline from County Road P38 to the Simmons Property;

d) The Preliminary Plans shall include, without limitation, the Engineers' itemized estimates of the costs of the separable portions of the Project, including the costs of engineering, design, construction and construction administration, but excluding costs of rights-of-way.

6. **APPROVAL OF PRELIMINARY PLANS.** Upon the Engineers' completion of the Preliminary Plans, and after approval of the same by the Authority, the Preliminary Plans shall be submitted to the other Parties for their written approvals. Each of the other Parties shall have 21 days to review the Preliminary Plans and to approve or disapprove the same in writing or suggest amendments thereto.

7. **PREPARATION OF FINAL PLANS FOR PROJECT.** Upon receipt by the Authority of the other Parties' written approvals of the Preliminary Plans, the Authority shall direct the Engineers to prepare final plans and specifications for the Project (hereinafter referred to collectively as "**the Final Plans**").

8. **APPROVAL OF FINAL PLANS.** Upon the Engineers' completion of the Final Plans, and after approval of the same by the Authority, the Final Plans shall be submitted to the other Parties. Each of the other Parties shall have 21 days to review the Final Plans and to approve or disapprove the same in writing or suggest amendments thereto.

9. **PROJECT RIGHTS-OF-WAY.** Within a reasonable time after approval of the Final Plans by all Parties, and without further consideration, each of the other Parties shall grant to the NRD a permanent easement or permit over all of such Parties' lands and rights-of-way that shall be designated in the Final Plans as necessary Project rights-of-way. Each such permanent easement or permit shall run with the land and grant to the NRD the permanent right to design, construct, own, operate, maintain,

repair, replace and regulate water transmission and distribution mains, and appurtenances thereto, in, on, over and across such designated land of the granting Party, or contain a grant in such other form as may be determined by agreement of the granting Party and the NRD. Excepting Project rights-of-way to be acquired for the NRD by the Authority from the Nebraska Department of Roads over and under Highway 133 highway right-of-way, the NRD, at its sole and unreimbursed expense, shall acquire in its own name all Engineer-designated lands, easements and rights-of-way for the Project, and such approvals, licenses, easements, water rights, permits and consents, as the NRD determines are necessary or convenient for construction and/or for permanent operation, maintenance repair, replacement and regulation of the Project.

10. **PROJECT CONTRACTORS.** In its sole discretion, the Authority may determine to retain separate contractors (hereinafter referred to collectively as “the **Project Contractors**”) to construct separable portions of the Project, and/or may determine to construct the Project in increments or stages. Within a reasonable time after approval of the Final Plans by all Parties, the Authority shall conduct one or more public lettings, in accordance with the appropriate policies of the Authority, and thereby retain Project Contractors who the Authority determines are the lowest and best bidders, to construct the Project or separable portions thereof; and, within a reasonable time after the Authority’s receipt and opening of such bids, the Authority shall deliver a summary of all such bids to the other Parties, together with the identification by the Authority of the bidder who the Authority determines is the lowest and best bidder, whereupon, in the absence of good cause to the contrary being shown by the other Parties, the Authority shall accept such bidder’s bid and shall award to such bidder the contract to construct the Project or a separable portion thereof.

11. **CONSTRUCTION CONTRACT DOCUMENTS.** The proposed contract(s) between the Authority, on the one hand, and the Project Contractors, on the other hand, for construction of the Project (all such contract(s), together with the Final Plans, all hereinafter being referred to collectively as “the **Construction Contract Documents**”), including, without limitation, the contract prices that the Authority proposes to pay to the Project Contractors for construction of the Project, shall be

submitted to the other Parties, who shall have a period of ten (10) days to review the same and to suggest amendments thereto.

12. **CONTRACTOR INSURANCE.** The Construction Contract Documents shall provide for insurance coverages in the minimum amounts set out in the schedule attached hereto as Exhibit "C" and incorporated herein by reference, all such coverages to name the NRD as an additional insured.

13. **PROJECT FINANCING.** The Authority shall be solely responsible for obtaining all financing for the Project, and shall be solely responsible for applying for state and federal grants for which the Project may be eligible. In the event that the Authority is not able to arrange financing upon such terms as the Board of Directors of the Authority, in its sole discretion, determines reasonable, the Authority may terminate This Agreement upon written notice to the other Parties.

14. **CONSTRUCTION OF PROJECT.** After arranging for Project financing and determining the lowest and best bidder for construction of the Project, the Authority shall execute the Construction Contract Documents on its own behalf and authorize the Project Contractors to proceed to construct the Project, in substantial conformance with the Construction Contract Documents approved by the other Parties.

15. **CONSTRUCTION OBSERVATION.** The Authority will provide for engineering observation and administration of construction of the Project. Representatives of the other Parties shall be given the opportunity to observe such construction at all reasonable hours and the right to request and receive from the Authority contemporaneous copies of all written communications between or among, or issued by the Authority and/or the Engineers and/or the Project Contractors pertaining to Project construction, including but not limited to statements by the Engineers as to percentage of completion and substantial completion.

16. **ACCEPTANCE OF PROJECT.** The Authority shall not accept the Project without NRD approval, which approval shall not be withheld or delayed unreasonably.

17. **AS-BUILT PLANS AND FINAL COST STATEMENT.** Upon completion of construction of the Project or any separable portions thereof, the

Authority shall direct the Engineers to prepare and deliver to the NRD (a) as-built plans and specifications for the Project and (b) itemized statements of the final costs of design and construction of the separable portions of the Project.

18. **CONTRACTOR'S WARRANTIES.** The Authority shall enforce all bonds and warranties given by the Project Contractors in the Construction Contract Documents, as the NRD from time to time may request.

19. **POINT OF DELIVERY.** After substantial completion of construction of the Project, or as soon thereafter as Project facilities are available to receive and distribute water, the NRD shall furnish water to the Project through a pipe connection to the Project pipeline situated in a vault located at or near the Point of Connection.

20. **CONNECTIONS.** The Authority shall have the right to install two one-inch (1") connections to the Project water lines on the Authority's airport property. For the first such connection the Authority shall pay to the NRD a hook-up fee of \$3,500 and shall pay to the NRD monthly water fees beginning the first day of the month following the Authority's acceptance of the Project from the Project Contractor. For the second such connection the Authority shall reimburse to the NRD the actual cost of the installation of the connection, a hook-up fee of \$3,500, and also shall pay to the NRD monthly water fees beginning the first day of the month following such installation. For each connection requested by Simmons, Simmons shall pay to the NRD the NRD'S standard hook-up fee and connection charges.

21. **CONTRIBUTIONS TO PROJECT COSTS.** Simmons agrees to pay to the Authority a contribution in the amount of \$50,000 towards the Authority's costs for engineering and construction of the Project, such payment to be due to the Authority upon the Authority's award of a contract to the Project Contractor for construction of the Project. The amount of such payment shall be escrowed with Simmons' attorneys on the effective date of This Agreement, and shall be paid by such attorneys when due pursuant to This Agreement. The Authority agrees to pay the remainder of the Authority's costs expended for engineering and construction of the Project without further reimbursement by either of the other Parties.



22. **REBATE OF PROJECT CONTRIBUTIONS.** Commencing on December 31, 2010, and on December 31<sup>st</sup> of each succeeding year thereafter, the NRD shall rebate to the Authority the first One Thousand Dollars (\$1,000) of each Project hook-up fee paid to the NRD during the prior NRD fiscal year by water users seeking to be served by the Project. Such rebates shall be made annually until 40% of the Authority's total costs expended for construction of the Project have been rebated, without interest.

23. **EFFECT OF PROJECT CONTRIBUTION.** Except as otherwise specifically provided in This Agreement, a contribution paid by a Party to the NRD in accordance with This Agreement shall constitute the sole contribution due by such Party towards the costs of PROJECT design, construction and rights-of-way.

24. **RECORDS AVAILABILITY.** The Authority's records of Project receipts and expenditures shall be made available to the other Parties for their inspection and copying at all reasonable hours for a period of ten years after final completion of Project construction.

25. **EMERGENCY REDUCTIONS.** The Parties other than the NRD agree to accept reduced water deliveries when, due to unusual system demands during extreme climatic conditions, fire flows or emergency situations, to continue such deliveries would seriously impair the NRD'S service to its other customers, it being understood that all users dependent upon the NRD for water supply will share the shortages as proportionately as possible given the limits of the NRD'S controls.

26. **WATER QUALITY.** Water delivered by the NRD to the Project will be of quality and chemical content equivalent to that provided to the other customers of the NRD and will satisfy all State and Federal rules and regulations. No change in water quality will be made by the NRD to satisfy any special requirements of the other Parties.

27. **APPROVAL FROM STATE DEPARTMENT OF HEALTH & HUMAN SERVICES.** The NRD shall have the responsibility for obtaining from the Department of Health & Human Services of the State of Nebraska any approvals for the delivery of water under this agreement that may be required prior to delivery of any

water hereunder, and shall perform at its own expense any testing or monitoring of water quality which may be required.

**28. PROJECT OWNERSHIP, OPERATION AND MAINTENANCE.**

After final completion of construction of the Project or respective separable portions thereof, and acceptance of the same from the Project Contractors,

a) The NRD shall own all the portions of the Project as a part of the NRD'S water system; and,

b) The NRD, at its sole cost and expense, shall permanently operate, maintain, repair, replace and regulate all portions of the Project, at such times and in such manner as the NRD shall determine necessary, all in accordance with generally-accepted engineering practices and Nebraska statutes governing natural resources district special improvement water supply projects.

**29. INDEMNIFICATIONS.** (a) The Authority shall defend, indemnify, and hold each of the other Parties harmless from and against all costs and expenses, including attorneys fees and court costs, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from the design and/or construction of the Project; (b) the NRD shall defend, indemnify, and hold each of the other Parties harmless from and against all costs and expenses, including attorneys fees and court costs, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from the NRD'S operation, maintenance, repair, replacement, or regulation of the PROJECT, except such personal injuries or property damages as may be caused by the sole negligence of such other PARTY.

**30. PROJECT RISK OF LOSS.** After completion of construction of the Project and acceptance thereof from the Project Contractors, the sole risk of loss of or damage to any portion of the Project shall be borne by the Party which, under This Agreement, has the duty to provide operation, maintenance, repair, replacement or regulation of such portion of the Project, whether such loss or damage results from accident or other casualty whatsoever.

31. **NONDISCRIMINATION.** The Parties shall not, in the performance of This Agreement, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, political or religious opinions, affiliations or national origin.

32. **CAPTIONS.** Captions used in This Agreement are for convenience and are not used in the construction of This Agreement.

33. **APPLICABLE LAW.** In performing This Agreement the Parties shall conform to all applicable state and federal laws, rules and regulations.

34. **MODIFICATION.** This Agreement contains the entire agreement of the Parties. No representations were made or relied upon by any of the Parties other than those expressly set forth herein. No agent, employee or other representative of any of the Parties is empowered to alter any of the terms hereof unless done in writing and signed by an authorized officer of such Party.

35. **INVALID PROVISIONS.** In the event that any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition, or provision herein contained shall not affect the validity of the remainder of the covenants, conditions or provisions of This Agreement which shall in all respects remain a legally-binding agreement with the invalid portion being deleted; provided that the validity of any such covenant, condition, or provision does not materially prejudice any of the Parties in its respective rights and obligations contained in the valid covenants, conditions, or provisions of This Agreement.

36. **NON-WAIVER.** No delay or failure by any of the Parties to exercise any right under This Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right unless otherwise expressly provided herein. A valid waiver by any of the Parties shall not be deemed to extend the amount of time available to perform any other act required under This Agreement.

37. **FURTHER AGREEMENTS.** Each of the Parties will, whenever and as often as another Party may request, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all such further conveyances,

assignments or other instruments and documents as the requesting party may determine to be necessary, expedient or proper in order to complete any and all conveyances, transfers, and assignments herein provided, and do any and all other acts and to execute, acknowledge and deliver any other documents so requested in order to carry out the intent and purposes of This Agreement.

38. **TIME IS OF THE ESSENCE.** Time is expressly declared to be of the essence of This Agreement.

39. **DEFAULT.** If the any of the Parties fails to comply with any provision of This Agreement after reasonable request for performance has been served on such Party, the remaining Parties may seek specific performance of This Agreement.

40. **EFFECTIVE DATE AND TERM.** This Agreement shall become effective upon its execution by all Parties, and shall extend for the term set forth above.

41. **NOTICES.** Notices to the respective parties provided for in This Agreement shall be sufficient if sent by certified or registered mail, postage prepaid, addressed as follows:

To the NRD: John Winkler, General Manager  
Papio-Missouri River NRD  
8901 South 154th Street  
Omaha, Nebraska 68138-3621

To the Authority:

---

---

---

---

To Simmons:

---

---

---

---

or to such other respective representative(s) or address(s) as the respective one of the Parties may designate to the other Parties from time to time in writing.

**IN WITNESS WHEREOF**

THIS AGREEMENT is executed by the NRD on \_\_\_\_\_, 2009

**PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT**

By \_\_\_\_\_  
**General Manager**

THIS AGREEMENT is executed by the Authority on \_\_\_\_\_, 2009.

**BLAIR AIRPORT AUTHORITY**

By \_\_\_\_\_  
Title: \_\_\_\_\_

THIS AGREEMENT is executed by Simmons on \_\_\_\_\_, 2009.

\_\_\_\_\_  
**JANA JOAN SIMMONS**