

April 18, 1997

Introduced By: Larry Gossett

fpt:de

Proposed No.: 97-183

10195

MOTION NO.

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A MOTION authorizing the executive to execute an interlocal agreement with the Port of Seattle, State of Washington and Snohomish County for construction, maintenance and repair of a regional live aircraft fire fighting training center.

WHEREAS, King County, the Port of Seattle, Snohomish County and the Boeing Company all have aircraft rescue and fire fighting units which are required by the Federal Aviation Administration (FAA) regulations to be trained annually in specialized techniques for handling aircraft emergencies, and

WHEREAS, the Puget Sound Air Pollution Control Agency (PSAPCA) has prohibited burning of hydrocarbon fuels for outdoor live fire training in the immediate Puget Sound Basin but has approved a live fire fighting facility at the Washington State Patrol Training Academy near North Bend, and

1 WHEREAS, development of a regional facility for joint use
2 of all airport fire protection agencies within reasonable
3 proximity to the Puget Sound basin is economically and
4 environmentally a sound approach, and

5 WHEREAS, King County Airport ARFF staff have participated
6 in an interjurisdictional group to develop plans for
7 construction of a regional live fire training facility at the
8 Washington State Fire Training Academy near North Bend, and

9 WHEREAS, the interjurisdictional group has developed a
10 proposed interlocal agreement for sharing the cost of
11 construction, maintenance and repair of such a facility,

12 NOW, THEREFORE BE IT MOVED by the Council of King
13 County:

14 The Executive is hereby authorized to execute an
15 interlocal agreement with the Port of Seattle, State of
16 Washington and Snohomish County, and a separate agreement
17 with these same parties and the Boeing Company, for the
18 purpose of financing construction, maintenance and repair of
19 a regional live fire fighting training facility; provided
20 that the terms and conditions are substantially the same as
21 Attachment A (dated April 22, 1997) hereto; provided further
22 that the steering committee established by the interlocal
23 agreement transmit to the County Council within 90 days of
24 the execution of this agreement a community involvement plan
25 to address potential community concerns about facility

1 operations and their impacts on neighborhoods, businesses and
2 institutions.

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PASSED by a vote of 12 to 0 this 28th day of
April, 1997

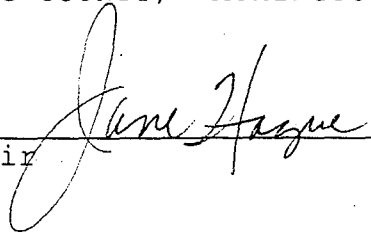
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KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

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Chair

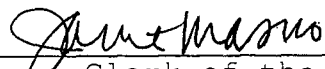
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ATTEST:

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Clerk of the Council
~~ACTING~~

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Attachments: Attachment A (dated April 22, 1997)

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INTERLOCAL AGREEMENT FOR A REGIONAL

LIVE-FIRE TRAINING FACILITY

10195

This Interlocal Agreement ("Agreement") is entered into this _____ day of _____, 1997, pursuant to chapter 39.34 RCW, by the following parties: the Port of Seattle, a municipal corporation of the State of Washington ("Port"); King County ("King"); Snohomish County ("Snohomish"); the State of Washington, Washington State Patrol ("WSP"); and the State of Washington Department of General Administration ("GA").

PURPOSE: It is the purpose of this Agreement to set forth the terms and conditions for the Port, King and Snohomish Counties, and The Boeing Co. ("Boeing"), by subsequent agreement, to construct and the State to operate, a live-fire training facility for aircraft rescue and fire fighting training on real property owned by the WSP at the Washington State Fire Training Academy ("WSFTA") located near the City of North Bend, King County, Washington.

WHEREAS, the Puget Sound Air Pollution Control Agency ("PSAPCA") has prohibited the burning of hydrocarbon fuels for outdoor live-fire training in the immediate Puget Sound Basin, but has approved a Notice of Construction of a live-fire training facility at the WSFTA in North Bend; and

WHEREAS, the Federal Aviation Administration ("FAA"), pursuant to FAA Regulation Part 139, requires ongoing live-fire training for airport firefighter certification, and the State of Washington, pursuant to WAC 296-305-085, requires fire service employers to establish and follow reasonable training policies and procedures; and

WHEREAS, the parties to this Agreement, as well as others similarly impacted by the PSAPCA decision, agree that a single, joint-use facility for all airport fire protection agencies within reasonable proximity to the Puget Sound Basin is economically and environmentally a sound approach; and

WHEREAS, on December 21, 1993, the Port, King and Snohomish Counties, Boeing and others not parties to this Agreement entered into a Memorandum of Understanding forming a Regional Aircraft Live-Fire Training Committee ("RALFTC") and providing, among others, for the investigation and potential development, including site selection, for a new, jointly-financed regional live-fire training facility, and a funding plan to include FAA funding participation; and

WHEREAS, the RALFTC recommended the WSFTA in North Bend as the preferred site for construction of a new regional live-fire training facility; and

WHEREAS, WSP has accepted RALFTC's recommendation to locate the Facility at the WSFTA; and

WHEREAS, WSP intends to lease from the Department of Natural Resources (DNR) approximately 3.3 acres adjacent to the WSFTA for use as part of the maneuvering/staging area for the Equipment to attack the fires at the Facility;

WHEREAS, RALFTC members have agreed to form an advisory committee to the Director of WSP concerning the use, operation, and management of the Facility; and

WHEREAS, GA and the Port have entered into an Interlocal Cooperation Act agreement dated April 5, 1996, whereby GA delegated its public works authority for state facilities to the Port; and

WHEREAS, the parties wish to set forth their rights and obligations in the development, management, and use of the Facility;

NOW, THEREFORE, the parties agree as follows:

1. **Definitions:** Unless otherwise indicated, the following terms shall have the following meaning whenever used in this Agreement:

(a) **Equipment:** Two Aircraft Rescue and Fire Fighting vehicles ("ARFF vehicles") approved by FAA, and related equipment.

(b) **Facility:** An aircraft, live-fire, training prop, designed to simulate aircraft crash, fuel spill ground fires, interior fires, engine fires, and wheel/gear fires, and consisting of an outdoor, lined burn pit, surrounded by paved or crushed rock driving surface, including but not limited to, the following accessory equipment and structures: fuel storage/delivery systems, water storage and/or stand alone waste water and waste foam/fuel collection and treatment systems, a control shed, and at least a three-bay Equipment storage building.

(c) **Funders:** The Port, King, and Snohomish Counties and Boeing, as added by separate agreement, in accordance with the funding formula set out in Exhibit A to this Agreement.

(d) **Repairs:** All work and materials necessary, for any reason including natural disaster, to maintain the Facility, beyond the routine maintenance required in the operational specifications provided pursuant to subsection 3(d) of this Agreement.

(e) **Improvements:** All work necessary to expand, renovate, or upgrade the Facility.

(f) **De-Commissioning:** All work, including environmental cleanup, necessary for the dismantling and disposal of the Facility to the extent necessary to return the site to a level-grade suitable for industrial development.

(g) **Maintenance:** All work required or recommended by standard common facility maintenance practice and by operational specifications in any maintenance and operations manuals provided for the Facility and Equipment, or as otherwise agreed to by WSP and the Users' Advisory Committee.

2. **Duration of Agreement:** This Agreement shall commence on the date first set forth above, and except as otherwise provided herein shall remain in effect until twenty (20) years after the date a certificate of occupancy is granted for the Facility. Provided, that any Funder may terminate its participation in this Agreement by 30 days notice to other Funders if the FAA grant of funds falls below the level of grant request. Any Funder who elects to terminate under this subsection shall be responsible for any costs up to the date of termination. This Agreement may be extended for five year increments at the sole option of the Funders, provided that there is agreement between the Funders and WSP that there is still useful life remaining in the Facility.

3. Construction:

(a) **Design:** The parties recognize and acknowledge that the design for the facility's construction and decommissioning and for the relocation or replacement of buildings, if necessary, was undertaken pursuant to the Memorandum of Agreement for Design Phase of Regional Aircraft Live-Fire Training Facility dated July 26, 1996 ("Memorandum of Agreement") between the parties and Boeing. This Interlocal agreement, when fully executed, supersedes said Memorandum of Agreement.

(b) **Design Approval and Budgetary Authorization:** Prior to commencing design, the Funders and WSP shall give written approval of a Project Scope Document for the Facility and Equipment. This will enumerate the major components, special features, functional requirements and design standards that will be provided in the design. The Project Scope Document will become the standard for determining whether the designed Facility meets the requirements of the Funders and WSP. A change in scope is defined as any modification that changes the functionality of the Facility and Equipment or increases project construction cost by more than \$10,000. Reviews of the plans, specifications, and budgets will be conducted at the 30%, 60% and 90% design stages. During each review, Funders and WSP will have an opportunity to make written comments on the design. The review comments will be responded to in writing explaining what action will be taken. Comments that request a change in scope will be referred to all the Funders and

WSP for concurrence. The final plans, specifications, Engineer's construction cost estimate and the contingency budget estimate must receive the unanimous written approval of all the Funders and WSP before advertising for bids and must have the FAA's approval.

The Engineer's construction cost estimate(s) (including contingency) must be within the authorized construction funding and the total project must be within the Authorized Project Budget. If it is not, the Funders will be notified to determine the course of action, which could include proceeding with bidding or revising the scope and redesigning to be within budget. When the Funders have agreed, the contract can be advertised for bid by the Port.

The Funders will be notified of the bid results. The contract may be awarded without further approval if the bid price is within the authorized construction funding or subsequent agreement of the Funders. If it is not, the Funders will be notified to determine the course of action, which could include awarding the contract or canceling the bids, revising the scope and redesigning to be within authorized project budget.

Any construction change order that would cause the construction costs to exceed the authorized construction funding, or exceeds \$50,000 will be referred to the Funders for approval.

The authorized construction funding and the authorized project budget are set out in Exhibit B, which is attached and incorporated herein.

(c) **Permitting:** The Port shall obtain on behalf of WSP all permits necessary to construct the Facility. WSP shall cooperate with the Port to assist with the permit process; such cooperation shall include WSP providing the Port with all relevant information, including existing WSP permits.

(d) **Construction Management and Procurement of Equipment:** Subject to the approvals set forth in subparagraph 3(b) above, the Port shall be responsible for and have authority to bid, award, and administer all necessary contracts for the construction of the Facility and to resolve all claims arising from such construction. During construction, the Port shall abide by the Interlocal Agreement between the Port and GA, dated April 5, 1996. The Port shall require, as part of the construction contract deliverables, operational specifications in the form of a maintenance and operations manual for the Facility, along with related training. The Port shall require all contractors performing work on the property leased from DNR to maintain the minimum levels of insurance coverage required by the WSP/DNR lease. The Port shall also be responsible for and have the authority to procure and purchase the Equipment.

(e) **Site Restoration:** If construction commences but the Facility does not become operational, the Port, after obtaining Port Commission approval, if necessary, without de-structuring useful improvements completed to date, as determined by the Port and WSP, shall restore the site to either its substantially-original condition (exclusive of landscaping) or to a stable, developable site, whichever is least expensive. In such event, no other decommissioning costs nor any liability under Section 11 shall be incurred by the Funders. The Port shall be reimbursed by the Funders according to the non-eligible allocations as set forth in Exhibit A, or reimbursed as otherwise agreed to by the Funders.

4. **Finance:**

(a) **Facility Development Costs:** Shares of the auditable costs associated with the development and construction of the Facility (including, but not limited to: permits; architectural and engineering fees; environmental site studies; GA's oversight of the project per the interlocal agreement between GA and WSP dated October 2, 1996 (\$28,000); and the first year's rental payment for the WSP/DNR lease); shall be borne by the Funders in accordance with, and not to exceed, the limits of the funding allocations set forth in Exhibit A to this Agreement; Provided that, the parties may, by written agreement authorized by their respective legislative bodies, authorize increases to their respective funding allocations.

(b) **FAA Grant:** The Port shall be responsible for sponsoring and complying with all FAA grant application requirements for reimbursement of funds attributable to development and construction of the Facility. To the extent necessary, the parties to this Agreement shall cooperate with the Port to ensure the FAA grant requirements are met.

(c) **Reimbursement of Port Funds:** The Funders shall reimburse the Port for all monies advanced by the Port, including costs of predesign, design, and any Port commissioned Phase II Environmental Site Assessment, in its role as administrator for construction of the Facility, and all costs associated with the Port's procurement and purchase of the Equipment, to the extent of and limited to not exceed their respective funding allocation responsibilities as set forth in Exhibit A to this Agreement. Payment to the Port pursuant to this sub-paragraph shall be made no later than thirty (30) days after receiving a request from the Port for such reimbursement.

(d) **User Fees:** At least annually, WSP shall set, after consultation with the Users' Advisory Committee created pursuant to subsection 5(j), the following categories of fees for the use of the Facility and Equipment:

- (i) **User Fees for the Funders:** shall be set so as, on average, to recover WSP'S auditable costs of the annual rental payment for the WSP/DNR lease, and

for managing, maintaining and operating the Facility and Equipment, as set forth in section 5 below;

- (ii) Other User Fees: shall be set so as, on average, to recover WSP's auditable costs of the annual rental payment for the WSP/DNR lease, and for managing, maintaining and operating the Facility and Equipment as set forth at section 5 below, plus a premium.

- (iii) The premium shall be set aside and invested by WSP for the following use: fifty percent shall be retained by WSP for the eventual de-commissioning of the Facility; and fifty percent shall be used, according to the processes set forth in this Agreement, for repairs and improvements to the Facility and Equipment. To the extent repair and improvement funds remain at the termination of this Agreement, those shall revert to the decommissioning fund. Once de-commissioning funds reach the projected costs of de-commissioning according to the plans and specifications developed under subsection 3(a), or as subsequently adjusted by actual conditions, the entire premium shall go towards repair and improvement, or at the Funders' option shall be used to reduce, in proportion to

the funding formula, the Funders' costs to train at the Facility.

(e) **Operating Costs:** WSP shall assume those auditable costs of managing, maintaining and operating the Facility pertaining to its duties as set forth in section 5, below. WSP shall recoup those costs primarily through the assessment of user fees as provided in subsection 4(d) to this Agreement. At the termination of this Agreement, any outstanding balance in operating costs attributable to the Funders' use shall be borne by the Funders in proportion with their use over this Agreement's term, and any outstanding surplus in the fees charged to the Funders over the actual operating costs attributable to their use shall be remitted to the Funders in like proportion. However, each Funder shall remain fully responsible for paying its training fees as assessed by WSP.

5. **Management of Facility:** As owner of the Facility, the State, acting through WSP, shall be solely responsible for its management including, but not limited to, the following, subject only to those exceptions specifically set forth herein:

(a) **Lease with DNR:** WSP shall negotiate, execute and administer a 30 year lease with the Department of Natural Resources (DNR) for approximately 3.3 acres adjacent to the WSFTA for use as part of the maneuvering/staging area for the Equipment to attack the training fires at the Facility. WSP will pass through to the

Funders by way of facility development costs in section 4(a), and to the Funders and other users by way of user fees pursuant to section 4(d), the annual lease rental payments in the WSP/DNR lease for the Facility-related uses.

(b) **Administrative Services:** WSP shall be responsible for providing all administrative and support services for the Facility including, but not limited to, purchasing, accounting, staffing, personnel, payroll, and clerical.

(c) **Operations:** WSP shall provide professional facilities management services including, but not limited to: consumables; scheduling access to Facility; environmental monitoring; compliance with state, federal, and local environmental regulatory and permit requirements; supervision of NEPA and SEPA; WISHA and OSHA safety compliance; training instructors pursuant to subsection 5(f); providing systems operators pursuant to subsection 5(g); and systems maintenance.

(d) **Maintenance:** WSP shall perform all routine maintenance of the Facility recommended or required by the operational specifications provided pursuant to subsection 3(d) above and common facility maintenance practice. WSP shall report to the Funders any potential or existing operational problems at the Facility, as soon as reasonably practicable after WSP becomes aware of the problem. Equipment maintenance shall be performed only by factory-trained personnel approved by WSP and the Users' Advisory

Committee.

(e) **Operation and Maintenance of Shared WSFTA Facilities:** WSP shall apportion between the WSFTA and the Facility the costs of operating and maintaining the following facilities and/or equipment common to the operation of the WSFTA and the Facility, and shall recoup the expenses attributable to the Facility in the form of user fees as provided in subsection 4(d) to this Agreement including, but not limited to, the following:

- (i) Utilities;
- (ii) Sanitation;
- (iii) Waste water and waste foam/fuel collection and treatment systems, if the WSP opts in the future to tie in to the Facility's treatment system.

(f) **Training and Curriculum:** For live-fire training activities, the Funders shall be responsible for providing instructors, with experience as a fire department member assigned to ARFF duty at an indexed airport or under U.S. Department of Defense standards and providing training curriculum to their fire protection staff as needed for compliance with the regulatory requirements governing their operations; provided, that only instructors trained by WSP personnel in the safe use of the Facility will be permitted to conduct live-fire training at the Facility.

(g) **Operation of Facility and Equipment:** At all times, operation and control of the Facility shall be restricted to WSP employees trained in its use, and operation of ARFF vehicles shall be restricted to drivers trained on said vehicles. Parties may bring their own vehicles to the Facility for training, but shall pay all associated costs.

(h) **Safety:** WSP shall provide a professionally qualified, on-site safety officer to be stationed at the Facility during all live-fire training activities. The parties agree to abide by the instructions of the safety officer at all times when using the Facility for live-fire training activities. The safety officer shall not interfere during training operations unless, in his/her professional judgment, an unsafe condition exists. If training is halted because of safety concerns, it will not resume until, in the judgment of the safety officer, the unsafe condition has been corrected.

(i) **Management Policy:** Pursuant to chapter 43.63A RCW, WSP shall have the authority to regulate management and use of the Facility, provided that such policies do not conflict with WSP's obligations under this Agreement. Not less than once each biennium, WSP shall approve the fee structure, administrative policies, priorities for use, scheduling requirements, and any other management issues consistent with and not explicitly addressed in this Agreement.

(j) **Users' Advisory Committee:** There is hereby established a Users' Advisory Committee ("Committee") consisting of one representative from each of the Funders' organizations, and one non-voting representative from the WSFTA. The Committee shall meet quarterly with the State Fire Marshall for the first year of this Agreement and then as agreed to by the Committee and the Fire Marshall thereafter. The Committee members shall receive written notification ten (10) days (or such other time as is reasonable under the circumstances) in advance of any WSP meeting where issues of management and operation of the Facility, including design, accessibility, scheduling, serviceability, and user fees (including increases in lease rental costs for the WSP/DNR lease), will be discussed. The members of the Committee shall be furnished copies of any WSP or Fire Protection Policy Board staff recommendations concerning changes in the Facility's fee structure, scheduling requirements, professional qualifications, or safety standards at the same time such recommendations are provided to WSP. The Committee shall have reasonable access to all administrative and financial records regarding or relevant to the Facility by appointment during business hours; provided, that employee information confidential under the Public Disclosure Act, chapter 42.17 RCW, shall remain confidential.

6. Repairs and Improvements:

(a) **Repairs:** Except as otherwise provided by this Agreement, after occupancy and during the term of this Agreement, WSP shall

make Repairs to the Facility as necessary, utilizing the funds in the repair account set up pursuant to subsection 4(d). WSP shall assume the cost of Repairs to the Facility from its own budget if there are insufficient funds in the repair account, but WSP shall not assume costs of Repair of more than \$15,000 in any fiscal biennium. WSP shall recoup its costs of Repairs primarily through the assessment of user fees as provided in subsection 4(d) to this Agreement. WSP shall require non-Funder users of the Facility to indemnify WSP and the State for any damages, claims, suits, or actions arising from the non-Funder users' negligent use of the Facility, and to waive any immunity under industrial insurance law through an indemnity and waiver covering the same risks and liabilities as are covered in Section 12 of this Agreement. For any single repair costing over Fifteen Thousand Dollars (\$15,000), WSP shall inform the Funders and the Funders and WSP shall unanimously agree in writing how to finance it. Failure to reach an agreement shall terminate this Agreement.

(b) **Improvements:** Improvements to the Facility and financing of such shall be subject to the unanimous written agreement of the parties.

7. **Ownership:** The State of Washington shall have ownership of the Facility, Equipment, and all associated Improvements, subject to such access rights as are granted in section 8 below.

8. **Access to Facility:** Except as otherwise provided in this Agreement, WSP shall maintain the Facility operational and available for use by the Funders to conduct live-fire training for a minimum of twenty (20) years following the issuance of a certificate of occupancy. Prior to the expiration of this Agreement, in the event the State Legislature dissolves WSP's, or WSP's successor's, authority to operate the WSFTA, or in the event funding of WSFTA by the Legislature is withdrawn, reduced or limited in such a way as to prevent State operation of the Facility, then WSP and the State shall be excused from performance under this Agreement. In that event, GA shall, under the authority of RCW 43.82.010, lease the Facility to the Port or any other willing governmental entity, for the remainder of the term of this Agreement for use as a live-fire training facility consistent with the provisions of this Agreement. Further, WSP shall seek the approval of DNR for a sublease of the WSP/DNR lease to one of the Funders. In the event of a release of Hazardous Substance(s) at the WSFTA which results in a shutdown of the Facility, and the WSP was not negligent, then the WSP shall not be in breach of providing access to the Funders pursuant to this Agreement during the period of any shutdown. This Agreement shall be extended for the amount of time of any shutdown. Any dispute as to whether the WSP was negligent shall be resolved pursuant to the Dispute Resolution clause in subsection 15(b).

9. **Use of Facility:**

(a) **Scheduling Priority:** The Funders shall have priority in scheduling/reserving use of the Facility. The Funders shall reserve use of the Facility by written request to WSP at least three (3) months in advance of scheduled training activities. WSP shall provide written confirmation that the Facility is available and reserved for use. Conflicts between Funders shall be resolved in favor of the party whose request was first received by WSP. Additional scheduling is subject to availability and approval of WSP.

(b) **Other Users:** WSP shall retain the right to schedule use of the Facility by other users during those times that it is not reserved for use by the Funders. In no event shall WSP reschedule the Funders's reserved use of the Facility to accommodate any other user.

10. **Fuel Consumption:** Fuel burned at the Facility by the Funders shall not exceed 50% of PSAPCA's allocation to the WSFTA, unless a greater amount is approved by WSP.

11. **Environmental Liability.**

(a) **Hazardous Substances Use.** Any and all use by the Funders of Hazardous Substances as defined in subsection 11(d) at the Facility shall be carried out in substantial compliance with all applicable federal, state and local laws, ordinances and regulations.

(b) **Representation.** WSP, having conducted a Phase I Environmental Site Assessment dated March 1996 of the WSFTA site, including the location for the Facility, hereby represents and warrants that to the best of WSP's knowledge, (i) there may have been releases of Hazardous Substances as defined in subsection 11(d) at or from the land upon which the Facility has been or will be constructed; and (ii) no claim of liability has been made or is threatened by any government agency or other third party relating to the presence of adverse environmental conditions at or on the land upon which the Facility has been or will be constructed. Based upon the results of the Phase I Environmental Site Assessment, the WSP, at its own expense, is commissioning a Phase II Environmental Site Assessment. WSP shall provide a copy of the Phase II Environmental Site Assessment to the Funders. If the Phase II Environmental Site Assessment indicates that releases of Hazardous Substances have occurred on the land upon which the Facility has been or will be constructed, then WSP may elect, at its expense, to cleanup the Hazardous Substances within a time frame which accommodates the schedule for construction/operation of the Facility. If WSP does not elect to conduct such cleanup, the Funders may terminate this Agreement without liability or further obligation.

The Funders may elect to conduct a separate Environmental Site Assessment. In such case, the Port shall commission and pay for a Phase II Environmental Site Assessment of all or part of the site proposed for the Facility and other related areas or systems at

WSFTA. The Funders shall approve the scope of work, schedule and budget for any Port-commissioned Phase II Environmental Site Assessment before it is conducted. The Funders shall pay for the cost of this Phase II Environmental Site Assessment in accordance with the reimbursement formula set forth in Exhibit A. In the event the Funders elect to conduct a separate Phase II Environmental Site Assessment, WSP shall grant access and entry upon and onto the WSFTA to the Port, its consultants, contractors, and subcontractors. WSP acknowledges that this Phase II Environmental Site Assessment may include drilling and installation of monitoring wells for soil and groundwater testing.

(c) **Indemnification.** The Funders shall indemnify, defend and hold harmless State and each other from any and all claims of liability by a third party, including without limitation any agency or instrumentality of the federal, state or local government, for cleanup activities to the extent required by applicable law (remedial or removal), arising out of or relating to the release or threat of release of a Hazardous Substance at or from the Facility to the extent caused by such indemnifying party, their agents, employees, invitees or contractors at the Facility during the term of this Agreement.

State shall indemnify, defend and hold harmless the Funders from and against any and all claims of liability asserted against the Funders by a third party including without limitation any agency or instrumentality of the federal, state or local

government, for cleanup activities to the extent required by applicable law (remedial or removal), arising out of or relating to the release or threat of release of any Hazardous Substance existing at or emanating from the Facility, except to the extent caused by the Funders, their agents, employees, invitees and contractors at the Facility during the term of this Agreement.

(d) **Definition, Hazardous Substances.** For the purposes of this Agreement, the term "Hazardous Substances" shall mean any dangerous waste, hazardous waste or hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (42 U.S.C. § 9601 *et seq.*); or the Resource Conservation and Recovery Act as amended (42 U.S.C. § 6901 *et seq.*); or the Washington Model Toxics Control Act as amended (chapter 70.105D RCW); or the Washington Hazardous Waste Management Act as amended (chapter 70.105 RCW).

12. **Indemnification.** Except to the extent set forth in Section 11, each party shall indemnify and hold the other harmless from and against any and all claims, actions, damages, liability, and expense, including, without limitation, reasonable attorney's fees, for bodily injury including death and physical damage to or loss of use of property to the extent arising out of the negligent act or omission of such party in the use of the Facility under this Agreement. Each indemnifying party expressly waives, as respects the indemnitee only, any immunity under Title 51 RCW Industrial Insurance or any other statute or source for claims by its

employees. This waiver was mutually negotiated by the parties as required by RCW 4.24.115.

13. **Force Majeure:**

- (a) Performance by WSP of its obligations under this Agreement shall be excused and shall not constitute a breach or default for Acts of Force Majeure. Force Majeure means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Acts of Force Majeure include, but are not limited to, acts of God or the public enemy, acts or omissions of any government entity not a party to this Agreement, fire or other casualty, quarantine or epidemic, or other similar occurrences.

- (b) If WSP is impacted by an Act of Force Majeure, WSP shall provide written notification to the Funders within forty-eight (48) hours of notification to WSP of the Act of Force Majeure, or such other time as is reasonable under the circumstances, but in no event later than one week after the Act of Force Majeure.

14. **Consent:** This Agreement shall not take effect unless previously authorized by Port Commission; the King County Council, the Snohomish County Council, and the Directors of WSP and GA.

15. General Provisions:

(a) **Notices:** All notices with respect to this Agreement shall be in writing and shall be delivered personally, by facsimile, or by deposit in the United States mail, properly addressed, postage fully prepaid, for delivery by registered or certified mail, return receipt requested. Notices given by personal delivery or facsimile shall be deemed effective upon receipt; notices given by mail shall be deemed effective on the third day after deposit. Notices may be given at the following addresses, until further notice by any party:

To the Port: Port of Seattle
Fire Chief
2400 S. 170th
Seattle, WA 98158

To WSP: State Fire Marshal
P.O. Box 42638
General Administration Bldg.
Olympia, WA 98504-2638

To King County: Police/ARFF Chief
King County Airport
P.O. Box 80245
Seattle, WA 98108

To Snohomish County: Fire Chief
 Snohomish County Airport
 3601 - 109th S.W.
 Everett, WA 98204

(b) **Dispute Resolution:** In the event of a dispute between the parties regarding any section of this Agreement, the parties shall attempt to resolve the matter informally. If the Parties are unable to resolve the matter informally within 30 days, they shall elevate the matter to their representative occupying the following position, or to a representative of substantially similar authority: for the Port, Executive Director; for King, Airport Manager; for Snohomish, Airport Director; and for WSP, Chief. Such representatives shall attempt to resolve the matter informally. If this informal resolution is not successful within 30 days of the dispute being escalated, the parties agree to make reasonable efforts to resolve the dispute by mediation. The mediator shall be selected pursuant to the Rules of the American Arbitration Association ("AAA") and the mediation shall occur pursuant to the AAA Commercial Mediation Rules.

If the mediation is unsuccessful, the parties shall submit the matter to arbitration by the AAA in accordance with the Commercial Arbitration Rules of AAA. The parties agree to be bound by the decision of the arbitrator and judgment upon the award rendered by the arbitrator may be entered in the Superior Court of King County. The decision of the arbitrator and the specific basis for the

decision shall be in writing. The arbitrator shall use this Agreement as a basis for decisions.

Scheduling of the arbitration and the scope and extent of discovery shall be determined by the arbitrator in accordance with AAA rules.

All fees and expenses of the arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, and witnesses.

(c) **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

(d) **Consent to Jurisdiction:** The parties to this Agreement agree that the exclusive jurisdiction and venue of any arbitration hearing arising under this Agreement or out of the transactions contemplated hereby, shall be in King County, Washington.

(e) **Entire Agreement:** This Agreement constitutes the entire agreement between the parties and may not be changed or modified other than by a written amendment executed by the parties.

(f) **Supersedes:** This Agreement supersedes all other agreements between the parties, whether written or oral, regarding the subject matter of this Agreement.

(g) **Severability:** If any provision of this Agreement shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision and to this end, the provisions of this Agreement are declared to be severable.

(h) **Counterparts:** This Agreement may be executed in more than one counterpart, each of which, including facsimiles, shall be deemed an original.

(i) **Successors and Assigns:** This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

(j) **No Waivers:** No failure by a party to this Agreement to exercise, and no delay by a party in exercising, any right under this Agreement shall operate as a waiver of such right, and no single or partial exercise of such right shall preclude any other or further exercise thereof, or the exercise of any other right.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and effective as of the date and year first set forth above.

101953

STATE OF WASHINGTON

PORT OF SEATTLE

WASHINGTON STATE PATROL

By: _____

By: _____

M. R. Dinsmore

Name: _____

Its: _____

Its: _____

KING COUNTY

SNOHOMISH COUNTY

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

STATE OF WASHINGTON

DEPARTMENT OF GENERAL

ADMINISTRATION

By: _____

Name: _____

Its: _____

EXHIBIT "A"
Regional Live Fire Training Facility Funding Formula

10195

I. Cost Allocation Method

A. Funding Formula: The following formula is used to calculate the share of project costs attributable to each project Funder, and is based upon the method described further in Section II. The formula below does not consider FAA project cost reimbursement to public agency Funders. (See Section I.C.)

$$LocalFunderObligation = \left(\frac{FFA}{FFAT} \times CA \right) + \left(\frac{FFE}{FFET} \times (CE - CA) \right)$$

Where: FFA = Number of a Funder's firefighters requiring Index "A" training or greater.
 FFAT = Aggregate number of Funders' firefighters requiring Index "A" training or greater.
 FFE = Number of a Funder's firefighters requiring Index "E" training.
 FFET = Aggregate number of Funders' firefighters requiring Index "E" training.

Funder	Index "A"	Index "E"
Boeing	145 FFA	0
Port of Seattle	60 FFA	60 FFE
King County Airport	14 FFA	0
Snohomish County Airport	12 FFA	0
Aggregate	231 FFAT	60 FFET

Table I.A. Firefighter Headcounts. Fixed as of November 1994.

CA = Cost of Index "A" training facility. Fixed at \$2,200,000.
 CE = Cost of Index "E" training facility. Fixed at Pre-Design estimate at \$7,429,831.

B. Funder obligation breakdown. The formula in I.A. produces the following percentage breakdown per Funder. This percentage breakdown will be the ONLY basis used to determine Funder obligations both incrementally and in total.

Funder	Percentage of Project
Boeing	18.59%
Port of Seattle	78.09%
King County	1.78%
Snohomish County	1.54%

Table I.B. Funder Allocation Percentages.

C. FAA Grant Moneys Administration: Costs eligibility for FAA grant moneys will be determined by POS, as the FAA Grantee. An *FAA Grant Percentage* will be calculated by dividing the *FAA Grant Amount* by the *Aggregate Public Agency Funder Obligations*.

$$FAAGrantPercentage = \frac{FAAGrantAmount}{AggregatePublicAgencyFunderObligations}$$

Credit determined by multiplying each public agency's obligation times the FAA Grant Percentage will be applied to the public agency Funder's obligation by POS. The balance of each public agency's obligation will be subject to reimbursement to POS in the manner described in the Interlocal Agreement. See Section III.B. for sample scenarios.

D. Boeing Cost Recovery: Since Boeing is not eligible for FAA grant moneys, their obligation(s) based upon Table I.B. will be subject to full reimbursement to POS in the manner described in the Interlocal Agreement.

E. Project Cost Variations: Project cost variations will be shared by Funders according to the Table I.B. Cost control will be according to the Interlocal Agreement.

EXHIBIT "A"
Regional Live Fire Training Facility Funding Formula

II. Funding Formula Derivation Method.

The following cost distribution plan has been agreed to by the Funders of the Regional Live Fire Training Facility. This Facility is to be constructed at the Washington State Fire Training Academy located near North Bend, WA.

A. **Index "A" Firefighter Headcount:** The firefighter headcount requiring "Index A" level training or greater as of November 1994 is used as the initial factor in calculating Funder project percentages.

Funder	Firefighter Headcount	Percentage
Boeing	145	62.8%
Port of Seattle	60	26.0%
King County	14	6.0%
Snohomish County	12	5.2%
Aggregate	231	100%

B. **Index "A" Facility Cost:** Based upon a previous design estimate, this cost is fixed and is used as the baseline for the purpose of determining the initial obligation for the new facility.

Index "A" Facility	\$2,200,000
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C. **Index "A" Funder Obligations:** The Index "A" obligation for each Funder is calculated by multiplying the percentage in Section II.A. times the Index "A" cost in Section II.B.

Funder	Percentage	Index "A" Cost	Index "A" Obligation
Boeing	62.8%	\$2,200,000	\$1,381,600
Port of Seattle	26.0%	\$2,200,000	\$572,000
King County	6.0%	\$2,200,000	\$132,000
Snohomish County	5.2%	\$2,200,000	\$114,400
Totals	100%	N/A	\$2,200,000

D. **Index "E" Firefighter Headcount:** The firefighter headcount requiring Index "E" level training as of November 1994.

Funder	Firefighter Headcount	Percentage
Boeing	0	0
Port of Seattle	60	100%
King County	0	0
Snohomish County	0	0

E. **Index "E" Facility Cost:** A formal Pre-Design was commissioned to estimate cost of the proposed Index "E" facility the cost. The table below establishes the relationship of these costs. The Delta represents the added cost of sizing the facility from an Index "A" to an Index "E" facility.

Index "E"	Index "A"	Index "E" Delta
\$7,429,831	\$2,200,000	\$5,229,831

F. **Index "E" Funder Obligations:** The Index "E" obligation is only applicable to Port of Seattle and is calculated by multiplying the percentage in Section II.D. times the Index "E" cost Delta in Section II.E.

Funder	Percentage	Index "E" Delta	Index "E" Obligation
Port of Seattle	100%	\$5,229,831	\$5,229,831

G. **Total Funder Obligations:** Total obligations are determined by adding Index "A" obligations (Section II.C) to Index "E" obligations (Section II.F).

Funder	Index "A" Obligation	Index "E" Obligation	Total Obligation	Percentage of Project
Boeing	\$1,381,600	0	\$1,381,600	18.59%
Port of Seattle	\$572,000	\$5,229,831	\$5,801,831	78.09%
King County	\$132,000	0	\$132,000	1.78%
Snohomish County	\$114,400	0	\$114,400	1.54%
Totals	\$2,200,000	0	\$7,429,831	100%

H. **Funders' Percentage:** The Percentage of Project column in Section II.G. shall be the fixed basis for distributing costs for this project.

EXHIBIT "A"
Regional Live Fire Training Facility Funding Formula

10195

III. FAA Grant Administration

- A. Public Agency Eligibility:** Public agencies are seeking FAA financial support for their obligations on this project.
1. To the extent that the FAA provides support, public agencies' obligations will be reduced proportionally, i.e., with a 75% FAA support level, public agencies will fund the 25% balance of their total obligations locally. *Boeing is not eligible for FAA funding and will fully fund its obligation locally.*
 2. FAA support for public agency aggregate obligations will be determined based upon the level of funding approved in the FAA Grant. The Port of Seattle will administer the FAA grant money for all public agency Funders.
- B. FAA Funding Scenarios:** Due to the uncertainty of the level of funding from the FAA a variety of scenarios are described below: This table depicts the FAA and Local Funder dollar amounts resulting from a range of FAA Funding Percentages. The local Funders' obligations decrease as the FAA funding percentage increases. Boeing's obligation remains constant. The 0% column reflects the full local Funders' obligations without FAA participation. The Funders' shares were calculated using the Funder allocation percentages from Table I.B. Changes in the total project cost will cause the amounts shown in Table III.B. to increase or decrease proportionally.

Funders	FAA Funding Percentage						
	0%	50%	60%	65%	66%	70%	75%
POS	\$5,801,831	\$2,900,916	\$2,320,732	\$2,030,641	\$1,966,183	\$1,740,549	\$1,450,458
King	\$132,000	\$67,100	\$53,680	\$46,970	\$45,479	\$40,260	\$33,550
Snohomish	\$114,400	\$57,200	\$45,760	\$40,040	\$38,769	\$34,320	\$28,600
FAA	\$0	\$3,025,216	\$3,630,259	\$3,932,780	\$4,000,000	\$4,235,302	\$4,537,823
Boeing (Non FAA)	\$1,381,600	\$1,381,600	\$1,381,600	\$1,381,600	\$1,381,600	\$1,381,600	\$1,381,600

Assumed Project Cost \$7,429,831

Table III.B. Funding Scenarios

10195

EXHIBIT B

AUTHORIZED BUDGET

CONSTRUCTION	\$5,334,434
EQUIPMENT, TAX, OUTSIDE SERVICES, ADMINISTRATION	<u>\$2,046,266</u>
TOTAL PROJECT BUDGET	\$7,380,700

10195

MEMORANDUM OF AGREEMENT

FOR A REGIONAL LIVE-FIRE TRAINING FACILITY

This Memorandum of Agreement for a Regional Live-Fire Training Facility is entered into this ____ day of _____, 1996, by the following parties: the Port of Seattle, a municipal corporation of the State of Washington ("Port"); King County ("King"); Snohomish County ("Snohomish"); the State of Washington, Washington State Patrol ("WSP"); the State of Washington Department of General Administration ("GA"); and The Boeing Company ("Boeing").

WHEREAS, the parties to this Agreement wish to include Boeing as a party to and as a Funder under the Interlocal Agreement for a Regional Live-Fire Training Facility dated the ____ day of _____, 1996;

NOW, THEREFORE, the parties agree as follows:

1. Boeing is hereby included as a party to and a Funder under the Interlocal Agreement for a Regional Live-Fire Training Facility dated the ____ day of _____, 1996. All the terms and conditions of the Interlocal Agreement are incorporated by reference into this Memorandum of Agreement and Boeing agrees to be

bound to the terms and conditions of the Agreement to the same extent as if it were a signator to the Interlocal Agreement.

2. All notices with respect to the Agreement shall be delivered to Boeing at the following address, until further notice:

Boeing Fire Chief, P.O. Box 3707 M/S 3U-53, Seattle, WA 98124

3. Boeing's representative for the purposes of the elevated informal resolution under section 15(b) of the Agreement shall be Director, Security and Fire Protection, The Boeing Company.

IN WITNESS WHEREOF, the parties have caused this Addendum to be executed and effective as of the date and year first set forth above.

STATE OF WASHINGTON
WASHINGTON STATE PATROL

PORT OF SEATTLE

By: _____

By: _____

M. R. Dinsmore

Name: _____

Its: _____

Its: _____

10195

KING COUNTY

SNOHOMISH COUNTY

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

STATE OF WASHINGTON
DEPARTMENT OF GENERAL
ADMINISTRATION

THE BOEING COMPANY

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____