

**AIRPORT MDL COALITION COMMON INTEREST,
CONFIDENTIALITY, AND PARTICIPATION AGREEMENT**

This Airport Multi-District Litigation (MDL) Coalition Common Interest, Confidentiality, and Participation Agreement (“Participation Agreement” or “Agreement”) is made as of this ____ day of _____ 2025 (the “Effective Date”), by and between those parties to this Agreement (hereafter collectively the “Members,” or individually “Member”).

WHEREAS, each of the Members owns or operates a commercial or public use airport regulated by the Federal Aviation Administration;

WHEREAS, each of the Members’ airport(s) is impacted (or potentially impacted) by per- and polyfluoroalkyl substances (PFAS), including but not limited to impacts from using aqueous film forming foam (AFFF);

WHEREAS, each Member has determined it has an interest in the Multi-District Litigation (MDL) pending in the U.S. District Court for the District of South Carolina, MDL 2873 (the MDL proceeding), and generally in litigation involving varied causes of action and claims relating to PFAS, including but not limited to claims for damages resulting from using AFFF (collectively, PFAS litigation);

WHEREAS, each Member recognizes the common interest the Members have with each other regarding claims for damages related to use of AFFF that are of the type being tried in the MDL proceeding and in PFAS litigation, and each Member has concluded these common interests will be best served by entering into this Agreement and participating with the activities outlined herein;

WHEREAS, the participation in the activities outlined in this Agreement may require sharing of confidential and/or privileged information, as defined herein, among Members in anticipation and in course of litigation, without a waiver of any otherwise applicable privileges, protections, immunities, and exemptions from disclosure, so that the claims and defenses of the Members may be thoroughly investigated and prepared for litigation without any party opposing any of the Members in the MDL proceeding. This Agreement sets forth the provisions under which the Members, through their respective counsel, and their respective staff, management, consultants, experts, and counsel will manage and protect confidential and/or privileged information shared and exchanged during the course of its term.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference and shall be deemed to be part of this Agreement, the parties mutually agree as follows:

ARTICLE 1. PURPOSE/SCOPE OF THE AIRPORT MDL COALITION

Section 1.01 Purpose.

The purpose of this Agreement is to establish the organizational structure and ongoing operations for an Airport MDL Coalition (also referred to herein as “Coalition”) so that the Members, acting with common interests, may have an efficient pathway to evaluate claims for and, as each Member may determine, participate in the MDL as a plaintiff. These activities may include, but are not limited to:

- a. coordinating Member information and input that Members may consider and use in their legal strategy and MDL filings, or related to their positions as potential plaintiffs in the MDL;
- b. assisting Members, through their counsel, with evaluating MDL participation;
- c. assisting Members in developing a legal strategy for retaining plaintiffs' counsel in MDL proceedings and, where possible, negotiates standard retention terms (for Members that have not already retained counsel);
- d. working with Members to ensure that MDL plaintiffs' counsel, particularly counsel appointed by the MDL Court, best consider the interests of Part 139 airports;
- e. analyzing and communicating key PFAS developments from the MDL, the U.S. Environmental Protection Agency (EPA), the Federal Aviation Administration (FAA), and other regulatory authorities, and providing PFAS updates to Members; and
- f. providing strategic communications talking points for Members related to PFAS litigation, and related legal and regulatory developments.

Section 1.02 No Defense Work.

The Coalition will not engage in any MDL defense work. If, for any reason, a Member were to become both a plaintiff and a defendant in the MDL, such Member may continue in the Coalition solely regarding plaintiff-related issues.

Section 1.03 Denial of Liability.

This Agreement shall not constitute, or be interpreted, construed or used as evidence of, any admission of liability, law or fact, a waiver of any right or defense, or an estoppel against any Member by a Member or Members as among themselves or by any other person not a party to or no longer a Member under this Agreement. The Members generally deny: any and all liability; any claim for damages whatsoever, including but not limited to any past or future response costs, damages to natural resources, bodily injury and property damage, or any other past, present or future claims alleged to be related to or arise out of any matters involving PFAS including, without limitation, the use, storage, management, release or disposal of PFAS. However, nothing in this Section is intended or should be construed to limit, bar, or otherwise impede the enforcement of any term or condition of this Agreement against any Member.

ARTICLE 2. MEMBERSHIP

Section 2.01 Eligibility.

Each entity, such as a City, County, State, public trust, or authority, that owns and/or operates one or more public use airports currently or previously certificated under 14 CFR part 139 that, pursuant to that certification, used or was required to use AFFF or had fire extinguishing or suppression systems or equipment containing PFAS or PFAS-related chemical substances in the United States or a United States Territory is eligible to be a Member, provided each Member executes this Agreement and pays the fees set forth in Article 7. Other public entities operating airports in the United States or a United States Territory with commonality of interest with Members may be approved for participation in the Coalition by affirmative vote of the Members (see Section 4.05).

Airports already appearing as plaintiffs in the MDL are eligible to become Members, subject to the initial funding accommodation in Article 7.

Members are able to participate in Coalition meetings after they execute this Agreement and pay their Initial Assessment and can remain Members to the extent they remain in compliance with this Agreement, including remaining current with any subsequent assessments (Additional Assessments).

Section 2.02 Withdrawal.

Members may withdraw from this Agreement at any time and become a Withdrawn Member. However, a Withdrawn Member remains obligated to pay, in full, its Initial Assessment and any Additional Assessments that are assessed more than thirty (30) business days prior to receipt by Coalition Counsel, defined in Article 5, of written notice of such Member's withdrawal. In addition, a Withdrawn Member must simultaneously provide written notice to all Members of its withdrawal.

Section 2.03 Removal.

Any Member who is more than sixty (60) days late in paying its Additional Assessment may be removed from the Coalition upon vote of the Steering Committee (see Section 4.01c.)

ARTICLE 3. COMMON INTEREST AND CONFIDENTIALITY OF SHARED INFORMATION

Section 3.01 Common Interest.

The Members share common interests and goals in pursuing common strategies related to the MDL as they share common issues of fact and law. The Members recognize that the sharing and disclosure among them of privileged and confidential information is essential to the success of this Agreement. The purpose of this Agreement is to ensure that the privileged and/or confidential information shared will be used for the efficient development of litigation strategies and coordination and related work product. This privileged and/or confidential information will not be disclosed such that any privileges or other basis for confidentiality attached to these communications and documents are waived.

Section 3.02 Confidentiality Statement.

The Members agree to protect all confidential and/or privileged information exchanged among them under this Agreement, as confidential and privileged to the maximum extent allowable under applicable law. Pursuant to this Agreement, rights in the confidentiality of confidential and/or privileged information, and the confidences attached thereto, have not and will not be waived except as provided in Section 3.04 below. Any inadvertent disclosure of confidential and/or privileged information that is inconsistent with this Agreement shall not waive the confidentiality of such confidential and/or privileged information.

Section 3.03 Use of Confidential and/or Privileged Information.

Confidential and/or privileged information is to be used by the recipient of the information solely in connection with preparing and presenting work done for the benefit of the Members pursuant to this Agreement. Confidential and/or privileged information may not be shared by a recipient that is not a Member without prior written waiver from all Members to this Agreement, unless the relevant Member determines that disclosure is required by applicable law. If the relevant Member determines that disclosure is required by applicable law, it agrees to provide all Members to this Agreement notice as soon as reasonably possible after receipt of the request or demand, with the goal of providing such notification at least five working days before the response deadline. Notwithstanding the foregoing, any Member may release, disclose, discuss, or make available confidential and/or privileged information to or with its own staff, management, consultants, experts, and/or counsel who have a need for such information as part of their responsibilities associated with this Agreement and if such disclosure would not waive the disclosing Member's ability to protect the disclosed confidential and/or privileged information from disclosure to non-Members.

Section 3.04 Requests for Release and/or Disclosure.

A Member who receives a request from any entity that is not a Member to release, disclose, discuss, or obtain access to any confidential and/or privileged information (whether by way of a subpoena, discovery request, or request under any federal, state or local law) shall notify the other Members by and through Coalition Counsel of such request as soon as reasonably possible after receipt of the request, but in no event will provide notice less than five working days before the response deadline, unless contrary to law. When subject to a request for public records pursuant to federal, state or local public records or information disclosure laws, governmental entities who are Members agree to notify all Members to this Agreement as soon as reasonably possible after receipt of the request, but in no event will provide less than five working days before releasing confidential and/or privileged information pursuant to the request, unless contrary to law. Unless all of the other Members consent to disclosure or release of confidential and/or privileged information, the Member receiving the request for disclosure shall assert, to the extent authorized by law, and subject to any mandatory disclosure laws or court orders, all relevant and applicable privileges and other objections to the disclosure of such information.

Section 3.05 Continuing Confidential Obligations.

The confidentiality obligations of the Members under this Agreement shall remain in full force and effect, without regard to whether a Member withdraws or is removed, whether this Agreement is terminated or whether any MDL action is terminated by final judgment or settlement. The provisions of this Section shall not apply to information which is now or hereafter becomes public knowledge without violation of this Agreement, or which is sought or obtained from a Member pursuant to applicable discovery procedures and not otherwise protected from disclosure.

ARTICLE 4. ORGANIZATION AND PROCEDURES

Section 4.01 Steering Committee.

In order to carry out the purposes of this Agreement, the Members establish a Steering Committee that shall be responsible for directing the joint efforts of the Members under this Agreement.

a. Steering Committee Members.

Membership on the Steering Committee shall be open to those representatives who express their willingness, in writing, to actively participate in the function of the Steering Committee. Members of the Steering Committee shall serve as volunteers without compensation from the Fund. The Steering Committee Members' representative to the Steering Committee shall be an attorney for one or more of the Members or a person acting on the advice of counsel.

b. Enumerated Powers of the Steering Committee.

The powers, duties, and responsibilities of the Steering Committee shall include:

- i. approving and determining the activities of contractors and/or consultants, to be retained by Coalition Counsel according to Article 5 to assist Coalition Counsel in providing legal advice to the Members;
- ii. reviewing and approving payment of funds out of the Fund;
- iii. recommending Additional Assessments, as provided for in Article 7, if necessary to carry out the purposes of this Agreement;
- iv. recommending such other activities as are necessary and proper to carry out the purposes of this Agreement;

c. Steering Committee Voting.

A quorum of the Steering Committee shall be 75 percent of the then-current Steering Committee membership. Any votes required to carry out the enumerated powers in subsection b. of this section can only be conducted at a meeting if there is a quorum and shall be decided by a simple majority of those participating at the meeting when the vote is held. Voting may also be conducted via email, which would require simple majority of all Steering Committee Members.

Section 4.02 Other Committees.

The Members, Coalition Counsel, or the Steering Committee may, from time to time, establish other committees that may be necessary to effectuate the purposes of this Agreement.

Section 4.03 Call for, and Notice of, Meetings.

Meetings of all the Members or of the Steering Committee may be held in person, via video or teleconference or by email exchange and may be called by Coalition Counsel or any Member of the Steering Committee.

Section 4.04 Notice of Meetings.

Reasonable notice of the time, place and purpose of any meeting of the Coalition shall be given to each Member. Notice given by e-mail to the Member list at least three business days in advance, unless there is good cause to call an immediate emergency meeting, shall be considered reasonable.

Section 4.05 Decision-making and Voting.

Each Member shall have a single vote in matters voted on under this Agreement, regardless of the number or size of airports it operates. At least 60% of the Members must participate in a meeting in order to hold a vote, and a simple majority vote is necessary for decision-making. Voting by email will be allowed.

ARTICLE 5. COALITION COUNSEL

The Members have initially appointed Earth & Water Law¹ as Coalition Counsel to act on behalf of the Airport MDL Coalition in coordinating activities to be performed under the terms of this Agreement.

Section 5.01 Enumerated Powers and Duties of Coalition Counsel.

The powers, duties, and responsibilities of the Coalition Counsel shall include:

- a. negotiating with counsel that represents plaintiffs in the MDL for general terms of engagement for Members, though no such terms will be binding on any Member unless and until any Member separately enters into an engagement with plaintiffs' counsel for representation in the MDL;
- b. assessing and communicating key PFAS developments from the MDL, EPA, FAA, and other regulatory authorities to Members;
- c. developing strategic communication tools for Members regarding key PFAS developments from the MDL, EPA, FAA, and other regulatory authorities;
- d. payment of all bills approved by the Steering Committee;
- e. providing the Members with informal written accounting of monies received, spent, obligated from the Fund from time to time and upon the termination of the Agreement;

¹ Contact: Jeffrey S. Longworth, Partner, Earth & Water Law, 1455 Pennsylvania Ave., NW, Suite 400, Washington, DC 20004 | (202) 280-6362 (o) | (301) 807-9685 (c) | www.earthandwatergroup.com
EWLaw Airport MDL Coalition Participation Agreement

- f. providing the Members with summaries of meetings, as requested, and responding to Members' requests for information;
- g. retaining and negotiating the terms of any contract or agreement for any contractor and/or consultant approved under Article 4 as necessary to assist Coalition Counsel providing legal advice to the Members;
- h. disseminating draft documents and other information to Members for input and collecting Members' comments;
- i. distributing all notices and other documents as required to keep the Members fully informed of matters covered by this Agreement; and
- j. conducting such other activities as the Steering Committee requests to carry out the purposes of this Agreement.

In performing its responsibilities, Coalition Counsel shall work closely with the Steering Committee, and any consultant or contractor it retains on behalf of the Airport MDL Coalition as directed by the Steering Committee.

Section 5.02 Compensation of Coalition Counsel.

Coalition Counsel shall, upon the approval of the Steering Committee, be compensated from the Fund established under Article 7 for all services and reasonable expenses incurred in performing the duties set forth herein.

ARTICLE 6. CONTRACTORS AND CONSULTANTS

Section 6.01 Airports Council International – North America.

Airports Council International – North America (ACI-NA) is a retained, non-testifying expert consultant without compensation regarding operational, regulatory, and legislative matters related to AFFF use at airports across North America and the transition to fluorine free foam usage and implementation at airports and is subject to the common interest and confidentiality conditions set forth in this Agreement.

Section 6.02 Other Contractors and Consultants.

Pursuant to Articles 4 and 5 above, additional contractors and consultants may be retained by the Coalition as determined and approved by the Steering Committee.

ARTICLE 7. FUNDING

Section 7.01 Initial Funding (Initial Assessment).

Without any admission of liability, the Members agree that a fund shall be created to administer the cost and expenses of the Coalition ("Coalition Fund"). Each Large Hub Member shall initially pay into the fund \$20,000. Each Medium Hub Member shall initially pay into the fund \$10,000. Each Small Hub or Non-Hub Member shall initially pay into the fund \$5,000. Each Unclassified Member shall initially pay into the fund \$5,000. Members agree and understand that litigation can be expensive and have uncertain outcomes. Initial Payments are due with the execution of this Participation Agreement. A Member's hub determination is determined as of January 1, 2023.

Section 7.02 Initial Funding for Airports Already in the MDL.

For those airports that are already in the MDL, the Initial Assessment shall be 75 percent of what they would otherwise be assessed under Section 7.01.

Section 7.03 Additional Assessments.

Amount of funding will be determined by annual budget; subject to review and Additional Assessment by July 31 of each year, or as may be proposed by Coalition Counsel and approved by the Steering Committee as needed. In no event shall the total and cumulative monies payable by this Member under this agreement exceed \$100,000.00 without further written approval.

Section 7.04 Trust Account.

All funds shall be held in a Trust Account by Coalition Counsel, unless another trust is recommended and approved by the Steering Committee.

Section 7.05 Refunds.

In the event that funds remain in the Fund established pursuant to this Agreement at the time that this Agreement is terminated, Coalition Counsel shall refund such money to the Members, with each Member being entitled to its proportionate share assessed in accordance with the proportions paid under Section 7.01. No Member shall be entitled to any refund under this Paragraph if such Member has not made all contributions required of it under this Agreement. Any removed Member or Withdrawn Members that withdraw before termination are not entitled to any refunds.

Section 7.06 Authorized Payments.

Approval by a vote of the Steering Committee as provided in Section 4.01 shall be required to authorize a disbursement from the Coalition Fund to pay for expenses under this Agreement. Coalition Counsel shall not pay for any expenses unless and until such cost is authorized by the Steering Committee.

ARTICLE 8. CONFLICTS

Execution of the Agreement means the Member will waive claims of conflict of interest among the Members potentially or actually caused by Coalition Counsel's representation, each of the Members' separate counsel, technical consultants participating in the Coalition, or any activities under this Agreement.

Waiver of Conflict of Interest: Coalition Counsel and Members' separate counsel shall not, solely by virtue of representation of the Coalition or of their participation in any activities pursuant to this Agreement, be disqualified and/or otherwise rendered unable to represent and/or provide legal services in the present and/or future to any person or entity, including, but not limited to, any one or more of the Members, in connection with any and all unrelated matters of any sort. The Members expressly waive any present and/or future right to disqualify Coalition Counsel or other Member's separate counsel, based solely upon the representation described above, from representation of any person or entity, including, but not limited to, any one or more of the Members, in any and all unrelated matters of any sort; provided, however, that this waiver does not apply to the use of the confidential information of any Member obtained by Coalition Counsel or their separate counsel as a result of the representation of the Coalition, for any purpose in any other forum, action, or proceeding. Each Member's waiver of disqualification, as provided herein, shall continue in force in the event of such Member's withdrawal or removal from the Coalition or the termination of this Agreement.

ARTICLE 9. TERMINATION

This Agreement shall terminate on the earlier to occur of the following: (a) resolution of the MDL, as evidenced by Court Order or some other documentation from the Court; or (b) by approval of termination of this Agreement in accordance with the procedures of Article 4. Any monies assessed and collected pursuant to this Agreement that are remaining upon termination of this Agreement shall be refunded in accordance with Section 7.05.

ARTICLE 10. GENERAL

Section 10.01 Binding on Successors and Assigns.

This Agreement shall be binding upon the successors and assigns of the Members. No assignment or delegation of the obligation to make any payment or reimbursement hereunder will release the assigning Member without the prior written consent of the Steering Committee.

Section 10.02 Relationship of Members.

No Member, or representative or counsel for any Member, has acted as counsel for any other Member with respect to such Member entering into this Agreement, except as expressly engaged by such Member with respect to this Agreement, and each Member represents that it has sought and obtained any appropriate legal advice it deems necessary prior to entering into this Agreement.

No Member or its representatives shall act or be deemed to act as legal counsel of any other Member, unless expressly retained by such Member for such purpose, and, except for such retention, no attorney/client relationship is intended to be created between representatives on any Committee or subcommittee and the Members.

Nothing herein shall be deemed to create a partnership or joint venture and/or principal and agent relationship between or legally or equitably, any third party and shall not be enforceable by any third party.

Section 10.03 Authority to Enter into Agreement.

The signatories to this Agreement represent that they have authority to bind their respective entity as a Member to this Agreement.

Section 10.04 Interpretation.

- a. The terms "herein," "hereof," "hereto," and "hereunder," and any similar terms used in this Participation Agreement refer to this Participation Agreement.
- b. Words importing persons shall include authorities, firms, associations, partnerships, trusts, corporations, and other legal entities, including public bodies, as well as natural persons.
- c. Any headings preceding the text of the articles and sections of this Participation Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience or reference and shall not constitute a part of this Participation Agreement, nor shall they affect its meaning, construction, or effect.
- d. Words importing the singular shall include the plural and vice versa.
- e. Capitalized words or terms other than articles or sections headings and names of persons are technical and pertain strictly to this Participation Agreement.

Section 10.05 Governing Law.

For purposes of enforcement or interpretation of the provisions of this Agreement, the Members agree that the law of the District of Columbia will be applicable (without regard to its laws applicable to choice of law) and further agree not to contest personal jurisdiction in the local or federal courts in District of Columbia with respect to litigation brought for such purposes.

Questions regarding whether documents related to or obtained through this Agreement are public records, and the legal protection or confidentiality thereof, will be determined based upon the applicable local law of any Member that becomes subject to a public records request. No Member shall be liable in any way to the Coalition or any Member thereof for acts in compliance with local public records law so long as the Member timely notified the Coalition of an applicable public records request before it released any documents related to or obtained through this Agreement.

Section 10.06 Entire Agreement.

This Agreement including all Exhibits and amendments attached hereto shall constitute the final and entire agreement between the Members with respect to the subject of this Agreement and supersede and replace any previous agreements and understandings between the Members, whether written or oral, with respect to the subject matter of this Agreement.

Section 10.07 Severability.

Any provision of this Agreement held by a court of competent jurisdiction to be invalid or unenforceable will not impair or invalidate the remainder of this Agreement and the effect thereof shall be confined to the provision held unenforceable. The Members expressly agree that the terms and provisions of this Agreement are contractual in nature and not merely recitals.

Section 10.08 Anti-Trust.

The Members will not use their membership in the Coalition to share business sensitive commercial information or as a vehicle to discuss or conduct anti-competitive practices regarding prices, boycotts, exclusion of firms from the market, or other unlawful activities under United States antitrust law.

Section 10.09 Use of Agreement.

This Agreement shall not be used by any Party in any litigation or otherwise except to enforce the terms thereof or to prove the continued existence of any privilege, confidentiality, or immunity.

Section 10.10 Multiple Counterparts.

This Agreement may be executed in one or more counterparts, each of which is deemed an original but all of which together shall constitute one and the same instrument. Each original will fully bind each Member who has executed it. Signatures on counterparts to this Agreement may be obtained electronically.

Section 10.11 Notices.

All notices and other communications shall be in writing and shall be sufficient if given, and shall be deemed given, on the date on which the same has been mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the County: Snohomish County Paine Deputy Prosecuting Attorney
Civil Division, Snohomish County Prosecuting Attorney's Office

Attn: Michelle Corsi
3000 Rockefeller Ave, M/S 504
Everett, WA 98201-4046
O: 425-388-5108 | C: 425-377-4781 | F: (425) 388-6333
michelle.corsi@snoco.org

If to the Subrecipient: MDL Coalition Common Interest

ADDRESS

Attn:

PHONE

The County or the Subrecipient may, by notice to the other given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

IN WITNESS WHEREOF, this Agreement is executed by the undersigned Member.

[Signatures begin on following page]

Airport MDL Coalition Common Interest, Confidentiality, and Participation Agreement

Signature Page 1:

AGREED AND ACCEPTED:

By:

Printed Name:

Title:

Member:

Date:

Member's Notice Information for Purposes of the Agreement is:

Name(s) of Member's Representative(s) for Notice Purposes:

Address(es) for Representative(s) of Member for Notice Purposes:

Email(s) for Representative(s) of Member for Notice Purposes:

Phone Number(s) for Representative(s) of Member for Notice Purposes:

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Signature Page 2:

SNOHOMISH COUNTY:

By: _____
County Executive Date

MDL Coalition Common Interest:

By: _____ Date
Name:
Title:

Approved as to form only:

Deputy Prosecuting Attorney Date

Approved as to form only:

Legal Counsel to the Contractor Date