

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No. 201312007
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Originating Department:	Executive Office
Contract or Grant Administrator:	County Executive Designee
Contractor's / Agency Name:	Port of Bellingham
Is this a New Contract?      If not, is this an Amendment or Renewal to an Existing Contract?    Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If Amendment or Renewal, Original Contract # Does contract require Council Approval?    Yes <input type="checkbox"/> No <input type="checkbox"/>	
Is this a grant agreement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, grantor agency contract number(s)      CFDA #	
Is this contract grant funded? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, associated Whatcom County grant contract number(s)	
Is this contract the result of a RFP or Bid process?      Contract Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, RFP and Bid number(s)      Cost Center:	
Is this agreement excluded from E-Verify? No <input type="checkbox"/> Yes <input type="checkbox"/> If no, include Attachment D Contractor Declaration form. <b>If yes, indicate exclusion(s) below:</b> <input type="checkbox"/> Professional services agreement for certified/licensed professional <input type="checkbox"/> Contract work is for less than 120 days <input type="checkbox"/> Contract less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS) <input type="checkbox"/> Contract work is all performed outside U.S. <input type="checkbox"/> Work related subcontract less than \$25,000. <input checked="" type="checkbox"/> Interlocal Agreement (between Govt's) <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA	
Contract Amount:(sum of original contract amount and any prior amendments) \$100,000 This Amendment Amount: \$ Total Amended Amount: \$	Contracts that require Council Approval (incl. agenda bill & memo) <ul style="list-style-type: none"> <li>• Professional Services Agreement above \$20,000.</li> <li>• Bid is more than \$40,000.</li> <li>• Amendments that have either an increase greater than 10% or provide a \$10,000 increase in amount (whichever is greater)</li> </ul> RENEWALS: Council approval is not required when exercising an option to renew that is provided in the original contract.
Summary of Scope: Lease agreement for the provision of an Emergency Operations Center located at the Airport Industrial Park.	
Term of Contract:    10 Years	Expiration Date:    12-31-23

<i>Contract Routing Steps &amp; Signoff</i>	<i>Sign or Initial</i>	<i>Indicate date transmitted</i>
1. Prepared by:		Date:
2. Attorney reviewed:	DG	Date: 11/30/13 (See AB)
3. AS Finance reviewed:	bennett	Date: 12/2/13
4. IT reviewed, if IT related:		Date:
5. Corrections made:		Date:
6. Attorney signoff:		Date:
7. Contractor signed:		Date:
8. Submitted to Exec Office:	✓	Date: 12-2-13
9. Council Approved (if required):	✓	Date: 12-10-13
10. Executive signed:	✓	Date: 12-17-13
11. Contractor original returned to Dept.:		Date:
12. County original to Council:	✓	Date: 12-30-13

COUNTY ORIGINAL

FINAL 11-25-13

WHATCOM COUNTY  
CONTRACT NO.  
2013/2007

**INTERLOCAL AGREEMENT**  
**FOR THE**  
**EXCLUSIVE USE OF THE**  
**SPECIAL PURPOSE FACILITY**  
**AT THE**  
**AIRPORT INDUSTRIAL PARK**

CITY OF BELLINGHAM  
CONTRACT#  
2013-0603

This INTERLOCAL AGREEMENT (the "Agreement") is made and entered into this 3<sup>rd</sup> day of December, 2013, by and between the **PORT OF BELLINGHAM**, a municipal corporation (the "Port"), the **CITY OF BELLINGHAM**, a Washington City, and **WHATCOM COUNTY**, a Washington county. The City of Bellingham and Whatcom County are collectively referred to herein as the "Users."

**WHEREAS**, the Port owns the Special Purpose Facility located in a portion of a building located at the Airport Industrial Park that is depicted on Exhibit "A" (the "SPF");

**WHEREAS**, the SPF has previously been used by the federal government as an emergency operations center for the 2010 Winter Olympics and therefore is configured for use as an emergency operations center;

**WHEREAS**, the Users have statutory responsibilities to manage emergency responses within their respective jurisdictions;

**WHEREAS**, the Port, City and County partnership reflects the community interest; and

**WHEREAS**, the Users desire to utilize the SPF as an emergency operations center for their respective emergency operations; and

**WHEREAS**, the Port is obligated to ensure that the use of the SPF is consistent with the Grant Assurances for Airport Sponsors as contained in the Code of Federal Regulations.

**NOW THEREFORE**, and in consideration of the mutual promises and covenants contained herein the parties agree as follows:

1. **PREMISES**: The Port does hereby grant to the Users, jointly and severally, the exclusive use and possession of that portion of the building comprising the SPF portion of the building and associated improvements (the "Improvements") and the underlying real property described as **Lease #25 of the Bellingham International Airport Binding Site Plan** described in Exhibit "A" (the Improvements and the real property are collectively the "Premises"). The Premises consist of an agreed exclusive use area of approximately 24,854 square feet in the SPF building and associated exterior spaces designated by Port as depicted on Exhibit "A" (the "Agreed Exclusive Use Area").

2. **TERM**: The term of this Agreement ("Term") shall be for ten (10) years beginning January 1, 2014 ("Commencement Date"), provided, however, the Users shall have the right to

terminate this Agreement up to the end of the fourth year of the initial term of this Agreement by providing not less than six (6) months prior written notice to the Port of the Users intent to terminate this Agreement.

2.1 If the Users take possession of the Premises before the Commencement Date, it is understood and agreed that there shall be no Use Payment charged to allow the Users to prepare the Premises for occupancy; provided, however, the Users shall pay all utilities and services and any other costs associated with early possession. This Agreement shall be in full force and effect should the Users take possession before the Commencement Date.

2.2. Subject to the terms and conditions herein, Users shall have the right to renew this Agreement for two (2) consecutive ten (10) year periods by giving written notice of such intention to the Port (or any successor in interest) at least one-hundred twenty (120) days prior to the expiration of the term of this Agreement or any renewal thereof. The Users shall not be entitled to renew this Agreement unless the Users are in good standing in regard to the Agreement at the time of renewal. The terms and conditions of any renewal shall be the same as set forth in this Agreement, except that the Use Payment (as defined below) shall be renegotiated between the Port and the Users.

3. **USE PAYMENT:** The term "Use Payment," as used herein means the annual payment made by the Users to the Port, which will be made quarterly in advance.

3.1. The Use Payment shall be One Hundred Thirty-Four Thousand Two Hundred Eleven and 60/100 Dollars (\$134,211.60).

3.2. The Use Payment shall remain fixed for the first three (3) years of the Agreement beginning January 1, 2014, and shall thereafter be adjusted annually using the Consumer Price Index (CPI) for all Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics for the Seattle-Metropolitan area (the "Index"). The Index used shall be that published for the nearest period preceding the annual Anniversary Date of the previous year compared to the Index published for the nearest period preceding the Anniversary Date for which the adjustment is being determined. The percentage change from the earlier Index to the later Index shall be multiplied by the Use Payment for the previous year and the result added to that rate to arrive at the adjusted Use Payment which shall apply to the following year, except in no event shall the Use Payment be less than the original Use Payment for the preceding year and in no event shall the Use Payment increase by more than three percent (3%) per year.

3.3. The Use Payment by the Users to the Port is exempt from Washington State Leasehold Excise Tax.

3.4. The Users and the Port have determined that the Use Payment taken together with the other promises and covenants contained herein constitutes "true and full value."

4. **USE OF PREMISES:** The Users shall use the Premises as an emergency operations center, including fire response, law enforcement response, emergency communications,

emergency operations, and their ancillary public safety activities, and for no other purpose without the written consent of the Port, which will not be unreasonably withheld, conditioned or delayed.

4.1. The Users may allow the use of the SPF by others for emergency operations.

4.2. Notwithstanding the foregoing described use, the Premises shall not be used to store, distribute or otherwise handle flammable or dangerous materials, excepting only those that are necessary to conduct the authorized use. At the request of the Port, Users shall provide a list of all flammable or dangerous materials stored or used on the Premises.

5. **CONDITION OF PREMISES.** The Users accept the Premises, including all existing Improvements thereon, "as is" without further liability for maintenance or repair on the part of the Port, and is not relying on any representations of the Port as to the condition, suitability, zoning restrictions, or usability, except as specifically noted herein. The Users shall keep the Premises and all Improvements thereon continually in good condition throughout the term of this Agreement and all renewals. Users shall not allow any portion of the Improvements on the Premises to remain in a damaged, unworkable or other condition that would compromise the condition of any portion of the Improvements. The Users further agree to maintain the exterior appearance of all Improvements during the term of this Agreement in as good condition as it exists on the Commencement Date of the Agreement, reasonable wear and tear excepted.

5.1 The parties hereto recognize that a previous tenant modified the Premises by creating an upstairs area that is not permitted and is not usable without obtaining permits from Whatcom County. The Users are under no obligation to improve such upstairs area.

5.2. The Port and the Users upon joint agreement as to timing, necessity and procurement process shall share equally in one-third shares for any roof replacement or repair. The estimated useful life of the existing roof is 10 years from the date of this Agreement.

5.3. The Users shall be solely responsible for all costs associated with installation of telecommunications equipment or interior improvements.

6. **IMPROVEMENTS BY USERS.** Subject to obtaining the Port's written approval as hereafter described, the Users may make and install, at their own expense, such improvements ("Tenant Improvements") as are normal and customary in connection with the uses authorized herein. The Users shall submit plans to and obtain written approval from the Port before commencing any improvements. The Port shall have a reasonable period of time to review such plans prior to issuing a decision. All Tenant Improvements that are to be designated fixtures shall be so designated by the Port and Users upon the Port's approval of the plans for such improvements. All Tenant Improvements shall conform to the requirements of the Americans With Disabilities Act, 42 USC 12101 et seq and the Rules, Regulations and Minimum Standards for the Bellingham International Airport.

6.1. Prior to the conclusion of this Agreement, the Users shall remove the following from the Premises: all Users' equipment, personal property, and Improvements not designated as

fixtures. If any of the foregoing items not designated as fixtures are not removed from the Premises by the conclusion of the Agreement the Port shall first notify the Users of the need to remove and dispose of such items at the Users' expense. Reasonable notice shall be provided by the Port to the Users who shall respond in a reasonable time.

7. **MAINTENANCE AND REPAIR OF PREMISES:** Except as provided in this Agreement related to (i) a casualty loss set forth in Section 11.1, (ii) roof repair or replacement set forth in Section 5.2 and (iii) for structural repairs set forth in Section 7.1, maintenance and repair of the Premises and all Improvements thereon, including for the damages caused by Users or their agents, is the sole responsibility of the Users, including, but not limited to, maintenance and repair of any damage to the Premises or Improvements thereon from unforeseen or unexpected events. Without limiting the generality of the foregoing, the Users shall keep and maintain the Premises and all Improvements thereon in as good condition as they existed on the commencement of this Agreement, reasonable wear and tear and conditions requiring structural repairs accepted.

7.1 The Port will be responsible for and shall repair in a timely manner any conditions that require structural repair. As used in this Agreement, the term "Structural Repair" means the repair of elements of the Building necessary to hold the Building together, such as, without limitation, foundations, walls, and floor structures except for structural repair required because of (i) the Users' failure to perform maintenance or (ii) damage caused by Users, their agents, or any person or entity on the Premises as a result of the User's activity.

8. **UTILITIES:** The Users will arrange and pay for all utility connections and services and distribution of such utilities within its leased Premises. At the conclusion of this Agreement, the Users shall arrange for such utility services to be terminated and for the final bill to be sent to the Users. The Users shall be liable for all utility charges that accrue if it fails to so terminate services.

9. **FEDERAL AVIATION REQUIREMENTS:** The Users agree that its use of the Premises will be accomplished in accordance with the following covenants:

9.1. The Users shall prevent any use of the Premises that would interfere with the landing or taking off of aircraft at the Bellingham International Airport, or otherwise constitute an airport hazard.

9.2. The Users shall prevent any operation on the Premises which would produce electromagnetic radiations of any nature which would cause interference with any air navigational or communications aid now or in the future to be installed to serve the Bellingham International Airport, or which would create any interfering or confusing light or cause any restrictions to visibility at the airport.

9.3. The Port retains the public right of flight for the passage of aircraft in the airspace above the surface of the Premises hereinbefore described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in said airspace, and for use of said airspace for landing on,

taking off from or operating on the Bellingham International Airport.

10. **OFF STREET PARKING**: The Users shall not rely on any public streets, rights-of-way or other properties not included in this Agreement for the parking of vehicles. Further, the Users understand that there are approximately 55 parking spaces with 30 contractually committed to the adjoining tenant Department of Homeland Security on an as needed basis. There are 27 secured parking spaces inside the Premises; therefore, there are approximately 52 parking spaces available for the Users' use.

10.1 **Further Cooperation for Additional Parking**: The parties hereto recognize that the Users may, from time to time, require additional parking in the event of emergency situations, declared disaster and regional training exercises. The parties shall cooperate in good faith regarding additional parking and the Users shall pay a reasonable fee for such additional parking not to exceed \$250 a day for the entire west lot or any portion thereof. In the event that the Port experiences a disaster or training exercise there shall be no charge for additional parking. Any and all additional parking spaces associated with a portion of the west lot shall be designated by the Port, on a space available basis.

## 11. **CASUALTY LOSS**

11.1 **Port Improvements**: Except as otherwise provided in this Agreement, the Users shall not be responsible to the Port for any damage or destruction of the Premises and the Improvements located thereon. The term "damage or destruction" means an unintended or unanticipated event which causes damage, the repair of which will cost an amount equal to or more than twice the Port's property insurance deductible or which renders all or any critical portion of the Premises substantially unsuitable for the uses set forth in Section 4. It shall be the Port's responsibility to provide its own protection against property losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the Users, third party, or act of nature. However, to the extent and in proportion that the damage or destruction is caused by or arises by either the negligent or willful conduct of the Users, its agents, or any person or entity on the Premises as a result of the User's activity, the Users shall be liable for the same proportion of the Port's property insurance self-insured retention or deductible.

11.2. **Users' Property**: The Port shall not be responsible to the Users for any property loss or damage done to the Users' property, whether real, personal or mixed, occasioned by reason of any fire, storm or other casualty whatsoever. It shall be the Users' responsibility to provide its own protection against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the Port, third party, or act of nature. However, to the extent and in proportion that the damage or destruction is caused by or arises by either the negligent or willful conduct of the Port, its agents, or any person or entity on the Premises as a result of the Port's activity, the Port shall be liable for the same proportion of the User's property insurance self-insured retention or deductible.

11.3 **Casualty Loss**: In the event of "damage or destruction" of the Improvements either party may elect to terminate this Agreement upon thirty days written notice; provided all

obligations contained herein shall continue until fully performed. Upon termination the Use Payment shall be prorated to the date of termination

12. **LIABILITY INSURANCE**: Each User shall procure and maintain a comprehensive general liability policy or the equivalent self-insurance program covering all claims for personal injury (including death) and/or property damage (including all real and personal property located on the Premises) arising on the Premises or arising out of Users' operations. The limits of liability shall be not less than One Million Dollars (\$1,000,000) for each occurrence and in the aggregate. The Users shall provide certificates of insurance (or certificates of self-insurance) and, if requested, copies of any policy to the Port.

13. **MUTUAL WAIVER OF SUBROGATION**: So long as their respective property/casualty insurers so permit, and with regard to any self insurance program, each User and the Port hereby mutually waive their respective rights of recovery against each other for any insured property/casualty loss but only to the extent of the net insurance proceeds payable under such policies. Each party shall seek any special endorsements required by their insurer to evidence compliance with the aforementioned waiver .

14. **ENVIRONMENTAL INDEMNIFICATION**: To the extent permitted by law, the Users shall defend, indemnify, and hold the Port harmless from any and all claims, demands, judgments, orders or damages resulting from Hazardous Substances on the Premises caused in whole or in part by the activity of the Users, their agents, subtenants, or any other person or entity on the Premises during any period of time that the Users have occupied all or a portion of the Premises during the term of this Agreement. The term "Hazardous Substances," as used herein, shall mean any substance heretofore or hereafter designated as hazardous under the Resource Conservation and Recovery Act, 42 USC Sec. 6901 et seq.; the Federal Water Pollution Control Act, 33 USC Sec. 1257 et seq.; the Clean Air Act, 42 USC Sec. 2001 et seq.; the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 USC Sec. 9601 et seq.; or the Hazardous Waste Cleanup-Model Toxics Control Act, RCW 70.105D, all as amended and subject to all regulations promulgated thereunder.

14.1. Although the Users shall not be liable for any Hazardous Substances that existed on the Premises prior to the inception of this Agreement, the Users shall be responsible for the costs of any environmental investigations or remediation arising from the development or use of the Premises by the Users.

15. **CURRENT ENVIRONMENTAL CONDITIONS AND DUTY OF USERS**: The Port makes no representation about the condition of the Premises. Hazardous Substances may exist in, on, under, or above the Premises. If there are any Hazardous Substances in, on, under or above the Premises as of the Commencement Date, the User shall exercise the utmost care with respect to the Hazardous Substances, the foreseeable acts or omissions of third parties affecting the Hazardous Substances, and the foreseeable consequences of those acts or omissions. Prior to conducting any environmental investigation of the subsurface of the Premises, the Users shall provide prior written notice to the Port. The Users shall provide the Port with the results of all such investigations.

16. **USERS WILL OBTAIN PERMITS:** The Users agree to obtain and comply with all necessary permits for any new improvement. If the Users fail to obtain and comply with such permits, then the User accepts full responsibility for any and all costs incurred by the Port, including actual attorneys' fees. In this way, the Users agree to be solely responsible for all damages, costs, and expenses incurred as a result of the Users' failure to fully comply with any necessary permit process and requirements.

17. **RIGHT OF FIRST REFUSAL TO PURCHASE BUILDING CONTAINING THE SPECIAL PURPOSE FACILITY:** Should the Port offer the Premises for sale during the term of this Agreement and any renewals, the Users (either individually or collectively) shall have the right of first refusal to purchase the Premises and Improvements. Any sale or transfer of the building while this Agreement is in effect shall be subject to this Agreement. This Right of First Refusal is subject to the following:

a. The Premises will be sold "as is" "where is" without further liability of the Port. The Port will provide a statutory warranty deed and a standard form title insurance policy in the amount of the purchase price. The purchase price will be payable as all cash at closing.

b. The Users (either individually or collectively) must provide the Port written notice of intent to purchase within six (6) months after the Port provides written notice to the Users of the offer for sale.

c. Upon receipt of notice of the Users' intent to purchase, the Port and the Users will promptly meet and attempt to select a qualified MAI appraiser to appraise the value of the Premises. The Port and the Users will split 50%/50% the cost of the appraisal. The appraised value of the Premises (including all related Port-owned improvements) will be the purchase price.

d. If the Port and the Users cannot agree, then the Port and the Users shall each select an MAI appraiser and have the Premises (including the Improvements) appraised. The Port and the Users shall pay for their own appraisers. The average of those two appraisals shall be the purchase price.

e. If, after determining the purchase price, the Users elect to move forward the Port and the Users will negotiate an appropriate ground lease for the real property underlying the Premises with ground rent at fair market value with reasonable adjustments and escalations. The term "fair market value" for ground rent shall be the reasonable rental value of the real property only, without regard to any of the Improvements.

f. If after determining the purchase price, the Users elect not to move forward, the Right of First Refusal will remain in effect; however, if the Users again provide notification of a desire to exercise the Right of First Refusal if offered by the Port and a new appraised value is required by the Port, the Users will bear the costs of the appraiser(s) as provided above.

17. **INDEMNIFICATION AND HOLD HARMLESS:**

17.1 To the extent permitted by law, the Users will defend, indemnify and hold harmless the Port, its officers, employees and agents from any and all demands, claims, judgments or liability for loss or damage (collectively "liability") arising as a result of accidents, injuries or other occurrences on the Premises, to the extent such liability is caused by or arises from any actual or alleged negligent or willful conduct of the Users, its agents, or any person or



entity on the Premises as a result of the Users' activity, regardless of who the injured third-party may be.

17.2 To the extent permitted by law, the Port will defend, indemnify and hold harmless the Users, their officers, employees and agents from any and all demands, claims, judgments or liability for loss or damage (collectively "liability") arising as a result of accidents, injuries or other occurrences on the Premises, to the extent such liability is caused by or arises from any actual or alleged negligent or willful conduct of the Port, its agents, or any person or entity on the Premises as a result of the Port's activity, regardless of who the injured third-party may be.

18. **LAWS AND REGULATIONS:** The Users agree to conform to and abide by all lawful codes, laws, and regulations in connection with its use of the Premises and the construction of improvements and operation of Users' use thereon and not to permit said Premises to be used in violation of any lawful rule, code, law or regulation.

18.1. The Users' obligations herein shall include, but in no way be limited to, the obligation to comply with all state and federal environmental laws and regulations. The Users covenant and agree that they will indemnify and hold harmless the Port from any fine, penalty, or damage which may be imposed by any lawful authority, which may arise as a result of the Users' failure to comply with the obligations of this paragraph.

19. **WASTE AND REFUSE:** The Users agree not to allow conditions of waste and refuse to exist on the Premises and to keep the Premises in a neat, clean, and orderly condition and to be responsible for all damages caused to the Premises by Users, their agents or any third party on the Premises.

20. **SIGNS:** No signs shall be installed without the prior written permission of the Port.

21. **TERMINATION:** Upon termination of this Agreement or any extension thereof, whether by expiration of the stated term or sooner termination thereon as herein provided, the Users shall surrender to the Port the Premises peaceably and quietly restored to the condition existing at the time of initiation of this Agreement, except for: (i) normal wear and tear, and (ii) any improvements which the Port permits to remain on the Premises.

21.1. This Agreement shall be construed as a lease for the purposes of the Port availing itself of the unlawful detainer proceedings set forth in Chapter 59.12 RCW.

22. **NON WAIVER:** Neither the acceptance of the Use Payment nor any other act or omission of the Port or the Users after a default shall operate as a waiver of any past or future default or deprive any party promptly exercising any other right or remedy it has under this Agreement. Any waiver shall be in writing and signed by the party granting the waiver to be binding on that party.

23. **COORDINATORS AND NOTICES:** The person designated below shall be the contact person and coordinator for all issues related to this Agreement. Any notice, demand, request,

consent, approval or communication that either party desires or is required to give to the other party shall be in writing addressed to the other party at the addresses as follows:

TO PORT: Shirley McFearin  
Director of Real Estate  
Port of Bellingham  
Post Office Box 1677  
Bellingham, Washington, 98227-1677

TO THE CITY: Roger Christensen  
Fire Chief  
City of Bellingham  
1800 Broadway  
Bellingham, Washington, 98225-3133

TO THE COUNTY: Jack Louws (or Designee)  
County Executive  
Whatcom County  
311 Grand Avenue, Suite 108  
Bellingham, WA 98225-4038

or such address as may have been specified by notifying the other party of the change of address. Notice shall be deemed served on the date of actual delivery or the first attempted delivery as shown on the return receipt if mailed with the United States Postal Service by certified mail, return receipt requested.

24. **QUIET ENJOYMENT:** The Port shall take no action which interferes with the Users' right of quiet enjoyment. Notwithstanding the foregoing, the Port reserves the right to grant easements and other land uses on the Premises to others when the easement or other land uses applied for will not unduly interfere with the use to which the Premises is put by Users, or interfere unduly with the approved plan of development for the Premises.

25. **THE PORT MAY ENTER PREMISES:** It is agreed that the duly authorized officers or agents of the Port may enter to view said Premises and if the business or normal function of the Port should at any time require that it enter upon the Premises to perform any work or make any improvements. Prior to entry the Port will provide the User with reasonable notice, reasonably schedule entry and shall comply with all reasonable access requirements of the User.

26. **TIME:** It is mutually agreed and understood that time is of the essence of this Agreement.

27. **INTERPRETATION:** This Agreement has been submitted to the scrutiny of the parties hereto and their counsel, if desired. In any dispute between the parties, the language of this Agreement shall, in all cases, be construed as a whole according to its fair meaning and not for or against either the Port or the Users. If any provision is found to be ambiguous, the language shall not be construed against any party solely on the basis of which party drafted the provision.

If any word, clause, sentence, or combination thereof for any reason is declared by a court of law or equity to be invalid or unenforceable against one party or the other, then such finding shall in no way affect the remaining provisions of this Agreement.

28. **SURVIVAL**: All obligations of this Agreement shall not cease upon the termination of this Agreement and shall continue as obligations until fully performed.

29. **GOVERNING LAW**: This Agreement, and the right of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington, and the parties agree that in any such action jurisdiction and venue shall lie exclusively in Whatcom County, Washington.

30. **JOINT AND SEVERAL OBLIGATIONS**: The obligations of the Users in this Agreement are the joint and several obligations of Whatcom County and the City of Bellingham.

31. **NO THIRD PARTY BENEFICIARIES**: There are no third party beneficiaries to this Agreement.

32. **TRUE AND FULL VALUE**: The County, the Port and the City have each independently analyzed the economics of the transaction contemplated herein and have each determined that each entity is receiving true and full value as that term is defined in RCW 43.09.210, relevant case law and attorney general opinions.


33. **ENTIRE AGREEMENT**: This Agreement contains all of the understandings between the parties. Each party represents that no promises, representations or commitments have been made by the other as a basis for this Agreement that have not been reduced to writing herein. No oral promises or representations shall be binding upon any party, whether made in the past or to be made in the future, unless such promises or representations are reduced to writing in the form of a modification to this Agreement executed with all necessary legal formalities.

34. **VALIDATION**: IN WITNESS WHEREOF, the parties have respectively caused this instrument to be approved and executed on the day and year noted below.

**THE PORT OF BELLINGHAM**

  
By: Rob Fix, its Executive Director

**WHATCOM COUNTY**

  
By: Jack Louws, County Executive

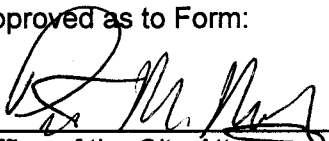
Approved as to form:

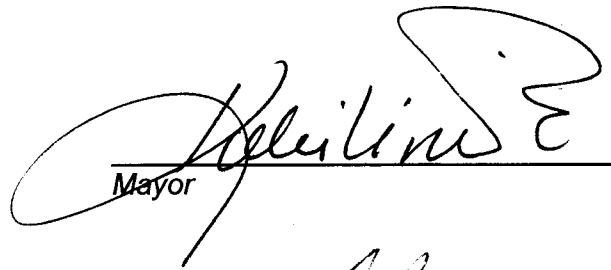
  
Chief Civil Deputy Prosecutor

**THE CITY OF BELLINGHAM**

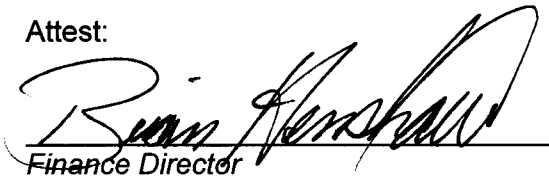
EXECUTED, this the 20<sup>th</sup> day of December, 2013, for the City of Bellingham as follows:


Approved as to Form:

  
Office of the City Attorney

  
Mayor

Attest:

  
Finance Director

  
Department Head

[INSERT NOTARY BLOCK]

F:\PORT OF BELLINGHAM\Real Estate\Special Purpose Facility\Special PURPOSE FACILITY PORT YELLOW CLEAN 11-18-13.doc

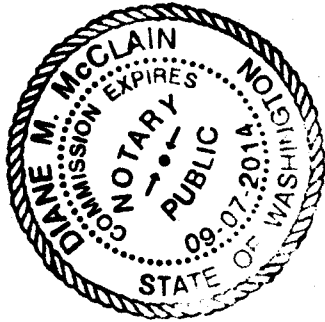
STATE OF WASHINGTON:

SS

COUNTY OF WHATCOM :

ON THIS 3<sup>rd</sup> day of December, 2013, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **ROB FIX**, known to me to be the **Executive Director** of the **PORT OF BELLINGHAM**, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.



Diane M. McClain  
Name (Print) Diane M. McClain  
NOTARY PUBLIC, in and for the State  
of Washington, residing at Bellingham  
My Commission expires: 09.07.14

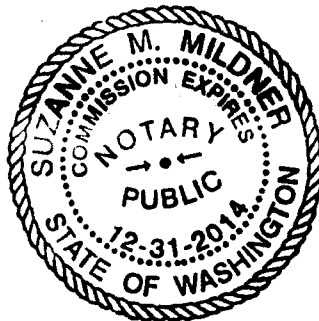
STATE OF WASHINGTON:

SS

COUNTY OF WHATCOM :

ON THIS 16<sup>th</sup> day of December, 2013, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Jack Louws known to me to be the County Executive of Whatcom County and acknowledged the said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that he/~~she~~ was authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.



Suzanne M. Mildner  
Name (Print) Suzanne M. Mildner  
NOTARY PUBLIC, in and for the State  
of Washington, residing at Bellingham  
My Commission expires: 12-31-14

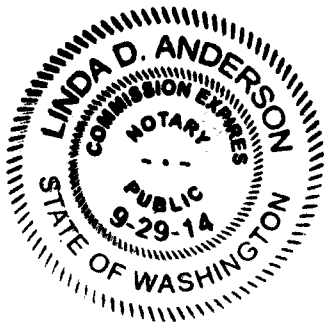
STATE OF WASHINGTON:

SS

COUNTY OF WHATCOM :

ON THIS 20<sup>th</sup> day of December, 2013, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Kelli Linville known to me to be the MAYOR of the City of Bellingham and acknowledged the said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.



Linda D. Anderson  
Name (Print) LINDA D. ANDERSON  
NOTARY PUBLIC, in and for the State  
of Washington, residing at Bellingham  
My Commission expires: 9/29/2014

# BELLINGHAM INTERNATIONAL AIRPORT GENERAL AND SPECIFIC BINDING SITE PLAN

WHATCOM COUNTY, WASHINGTON

EXHIBIT "A-1"

**LEGAL DESCRIPTION**

PORTIONS OF SECTIONS 10, 11, 14 AND 15, IN TOWNSHIP 38 NORTH, RANGE 2 EAST, T. 38 N., R. 2 E., WHATCOM COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED IN QUIT CLAIM DEED, #843088, BETWEEN WHATCOM COUNTY AND THE PORT OF BELLINGHAM, RECORDED UNDER AUDITOR'S FILE #843088, RECORDS OF THE AUDITOR OF SAID COUNTY AND STATE.

EXCEPT PARCEL NO. 7-17 DESCRIBED THEREIN.

EXCEPT A TRACT OF LAND LOCATED IN THE NORTH HALF OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 38 NORTH, RANGE 2 EAST, T. 38 N., R. 2 E., AS DESCRIBED AS FOLLOWS:

SECTION 15, TOWNSHIP 38 NORTH, RANGE 2 EAST, T. 38 N., R. 2 E., AS DESCRIBED AS FOLLOWS:

THE SOUTHWEST CORNER OF THE NORTHERLY LINE OF THE WHATCOM-MARIETTA ROAD WHERE SAID NORTHEASTLY LINE OF THE WHATCOM-MARIETTA ROAD INTERSECTS THE SOUTHWEST CORNER OF THE SOUTHWESTLY LINE OF THE WHATCOM-MARIETTA ROAD TO SAID WHATCOM-MARIETTA ROAD A DISTANCE OF 300 FEET; THENCE SOUTHWESTERLY PARALLEL TO SAID WHATCOM-MARIETTA ROAD A DISTANCE OF 150 FEET; THENCE SOUTHWESTERLY AT RIGHT ANGLES A DISTANCE OF 300 FEET TO THE NORTHEASTLY LINE OF WHATCOM-MARIETTA ROAD; THENCE ALONG SAID NORTHEASTLY LINE OF WHATCOM-MARIETTA ROAD A DISTANCE OF 150 FEET TO THE POINT OF BEGINNING.

ALSO PARCELS OF LAND IN THE NORTH HALF OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 38 NORTH, RANGE 2 EAST, T. 38 N., R. 2 E., AS DESCRIBED IN DEEDS RECORDED UNDER AUDITOR'S FILE #1217109, #1565712, #1565713, #1565814 AND #1567967, RECORDS OF THE AUDITOR OF WHATCOM COUNTY, WASHINGTON.

ALSO A PARCEL OF LAND IN THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 38 NORTH, RANGE 2 EAST AS DESCRIBED IN DEED RECORDED UNDER AUDITOR'S FILE #1229210, RECORDS OF THE AUDITOR OF SAID COUNTY AND STATE.

ALSO PARCELS OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 38 NORTH, RANGE 2 EAST, T. 38 N., R. 2 E., AS DESCRIBED IN DEEDS RECORDED UNDER AUDITOR'S FILE #1147977 AND #1148492, RECORDS OF THE AUDITOR OF SAID COUNTY AND STATE.

ALSO LOTS 1 THROUGH 11 INCLUSIVE, AND LOTS 13 THROUGH 15, ALL IN BLOCK 98; LOTS 11, 12 AND 13, BLOCK 97; LOTS 7, 8 AND 9, BLOCK 100, AND THE SOUTH 620 FEET OF THE WEST 320 FEET OF BLOCK 101; RAKEVIER ADDITION TO THE CITY OF BELLINGHAM, AS PER THE MAP THEREOF RECORDED IN BOOK 7 OF PLATS, PAGES 40 TO 45 INCLUSIVE, RECORDS OF SAID COUNTY AND STATE; ALSO LOT 8 AND 9 AND A PORTION OF LOT 7, BLOCK #150431, RECORDED UNDER AUDITOR'S FILE #1151781, RECORDS OF SAID COUNTY AND STATE.

ALSO THE EAST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, EXCEPT ROAD AND TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 2 EAST, T. 38 N., R. 2 E., AS DESCRIBED IN DEED RECORDED UNDER AUDITOR'S FILE #1151781, RECORDS OF SAID COUNTY AND STATE.

ALSO THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 2 EAST, T. 38 N., R. 2 E., AS DESCRIBED IN DEED RECORDED UNDER AUDITOR'S FILE #1151781, RECORDS OF SAID COUNTY AND STATE.

ALSO PARCEL A: THE WESTERLY HALF OF BLOCK 27, "RAKEVIER ADDITION TO THE CITY OF BELLINGHAM," WHATCOM COUNTY, WASHINGTON, AS PER THE MAP THEREOF RECORDED IN BOOK 7 OF PLATS, PAGES 40 TO 45, INCLUSIVE, IN THE AUDITOR'S OFFICE OF SAID COUNTY AND STATE, EXCEPTING THEREFROM THE FOLLOWING DESCRIBED TRACT: THE NORTH 33 FEET OF THE WESTERLY HALF OF SAID BLOCK 27, EXCEPTING THE WEST 60 FEET.

PARCEL B: THE WEST 50 FEET OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 2 EAST OF T. 38 N., R. 2 E., EXCEPT THE WEST 10 FEET AND HIGHWAY.

TOGETHER WITH VACATED ROADS ABUTTING, ADJACENT TO, AND SUBJECT TO EASEMENTS, AGREEMENTS, LEASES, COVENANTS, RESTRICTIONS, RESERVATIONS AND ENCUMBRANCES OF RECORD.

**DECLARATION & DEDICATION**

KNOW ALL MEN BY THESE PRESENTS, THAT WE, THE UNDERSIGNED, BEING OWNERS IN THE SEVERAL OF THE LAND HEREIN DESCRIBED, DO HEREBY CERTIFY THAT THE GENERAL AND SPECIFIC BINDING SITE PLAN IS MADE WITH OUR FREE CONSENT AND ACCORDANCE WITH OUR WISHES, AND DO HEREBY DEDICATE TO THE USE OF THE PUBLIC FOREVER THE ROAD RIGHT-OF-WAY AS SHOWN HEREON (SEE SHEET 5); ALSO, THE RIGHT TO MAKE ALL NECESSARY SLOPES FOR CUTS AND FILLS UPON THE LEASES, LOTS, BLOCKS AND TRACTS IN ANY REASONABLE GRADING OF THE ROADS AND EASEMENTS; AND HEREBY WAIVER ALL CLAIMS FOR DAMAGES AGAINST ANY GOVERNMENTAL AUTHORITY WHICH MAY BE OCCASIONED TO THE ADJACENT LAND BY THE ESTABLISHED CONSTRUCTION, DRAINAGE AND MAINTENANCE OF SAID ROAD; AND WAIVER OUR FREE CONSENT AND ACCORDANCE WITH OUR WISHES.

*Edward S. Stashman*  
 EDWARD STASHMAN  
 PORT OF BELLINGHAM COMMISSIONER,  
 SECRETARY

Dep. No. BSP-01 SHL 3

APPROVE'S OFFICER  
 Filed for record this 21 day of JULY, 1989  
 at Bellingham, in the County of WHATCOM, State of WASHINGTON.  
 AT THE REQUEST OF LARRY STEELE AND ASSOC.  
 Notary Public for the office

THIS map correctly represents a survey made by me or under my direction in accordance with the requirements of the laws of the State of Washington.  
 LARRY STEELE & ASSOCIATES  
 LAND SURVEYORS  
 200-974-020  
 Bellingham, WA 98201  
 Certificate No. 1223-12

BEING A PORTION OF  
 SECTION 310, 11, 14 AND 15,  
 TWP. 38 N., R. 2 E., T. 38 N., R. 2 E., W.M.,  
 WHATCOM COUNTY  
 WASHINGTON

**BINDING SITE PLAN**  
 FOR THE  
**PORT OF BELLINGHAM**  
 SHEET # PRE DATE 6/12/89 SHEET NO. 21987  
 SHEET # PRE DATE AS NOTED SHEET NO. 3 #11

FIELD BOOK 44B  
 VOL. 1 Pg. 60

ACKNOWLEDGMENT  
 STATE OF WASHINGTON ) SS  
 COUNTY OF WHATCOM )

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT THE PORT OF BELLINGHAM COMMISSIONERS, BY THEIR FREE AND VOLUNTARY ACT FOR SIGNED THIS INSTRUMENT AND ACKNOWLEDGED IT TO BE THEIR FREE AND VOLUNTARY ACT FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.  
 SIGNATURE OF NOTARY PUBLIC James S. White DATE: June 28, 1990  
 MY APPOINTMENT EXPIRES 1-2-94

DRAINAGE EASEMENTS (WCC 21-24.050.2)

NOTE: WHATCOM COUNTY SHALL HAVE NO OBLIGATION TO ASSUME ANY RESPONSIBILITY OR COST FOR THE MAINTENANCE OR IMPROVEMENT OF ANY DRAINAGE COURSE(S) OR SEASONALLY WET AREA(S) AS MAY OCCUR UPON THIS PROPERTY.

DIRECTOR OF PUBLIC WORKS APPROVAL  
 EXAMINED AND APPROVED THAT THIS SPECIFIC BINDING SITE PLAN CONFORMS WITH THE TERMS OF THE GENERAL BINDING SITE PLAN.  
John R. Taylor DATE 7-5-90  
 WHATCOM COUNTY DIRECTOR OF PUBLIC WORKS

TREASURER'S CERTIFICATION  
 EXAMINED AND APPROVED BY THE WHATCOM COUNTY TREASURER THAT ALL TAXES AND DELINQUENT ASSESSMENTS FOR WHICH THE PROPERTY IS LIABLE AS OF THE DATE OF CERTIFICATION HAVE BEEN DULY PAID, SATISFIED OR DISCHARGED.  
Becky Sherwin Deputy DATE 7/6/90  
 WHATCOM COUNTY TREASURER

HEALTH DEPARTMENT APPROVAL  
 EXAMINED AND APPROVED BY THE WHATCOM COUNTY DISTRICT DEPARTMENT OF HEALTH.  
Elaine R. Baird DATE 7/27/90  
 DIRECTOR, ENVIRONMENTAL HEALTH

HEARING EXAMINER APPROVAL  
 I, Ed Ward 6/20/89 HEARING EXAMINER OF WHATCOM COUNTY,  
 DO HEREBY CERTIFY THAT THE GENERAL BINDING SITE PLAN HEREIN DEDICATED CONFORMS TO THE TERMS OF APPROVAL GRANTED ON MAY 4, 1989.  
Ed Ward DATE 7-5-90  
 HEARING EXAMINER

ENGINEER'S APPROVAL  
 EXAMINED AND APPROVED BY THE WHATCOM COUNTY DIVISION OF ENGINEERING.  
Edward P. Stashman DATE July 3, 1990  
 WHATCOM COUNTY ENGINEER

SURVEYOR'S CERTIFICATE

I, BEN C. MORRIS, DO HEREBY CERTIFY THAT THIS "Bellingham International Airport General and Specific Binding Site Plan" IS BASED UPON AN ACTUAL SURVEY MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STATE, THAT ALL DISTANCES, COURSES, AND ANGLES ARE CORRECTLY SHOWN HEREON, THAT ALL MONUMENTS HAVE BEEN SET ON THE GROUND.  
Ben C. Morris  
 BEN C. MORRIS P.L.S. LICENSEE NO. 22343

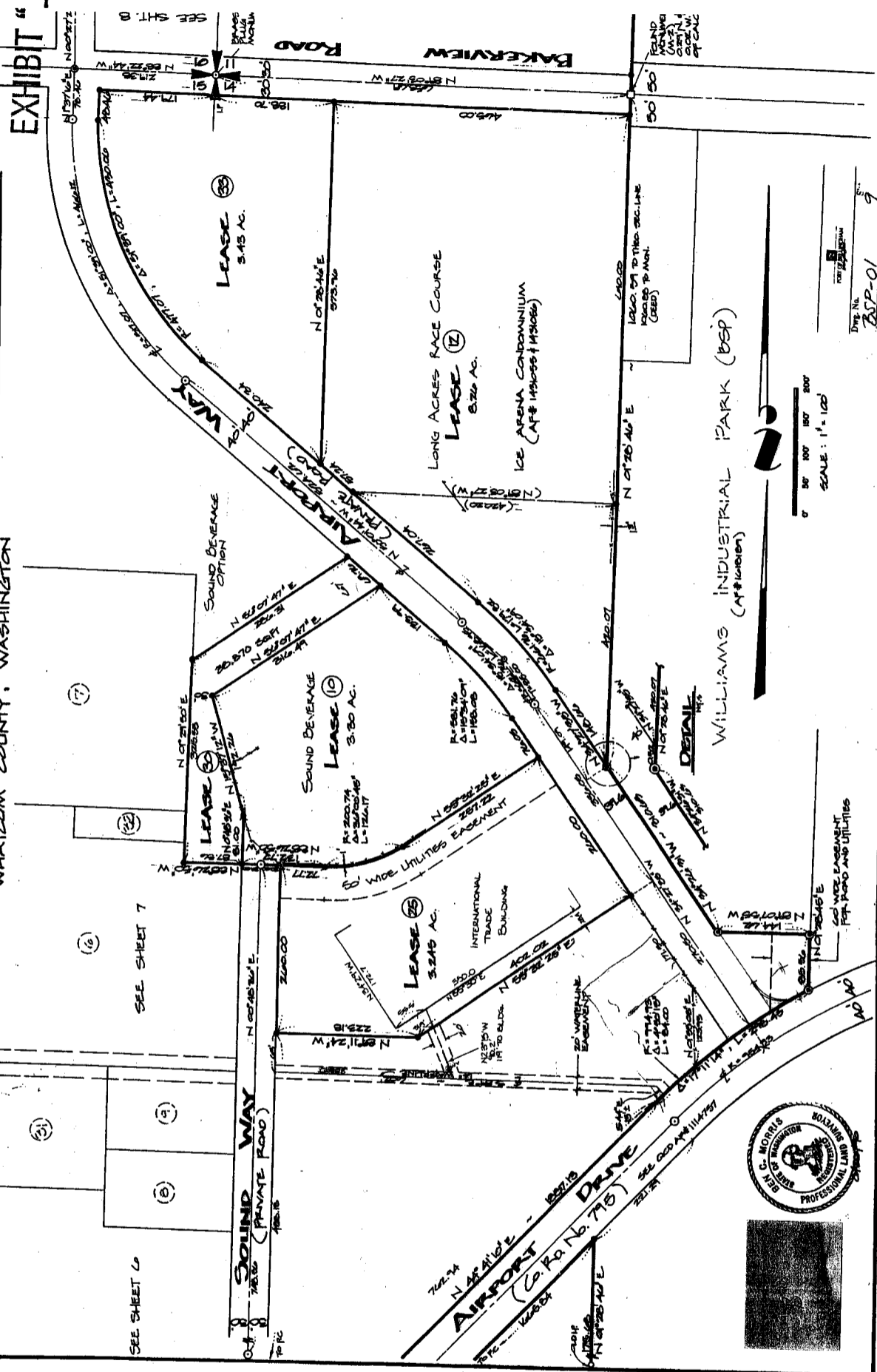


# BELLINGHAM INTERNATIONAL AIRPORT

## GENERAL AND SPECIFIC BINDING SITE PLAN

WHATCOM COUNTY, WASHINGTON

EXHIBIT "A-2"



<p><b>BINDING SITE PLAN</b> FOR THE <b>PORT OF BELLINGHAM</b></p> <p>DATE: 10/12/90 SHEET: 9 of 11</p>	
<p>BEING A PORTION OF SECTIONS 3, 10, 11, 14 AND 19, TWP 36N, R. 22E, W. 4N, WHATCOM COUNTY, WASHINGTON</p>	
<p>LARRY STEELE &amp; ASSOCIATES LAND SURVEYORS 200 4TH AVE. S.E. BELLINGHAM, WASH. 98224</p>	
<p><b>SURVEYOR'S CERTIFICATE</b> This map correctly represents a survey made by me or under my direction in accordance with the requirements of WHATCOM COUNTY TITLE 21, at the request of THE PORT OF BELLINGHAM, on 10/12/90.</p> <p><i>Roy L. Lander</i> Roy L. Lander, Surveyor Certificate No. 222042</p>	
<p><b>OWNER'S CERTIFICATE</b> Filed for record this 6th day of July, 1990, at _____ o'clock, P.M., in volume _____ of BPP's, at _____.</p> <p>Bellingham County Auditor's Office</p>	





**WHATCOM COUNTY  
EXECUTIVE'S OFFICE**

County Courthouse  
311 Grand Avenue, Suite #108  
Bellingham, WA 98225-4082



**Jack Louws**  
County Executive

## **MEMO:**

**TO:** Whatcom County Council

**DATE:** November 25, 2013

**FROM:** Jack Louws, County Executive

**RE:** Joint Lease Agreement for the purposes of opening an Emergency Operations Center (EOC)

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### **Background and Purpose:**

Earlier this year, local representatives from the Executive's Office, City and County Emergency Management, fire and police agencies, and the Port of Bellingham developed a joint work committee to discuss the facility deficiencies and our local ability to adequately respond and recover from a natural or man-made disaster. The most critical deficiency in the county was the lack of a functional emergency operations center, or EOC. Our current ability to quickly assemble an EOC is hampered by locating adequate space that could properly function as an EOC for local, state and federal responders. Current identified locations include various small conference rooms, spread throughout the County. These limited options would easily be overwhelmed by potential disasters. The County experienced such deficiencies during the pipeline rupture/fire in 1999, the county-wide flooding in 2009, and the Port of Bellingham's marina fire in 2012.

The County and other responders experienced the benefits of an appropriate EOC facility during the 2010 Winter Olympics with the creation of the Olympic Coordination Center (OCC). The center proved to be an effective facility which enabled local, state, and federal entities to collaborate on emergency incidents and planned events, such as joint exercises and training for large groups. The Federal government made a substantial investment in the OCC property for use as an Emergency Operations Center. Following the Olympic Games they abandoned the building and left the investment within the Port owned building.

The Port of Bellingham owns the OCC facility located in a portion of the building at the Airport Industrial Park. The County, the Port and the City desire to co-locate and utilize the facility as an Emergency Operations Center for unified emergency operations. The

three Parties will partner on a 10 year lease and Interlocal agreement to share the space and the cost for the facility previously housing the OCC.

Together the parties will develop collaborative uses for the building, including fire response, law enforcement response, emergency communications, 911 call receiving and consolidated public safety dispatch, emergency operations, and their ancillary public safety activities. Initial phase of this collaboration is the relocation of the County's Division of Emergency Management and the City of Bellingham's Emergency Management operations to the EOC. The Partners are working with major industrial operations in our county (oil refineries and shipping companies) to provide use of the space for exercises, training and emergency response. The County and City together with What-Comm will analyze and plan for the co-location of all emergency communication centers. This work will proceed during the next budget biennium with projected completion and implementation in 36-48 months.

**Funding Amount and Source:**

The term of this Agreement shall be for ten (10) years beginning January 1, 2014; provided, however, the County and the City shall have the right to terminate this Agreement prior to the end of the fourth year by providing not less than six months written notice. For the first three years of the agreement the County and the City shall each pay \$67,106 per year. Thereafter, and throughout the initial term the Use Payment shall escalate annually using the Consumer Price Index (CPI) not to exceed 3% annually. The County and City shall have the right to renew this agreement for two additional consecutive 10 year periods.

The Port, the County, and the City shall share equally in 1/3 shares of any roof repair or replacement during the term of the lease. The County and City shall be responsible for all maintenance and repair of the facility and all improvements thereon and all utilities and services required for their use of the facility. The Port shall be responsible for any structural repairs, such as foundations, walls and floor structures. The lease includes provisions for substantial and adjacent parking made available during major events.

The County and the City retain a right to purchase the building during the term of this agreement based on terms described in the lease. The County will provide the lease and utility costs through the Non-Departmental budget of the General Fund.