

To: County Board Members

From: Kim Jones

Re: Airport Joint Use Agreements (AJUA) Frequently Asked Questions

Why can't Dane County Regional Airport (DCRA) just order the new PFAS free foam now if it is available or require that Wisconsin Air National Guard (WI ANG, a/k/a the 115th Fighter Wing) use it as part of this AJUA?

The new foam was just approved in September of 2023. The WI ANG is already on the list to get the new foam for their DCRA fire-fighting services, but transitioning to the new foam is not as simple as ordering the new foam. Airports cannot just empty the old foam out of the fire-fighting equipment and replace it with the new foam. There are many factors that need to be considered to make sure the transition is successful including training firefighters how to use the new foam, proper cleaning of equipment previously containing foam with PFAS, and making sure the supply chain for the new foam is fully established and consistently reliable.

From the FAA foam transition plan:

It is critical that ARFF departments fully understand the differences between the AFFFs and the new MILSPEC F3s. While both foams are very effective, training must be adjusted to emphasize the differences in MILSPEC F3 performance in extinguishing Class B, liquid fuel spill fires...The absence of the fluorinated surfactant makes MILSPEC F3 foam travel slower than with AFFFs.

The new product was just placed on the approved list for the military in September of this year and airports that transition to the new foam have to be sure it will continue to be available in sufficient quantities after they make the transition or risk contaminating their equipment if the companies cannot keep up with the demand for the new foam.

From the FAA foam transition plan:

Availability of MILSPEC F3 Airports should ensure that sufficient quantities of the MILSPEC F3 products they have chosen are available when they are ready to make the transition. One of the most important considerations is the incompatibility of one MILSPEC F3 foam to other MILSPEC F3 products or AFFF. According to the new MILSPEC (MIL-PRF-32725), airports must NOT mix any F3 products together in a foam tank. Airports should attempt to transition all their vehicles consecutively over a short period of time.

You can see the entire plan that was released in May of 2023 here:

https://www.faa.gov/sites/faa.gov/files/FAA_Aircraft_F3_Transition_Plan_2023.pdf

Why is there a \$100 payment in the contract? What would the payment be to DCRA using the formula worksheet used to pay other airports?

- The worksheet was completed in 2020 and showed the baseline AJUA payment would be \$89,097.00 a year if DCRA did their own firefighting services and took the formula payment instead of getting firefighting services. The receipt of Aircraft Rescue and Firefighting (“ARFF”) services saves DCRA far more than \$89,097.00 a year in staffing, training, and equipment costs.
- **Truax Field – Dane County Regional Airport 2020 AJUA Share Calculation**
 1. Airport Calculated Cost Per Year = \$1,113,713.43
 2. Air National Guard percentage military flying operations = 8%
 3. Baseline AJUA payment ($\$1,113,713.43 \times 8\%$) = \$89,097.00

Why doesn't DCRA ask for further modifications to this agreement?

- The AJUA is a standardized federal form that was recently updated at the federal level. DCRA negotiated to achieve the best results with the leverage we had, but many terms had little to no room for modification.
- The indemnification/hold harmless provision is limited to firefighting services, including AFFF use, on civil aircraft. Under those circumstances, DCRA would be responsible for cleanup and pursuing the responsible party (commercial or general aviation owner of the aircraft)—the same responsibility DCRA would have if we provided our own ARFF services.

Did the airport team ask for changes to the indemnification clause and/or a better deal?

- Yes. Attorneys from the Dane County Corporation Counsel's Office made requests to modify the agreement and change the indemnification clause sent to them by the military as part of this agreement. Military officials rejected the modifications and made it clear that this is a standard federal agreement used in this situation. They advised that if the DCRA does not want to sign the AJUA with the indemnification clause as written, then the military will continue providing firefighting services for a year while the airport establishes its own fire-fighting services.
- As with all contract negotiations, every attempt was made to create the most favorable contract terms for the airport, the county, and its residents. Given the known environmental risks, any entity doing this work for the airport on contract would include a similar provision as a condition of providing the service.
- The cost for DCRA to provide those services without the WI ANG would be borne by air carriers, travelers, and/or taxpayers and would in all likelihood increase the cost of flights into and out of the Dane County region. Under this scenario, DCRA and its users

would bear this new expense, but the military would still maintain its own fire equipment on the premise and staff to service their aircraft.

What does DCRA get in this agreement?

- The value of tens of millions of dollars of Aircraft Rescue and Firefighting services that we don't have to pay for over the years of this agreement.
- The \$100 cash listed in the AJUA is included to show a transfer of funds and is not the only compensation we receive. The true value of the agreement is in the ARFF services.
- The value of the ARFF services the WI ANG provides greatly outweighs the compensation we would otherwise be entitled to.

Why isn't DCRA asking the WI ANG to pay for PFAS mitigation in this agreement?

- The purpose of the AJUA is for the Airport to receive compensation for the Government's use of joint flying facilities. The WI ANG is separately handling its PFAS mitigation obligations outside of this agreement. The WI ANG has spent over \$4.6 million in PFAS investigation, mitigation, and remediation since 2017. Most recently, \$2.16 million was awarded in September 2023 to finalize delineation of former spills on Truax as part of the CERCLA process. The 115th Fighter Wing will also pay their fair share of the Darwin and Pierstorff AFFF cleanup, but that is managed through existing procedures with the U.S. Department of Justice once we finish the cleanup.

What happens if the County Board votes down the AJUA?

- If the County Board rejects the AJUA, the WI ANG would give DCRA one year to start our own fire department. Without the AJUA in place, DCRA would have to spend tens of millions in operations and staffing, equipment, and capital costs to create and maintain our own fire department with ARFF services.

If DCRA is negotiating an agreement allowing the WI ANG to use the airport through the AJUA, why aren't they using this access to DCRA as leverage?

- This isn't an agreement to allow the WI ANG to use the DCRA. They already have that right under federal law. This is an agreement for the WI ANG to compensate DCRA for their use of jointly-used flying facilities within the standards allowed by federal statute.

Will voting this down help stop the F-35s from using DCRA?

- No. The WI ANG and the F-35s will use DCRA runways with or without this agreement because federal law requires we allow the military to use the airport. DCRA cannot force the WI ANG to leave or change the F-35 mission. This agreement compensates the DCRA for the use of the DCRA that will occur.

If this AJUA isn't signed who will respond to a military aircraft crash on airport property?

- Without this AJUA, the airport would be required to respond to any incident involving a military aircraft that occurs on the airfield outside of the military leasehold. Ending our long-standing partnership with the WI ANG would result in the County being primarily responsible for providing these services and all of the risks involved with doing that.

What if an F-35 crashes?

- This agreement only pertains to airport property and how services are shared on that property. Any crashes of military jets on or off airport property would be handled by the military and this agreement would not impact that response.

If we don't have the WI ANG do fire-fighting services for the DCRA will they still do their own fire-fighting for their jets and will it not be available to DCRA?

- Yes, on their leasehold. And they will not provide services to DCRA.

Wouldn't DCRA be better off environmentally by doing the fire response ourselves?

- There is no reason to think so because FAA standards require the fire-fighting services regardless of how they are provided. If the WI ANG does not provide those services, the airport will have to establish and maintain its own fire department. There would be no net environmental benefit and any environmental risks from firefighting services would increase given the presence of two separate fire departments at the airport.

Why does this agreement release WI ANG from the future costs from contamination resulting from fire services? Does it remove WI ANG responsibility to clean up past contamination?

- The AJUA releases WI ANG from future costs for the effects of firefighting services to civil aircraft at DCRA because they are providing a service to DCRA and it is common for a service provider to seek a limit to their liability exposure. Anyone providing this service would require a similar clause given the now-known environmental risks.
- DCRA will have clean up responsibility for firefighting services to civil aircraft regardless of who provides those services.
- The terms of the AJUA have never been interpreted to release WI ANG from its obligations for past PFAS contamination. DNR named them one of the responsible parties for that contamination and this agreement does not change that.

Is WI ANG targeting DCRA with the indemnification language?

- No. This indemnification clause is required in all new AJUAs where an airport receives ARFF services.

Does the airport team believe the indemnification language only applies to future environmental contamination or incidents that might occur?

- Yes. The indemnification provision in the agreement is limited to the WI ANG's future use of AFFF and other firefighting materials in providing fire protection services to DCRA i.e. on non-military aircraft. Under those circumstances, the airport would be responsible for cleanup and pursuing the responsible party (either the commercial or private owner of the aircraft).
- The Air National Guard's use of AFFF in any other circumstance would not be covered under this provision.

Do the terms of the AJUA limit Dane County liability to service for civil aircraft?

- Yes. The indemnity clause is limited to services provided to the County.

Why doesn't DCRA contract with the Madison or other area fire departments to provide this service instead?

- This type of fire-fighting service requires specialized training and an ability to meet FAA-mandated first responder times. The National Guard has a training facility to achieve

these requirements at Volk Field. The WI ANG takes on the cost of the specialized training as part of our agreement with them.

- Because the FAA requires certain response times, contracting with another fire department with sufficient training would not avoid the significant expenses of building and maintaining a fire station at the airport nor procuring and maintaining the necessary equipment that complies with FAA standards.

How much is the estimated cost of establishing an airport firefighting department?

- The airport team hasn't evaluated a true cost estimate for this option, as it has been far more advantageous to the airport and community to receive firefighting services through the AJUA. That said, based on recent experiences of other airports, we believe a rough project estimate exceeding \$20 million is a reasonable assumption to build a fire station at the airport. After that the DCRA would have staffing costs every year to maintain 24/7 fire services. The WI ANG has used over 30 staff members dedicated to these services.

When there is a civilian aircraft crash what are the current DCRA costs?

- The DCRA currently only has to pay to replenish any supplies by the WI ANG. This is a cost DCRA would bear if they had to provide their own service without the WI ANG.