

After Recording Return To:
Snohomish County Council
M/S 609
3000 Rockefeller Avenue
Everett, Washington 98201

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SNOHOMISH COUNTY, WASHINGTON

**INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND THE CITY
OF MUKILTEO CONCERNING THE DEVELOPMENT OF THE FUTURE OF FLIGHT
AVIATION CENTER AT THE SNOHOMISH COUNTY AIRPORT**

This Interlocal Agreement (hereinafter "Agreement") is entered into pursuant to Chapter 39.34 RCW (the Interlocal Cooperation Act) by the City of Mukilteo, a Washington municipal corporation (hereinafter "City") and Snohomish County, a political subdivision of the State of Washington (hereinafter "County").

WHEREAS, the County, in conjunction with the Snohomish County Public Facilities District, through the Snohomish County Airport – Paine Field, is proposing to develop and construct an approximately 73,000 square foot conference and special event center, as a regional center as defined by RCW 35.57.020, known as the "Future of Flight Aviation Center" ("FOF"), on approximately 14.25 acres of land in the Northwest corner of Paine Field. This facility will provide space for conferences and special events, cultural aviation artifacts, food service for public and special events, aviation education programs, and related parking. The facility will also house the Boeing Tour Center which will include a 242-seat theater. A 102 room hotel is proposed to be constructed immediately adjacent to the FOF on approximately 2.40 acres of land. The proposed hotel would compliment the conference and special events element of the FOF by providing lodging, additional meeting space, and food/beverage catering service. Together, the FOF and related hotel are known, for purposes of this Agreement, as the "Project"; and

WHEREAS, the Project will straddle the jurisdictional lines of the City and County.

WHEREAS, pursuant to chapter 14.08 RCW, the Revised Airports Act, the Snohomish County Airport has applied to the County and received development permits for the FOF; and

WHEREAS, both the City and the County agree that the Project is important to their respective jurisdictions and want to see the Project proceed expeditiously; and

WHEREAS, the parties executed a Memorandum of Understanding promoting governmental coordination in support of the Project on July 29, 2004. By that Memorandum, the

parties agreed that an Interlocal Agreement is the necessary mechanism to legally address the issues agreed to in the Memorandum; and

WHEREAS, the parties desire to formalize their Memorandum of Understanding by this Agreement;

Now, therefore, in consideration of the promises in this interlocal agreement, it is mutually agreed as follows:

A. SCOPE OF AGREEMENT

This Agreement is limited to address issues arising out of the development of the Project. The definition of "Project" used throughout this Agreement is that set forth in the second recital paragraph above, which is incorporated herein by reference as if set forth in full. The parties intend to discuss broader development issues in coordination with other potential stakeholders in the future.

B. OBJECTIVES AND RESPONSIBILITIES

1. The County and the City share a mutual objective of ensuring that the development of the Project proceeds expeditiously.
2. The parties agree that all permits relating to the Project will be processed and acted upon by the County in accordance with the County's exclusive jurisdiction authorized by the Revised Airports Act, Chapter 14.08 RCW. However, the parties agree that the Project will not set a jurisdictional precedent for future airport or County development projects at the airport.
3. Frontage Improvements. To mitigate impacts from the Project, the County will provide frontage improvements as part of the Project as follows:
 - (a) High Quality Gateway Entrance to Mukilteo. The Project is volunteering a 50-foot landscaped and irrigated buffer. This buffer will create an inviting greenscape at the SR 526 entrance into Mukilteo for a distance of 1890 linear feet. The parties agree to this improved gateway philosophy for the frontage improvements proposed by the Project. The parties are satisfied that the frontage improvements will adequately address related impacts from the Project.
 - (b) Connectivity Extension. The State's Paine Field Boulevard project did not connect the asphalt trail system on the west side of Paine Field Boulevard to Paine Field Boulevard/SR 526. The parties agree that the County and/or a third party at the direction of the County will, within one year of FOF occupancy, design and install a sidewalk to current city code along the north side of 84th Street connecting the asphalt trail to Paine Field Boulevard. This extends the connectivity of the present pedestrian system and prepares for future additional connectivity down Japanese Gulch. The parties agree that this improvement adequately addresses pedestrian

facilities necessitated by the Project.

The design and installation of the 50-foot buffer along the 1890 foot Project frontage accommodates the future installation of a sidewalk when Paine Field Boulevard is extended down Japanese Gulch. That proposed extension includes a signaled crossing at 40th Avenue West, which would then make it safe to install a sidewalk inviting pedestrians to that crossing. Staff from the Washington State Department of Transportation (“WSDOT”) has indicated that the State would be seeking to install sidewalks down both sides of SR 526 in front of the Project when Paine Field Boulevard is extended down Japanese Gulch. The proposed Project buffer leaves sufficient room within the existing State right-of-way for future sidewalks. In addition, the parties believe that the aforementioned Project frontage improvements will assist WSDOT when planning and investing in future frontage improvements for Paine Field Boulevard.

4. **Surface Water Management Fees.** The parties agree that the City will collect and retain surface water management fees at City rates for the portion of Project land within the City’s boundaries and that the County will collect and retain surface water management fees at County rates for the portion of Project land within unincorporated Snohomish County.

5. **Allocation of Tax Revenue.** Because the Project straddles the jurisdictional boundaries of the City and the County, it is necessary for the parties to agree on a formula to allocate, between the parties, certain tax revenues from the Project, until such time as the portion of the Project in unincorporated Snohomish County is annexed. Taxes shall be allocated as follows, beginning with the commencement of construction of the Project.

(a) **Allocation of Local Sales and Use Tax Revenue.** The parties agree to allocate the Local Sales and Use Tax revenues collected pursuant to RCW 82.14.030 in the manner prescribed herein. Pursuant to RCW 82.14.030, the County is authorized to receive 15% of Local Sales and Use Tax and the City is authorized to receive 85% of the Local Sales and Use Tax for taxes collected from properties that are located within the City. The City is entitled to receive Local Sales and Use Tax only from that portion of the Project that is within the City. The parties agree that, according to that certain survey dated June 15, 2005, and attached hereto as Exhibit A (the “Survey”), 26% of the Project is within the City (“City Land Area”), with the remaining 74% of the Project within the unincorporated jurisdiction of the County (“County Land Area”). Therefore, the City shall be entitled to 85% of 26% of tax revenues generated from the Project. The formula shall be as follows:

Where T = taxes collected:

$$\text{County's share} = .74T + .15(.26T)$$

$$\text{City's share} = 85(.26T)$$

For example, if in a particular quarter, \$10,000 in taxes are collected for revenues generated by the Project pursuant to RCW 82.14.030, the County would be entitled to collect \$7,400 (i.e. 74%) with no offset for the City (except as provided in paragraph (b) below), and the remaining \$2,600 (i.e. 26%) would be split \$390 (15%) to the County and \$2,210 (85%) to the City.

For purposes of this Agreement, the County shall be designated to receive from the State on behalf of the parties 100% of the Local Sales and Use Tax generated from the Project. The County will remit to the City its share of the allocated local sales and use tax from the Project within **30** days of last day of the quarter for which remittance is being made.

- (b) **Additional Sales and Use Tax Revenue Sharing for Mitigation.** To offset impacts to City services expected from operation of the Project, the County agrees, during the term of this Agreement, in addition to amounts set forth in paragraph (a) above, to pay as mitigation to the City a share of the receipts of the County's portion of the Local Sales and Use Tax revenue generated by the operation of the Project (i.e., non-construction sales and use tax) and received from the State of Washington, as follows: The County will pay to the City in quarterly installments an amount equal to 50% of the Local Sales and Use Tax from the County's share of revenue received from the State during the quarter from Non-aviation Activities associated with the Project. "Non-aviation Activities" shall mean all activities other than the design, manufacture, use, storage, maintenance, or operation of aircraft, including without limitation all hotel activities such as overnight stays and associated services, restaurant and banquet services, conferences, commercial parking, ground/air transportation services, and all Tour Center activities, such as museum memberships, admissions, and activities, facility rentals, food and retail sales, ground/air transportation services. When the County's annual payment established by this paragraph (b) reaches \$150,000 it shall be capped at that amount and an annual inflation factor based on the Consumer Price Index for the Puget Sound Region will be applied to increase the maximum amount paid by the County to the City by that percentage for each year thereafter during the term of this Agreement. The County's payment to the City will be made within 30 days of the last day of the quarter for which payment is being made and will be remitted with the City's portion of the Local Sales and Use Tax as allocated in paragraph (a) above.
- (c) **Allocation of Hotel/Motel Special Excise Tax.** Chapter 67.28 RCW authorizes both the City and the County to collect a special excise tax on the sale of or charge made for the furnishing of lodging by a hotel, motel, or similar entity. Pursuant to SCC 4.40.010, the County levies a 2% special excise tax. The special excise tax collected by the County pursuant to SCC 4.40.010 is subject to a credit for the full amount of tax imposed by a city upon the same taxable event. The County levies an additional 2% special excise tax for promoting regional tourism pursuant to SCC 4.41.010. A credit for a city tax on the same taxable event is not allowed for this additional tax if a credit is allowed under SCC 4.40.020 for the first 2% tax. The

2% Hotel/Motel Special Excise tax collected by the County and the City shall be allocated between the parties based upon the percentage of land area of the proposed hotel within each respective jurisdiction as determined by the Survey. The 2% special excise tax collected by the County pursuant to SCC 4.41.010 is not subject to allocation. The parties agree that the County is designated to receive from the State remittance of the Hotel/Motel Special Excise taxes and disburse to the City its 10.1% share which represents the percentage of the hotel site within the City. The City's portion of the Hotel/Motel Special Excise tax remitted by the State will be remitted to the City by the County on a quarterly basis, within 30 days of last day of the quarter for which remittance is being made.

- (d) Allocation of Leasehold Excise Tax (LET). The parties agree to allocate the Leasehold Excise Tax remitted by the State based upon the percentage of the Hotel leasehold land area within the respective jurisdictions as determined by the Survey – 89.9% in the County and 10.1% in the City. The Boeing Tour Center lease is totally in the County's jurisdiction so the LET generated by the lease for this facility will not be allocated and remain the County's. The Gallery and Conference Center portion of the Project is not subject to a lease, and, consequently, no leasehold excise tax is generated by the facility; provided, that if any portion of the facility is leased, the leasehold tax shall be allocated based upon the percentage of leasehold land area within the respective jurisdictions. The parties agree that the County is designated to receive the State remittance of the leasehold excise tax and disburse to the City its share within 30 days of last day of the quarter for which remittance is being made.
- (e) Allocation of Gambling Taxes. In the event any taxable gambling activities are conducted within the Project, the parties agree to negotiate in good faith to allocate any taxes imposed upon such activities.
- (f) Business License. The Hotel shall comply with the City's ordinances governing business licensing and registration.
- (g) Other Taxes and License Fees. The parties agree that all other taxation and fees, including without limitation admissions taxes, commercial parking taxes, and franchise taxes and fees, may be imposed as authorized by law.

9. Nothing in this Agreement shall be construed as prohibiting either of the parties from imposing or collecting any other taxes, fees, or charges on the Project which that party may be authorized to impose by law.

C. HOLD HARMLESS/INDEMNIFICATION

Each party agrees to indemnify, defend, and hold harmless the other party, its employees, agents,

and appointed and elected officials from any and all claims, demands, damages, suits, penalties, judgments, losses or costs which may be made against them to the extent that such claim is caused by each party's own negligence.

D. EFFECTIVE DATE, DURATION, MODIFICATION AND TERMINATION

1. This Agreement shall become effective following the approval of the Agreement by the official action of the governing bodies of each of the parties hereto and the signing of the Agreement by the duly authorized representative of each of the parties hereto.
2. This Agreement shall remain in effect for 15 years or until such time as this agreement is extended, terminated or modified as set forth below.
3. This Agreement may be modified or terminated upon mutual agreement of the parties. Any modification shall become effective following written amendment to the Agreement executed by both parties. Any mutual termination shall become effective 90 days following written amendment to the Agreement executed by both parties. Any amendments or mutual termination shall be in writing and executed in the same manner as provided by law for the execution of this Agreement.
4. This Agreement shall automatically renew for additional five (5) year periods unless terminated at the conclusion of a term by either party upon one (1) year advance written notice to the other party and under the following conditions. The party seeking the unilateral nonrenewal shall agree to professional mediation with the other party if so requested. The other party must make its request in writing within 60 days of receipt of the written notice from the party seeking unilateral nonrenewal. Under this Agreement both parties agree to share equally in the expense of mediation in such cases. The purpose of the mediation is to explore the issue(s) prompting the desire for a unilateral nonrenewal, and, if practicable and mutually desirable, negotiate an amendment to this Agreement, rather than a termination.
5. Following any amendment or termination, the County and City shall remain responsible for fulfilling any outstanding obligations under this Agreement incurred prior to the effective date of the amendment or termination.
6. The County and the City shall comply with all applicable federal, state and local laws in performing this Agreement.
7. This Agreement shall terminate upon annexation of the property underlying the Project currently within the County's jurisdiction.

E. EXERCISE OF RIGHTS OR REMEDIES

Failure of either party to exercise any rights or remedies under this Agreement shall not be a waiver of any obligation by either party and shall not prevent either party from pursuing that right at any future time.

F. RECORDS

Both parties shall maintain adequate records to document obligations performed under this Agreement. Both parties shall have the right to review the other party's records with regard to the subject matter of this Agreement, upon reasonable notice. Such rights last for six (6) years from the date of termination of this Agreement.

G. SEVERABILITY

Should any clause, phrase, sentence or paragraph of this Agreement or its application be declared invalid or void by a court of competent jurisdiction, the remaining provisions of this Agreement or its application of those provisions not so declared shall remain in full force and effect.

H. GOVERNING LAW AND STIPULATION OF VENUE

This Agreement shall be governed by the laws of the State of Washington. Any action hereunder must be brought in the Superior Court of Washington for King, Snohomish, or Skagit County.

I. CONTACTS FOR AGREEMENT

The contact persons for this Agreement are:

City of Mukilteo
4480 Chennault Road
Mukilteo, WA 98275
(425) 355-4141

Snohomish County
3000 Rockefeller Avenue
Everett, WA 98201
(425) 388- 3123

J. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties with respect to the matters contained herein.

Dated this 28TH day of DECEMBER 2005.

CITY OF MUKILTEO

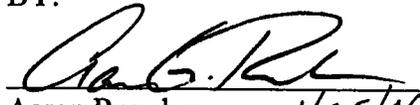
BY:



Don Doran
Mayor

SNOHOMISH COUNTY

BY:

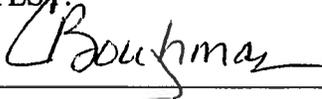


Aaron Reardon
County Executive

1/25/06

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ATTEST:



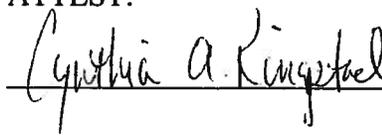
Christina J. Boughman
City Clerk

Approved as to form:
Office of the City Attorney



James E. Haney
Attorney for the City of
Mukilteo

ATTEST:



Approved as to form:
Snohomish County Prosecutor

Deputy Prosecuting Attorney for
Snohomish County

ATTEST:

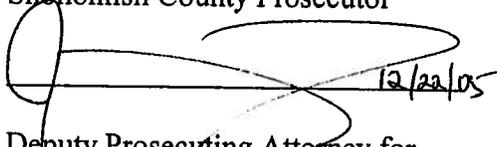
City Clerk

Approved as to form:
Office of the City Attorney

Attorney for the City of
Mukilteo

ATTEST:

Approved as to form ^{only}:
Snohomish County Prosecutor

 12/22/05

Deputy Prosecuting Attorney for
Snohomish County