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**Interlocal Agreement by and between  
the City of Mukilteo and Snohomish County  
regarding  
Advanced Traffic Impact Fee Mitigation**

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**THIS AGREEMENT** is made by and between the City of Mukilteo, a Washington municipal corporation (hereafter "CITY") and SNOHOMISH COUNTY, a political subdivision of the State of Washington (hereafter "COUNTY") and are collectively referred to as "the Parties." The parties are located in and exist under the laws of the State of Washington.

WHEREAS, the Growth Management Act (GMA) requires that Level of Service standards be established for all arterials and transit routes; and

WHEREAS, these service standards are then used to judge the performance of the transportation system and to determine if any transportation improvements are needed to accommodate development; and

WHEREAS, the COUNTY owns and operates the Snohomish County Airport ("Airport"), also known as Paine Field; and

WHEREAS, State Route 525 serves as the common border between the CITY and Snohomish County Airport; and

WHEREAS, the COUNTY has designated an 100-acre site on the west side of the Airport known as the Paine Field Aerospace Business Park; and

WHEREAS, the COUNTY has estimated that the Paine Field Aerospace Business Park can accommodate up to one million square feet of large aerospace manufacturing operations; and

WHEREAS, the Paine Field Aerospace Business Park development will take direct access onto SR 525 in the city of Mukilteo and will have direct impacts on the CITY's street system; and

WHEREAS, employee and service trips generated from the Paine Field Aerospace Business Park will impact the intersection of SR 525 and Beverly Park Road in the city of Mukilteo; and

WHEREAS, the SR 525 and Beverly Park Road intersection is currently bumping up against a level of service "F" that could potentially limit, or delay, future development of the Paine Field Aerospace Business Park until road improvements are in place to accommodate the growth; and

WHEREAS, the Parties also are parties to that agreement titled "Interlocal Agreement Between Snohomish County and the City of Mukilteo Regarding Interjurisdictional Review and Mitigation for Development Impacts on Their Respective Transportation Infrastructure" (hereafter "Traffic Mitigation Agreement"), recorded under Snohomish County Auditor's number 200905260171; and

WHEREAS, the Airport desires to pay an advanced traffic mitigation fee to the CITY and the CITY will accept payment of such fee by Airport as mitigation for 533 future pm peak hour traffic trips generated from the Paine Field Aerospace Business Park or other future Airport aerospace developments that affect the SR 525 and Beverly Park intersection; and

WHEREAS, the COUNTY requests the option of selling unused advance traffic mitigation and a corresponding number of future pm peak hour traffic trips generated from the Paine Field Aerospace Business Park to other off airport aerospace development projects impacting the SR 525 and Beverly Park Road intersection; and

WHEREAS, the CITY will spend all of the Airport's advanced traffic mitigation fee to design, permit and construct the Harbour Reach Drive Extension project; and

WHEREAS, the Airport acknowledges that the CITY is experienced in designing and managing major capital construction projects and is willing to allow the CITY to oversee and manage the work on behalf of the COUNTY on the following terms and conditions;

NOW, THEREFORE, the CITY and the COUNTY agree:

#### **1. AUTHORITY, PURPOSE AND CONSIDERATION**

A. Authority. This interlocal agreement (hereafter "AGREEMENT") is entered into pursuant to chapter 39.34 RCW (Interlocal Cooperation Act).

B. Purpose. The purpose of this AGREEMENT is to create a binding contract between the CITY and the COUNTY with respect to Paine Field Aerospace Business Park and the payment and use of advanced traffic mitigation impact fees.

C. Consideration. Airport shall pay the CITY an advance traffic mitigation impact fee in the amount of One Million Dollars (\$1,000,000.00) (hereafter the "FEE"). Payment of the FEE shall satisfy the traffic mitigation requirements for 533 employee and service pm peak hour trips generated by the Paine Field Aerospace Business Park required of the Airport by the CITY for future impacts to the City's transportation system. The CITY accepts and warrants that the FEE is full consideration for mitigation of 533 pm peak hour trips as and when applied to future traffic mitigation permitting requirements processed by the CITY for impacts to the SR 525 and Beverly Park Road intersection. The CITY further accepts and warrants that, in consideration of the advance payment of traffic mitigation fees, all obligations incurred by the COUNTY under the Traffic Mitigation Agreement to mitigate impacts to the SR 525 and Beverly Park Road intersection from 533 employee and service pm peak hour trips generated by the Paine Field Aerospace Business Park or other future Airport aerospace developments impacting the SR 525 and Beverly Park Road intersection are deemed fulfilled, and no additional mitigation under that agreement may be imposed by the CITY for the 533 employee and service pm peak hour trips.

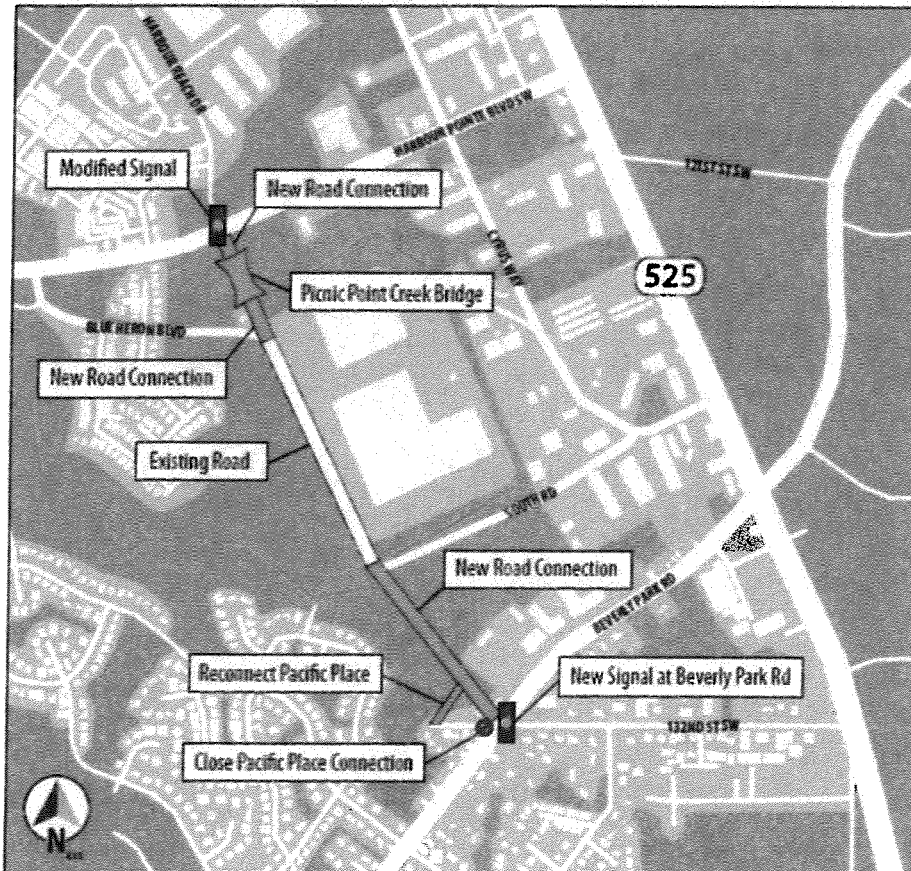
D. Timing of Mitigation. CITY and COUNTY agree that this advance mitigation FEE may be used as match for other state or federal grants for the design, permitting and construction of the Harbour Reach Drive Extension project. The FEE shall be spent by 2020 for such purposes. If the entire FEE has not been invested in the Harbour Reach Drive Extension project by December 31, 2020, the COUNTY reserves the right to have any unobligated portion of the FEE transferred to another CITY or COUNTY project which benefits the Paine Field Aerospace Business Park.

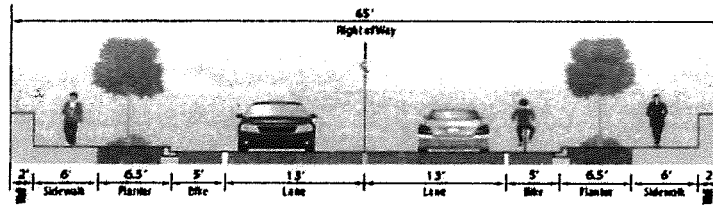
## 2. DURATION

This AGREEMENT shall become effective upon execution by the Parties and recording with the Snohomish County Auditor, and shall remain in effect until the work described below is completed by the CITY and all of the COUNTY'S advance traffic mitigation has been applied by the CITY to development projects as traffic mitigation, unless terminated sooner as provided herein.

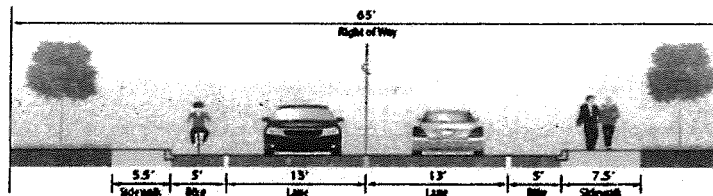
## 3. PROJECT DESCRIPTION

The Harbour Reach Drive Extension improvement plans call for the construction of two new segments of roadway, including a critical bridge structure, to address concerns around public safety, mobility, and congestion. By building the Harbor Reach Drive Extension Project, local and regional road networks will function more efficiently by relieving the congestion on SR 525 and Beverly Park Road intersection which is nearing LOS F—greater than 100 seconds of delay—in the near term. It is not feasible to add capacity on SR 525 in this vicinity due to environmental and cost constraints. Below is an illustration of the proposed roadway:

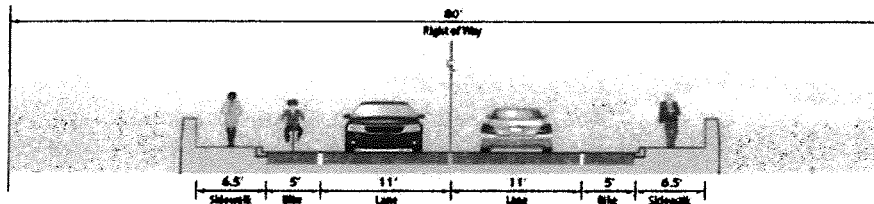




**Roadway Section A**  
Beverly Park Road to Harbour Reach Drive (South Road)  
Not to Scale



**Roadway Section B**  
Existing Harbour Reach Drive (South Road)  
Not to Scale

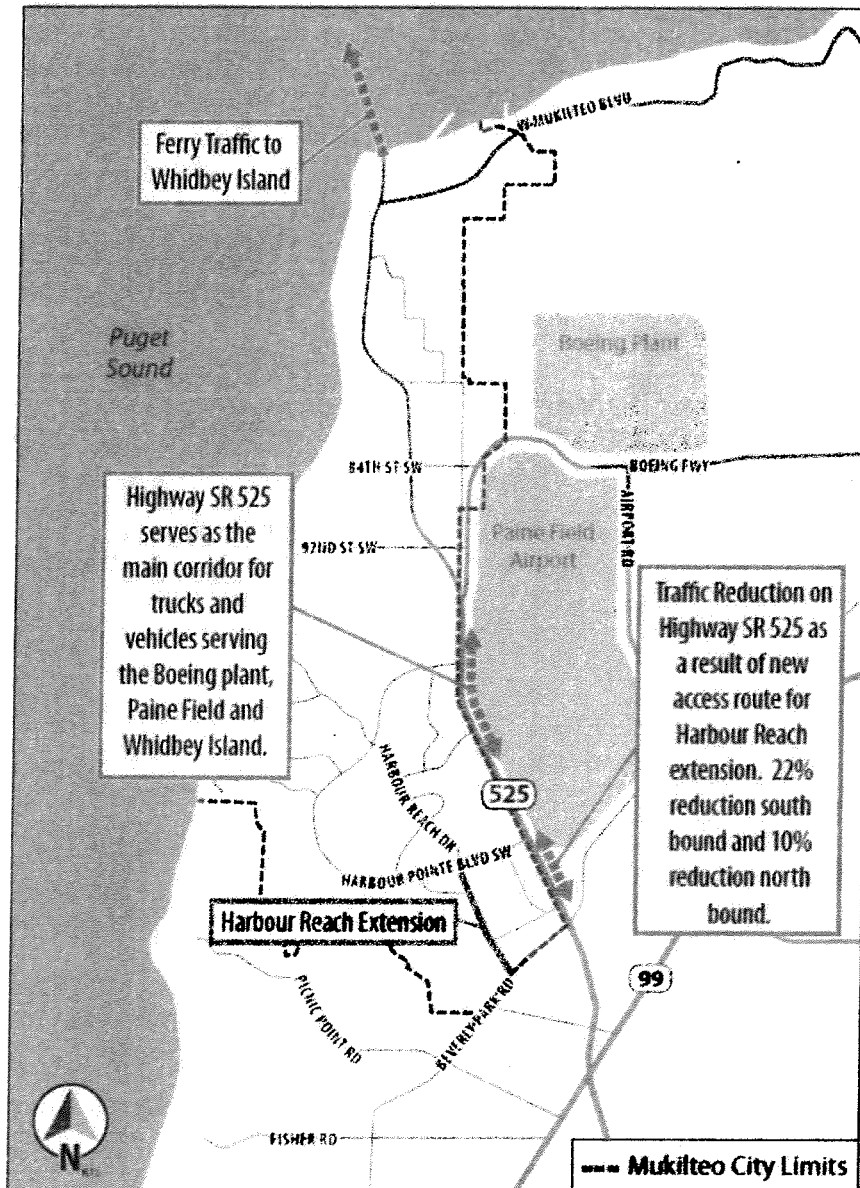


**Roadway Section C**  
Picnic Point Creek Bridge  
Harbour Reach Drive to Harbour Pointe Boulevard  
Not to Scale

The CITY shall make all reasonable attempts to design, permit, and construct the Harbour Reach Drive Extension project as agreed to by the COUNTY and the CITY. If the CITY ultimately discovers that full funding and construction of the Harbour Reach Drive Extension project is not feasible, the CITY and COUNTY shall identify an alternative project to invest any unused portions of the FEE to improve traffic flow along SR 525 or SR 526. The CITY will be responsible for design, permitting, construction, and future maintenance of the roadway improvements if located within the CITY's jurisdictional limits.

#### 4. PROJECT LOCATION

Harbour Reach Drive Extension will be a north/south connector linking Harbour Pointe Boulevard with Beverly Park Road and is generally located just west of Cyrus Way and east of Blue Heron Blvd. in the city of Mukilteo as shown on Exhibit A, attached hereto and incorporated herein by this reference.



## 5. CITY RESPONSIBILITY.

A. The CITY shall perform or obtain the performance of the design, permitting, and construction of the the Harbour Reach Drive Extension project as generally illustrated in this Agreement (the "Project") and shall be funded, in part, from advanced traffic mitigation fees paid by the COUNTY under this AGREEMENT. The CITY and COUNTY acknowledge that the advanced traffic mitigation FEE will not cover the entire cost of the Project; therefore the funds shall be spent in the following sequencing: design, permitting, with remaining funds to be included in the final capital construction budget.

B. The CITY shall manage and oversee all aspects of the Work, according to CITY standards and policies and the law of the State of Washington, including, but not be limited to:

- i. The CITY shall retain a consulting engineer to design the Work according to the CITY's adopted standards and specifications for the Work and to prepare cost estimates.
- ii. The CITY shall prepare a public works contract, including general terms and technical specifications, consistent with the CITY's standard public works construction contract and the law of the State of Washington.
- iii. The CITY shall solicit bids for the Work according to the public works laws applicable to the CITY. The CITY shall evaluate bids for the Work and use its sole discretion to determine the lowest responsible, responsive bid for the Work. The CITY reserves to itself the sole discretion to determine whether to reject or accept any and all bids. The CITY shall award a contract to the lowest responsible, responsive bidder as determined by the CITY.
- iv. The CITY shall manage the Work, including all activities of an owner normally associated with a public works contract, including but not limited to:
  - a. inspecting or testing the Work for compliance with the contract's terms and specifications;
  - b. making all payments as provided in the public works contract;  
and
  - c. preparing and maintaining all records normally prepared for public works contracts, including, but not limited to, records relating to inspections, progress payments, change orders, retainage, close out and taxes.
- v. The CITY shall solicit bids for construction as required by permitting agencies. The CITY shall, at its sole expense, make restorations and, or, improvements to the Work that regulatory agencies require as the result of the monitoring process.

C. The CITY shall, at its sole expense, defend any claims brought by the contractor performing the Work, or any subcontractor, or the engineer; provided that the COUNTY shall indemnify the CITY for such cost of defense that resulted from the COUNTY's default, failure of performance or negligent conduct associated with the Work.

D. The CITY agrees that the COUNTY may sell or otherwise transfer all or any portion of the unused advanced traffic mitigation pm peak hour trips purchased under this AGREEMENT for aerospace development. Upon request of the purchaser, with presentation of proof of the transfer from the COUNTY, the CITY agrees to transfer the portion of the COUNTY's advance traffic mitigation purchased to the purchaser and to apply the corresponding number of pm peak traffic trips to the purchaser's traffic trip obligations for mitigation of purchaser's development impacts on the SR 525 and pm peak hour Beverly Park Road intersection.

E. The CITY agrees to reserve and allocate 533 employee and service pm peak hour trips at the SR 525 and Beverly Park Road intersection for future development of the Paine Field Aerospace Business Park or other Airport aerospace developments impacting the intersection.

F. The CITY warrants to COUNTY in the event CITY is unable for any reason to perform its obligation to approve future pm peak hour trips under this AGREEMENT that CITY will refund to COUNTY such portion of the FEE corresponding to number of peak pm trips it is unable to approve.

## **6. COUNTY RESPONSIBILITY.**

A. The Airport on behalf of the COUNTY has applied for a \$650,000 Advance Planning Grant from the Washington State Department of Commerce (DOC) to partially fund COUNTY's purchase of advance traffic mitigation from the CITY. The CITY has submitted a timely Letter of Support to the Airport for inclusion in Airport's Advance Planning Grant application.

B. This Interlocal Agreement is contingent upon DOC offer of \$650,000 Advance Planning grant to the COUNTY and County Council approval authorizing the Airport to accept the \$650,000 grant.

C. The COUNTY shall pay the CITY the advanced traffic mitigation FEE within 30 days following Airport receipt of the \$650,000 payment from the DOC Advance Planning grant that is anticipated to occur within 30 days following execution of this Agreement by the parties.

D. The COUNTY may observe performance of the Work, but it shall not communicate directly with the contractor. Requests for information or suggestions concerning the Work shall be made to the CITY's construction manager.

E. The COUNTY shall have the option of selling unused advance traffic mitigation and a corresponding number of future pm peak hour traffic trips reserved under this Agreement to any aerospace developer impacting the SR 525 and Beverly Park Road intersection.

## **7. INDEMNIFICATION AND HOLD HARMLESS.**

Each Party agrees to protect, defend, and indemnify the other Party, its officers, officials, employees, and agents from any and all costs, claims, judgments and/or awards of damages arising out of or in any way resulting from the Party's default, failure of performance, or negligent conduct associated with this AGREEMENT, by the Party, its employees, subcontractors or agents. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the other Party only, and only to the extent necessary to provide each Party with a full and complete indemnity of claims made by the other Party's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

## **8. TERMINATION.**

If a party fails to comply with any material provision(s) of this Agreement the other party may terminate this Agreement, in whole or in part, for default upon thirty (30) days written notice to the defaulting party. Any extra costs, expenses or damages incurred by the non-defaulting party as a result of the termination for default shall be borne exclusively by the party in default. The rights and

remedies of this provision are in addition to any other rights or remedies provided to the non-defaulting party by law or under this Agreement. Any termination of this Agreement for default shall not relieve the defaulting party of any obligation, which may arise out of work already performed prior to such termination.

## **9. PROJECT RECORDS**

During the progress of the construction and for the period specified by the applicable records retention laws, all records pertaining to the Project and accounting shall be kept available for inspection and audit by the State and copies of all records, accounts, documents or other data pertaining to this AGREEMENT and the Project will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim or audit finding has been resolved even though such litigation, claim, or audit may continue past the specified retention period.

## **10. DISPUTE RESOLUTION**

If a dispute arises between the CITY and COUNTY, the Parties agree that they will attempt to resolve the issue through mutual negotiation. In the event that the parties are not able to reach an agreement through such negotiation, the Parties agree to engage in mediation in order to resolve the dispute. Mediation may be requested by either party, and shall be attempted prior to the institution of any lawsuit arising under the AGREEMENT. The Parties agree to share the cost of mediation equally. Venue for any lawsuit arising under this AGREEMENT shall be Snohomish County Superior Court.

## **11. CHANGES AND MODIFICATIONS**

Either party may request changes, amendments, or additions to any portion of this AGREEMENT; however, no such changes, amendments, or addition to any portion of this AGREEMENT shall be valid or binding upon either party unless it is in writing and executed by both parties. All amendments shall be attached to and made part of this AGREEMENT.

## **12. NOTICES AND CONTACTS**

Unless otherwise directed in writing, notices, reports, invoices and payments shall be delivered to each party as follows:

County:  
Bill Lewallen  
Deputy Airport Director  
3220-100<sup>th</sup> Street SW, Suite A  
Everett, WA 98204  
Phone: 425.388.5116  
Email: Bill.Lewallen@co.snohomish.wa.us

City:  
Patricia Love  
Community Development Director  
11930 Cyrus Way  
Mukilteo, WA 98275  
Phone: 425.263.8041  
Email: plove@ci.mukilteo.wa.us



Notices mailed by either party shall be deemed effective on the date mailed. Either party may change its address for receipt of reports, notices, invoices, or payments and/or designation of Project Manager by giving the other written notice of not less than seven (7) days prior to the effective date.


### 13. SEVERABILITY

Should any clause, phrase, sentence or paragraph of the AGREEMENT or its application to any party or circumstance be declared invalid or void by a court of competent jurisdiction, the remaining provisions of this AGREEMENT and/or their application to other parties and circumstances, not declared invalid or void, shall remain in full force and effect.

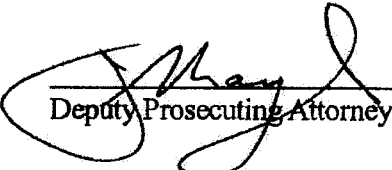
### 14. ENTIRE AGREEMENT

These provisions represent the entire and integrated agreement of the parties and may not be modified or amended except as provided herein. Any understanding, whether oral or written which is not incorporated herein is expressly excluded.

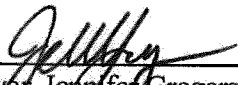
#### SNOHOMISH COUNTY

By:   
County Executive, John Lovick  
Date: 4-20-15

#### APPROVED AS TO FORM

 3/9/15  
Deputy Prosecuting Attorney

#### CITY OF MUKILTEO

By:   
Mayor, Jennifer Gregerson  
Date: 3-5-15

#### APPROVED AS TO FORM

 3/2/15  
Office of the City Attorney

COUNCIL USE ONLY	
Approved:	<u>4-15-15</u>
Dee file:	<u>D-11</u>

Exhibit A: Location Map of Harbour Reach Drive & Paine Field Aerospace Business Park

