

After Recording Return to:
Port of Everett – John Mohr
2911 Bond Street, Suite 202
Everett, WA 98206

INTERLOCAL AGREEMENT FOR THE ESTABLISHMENT OF A RAILROAD QUIET ZONE

THIS INTERLOCAL AGREEMENT FOR THE ESTABLISHMENT OF A RAILROAD QUIET ZONE (this "Interlocal Agreement") is entered into by and between the PORT OF EVERETT, a Port District organized under the laws of the State of Washington (the "Port"), and the CITY OF MUKILTEO, a municipal corporation organized under the laws of the State of Washington (the "City"), for the purposes of establishing respective responsibilities for the establishment of a railroad quiet zone.

R E C I T A L S

A. The Port has received permits for and is in the process of constructing a rail barge transfer facility ("RBTF") within the city limits of the City of Everett, near the common city limits boundary of the City of Everett and the City.

B. The RBTF will connect to the Burlington Northern Santa Fe ("BNSF") mainline which runs through the City and continues northerly into the City of Everett.

C. Certain citizens residing within the City raised concerns about existing and future noise generated by the railroad engine horns that are activated as trains near at-grade crossings, such as those adjacent to the RBTF site.

D. The Port, at the request of certain citizens, pledge funding to be utilized for implementation of a "quiet zone" in the vicinity of the RBTF site. A "quiet zone" may relieve the railroad train engines from having to sound warning horns as the trains approach the quiet zone location.

E. In order to initiate implementing a quiet zone, the local jurisdiction, which in this case is the City, must be the initiating party. The City is willing to be the initiating party for a quiet zone in the vicinity of the RBTF.

F. This Interlocal Agreement specifies the respective responsibilities as between the Port and the City for the establishment of a quiet zone in the vicinity of the RBTF site.

A G R E E M E N T

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the Port and the City agree as follows:

1. The City shall make application for the establishment of a quiet zone in the vicinity of the RBTF site. Such request and application shall be made to the Federal Railroad Administration and the BNSF as well as any other interested agency. In cooperation with the City of Mukilteo, the Port will prepare all application materials, including, but not limited to drawings, plans, and environmental assessments for approval and submittal by City.

1.1 The Port and the City will provide such reasonable coordination with Washington State Ferries, Sound Transit, BNSF and the United States Air Force, as owner of the Mukilteo "Tank Farm" property which is also in the vicinity of the RBTF site, as may be reasonably necessary to accomplish the establishment of a quiet zone.

2. In the event the Federal Railroad Administration and/or BNSF determines that a quiet zone is not possible in the vicinity of the RBTF site, the City will consider the closure of the at-grade crossing at Mount Baker Avenue on condition that emergency crash gates be permitted to allow emergency access.

3. The Port shall contribute funding up to a maximum of Six Hundred Thousand Dollars (\$600,000.00) for the cost of application, design and implementation of the quiet zone. Such funding shall be payable to the City of Mukilteo upon presentation of reasonable documentation justifying expenses relating to the applicable design and/or implementation of the quiet zone, which such activity shall be undertaken by the City with coordination and implementation to the Port. Unless agreed otherwise, by the Port Commission, the Port's commitment of Six Hundred Thousand Dollars (\$600,000.00) shall be the extent of its responsibility for any funding of the application, design, implementation, periodic monitoring and/or data reporting or maintenance of the quiet zone.

3.1 The City acknowledges that the State Environmental Policy Act ("SEPA") review conducted for the RBTF did not require the Port to mitigate an adverse environmental impact relating to noise in the manner or extent as specified in Section 3 above. The City further acknowledges that the railroad noise that may be mitigated by the quiet zone implementation as specified in Section 3 above is predominantly not related to the RBTF.

3.2 In making the commitment to design and construct the quiet zone, the City acknowledges that the Port will mitigate applicable railroad noise resulting from the RBTF, and any new applicable railroad noise resulting from future development of the property commonly known as the Mukilteo Tank Farm. The Port reserves its rights to assign credit for the advance noise mitigation to other parties conducting development on the Mukilteo Tank Farm. The City agrees that such advance noise mitigation is assignable and may be considered in the SEPA process for mitigation for the other development projects to the extent adverse environmental impacts relating to noise are determined to occur as a result of the other projects' construction and/or uses and to the extent that advance noise mitigation actually mitigates such adverse noise impact.

4. **Required Provisions.** Pursuant to RCW 39.34.030(3), the following Interlocal Agreement provisions are addressed:

4.1 **Duration.** This Agreement shall be in full force and effect from and after its execution and during the application, design and implementation activities establishing the quiet zone.

4.2 No Organization. No organization is created by or anticipated under this Agreement.

4.3 No Ownership. No joint ownership is created by this Interlocal Agreement. The quiet zone improvements that are installed shall be owned by either BNSF or the City, depending upon the nature of the improvement.


4.4 Effective Date. This Interlocal Agreement shall go into full force and effect upon its filing with the Snohomish County Auditor. Such filing shall be accomplished by the Port. The Agreement shall be effective as of the date of execution.

4.5 Indemnity. Except as expressly provided herein, the parties shall bear their respective liabilities and obligations in accordance with the laws of the State of Washington.


5. Dispute Resolution. In the event of a dispute between the parties, such dispute shall be submitted to an arbitrator selected by mutual agreement of the parties. If the parties are unable to agree, an arbitrator shall be selected using the procedures established by the Judicial Arbitration Mediation Service of Washington or such similar organization agreed to by the parties. The decision of the arbitrator regarding the interpretation and application of this Interlocal Agreement shall be final. The cost of arbitration shall be borne equally by the parties. Each party shall be responsible for its own costs in the arbitration process.

6. Entire Agreement; Amendment. This is the entire agreement between the parties. Any prior understanding, written or oral, shall be deemed merged with the provisions of this Interlocal Agreement. This Interlocal Agreement shall not be amended, except in writing, with the express written consent of the parties hereto.


PORT OF EVERETT

By 
John M. Mohr, Executive Director
Dated: 5/4/2006

Approved as to Form:


Port Attorney

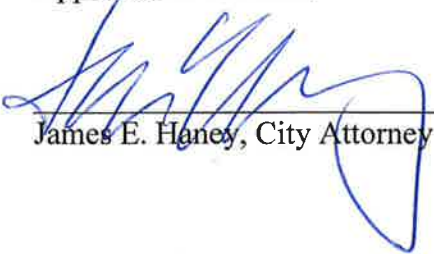
CITY OF MUKILTEO

By 
Joe Marine, Mayor
Dated: 3/29/06

Attest/Authenticated:


Christina J. Boughman, City Clerk

Approved as to Form:


James E. Haney, City Attorney