

June 17, 1997

Introduced By: Cynthia Sullivan

JK 423V2;clerk 6/19/97

Proposed No.: 97-386

MOTION NO. **10230**

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A MOTION authorizing the county executive to execute a memorandum of understanding with the city of Seattle and the city of Tukwila to establish a process and schedule for negotiating and resolving matters relating to Potential Annexation Areas and other boundary issues.

WHEREAS, the Washington State Growth Management Act of 1990, as amended, requires each city within the county to propose the location of an urban growth area, and

WHEREAS, the Countywide Planning Policies (CPPs) were adopted and approved by Ordinance 10450 on July 6, 1992 and amended by Ordinance 11446 on July 19, 1994 and having been ratified by cities within the county, established rules for designating city potential annexation areas (PAAs) within the countywide urban growth boundary, and

WHEREAS, the Countywide Planning Policies state that unincorporated areas are encouraged to annex or incorporate within the 20-year timeframe of the CPPs in order to transition governmental roles so the cities become the provider of local urban services and the County becomes the regional government providing countywide and rural services, and

WHEREAS, the Countywide Planning Policies state that each city, with a potential annexation area, shall enter into an interlocal agreement with the county governing

1 development within the potential annexation area, and defining service delivery
2 responsibilities, and

3 WHEREAS, the city of Seattle, the city of Tukwila and King County commit to a
4 process to mutually resolve issues of concern related to municipal boundaries, and
5 acknowledge the need to resolve the issue of long-term governance of the entire North
6 Highline unincorporated area;

7 NOW, THEREFORE, BE IT MOVED by the Council of King County:

8 The county executive is hereby authorized to execute a memorandum of
9 understanding, substantially in the form attached, with the city of Seattle and the city of
10 Tukwila to establish a process and schedule for negotiating and resolving matters relating to
11 PAAs and other boundary issues.

12 PASSED by a vote of 7 to 0 this 23rd day of June, 1997

13 KING COUNTY COUNCIL
14 KING COUNTY, WASHINGTON

15 Jane Hogue
16 Chair

17 ATTEST:

18 [Signature]
19 Clerk of the Council

20 Attachments: Memorandum of Understanding
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MEMORANDUM OF UNDERSTANDING

In consideration of the terms set forth below, the City of Tukwila ("Tukwila"), a Washington municipal corporation, the City of Seattle ("Seattle"), a Washington municipal corporation, and King County ("the County"), a Washington municipal corporation, agree to the following Memorandum of Understanding ("MOU" or "Agreement").

A. Purpose:

1. To establish a process and schedule for negotiating and resolving issues relating to: 1) the potential annexation area ("PAA") previously designated by both the City of Tukwila and the City of Seattle; 2) other unincorporated areas between the cities of Tukwila and Seattle; and 3) other boundary issues identified in Sections C(3)(c) and (d) below, (the geographic areas for all three are collectively referred to as "the affected area.")

2. To negotiate with the following common goals:

- Preservation of natural neighborhoods and communities.
- Use of physical boundaries, including but not limited to bodies of water, highways and land contours.
- Creation and preservation of logical and efficient service areas.
- Prevention of abnormally irregular boundaries.
- Adjustment of impractical boundaries.
- Boundary and service changes should be clear and predictable to residents and businesses in the affected area.
- Protection or Enhancement of industrial activities and areas.
- Environmental efforts in the affected area should be supported.
- Major infrastructure costs should be distributed in proportion to benefits.
- Resolution of interjurisdictional boundary disputes should include a fair and equitable distribution of revenues, facilities, development, and maintenance and operation costs.
- Consider opinions of residents and property owners in agreements related to annexation or boundary changes.

3. To identify issues to include in subsequent interlocal agreements.

4. To agree to resolve the long-term governance of the remaining North Highline unincorporated urban area (which is bounded by Seattle, Tukwila, Burien and SeaTac) in subsequent negotiations.

B. Resolution.

1. The Mayors of Seattle and Tukwila and the King County Executive will each prepare a resolution or other legislation to be adopted by their respective jurisdictions that will authorize execution of this MOU as the process for resolving the dispute over the PAA and for resolving the issues identified in this MOU.

2. In consideration of Seattle's agreement to participate according to the terms of this MOU, the City of Tukwila will, within seven (7) days after the aforesaid resolutions are passed in each jurisdiction, dismiss its appeal of the Seattle Comprehensive Plan amendments that is currently pending before the Central Puget Sound Growth Management Hearings Board as case number 97-3-009.

C. Negotiation Process:

1. Mediator:

a. All three parties, the County, Tukwila, and Seattle will jointly hire a mediator to mediate the issues identified below. All three will jointly share the cost, with the invoices being submitted to King County after the mediation is completed. Seattle and Tukwila will each reimburse the County for 1/3 of the cost of the mediator.

b. The mediator will be chosen by mutual agreement. Each party will submit 3 names to each of the other parties within one week after execution of this agreement. The parties shall mutually agree upon a mediator from the names submitted. If the parties cannot agree upon a mediator from the names submitted, the parties agree to use a mediator supplied by the Central Puget Sound Growth Hearings Board.

2. Negotiation Proceedings:

a. Because of the importance and implications of the issues involved, the first mediation session will not occur until ninety (90) days after this Agreement is executed, in order to give the parties time to study and evaluate the issues identified. Within this ninety (90) day period, the parties would jointly host a public meeting to obtain the input of affected citizens. After the mediation is completed, another public meeting would be held to obtain public input on the results of the mediation.

b. The parties agree that the first mediation session will begin no later than one hundred twenty (120) days after execution of this Agreement. The parties further agree to meet not less than twice per month (for at least 4 hours for each session) after the first mediation session until the issues are resolved or until expiration of this Agreement, whichever comes first. At the first meeting the parties shall agree upon and reduce to writing a schedule of dates, times and locations of meetings for the sessions.

3. Issues: The parties agree that, at minimum, the following issues will be the subject of the mediation:

a. The appropriate location of potential annexation area (PAA) boundaries for the City of Seattle, if any, in the South Park area;

b. The appropriate location of potential annexation area (PAA) boundaries for the City of Tukwila, if any, in the South Park area;

c. The appropriate allocation of jurisdictional and financial responsibility among the parties for major public facilities, including but not limited to the operation, maintenance and repair or replacement of the 16th Avenue South bridge.

d. The appropriate allocation of jurisdictional responsibility for those areas between any PAA boundaries resolved by (a) and (b) of this subsection C.3. and the 16th Avenue South bridge.

e. Although not directly related to the potential annexation area dispute, there exist several areas where existing boundaries between Seattle and Tukwila are illogical and negatively affect the respective cities' ability to provide governmental services as efficiently and effectively as desired. Therefore, in the interest of good public policy, these existing boundary anomalies will also be subject to mediation under the process established by this MOU. At a minimum, these areas include the seven (7) sites identified on the Attached Site Identification Maps attached as Exhibits 1-8. Additional sites may be added through the amendment pursuant to the process in Section G.

f. The parties acknowledge that any agreement reached by the Mayor of Seattle, Mayor of Tukwila, the County Executive, or their designees during the mediation will require approval by their respective Councils. Such approvals may include comprehensive plan amendments to designate potential annexation area boundaries and interlocal agreements covering the issues that are the subject of this mediation.

g. In accordance with the parties' agreement to resolve the long-term governance of the remaining North Highline unincorporated area in subsequent negotiations, the County shall provide a North Highline Community Profile. This document will include general descriptions of local urban services, costs of the major local urban services currently provided by King County and estimates of revenues. The parties agree to review this information, and to identify service provision issues to be resolved in subsequent negotiations.

4. Good Faith Negotiation. The parties shall negotiate in good faith with the common goals in mind to resolve the issues identified. If a court of competent jurisdiction determines that a party hereto has not been negotiating in good faith, then that party shall pay the costs and expenses of the mediator for the portion of the mediation for which the party was found not to have negotiated in good faith, as well as the costs,

expenses and attorney fees of all parties for the court proceedings to determine the good faith of the party.

5. Sharing of Studies and Information. To the extent that the parties have prepared or prepare studies relating to usage or provision of various services to the affected area, and, for purposes of the boundary dispute areas, the surrounding areas, they will share those with the other parties. The parties will share such information and studies regarding provision of utilities, transportation issues, infrastructure costs, fiscal impacts of proposed boundary adjustments, etc., without any requirement of a further request, no later than 2 weeks prior to the first negotiation session. Upon receipt of a request for information or studies during the 90-day period prior to the first mediation session, a party shall attempt in good faith to provide the requested information or studies within 2 weeks after the request. If studies or information are prepared or identified during the course of the mediation that were not previously shared, the parties shall share such information or studies within 2 weeks after receipt of a request from another party. The information or studies referenced includes but is not limited to any studies involving the condition and/or usage of the 16th Avenue South bridge; the costs of improving, operating and maintaining, or repairing or replacing, the 16th Avenue South bridge; any environmental due diligence or other studies of soils and other environmental conditions, contamination remediation costs; studies or data relating to violations of currently applicable zoning, building or other regulatory codes in the affected area. This is not intended to include any attorney work product or attorney client privileged materials.

6. Confidentiality. All discussions, proposals and communications occurring during the mediation process, whether written, oral or otherwise shall be considered for settlement purposes only and all parties specifically agree that no such discussions or writings resulting from the negotiations and mediation shall be used or referred to in any litigation or other adversarial proceedings.

7. Timeline. The parties shall complete the mediation regarding the identified issues within 9 months from execution of the agreement. This date may be extended by written mutual agreement of all parties.

D. Cessation of Annexation Activities. Except for the Resolution described above in Section B, after execution of this Agreement and until either the date of a signed agreement resolving the issues identified herein or the date of the end of mediation specified in Section C(7) or any extended date agreed upon pursuant thereto, whichever comes first, neither Tukwila nor Seattle shall take any action to annex the South Park PAA or any part thereof or any of the geographic areas identified herein as affected areas. This prohibition includes but is not limited to, introducing any resolutions or ordinances, accepting annexation petitions, or proposing annexation of any of the affected areas.

E. Disputes and Interpretation of this Agreement. Any disputes concerning the interpretation or application of this MOU or any matter upon which the parties reach impasse shall be submitted to the mediator for assistance with resolution. In the event

resolution cannot be achieved by this method within fourteen (14) days after submission to the mediator, any party may file an appropriate action before a court of competent jurisdiction.

F. Notices.

1. Each notice, approval or other communication required or permitted to be provided to another party pursuant to this Agreement ("Notice") shall be deemed to have been given if made in writing and (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered), (b) sent by United States mail, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received three days after mailing), or (c) sent by facsimile with confirmed receipt prior to 5:00 p.m., with a copy sent by United States mail, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received on the date the fax was received), addressed to the respective parties as follows:

City of Tukwila

Fax: _____

Attention:

City of Seattle
Office of Management and Planning
3rd Floor, 600 Fourth Avenue
Seattle, Wa. 98104
Fax: (206)2330085
Attention: Director, Office of Management
and Planning

King County

Fax: _____

Attention:

2. Any party may, by Notice given pursuant to this paragraph, change the person or persons and address or addresses, or designate an additional person or persons or an additional address or addresses for its Notices.

G. Amendment. This Agreement shall not be amended except by written instrument signed by all parties hereto.

H. Governing Law. This Agreement shall be governed by the laws of the State of Washington.

I. Severable Provisions. If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

J. Authorization. The undersigned hereby declare that they are authorized to execute this Agreement.

K. Execution. This Agreement may be executed in duplicate originals.

Dated this _____ day of _____, 1997.

CITY OF TUKWILA

by _____
(Typed name and Title)

Dated this _____ day of _____, 1997.

CITY OF SEATTLE

by _____
(Typed name and Title)

Dated this ____ day of _____, 1997.

KING COUNTY

by _____
(Typed name and Title)

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, 1997, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared _____, known to me to be the _____ of _____, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

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

Signature _____

Print Name _____

NOTARY PUBLIC in and for the State of Washington, residing at _____.

My commission expires _____.

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, 1997, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared _____, known to me to be the _____ of _____, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

102301

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

Signature _____

Print Name _____

NOTARY PUBLIC in and for the State of Washington, residing at _____.

My commission expires _____.

STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

On this _____ day of _____, 1997, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared _____, known to me to be the _____ of _____, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

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

Signature _____

Print Name _____

NOTARY PUBLIC in and for the State of Washington, residing at _____.

My commission expires _____.