

**CITY OF BURIEN
AGENDA BILL**

Agenda Subject: Motion to Authorize the Acting Mayor to Execute a Memorandum of Understanding For Mediation Settlement for the North Highline Annexation		Meeting Date: February 2, 2009
Department: City Manager	Attachments: 1--Countywide Planning Policy LU-32 2--Proposed Annexation Map 3--Summary of Settlement Agreement 4--Mediation Settlement Agreement 5—Letter from Acting Mayor, 1/14/09	Fund Source: N/A Activity Cost: N/A Amount Budgeted: N/A Unencumbered Budget Authority: N/A
Contact: Mike Martin, City Manager		
Telephone: (206) 248-5508		
Adopted Work Plan Priority: Yes X No	Work Plan Item Description: North Highline Annexation	
<p>PURPOSE/REQUIRED ACTION: The purpose of this agenda item is for Council to authorize the Mayor to execute a Memorandum of Understanding (MOU) relating to resolving overlapping potential annexation areas (PAA) in the North Highline area.</p> <p>BACKGROUND (Include prior Council action & discussion): In late October, 2008, the cities of Burien and Seattle, King County and Fire Districts 2 and 11, agreed to mediation to resolve our overlapping PAAs, pursuant to Countywide Planning Policy LU-32 (Attachment 1).</p> <p>Following several meetings, an agreement was reached on an MOU. Attached to this agenda bill are the proposed annexation map (Attachment 2 and also included as part of Attachment 4), a summary of the agreement (Attachment 3) and the components of the agreement—the mediation statement, MOU, fire service transition framework, and proposed annexation tax credit legislation (all part of Attachment 4). The North Highline and Burien/Normandy Park Fire Districts have already signed the MOU. The Seattle City Council considered the MOU and “held” the item until February 9th. The King County Council will consider the MOU soon.</p> <p>At your January 12th meeting, Council voted to amend a motion to execute the MOU by adding additional language to the MOU to clarify that annexations would occur via the election method. Council then tabled the amended motion to January 26th. Due to lack of a quorum, the item was postponed to Feb. 2nd. A letter offering the amended MOU language was also sent to the MOU parties (see Attachment 5). Staff has been discussing the proposed amendment with the MOU parties and the mediators. We will continue to seek acceptance of the amended language and will report to Council on Monday.</p> <p>OPTIONS (Including fiscal impacts): 1-Authorize execution of the MOU without changes. 2-Propose additional changes to MOU and its terms. 3-Delay action on MOU execution. 4-Do not authorize execution of MOU.</p>		
Administrative Recommendation: Authorize the Acting Mayor to execute the MOU.		
Committee Recommendation: N/A		
Advisory Board Recommendation: N/A		
TABLED MOTION (1/12/09): I move to authorize the Acting Mayor to execute a Memorandum of Understanding for mediation settlement for the North Highline Annexation and to modify the language in Memorandum of Understanding Paragraph 3 to add “by the election method” after “All parties agree that the annexation of the North Highline communities.”		
Submitted by: Mike Martin		
Administration _____	City Manager _____	
Today’s Date: January 27, 2009	File Code: R:\CC\Agenda Bill 2009\020209cm-2 North Highline Annexation--MOU.docx	

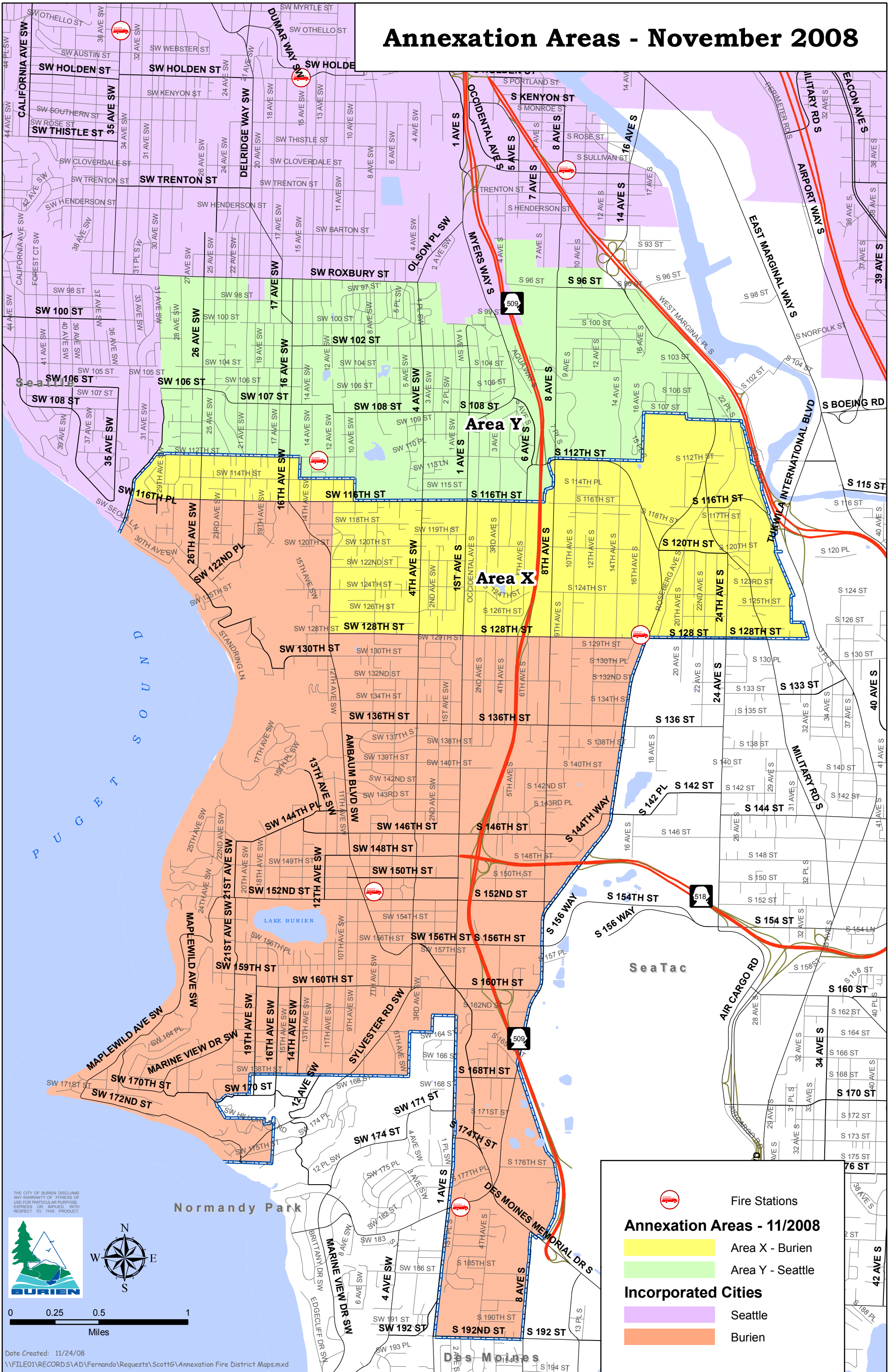
Policy LU-32 from King County Countywide Planning Policies, October, 2008

- LU-32 A city may annex territory only within its designated potential annexation area as shown on Appendix 2, the Interim Potential Annexation Area Map. All cities shall phase annexations to coincide with the ability for the city to coordinate the provision of a full range of urban services to areas to be annexed.

The following applies only within the North Highline unincorporated area. Where PAAs overlap prior to January 1, 2009, the cities with the PAA overlap and the county should attempt to establish alternative non-overlapping PAA boundaries through a process of negotiation. Absent a negotiated resolution, a city may file a Notice of Intent to Annex with the Boundary Review Board for King County for territory within its designated portion of a PAA overlap as shown on the Interim Potential Annexation Area Map and detailed in the city's comprehensive plan after the following steps have been taken:

1. The city proposing annexation has, at least 30 days prior to filing a Notice of Intent to annex with the Boundary Review Board, contacted in writing the cities with the PAA overlap and the county to provide notification of the city's intent to annex and to request a meeting or formal mediation to discuss boundary alternatives, and;
2. The cities with the PAA overlap and the county have either:
 - a. Agreed to meet but failed to develop a negotiated settlement to the overlap within 60 days of receipt of the notice, or;
 - b. Declined to meet or failed to respond in writing within 30 days of receipt of the notice.

Annexation Areas - November 2008



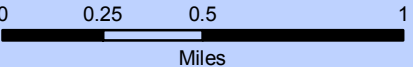
Fire Stations

Annexation Areas - 11/2008

- Area X - Burien
- Area Y - Seattle

Incorporated Cities

- Seattle
- Burien



Date Created: 11/24/08

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SUMMARY OF ANNEXATION MEDIATION SETTLEMENT

Memorandum of Understanding

1. Both Seattle and Burien can exclusively pursue annexations within “Area X” (Burien) and “Area Y” (Seattle) through the end of 2011. Each city agrees to not interfere with each other’s annexation proposal.
2. Fire District 11’s Headquarters Station is removed from Burien’s proposed annexation area (Area X).
3. All parties support amending sales tax credit legislation to include Seattle, provide “parity” for Burien (if Burien annexes Area Y after 2011) and extend the annexation commencement deadline from 2010 to 2015.
4. All parties agree to a transition framework to preserve and possibly improve fire and emergency services in the area under the proposed annexation scenario.

Fire Service Transition Framework

1. Support preservation, and strive for improvement of current level of fire and safety services to North Highline and surrounding neighborhoods including Arbor Heights, North Burien, and unincorporated areas in South Park.
2. Fire District 2 continues their current service contract with Fire District 11 through to January of 2012, regardless of annexation. The current agreement expires in November, 2011.
3. If Burien successfully annexes Area X as shown on the draft MOU map, Fire District 2 and Fire District 11 would expand their current service contract to include Area X.
4. Fire District 2 may need to reduce the rate of compensation in the new expanded contract to better reflect service costs.
5. Fire District 2 and Fire District 11 start to put into place the details that would guide a Lateral Hiring process.
6. King County to identify county-owned property that could potentially become a new fire station for Fire District 2.
7. City of Seattle and Fire District 11 to work on service arrangements in areas of need, for example in Arbor Heights and South Park.

Annexation Sales Tax Credit Legislation

The following is a summary of the statutory changes proposed to the state’s sales/use tax credit law (RCW 82.14.415) that would address the issues of: (1) access to the program by the City of Seattle; and (2) funding “parity” for the City of Burien if Burien annexes the northern portion of the North Highline Unincorporated Area.

Existing Provision	Proposed Revision	Effect of Change
Sec. 1(1) Limits tax credit to cities with population under 400,000.	Removes the population limitation.	Allows Seattle to participate in the state’s sales/use tax program to cover municipal costs associated with an annexed area.
Sec. 1(1)(a) Requires cities to commence an annexation by January 1, 2010 to qualify for the 10-year sales/use tax credit	Extends the annexation commencement date to January 1, 2015.	Gives cities an additional 5-year period to commence an annexation (this acknowledges delayed effective date of July 1, 2011 for 0.85% sales/use tax credit.)
Sec. 1(3) Two sales/use tax rates based on the size of the annexed area: *0.1% - annex area pop. 10,000 – 20,000 *0.2% - annex area pop. greater than 20,000	Adds new subparagraph (b) that creates a 0.85% sales/use tax category for an annexed area with pop. greater than 18,000 provided the annexed area is also claimed, or was claimed, as a Potential Annexation Area by two or more cities and one of the cities has a population greater than 400,000. Limits the maximum amount generated through the sales/use tax credit under this new category to \$5 million per fiscal year.	Limits the new sales/use tax category to the North Highline area (both claimed by the cities of Seattle & Burien). Sets the sales/use tax rate high enough to generate \$5 million by the City of Burien, but caps the amount of revenue made available to either Seattle or Burien at \$5 million per fiscal year.
Sec. 1(8) Requires certain requirements before a city can impose the sales/use tax.	Adds requirement that local government “certify” that amount needed to provide municipal services to annexed area is true/actual costs.	Require certification that no funds used to support municipal service in the city’s non-annexed areas.
Sec. 1(10) New subsection	Requires state to stop sending revenues to city once the \$5 million is reached under the 0.85% sales/use tax category.	Additional assurance that neither the cities of Seattle or Burien can get more than \$5 million per fiscal year to cover cost of municipal services in its annexed area.
Sec. 1(11)(f) New subparagraph	Defines a “Potential Annexation Area (PAA).”	Helps identify area where the 0.85% sales/use tax category applies – PAA is a term specific to King County.
Sec. 1(12) New subsection	Delays the 0.85% sales/use tax category until July 1, 2011.	Delays impact on state budget until next the 2011-2013 Biennium.



Settlement Agreement

We, KING COUNTY, CITY OF BURIEIN, CITY OF SEATTLE, FIRE DISTRICT # 2 AND FIRE DISTRICT # 11

having participated in a mediation session(s) on Nov 6, Nov 20 & Dec 4, 2008 and being satisfied that we have reached a fair, legally binding and reasonable settlement, hereby agree as follows:

The parties agree that they have the option of returning to mediation if problems arise later and they agree/ disagree to do so.

We are unable to reach agreement on the following issues and these issues are not a part of our mediation agreement:

The parties to this agreement have carefully reviewed this agreement and affirm that it accurately reflects each aspect of their own intent. The parties have been advised that if they wish they may have a legal or union representative review the agreement before signing.

The undersigned having mediated in sessions held on November 6th, November 20th and December 4th, 2008 hereby agree as follows:

1. We have reached agreement on the terms of a proposed Memorandum of Understanding (attached) for the annexation of North Highline.
2. We agree to seek prompt approval of the proposed Memorandum of Understanding by our respective elected officials.
3. We agree to carry out all the terms of the Memorandum of Understanding in good faith once adopted by our elected officials.

Dated: December 4, 2008

King County

Kurt Triplett

By: Kurt Triplett

Its: Chief of Staff
King County Executive

City of Burien

Mike Martin

By: Mike Martin

Its: City Manager

City of Seattle

Kenny Pittman for Tim Ceis

By: Kenny Pittman

Its: SR. Policy Advisor

King County
Fire District #2

Michael Marrs

By: MICHAEL MARRS

Its: FIRE CHIEF

King County
Fire District #11

Wayne Alishokis

By: WAYNE ALISHOKIS

Its: COMMISSIONER

Memorandum of Understanding—North Highline Annexation

K.P. F.T.
FT sub
mm PSH
AAJ
WA
JR
MM

It is hereby agreed between the parties as follows:

1. All parties support the transition of the unincorporated North Highline (shown on the attached map) to city status in a timely and coordinated manner that, at a minimum preserves, if not increases existing local service levels.
2. All parties recognize and respect that the cities of Burien and Seattle each represent reasonable governance alternatives to be considered by North Highline residents.
3. All parties agree that the annexation of the North Highline communities to more than one city is the preferred option at this time given the diversity of community preferences and the significant cost of service associated with annexing the entire North Highline area communities.
4. All parties agree that the continued provision of fire protection services is essential to the residents and businesses in the North Highline communities and that all parties will work together to develop service agreements that ensure that an annexation will not result in a reduction of fire protection services to those areas of North Highline that are not immediately annexed by Burien or Seattle.
5. All parties agree to the terms of the attached Transition Framework to support preservation, and strive for improvement of current level of fire and safety services to North Highline and surrounding neighborhoods including Arbor Heights, North Burien, and unincorporated areas in South Park.
6. All parties agree that Burien and Seattle both will need fiscal support beyond the local municipal revenues generated in the unincorporated area if they are to provide municipal services to these communities in the immediate, mid, and long term basis. Accordingly, all parties support the provision of such additional revenues by the state to both cities in a manner that provides equal access by both cities to financial support for annexation. All parties agree to work together to pursue such revenues from the state for both cities. Such support shall include but is not limited to:
 - a. Publicly supporting the proposed legislation (attached),
 - b. Sign in and testifying in support of the proposed legislation at State Legislative hearings and meetings, and
 - c. Burien shall seek Suburban Cities Association support of the proposed legislation, and
 - d. Burien and Seattle shall seek support from the Association of Washington Cities, King County shall seek support from the Washington State Association of Counties, and Fire Districts 11 & 2 shall seek support from the Washington State Council of Fire Fighters.
7. All parties agree to support before the Washington State Boundary Review Board for King County a phased, coordinated annexation of large areas of North Highline where Burien can pursue annexation of area X, as shown on the attached map, and Seattle can pursue annexation of area Y, as shown on the attached map. All parties further agree this MOU shall be submitted as an exhibit in any proceedings related to the annexation of the North Highline area.
8. Burien agrees to pursue annexation only in area X and Seattle agrees to pursue annexation only in area Y until December 31, 2011.

9. Representatives of the jurisdictions that are a party to this agreement commit to not interfere with each others annexation elections attempts.
10. This agreement is effective until January 1, 2012.

Dated: December 4, 2008

City of Burien

By: _____

Its: _____

City of Seattle

By: _____

Its: _____

King County

By: _____

Its: _____

North Highline
Fire District #11

By: _____

Its: _____

King County
Fire District #2

By: _____

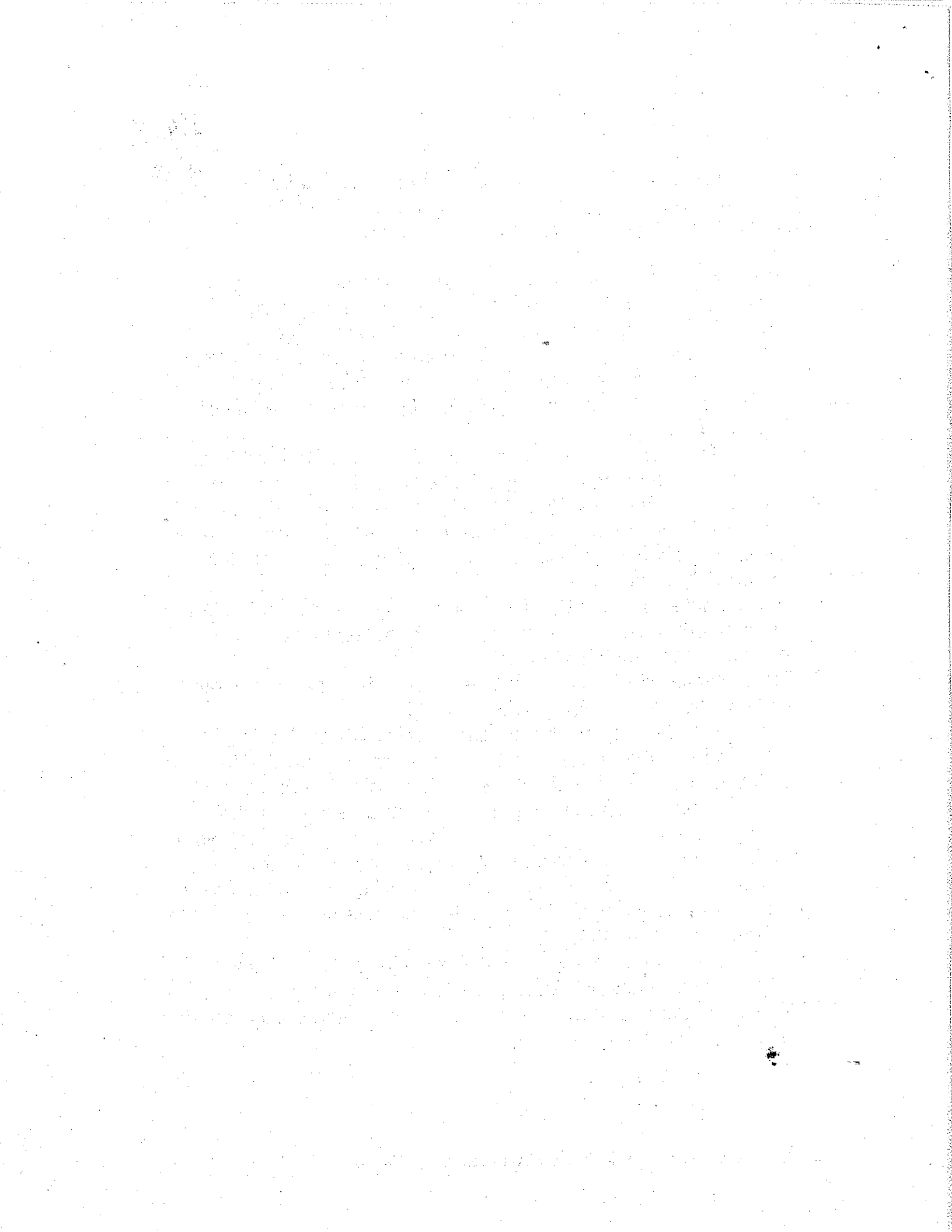
Its: _____

K.P. ef
mm
SAZ
WA

Transition Framework

This is a Transition Framework in bullet form that details the beginnings of the transition plan for fire and safety services in the North Highline PAA for potential annexation(s.)

1. All parties agree to support preservation and strive for improvement of the current level of fire and safety services to North Highline and surrounding neighborhoods including Arbor Heights, North Burien, and unincorporated areas in South Park.
2. All current Fire District employees who are displaced by annexation shall be transferred to Fire District 2 or the City of Seattle as appropriate.
3. Fire District 2 agrees to extend their existing contract with Fire District 11 through to January 1, 2012, regardless of annexation.
4. Fire District 2 and Fire District 11 also agree to expand their current service contract to a larger geographic area that includes: Area X (as shown in attached map), should the city of Burien successfully annex.
5. Fire District 2 and Fire District 11 both understand that Fire District 2 may need to reduce the rate of compensation in the new expanded contract to better reflect service costs.
6. Fire District 2 and Fire District 11 shall put into place the details that would guide a Lateral Hiring process.
7. In the event Seattle and Burien annex areas X and Y on the attached map, then King County shall secure for Fire District 2 an appropriate parcel of land sufficient to locate a new Fire Station that provides appropriate response time as agreed to by the County and Fire District 2. In the event Seattle annexes areas X and Y as shown on the map, then Burien shall secure for Fire District 2 an appropriate parcel of land sufficient to locate a new Fire Station that provides appropriate response time as agreed to by Burien and Fire District 2.
8. City of Seattle and Fire District 11 shall work collaboratively to optimize response times through reciprocal service arrangements in areas of need, for example in Arbor Heights and unincorporated areas in South Park.



1 | ANNEXATION TAX CREDIT

2 | November 25, 2008

Handwritten initials and signature: "JTB", "KI", "The", "WA" and a scribble.

3 |
4 | AN ACT Relating to the local sales and use tax that is credited against the state sales
5 | and use tax for cities to offset municipal service costs to newly annexed areas; amending
6 | RCW 82.14.415; and providing an effective date.

7 | BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 | **Sec. 1** RCW 82.14.415 and 2006 c 361 s 1 are each amended to read as follows:

9 | (1) The legislative authority of any city (~~with a population less than four hundred~~
10 | ~~thousand and which~~) that is located in a county with a population greater than six
11 | hundred thousand that annexes an area consistent with its comprehensive plan required
12 | by chapter 36.70A RCW(~~(s)~~) may impose a sales and use tax in accordance with the
13 | terms of this chapter. The tax is in addition to other taxes authorized by law and shall be
14 | collected from those persons who are taxable by the state under chapters 82.08 and 82.12
15 | RCW upon the occurrence of any taxable event within the city. The tax may only be
16 | imposed by a city if:

17 | (a) The city has commenced annexation of an area under chapter 35.13 or 35A.14
18 | RCW having a population of at least ten thousand people prior to January 1, ~~((2010))~~
19 | 2015; and

20 | (b) The city legislative authority determines by resolution or ordinance that the
21 | projected cost to provide municipal services to the annexation area exceeds the projected
22 | general revenue that the city would otherwise receive from the annexation area on an
23 | annual basis.

24 | (2) The tax authorized under this section is a credit against the state tax under chapter
25 | 82.08 or 82.12 RCW. The department of revenue shall perform the collection of such
26 | taxes on behalf of the city at no cost to the city (~~and shall remit~~). The tax shall be
27 | remitted to the city as provided in RCW 82.14.060.

28 | (3)(a) Except as provided in (b) of this subsection, the maximum rate of tax any city
29 | may impose under this section shall be ~~((0.2 percent for the total number of annexed~~

1 areas the city may annex. The rate of the tax imposed under this section is):

2 (i) 0.1 percent for each annexed area population that is greater than ten thousand and
3 less than twenty thousand~~((The rate of the tax imposed under this section shall be))~~;

4 (ii) 0.2 percent for an annexed area ~~((which the))~~ population that is greater than twenty
5 thousand.

6 (b) 0.85 percent for an annexed area population that is greater than eighteen thousand
7 and the annexed area is annexed by a city that has officially designated the area a
8 potential annexation area and the annexed area is, or was prior to November 1, 2008,
9 officially designated as a potential annexation area by a city with a population greater
10 than four hundred thousand, in a county with a population over one million.

11 (4)(a) The maximum cumulative rate of tax a city may impose under subsection
12 (3)(a)(i) and (ii) of this section is 0.2 percent for the total number of annexed areas the
13 city may annex.

14 (b) The maximum cumulative rate of tax a city may impose under subsection
15 (3)(b) of this section is 0.85 percent and for the single annexed area the city may annex
16 and the amount of tax distributed to a city under subsection (3)(b) of this section shall not
17 exceed five million dollars per fiscal year.

18 (5) The tax imposed by this section shall only be imposed at the beginning of a fiscal
19 year and shall continue for no more than ten years from the date the tax is first imposed.
20 Tax rate increases due to additional annexed areas shall be effective on July 1st of the
21 fiscal year following the fiscal year in which the annexation occurred, provided that
22 notice is given to the department as set forth in subsection ~~((8))~~ (9) of this section.

23 ~~((5))~~ (6) All revenue collected under this section shall be used solely to provide,
24 maintain, and operate municipal services for the annexation area.

25 ~~((6))~~ (7) The revenues from the tax authorized in this section may not exceed that
26 which the city deems necessary to generate revenue equal to the difference between the
27 city's cost to provide, maintain, and operate municipal services for the annexation area
28 and the general revenues that the cities would otherwise expect to receive from the
29 annexation during a year. If the revenues from the tax authorized in this section and the
30 revenues from the annexation area exceed the costs to the city to provide, maintain, and

1 operate municipal services for the annexation area during a given year, the city shall
2 notify the department and the tax distributions authorized in this section shall be
3 suspended for the remainder of the year.

4 ~~((7))~~ (8) No tax may be imposed under this section before July 1, 2007. Before
5 imposing a tax under this section, the legislative authority of a city shall adopt an
6 ordinance that includes the following:

7 (a) A certification that the amount needed to provide municipal services to the
8 annexed area reflects the city's true and actual costs;

9 (b) The rate of tax under this section that shall be imposed within the city; and

10 (c) ~~((b))~~ The threshold amount for the first fiscal year following the annexation and
11 passage of the ordinance.

12 ~~((8))~~ (9) The tax shall cease to be distributed to the city for the remainder of the
13 fiscal year once the threshold amount has been reached. No later than March 1st of each
14 year, the city shall provide the department with a certification of the city's true and actual
15 costs to provide municipal services to the annexed area, a new threshold amount for the
16 next fiscal year, and notice of any applicable tax rate changes. Distributions of tax under
17 this section shall begin again on July 1st of the next fiscal year and continue until the new
18 threshold amount has been reached or June 30th, whichever is sooner. Any revenue
19 generated by the tax in excess of the threshold amount shall belong to the state of
20 Washington. Any amount resulting from the threshold amount less the total fiscal year
21 distributions, as of June 30th, shall not be carried forward to the next fiscal year.

22 ~~((9))~~ (10) The tax shall cease to be distributed to a city imposing the tax under
23 subsection (3)(b) of this section for the remainder of the fiscal year, if the total
24 distributions to the city imposing the tax exceed five million dollars for the fiscal year.

25 (11) The following definitions apply throughout this section unless the context clearly
26 requires otherwise:

27 (a) "Annexation area" means an area that has been annexed to a city under chapter
28 35.13 or 35A.14 RCW. "Annexation area" includes all territory described in the city
29 resolution.

30 (b) "Department" means the department of revenue.

1 (c) "Municipal services" means those services customarily provided to the public by
2 city government.

3 (d) "Fiscal year" means the year beginning July 1st and ending the following June
4 30th.

5 (e) "Threshold amount" means the maximum amount of tax distributions as
6 determined by the city in accordance with subsection ~~((6))~~ (7) of this section that the
7 department shall distribute to the city generated from the tax imposed under this section
8 in a fiscal year.

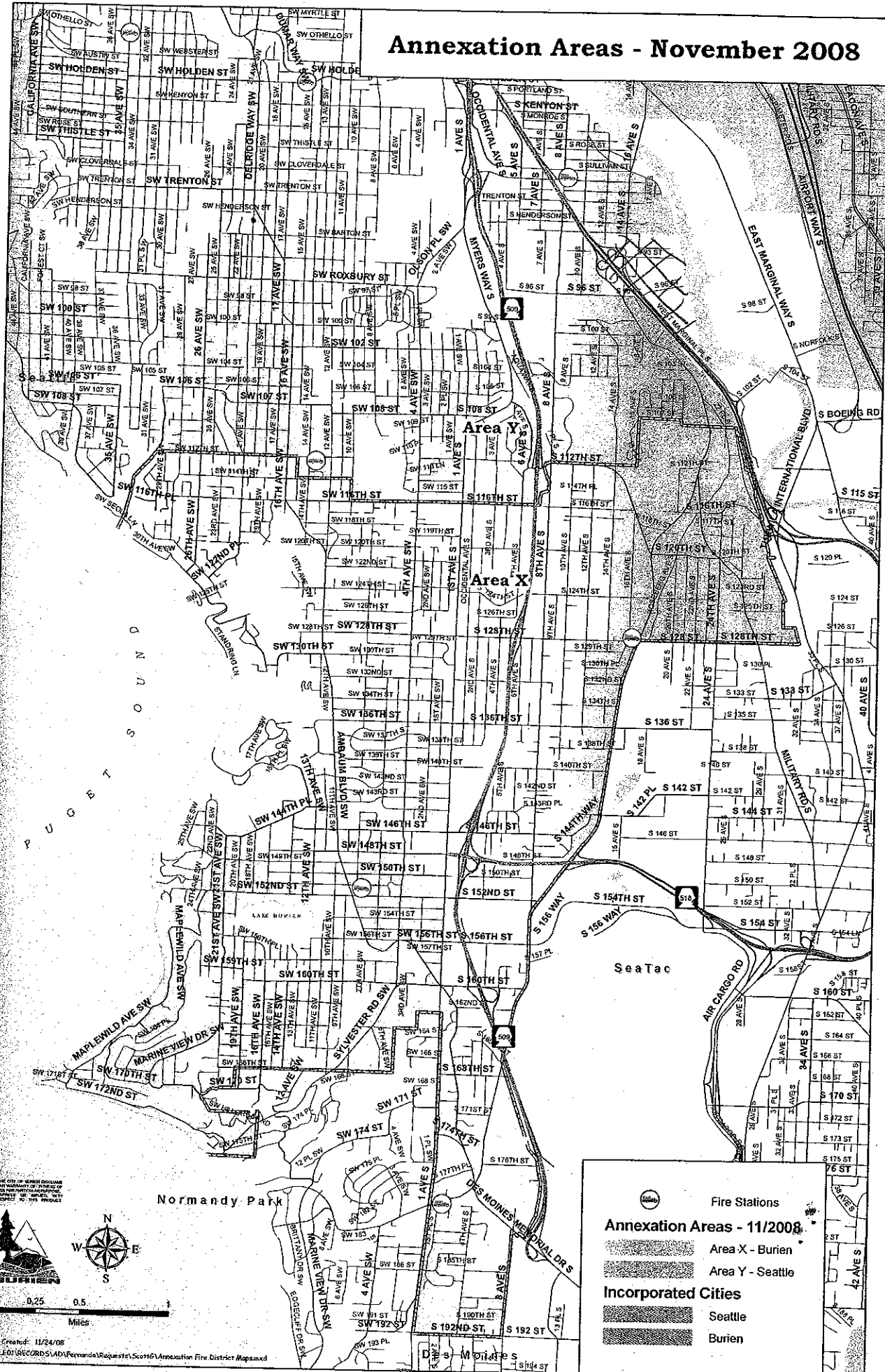
9 (f) "Potential Annexation Area" means one or more geographic areas that a city
10 has officially designated for potential future annexation, as part of its comprehensive plan
11 adoption process under the state Growth Management Act, Chapter 36.70A RCW.

12 (12) Subsection (3)(b) of this section takes effect July 1, 2011.

13
14 --- END ---
15

Annexation Areas - November 2008

AA2
mjm
K.P.
M.M.
J.L.
WA



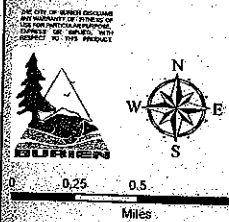
Fire Stations

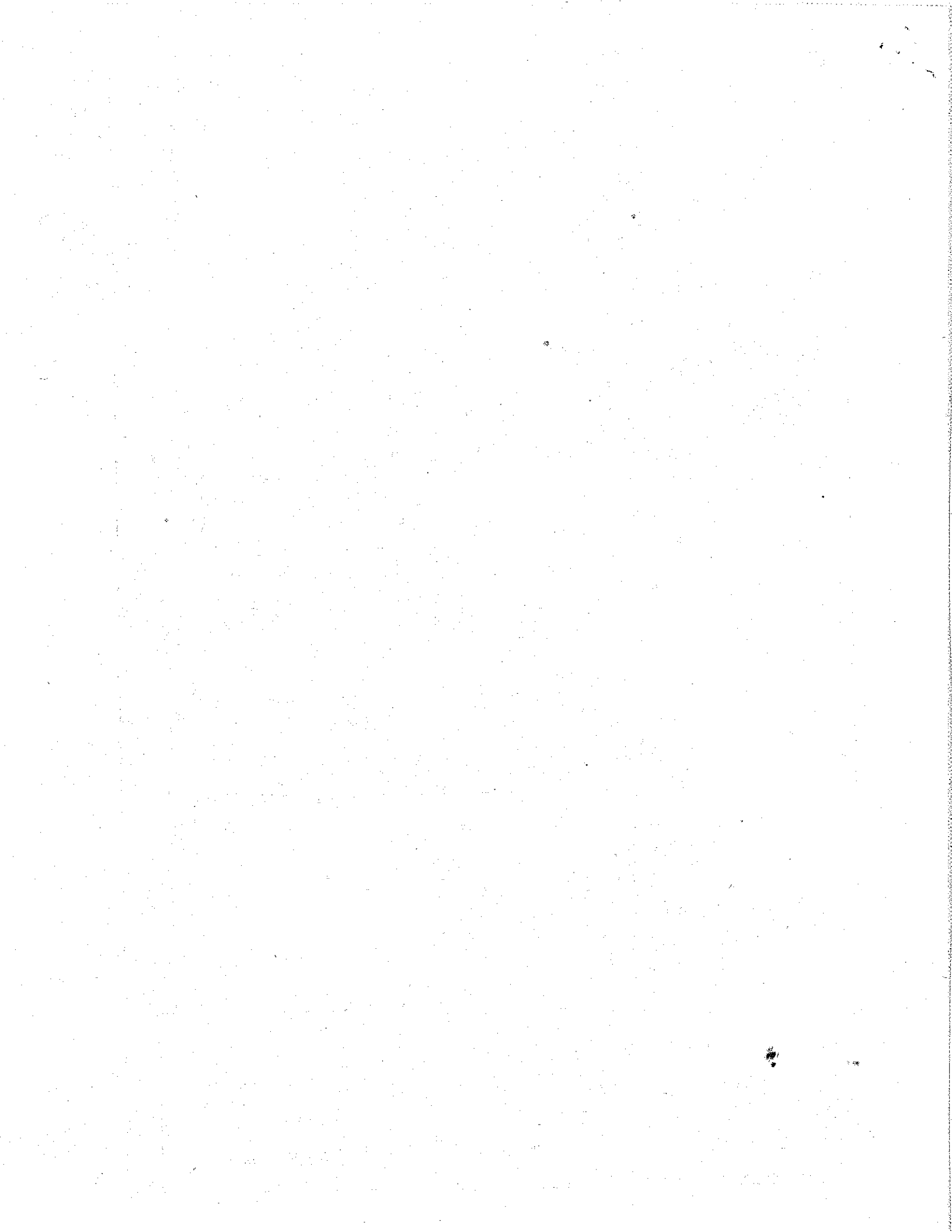
Annexation Areas - 11/2008

- Area X - Burien
- Area Y - Seattle

Incorporated Cities

- Seattle
- Burien







Burien

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January 14, 2009

The Honorable Greg Nickels
Mayor, City of Seattle
PO Box 94749
Seattle, WA 98124-4749

The Honorable Ron Sims
King County Executive
701 Fifth Avenue, Suite 3210
Seattle, WA 98104

The Honorable Julia Patterson
King County Council President
516 Third Avenue, Room 1200
Seattle, WA 98104

The Honorable Richard Conlin
Seattle City Council President
PO Box 34025
Seattle, WA 98124-4025

The Honorable Gary Hobbick
Chairman, Board of Commissioners
King County Fire Protection District #2
Burien-Normandy Park Fire Department
15100 8th Ave. SW
Burien, WA 98166

The Honorable Ron Malaspino
Chairman, Board of Commissioners
North Highline Fire District
1243 SW 112th Street
Seattle, WA 98146

Dear Honorable Elected Officials:

I am writing on behalf of the Burien City Council to ask you to modify the Memorandum of Understanding (MOU) that is part of a recently mediated settlement regarding annexation of the North Highline area. The Burien City Council seeks the modification so that it is explicitly clear that both Burien and Seattle are committed to advancing annexations only by vote of the people, known technically as "the election method."

You are aware that representatives from each of our five agencies completed annexation settlement talks December 4. That settlement is now in the process of being formally ratified by the elected bodies from each agency. Among other things that settlement included a nine-point MOU outlining terms that would allow annexation to advance unopposed by signatories.

The Burien City Council considered the settlement at its regular meeting on January 12. Responding to community testimony, the Council decided to modify point #3 in the MOU to make explicit Burien's and Seattle's commitment to annexation through the election method. To wit:

- 3) All parties agree that the annexation of the North Highline communities, *by the election method*, to more than one city is the preferred option at this time given the diversity of community preferences and the significant cost of service associated with annexing the entire North Highline area communities.

(Emphasis indicates language modification)

Honorable Elected Officials


January 14, 2009

Page Two

Council members then agreed to table the settlement agreement, directed me to seek your concurrence with this language change and then bring it back to for a final vote at their next meeting on January 26.

The Burien City Council believes this language will reassure North Highline residents that they are in control of their destiny regarding annexation, and put to rest fears that they will be left out of the process. To that end, the Burien City Council asks you to modify MOU point #3 as above, and formalize that decision by motion at your next regular meeting. I would be more than happy to direct staff to appear before you to elaborate on Burien's position or to try answering any questions you may have.

Sincerely,



Rose Clark
Acting Mayor
City of Burien

CC: Kurt Triplett, King County Chief of Staff
Tim Ceis, Seattle Deputy Mayor
Chief Mike Marrs, Fire District 2
Chief Scott LaVielle, North Highline Fire District