

RESOLUTION NO. 1634

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH THE CITY OF MILTON REGARDING A POTENTIAL BOUNDARY ADJUSTMENT

WHEREAS, Benaroya Capital Company, LLC and affiliates are in the process of developing over 80 acres of land along the west side of Freeman Road East south of 20<sup>th</sup> Street East; and

WHEREAS, as a condition of development, Benaroya is required to straighten and widen Freeman Road East along its entire frontage; and

WHEREAS, the approximately 800 foot portion of Freeman Road just south of 20<sup>th</sup> Street East is currently solely within the City of Milton, and proposed straightening and widening of Freeman Road at this location will result in an irregular boundary between the cities of Fife and Milton; and

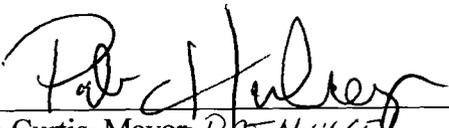
WHEREAS, it is in both cities' best interests to have the entire width of a segment of right of way solely in one jurisdiction; and

WHEREAS, RCW 35.10.217 provides a mechanism for a portion of one city to be annexed into another city by resolution of each city's legislative body, when areas proposed to be annexed consist solely of land owned by the cities; and

WHEREAS, the purpose of the attached memorandum of understanding is to set forth the parties' intent to adjust their respective boundaries as shown in Exhibit C attached thereto, using the process set forth in RCW 35.10.217, upon completion of the Freeman Road improvements, and to establish the enforcement and permitting responsibilities for this area between the date of the MOU and the completion of the annexations under RCW 35.10.217; now, therefore

BE IT RESOLVED that the City Manager is authorized and directed to negotiate and execute on behalf of the City, a memorandum of understanding with the City of Milton regarding boundary adjustment substantially the form attached hereto as Exhibit A. The City Manager is further authorized to make non-material changes to the attached MOU prior to execution with approval of the City Attorney as to form.

ADOPTED by the City Council at an open public meeting held on the 25<sup>th</sup> day of November, 2014.

  
~~Tim Curtis, Mayor~~ PAT MULVEY,  
DEPUTY MAYOR

Attest:

  
Carol Egan, City Clerk

**EXHIBIT A**

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE CITY OF FIFE AND THE CITY OF MILTON  
REGARDING BOUNDARY ADJUSTMENT**

1. Date and Parties. This Memorandum of Understanding (“MOU”), for reference purposes only, is dated the \_\_\_\_\_ day of \_\_\_\_\_ 2014, and is entered into between the City of Fife (hereinafter “Fife”) and the City of Milton (hereinafter “Milton”).

2. Recitals.

2.1 The City of Fife is planning improvements to Freeman Road East as shown in Exhibit A attached hereto which will be constructed by Benaroya Capital Company, LLC as a condition of development of property in Fife adjoining Freeman Road (the “Improvements”). The Improvements will widen and straighten Freeman Road.

2.2 As shown on the map attached hereto as Exhibit B, the portion of Freeman Road just south of 20<sup>th</sup> Street East is currently solely within the City of Milton. The proposed straightening and widening of Freeman Road at this location will result in an irregular boundary between the Cities as also shown in Exhibit B.

2.3 It is in both Cities’ best interests to have the entire width of a segment of right of way solely in one jurisdiction.

2.4 RCW 35.10.217 provides a mechanism for a portion of one city to be annexed into another city by resolution of each city’s legislative body. The areas proposed to be annexed consist solely of street right of way.

2.5 The purpose of this MOU is to set forth the parties’ intent adjust their respective boundaries as shown in Exhibit C attached hereto, using the process set forth in RCW 35.10.217, upon completion of the Improvements, and to establish the enforcement and permitting responsibilities for this area between the date of this MOU and the completion of the annexations under RCW 35.10.217.

3. Agreement to Consider Annexation. Fife and Milton agree to give due consideration, including public participation as deemed appropriate by each City, to adjusting their city limits as shown in Exhibit C attached hereto using the process set forth in RCW 35.10.217 effective upon completion of the Improvements.

4. Design Review and Permitting Authority. While this MOU is in effect, street construction and related standards, land use and environmental review and permitting authority, and land use regulation and enforcement between the cities shall be according to the proposed adjusted boundaries shown in Exhibit C. All other authority and jurisdiction between the cities shall be in accordance with the actual boundaries between the cities. By its signature below,

Benaroya consents to the division of permitting and regulatory authority set forth in this Section 4, and agrees to submit its permit applications for the Improvements accordingly.

5. Termination. Either party may terminate this MOU after giving due consideration in accordance with Section 3, by giving 60 days written notice to the other party. In the event of termination under this section, all permits and approvals regarding property within the proposed annexation areas shown in Exhibit C issued under Section 4 by one city shall be given full effect by the other city. Any complete applications for permits and approvals under Section 4 regarding property within the proposed annexation areas shown in Exhibit B that are pending at the time of termination under this section and are vested under applicable law shall remain subject to the standards and regulations under Section 4 that were in effect on the date of complete application, and the city who accepted the application shall proceed with review and processing of the application as an agent of the other city.

6. Annexation. Within 30 days after completion and acceptance of the Improvements within the proposed annexation areas, each City shall present to its governing body for approval, the resolutions required for annexation under RCW 35.10.217 in accordance with Exhibit C attached hereto. Upon completion of the annexations under RCW 35.10.217, this MOU shall terminate.

7. Indemnification.

7.1 Fife shall defend, indemnify and hold Milton its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this MOU, to the extent caused by the negligence or willful misconduct of Fife, its officers, employees, agents or volunteers.

7.2 Milton shall defend, indemnify and hold Fife, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this MOU, to the extent caused by the negligence or willful misconduct of Milton, its officers, employees, agents or volunteers.

7.3 In the event of a claim, loss, or liability based upon the alleged concurrent or joint negligence of the parties, the parties shall bear their respective liability, including cost, in accordance with their respective liability established in accordance with the laws of the State of Washington.

7.4 FOR PURPOSES OF INDEMNIFICATION ONLY, THE PARTIES, BY MUTUAL NEGOTIATION, HEREBY WAIVE, AS RESPECTS THE OTHER PARTY ONLY, ANY IMMUNITY THAT WOULD OTHERWISE BE AVAILABLE AGAINST SUCH CLAIMS UNDER THE INDUSTRIAL INSURANCE PROVISIONS OF TITLE 51 RCW.

7.5 The provisions of this section shall survive the expiration or termination of this MOU with respect to acts and omissions occurring during the term hereof.

8. Contract Administration. The parties do not by this MOU create any separate legal or administrative entity. The City Manager of Fife, or his designee shall be responsible for

working with the Mayor of Milton, or his/her designee to administer the terms of this MOU. The parties do not intend to jointly own any real or personal property as part of this undertaking. The parties will cooperatively work together to further the intent and purpose of this MOU.

9. Notice. Any notice or information required or permitted to be given to the parties under this MOU may be sent to the following addresses unless otherwise specified:

City of Fife  
Attn: Public Works Director  
5411 23<sup>rd</sup> Street East  
Fife, WA 98424

City of Milton  
Attn: Public Works Director  
\_\_\_\_\_  
\_\_\_\_\_

10. Modification. This MOU constitutes the complete and final agreement of the parties, and replaces and supersedes all oral and/or written proposals and agreements heretofore made by the parties on the subject matter. No provision of this MOU may be amended or added to except by agreement, in writing, signed by both parties.

11. Governing Law; Venue; Attorneys Fees. This MOU shall be governed by the laws of the State of Washington. In any suit or action instituted to enforce any right granted in the MOU, the exclusive venue shall be the courts of Pierce County, Washington, and the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney's fees from the other party.

12. Signature Authority

12.1 The Fife City Manager was authorized to execute this MOU by Resolution No. \_\_\_\_ adopted by a majority of the entire City Council on the \_\_\_\_\_ day of \_\_\_\_\_ 2014 at a regularly scheduled Council meeting.

12.2 The Mayor of Milton was authorized to execute this MOU by Resolution No. \_\_\_\_ adopted by a majority of the entire City Council on the \_\_\_\_\_ day of \_\_\_\_\_ 2014 at a regularly scheduled Council meeting.

13. 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 applications of those provisions not so declared shall remain in full force and effect.

CITY OF FIFE

CITY OF Milton

By: \_\_\_\_\_  
Subir Mukerjee, Interim City Manager

By: \_\_\_\_\_  
Debra Perry, Mayor

ATTEST:

ATTEST:

\_\_\_\_\_  
Carol Etgen, City Clerk

Approved as to form:

\_\_\_\_\_  
Gregory F. Amann  
Assistant City Attorney

\_\_\_\_\_  
Katie Bolam, City Clerk

Approved as to form:

\_\_\_\_\_  
Bio Park  
City Attorney

Approved and Consented as to Section 4:

Benaroya Capital Company, LLC

By: \_\_\_\_\_







42770

1815 7th Avenue South  
North, WA 98002  
(206) 835-8700  
City of Bellevue, WA  
Engineering Department

Project No.	Project Name	Project Location	Project Status

For: BEAUPOTA LLC  
3600-960TH PLACE SE SUITE 250  
BELLEVUE, WA 98008

BEAUPOTA LLC  
FREEMAN ROAD EAST  
CITY LIMIT EXHIBIT

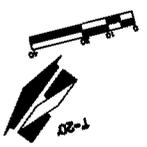
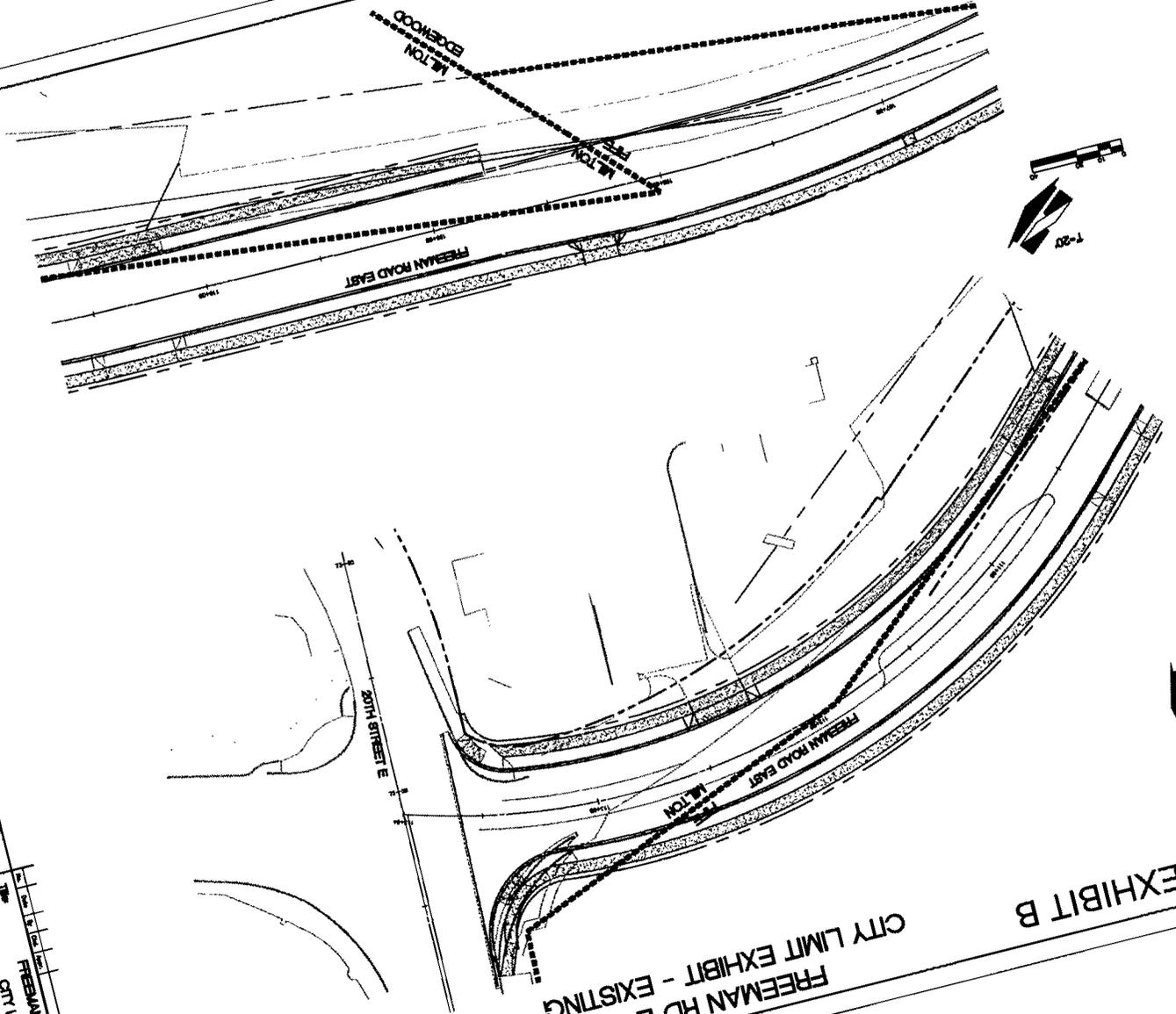
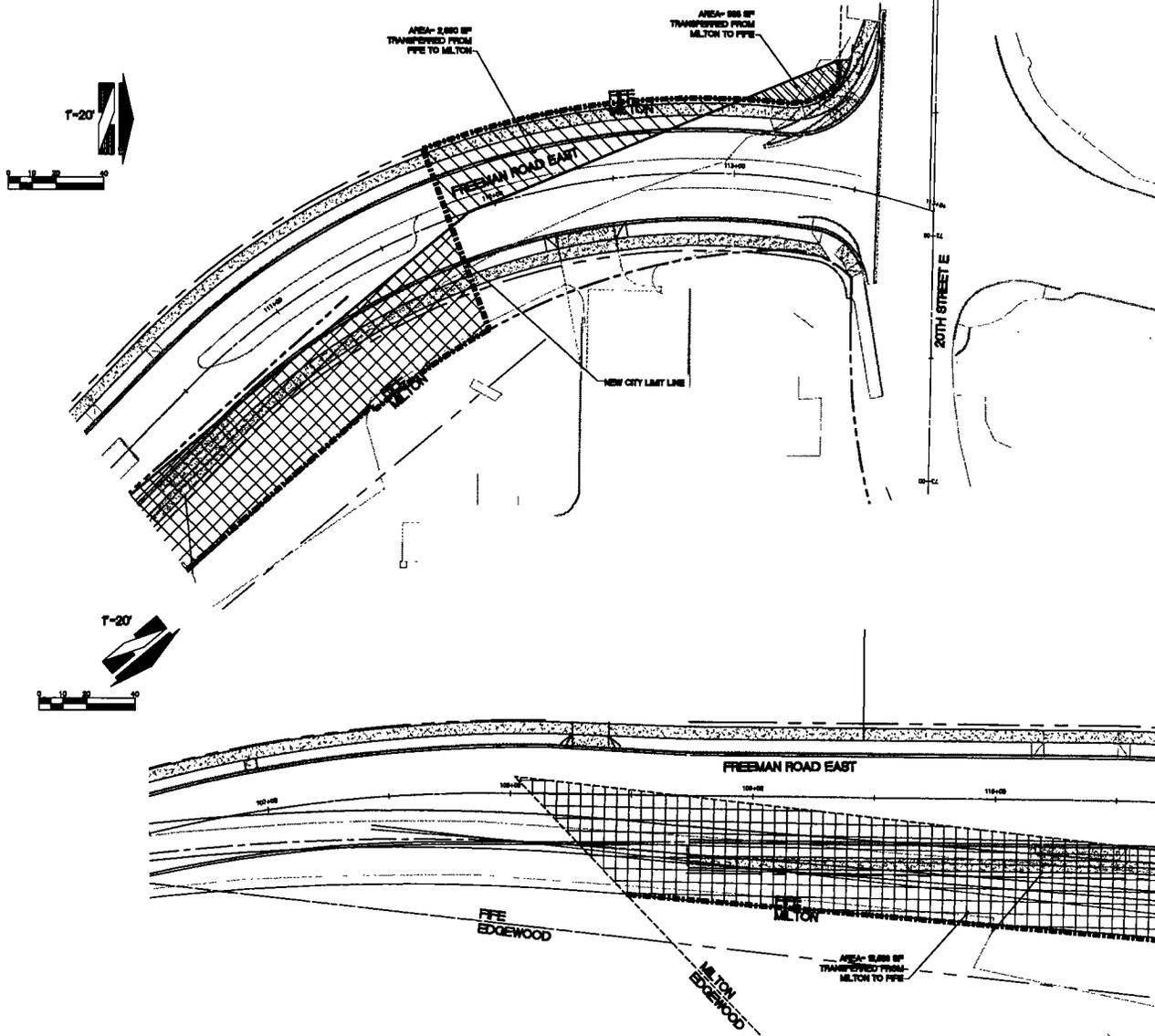


EXHIBIT B

FREEMAN RD E EXISTING  
CITY LIMIT EXHIBIT - EXISTING

# EXHIBIT C

## FREEMAN RD E CITY LIMIT EXHIBIT - PROPOSED



12770 Date: _____ Scale: 1" = 1'		1815 72ND AVENUE SOUTH BELLEVUE, WA 98006 (425) 231-8223 FAX (425) 231-8782 FAX CIVIL ENGINEERING, LAND SURVEYING, ARCHITECTURE, ENVIRONMENTAL SERVICES	Prepared: JHL Checked: JHL Approved: JHL Date: 7/21/07	Date: _____ Title: _____ For: BEVAROYA L.L.C. 3600-186TH PLACE SE, SUITE 250 BELLEVUE, WA 98008	Title: FREEMAN ROAD EAST CITY LIMIT EXHIBIT BEVAROYA, PFE
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