

**INTERLOCAL AGREEMENT
FOR COOPERATIVE DESIGN
OF THE WHITE RIVER TRAIL BRIDGE**

THIS INTERLOCAL AGREEMENT is made and entered into this day by and between the City of Buckley (hereinafter referred to as Buckley), City of Enumclaw (hereinafter referred to as Enumclaw), Pierce County, and King County, collectively referred to in this Agreement as the "Parties".

RECITALS

1. WHEREAS, King County owns certain real property, which contains a portion of King County's Enumclaw Plateau Trail to the north of and adjacent to the White River, and, Buckley owns certain real property, which contains a portion of the Foothills Trail spur located south of and adjacent to the White River, each identified on Exhibit A attached hereto.
2. WHEREAS, the Parties have determined that there is a need for a safe, non-motorized crossing of the White River for regional trail users in order to access the trails and communities on each side of the river.
3. WHEREAS, Enumclaw and Buckley have determined that there would be great benefit to their citizens by such a connection.
4. WHEREAS, Pierce County has included this connection in its plans and also recognizes that it would be of great benefit to its citizens; and King County recognizes that this connection would be of great benefit to its citizens.
5. WHEREAS, the Parties have mutually determined that the public interest would be best served with the least expenditure of public funds by a four-party agreement providing for each to contribute a portion of the development funds to jointly design the improvements consistent with the terms and conditions of this Agreement.
6. AUTHORITY. This Agreement is entered into pursuant to the following Washington statute: RCW 39.34 (Interlocal Cooperation Act). The parties represent that under state law, including but not limited to RCW 35.75, RCW 36.34.340, RCW 36.75.160, RCW 36.89.030, and RCW 67.20.010, they each have authority to perform the services, activities, and undertakings contemplated herein.

NOW, THEREFORE, the Parties agree as follows:

7. PURPOSE; PARTIES' ROLES.

7.1 Purpose. The Purpose of this Agreement is establish a framework for the parties to plan for and collaboratively apply for grants to design a new bridge across the White River to connect King County's Enumclaw Plateau Trail to Buckley's Foothills Trail. The White River Bridge ("Bridge" or "Bridge project") is defined as the bridge structure or structures over the White River and the approaches to the bridge on both sides of the river. The trail ("Trail") is defined as the proposed trail on County property located between the western approach to the Bridge and the Enumclaw city limits.

7.1 Parties' Roles. The parties' roles are as follows. **A. King County.** King County will act as the lead agency to provide the project management necessary for design of the Trail and the Bridge. Such management will include all plan design and development work leading to completion of the Trail and Bridge design. As the lead agency, King County will be advised and informed by the White River Bridge Committee as provided for in Section 9. **B. City of Buckley.** Buckley will cooperate and participate in the Bridge design and grant application process as set forth more fully below. **C. City of Enumclaw.** Enumclaw will cooperate and participate in the Bridge design and grant application process as set forth fully below. **D. Pierce County.** Pierce County will cooperate and participate in the Bridge design and grant application process as set forth fully below.

8. Term. The term of this Agreement shall be 5 years, commencing on the 1st day of May 2006, and terminating on the 30th day of April 2011, unless sooner terminated as herein provided.

9. Establishment of a White River Bridge Committee.

9.1 Committee established. In order to facilitate the administration of this Agreement as between the Parties, the Parties hereby establish a forum to be known as the White River Bridge Committee (WRBC). This Agreement does not create a new legal or administrative entity, or a joint board.

9.2 Membership. The WRBC shall consist of four members with each of the following Parties represented by one member apiece: the City of Buckley; the City of Enumclaw; the County of King; and the County of Pierce.

9.3 Purposes. The WRBC will serve as a forum in which the Parties may:

- a) To the extent possible and appropriate, coordinate with the lead agency on the planning and design of the Bridge.
- b) Advise and inform each other regarding problems and issues of mutual interest concerning the design of the Bridge.

- c) Encourage and receive input from citizens and citizen groups on the design of the Bridge.
- d) Collect and disseminate information from and to each other and the public.
- e) Liaison between themselves, and between the Parties and other governmental agencies or any private entity or person in the design of the Bridge.
- f) Review and comment on any proposed expenditures of money contributed to the Bridge project by the Parties, prior to the actual expenditure of such funds or invoicing to any party to this agreement.
- g) Develop mutually acceptable guidelines for Bridge design to assure consistency of care, service, and use by and within each jurisdiction.
- h) Recommend appropriate grants and assist the lead agency in the preparation and review of grant applications made in furtherance of the Bridge design, and aid each of the Parties in writing letters of support for such grants.

- 9.4 Limitations on WRBC. The WRBC shall have no power to obligate any Party or Parties in matters of policy, administration or finance. The WRBC shall have no power to purchase or hold property or otherwise expend funds. The Parties shall provide no operating or other revenues to the WRBC. The WRBC shall have no power to employ staff or purchase goods or services through contract. The WRBC shall have no independent power to take action. The activities of the WRBC shall not be a necessary antecedent to any action by any of the Parties.
- 9.5 WRBC to Sunset. The WRBC shall cease to exist upon the expiration or earlier termination of this Agreement. By mutual written consent, the Parties may also eliminate the WRBC at any time prior to the expiration or earlier termination of this Agreement.

10. Organizations and Voting

- 10.1 One member chosen by the Committee representatives shall serve as Chairperson. The chairperson shall prepare the agenda for each meeting of the Committee at the meeting times, place, and frequency established by the Committee.
- 10.2 Each member of the WRBC shall have one vote. In the event of a tie vote the issue shall fail. In dealing with issues related to review of expenditures, only representatives of Parties having committed budgets or funds to the Bridge project will have a vote.

- 10.3 The Parties may designate alternate members in a manner considered appropriate by the designated Party. In the event that a Party's appointed representative will be unable to attend a meeting of the WRBC, the Party represented by that appointed member may be represented by the alternate member. Alternate members representing absent members shall have the same privileges as appointed members; provided that no Party shall have more than one vote on the business brought to the WRBC.

11. Relationships Among the Parties.

- 11.2 Finance of Bridge Design. The Parties anticipate that they will each voluntarily contribute capital improvement program (CIP) or other funds towards the initial design of the Bridge, in amounts to be determined later. Nothing in this Agreement obligates any Party to fund any aspect of the Bridge project contemplated herein. However, once a Party voluntarily commits to contribute particular funds towards the Bridge design, then such Party will be obligated to contribute such funds unless and until the Parties mutually negotiate another outcome. Parties that commit to contribute funds towards bridge design are termed "Funding Parties" for purposes of this ILA.

11.3 Manner of Collecting, Holding and Accounting for Money.

As the lead agency, King County will provide budget and accounting documentation to Funding Parties. King County's budget and accounting documentation will be consistent with generally accepted accounting principles as well as any additional guidance provided by the Parties through the WRBC. During the Bridge design process, King County will invoice the Funding Parties in advance of actual expenditures, on a quarterly basis or such other basis as the Parties may decide. The invoice will show the sum total of funds requested for the coming quarter or other period, each Funding Party's share of that total, and will identify the proposed expenditures by cost category, activity code or such other criteria as the parties may agree upon. The Funding Parties will provide funds to King County within 30 days of invoice receipt. King County will deposit the funds in a Capital Improvement Project (CIP) account, from which King County may expend funds on the Bridge project.

King County will also prepare and distribute to all Parties, on a quarterly basis or such other basis as the Parties may decide, a receipt or accounting statement showing the actual expenditures from the immediate preceding quarter and the current account balance, if any. Furthermore, King County will cooperate with individual Parties to meet any other specific accounting or bookkeeping requirements they may have.

11.4. Account Close-Out If Project Abandoned.

If, for any reason, the Bridge project is abandoned or otherwise terminated before the Bridge design is completed, then King County will settle up all remaining obligations, close out the project account, liquidate or return personal property consistent with applicable surplus requirements, provide a final account summary to the other Funding Parties, and return any unspent funds on a prorated basis that reflects each Funding Party's relative contribution to the project. Thereafter, KC shall maintain all relevant account books, project plans, and Bridge engineering and design documents for a period of not less than five (5) years, during which period King County shall allow the other Parties to inspect such materials by appointment during regular business hours.

11.5 Parties' Options Not Limited. Nothing in this Agreement shall limit the Parties' legal rights or remedies, or their broader freedom to creatively resolve the contingencies addressed in this section or other contingencies not contemplated in this Agreement; PROVIDED, that the Parties shall attempt to work cooperatively in good faith through the WRBC as set forth above; and provided further, that in the event of a dispute they shall first utilize the dispute resolution process set forth in section 15 below.

12. Indemnification. Each Party shall protect, defend, indemnify and save harmless the other Parties, their officers, officials, employees and agents while acting within the scope of their employment as such, from any and all suits, costs, claims, actions, losses, penalties, judgments, and/or awards of damages, of whatsoever kind arising out of, or in connection with, or incident to the services associated with this Agreement caused by or resulting from each Party's own negligent acts or omissions. 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 Parties only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them. In the event of litigation between the Parties to enforce the rights under this paragraph, reasonable attorney fees shall be allowed to the prevailing party.

13. Termination. This Agreement is subject to termination based upon the following:

13.1 Necessity. In the event that King County determines that termination of this Agreement is necessary due to closure of the facility, transfer of the facility or any other reason the County determines justifies termination, the County shall give the other Parties 30-days' notice of termination of this Agreement.

- 13.2 Default. By reason of a breach of this Agreement by a Party, the other Parties may terminate this Agreement; provided that written notice specifying the breach, and thirty (30) days to cure the breach is given, and thereafter, in the absence of a substantial cure, the dispute resolution procedures set forth in paragraph 15 below are followed. The notice and dispute resolution requirements do not apply where protection of the public's health, welfare or safety requires immediate termination.
- 13.3 Lack of Appropriation. Any Party's obligation under this Agreement that may extend beyond the current appropriation year is expressly conditioned upon that Party's legislative appropriation of sufficient funds to support the activities described in this Agreement. If the Party's legislative body does not appropriate sufficient funds for those purposes, then that Party's participation under this Agreement shall terminate automatically at the end of the current appropriation year.
14. Dispute Resolution. If a Party claims that another Party has breached any term of this Agreement, the following procedures shall be followed if, and when, informal communications such as telephone conversations fail to satisfy the claiming Party:
- 14.1 The claiming Party's representative shall provide a written notice to the other Party's representative of the alleged breach. The notice shall identify the act or omission at issue and the specific term(s) of the Agreement which the complaining Party alleges was violated.
- 14.2 The responding Party's representative shall respond to the notice in writing within seven (7) working days. The response shall state that Party's position as well as what, if any, corrective action the responding Party agrees to take.
- 14.3 The claiming Party shall reply in writing, indicating either satisfaction or dissatisfaction with the response. If satisfied, then the responding party shall take any corrective action within fourteen (14) calendar days after receipt of the claiming Party's reply. If dissatisfied, the claiming Party shall call an in-person meeting. The meeting shall occur within a reasonable period of time and shall be attended by the designated representatives of each Party, and such others as they individually invite. If the claiming Party remains dissatisfied with the results of the meeting, it may sue to enforce the terms of this Agreement or it may terminate this Agreement. The Parties also may agree to an alternate dispute resolution process.

15. Liability Insurance Requirements. Notwithstanding any other provision within this Agreement, the Parties shall each procure and maintain for the duration of the Agreement:

Commercial General Liability. (to include Products-Completed Operations) insurance against claims for injuries to persons or damages to property that may arise from or in connection with activities performed under this Agreement. General liability insurance shall be as broad as that provided by Commercial General Liability "occurrence" form CG0001 (Ed. 11/85).

The insurance limits shall be no less than One Million dollars (\$1,000,000) combined single limit per occurrence and Two million dollars (\$ 2,000,000) in the aggregate for bodily injury and property damage

Automobile Liability. Insurance Services form number CA 00 01 (Ed. 1/80) any auto. The Limit of Liability shall be no less than One Million dollars (\$ 1,000,000) per occurrence.

Workers Compensation/Stop Gap: Statutory Workers Compensation coverage and Stop Gap Liability for a limit no less than One Million dollars (\$1,000,000)

The insurance policies required in this Agreement are to contain or be endorsed to contain the following provisions:

With respect to all Liability Policies except Professional Liability and Workers Compensation:

King County, Pierce County, The City of Buckley and The City of Enumclaw their officers, officials, employees, agents and consultants are to be covered as additional insureds as respects liability arising out of activities performed under this Agreement. Such insurance shall be Primary.

Municipal or State Agency Provisions

If the Party is a Municipal Corporation or a subdivision or an agency of the State of Washington and is self-insured for any of the above insurance requirements, a certification of self-insurance shall be attached hereto and be incorporated by reference and shall constitute compliance with this section.

Insurance for Design Phase

Unless the WBRC recommends otherwise, King County shall cause all consultants and contractors performing work pursuant to this agreement to procure and maintain the following insurance coverages:

General Liability. Coverage shall be at least as broad as Insurance Services Office form number CG 00 01 covering **COMMERCIAL GENERAL LIABILITY**. \$1,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a \$2,000,000 aggregate limit.

Automobile Liability. Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9. \$1,000,000 combined single limit per accident.

Workers' Compensation. Statutory requirements of the State of residency. Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.

Employer's Liability or "Stop Gap". Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.

Builder's Risk: The Contractor shall procure and maintain "All Risk" Builders Risk Insurance at least as broad as ISO form number CP0020 (Builders Risk Coverage Form) with ISO form number CP0030 (Causes of Loss - Special Form) including coverage for collapse, theft, off-site storage and property in transit. The coverage shall insure for direct physical loss to property of the entire project, for 100% of the replacement value thereof. The policy shall be endorsed to cover the interests, as they may appear, of the Owners, Contractor and subcontractors of all tiers with the Owners and sub-contractors listed as a Named Insured.

Professional Liability Errors and Omissions. If the work involves Professional Services \$ 1,000,000 per claim/aggregate.

U.S. Longshoreman and Harbor Workers' coverage. If the work is on or adjacent to navigable water, as defined by the U.S. Department of Labor. **Longshoreman and Harbor Workers' Compensation Act** (administered by the U.S. Department of Labor).

Protection & Indemnity (to include Jones Act). If the work involves marine activities, or work from a boat, vessel, or floating platform, Contractor shall provide Protection & Indemnity coverage including injury to crew (Jones Act) and passengers; Protection & Indemnity, SP 38 or SP 23 for \$2,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a \$2,000,000 aggregate limit.

Pollution Liability (OPA, CERCLA): \$1,000,000 and statutory limits of liability as applicable. If the performance of work involves marine activities or work from boat, vessel or floating platform, Contractor shall provide Pollution insurance to satisfy U.S. Coast Guard requirements as respects the Federal Oil Pollution Act of 1990 and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended.

The insurance policies required are to contain or be endorsed to contain the following provisions:

1. With respect to all Liability Policies except Professional Liability and Workers Compensation:
 - (a) The Owners, their officers, officials, employees, agents and consultants are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract. Additional Insured status shall include Products-Completed Operations.
 - (b) The Contractor's insurance coverage shall be primary insurance as respects the Owner's, their officers, officials, employees, agents, and consultants. Any insurance and/or self-insurance maintained by the Owners, their officers, officials, employees, agents and consultants shall not contribute with the Contractor's insurance or benefit the Contractor in any way.
 - (c) The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
2. For Protection and Indemnity Insurance the Contractor shall waive all rights of subrogation against the Owners.

16. Notice. Any written notice, which is required or permitted regarding this Agreement, shall be given by U.S. first-class mail or by personal delivery to the Party, which is the intended recipient of the notice at its address as follows:

If to City of Buckley:
David Schmidt
City Administrator
P.O. Box 1960 (933 Main St.)
Buckley, WA 98321

If to City of Enumclaw:
LARRY FETTER
DIRECTOR OF PARKS
1339 GRIFFIN AVE
ENUMCLAW WA 98022

If to Pierce County:

If to King County:

17. Entire Agreement. This Agreement contains the Parties' entire understanding with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein.

18. Amendments in Writing. Any amendment or modification of this Agreement must be in writing and executed by the Parties agreeing thereto.

19. No Continuing Waiver of Default. The waiver of any default under any provision of this Agreement must be in writing to be valid and shall not constitute a waiver of any other default, whether of the same or of any other provision.

20. Legislative Approval. The Interlocal Cooperation Act, RCW 39.34, requires that this Agreement be approved by the parties' legislative bodies prior to execution. The Parties hereby affirm their intent to use their best efforts to seek timely approval of the Agreement by their respective legislative bodies.

21. Applicable Law. This Agreement shall be construed under the laws of the State of Washington. Venue for any lawsuit arising out of this Agreement shall lie in King County Superior Court.

22. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

23. Headings Not Part of Terms or Conditions. The headings of the various sections and subsections of this Agreement are inserted for convenience only and shall not be deemed to expand, limit, or otherwise affect them.

24. Assignability, Terms and Conditions Binding on Successors and Assigns. Any or all of the rights and obligations of a Party to this Agreement may be assigned and delegated to other persons, firms, or corporations only with the express written consent of the other Parties. This Agreement shall be binding on such approved assignees and delegates.
25. No Agency, Partnership, or Employment Relationship Created. Nothing herein shall be construed as creating an agency, partnership, or employment relationship between or among the parties or any of their employees, representatives, or agents.
26. No Third Party Beneficiaries. Nothing in this Agreement shall create or be construed to create any rights, duties, obligations, or cause of action in any person not a party to it.
27. No Restriction on Police Powers. Nothing in this Agreement shall diminish any of the parties' governmental or police powers.
28. Severability. If any provision of this Agreement is deemed unlawful or unenforceable, such provisions shall be fully severable, and the remainder of this Agreement shall be in full force and effect with the automatic addition of a provision as similar in its terms to such illegal or unenforceable provision as may be possible to make such provision legal and enforceable.

29. Recording. King County shall record this Agreement following approval by all of the parties' legislative bodies and execution by all the Parties.

EXECUTED THIS _____ DAY OF _____, 2006.

By: [Signature]
TITLE: Mayor Emerald
6/19/06

By: [Signature]
TITLE: Mayor Buckley
6-20-06

APPROVED FOR FORM

APPROVED FOR FORM

[Signature] 6/19/06
City Attorney

[Signature]
City Attorney

Pierce County

By: [Signature]
TITLE: Director

By: _____
TITLE: _____

APPROVED FOR FORM

APPROVED FOR FORM

[Signature] 4/17/06
Deputy Prosecuting Attorney

Deputy Prosecuting Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

CORPORATE ACKNOWLEDGMENT
STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ___ day of ___, 2006 before me personally appeared
_____ to me known to be the _____ of the
corporation that executed the within and foregoing instrument, and acknowledged said
instrument to be the free and voluntary act and deed of said corporation, for the uses and
purposes therein mentioned, and on oath stated that was authorized to execute the said
instrument and that the seal affixed is the corporate seal of said corporation.

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

Notary Public in and for the
State of Washington, residing at _____

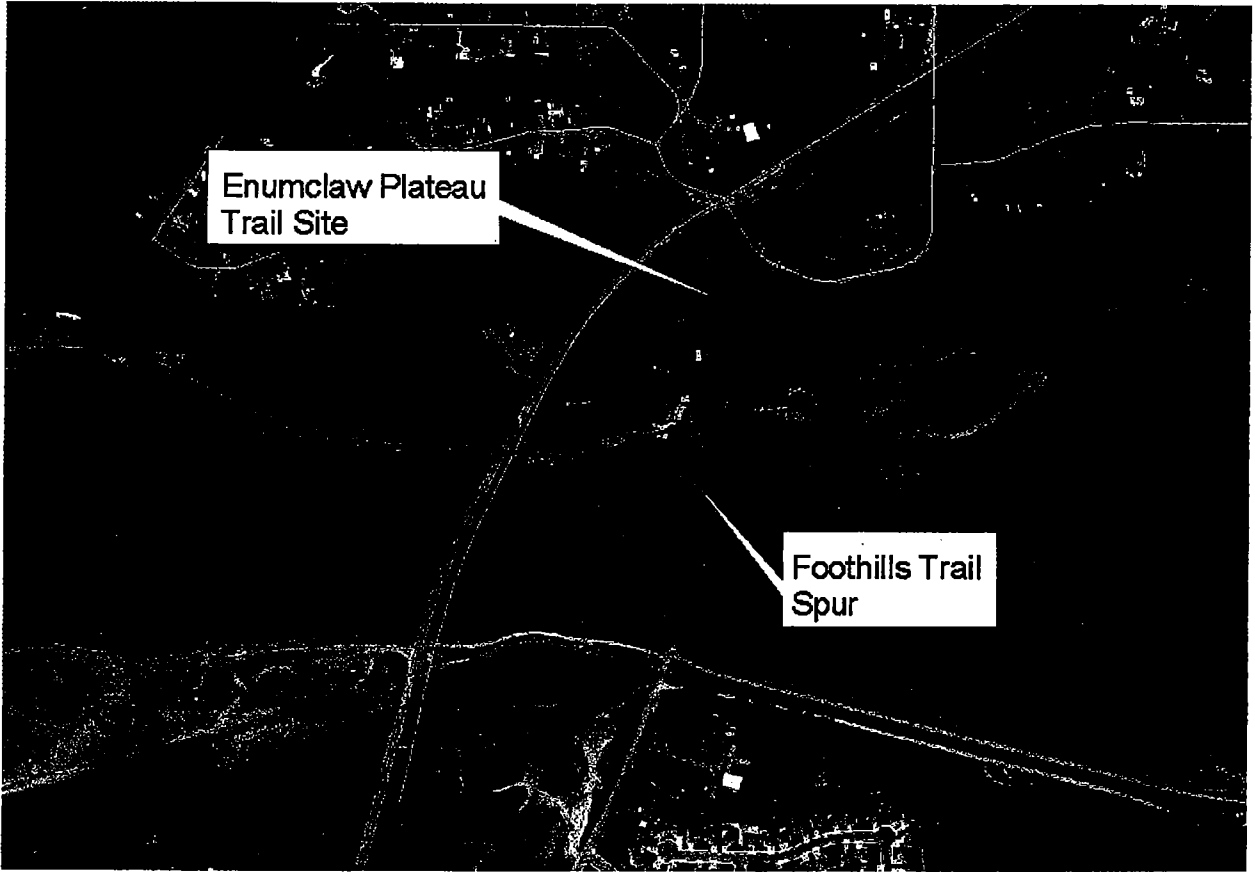
STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that _____ signed this instrument on the ___ day of ___, 2006
and on oath stated that he/she was authorized by the King County Executive to execute the
instrument, and acknowledged it as the free and voluntary act of said County for the uses and
purposes mentioned in the instrument.

Dated:

Notary Public in and for the
State of Washington, residing at _____

Exhibit A



15621

**Pierce County
Contract Signature Page**

Interlocal Agreement for Cooperative Design for the White River Trail Bridge

Contract # 052817

IN WITNESS WHEREOF, the parties have executed this agreement this 5th day of May, 2006.

PIERCE COUNTY:

Approved as to form only:

By [Signature] 4/17/06
Deputy Prosecuting Attorney Date

By [Signature] 5-2
Budget & Finance Date

Approved:

By _____
Department Director Date
(under \$250,000)

or

By [Signature] 5/4/06
Pierce County Executive Date
(\$250,000 or more)