

**INTERLOCAL AGREEMENT FOR COOPERATIVE PLANNING,
DESIGN, AND CONSTRUCTION OF A FOOTHILLS
TRAIL NON-MOTORIZED BRIDGE ACROSS THE WHITE RIVER**

THIS INTERLOCAL AGREEMENT (hereinafter referred to as this "Agreement") is made and entered into by and among the City of Buckley (hereinafter referred to as Buckley), City of Enumclaw (hereinafter referred to as Enumclaw), Washington State Department of Transportation (hereinafter referred to as WSDOT), Pierce County, and King County; collectively referred to in this Agreement as the "Parties" and singularly referred to as a "Party."

RECITALS

- A. 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.
- B. The completed portions of the Enumclaw Plateau Trail and Foothills Trail remain separated by the White River. The lack of a safe pedestrian and cycling corridor between the surrounding communities presents certain health and safety risks and limits the ability of the communities to interact using non-motorized transportation methods. In order to address these issues, the Parties have determined that there is a need for a safe, non-motorized crossing of the White River.
- C. Pierce and King County have included this connection in their respective regional trail plans and recognize the benefit this connection would have for their citizens.
- D. King County, Enumclaw, Pierce County and Buckley conducted a feasibility study (White River Pedestrian Trail Feasibility Study Report – May 2008) which evaluated and selected a proposed alignment for a non-motorized bridge crossing of the White River.
- E. WSDOT has initiated a project to replace the SR 167 Puyallup River Bridge located at milepost 6.40 just outside of the City of Puyallup. The structure is an historic bridge, and pursuant to WSDOT's project mitigation requirements, WSDOT is obligated to try to preserve the bridge. While researching potential ways to preserve and reuse the existing bridge being replaced by this project, WSDOT became aware of the aforementioned feasibility report for a White River Pedestrian Trail Bridge. WSDOT contacted King and Pierce Counties to discuss the feasibility of reusing the SR 167 Puyallup River Bridge as a pedestrian/non-motorized bridge across the White River.
- F. WSDOT, King County and Pierce County have jointly conducted a study to assess the potential costs for reusing the SR 167 Puyallup River Bridge and concluded that reuse of the SR 167 Puyallup River Bridge as a pedestrian/non-motorized bridge across the White River may be a feasible alternative if additional funding is obtained through grants or other funding sources.

- G. In February 2013, the Parties formally expressed their interests in attempting to reuse the SR 167 Puyallup River Bridge as a pedestrian/non-motorized bridge across the White River by agreeing to be invited signatories and concurring parties to an agreement with the Federal Highway Administration, U.S. Army Corps of Engineers and Washington State Department of Archaeology and Historic Preservation to attempt to preserve the SR 167 Puyallup River Bridge.
- H. The Parties have mutually determined that the public interest would be best served by the Parties working collaboratively on funding opportunities for reuse of the existing SR 167 bridge as a non-motorized crossing of the White River consistent with the terms and conditions of this Agreement. Once funding has been committed for the White River crossing project, the money will be used for project planning, permitting, design and development work.
- I. This Agreement is entered into pursuant to 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 36.75.060, RCW 36.89.030, RCW 47.01.260, chapter 47.30 RCW, and RCW 67.20.010, they each have authority to perform the services, activities, and undertakings contemplated herein.

NOW, THEREFORE, pursuant to the above Recitals which are incorporated herein as if fully set forth below and in consideration of the terms, conditions, and performances contained herein, and the attached Exhibit A, which is incorporated and made a part hereof,

The Parties mutually agree as follows:

TERMS AND CONDITIONS

1. **PURPOSE.** The Purpose of this Agreement is to establish a framework for the Parties to collaboratively seek grants and other funding sources to design a pedestrian/non-motorized bridge across the White River to connect King County's Enumclaw Plateau Trail to Buckley's Foothills Trail using the existing historical bridge to be relocated as a result of the WSDOT SR 167 Puyallup River Bridge replacement project. 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 between the western approach to the Bridge and the Enumclaw city limits, and the proposed trail between the eastern approach to the Bridge and the Foothills Trail.
2. **PARTIES' ROLES.** The Parties' roles are as follows:
 - 2.1 **King County.** King County will act as the lead agency and provide the project management necessary for preliminary design work of the Bridge and the associated trail connections as necessary for grant application. As the lead agency, King County will be advised and informed by the White River Bridge Committee as provided for in Section 4.

- 2.2 City of Buckley. Buckley will cooperate and participate in the Bridge design and grant application process as set forth more fully below.
- 2.3 City of Enumclaw. Enumclaw will cooperate and participate in the Bridge design and grant application process as set forth more fully below.
- 2.4 Pierce County. Pierce County will cooperate and participate in the Bridge design and grant application process as set forth more fully below.
- 2.5 As part of WSDOT's bridge replacement project, WSDOT will remove the deck and sidewalks from the existing historical bridge and relocate the remaining structure to be used for the Bridge to a storage site on existing WSDOT owned right of way at WSDOT's sole expense. WSDOT will also cooperate and participate in the bridge design and grant application process as set forth more fully below.
- 2.6 This Agreement covers only preliminary work on this Bridge Project including feasibility studies, planning, permitting, design and development work leading to completion of the Bridge design. This Agreement is not intended to address all of the design, construction, operation and maintenance phases of the Bridge and Trail Project. If grants and other funding resources become available and are awarded for design of the Bridge and Trail project, the Parties fully contemplate that further amendments to this Agreement will be necessary to further define roles and responsibilities regarding the design, construction, operation and maintenance of the Bridge and Trail project.
3. TERM. The term of this Agreement shall be five (5) years, commencing on the day the agreement is fully executed, unless sooner terminated as provided in **Section 7**.
4. ESTABLISHMENT OF A WHITE RIVER BRIDGE COMMITTEE.
- 4.1 Committee established. In order to facilitate the administration of this Agreement as among the Parties, the Parties hereby establish a forum to be known as the White River Bridge Committee ("WRBC" or the "Committee"). This Agreement does not create a new legal or administrative entity, or a joint board.
- 4.2 Membership. The WRBC shall consist of five members with each of the following Parties represented by one member each: the City of Buckley; the City of Enumclaw; King County; Pierce County; and WSDOT.
- 4.3 Purpose of WRBC. 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 funding opportunities, grant applications, planning and design of the Bridge and Trail.

- b) Advise and inform each other regarding problems and issues of mutual interest concerning the design of the Bridge and Trail.
 - c) Encourage and receive input from citizens and citizen groups on the design of the Bridge and Trail.
 - d) Collect and disseminate information from and to each other and the public.
 - e) Liaison between themselves, and among the Parties and other governmental agencies or any private entity or person regarding funding opportunities, grant applications and design of the Bridge and Trail.
 - f) Review and comment on any proposed expenditures of money contributed to the Bridge and Trail projects 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 and Trail 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 and Trail design, and aid each of the Parties in writing letters of support for such grants.
- 4.4 WRBC Limitations. The WRBC shall have no power to obligate any Party. 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 the 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.
- 4.5 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.
- 4.6 Organization and Voting.
- a) 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.

- b) 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 or Trail project will have a vote.
- c) 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.
- d) Each Party shall be responsible for the salaries, benefits and costs of their participating employees. No Party shall seek or recover the costs of such employee or Party participation in the WRBC.

5. RELATIONSHIPS AMONG THE PARTIES.

5.1 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 Project, 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 Agreement.

5.2 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 thirty (30) calendar days of invoice receipt. King County will deposit the funds in a 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.

- 5.3 Parties' Options Not Limited. Nothing in this Agreement shall limit the Parties' legal rights or remedies, 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 8 below.

6. INDEMNIFICATION

- 6.1 To the extent authorized by law, the Parties shall protect, defend, indemnify, and hold harmless each other and their employees, authorized agents, and/or contractors, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, each Party's obligations to be performed pursuant to the provisions of this Agreement. The Parties shall not be required to indemnify, defend, or hold harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the negligence of the other Party; provided that, if such claims, suits, or actions result from the concurrent negligence of (a) the STATE, its employees, authorized agents, or contractors and (b) the Parties, their employees or authorized agents, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of each Party, its employees, authorized agents, and/or contractors.
- 6.2 The Parties agree that their obligations under this section extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its officers while performing under the terms of this Agreement. For this purpose, the Parties, by mutual negotiation, hereby waive with respect to the STATE only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions chapter 51.12 RCW.

7. TERMINATION. This Agreement is subject to termination based upon the following:

- 7.1 Necessity. In the event that King County determines that termination of this Agreement is necessary due to lack of funding or any other reason, in its sole discretion, justifies termination, King County shall give the other Parties thirty (30) calendar days' notice of termination of this Agreement. Upon King County's termination of the Agreement, all Parties shall be released from any future funding or other obligations related to this Agreement.
- 7.2 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) calendar days to cure the breach is given, and thereafter, in the absence

of a substantial cure, the dispute resolution procedures set forth in Section 8 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.

- 7.3 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.
- 7.4 Public Convenience. Any Party other than King County, may withdraw from the Agreement for public convenience upon thirty (30) calendar days' written notice to the other Parties; provided that, to the extent each Party has obligated itself to provide funding for the Bridge Project, that funding obligation shall survive the Party's withdrawal from the Agreement and the obligated funding shall continue to be provided by the Party until the end of the Party's current appropriation year, after which the Party shall have no further funding obligation to the Bridge Project.
- 7.5 Account Close-Out If Project Abandoned. If, for any reason, the Bridge Project is abandoned or otherwise terminated before the Bridge Project is completed, 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.
8. 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:
- 8.1 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.
- 8.2 The responding Party's representative shall respond to the notice in writing within twenty-one (21) business days. The response shall state that Party's position as well as what, if any, corrective action the responding Party agrees to take.
- 8.3 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) business 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 ninety (90) days after providing notice pursuant to Section 8.1, it may sue to enforce the terms of this Agreement or it may withdraw from this Agreement. The Parties also may agree to an alternate dispute resolution process.

9.

9.1 Notwithstanding any other provision within this Agreement, the Parties shall each procure and maintain for the duration of the Agreement, at their own expense:

a) 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.

b) 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.

c) Workers Compensation/Stop Gap: Statutory Worker's Compensation coverage and Stop Gap Liability for a limit no less than one million dollars (\$1,000,000).

9.2 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 Worker's Compensation:

a) King County, Pierce County, WSDOT, Buckley, and 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.

9.3 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.

9.4 Insurance for Design Phase. King County shall cause all consultants and contractors performing work pursuant to this Agreement (hereinafter

Consultant/Contractors) to procure and maintain the following insurance coverages:

- a) 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.
- b) 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.
- c) 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.
- d) 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.
- e) Professional Liability Errors and Omissions. If the work involves Professional Services \$1,000,000 per claim/aggregate.

9.5 Design Phase Insurance Requirements. The insurance policies required are to contain or be endorsed to contain the following provisions:

- a) With respect to all Liability Policies except Professional Liability and Workers Compensation:
 - i. The Parties, their officers, officials, employees, and agents, are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor/Consultants in connection with the Contractor/Consultant's contract. Additional Insured status shall include Products-Completed Operations.
 - ii. The Contractor/Consultant's insurance coverage shall be primary insurance as respects the Parties, their officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by the Parties, their officers, officials, employees, agents and consultants shall not

contribute with the Contractor/Consultant's insurance or benefit the Contractor/Consultant in any way.

- iii. The Contractor/Consultant'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.

10. 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:

Attn: Mayor Pat Johnson
City of Buckley
933 Main Street
Buckley, WA 98321

If to City of Enumclaw:

Attn: Mayor Liz Reynolds
City of Enumclaw
1339 Griffin Avenue
Enumclaw, WA 98022

If to Pierce County:

Attn: Tony Tipton, Director
Pierce County Parks and Recreation
9112 Lakewood Drive S.W.
Lakewood, WA 98499-3998

If to King County:

Attn: Kevin Brown, Director
King County Parks and Recreation Division
201 S. Jackson Street, Suite 700
Seattle, WA 98104-3855

If to Washington State:

Attn: Brenden Clarke
Department of Transportation
WSDOT Olympic Region
5720 Capital Boulevard SE
Tumwater, WA 98501-5201

- 11. 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.
- 12. AMENDMENTS IN WRITING. Any amendment or modification of this Agreement must be in writing and executed by the Parties agreeing thereto.
- 13. 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.

14. **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.
15. **EXECUTION IN COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original.
16. **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.
17. **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.
18. **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.
19. **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.
20. **NO RESTRICTION ON POLICE POWERS.** Nothing in this Agreement shall diminish any of the Parties' governmental or police powers.
21. **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.
22. **RECORDING.** King County shall record this Agreement following approval by all of the Parties' legislative bodies and execution by all the Parties.
23. **BUSINESS DAYS.** Business days for this Agreement are defined as Monday through Friday, excluding Washington State holidays per RCW 1.16.050.
24. **RECORD RETENTION.** King County shall maintain all relevant account books for a period of not less than six (6) years from the end or termination of this Agreement, during which period King County shall allow the other Parties to inspect such materials by appointment during regular business hours.

EXECUTED THIS _____ DAY OF _____ 2015.

The City of Buckley

The City of Enumclaw

By: _____

By: _____

TITLE: _____

TITLE: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

Buckley City Attorney

Enumclaw City Attorney

Pierce County

King County

By: _____

By: _____

TITLE: _____

TITLE: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

Deputy Prosecuting Attorney

Deputy Prosecuting Attorney

Washington State Department of Transportation

By: _____

TITLE: _____

APPROVED AS TO FORM

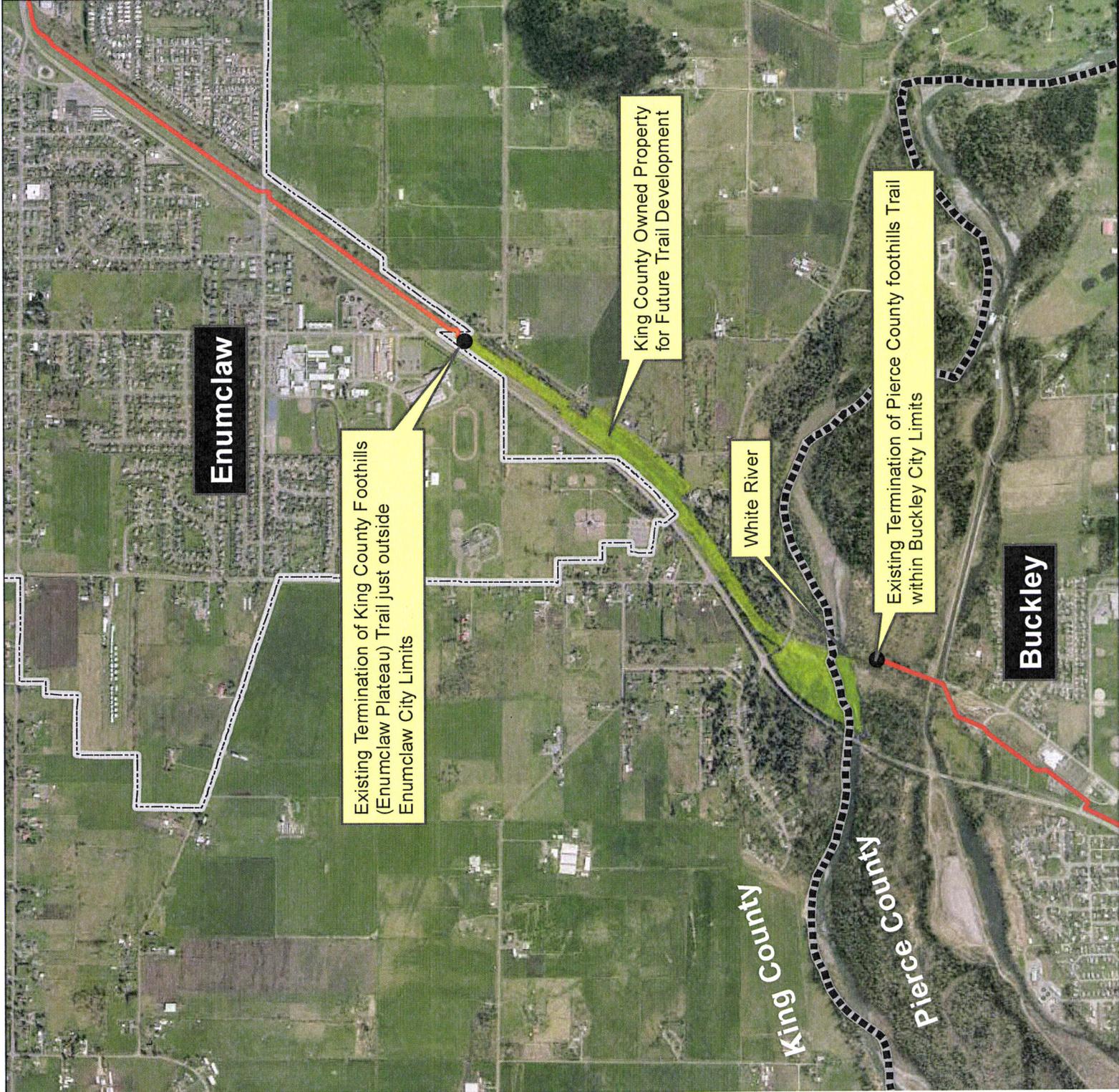
State Attorney

Exhibit A

White River Pierce County-King County Proposed Trail Connection Context

18109

December 10, 2013



King County

Department of
Natural Resources and Parks
Parks and Recreation Division

The information included on this map has been compiled by King County staff from a variety of sources and is subject to change without notice. King County makes no representations or warranties, express or implied, as to accuracy, completeness, timeliness, or rights to the use of such information. This document is not intended for use as a survey product. King County shall not be liable for any general or specific, direct, incidental, or consequential damages, including the use or misuse of information obtained on this map. Any sale of this map or information on this map is prohibited except by written permission of King County.