

Adopted: 09/12/18
Effective: 09/17/18

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

ORDINANCE NO. 18-053

APPROVING AND AUTHORIZING THE COUNTY EXECUTIVE TO SIGN AN INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND THE CITY OF BRIER CONCERNING SNOHOMISH COUNTY PROVIDING THE CITY PARTIAL FUNDING FOR A PEDESTRIAN ACCESSIBLE FACILITY IMPROVEMENT PROJECT

WHEREAS, the City of Brier (the "City") has a project to install pedestrian accessible facility improvements, (the "Project"); and

WHEREAS, prior to the County's adoption of the 2018 Annual Construction Program (ACP) of its 2018 Transportation Improvement Program (TIP) (collectively the ACPTIP) the City requested funds from the County to help with the Project; and

WHEREAS, the County in the adopted 2018 ACPTIP (TIP # C.00.75) allocated Forty Thousand Dollars (\$40,000) of Real-Estate Excise Tax (REET) funds for the Project.

WHEREAS, providing pedestrian accessible facility improvements is important for and benefits all users of all right-of-ways and helps achieve the goals and purpose of the Americans with Disabilities Act (ADA);

WHEREAS, The County desires to assist the City with the Project.

NOW, THEREFORE, BE IT ORDAINED:

Section 1. The County Council hereby adopts the foregoing recitals as findings of fact and conclusions as if set forth in full herein.

Section 2. The Snohomish County Council approves and authorizes the Snohomish County Executive, or designee, to sign the Interlocal Agreement between Snohomish County and the City of Brier concerning Snohomish County providing the City partial funding for a pedestrian accessible facility improvement project, a copy of which is attached to this ordinance as Exhibit A.

PASSED this 12th day of September, 2018.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

Stephanie Wright
Chairperson

ATTEST:

Randi Reed
Clerk of the Council, *ASST*

APPROVED

EMERGENCY

VETOED

DATE: 9/12/18
[Signature]
County Executive

ATTEST:

Melissa Seraghty

Approved as to form only:

[Signature] 5/12/18
Deputy Prosecuting Attorney

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EXHIBIT A
to
ORDINANCE NO. 18-053

[See Attached Interlocal Agreement between Snohomish County and the City of
Brier concerning Snohomish County providing the City partial funding for a
pedestrian accessible facility improvement project]

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EXHIBIT A

INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND THE CITY OF BRIER CONCERNING SNOHOMISH COUNTY PROVIDING THE CITY PARTIAL FUNDING FOR A PEDESTRIAN ACCESSIBLE FACILITY IMPROVEMENT PROJECT

This INTERLOCAL AGREEMENT (the “Agreement”), is made and entered into by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington (the “County”), and the CITY OF BRIER, a Washington municipal corporation (the “City”), collectively the “Parties”, pursuant to Chapter 39.34 RCW, concerning the County providing the City partial funding for a pedestrian accessible facility improvement project within the City.

RECITALS

- A. The City has a project to install pedestrian accessible facility improvements consisting of ADA curb ramps on Oak Way between 212th and Vine Road, (the “Project”).
- B. Prior to the County’s adoption of the 2018 Annual Construction Program (ACP) of its 2018 Transportation Improvement Program (TIP) (collectively the ACPTIP) the City requested funds from the County to help with the Project.
- C. The County in the adopted 2018 ACPTIP (TIP # C.00.75) allocated Forty Thousand Dollars (\$40,000) of Real-Estate Excise Tax (REET) funds for the Project.
- D. Providing pedestrian accessible facility improvements is important for and benefits all users of all right-of-ways and helps achieve the goals and purpose of the Americans with Disabilities Act (ADA).
- E. The County desires to assist the City with the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the respective agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the City agree as follows:

1. Requirements of Interlocal Cooperation Act

1.1 Purpose of Agreement. This Agreement is authorized by and entered into pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW. The purpose and intent of this Agreement is to facilitate the payment of REET funds to the City as partial funding for the Project.

1.2 No Separate Entity Necessary. The parties agree that no separate legal or administrative entity is being created under this Agreement.

1.3 **Ownership of Property.** Except as expressly provided to the contrary in this Agreement, any real or personal property used or acquired by either party in connection with the performance of this Agreement will remain the sole property of such party, and the other party shall have no interest therein.

1.4 **Administrators.** Each party to this Agreement shall designate an individual (an "Administrator"), who may be designated by title or position, to oversee and administer such party's participation in this Agreement. The parties' initial Administrators shall be the following individuals:

County's Initial Administrator:

Max Phan, PE,
Manager-Program Planning & ENVS
Snohomish County
3000 Rockefeller Avenue M/S 607
Everett, Washington 98201
425-388-3109
max.phan@snoco.org

City's Initial Administrator:

Bob Colinas
Mayor
City of Brier
2901 228th Street S.W.
Brier, WA 98036
425-775-5440
rcolinas@ci.brier.wa.us

Either party may change its Administrator at any time by delivering written notice pursuant to Section 11 of this Agreement of such party's new Administrator to the other party.

2. Effective Date and Duration

As provided by RCW 39.34.040, this Agreement shall not take effect unless and until it has (i) been duly executed by both parties, and (ii) either filed with the County Auditor or posted on the County's Interlocal Agreements website. This Agreement shall remain in effect until all obligations of the parties are discharged, unless earlier terminated pursuant to the provisions of Sections 9 or 10 below; PROVIDED, that the parties obligations after December 31st of the year in which this Agreement is approved and becomes effective are contingent upon each parties local legislative appropriation of necessary funds in accordance with applicable laws.

3. City Responsibilities

3.1 **Lead Agency.** Pursuant to WAC 197-11-926(1), the City shall serve as the lead agency for the Project and shall be responsible for all aspects of the Project including but not limited to, permitting, design, construction, record keeping and complying with all applicable local, state and federal requirements.

3.2 **Invoicing.** Within 60 days of the execution of this Agreement the City shall invoice the County for the full amount of the funds as identified in Section 4.1 below.

3.4 **Records.** The City shall maintain accurate records related to the Project and any addenda thereto for a period of three (3) years following final payment.

4. County Responsibilities

4.1 **Amount of Funds.** The County's sole responsibility is to provide the City REET funds in an amount not to exceed Forty Thousand, (\$40,000), in accordance with Sections 3 and 4 of this Agreement.

4.2 **Payment of Invoice.** Unless the County delivers written notice to the City disputing the amount of an invoice, the County shall make payment on all invoices submitted by the City within thirty (30) days following receipt by the County of said invoices.

4.3 **Filing of the Agreement.** Following execution by both parties, the County shall file a copy of this Agreement on the County's Interlocal Agreements website, to satisfy the requirements of RCW 39.34.040.

5. Indemnification/Hold Harmless

5.1 **City's Indemnification of County.** The City shall indemnify, defend and hold the County harmless from and against all liabilities, suits, losses, costs, damages, claims, expenses, penalties or charges, including, without limitation, reasonable attorneys' fees and disbursements, that the County may incur or pay out by reason of: (i) any accidents, damages or injuries to persons or property occurring in, on or around the Project area during the term of this Agreement, but only to the extent the same are caused by any negligent or wrongful act of the City; or (ii) any breach or Default (as such term is defined in Section 9.1 below) of the City under this Agreement.

5.2 **Waiver of Immunity Under Industrial Insurance Act.** The indemnification provisions of Section 5.1 above are specifically intended to constitute a waiver of the City's immunity under Washington's Industrial Insurance Act, Title 51 RCW, as respects the County 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.

5.3 **Survival.** The provisions of this Section 5 shall survive the expiration or earlier termination of this Agreement.

6. Insurance

Each party shall maintain its own insurance and/or self-insurance for its liabilities from damage to property and /or injuries to persons arising out of its activities associated with this Agreement as it deems reasonably appropriate and prudent. The maintenance, or lack thereof, of insurance and/or self-insurance shall not limit the liability of the indemnifying party to the indemnified party(s).

7. Compliance with Laws

In the performance of its obligations under this Agreement, each party shall comply with all applicable federal, state, and local laws, rules and regulations.

8. Liability Related to City Ordinances, Policies, Rules and Regulations.

In executing this Agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, policies, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, policy, rule or regulation is at issue, the City shall defend the same at its sole expense and, if judgment is entered or damages are awarded against the City, the County, or both, the City shall satisfy the same, including all chargeable costs and reasonable attorney's fees.

9. Default and Remedies

9.1 Default. If either the County or the City fails to perform any act or obligation required to be performed by it under this Agreement, the other party shall deliver written notice of such failure to the non-performing party. The non-performing party shall have thirty (30) days after its receipt of such notice in which to correct its failure to perform the act or obligation at issue, after which time it shall be in default ("Default") under this Agreement; provided, however, that if the non-performance is of a type that could not reasonably be cured within said thirty (30) day period, then the non-performing party shall not be in Default if it commences cure within said thirty (30) day period and thereafter diligently pursues cure to completion.

9.2 Remedies. In the event of a party's Default under this Agreement, then after giving notice and an opportunity to cure pursuant to Section 9.1 above, the non-Defaulting party shall have the right to exercise any or all rights and remedies available to it in law or equity.

10. Early Termination

10.1 Notice of Termination. Except as provided in Section 10.2 below, either party may terminate this Agreement at any time, with or without cause, upon providing not less than thirty (30) days' advance written notice to the other party pursuant to Section 11 of this Agreement. The termination notice shall specify the date on which the Agreement shall terminate.

10.2 Lack of Funding. This Agreement is contingent upon governmental funding and local legislative appropriations. In the event that funding from any source is withdrawn, reduced, limited, or not appropriated after the effective date of this Agreement, this Agreement may be terminated by either party by delivering not less than thirty (30) days advance written notice to the other party pursuant to Section 11 of this Agreement. The termination notice shall specify the date on which the Agreement shall terminate.

10.3 No further payment. In the event this Agreement is terminated no payment shall be made by the County following the effective date of termination unless authorized in writing by the County.

10.4 Termination By City After Payment. In the event the City terminates this Agreement after receiving payment from the County but without completing the Project, the City will reimburse the County the full amount of the funds provided by the County within thirty (30) days following the effective date of termination.

11. Notices

All notices required to be given by any party to the other party under this Agreement shall be in writing and shall be delivered either in person, by United States mail, or by electronic mail (email) to the applicable Administrator or the Administrator's designee. Notice delivered in person shall be deemed given when accepted by the recipient. Notice by United States mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, and addressed to the Administrator, or their designee, at the addresses set forth in Section 1.4 of this Agreement. Notice delivered by email shall be deemed given as of the date and time received by the recipient.

12. Miscellaneous

12.1 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes any and all prior oral or written agreements between the parties regarding the subject matter contained herein. This Agreement may not be modified or amended in any manner except by a written document signed by the party against whom such modification is sought to be enforced.

12.2 Governing Law and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of Washington. The venue of any action arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Snohomish County. In the event that a lawsuit is instituted to enforce any provision of this Agreement, the prevailing party shall be entitled to recover all costs of such a lawsuit, including reasonable attorney's fees.

12.3 Interpretation. This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the parties hereto. The captions and headings in this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

12.4 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

12.5 No Waiver. A party's forbearance or delay in exercising any right or remedy with respect to a Default by the other party under this Agreement shall not constitute a waiver of the Default at issue. Nor shall a waiver by either party of any particular Default constitute a waiver of any other Default or any similar future Default.

12.6 No Assignment. This Agreement shall not be assigned, either in whole or in part, by either party without the express written consent of the other party, which may be granted or withheld in such party's sole discretion. Any attempt to assign this Agreement in violation of the preceding sentence shall be null and void and shall constitute a Default under this Agreement.

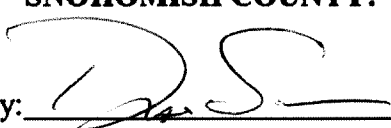
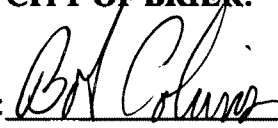
12.7 Warranty of Authority. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign this Agreement.

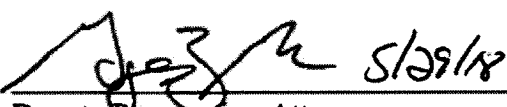
12.8 No Joint Venture. Nothing contained in this Agreement shall be construed as creating any type or manner of partnership, joint venture or other joint enterprise between the parties.


12.9 No Third Party Beneficiaries. This Agreement and each and every provision hereof are for the sole benefit of the City and the County. No other persons or parties shall be deemed to have any rights in, under or to this Agreement.

12.10 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date written below.

"County" SNOHOMISH COUNTY:	"City" CITY OF BRIER:
By: <u></u> <u>9/12/18</u>	By: <u></u> <u>5-30-2018</u>
Dave Somers Snohomish County Executive	Bob Colinas Mayor, City of Brier

Approved as to Form:
 5/29/18
Deputy Prosecuting Attorney

Approved as to Form:
 6/5/18
City Attorney

COUNCIL USE ONLY
Approved: 9-12-18
Docfile: D-19