

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: <i>Jiaren Frates</i>		4/2/2018		4/10/2018	Finance
Division Head:					
Dept. Head:					
Prosecutor:					
Purchasing/Budget:					
Executive:					

TITLE OF DOCUMENT:
 Authorize agreement between Whatcom County and Keller Rohrback LLP

ATTACHMENTS:

SEPA review required? () Yes () NO SEPA review completed? () Yes () NO	Should Clerk schedule a hearing ? () Yes () NO Requested Date:
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SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: *(If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)*

Authorize the County Executive to sign an Attorney Engagement and Contingency Fee Agreement between Whatcom County and Keller Rohrback L.L.P.

COMMITTEE ACTION:

COUNCIL ACTION:

Related County Contract #:	Related File Numbers:	Ordinance or Resolution Number:
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Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.

ATTORNEY ENGAGEMENT & CONTINGENCY FEE AGREEMENT

It is HEREBY ACKNOWLEDGED AND AGREED by and between Whatcom County (“Client”) and Keller Rohrback L.L.P. (“Attorneys”) as follows:

1. **Employment.** Client hereby retains Attorneys to represent Client with respect to potential claims against the **manufacturers and wholesalers of prescription opioid painkillers and other related defendants as agreed between Client and Attorneys.** Attorneys will assist Client in gathering information and data relevant to Client’s potential claims. Attorneys will also advise Client with respect to those potential claims. At Client’s request, Attorneys will institute proceedings to seek remedies on Client’s behalf as Client and Attorneys conclude is appropriate and advisable (“the Lawsuit”).
2. **Responsibility of Attorneys.** Although the individual attorneys listed below will be primarily responsible to represent Client in this matter, other members of Keller Rohrback may work on Client matters in accordance with their areas of practice. The primary attorneys representing Client are Derek Loeser, David Ko, and Daniel Mensher. Attorneys will consult with Client in connection with any settlement proposal before accepting same.
3. **Responsibility of Client.** Client will maintain control of the litigation. Client agrees to timely comply with Attorneys’ requests. Client agrees to advise Attorneys of all facts, knowledge, or information relevant to Attorneys’ representation of Client, including facts, knowledge, or information which come to Client’s attention after execution of this Agreement.
4. **Client Representative.** Client designates Karen Frakes to be the Client’s Representative. The Client’s Representative is responsible for receiving all communications from Attorneys and transmitting all communications from Client to Attorneys. Client agrees that Attorneys may rely on Client’s Representative’s statements as an accurate reflection of Client’s position and desires. Attorneys agree to keep the Client’s Representative informed of all significant developments regarding the representation.
5. **Attorneys’ Fees.** Other than as set forth in Paragraph 8, below, the fees that Client agrees to pay Attorneys (“Attorneys’ Fee” or “Attorneys’ Fees”) will depend on the outcome of the Lawsuit, as set forth here:
 - a. “Sums Recovered” means all monies (and the value of any other property) actually paid in settlement of or judgment on the Lawsuit’s claims (including the settlement of any demand made by Attorneys on Client’s behalf before initiation of the Lawsuit), including any monies paid in settlement or judgment as an award of attorneys’ fees, costs, or interest.

- b. If the Sums Recovered is an amount less than or equal to \$10 million, the Attorneys' Fee shall be 20% of the recovery;
- c. If the Sums Recovered is an amount greater than \$10 million but less than or equal to \$20 million, the Attorneys' Fee shall equal the amount specified in Section 5(b) above, plus 18% of any Sums Recovered in the \$10 million to \$20 million range.
- d. If the Sums Recovered is an amount greater than \$20 million but less than or equal to \$25 million, the Attorneys' Fee shall equal the amount specified in Sections 5(b) and 5(c) above, plus 15% of any Sums Recovered in the \$20 million to \$25 million range.
- e. If the Sums Recovered is an amount in excess of \$25 million, the Attorneys' Fee shall equal the amount specified in Sections 5(b), 5(c), and 5(d) above, plus 10% of any Sums Recovered in excess of \$25 million.
- f. Notwithstanding anything herein to the contrary, Attorneys agree to cap the Attorneys' Fee at five times the total lodestar (number of hours times hourly rate), to be calculated at the conclusion of the Lawsuit.
- g. If the Lawsuit proceeds to trial and the court awards Client a monetary judgment and an attorneys' fee, and the attorneys' fee is greater than the percentage Attorneys would be entitled to under Section 5(a)-(e), then Attorneys will be entitled to the full attorneys' fee awarded by the Court.

NO ATTORNEYS' FEES SHALL BE PAID IF NO RECOVERY IS MADE.

- 6. **Advice Concerning Attorneys' Fee.** Client has been informed of the alternative of employing Attorneys on an hourly fee bases. This alternative would require the payment of a \$25,000 retainer at commencement of the representation, payment of costs as incurred, and payment of legal fees each month for legal services. In deciding to engage Attorneys on a contingency fee basis, Client has considered the risks involved in this case, the experience and reputation of Attorneys, and the uncertainty regarding the number of hours required to prosecute the case.
- 7. **Costs.** Attorneys will advance all "out-of-pocket" costs, fees, and expenses incurred by Attorneys in pursuing the Lawsuit ("Costs"). Notwithstanding the foregoing, Attorneys agree to notify and obtain Client's consent before incurring Costs aggregating more than \$10,000 in any single month.

Client understands that Attorneys shall seek reimbursement from defendants for all Costs actually expended, but that there is no guarantee that Costs will be reimbursed by the defendants to Attorneys. Attorneys will be reimbursed for all Costs out of any settlement or recovery in addition to any Attorneys' Fees they receive under Paragraphs 5 or 8, as the case may be. Attorneys shall be reimbursed for Costs first, from any monies paid by a defendant on account of Cost reimbursement and, if such monies are insufficient, from any monies paid as part of the Sums Recovered.

Attorneys may, with Client's prior consent which shall not unreasonably be withheld, hire any expert or consultant whose services Attorneys advises Client is necessary for the evaluation or prosecution of any of the claims within the scope of the Lawsuit.

8. **Withdrawal or Discharge.** Subject to Court rules and other applicable laws, Attorneys shall have the right to withdraw from representation of Client upon giving reasonable notice of the intention to withdraw. In the event of withdrawal of Attorneys or discharge of Attorneys by Client, Attorneys may seek reasonable fees for services rendered according to the terms of Paragraph 5, above. Client shall have the right to discharge Attorneys at any time. If Client discharges Attorneys, Attorneys retain the right to seek reasonable fees for services rendered according to the terms of Paragraph 5, above.
9. **Venue and Attorneys' Fees.** The Parties agree that in the event any dispute should arise with respect to this Agreement, venue shall lie in Bellingham, Washington. Further, the prevailing party in such an action shall be awarded reasonable costs and attorneys' fees.
10. **Outcome.** Attorneys do not guarantee or represent a particular result in this Lawsuit. Client understands the risks associated with pursuing this Lawsuit.
11. **No Other Agreements.** Client has read this contract, has received a copy of it, and agrees to its terms and conditions. There are no oral or other agreements between Client and Attorneys. This Agreement when signed below by Client replaces any prior understandings or oral agreement between Client and Attorneys.
12. **Governing Law.** This Agreement and all aspects of the Parties' relationship shall be construed under the laws of the State of Washington, without regard to choice of law principles.
13. **Other Provisions.** This Agreement may be executed in one or more counterparts and transmitted by mail, overnight delivery service, and/or email, each one of which shall constitute an original and all of which shall constitute one and the same document.

CLIENT: WHATCOM COUNTY

JACK LOUWS,
WHATCOM COUNTY EXECUTIVE

DATED: _____

STATE OF WASHINGTON)
)ss.
COUNTY OF WHATCOM)

On this day personally appeared before me _____, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes mentioned in the foregoing agreement.

SUBSCRIBED AND SWORN TO BE BEFORE ME, on this _____ day of April, 2018.

NOTARY PUBLIC in for the State of
Washington, residing at _____
My Commission Expires: _____

APPROVED TO FORM:

KAREN N. FRAKES, WSBA #13600
Whatcom County Prosecuting Attorney

ACCEPTED: Keller Rohrback L.L.P.

By: _____

DATED: _____

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

On this day personally appeared before me _____, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes mentioned in the foregoing agreement.

SUBSCRIBED AND SWORN TO BE BEFORE ME, on this _____ day of April, 2018.

NOTARY PUBLIC in for the State of
Washington, residing at _____
My Commission Expires: _____