

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.

201912002

Originating Department:	Council
Division/Program: <i>(i.e. Dept. Division and Program)</i>	
Contract or Grant Administrator:	Karen Frakes
Contractor's / Agency Name:	Keller Rohrback LLP
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/>	
Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____	
Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input type="radio"/> No <input checked="" type="radio"/>	
If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded? Yes <input type="radio"/> No <input checked="" type="radio"/>	
If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process? Yes <input type="radio"/> No <input checked="" type="radio"/>	
If yes, RFP and Bid number(s): _____ Contract Cost Center: _____	
Is this agreement excluded from E-Verify? No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below:	
<input type="checkbox"/> Professional services agreement for certified/licensed professional.	
<input type="checkbox"/> Contract work is for less than \$100,000.	
<input type="checkbox"/> Contract work is for less than 120 days.	
<input type="checkbox"/> Interlocal Agreement (between Governments).	
<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).	
<input type="checkbox"/> Work related subcontract less than \$25,000.	
<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>n/a</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ _____	Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when: <ol style="list-style-type: none"> 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
Summary of Scope:	
Contractor will represent Whatcom County with respect to potential claims against the manufacturers and wholesalers of e-cigarettes and related products.	
Term of Contract:	Expiration Date:

Contract Routing:	1. Prepared by: <u>sm</u>	Date: <u>12/2/19</u>
	2. Attorney signoff: <u>KMF</u>	Date: <u>12/2/19</u>
	3. AS Finance reviewed: <u>obennett</u>	Date: <u>12/2/19</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____ ✓	Date: <u>11-20-19</u>
	6. Submitted to Exec.: _____ ✓	Date: <u>12-2-19</u>
	7. Council approved (if necessary): _____ ✓	Date: <u>12-3-19</u>
	8. Executive signed: _____ ✓	Date: <u>12-4-19</u>
	9. Original to Council: _____ ✓	Date: <u>12-10-19</u>

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 e-cigarettes and related products, including Juul Labs, Inc., and its corporate affiliates. 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, Dean Kawamoto, and Alison Gaffney. 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 N. Frakes, Chief Civil Deputy Prosecuting Attorney, 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 Representatives 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 \$100 million, the Attorneys' Fee shall be 15% of the recovery;
- c. If the Sums Recovered is an amount greater than \$100 million but less than or equal to \$300 million, the Attorneys' Fee shall equal the amount specified in Section 5(b) above, plus 13% of any Sums Recovered in the \$100 million to \$300 million range.
- d. If the Sums Recovered is an amount greater than \$300 million, the Attorneys' Fee shall equal the amount specified in Sections 5(b) and 5(c) above, plus 5% of any Sums Recovered in excess of \$300 million.
- e. If the Lawsuit proceeds to trial, Attorneys will be entitled to an additional 2% of Sums Recovered specified in 5(a)-5(d).
- f. 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)-(f), 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.

DATED: 12-4-19


CLIENT SIGNATURE

ATTORNEY ENGAGEMENT & CONTINGENCY FEE
AGREEMENT

Approved as to form:


Civil Deputy Prosecuting Attorney 12/4/19
(Date)

Keller Rohrback LLP
1201 Third Avenue, Suite 3200
Seattle, WA 98101

ACCEPTED: Keller Rohrback L.L.P.

By: 

Derek W. Loeser

Dated: 11/20/19

4842-9142-5629, v. 1

ATTORNEY ENGAGEMENT & CONTINGENCY FEE
AGREEMENT

Keller Rohrback LLP
1201 Third Avenue, Suite 3200
Seattle, WA 98101