

**AGREEMENT FOR LEGAL SERVICES**

Kitsap Public Health District, at 345 6<sup>th</sup> Street, Suite 300, Bremerton, Washington, 98337 (the “District”), and the Office of the Kitsap County Prosecuting Attorney, 614 Division Street, MS-35A, Port Orchard, Washington 98366 (the “Prosecuting Attorney”), enter into this Agreement for Legal Services (this “Agreement”) for legal services. In consideration of the mutual covenants contained herein, the District and the Prosecuting Attorney agree as follows:

**1. RECITALS**

Whereas, the District is a governmental unit constituted pursuant to chapter 70.46 RCW and chapter 9.52 Kitsap County Code, whose members include Kitsap County and the cities of Bainbridge Island, Bremerton, Port Orchard and Poulsbo;

Whereas, the District is governed by the Kitsap Public Health Board, which includes representatives of the cities of Bainbridge Island, Port Orchard, Bremerton and Poulsbo;

Whereas, the District requires legal services and desires to obtain them from the Prosecuting Attorney;

Whereas, the cities of Bainbridge Island, Bremerton, Port Orchard and Poulsbo agree that the Prosecuting Attorney’s Office may represent the District throughout the entire county, including areas otherwise within the jurisdiction of the cities; and

Whereas, under RCW 39.34.080, the Prosecuting Attorney’s Civil Division may contract with the District to represent and provide legal advice to the District on civil legal matters.

Now, therefore, in consideration of the terms and conditions contained herein, the District and the Prosecuting Attorney agree as follows:

**2. INCORPORATION OF RECITALS**

The recitals set forth in Section 1, above, are hereby incorporated as substantive terms of this Agreement.

**3. SCOPE OF WORK**

Kitsap County (the “County”), through the Prosecuting Attorney, will provide legal services to the District as more fully described in Attachment A, “Scope of Services”, attached hereto and incorporated herein, except as follows:

A. When legal services are available to the District through its insurance pool, the District agrees that it is its responsibility to promptly notify its insurance pool of claims and/or litigation filed against the District as required by the pool.

B. As provided in Section 13 of this Agreement, when a conflict of interest exists between the District and the County which, in accordance with the Rules of Professional Conduct governing county prosecuting attorneys in Washington State, either has not been waived by both the District and the County following full disclosure or cannot be waived despite full disclosure.

C. When both the County and the District agree that a legal matter should be sent to outside counsel due to the need for specialized expertise or otherwise.

#### **4. COMPENSATION**

The District will compensate the Prosecuting Attorney for the services performed by the Prosecuting Attorney and Deputy Prosecuting Attorneys under this Agreement at the hourly rate of \$149.00, and \$91.00 per hour for paralegal services. The Chief Civil Deputy Prosecuting Attorney shall be the initial point of contact for requests for legal services and may assign such requests to other attorneys as the nature of the matter requires. The hourly rates includes overhead support.

The District shall be responsible for all incidental costs associated with its representation, including, but not limited to, mileage and travel costs, court costs, copy fees, courier fees, fees for title reports, et cetera.

#### **5. BILLING AND PAYMENT**

The Prosecuting Attorney shall submit quarterly invoices to the Kitsap Public Health District, 345 6<sup>th</sup> Street, Suite 300, Bremerton, Washington, 98337 to the attention of the Administrator. Invoices will describe the services performed by each attorney, detail the number of hours worked, and list the fees and costs incurred during that month. The District shall pay County at the hourly rates set forth in Section 4. The District will make payment within thirty (30) days following receipt of billing. Upon request, the District is entitled to review the time sheets of attorneys anytime during the term of this Agreement and within one year after its expiration or termination.

#### **6. DURATION**

This Agreement is effective January 1, 2022. It shall have a term of one year and shall expire on December 31, 2022, unless renewed in writing.

#### **7. REPRESENTATIVES**

The coordinating contact representative for the Prosecuting Attorney will be the Chief Civil Deputy Prosecuting Attorney. The coordinating contact for the District will be the Administrator, who shall have full authority to request services hereunder.

## **8. INDEPENDENT CONTRACTOR**

The Prosecuting Attorney's services shall be furnished as an independent consultant and nothing in or arising from this Agreement shall be construed to create a relationship of employer-employee or master-servant.

## **9. INDEMNIFICATION**

The County shall indemnify the District and its agents, officers, officials, and employees for all losses, claims, and damages caused by the negligence or willful acts of County and/or its agents, officers, and employees, arising directly or indirectly out of or in consequence of the performance of this Agreement. The District shall indemnify the County and its agents, officers, officials and employees for all losses, claims and damages caused by the negligence or willful acts of the District and/or its agents, officers, officials, and employees, arising directly or indirectly out of or in consequence of the performance of this Agreement. This section shall survive the expiration or termination of this Agreement.

## **10. TERMINATION**

Either party may terminate this Agreement upon thirty (30) days written notice to the other. Upon receipt of the notice of termination, no further fees or expenses may be incurred except as authorized by the District. If this Agreement is terminated in accordance with this paragraph, the Prosecuting Attorney will be entitled to payment for all work actually performed. An equitable adjustment in the Prosecuting Attorney's compensation for partially completed items of work will be made.

## **11. NON-EXCLUSIVE AGREEMENT**

The District may obtain legal services from persons or entities in addition to Prosecuting Attorney. The Prosecuting Attorney may provide legal services to the County and other entities as allowed under state law.

## **12. CONFLICTS OF INTEREST**

As more fully explained in Attachment B hereto, incorporated herein, the Prosecuting Attorney shall observe the Rules of Professional Conduct as applicable to county prosecuting attorneys and inform the District if actual or potential conflicts of interest arise. The District recognizes that the Prosecuting Attorney may from time to time, represent the County in matters that may also involve the District. In such cases, if a conflict arises, the District understands and agrees that the Prosecuting Attorney must represent the County even though the County may be adverse to the District. In the event of such a conflict, when possible, the Prosecuting Attorney shall assign different deputy prosecuting attorneys to represent the County and the District and create an "ethics wall" to screen each attorney from the client confidences of the other. If a conflict of interest arises during the term of this Agreement which, in accordance with the Rules of Professional Conduct, either has not been waived by both the District and the County following full disclosure, or cannot be waived despite full disclosure, the Prosecuting Attorney

will work with the District to secure appropriate representation and provide for a smooth transition to alternative counsel. The District expressly waives any and all objections it might otherwise have to the Prosecuting Attorney's representation of the County. This section shall survive the expiration or termination of this Agreement.

**13. NON-WAIVER**

The failure of either party to exercise any rights or remedies under this Agreement for any breach shall not constitute a continuing waiver of any obligation and shall not prevent either party from pursuing any such rights or remedies for any succeeding breach.

**14. INTEGRATION**

This Agreement contains the entire agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein. This Agreement will supersede all previous communications, representations, or agreements, either verbal or written, between the parties.

**15. BINDING EFFECT**

The provisions of this Agreement are binding upon the parties and their successors, assigns, and legal representatives.

**16. MODIFICATION**

This Agreement may be amended only upon written agreement of the parties executed with the same formalities required for the execution of this Agreement.

**17. SEVERABILITY**

If any provision of this Agreement is held invalid, the remainder of this Agreement and the remaining rights and obligations of the parties will be construed and enforced as if this Agreement did not contain the invalid part, provided that the fundamental purposes of this Agreement can still be carried out.

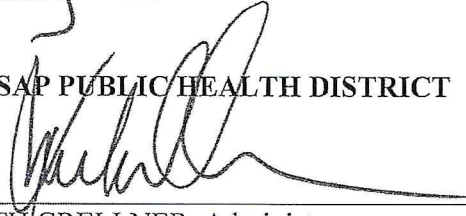
**18. VENUE**

This Agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance, and any action at law, suit in equity, or other proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the courts of the State of Washington, County of Kitsap.

[Signatures appear on the next page.]

Dated this 10<sup>th</sup> day of JANUARY, 2022

KITSAP PUBLIC HEALTH DISTRICT



KEITH GRELLNER, Administrator

Dated this 18 day of January, 2022

KITSAP COUNTY PROSECUTING ATTORNEY



CHAD M. ENRIGHT

Dated this 14th day of February, 2022

BOARD OF COUNTY COMMISSIONERS  
KITSAP COUNTY, WASHINGTON



Edward E. WOLFE, Chair

NOT PRESENT

ROBERT GELDER, Commissioner



CHARLOTTE GARRIDO, Commissioner

ATTEST:



Dana Daniels, Clerk of the Board

## **EXHIBIT A**

### **SCOPE OF SERVICES**

The Prosecuting Attorney will provide the District with a full range of legal services, with the exceptions set forth in the body of this Agreement, including the following:

1. Provide legal consultation services, including telephone and office consultation and written opinion memos on all District issues;
2. Review and redraft administrative regulations and policies, including the District's personnel manual;
3. Review and redraft contracts;
4. Review and redraft resolutions and ordinances;
5. Represent the District in actions to enforce District regulations throughout Kitsap County, including areas otherwise within the jurisdiction of the cities;
6. Evaluate claims filed with the District;
7. Represent the District in litigation before administrative tribunals and state and federal courts other than litigation, which the District may, in accordance with its insurance policies, tender to other counsel; and
8. Labor negotiations including legal advice regarding collective bargaining matters as required.

## **EXHIBIT B**

Executed Copy of Conflict Letter to Kitsap Public Health District  
Consisting of 4 pages



# Kitsap County Prosecuting Attorney

## Chad M. Enright



CIVIL DIVISION

**Ione George**  
Chief of Staff

**Jacquelyn Aufderheide**  
Civil Division Chief

**Carrie Aire**  
Administrative Manager

December 16, 2021

Gib Morrow, MD, MPH, Health Officer  
Keith Grellner, RS, Administrator  
Kitsap Public Health District  
345 6th Street, Suite 300  
Bremerton, WA 98337

RE: Exhibit B to 2022 Legal Services Agreement – Waiver of Potential Conflicts of Interest

Dear Dr. Morrow and Mr. Grellner:

The purpose of this letter is to explain potential conflict of interests in connection with the Prosecuting Attorney's Office providing legal services to Housing Kitsap.

As you know, the Interlocal Cooperation Act, particularly RCW 39.34.080, authorizes public agencies to contract with each other to perform governmental services, activities, or undertakings. For over 20 years, the Office of the Kitsap County Prosecuting Attorney (the "Prosecutor") has provided legal services to Kitsap Public Health District (the "Health District"). We value our relationship with the Health District and are willing to continue to provide such services. However, to ensure that the Health District understands the limitations on the legal services we provide, as well as the potential conflicts that may arise with our representation, we are providing this written explanation and request the Kitsap Public Health Board (the "Health Board") to expressly authorize the continuation of legal services by the Prosecutor, and waive potential conflicts of interest that might arise by virtue of our services to the Health District.

The Health District is a legally independent public agency, governed by the Health Board, consisting of members from the Cities of Bainbridge Island, Bremerton, Port Orchard, and Poulsbo, and the County of Kitsap (the "County"). See chapter 70.46 RCW and chapter 9.52 Kitsap County Code. The City members of the Health Board receive legal advice and representation from their appointed City attorneys. Under chapter 36.27 RCW, the Prosecutor has a legal duty and affirmative obligation to be the legal adviser to the Kitsap County Board of Commissioners and all County officers.

In serving as legal counsel to the District, the Prosecutor's advice to the Health District will not constitute legal advice to or representation of any particular member agency of the Health District. However, as more fully explained below, there may be times that the County and the Health District are involved in the same matter, giving rise to a potential conflict of interest.



The Rules of Professional Conduct (“RPCs”) allow clients to waive conflicts of interest when a lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client and each affected client gives informed consent in writing. In evaluating the potential conflicts that might arise with the Prosecutor’s representation of the Health District, we considered the legal matters the Health District has sought assistance with in the past, and may in the future seek legal assistance with:

- Laws and regulations pertaining to public health and safety, including communicable diseases, family health, environmental health, and food safety;
- Labor and employment matters including discipline and discharge, wage and hour laws, leave and disability laws, workers compensation, discrimination and whistleblower protection, etc.;
- Review and negotiation of municipal contracts, including procurement compliance with federal and state laws and regulations;
- General policy review;
- Real and personal property acquisition and disposition; and
- Public records law, including retention and disclosure.

The Prosecutor’s handling of most of the matters listed above should present no conflicts of interest. The primary reason for this is that many of the matters we advise the Health District in do not involve the County. In addition, the County is a member of the Health Board. Thus, the Health District’s confidential information is shared with the three County Commissioners who serve as the County’s representatives on the Health Board, and the potential for confidential information of the Health District being used to its disadvantage is low.

The main concern associated with waivers of conflicts of interest under the circumstances presented here is ensuring that the Health District and the County each receive objective and independent legal advice. For example, there have been and could be situations, such as where the Health District and the County are parties to the same contract, where the Prosecutor will need to assign different deputy prosecuting attorneys to represent the County and the Health District and create an “ethical wall” to screen each attorney from the client confidences of the other.

In our role as legal counsel to the Health District, we intend to provide objective and independent legal advice to the Health District. We must also provide objective and independent legal advice to the County. When the Health District becomes aware of matters that will involve both it and the County, before requesting legal assistance it will be incumbent upon the Health District to notify the Prosecutor so that the Prosecutor may assign different deputy prosecuting attorneys to the Health District and the County. If a conflict of interest arises which, in accordance with the RPCs, either has not been waived by both the Health District and the County following full disclosure, or cannot be waived despite full disclosure, the Prosecutor will work with the Health District to secure appropriate representation and provide for a smooth transition to alternative counsel.

Dr. Gib Morrow  
Mr. Keith Grellner  
December 16, 2021  
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By executing this letter, the Health District and each member agency of the Health Board consent to the Prosecutor's service as legal counsel for the Health District and waive any conflict of interest that might be said to arise by virtue of that representation. In addition, the Health District and each member agency of the Health Board consent to Prosecutor's ongoing representation of the County. We will inform the Health District and the County when we became aware of representation that might present a conflict of interest under the RPCs and request a waiver at that time. In some circumstances, the Prosecutor will reach out to the Cities' attorneys, so that each City may obtain independent advice about the specific matter if it chooses to do so.

If a situation arises in the future in which we perceive a potential conflict of interest where our duty of loyalty to you materially conflicts with our similar duty to the County, we will immediately bring this to the attention of the Health District and the County. In such an event, it may be necessary for us to remove ourselves from advising the Health District with respect to the matter involved. We trust this approach is acceptable to the Health District and each member agency of the Health Board.

Please present this letter together with the legal services agreement for consideration by the Health Board. If this approach is acceptable, please ask the Chair to sign the enclosed copy of this letter and return it to me at your convenience. By signing this letter, each member agency of the Health Board is waiving any conflict of interest that could be said to arise by virtue of our work as legal counsel to the Health District. Further, the Health District also expressly waives any conflict arising from Prosecutor's continued legal representation of the County.

Thank you for your attention and consideration.

Sincerely yours,

CHAD M. ENRIGHT  
Prosecuting Attorney

*Jacquelyn M. Aufderheide*

Jacquelyn M. Aufderheide  
Chief Civil Deputy Prosecuting Attorney

CONSENT GRANTED AND WAIVER APPROVED:

Dated this 14 day of February, 2022

Kitsap Public Health Board

*Charlotte Garrison*

CHARLOTTE GARRISON, Chair