

Approved: 8/24/2022

Effective: 9/04/2022

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

ORDINANCE NO. 22-030

APPROVING COMMON INTEREST, NON-DISCLOSURE AND JOINT DEFENSE
AGREEMENT WITH SNOHOMISH HEALTH DISTRICT

WHEREAS, the Snohomish Health District was incorporated in 1959 as an independent special purpose district for public health in Snohomish County; and

WHEREAS, since its formation, Snohomish County and Snohomish Health District have worked together in a collaborative manner to address public health issues and concerns; and

WHEREAS, Snohomish County, acting through the Snohomish County Council, and the Snohomish Health District, acting through its board of health, have committed to establishing a new County Department of Public Health to replace the Snohomish Health District; and

WHEREAS, Snohomish County and Snohomish Health District have further committed to partnering over the remainder of the year to transition all public health services, assets, employment contracts, and related matters to Snohomish County government; and

WHEREAS, recognizing their mutuality of interest and in order to facilitate the transition from a health district to a county Department of Public Health, Snohomish County and Snohomish Health District have a need to share information, including information that is privileged from disclosure to third parties as a result of the attorney-client privilege, the attorney work product doctrine, the work product doctrine, the joint defense privilege, the common interest doctrine, and other laws regarding confidentiality, privileges or immunities; and

WHEREAS, Snohomish County and Snohomish Health District wish to enter into an agreement to protect the confidential and privileged nature of any information exchanged by the parties and to further ensure that any such exchange does not diminish in any way the confidentiality of the information or constitute a waiver of any privilege or protection;

NOW THEREFORE BE IT ORDAINED:

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

1 Section 2. The council hereby approves and authorizes the executive, or
2 designee, to execute a common interest, non-disclosure and joint defense agreement
3 with Snohomish Health District in substantially the same form as attached to this
4 ordinance as Exhibit A.
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7 PASSED this 24th day of August, 2022.
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11 ATTEST:

12 *Melena Dao*
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14 Asst. Clerk of the Council
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SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

Ken D...
Council Chair

16
17 (X) APPROVED
18 () EMERGENCY
19 () VETOED
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DATE: August 25, 2022

Dave Somers
Dave Somers
County Executive

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22 ATTEST: *Melissa Geraghty*
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26 Approved as to form only:

27 *R. J. ...* 07/28/2022
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29 Deputy Prosecuting Attorney
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EXHIBIT A

to

ORDINANCE NO. 22-030

[See Attached Common Interest, Non-Disclosure and Joint Defense Agreement]

[The remainder of this page is intentionally left blank.]

COMMON INTEREST, NON-DISCLOSURE AND JOINT DEFENSE AGREEMENT

This Common Interest, Non-Disclosure and Joint Defense Agreement (“Agreement”) is entered into by and between Snohomish County (the “County”) and the Snohomish Health District (the “District”) (the County and the District are collectively “the Parties”) for the purpose of preserving the confidentiality, attorney-client privilege, and work-product doctrine protections that may exist in any communications and information exchanged between the Parties, their legal counsel, or other representatives related to the transition of public health authority and operations from the District to the County as further described below.

This Agreement is premised on the following agreements and facts:

A. Currently in Snohomish County, authority for public health regulation and enforcement lies with the District and its Board of Health; and

B. The County, a political division of the State of Washington, is a member of the District; and

C. The County has notified the District of its intent to withdraw from the District effective December 31, 2022, at which time the County will form a County department of public health and County board of health; and

D. The Parties agree that upon the County’s withdrawal from the District and formation of a County department of public health and County board of health, the County will assume all regulatory and enforcement authority for public health within Snohomish County, and that the County will assume all assets of the District, hire all District employees as County employees, and assume or otherwise dispose of all District liabilities, including, but not limited to, potential, pending and active claims and litigation (the “Transition”); and

E. The Parties share a mutuality of interest in connection with the transfer of public health authority and operations from the District to the County and agree that it is in their best interest to cooperate in efforts to accomplish such Transition; and

F. The Parties recognize that the common interests of the Parties are best served by exchanging information; and

G. Even upon such exchange, such information is privileged from disclosure to adverse or other non-parties to this Agreement as a result of the attorney-client privilege, the attorney work product doctrine, the work product doctrine, the joint defense privilege, the common interest doctrine, and other laws regarding confidentiality, privileges, or immunities with respect to disclosure to third parties; and

H. The Parties desire to further their common interests by establishing procedures for cooperation and the exchange and sharing of information between and among themselves and their counsel; and

I. It is the purpose of this Agreement to, inter alia, (i) protect the confidential and privileged nature of all exchanged information and (ii) ensure that the exchange and disclosure of information contemplated herein does not diminish in any way the confidentiality of the information and does not constitute a waiver of any privilege or protection.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Joint Defense, Confidential and Common Interest Materials.

To further their common interests, the Parties and their counsel intend from time to time to share certain confidential information in order to facilitate the Transition including, but not limited to: a) information relating to potential, pending, and active claims, liabilities, labor issues, and litigation that may be assumed by the County; and b) other types of confidential information which are not disclosable to the public under state or federal law including, but not limited to, certain information regarding District employees, patient health and medical records, client information, and certain financial records. All such information shall be referred to herein as the "Materials." The Materials may be in any format and include, but are not limited to, factual material, mental impressions, conclusions, opinions, legal theories, documents, memoranda, notes, data, electronically stored information, and reports prepared by consultants, experts or investigators acting on behalf of counsel, strategies, client confidences, witness interview summaries, expert witness discussion and opinion, and investigative reports, which would otherwise be protected from disclosure to non-parties to this Agreement by virtue of the joint defense, common interest, attorney-client, confidentiality laws, or work-product privileges. The Parties further agree that: (a) Materials exchanged or disclosed may contain confidential and privileged information and communications; (b) Materials exchanged or disclosed may contain attorney work-product; and (c) Materials will be used by the Parties solely for the purposes of realizing the Transition including, but not limited to, addressing the potential, pending and active claims, labor issues, and litigation that may be assumed by the County.

2. Confidentiality of Materials.

The exchanges and disclosures of Materials contemplated in this Agreement do not diminish in any way the confidentiality of the Materials and do not constitute a waiver of any privilege that the Materials would have if maintained in each of the Parties' respective possessions. To this end, it is understood and agreed to by the Parties that any Materials exchanged between them will remain confidential and shall be protected from disclosure to any non-party to this Agreement except as expressly provided herein. The privileges and protections of this Agreement may not be waived by any Party without the prior written consent of the other Party.

3. No Waiver of Privileges.

The exchange or disclosure of any information under this Agreement of Materials that is otherwise protected against discovery or disclosure as a result of the joint defense, attorney-client, attorney work-product, common interest, or other applicable confidentiality laws, rights, or

privileges is not intended for, and will not waive any applicable rights or privileges or protection from, disclosure. Further, the Parties agree that in pursuing any claims that may exist between the Parties, they will not assert that this Agreement or the exchange or disclosure of any information under this Agreement waived any applicable rights or privileges or protection from disclosure or the attorney-client privilege between or among the Parties and their counsel. This Agreement does not waive each Party's independent privilege and confidentiality with its own counsel. The Parties further agree that no Party to this Agreement may assert either the existence of this Agreement or the exchange of any Materials pursuant to this Agreement, as a possible basis for the disqualification of another Party's counsel as attorneys for that Party.

4. Applicability to All Joint Communications.

This Agreement shall apply to any and all joint conferences or communications, whether written, oral, or e-mail, conducted by, between, or among the Parties; the Parties and their counsel; or the Parties, their counsel, and their experts in connection with the Transition, and to all communications, whether written or oral, made by, between, or among the Parties; the Parties and their counsel, or the Parties, their counsel, and their experts, arising from, related to, or in connection with, the Transition including, but not limited to, potential, pending, and active claims, or liabilities and litigation that may be assumed by the County. This Agreement will also cover any information, document, or conversation explicitly designated as "Joint Defense and Common Interest Material" by agreement of the Parties.

5. No Disclosure of Materials.

Except as provided herein, the Parties shall not furnish or disclose any Materials that are privileged or otherwise protected from discovery or public release to any non-party to this Agreement without the prior written consent of the other Party or pursuant to court order. Materials shall be protected with all legally required means for safeguarding the type of information at issue. Materials may be disclosed to agents and employees of the Party, and their counsel, including experts, investigators, or consultants engaged for defense purposes or for the purpose of assisting the Transition, provided those persons shall be advised in advance of this Agreement and shall agree to abide by its terms. The requirements of this paragraph shall survive termination of this Agreement.

6. Demands for Disclosure of Materials by Non-Parties.

If a non-party to this Agreement requests or demands, by discovery request, subpoena, public records request, or otherwise, that a Party disclose or produce any Materials that are privileged or otherwise protected from discovery, the Party receiving the request shall immediately notify the other Party and give the other Party five (5) business days to respond to such notice before taking any action or making any decision in connection with such demand, discovery request, public records request, or subpoena. The Party that receives the demand, discovery request, public records request, or subpoena shall undertake all necessary action to protect the disclosure of Materials and all applicable rights and privileges with regard to this Agreement. The Party receiving the request shall also object to the request and shall assert all applicable rights and privileges with regard to this Agreement. The Party receiving the request shall not produce

documents or information in response to the request unless or until directed to do so by an order of court or authorized in writing by the other Party. The requirements of this paragraph shall survive termination of this Agreement.

7. No Obligations or Warranties.

Notwithstanding this Agreement, the Parties are under no obligation and are not required to exchange any information with the other Party even if the information may concern a matter of common interest. This Agreement does not give any Party the right or entitlement to any information. Further, no duty of loyalty will exist between an attorney and anyone other than his or her own client. All Materials and information exchanged between the Parties is provided solely on an "AS IS" basis with no warranty or representation as to its accuracy or suitability for any purpose or use. EACH DISCLOSING PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES PERTAINING TO THE MATERIALS AND CONFIDENTIAL INFORMATION, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. Termination.

The Parties agree that this Agreement shall remain in effect until completion of the Transition. A Party may terminate this Agreement upon written notice. Any termination is effective five (5) business days after receipt of written notice of the intent to terminate. During that five (5) business day period, the Agreement continues in effect. The Parties agree that upon termination, any information exchanged among them will remain confidential and shall be protected from disclosure except as provided in this Agreement.

9. Settlement.

Nothing contained in this Agreement shall limit the authority of any Party to settle, or offer to settle, some or all of the claims against that Party. Nothing contained herein authorizes any Party to bind any other party to such settlement or settlement offer. All Materials remain confidential and protected from disclosure if one or more Parties settle the claims against those Parties.

10. No Third-Party Beneficiaries.

The Parties expressly disavow any intention to create rights in any non-parties to this Agreement, and this Agreement shall not be construed to create any such rights.

11. Governing Law; Enforcement.

This Agreement and the rights and obligations of the Parties hereunder shall be governed and controlled by federal common law, applicable state and federal laws regarding confidentiality, and the laws of the State of Washington, and the Parties agree that any lawsuit between the Parties to enforce this Agreement shall be brought in Snohomish County. The Parties agree that a breach of the provisions of this Agreement by a Party will cause irreparable harm to the other Parties and that injunctive relief is therefore the appropriate means to enforce this Agreement.

12. Entire Agreement.

This Agreement constitutes the entire agreement between and among the Parties, and anyone acting for, associated with, or employed by any of the Parties, and supersedes any prior discussions, agreements or understandings, and there are no promises, representations, or agreements between and among the Parties or anyone acting for, associated with, or employed by any of the Parties other than as set forth in this Agreement.

13. Authority, Counterparts and Facsimile Signatures.

Each individual signing this Agreement warrants that he or she has the authority to enter into this Agreement on behalf of the party for which that individual signs. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be considered one and the same agreement, and any of the Parties' original signature may be obtained through facsimile signature.

14. Modification or Waiver.

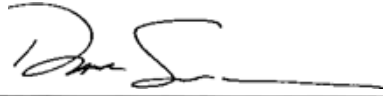
The provisions of this Agreement, including this section, may be modified or waived only in writing signed by each of the Parties affected by the modification or waiver. No waiver with respect to any portion of this Agreement shall apply to any other portion of this Agreement, and a waiver on one occasion shall not be deemed to be a waiver of the same or any other breach on a future occasion. No course of dealing by any of the Parties, and no failure, omission, delay, or forbearance by any of the Parties in exercising any rights or remedies, shall be deemed a waiver of any such rights or remedies or a modification of this Agreement.

15. Construction or Interpretation.

This Agreement is and shall be deemed jointly drafted and written by all of the Parties to it, and it shall not be construed or interpreted against any of the Parties originating or preparing it.

Dated this 25th day of August, 2022.

SNOHOMISH COUNTY:



Approved as to form:
ADAM CORNELL
Prosecuting Attorney



Rebecca J. Guadamud, WSBA No. 39718
Deputy Prosecuting Attorney
Attorneys for Snohomish County

SNOHOMISH HEALTH DISTRICT:

Shawn Frederick
Shawn Frederick (Aug 2, 2022 08:40 PDT)

Shawn Frederick
Administrative Officer

Nikki Thompson
Nikki Thompson (Aug 1, 2022 16:43 PDT)

Nikki Thompson, WSBA No. 37884
Noel Treat, WSBA No. 25296
Attorneys for Snohomish Health District

COUNCIL USE ONLY	
Approved	<u>8/24/2022</u>
ECAF #	<u>2022-0752</u>
MOT/ORD	<u>Ordinance 22-030</u>