

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

MOTION NO. 19-385

APPROVAL OF AMENDMENT NO 2 TO THE CONTRACT FOR SERVICES WITH
CHARLES H. MONTANGE FOR CONSULTATION AND REPRESENTATION
REGARDING CENTENNIAL TRAIL LEGAL RIGHTS

WHEREAS, Snohomish County acquired a property interest from the Port of Seattle by Real Estate Purchase and Sale Agreement dated March 8, 2016, and Quitclaim Deed recorded March 25, 2016; and

WHEREAS, Prior to the County's purchase of the property interest from the Port of Seattle, BNSF had reserved a freight easement known as Woodinville Freight Easement over the property interest; and

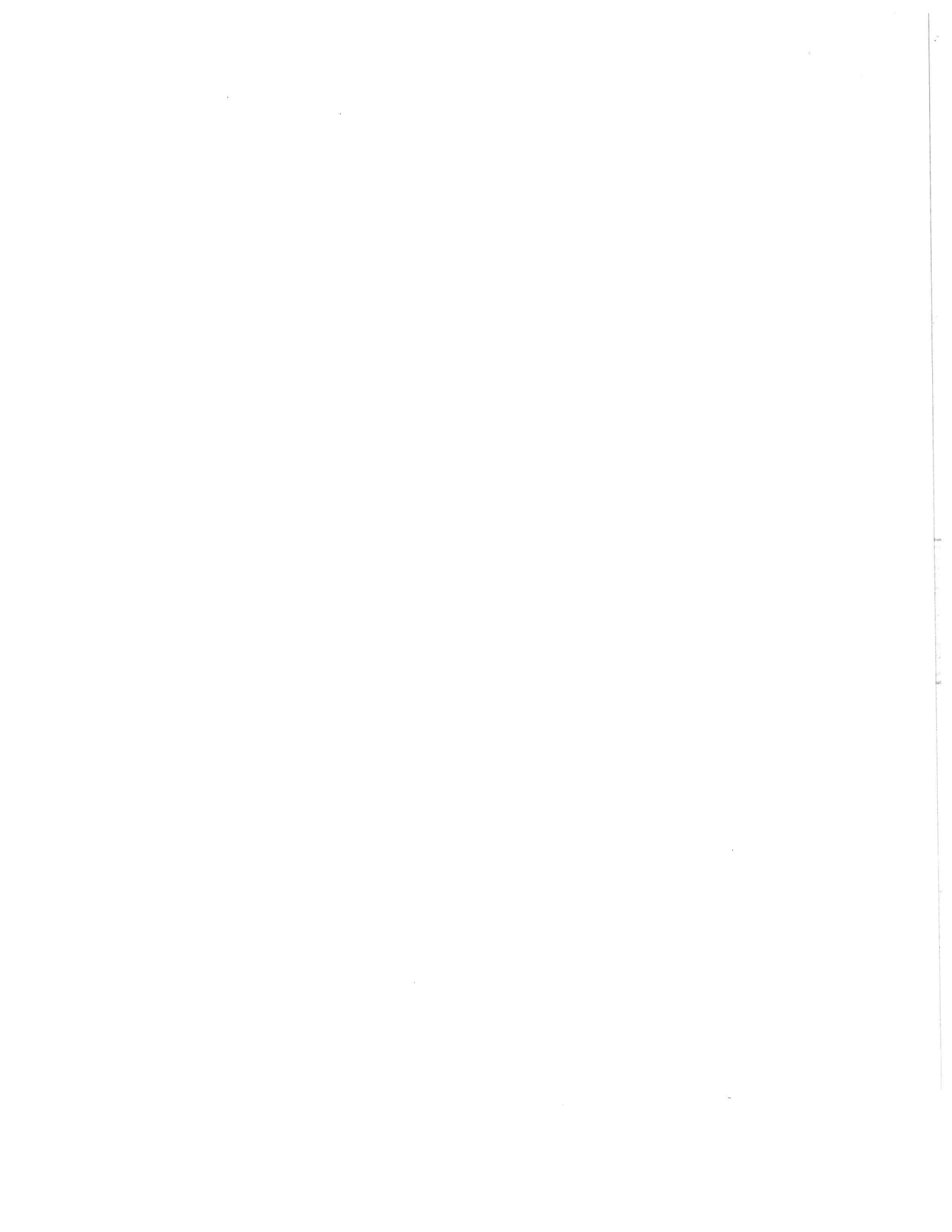
WHEREAS, Snohomish County has endeavored to design Centennial Trail South, a public trail that will be compatible with rail in the Woodinville Freight Corridor; and

WHEREAS, Snohomish County has recognized the need to verify and protect its property rights obtained in the Purchase and Sale Agreement and associated with the Woodinville Freight Easement; and

WHEREAS, Snohomish County has engaged an attorney with knowledge and experience regarding the representation of property owners concerning such rights and desires to amend its previous agreement with the attorney concerning representation by and compensation of said attorney; and

WHEREAS additional compensation is needed in order to cover additional expenses through 2020 in order to continue the efforts in connection with the current conditions and risks associated with the expiration of the current Operations and Maintenance Agreement that outlines responsibilities of the parties;

NOW, THEREFORE, ON MOTION, the Snohomish County Council hereby approves and authorizes the County Executive to sign and execute the Amendment No. 2 to Agreement for Legal Consultation Services with attorney Charles H. Montange ("Amendment"), and in doing so further ratifies the work previously performed by attorney Montange pursuant to the Amendment.



DATED this 4th day of December, 2019.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington



Council Chair

ATTEST:



Asst. Clerk of the Council

D-4

CONTRACTOR: Charles H. Montange
ADDRESS: 426 NW 162ND St., Seattle, WA 98177
TELEPHONE: 206-546-1936
COUNTY DEPT.: Snohomish County Parks/ Prosecuting Attorney
PROJECT: Legal Consultation Services
AMOUNT: Not to Exceed \$165,000
FUND SOURCE: 309-51094905056199

AMENDMENT NO. 2 TO AGREEMENT FOR LEGAL CONSULTATION SERVICES

This Amendment Number 2 to Agreement for Legal Consultation Services executed February 11, 2019 ("Amendment No. 2" to "Agreement") is made between Snohomish County, a political subdivision of the State of Washington (hereinafter referred to as "County"), through the office of the Prosecuting Attorney, and attorney Charles H. Montange (hereinafter referred to as "Attorney"), whose office is located in Shoreline, Washington. In consideration of the mutual promises contained herein as set forth below, the parties agree to amend the Agreement as follows:

1. Section IV, entitled "Compensation," shall be amended to read in its entirety as follows:

The County shall pay Attorney for the above-described services at Attorney's standard billing rate of \$250.00 per hour plus reasonable costs and expenses. Reasonable expenses shall include copying, long distance telephone calls, organization of materials, filing costs and associated fees, and other incidental expenses at cost to the Attorney, but does not include ordinary overhead such as office, secretary, or paralegal expenses, stationary costs, and other expenses not directly incident to a specific request for services.

Attorney will advise County of likely amounts upon request for specific tasks in advance, to the best of his ability, but shall not be bound to those amounts. The total fee for Attorney's services pursuant to this Agreement shall not exceed \$165,000.00 without amendment of this Agreement containing written authorization for fees(s) in excess of that amount.

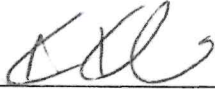
2. All other terms and conditions of Agreement shall remain in full force and effect except as amended.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed as follows:

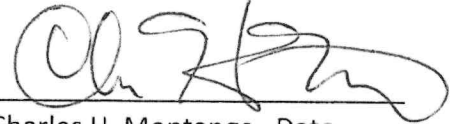
DATED this 4th day of December 2019.

COUNTY:

ATTORNEY:

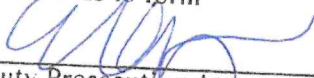


Ken Klein
Executive Director



Charles H. Montange Date

Approved as to form



Deputy Prosecuting Attorney
Snohomish County, WA

COUNCIL USE ONLY	
Approved:	<u>12.4.19</u>
Docfile:	<u>D-4</u>

CONTRACTOR: Charles H. Montange
ADDRESS: 426 NW 162nd St.
Seattle, WA 98177
TELEPHONE: 206-546-1936
COUNTY DEPT.: Snohomish County Parks
PROJECT: Legal Consultation Services
AMOUNT: Not to Exceed \$50,000
FUND SOURCE: 309-51094905056199

AMENDMENT TO AGREEMENT FOR LEGAL CONSULTATION SERVICES

THIS AMENDMENT NO. 1 TO AGREEMENT FOR LEGAL CONSULTATION SERVICES EXECUTED MARCH 27, 2018, is made between Snohomish County, a political subdivision of the State of Washington (hereinafter referred to as COUNTY), through the office of the Prosecuting Attorney, and Charles H. Montange (hereinafter referred to as ATTORNEY), whose office is located in Shoreline, Washington. In consideration of the mutual promises exchanged, the parties agree as follows:

The Agreement for Legal Consultation Services Executed March 27, 2018, is hereby amended as follows:

1. Section I, entitled "Purpose of Agreement," is amended to read in its entirety as follows:

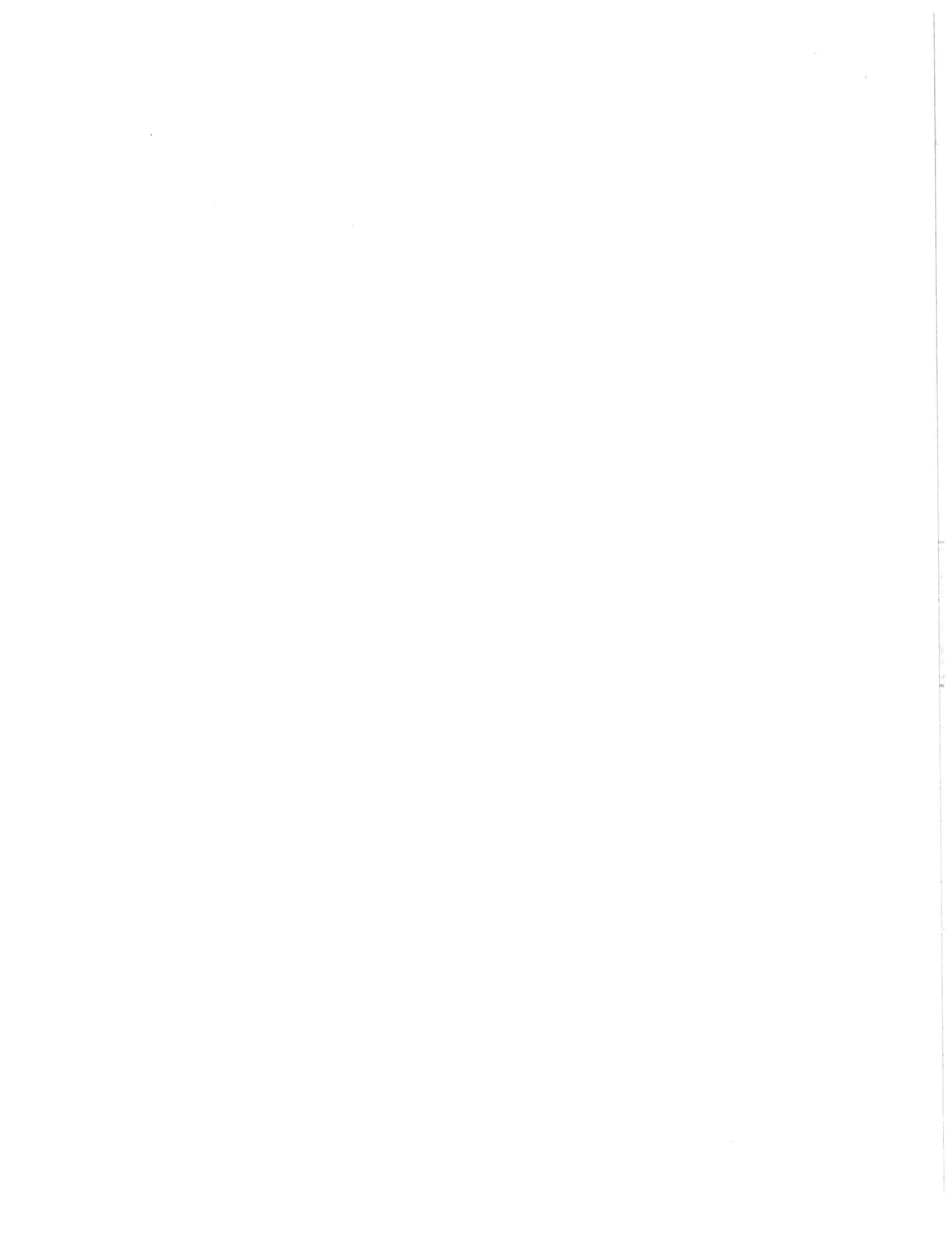
I. PURPOSE OF AGREEMENT

The COUNTY is retaining ATTORNEY to advise and represent the COUNTY regarding its rights, obligations, and potential options in connection with a rail corridor located in Snohomish County. *See Snohomish County – Pet for Dec. Order, STB dkt F.D. 35830, served March 5, 2015.*

2. Section II, entitled "Description of Services," is amended to read in its entirety as follows:

II. DESCRIPTION OF SERVICES

ATTORNEY shall provide legal services to COUNTY upon request as provided in Article I, including but not limited to the following:



CONTRACTOR: Charles H. Montange
ADDRESS: 426 NW 162nd St., Seattle, WA 98177
TELEPHONE: 206-546-1936
COUNTY DEPT.: Snohomish County Parks/Prosecuting Attorney
PROJECT: Legal Consultation Services
AMOUNT: Not to Exceed \$10,000
FUND SOURCE: 309-51094905056199

AGREEMENT FOR LEGAL CONSULTATION SERVICES

THIS AGREEMENT is made between Snohomish County, a political subdivision of the State of Washington (hereinafter referred to as COUNTY), through the office of the Prosecuting Attorney, and Charles H. Montange (hereinafter referred to as ATTORNEY), whose office is located in Shoreline, Washington. In consideration of the mutual promises contained herein agree as set forth below, the parties agree as follows:

I. PURPOSE OF AGREEMENT

The COUNTY is retaining ATTORNEY to advise and represent the COUNTY regarding its rights, obligations, and options in connection with a rail corridor purchased by the COUNTY from the Port of Seattle and commonly referred to as the Eastside Rail Corridor, located in Snohomish County.

II. DESCRIPTION OF SERVICES

ATTORNEY shall provide legal services to COUNTY upon request as provided in Article I, including but not limited to the following:

Based on information provided by the COUNTY (including but not necessarily limited to operating agreements and contracts relating to the right of way covered in F.D. 35830, information concerning property ownership, and rail uses and volumes), ATTORNEY will provide opinion and advice concerning rights, requirements, obligations, and options of COUNTY in connection with said right of way; ATTORNEY will represent COUNTY before administrative bodies, tribunals, boards and/or courts as necessary and as requested and authorized by COUNTY; ATTORNEY does not guarantee any particular result or outcome.

Advice and representation of the COUNTY shall include advice regarding and representation before the federal Surface Transportation Board as requested

by the COUNTY. Advice and representation of the COUNTY may also include advice regarding and representation in state and federal courts as requested by the COUNTY.

In matters concerning performance under this agreement, ATTORNEY shall report to Deputy Prosecuting Attorney Sean Reay of the Civil Division of the Snohomish County Prosecuting Attorney's Office. ATTORNEY shall be special deputized in connection with his performance of services under this agreement.

III. DURATION

This agreement shall take effect upon execution by the parties and shall expire on December 31, 2020, unless renewed by written agreement between COUNTY and ATTORNEY or terminated as provided in this agreement. PROVIDED HOWEVER, that any financial obligations of the County after December 31, 2019, shall be conditioned upon legislative appropriation and approval of same. The agreement is intended to and shall be construed to ratify work by ATTORNEY consistent with this agreement from January 1, 2019, to the date of execution.

IV. COMPENSATION

The COUNTY shall pay ATTORNEY for the above-described services at ATTORNEY's standard billing rate of \$250.00 per hour plus reasonable costs and expenses. Reasonable expenses shall include copying, long distance telephone calls, organization of materials, filing costs and associated fees, and other incidental expenses at cost to the ATTORNEY, but does not include ordinary overhead such as office, secretary, or paralegal expenses, stationary costs, and other expenses not directly incident to a specific request for services.

ATTORNEY will advise COUNTY of likely amounts upon request for specific tasks in advance, to the best of his ability, but shall not be bound to those amounts. The total fee for Attorney's services pursuant to this Agreement shall not exceed \$10,000.00 without amendment of this Agreement containing written authorization for fee(s) in excess of that amount.

V. BILLING AND RECORD KEEPING

ATTORNEY shall submit billing statements to COUNTY on a monthly (or as otherwise deemed practicable) basis, except for months during which no services are provided. Statements shall be addressed to:

Jason J. Cummings, Chief Civil Deputy
Sean D. Reay, deputy prosecuting attorney
Snohomish County Prosecuting Attorney's Office
Robert J. Drewel Building

3000 Rockefeller Ave., M/S 504
Everett, Washington 98201-4060

Each billing statement shall itemize the work performed, time expended, and who performed it (if not Charles Montange). Appropriate supporting documentation of expenses shall be included. Payment shall be due within 30 days of receipt of invoice by COUNTY. COUNTY may, at reasonable times, inspect the books and records of ATTORNEY relating to service and charges under this agreement.

VI. RELATIONSHIP OF PARTIES

ATTORNEY agrees that ATTORNEY will perform services under this agreement as an independent contractor and not as an agent, employee, or servant of COUNTY. ATTORNEY and its employees are not entitled to any benefits or rights enjoyed by employees of the COUNTY.

The parties intend this agreement to create the relationship of attorney and client. ATTORNEY shall abide by and perform its duties in accordance with the ethical rules applicable to attorneys admitted to practice in Washington and with all federal, state, and local laws, regulations, and ordinances. ATTORNEY shall protect the confidentiality of all communications between ATTORNEY and COUNTY, its officers, agents or employees, except as expressly authorized in writing by COUNTY.

VII. OWNERSHIP OF DOCUMENTS

All reports, plans, pleadings, opinions, analyses, data, or other documents produced in the performance of this agreement shall be the property of COUNTY. Copies of documents prepared in the connection with legal services provided under this agreement shall be provided to COUNTY upon request.

VIII. TERMINATION

This agreement may be terminated at any time by either party upon giving the other party written notice of termination directed to the other party at the mailing address provided herein, in which case COUNTY shall pay ATTORNEY for all services provided by ATTORNEY prior to termination. Upon notice of termination, no further fees or expenses may be incurred. Termination shall not affect the rights of COUNTY under any other provision of this agreement.

IX. WARRANTY AND HOLD HARMLESS

ATTORNEY represents and warrants that: each attorney providing services under this contract is a member in good standing before the Washington State Bar Association; no disciplinary proceedings are pending against them; all necessary

investigations have been made to identify conflicts; and all conflicts have been disclosed and will continue to be disclosed to COUNTY.

X. CHANGES

No changes or additions shall be made in this contract except as agreed to by both parties and reduced to writing and executed with the same formalities as required for the execution of this agreement.

XI. NON-ASSIGNMENT

ATTORNEY shall not subcontract, assign, or delegate any of its rights or duties under this agreement except as provided in this agreement.

XII. NON-DISCRIMINATION

The ATTORNEY shall comply with the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC, which is incorporated herein by this reference. Execution of this contract constitutes a certification by the ATTORNEY of the ATTORNEY's compliance with the requirements of Chapter 2.460 SCC. If the ATTORNEY is found to have violated this provision, or furnished false or misleading information in an investigation or proceeding conducted pursuant to Chapter 2.460 SCC, this contract may be subject to a declaration of default and termination at the COUNTY's discretion. This provision shall not affect the ATTORNEY's obligations under other laws against discrimination.

XIII. GOVERNING LAW AND VENUE

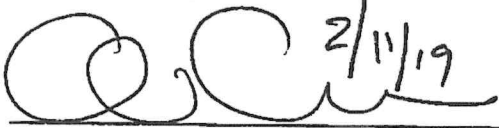
The laws of the State of Washington shall govern this agreement and the parties stipulate that any lawsuit regarding this agreement must be brought in Snohomish County, Washington.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed as follows:

DATED this 11th day of February 2019.

COUNTY:

ATTORNEY:


Date 2/11/19
Adam Cornell
Prosecuting Attorney⁴


Date 4 Feb 2019
Charles H. Montange

