

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

MOTION NO. 25-191

APPROVING 1st AMENDMENT TO 2024 CONTRACT FOR LEGAL SERVICES

WHEREAS, Plaintiff Marcus Whybark had an interaction with Defendants Deputy Carl D. Whalen and Deputy Kenneth P. Fredericksen on July 9, 2023; and

WHEREAS, Marcus Whybark filed a lawsuit on May 20, 2024, this time in the United States District Court for the Western District of Washington, against Mr. Whalen and Mr. Fredericksen, each individually; and

WHEREAS, the Rules of Professional Conduct preclude the Civil Division from representing Snohomish County, employees of Snohomish County, former employees of Snohomish County, and volunteers acting on behalf of Snohomish County, and which require outside counsel to provide representation in the civil lawsuit; and

WHEREAS, the Snohomish County Prosecuting Attorney, consistent with his authority under state law, county charter and county code, procured a Contract for Special Services with Shannon Ragonesi of Keating, Bucklin and McCormick for the purpose of representing Snohomish County and Carl D. Whalen; and

WHEREAS, the initial Contract for Special Services with Shannon Ragonesi and Keating Bucklin and McCormick executed on May 28, 2024, was not to exceed \$50,000; and

WHEREAS, litigation is in its early stages and will likely continue for the foreseeable future, as all parties are fully immersed in all aspects of discovery;

NOW, THEREFORE, ON MOTION, the Snohomish County Council authorizes the County Executive to sign the attached 1st Amendment to 2024 Contract for Special Services with Shannon Ragonesi and Keating Bucklin and McCormick in an amount not to exceed \$150,000.00.

PASSED this _____ day of _____, 2025.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

Council Chair

ATTEST:

Deputy Clerk of the Council

1st AMENDED CONTRACT FOR LEGAL SERVICES
(TORT LITIGATION)

SNOHOMISH COUNTY, through the office of the Prosecuting Attorney (hereinafter referred to as “County”), and SHANNON RAGONESI at KEATING, BUCKLIN & McCORMACK (hereinafter referred to as “Attorney”), in consideration of the mutual promises contained herein agree as set forth below. This amended agreement is entered into between the County and the Attorney for the express and limited purpose of amending Section 3, ¶ 1 (pg. 2) of the original Contract for Legal Services, originally entered into between the parties on May 28, 2024.

I. PURPOSE

On May 20, 2024, a lawsuit was filed against Snohomish County. Attorneys Edwin S. Budge, Erik J. Heipt, and Andrea R. Woods of Budge & Heipt, P.L.L.C. filed the lawsuit on behalf of Marcus Whybark. (*Marcus Whybark, an individual v. Carl D. Whalen, an individual, and Kenneth P. Fredericksen, an individual*; United States District Court for the Western District of Washington, 2:24-cv-00692). The suit alleges, among other things, Excessive Force, Assault, Battery, and Outrage arising out of an alleged excessive use of force by Snohomish County Sheriff’s Deputies during their contact with Plaintiff Marcus Whybark on July 9, 2023.

The circumstances involving the police contact with Marcus Whybark was investigated by an independent multi-agency team (SMART). Representation of the deputies by the Snohomish County Prosecuting Attorney presents a potential conflict of interest, and it has become necessary to hire outside counsel to provide representation for the deputies.

II. SCOPE OF WORK AND DUTY OF THE ATTORNEY

The Attorney shall act as independent counsel for and represent Defendant Carl D. Whalen in the matter of *Marcus Whybark, an individual v. Carl D. Whalen, an individual, and Kenneth P.*

Fredericksen, an individual; United States District Court for the Western District of Washington, 2:24-cv-00692.

The Attorney shall advise the Snohomish County Prosecutor and the Snohomish County Executive's Office and/or Snohomish County Risk Manager Sheila Barker in the event any County employee fails or refuses to cooperate with the representation by the Attorney.

III. FEES AND EXPENSES

The County shall pay Attorney for services provided relating to the above-described services at Attorney's standard billing rate for such services, provided such rate does not exceed \$285 for shareholders, \$252 for senior associates and \$246 for junior associates per hour, plus reasonable expenses. The Attorney may delegate services to other counsel in the firm or legal assistants employed by Attorney to assist them in providing legal services under this agreement in a cost-effective manner, provided that other counsel and legal assistants shall work at the specific direction and subject to the approval of Attorney. The aggregate fee for Attorney's services shall not exceed ***\$150,000.00*** without the prior written consent of the County. The term "reasonable expenses" shall include filing fees, witness fees, travel expenses, copying, long distance telephone calls, preparation of transcripts, expenses of depositions, 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.

IV. PAYMENT

All fees and expenses shall be billed monthly. Billings shall be directed to Snohomish County Risk Manager Sheila Barker and reference the claim by name and by the Snohomish County Prosecuting Attorney's file number C24-013.

V. DURATION OF CONTRACT

This contract shall be in effect as of the date it is executed, and shall continue, unless terminated, until the conclusion of litigation.

VI. 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 federal, state, or local laws against discrimination.

VII. TERMINATION

The County may terminate this contract as to any Attorney providing service under this contract who violates any provision of this contract, or any rule of professional conduct or other law, or is subject to discipline under the Rules for Lawyer Discipline. In case of termination, the County shall pay Attorney for all services provided in accordance with this contract through the date of termination. Upon notice of termination, no further fees or expenses may be incurred except to the extent necessary to safeguard the interest of the County as authorized by Snohomish County Risk Manager Sheila Barker.

VIII. RELATIONSHIP OF PARTIES

Attorney agrees that Attorney will perform services under this agreement as independent contractors and not as an agents, employees, or servants of County. Attorney and their employees are not entitled to any benefits or rights enjoyed by employees of the County.

IX. NON-ASSIGNMENT

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

X. GOVERNING LAW AND VENUE

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

XI. 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 are required for the execution of this agreement.

XII. WARRANTY, HOLD HARMLESS, AND INSURANCE REQUIREMENTS

1. Attorney represents and warrants that each Attorney providing services under this contract is a member in good standing of the Washington State Bar Association, that no disciplinary proceedings are pending against them, that all necessary investigations have been made to identify conflicts, and that all conflicts have been disclosed and will continue to be disclosed to County. Attorney further warrants that they carry and will maintain adequate professional liability insurance for work performed under this agreement during the term of this agreement. Attorney shall disclose such insurance coverage to County upon request.

2. Attorney shall protect, save harmless, indemnify, and defend, at their own expense, Snohomish County, its elected and appointed officials, officers, employees, and agents, from any loss or claim for damages of any nature whatsoever arising out of Attorney's negligence, intentional, tortious, or wrongful acts in the performance of this agreement, including claims by Attorney's employees or third parties. This provision shall not include claims or judgments for professional negligence, which are addressed in paragraph 3 below.

3. Attorney shall protect, save harmless, and indemnify, at their own expense, Snohomish County, its elected and appointed officials, officers, employees, and agents, from any loss or claim for damages of any nature whatsoever arising out of Attorney's professional negligence, which shall include, but is not limited to, any act covered by professional liability insurance maintained continuously by Attorney for the duration of this contract. Claims based on legal malpractice will only be reimbursed after being reduced to judgment or settlement, but Attorney agrees that reimbursement shall include any judgment or settlement amount, and all costs incurred by the County in defending the action, including but not limited to reasonable Attorney's fees and other costs of litigation.

4. Attorney's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days' prior written notice has been given to the County. Attorney shall give the County thirty (30) days' written prior notice of a reduction to or cancellation of coverage, and ten (10) days' notice of cancellation due to non-payment of premium, which the Attorney shall fax to Snohomish County Risk Management at (425) 388-3499.

5. All deductibles or self-insured retentions shall be the responsibility of the Attorney. Deductibles or self-insured retentions more than Fifty Thousand Dollars (\$50,000.00) must be disclosed and are subject to approval by the County's Risk Manager.

