

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

PROPOSED SUBSTITUTE MOTION NO. 22-372

APPROVING SECOND AMENDMENT TO 2021 CONTRACT FOR LEGAL SERVICES

WHEREAS, on March 21, 2017, Sheriff's deputies responded to a 911 call. An extended altercation between deputies and a 29-year-old suspect, Alexander W. Dold, ensued. It is our understanding that both impact weapons and a Taser were used during the altercation. Once a total of six law enforcement officers arrived, Mr. Dold was able to be controlled. Mr. Dold subsequently became unresponsive, deputies' efforts to revive him were unsuccessful, and he passed away. The incident was investigated by Snohomish County Multiple Agency Response Team (SMART); and

WHEREAS, on March 10, 2020, Plaintiffs' Jennifer Dold (sister and Personal Representative of Alexander Dold's Estate) and Kathy Duncan (Alexander Dold's mother) filed a lawsuit in United States District Court for the Western District of Washington, Case No. C20-383-RAJ; and

WHEREAS, the Rules of Professional Conduct preclude the Civil Division from representing Snohomish County, former employees of Snohomish County, and former employees of Snohomish County and volunteers acting on behalf of Snohomish County where a conflict of interest may exist, 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 Legal Services with Theron A. "Ted" Buck of Frey Buck, P.S. for the purpose representing Snohomish County; and

WHEREAS, the initial Contract for Legal Services with Theron A. "Ted" Buck and Frey Buck, P.S. fully executed by all parties on February 12, 2021 was not to exceed \$50,000; and

WHEREAS, the First Amended Contract for Legal Services with Theron A. "Ted" Buck and Frey Buck, P.S. signed by all parties on February 11, 2022 was not to exceed \$100,000; and

WHEREAS, this First Amended Contract, however, it did not make it to Council for review and approval, and shortly after it was signed by all parties. There was a flurry of activity in *Dold, et al. v. Snohomish County, et al.* and legal fees surpassed the \$100,000 cap requested in the First Amended Complaint before it could be fully executed; and

WHEREAS, the Second Amended Contract for Legal Services with Theron A. "Ted" Buck and Frey Buck, P.S. executed on August 25, 2022 is not to exceed \$300,000; and

WHEREAS, litigation is still ongoing and will likely continue for the unforeseeable future;

NOW, THEREFORE, ON MOTION, the Snohomish County Council hereby authorizes and ratifies the First Amendment and further authorizes the County Executive to sign the attached Second Amendment to 2021 Contract for Legal Services with Theron A. "Ted" Buck and Frey Buck, P.S. in an amount not to exceed \$300,000.00.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

\_\_\_\_\_  
Council Chair

ATTEST:

\_\_\_\_\_  
Asst. Clerk of the Council

**SECOND AMENDED CONTRACT FOR LEGAL SERVICES**  
**(TORT LITIGATION)**

SNOHOMISH COUNTY, through the office of the Snohomish County Prosecuting Attorney (hereinafter referred to as “the County”), and THERON A. “TED” BUCK, of the law firm of Frey Buck P.S. (hereinafter referred to as “Attorney”), in consideration of the mutual promises contained herein agree as set forth below. This second amended agreement is entered into between the County and the Attorney for the express and limited purpose of amending Section III (pg. 2) and Section XII, ¶ 5 (pg. 6) of the First Amended Contract for Legal Services, originally entered into between the parties on February 14, 2022:

**I. PURPOSE**

On March 10, 2020, a lawsuit was filed against Snohomish County, and former Snohomish County Sheriff Deputies Bryson McGee and Cody McCoy. Attorney James E. Lobsenz of Carney Badley Spellman, P.S. filed the lawsuit on behalf of Jennifer Dold, as Personal Representative for the Estate of Alexander Dold and Kathy Duncan, the decedent’s mother. (*Jennifer Dold, Personal Representative of the Estate of Alexander Dold; and Kathy Duncan, mother of Alexander Dold v. Snohomish County, a political subdivision of the State of Washington; Bryson McGee; and Cody McCoy*; United States District Court No. 2:20-cv-00383-RAJ). The suit alleges, among other things, deprivation of Alexander Dold’s Fourth Amendment Rights pursuant to 28 U.S.C §1983 arising out of an alleged excessive use of force by former Snohomish County Sheriff Deputies McGee and McCoy during their contact with Decedent Alexander Dold on March 21, 2017.

Although the Snohomish County Prosecuting Attorney’s Office undertook joint representation of the County and former Deputy McGee, a potential conflict of interest emerged in representing former Deputy McGee. As a result, it became necessary to retain outside counsel to provide representation for the County.

## **II. SCOPE OF WORK AND DUTY OF THE ATTORNEY**

The Attorney shall act as independent counsel for and represent Snohomish County in the matter of *Jennifer Dold, et al. v. Snohomish County, et al.*, United States District Court No. 2:20-cv-00383-RAJ.

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 representation by 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 \$335 for principal/case lead counsel, \$275 for associates and \$170 for paralegals per hour, plus reasonable expenses. The Attorney may delegate services to other counsel in the firm or legal assistants employed by Attorney to assist him 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 Three Hundred Thousand (***\$300,000.00***) without the prior written consent of Snohomish 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 or secretary 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 either the lawsuit by name or by the Snohomish County Prosecuting Attorney's Office file number C20-027.

**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 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.

### **IX. NON-ASSIGNMENT**

Attorney shall not subcontract, assign, or delegate any of its 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 the County. Attorney further warrants that it carries 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 the County upon request.

2. Attorney shall protect, save harmless, indemnify, and defend, at its 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 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 its 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' written 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 in excess of Three Hundred Thousand (\$300,000.00) must be disclosed and are subject to approval by the County's Risk Manager.

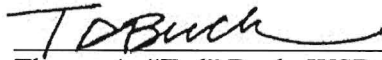
IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed as follows:

**SNOHOMISH COUNTY**

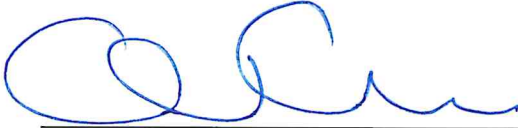
a political subdivision of  
the State of Washington

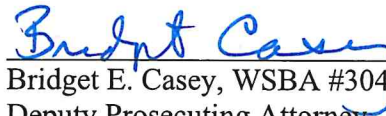
**FREY BUCK, P.S.**

\_\_\_\_\_  
Dave Somers Date  
Snohomish County Executive

 8/17/2022  
Theron A. "Ted" Buck, WSBA #22029 Date

Approved as to Form:

  
\_\_\_\_\_  
Adam Cornell, WSBA #32206 Date 25 August, 2022  
Snohomish County Prosecuting Attorney

  
\_\_\_\_\_  
Bridget E. Casey, WSBA #30459 Date 8/25/2022  
Deputy Prosecuting Attorney