

THIRD 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 third 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 Second Amended Contract for Legal Services, fully executed on September 29, 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 Four Hundred Twenty-Five Thousand Dollars (*\$425,000.00*) 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 Fifty Thousand Dollars (\$50,000.00) 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

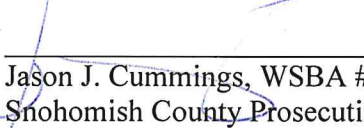
FREY BUCK, P.S.




Dave Somers Date
Snohomish County Executive
Ken Klein
Executive Director

Theron A. "Ted" Buck, WSBA #22029 Date

Approved as to Form:



Jason J. Cummings, WSBA #32206 Date
Snohomish County Prosecuting Attorney 3/20/23



Geoffrey A. Enns, WSBA #40682 Date
Deputy Prosecuting Attorney 3/17/23

COUNCIL USE ONLY	
Approved	<u>4/5/2023</u>
ECAF #	<u>2023-0306</u>
MOT/ORD	<u>Motion 23-126</u>