

SHUTE, MIHALY  
& WEINBERGER LLP

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**ATTORNEY-CLIENT COMMUNICATION  
PRIVILEGED AND CONFIDENTIAL**

June 20, 2016

Barbara Thompson  
Assistant County Administrative Officer  
Acting Assistant County Counsel  
San Benito County  
County Administration Building  
481 4th St., 1st Floor  
Hollister, CA 95023-3840

Re: Legal Retainer Agreement

Dear Barbara:

This letter sets forth the terms under which Shute, Mihaly & Weinberger LLP ("Firm") will provide legal services to the County of San Benito ("Client") in connection with the Class 1 area of the John Smith Road Landfill, owned by the City of Hollister ("Class 1 facility"). If you agree to the terms of this retainer agreement ("Agreement"), please sign this letter and return it to me at your earliest convenience.

**1. Legal Services to Be Provided**

The Firm is retained to provide Client the following legal services: advise Client regarding the post closure permit and cost issues related to the Class 1 facility and provide other advice regarding the Class 1 facility as requested by Client.

**2. Legal Fees, Costs and Billing Practices**

The Firm's hourly billing rates for these services will be as follows:

Partner	\$275
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Jr. Partner	\$255
Associate III	\$245
Associate II	\$235
Associate I	\$205
Planner	\$180
Paralegal	\$110
Law Clerk	\$70

Fees will not exceed \$10,000 without further authorization from Client. Fees will be charged in increments of one-tenth of an hour. The Firm will annually increase these billing rates consistent with any annual increase in the Consumer Price Index (October over October time period) for All Urban Consumers (not seasonally adjusted) San Francisco-Oakland-San Jose area (1982-1984 = 100) as published by the Bureau of Labor Statistics, U.S. Department of Labor, rounded to the nearest whole \$1. The Firm will implement the increase each year on January 1<sup>st</sup>, or as soon thereafter as the CPI information is published. If Client declines to pay for the Firm's services at any increased rates, the Firm will have the right to withdraw as Client's attorneys. The Firm has errors and omissions insurance coverage applicable to the services being provided under this Agreement.

Client will also reimburse Firm for costs incurred in the course of representation, including fees fixed by law or assessed by public agencies, long-distance telephone, facsimile, messenger services, postage, photocopying, and charges for electronic legal research time. In the event of out of town travel, Client agrees to pay all transportation costs, lodging, parking, and meals, as well as the hourly rates for attorney travel time. The Firm will provide detailed monthly billing statements for fees and costs incurred. Client agrees to pay the Firm's billed costs and fees within thirty (30) days following billing.

**3. Authorized Representative of Client**

Client designates Barbara Thompson as the authorized representative to direct the Firm and to be the primary person to communicate with the Firm regarding the subject matter of this Agreement. This designation is intended to establish a clear line of authority and to minimize potential uncertainty, but not to preclude communication between the Firm and other representatives of Client. Unless directed otherwise by Client, all correspondence and bills will be directed to the authorized representative.

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**4. Discharge and Withdrawal**

Client may discharge the Firm at any time by providing written notice to the Firm, which is effective upon receipt by the Firm. In the event of such discharge, if the Firm is Client's attorney of record in any proceeding, the Firm will promptly provide Client with a substitution of attorney form. Client will execute and return the substitution of attorney form immediately upon receipt from the Firm.

The Firm may withdraw at any time as permitted under the Rules of Professional Conduct of the State Bar of California. A valid reason for withdrawal by the Firm would include, but not be limited to, Client's consent, Client's breach of this Agreement, Client's failure to pay fees and costs as provided in this Agreement, Client's conduct renders it unreasonably difficult for the Firm to carry out the representation effectively, or any fact or circumstances that would render the Firm's continuing representation unlawful or unethical. At such time as the Firm's services conclude, all unpaid fees for legal and related services and costs and expenses will immediately become due and payable.

**5. Case File**

After the Firm's services conclude, the Firm will, upon Client's request, deliver the file for this matter to Client. If Client does not request the file for this matter, the Firm will retain it for a period of five years after the matter is closed. If Client does not request delivery of the file for this matter before the end of the five-year period, the Firm will have no further obligation to retain the file and may, at the Firm's discretion, destroy it without further notice to Client. At any point during the five-year period, Client may request delivery of the file. If Client so requests, paper copies of original documents (or the originals themselves) will be provided free of charge. Client agrees to pay for any additional fees or costs incurred to produce electronic files, if Client requests those files.

**6. No Guarantee**

Nothing in this Agreement and nothing in the Firm's statements to Client will be construed as a promise or guarantee about the outcome of this matter. The Firm makes no such promises or guarantees.

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**7. Conflicts Waiver**

Please be advised that our Firm represents public agencies and private organizations in land use and environmental matters throughout California. Accordingly, it is agreed, and you hereby consent, that our attorney-client relationship with you in this matter will not serve as a basis for the Firm's disqualification from representing other clients or parties in any legal proceedings, cases, controversies, or matters, other than those in which we represent you, except if and to the extent absolutely and non-waivably required by the Rules of Professional Conduct.

As we have discussed, the Firm has represented and will likely continue to represent San Benito Rising in connection with a ban on the use of land in San Benito County for fracking and other high intensity petroleum operation ("fracking matter"). We do not believe that there is any conflict of interest between our representation of Client in this matter and our work for San Benito Rising. Moreover, we do not believe that we have received any confidential communication from San Benito Rising that would be relevant to this matter. Although the fracking matter and this matter are unrelated and are unlikely to result in the firm obtaining any confidential information from San Benito Rising relevant to our representation of Client, our representation of Client in this matter will put the Firm in a position of representing two clients whose interests are potentially adverse. Notwithstanding the absence of any risk to confidential information, this situation does give rise to the possibility of divided loyalty on the part of our Firm.

Although we are not aware of any actual or reasonably foreseeable adverse effects of such potential divided loyalty in this case, it is possible that such effects may arise. Because it is at least arguably possible that an actual or potential conflict of interest could develop in the future between our work for San Benito Rising in the fracking matter and our work for Client, we have decided to seek Client's informed written consent to that work prior to undertaking any work on this matter.

Should an actual conflict arise, we will endeavor to apprise you promptly of the conflict. In the event that an actual conflict of interest should arise, by signing this letter Client consents to the Firm's continued representation of San Benito rising in the fracking matter. Client further agrees not to assert any such conflict of interest or to seek to disqualify us from representing San Benito Rising in the fracking matter, notwithstanding any adversity that may develop in the future.

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Of course, you have the option of retaining separate counsel in this matter. Notwithstanding the risks described in this letter, you have advised us that you do not wish to seek other counsel at this time. I encourage you to seek independent counsel regarding the import of this consent, if you so desire, and would emphasize that you remain completely free to seek independent counsel at any time even if you decide to sign this Agreement.

By signing and returning this Agreement, you will consent to and waive any conflicts arising from this Firm's simultaneous representation of Client in this matter and San Benito Rising in the fracking matter and to this Firm's continued and future representation of San Benito Rising with regard to the fracking matter, and agree not to assert any conflict of interest or otherwise seek to disqualify this firm from representing San Benito Rising in the fracking matter notwithstanding any adversity that may develop in the future.

This agreement will be effective when it is signed by you. However, this agreement will apply to any services we may provide in connection with the engagement before the effective date.

We look forward to working with you on this matter. If this Agreement is satisfactory, please sign and return the executed agreement to me.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Tamara S. Galanter

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ACCEPTED AND AGREED:

Barbara Thompson

Barbara Thompson  
Assistant County Administrative Officer  
Acting Assistant County Counsel

Date: 6/20/16