

October 25, 2019

Via E-mail and U.S. Mail

County of San Benito
Attn: Harry Mavrogenes
Director, San Benito County Resource Management Agency
2301 Technology Pkwy
Hollister, CA 95023
Email: hmavrogenes@cosb.us

Re: Retainer Agreement for Legal Services

Dear Mr. Mavrogenes:

We are pleased to represent the County of San Benito ("Client") with respect to the matters described in this Agreement. The following sets forth the terms pursuant to which **BURKE, WILLIAMS & SORESENSEN, LLP** ("Burke") and Client agree that Burke will provide legal services to Client. The hallmark of any productive professional relationship is effective communication, and we would invite you to contact us at any time during or after our representation with regard to any questions you may have associated with our representation or the matters described herein.

1. CONDITIONS. This Agreement will not take effect, and Burke will have no obligation to provide legal services, until the Director of the Resource Management Agency (the "Director") returns a signed copy of this Agreement. Upon signature of the Director, this agreement shall be subject to ratification by the Board of Supervisors in accordance with Chapter 5.09 of the San Benito County Code. The effective date of this Agreement will be November 5, 2019.

2. SCOPE OF SERVICES. Client hires Burke to assist with land use entitlement and CEQA advice concerning proposed developments within the County. No representation of any directors, officers, employees, shareholders, or any other persons or entities affiliated with Client shall be provided unless such representation is expressly included in this Agreement. Burke will provide those legal services reasonably required to represent Client. Burke will take reasonable steps to keep Client informed of progress and to respond to Client's inquiries. Services in any matter not described above will require a separate written agreement or a written modification to this Agreement.

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3. CLIENT'S DUTIES. Client agrees to be truthful with Burke, to cooperate, to keep Burke informed of any information or developments which may come to Client's attention, to abide by this Agreement, to pay Burke's bills on time, and to keep Burke advised of Client's address, telephone number, and whereabouts. Client will assist Burke in providing necessary information and documents and will appear when necessary at legal proceedings. Client designates the Director as the principal contact for all work performed under this Agreement. The Director shall coordinate with the County Counsel in accordance with San Benito County Code Section 5.09.11.

4. CONFLICTS OF INTEREST. Before accepting representation of Client, Burke has undertaken reasonable and customary efforts to determine whether there are any potential conflicts of interest or adversity of positions between Client and any other person or entity that would bar Burke from representing Client in general or in any of the specific matters listed in this Agreement. Burke has reviewed this issue in accordance with the Rules of Professional Conduct adopted in California. Burke believes that those rules, rather than the rules of any other jurisdiction, are applicable to Client's representation. Client's execution and return of the enclosed copy of this letter represents an express agreement to the applicability of the Rules of Professional Conduct adopted in California to any and all representation arising under this Agreement.

5. DISCLOSURE. Pursuant to the requirements of California Business & Professions Code Section 6148, Burke hereby discloses that it maintains professional errors and omissions insurance.

6. LEGAL FEES AND BILLING PRACTICES. Client agrees to pay by the hour at Burke's prevailing rates for all time spent on Client's matter by Burke's legal personnel provided that charges for service under this Agreement shall not exceed Twenty Thousand Dollars (\$20,000), without approval from the Board of Supervisors. Current hourly rates for legal personnel are set forth in Attachment "A" to this Agreement. Burke's rates are subject to change on 30 days' written notice to Client. In addition, rates shall automatically increase annually on January 1 of each year as set forth in Attachment "A" to this Agreement. If Client declines to pay increased rates, Burke will have the right to withdraw as attorney for Client.

The time charged will include the time Burke spends on telephone calls relating to Client's matter, including calls with Client, witnesses, opposing counsel or court personnel. The legal personnel assigned to Client's matter may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel

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attends a meeting, court hearing or other proceeding, each will charge for the time spent. Burke will charge for waiting time in court and elsewhere and for travel time, both local and out-of-town.

7. COSTS AND OTHER CHARGES.

(a) Burke will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses in addition to the hourly fees. The costs and expenses commonly include: service of process charges, filing fees, court and deposition reporters' fees, jury fees, notary fees, deposition costs, long distance telephone charges, messenger and other delivery fees, postage, photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultants' fees, expert witness, professional, mediator, arbitrator and/or special master fees, unavoidable administrative staff and secretarial overtime, and other similar items. Except for the items listed below, all costs and expenses will be charged at Burke's cost.

In-office photocopying/page:	\$.20
In-office color photocopying/page	\$ 1.00
Facsimile charges/page:	\$ 1.00
Mileage/mile:	\$.58 (per IRS notices)
Other:	

(b) Out-of-town travel. Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Burke's personnel. Client will also be charged the hourly rates for the time legal personnel spend traveling.

8. BILLING STATEMENTS. Burke will send Client periodic statements for fees and costs incurred. Each statement will be payable within 30 days of its mailing date. Client may request a statement at intervals of less than 30 days. If Client so requests, Burke will provide one within 10 days. The statements shall include the amount, rate, basis of calculation or other method of determination of the fees and costs, which costs will be clearly identified by item and amount.

9. INTEREST CHARGES. If a billing statement is not paid by its due date, interest will be charged on the principal balance (fees, costs, and disbursements) shown on the statement. Interest will be calculated by multiplying the unpaid balance by the periodic rate of .833% per month (TEN PERCENT [10%] ANNUAL PERCENTAGE RATE). The unpaid balance will bear interest from the date of the invoice until paid.

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10. DISCHARGE AND WITHDRAWAL. Client may discharge Burke at any time. Burke may withdraw with Client's consent or for good cause. Good cause includes Client's breach of this Agreement, refusal to cooperate or to follow Burke's advice on a material matter or any fact or circumstance that would render Burke's continuing representation unlawful or unethical. When Burke's services conclude, all unpaid charges will immediately become due and payable. After services conclude, Burke will, upon Client's request, deliver Client's file, and property in Burke's possession, whether or not Client has paid for all services.

11. DOCUMENT RETENTION POLICY. Client is entitled upon written request to any files in Burke's possession relating to the legal services performed by Burke for Client, excluding Burke's internal accounting records and other documents not reasonably necessary to Client's representation, subject to Burke's right to make copies of any files withdrawn by Client. Once a matter is concluded, Burke will close the file, and Client will receive notice thereof. Client's physical files may be sent to storage offsite, and thereafter there may be an administrative cost for retrieving them from storage. Thus, it is recommended that Client request the return of a file at the conclusion of a matter. Under Burke's document retention policy, Burke normally destroys files five (5) years after a matter is closed, unless other arrangements are made with Client.

All client-supplied materials and all attorney end product (referred to generally as "client material") are the property of Client. Attorney end product includes, for example, finalized contracts, pleadings, and trust documents. Attorney work product is the property of Burke. Attorney work product includes, for example, drafts, notes, internal memoranda and electronic files, and attorney representation and administration materials, including attorney-client correspondence and conflicts materials.

After the close of a matter, Burke will notify Client of any client materials that remain in Burke's possession. Client will be invited to retrieve these client materials within 45 days of notice, or Client may direct Burke to forward the client materials to Client, at Client's expense. If within 45 days of this notice Client fails to retrieve the client materials or request Burke to forward them, Client authorizes Burke to destroy the client materials.

After the 45-day period, Burke will, consistent with all applicable rules of professional conduct, use its discretion as to the retention or destruction of all attorney work product and any client materials that remain with Burke.

12. TECHNOLOGY. At its discretion, unless otherwise stated, Burke will employ technology to facilitate electronic discovery. This may include scanning of

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paper documents, culling of documents, converting electronically stored information into a format suitable for review, the usage of electronic review software, etc. Applicable associated costs, including electronic storage and transfer costs, will be billed to Client.

13. DISCLAIMER OF GUARANTEE AND ESTIMATES. Nothing in this Agreement and nothing in Burke's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Burke makes no such promises or guarantees. Burke's comments about the outcome of the matter are expressions of opinion only. Any estimate of fees given by Burke shall not be a guarantee. Actual fees may vary from estimates given.

14. MEDIATION/ARBITRATION; WAIVER OF JURY TRIAL. If a dispute arises out of or relating to any aspect of this Agreement between Client and Burke, or the breach thereof, and if the dispute cannot be settled through negotiation, Burke and Client agree to discuss in good faith the use of mediation before resorting to arbitration, litigation, or any other dispute resolution procedure. Nothing herein shall limit or otherwise affect your right under Sections 6200-6206 of the California Business and Professions Code to request arbitration of any fee dispute by an independent, impartial arbitrator or panel of arbitrators through a bar association program created solely to resolve fee disputes between lawyers and clients. However, should discussions, mediation or the non-binding arbitration provided through a local bar association program not resolve the dispute, the dispute shall be determined by binding arbitration before the American Arbitration Association under its then prevailing commercial arbitration rules, except that discovery may be taken in that arbitration pursuant to the California Code of Civil Procedure. The claims or controversies subject to this provision shall include, without limitation, any claim of professional negligence or malpractice. The arbitration shall be held in San Francisco, California, unless we mutually select another venue, and judgment may be entered upon the arbitrator's award by any court having jurisdiction. Should you refuse or neglect to appear or participate in the arbitration proceedings, the arbitrator is empowered to decide the claim or controversy in accordance with the evidence presented. You should realize that by accepting the arbitration provision, YOU WILL WAIVE YOUR RIGHT TO A JURY TRIAL AND THE RIGHT, EXCEPT UNDER LIMITED CIRCUMSTANCES, TO APPEAL THE ARBITRATOR'S DECISION.

_____ (Client Initial Here) ACS (Burke Initial Here)

15. ATTORNEYS' FEES CLAUSE. The prevailing party in any action or proceeding arising out of or to enforce any provision of this Agreement, with the exception of a fee arbitration or mediation under Business and Professions Code

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Sections 6200-6206, will be awarded reasonable attorneys' fees and costs incurred in that action or proceeding, or in the enforcement of any judgment or award rendered.

16. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

17. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

18. MODIFICATION BY SUBSEQUENT AGREEMENT. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them, or an oral agreement only to the extent that the parties carry it out.

19. EFFECTIVE DATE. This Agreement will govern all legal services performed by Burke on behalf of Client commencing with the date Burke first performed services. The date at the beginning of this Agreement is for reference only. Even if this Agreement does not take effect, Client will be obligated to pay Burke the reasonable value of any services Burke may have performed for Client.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE BURKE FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. CLIENT SHALL RECEIVE A FULLY EXECUTED DUPLICATE OF THIS AGREEMENT.

DATED: October ___, 2019

COUNTY OF SAN BENITO

By: _____
Harry Mavrogenes
Director, San Benito County Resource
Management Agency

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DATED: October 25, 2019

BURKE, WILLIAMS & SORESENSEN, LLP

By: 
Anna C. Shimko
Partner

Enclosure: return copy

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Attachment "A"

Rates for Attorneys and other timekeepers through December 31, 2019:

\$ 535	Senior Partners
\$ 445	Junior Partners
\$ 330-390	Associates
\$ 165	Paralegals

Effective each January 1, the foregoing base rates shall be increased based on the U.S. Department of Labor Bureau of Labor Statistics San Francisco-Oakland-San Jose Consumer Price Index-All Urban Consumers ("CPI-U"), using the CPI-U for each prior January as the base and the value to escalate the hourly rates in the ratio of the most recent January CPI-U value, rounded up to the nearest \$5 increment.

The U.S. Dept. of Labor Bureau of Labor Statistics (BLS) website will be the source of the data utilized (if the URL is changed, the parties shall agree on the replacement web page to be as close as reasonably possible to the page detailed herein):

http://data.bls.gov/PDQ/servlet/SurveyOutputServlet?data_tool=dropmap&series_id=CUURA421SA0,CUUS A421SA0