

Brown & Winters
Attorneys at Law

2533 S. Coast Hwy. 101, Suite 270
Cardiff-by-the-Sea, CA 92007-1322
Telephone: (760) 633-4485

William D. Brown
bbrown@brownandwinters.com

March 28, 2025

VIA EMAIL ONLY

T. Steven Burke, Jr.
City Attorney
City of Oceanside
300 North Coast Hwy
Oceanside, CA 92054
TSBurke@oceansideca.org

**Re: Insurance Coverage Legal Work
Related to City of Oceanside Environmental Sites**

Dear Mr. Burke:

This letter sets out the basis upon which Brown and Winters (B&W) is engaged to represent the City of Oceanside (City) in providing Legal Services as defined below. This Agreement will be effective when this letter has been fully executed by both parties and will continue until terminated as provided in this Agreement.

1. Legal Services

At this time, B&W's legal services shall include those legal services reasonably required to represent the City in seeking to utilize the City's historical insurance policies for reimbursement of the cost of investigating and remediating legacy contamination at the City's environmental sites (Environmental Sites).

We anticipate Legal Services will include:

- identifying and using historic liability insurance to fund the investigation and cleanup of legacy contamination for the City's Environmental Sites.
- Analyzing coverage determinations and advising the City regarding further recommended courses of action, including corresponding with insurers, negotiating and attempting to settle such claims.

- Prosecuting claims through litigation, mediation or arbitration as needed until settlement, award or judgment is obtained and participating in any mediation, arbitration and settlement discussions and preparation of a settlement agreement.
- In the event that B&W recommends that the preparation and filing of a coverage lawsuit against any of the City's historical insurers is necessary, B&W shall first notify the City of the same in writing and seek the City's written approval of the same.
- Pursuing collection of any arbitration awards or judgments favorable to the City.

2. Services Not Covered By This Agreement

If additional legal services are necessary in connection with the City's claim(s), and the City requests that B&W perform such services, additional fee arrangements must be made between the City and B&W. For example, such additional services may be required:

- If the judgment obtained is not in the City's favor, or the judgment amount is unsatisfactory to the City;
- If the judgment obtained is in the City's favor and an opposing party appeals the judgment;
- If a retrial is ordered after a motion for new trial or mistrial, or after reversal of the judgment on appeal.

3. B&W's Fees

B&W shall be compensated for legal services ONLY if a cost recovery is obtained for the City by B&W on the City's behalf. B&W's compensation shall be thirty-three percent (33%) of the funds recovered on behalf of the City. If no recovery is obtained, the City will be obligated to pay only for costs, disbursements and expenses, as described in Paragraph 4.

The fee to be paid to B&W will be a percentage of the "net recovery." The term "net recovery" means: (1) the total of all amounts received by settlement, arbitration award or judgment, including any award of attorney's fees, (2) minus all costs and disbursements set forth in Paragraph 4. Net recovery will also include the reasonable value of any non-monetary proceeds.

Monetary sanctions awarded to B&W during the course of this litigation shall not be considered part of the City's "net recovery" in this action. Such sanctions shall be deemed compensation to B&W for extraordinary time and effort expended as a result of an opposing party's bad faith conduct or failure to comply with discovery demands, court orders or

similar obligations. But if the sanctions award includes a cost item (such as the filing fee for making a motion), the amount thereof shall be credited to the City's costs account when received by B&W.

4. Disbursements and Expenses

It may be necessary for B&W to incur reasonable costs for items such as outside agency fees, filing fees, process service fees, court reporter fees, deposition transcripts, expert witness' fees, investigators' fees, delivery fees, and reasonable travel expenses. B&W will advance such costs and expenses on the City's behalf, and the City agrees to reimburse B&W for such actual out-of-pocket expenses when cost recovery is obtained for the City.

The City further agrees that if monies are maintained in B&W's trust account for the purpose of paying fees and costs as incurred, B&W is authorized without the prior consent of the City to transfer sufficient funds from trust to pay current as well as past due fees and costs upon mailing of bills for fees and costs in the ordinary course of business.

5. Negotiability Of Legal Fees

The City understands that the rates set out above are not set by law but are negotiable between B&W and the City.

6. Billing Statements and Correspondence

B&W will send a detailed monthly invoice addressed to the City, identifying any total reimbursable costs, disbursements and expenses incurred. The City agrees to promptly review all bills rendered by B&W and to promptly communicate any objections, questions, or concerns about their content.

B&W's practice is to provide clients with verbal or written status reports from time to time concerning the progress of the matter. We will send all reports to the City via email to the City Attorney, unless the City requests in writing that B&W do otherwise.

7. City Approval Necessary For Settlement

B&W will not make any settlement or compromise of any nature of any of the City's claims without the City's prior approval. The City retains the absolute right to accept or reject any settlement.

8. Discharge and Withdrawal

The City may discharge B&W at any time upon written notice. B&W may withdraw with the City's consent, or if permitted under the Rules of Professional Conduct of the State Bar of California and/or applicable law. Notwithstanding the discharge, the City will remain obligated to reimburse B&W for costs and expenses incurred in accordance with this Agreement prior to such discharge. In addition, B&W shall be entitled to the reasonable value of legal services performed prior to such discharge, to be paid by the City from any subsequent recovery on the claim(s) covered by this Agreement.

9. Arbitration Of Disputes

If a dispute arises between City and B&W regarding fees/costs due or legal services in connection with the claim(s) covered by this Agreement, such dispute shall be submitted to binding arbitration. This includes any claim against B &W for breach of contract, negligence, breach of fiduciary duty or other wrongdoing.

Such arbitration shall be conducted in accordance with the rules of the American Arbitration Association.

YOUR INITIALS BELOW SIGNIFY YOUR ACKNOWLEDGMENT OF THE FOLLOWING EXPLANATION:

You acknowledge that B&W has explained to you that such binding arbitration may deprive you of various rights that you otherwise might have in a legal action, including, without limitation, the right to a jury trial, the right to appeal, and full discovery rights.

(City's initials)

10. Other Provisions

The City may have access to the City's file for this matter at any reasonable time. At the end of the engagement, the City may request the return of the City's file for this matter. If the City has not requested the return of the City's file, and to the extent B&W has not otherwise delivered it or disposed of it consistent with the City's directions, B&W will retain the file for this matter for a period of five (5) years, after which B&W is authorized by this Agreement to have the file destroyed. If for any reason the City wishes to reserve any of the records or files from this matter, please request them from B&W well before this time period elapses.

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No change, waiver or modification of any other provisions of this Agreement shall be effective unless in writing and signed by both parties. This letter contains the entire Agreement concerning the services B&W will be performing, and compensation for such services. B&W has made no representations or promises, other than those expressly set forth in this Agreement.

To confirm your agreement to the terms and conditions set forth above, please sign and return a copy of this letter to B&W at your earliest convenience. We will then provide you with a fully executed copy.

We very much look forward to working with you.

Kind Regards,

BROWN & WINTERS

By: _____
William D. Brown (date)

APPROVED AND ACCEPTED.

City of Oceanside:

By: _____
T. Steven Burke, Jr. (date)

Its: City Attorney