(DRAFT)

FACILITY MAINTENANCE AGREEMENT
BETWEEN
ATASCADERO VETERANS MEMORIAL COMMITTEE
& THE CITY OF ATASCADERO

This Agreement is made and entered into this date ________________, by and between the City of Atascadero, and the Atascadero Veteran’s Memorial Committee, for the maintenance and upkeep of the Veteran's Memorial and related facility improvements at Atascadero Lake Park during the period of thirty years, from January 1, 2008 until December 31, 2038.

1. PARTIES

1.1 City

1.1.1 The City of Atascadero, Atascadero, California, whose mailing address for notice under the terms of this Agreement is as follows:

City of Atascadero
Attn:  Director of Community Services
6907 El Camino Real
Atascadero, California 93422

1.2 Atascadero Veteran’s Memorial Committee / Lessee

1.2.1 Atascadero Veteran’s Memorial Committee, whose mailing address for notice under the terms of this Agreement is as follows:

Atascadero Veteran's Memorial Committee
P. O. Box ______
Atascadero, California 93423

2. TERMS

The term of this agreement shall begin on January 1, 2008 and terminate on December 31, 2038. Subject to extension or sooner termination as hereinafter provided, this agreement shall continue for the term of thirty (30) years, upon mutual consent of both parties.

2.1 Obligations of Veteran’s Memorial Committee

2.1.1 Submit Building Permit application along with all necessary plans and documents required by the City of Atascadero Community Development Department.

2.1.2 Removal of all trash and litter from the area and place in nearby trash receptacles.
2.1.3 Immediately report any facility damage or vandalism to the City of Atascadero.

2.1.4 Notify the City of Atascadero’s Community Services Department and/or the City of Atascadero’s Public Works Department of any scheduled maintenance or renovations.

2.1.5 Maintain the bronze statue per sculptors recommendation. Keep the structure in a clean, presentable and repaired condition. Any and all repair costs will be the obligation of the Atascadero Veteran’s Memorial Committee.

2.1.6 Maintain the pathways, walls, concrete mow-strips, and any other improvements around the bronze statue in good repair. Any and all repair costs will be the obligation of the Atascadero Veteran’s Memorial Committee.

2.1.7 Replace all tattered or torn flags on an as needed basis.

2.2 **Obligations of the City of Atascadero**

2.2.1 The City of Atascadero grants the Atascadero Veteran’s Memorial Committee use of the property described in Attachment A for the express purpose only to install a Veteran’s Memorial statue and related site improvements.

2.2.2 Perimeter area weeding and spraying of pre-emergent herbicide.

2.2.3 Provide dumpster for trash.

2.2.4 The City of Atascadero will pay for all utility costs.

3. **INDEMNIFICATION:**

Atascadero Veteran’s Memorial Committee hereby agrees to, and shall, hold City, its elective and appointive boards, officers, agents and employees, harmless and shall defend the same from any liability for damage or claims for damage, or suits or actions at law or in equity which may allegedly arise from Atascadero Veteran’s Memorial Committee or agents' negligent operations or failure to perform under this agreement, whether such operations be by Atascadero Veteran’s Memorial Committee or by any one or more persons directly or indirectly employed by, or acting as agent for, Atascadero Veteran’s Memorial Committee.

4. **INSURANCE:**

Atascadero Veteran’s Memorial Committee shall not commence its services under this agreement until they have obtained all insurance as provided in Exhibit C.

5. **TERMINATION OF AGREEMENT**

5.01 **TERMINATION OF NOTICE:** Notwithstanding any other provision of this agreement, any party hereto may terminate this agreement, at any time, without cause by giving at least (90) days prior written notice to the other parties to this agreement.

5.02 **TERMINATION ON OCCURRENCE OF STATED EVENTS:** This agreement shall terminate automatically on the occurrence of any of the following events:

(1) Bankruptcy or insolvency of any party;

(2) The end of the (90) days as set forth in Section 5.01;

(3) End of the contract to which services were necessary; or
(4) Assignment of this agreement without the consent of the City.

5.03 TERMINATION BY ANY PARTY FOR DEFAULT:
Should any party default in the performance of this agreement or materially breach any of its provisions, a non-breaching party, at their option, may terminate this agreement, immediately, by giving written notice of termination to the breaching party.

5.04 TERMINATION:
This agreement shall terminate on December 31, 2038, unless extended as set forth in this Section. The City, with the agreement of the Atascadero Veteran’s Memorial Committee, is authorized to extend the term of this agreement beyond the termination date, as needed, under the same terms and conditions set forth in this agreement. Any such extension shall be in writing and be an amendment to this agreement.

6. NON-EMPLOYMENT STATUS.

It is understood and agreed by the parties hereto that Atascadero Veteran’s Memorial Committee, while engaged in operation of the program(s) described herein and complying with the terms of this agreement, is and shall act as an independent contractor and is not an officer, agent or employee of the City, and officers, employees and agents of Atascadero Veteran’s Memorial Committee are not entitled to any of the benefits of City employees.

7. ASSIGNMENT

Atascadero Veteran’s Memorial Committee shall not assign this agreement or any part thereof without the prior written consent of the City Manager or his designee.

8. ALTERATIONS

8.01 Any alterations, additions, improvements or changes, that Atascadero Veteran’s Memorial Committee may desire to make to the premises, shall be made at the LESSEE’S sole cost and expense and in compliance with all applicable governmental requirements. All such alterations and/or improvements shall be made only after first submitting the plans and specifications thereof to the City and obtaining the consent of the City in writing. Any such alterations or improvements shall at once become a part of the leased premises and, unless the City exercises its right to require the LESSEE to remove any alterations that the LESSEE has made to the premises, shall be surrendered to the City upon the expiration or sooner termination of the agreement.

8.02 If the City elects to exercise its right to terminate this agreement prior to the termination date established here within, the City will reimburse Atascadero Veteran’s Memorial Committee for all direct expenses of materials related to approved alterations and improvements, not including labor costs or the value of volunteer labor. Records and receipts shall be required for reimbursements.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date set forth opposite their respective names.

CITY OF ATASCADERO

_____________________________________________  Date:  _______________________
WADE MCKINNEY, City Manager

ATASCADERO VETERANS MEMORIAL COMMITTEE

_____________________________________________  Date:  _______________________
President, Atascadero Veterans Memorial Committee

ATTEST:

_____________________________________________ Date:  _______________________
MARCIA TORGERSON, City Clerk

APPROVED AS TO CONTENT:

_____________________________________________ Date:  _______________________
BRADY CHERRY, Director of Community Services

APPROVED AS TO FORM:

_____________________________________________ Date:  _______________________
PAT ENRIGHT, City Attorney
INSURANCE REQUIREMENTS FOR LESSEE

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Workers’ Compensation insurance as required by the State of California and Employer's Liability insurance (for lessees with employees).
3. Property insurance against all risks of loss to any tenant improvements or betterments.

Minimum Limits of Insurance

Lessee shall maintain limits no less than:

1. General Liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Employer's Liability: $1,000,000 per accident for bodily injury or disease.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Entity. At the option of the Entity, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Entity, its officers, officials, employees and volunteers; or the Lessee shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. The Entity, its officers, officials, employees and volunteers are to be covered as insureds with respect to liability arising out of ownership, maintenance or use of that part of the premises leased to the lessee.
2. The Lessee’s insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees or volunteers shall be excess of the Lessee’s insurance and shall not contribute with it.

3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days’ prior written notice by certified mail, return receipt requested, has been given to the Entity.

**Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A:VII.

**Verification of Coverage**

Lessee shall furnish the Entity with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the Entity or on other than the Entity’s forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the Entity before work commences. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.