

AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT (“Agreement”) is made and entered into by and between the CITY OF ATASCADERO, a general law city (hereinafter “CITY”), and the ATASCADERO COMMUNITY REDEVELOPMENT AGENCY, a redevelopment agency (“AGENCY”), collectively referred to as “ATASCADERO” and the law firm of BURKE, WILLIAMS & SORENSEN, LLP (hereinafter “BWS”):

WITNESSETH:

The parties hereto do agree as follows:

SECTION 1. RECITALS.

This Agreement is made and entered into with respect to the following facts:

A. ATASCADERO has heretofore engaged the services of BWS to act as the City Attorney for CITY, and as General Counsel for AGENCY and to perform all legal services as needed by ATASCADERO; and

B. It is the desire of the parties hereto to formalize, by means of this Agreement, their relationship pertaining to the performance of such legal services; and

C. BWS and ATASCADERO desire, pursuant to this Agreement, to provide for the continuation of such legal services, in the time and manner set forth in this Agreement; and

D. The legislative bodies of CITY and AGENCY have heretofore determined that the public interest, convenience and necessity require the execution of this Agreement.

SECTION 2. APPOINTMENT OF CITY ATTORNEY-GENERAL COUNSEL.

Brian A. Pierik, a BWS partner, is hereby appointed as the City Attorney of CITY and General Counsel of AGENCY (“City Attorney”). City Attorney shall serve at the pleasure of the Legislative bodies of CITY and AGENCY, and may be replaced at any-time, with or without cause, by any of the legislative bodies, without amending this Agreement. The City Attorney, or his approved successor, shall be responsible for providing or causing to be provided the legal services contemplated by this Agreement.

SECTION 3. DESIGNATION OF ASSISTANT CITY ATTORNEY-GENERAL COUNSEL.

The City Attorney, with the consent of the legislative bodies of the CITY and AGENCY shall designate a member of the firm to act as the Assistant City Attorney and Assistant General Counsel. Such person shall serve at the pleasure of the legislative bodies of the CITY and AGENCY and may be replaced, at any time, with or without cause, by any of the legislative bodies.

SECTION 4. LEGAL SERVICES.

BWS shall perform the legal services necessary to serve ATASCADERO which shall include, but are not limited to, the following:

- A. The City Attorney or authorized designee shall attend all regular meetings of the legislative bodies of CITY and AGENCY unless excused by the City Manager of the CITY or the General Manager of the AGENCY (hereinafter collectively “Manager”); and
- B. The Assistant City Attorney shall attend Planning Commission Meetings upon request by the Manager; and
- C. Provide legal advice to such other boards, commissions and committees of ATASCADERO as is directed by the Manager; and
- D. Provide legal advice on all matters affecting ATASCADERO as requested by any of the legislative bodies or the Manager; and
- E. Prepare or approve as to form, all resolutions, ordinances, contracts, agreements and other legal documents; and
- F. Represent ATASCADERO, and their respective elected and appointed officers, employees and agents in all administrative proceedings and civil or criminal litigation, except where otherwise ordered by ATASCADERO; and to prosecute violations of CITY ordinances when directed to do so by the Manager; and
- G. Provide legal advice and opinions on all financial mechanisms affecting ATASCADERO when requested by the Manager including and representing ATASCADERO as bond counsel in the issuance of bonds or other securities involving ATASCADERO.
- H. Provide such additional legal services as requested by the Manager.

SECTION 5. COMPENSATION.

BWS shall be compensated for providing the legal services contemplated by this Agreement, in accordance with the following:

- A. Retainer Services. “Retainer Services,” for the purpose of this Agreement, shall mean attendance at regular and special meetings of the City Council and the Community Redevelopment Agency, attendance at Staff meetings, drafting of Ordinances and Resolutions, review of Agendas and responding to legal questions which arise on a day to day basis. BWS’s compensation for such Retainer Services shall be in the sum of Ninety-Five Hundred Dollars (\$ 9,500.00) per calendar month for the first fifty (50) hours expended in providing such services.

B. Legal Services above Retainer and Non-Retainer Legal Services. For Retainer Services above the retainer hours and for non-retainer legal services, BWS' compensation shall be: Partners \$240 per hour; Associates \$215 per hour; Law Clerks \$175 per hour and Paralegals \$125 per hour. Bond counsel services are available by special arrangement under a fee structure reasonable for the project.

C. Travel Time. Compensation for travel time shall be at the rate of \$175 per hour. Travel time does not count against the 50 hours per month of Retainer Services.

D. Hourly Rates. Effective July 1 of each year, commencing July 1, 2008, the hourly rates specified in this Agreement, unless otherwise negotiated, will be increased by a standard annual adjustment upon consultation with the Manager and approved by the City Council as part of the Council's standard budget adoption process, equal to the average Consumer Price Index for the previous four quarters.

E. Reimbursement Expenses. BWS shall be entitled to reimbursement for all reasonable and necessary expenses incurred by it in the performance of legal services hereunder. "Reimbursable expenses" shall mean and include, but not be limited to reproduction of documents (currently \$.20 per page), facsimile (currently \$1.00 per page); mileage reimbursement (currently \$.48 per mile), and other costs reasonably and necessarily incurred in performing services for the CITY and AGENCY.

F. Invoices. Payment for Services.

(1) Invoices. BWS shall submit monthly invoices to ATASCADERO for all services provided and costs incurred pursuant to the terms of this Agreement. Said invoices shall set forth by date the type of work performed, the time spent on a task and the identity of the attorney performing the task. Fees are charged in increments of 1/10th of an hour. Invoices shall contain itemized descriptions of any out-of-pocket expenses incurred during the prior month.

(2) Payment. Payment to BWS shall be made by ATASCADERO within thirty (30) days of receipt of the statement.

SECTION 6. TERM AND TERMINATION.

The term of this Agreement shall commence on November 27, 2007, and shall continue thereafter until terminated as follows:

A. TERMINATION BY ATASCADERO. The legislative bodies of CITY and/or AGENCY may terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to BWS.

B. TERMINATION BY BWS. BWS may at any time, with or without cause, terminate this Agreement upon ninety (90) days written notice to ATASCADERO.

C. COMPENSATION IN THE EVENT OF TERMINATION. BWS shall be compensated for its services and reimbursed for costs rendered through and including the effective date of such termination.

SECTION 7. COMPLIANCE WITH LAWS.

BWS shall comply with all obligations required of it pursuant to the State Bar Act and other applicable laws, in connection with its provision of legal services hereunder.

SECTION 8. NOTICES.

Notices required pursuant to this Agreement shall be given by personal service upon the party to be notified, or by delivery of same into the custody of the United States Postal Service, or its lawful successor, postage prepared and addressed as follows:

ATASCADERO: City Manager,
City of Atascadero
6907 El Camino Real
Atascadero, California 93422

BWS: Burke, Williams & Sorensen
2310 E. Ponderosa Drive, Suite 25
Camarillo, California 93010

Service of a notice by personal service shall be deemed to have been given as of the date of such personal service. Notices given by deposit with the United States Postal Service shall be deemed to have been given five (5) consecutive business days following the deposit of the same in the custody of said Postal Service. Either party hereto may, from time to time, by written notice to the other, designate a different address or person which shall be substituted for that above specified.

SECTION 9. INDEMNIFICATION.

BWS does hereby agree to hold, ATASCADERO, and their respective elected and appointed officers and employees free and harmless from any claim, demand or judgment which may arise based upon personal injury to a third party or damage to property of a third party arising out of the performance of services by BWS pursuant to this Agreement.

SECTION 10. INSURANCE.

Not in derogation of the provisions of Paragraph 9 hereof, BWS does hereby agree to take out and maintain, in full force and effect, during the term or extended terms of this Agreement, the following insurance coverage:

- A. Liability insurance coverage, as is customary for law firms; and
- B. Such insurance coverage as is required pursuant to the Workers' Compensation Laws of the State of California; and
- C. Professional Liability Insurance.

SECTION 11. GENERAL PROVISIONS.

A. Assignment. BWS shall not assign this Agreement, or any of the rights, duties or obligations hereunder.

B. Status of Independent Contractor. Nothing contained in this Agreement shall be deemed or construed to create the relationship of principal or agent, or of a partnership, or of a joint venture, or of any other association of any kind or nature between the CITY and BWS, nor shall any employee of BWS be deemed to be an employee of ATASCADERO. BWS is an independent contractor. Employees of BWS shall not be deemed to be employees or agents of ATASCADERO. Neither ATASCADERO nor any of their respective officers, employees, servants or agents shall have control over the conduct of BWS or any of BWS's officers, employees or agents.

C. Discrimination. In the performance of this Agreement, BWS shall not engage in any unlawful discrimination of any kind, including without limitation, in its employment practices.

D. Entire Agreement. This Agreement constitutes the entire Agreement of the parties concerning the subject matter hereof and all prior agreements or understandings, oral or written, are hereby merged herein. Except as expressly set forth herein, this Agreement shall not be amended in any way except by a writing expressly purporting to be such an amendment, signed and acknowledged by both of the parties hereto.

E. Interpretation. Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that the party prepared the Agreement or caused it to be prepared.

F. Waiver. No waiver of any provision of this Agreement by either party hereto shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless executed in writing by the party making the waiver.

SECTION 13. EFFECTIVE DATE.

This Agreement shall be effective on November 27, 2007.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their representatives as follows:

CITY OF ATASCADERO

DATE: November _____, 2007

By: _____
George Luna, Mayor

ATTEST:

Marcia McClure Torgerson, City Clerk

**ATASCADERO COMMUNITY
REDEVELOPMENT AGENCY**

DATE: November _____, 2007

By: _____
Tom O'Malley, Chair

ATTEST:

Marcia McClure Torgerson, Board Secretary

BURKE, WILLIAMS & SORENSEN, LLP

DATE: November _____, 2007

By: _____
John J. Welsh, Managing Partner