CITY OF ATASCADERO AND  
THE ATASCADERO VETERAN’S MEMORIAL COMMITTEE  
AGREEMENT FOR MAINTENANCE/LANDSCAPE SERVICES  
FOR THE ATASCADERO VETERAN’S MEMORIAL  

THIS AGREEMENT, entered into this ____ day of __________________2008,  
by and between City Of Atascadero, a California municipal corporation and general law  
city (City) and the Atascadero Veteran’s Memorial Foundation, a non-profit corporation  
(Foundation). This Agreement is made with respect to the following facts:  

RECITALS  

1. There is strong public support within the local community for the construction  
of an “all wars” memorial to honor and remember Atascadero military  
veterans who have made, and continue to make, significant personal  
sacrifices in service of the United States of America.  

2. In response to the public's interest in honoring its military veterans, the  
Foundation has agreed, at its own expense, to design, construct, install, and  
donate to the City a bronze memorial statue and memorial wall to be placed  
on public property.  

3. The Foundation has also agreed to undertake certain ongoing maintenance  
obligations regarding the memorial and its location.  

4. On March 27, 2007, the Atascadero City Council approved the Foundation's  
proposed project to be located at the corner of Atascadero Lake Park at  
Highway 41 and Portola Road, as described more particularly in the Site Plan  
approved by the City and attached to this Agreement as Exhibit A. The  
location described in the Site Plan, including but not limited to the bronze  
memorial statue, the memorial wall, associated landscaping and lighting and  
other related improvements, shall be referred to collectively as the “Memorial  
Site.”(hereafter referred to as the “Project”)  

5. The parties to this Agreement wish to define their respective responsibilities  
for maintenance and landscaping services at the Memorial Site.  

AGREEMENT  

NOW, THEREFORE, for and in consideration of the mutual promises and  
agreements herein contained and the Recitals set forth above and hereby incorporated  
into this Agreement, and for other good and valuable consideration, the receipt and  
sufficiency of which are hereby acknowledged, the parties hereto agree as follows.
1. **THE PARTIES’ RESPECTIVE OBLIGATIONS.**

1.1. The Foundation’s obligations consist of the following actions (each at the Foundation’s sole expense):

   1.1.1. Comply with all applicable Municipal Code provisions and the memorial’s designer and/or sculptor in constructing and installing the bronze memorial statue and memorial wall.

   1.1.2. Install all landscaping and irrigation equipment at the Memorial Site pursuant to the Site Plan approved by the City attached as Exhibit A.

   1.1.3. Maintain the Memorial Site in a clean, attractive, and safe condition by, among other things, maintaining pathways, walls, benches, concrete mow strips, the bronze memorial statue, the memorial wall, lighting equipment, and other improvements in good repair, replacing flags on a regular and as-needed basis, and removing trash and debris from the Memorial Site on a regular and as-needed basis.

   1.1.4. Perform all necessary maintenance on the bronze memorial statue and memorial wall pursuant to the designer and/or sculptor’s recommendations and maintain the bronze memorial statue and memorial wall in a clean, presentable, and repaired condition.

   1.1.5. Report any vandalism at the Memorial Site to the Atascadero Police Department as soon as possible.

   1.1.6. Remove any graffiti from the bronze memorial statue and memorial wall within 48 hours of the discovery of such graffiti or receiving a request from the City to remove such graffiti.

   1.1.7. Provide the City’s Public Works Department with advance written notice of any maintenance, renovation, or alterations of the Memorial Site that would require a permit under the Municipal Code or would change the appearance of the Memorial Site in any material way. In performing such maintenance, renovation work, or alterations, the Veteran’s Committee shall comply with all applicable governmental requirements.

   1.1.8. Perform any necessary maintenance and repair tasks at the Memorial Site that are not otherwise mentioned in this Agreement.

1.2. The City’s obligations consist of the following:
1.2.1. Grant the use of the Memorial Site as the location of the Veteran’s Memorial.

1.2.2. Remove any graffiti (other than graffiti on the bronze memorial statue and memorial wall) at the Memorial Site within 48 hours of notification by the Foundation.

1.2.3. Maintain any irrigation equipment installed by the Foundation at the Memorial Site.

1.2.4. Pay for the cost of all utilities at the Memorial Site.

1.2.5. Maintain any trees planted by the Veteran’s Committee at the Memorial Site.

1.2.6. Perform any necessary weeding and application of pre-emergent herbicide in the landscaped areas at the Memorial Site.

2. TERM OF AGREEMENT.

2.1. Subject to the provisions of this Agreement regarding termination set forth below, the term of this Agreement shall begin on February ___, 2008, and terminate on February ___, 2023.

2.2. Notwithstanding Section 2.1, either the City or the Veteran’s Committee may terminate this Agreement with cause after complying with Section 10 and by giving written notice to the other party pursuant to Section 9. Termination based on cause will become effective immediately upon the giving of notice as provided in Section 9.

2.3. The City, with the agreement of the Veteran’s 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 will be an amendment to this Agreement.

2.4. The Agreement shall terminate upon the bankruptcy or insolvency of any party.

2.5. Upon the City’s acceptance of the completion of the improvement of the Project, the improvements shall become the property of the City.

3. DESIGNATED REPRESENTATIVES.

3.1. The City’s Director of Community Services is the designated City Representative and is responsible for coordination with the Veteran’s Committee Representative.
3.2. The ________________ is the designated Veteran’s Committee Representative and is responsible for coordination with the City Representative.

4. INSURANCE.

4.1. The Veteran’s Committee must maintain the following insurance during the term of this Agreement.

4.1.1. Commercial General Liability, Broad Form General Liability and Business Automobile Liability insurance that meet or exceed the requirements of ISO Forms GL0002, GL0404 and CA0001, Code 1, respectively, in the most current State of California approved forms, in connection with the Veteran’s Committee’s performance of this Agreement in the amount of not less than $1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage for each policy coverage.

4.1.2. Workers Compensation and Employers Liability insurance for all of its employees who are in any way connected with the Veteran’s Committee’s performance under this Agreement. The Workers Compensation insurance must comply with all applicable State laws.

4.1.3. Commercial General Liability, Broad Form General Liability and Business Automobile Liability policies required under this Agreement must be: (a) endorsed to name the City, its officers, officials, employees, agents, representatives, and volunteers as “additional insured” under such insurance coverage; (b) state that such insurance will be deemed “primary” such that any other insurance that may be carried by the City will be excess thereto; and (c) state that the policy will not be cancelable or subject to reduction except upon 30 days prior written notice to the City. Insurance is to be placed with insurers with a current Best’s Rating of at least A:VII and be a California Admitted Insurance Company.

4.1.4. Any contractor or subcontractor utilized by the Veteran’s Committee in connection with this Agreement must meet the insurance requirements set forth above.

5. INDEMNIFICATION.

5.1. The Veteran’s Committee agrees to hold harmless and indemnify, and, at the City’s request, defend the City, its officers, officials, employees, agents, representatives, and volunteers from and against any and all claims, demands, actions, damages, expenses, suits, accidents, injuries, liability, or proceedings of any character whatever (including without limitation, attorney’s fees), brought for or on account of, or resulting from or arising out of or in connection with, any act, error or omission, negligence, wrongful conduct, or other action by the Veteran’s Committee or any of the Veteran’s Committee’s officers, agents, employees, representatives, or subcontractors in connection with or in the performance of this Agreement.
5.2. The City agrees to hold harmless and indemnify, and, at the Veteran's Committee's request, defend the Veteran's Committee, its officers, officials, employees, agents, representatives, and volunteers from and against any and all claims, demands, actions, damages, expenses, suits, accidents, injuries, liability, or proceedings of any character whatever (including without limitation, attorney's fees), brought for or on account of, or resulting from or arising out of or in connection with, any negligence or wrongful conduct by the City or any of the City's officers, agents, employees, representatives, or subcontracts in connection with or in the performance of this Agreement.

6. ASSIGNMENT. The Veteran’s Committee may not assign this Agreement or any part of this Agreement to any other individual or entity without the prior written consent of the City Manager or his/her designee.

7. MODIFICATION OF AGREEMENT. This Agreement may be modified or amended only upon mutual written consent of the City and the Veteran’s Committee.

8. USE OF TERM "City". Reference to the "City" in this Agreement includes the City Manager or any authorized representative acting on behalf of City.

9. NOTICES. All notices given or required to be given pursuant to this Agreement shall be in writing and may be given by personal delivery or by mail. Notice sent by mail must be addressed as follows:

TO City: City Of Atascadero
Director of Community Services
6907 El Camino Real
Atascadero, CA 93422

TO Veteran’s Committee: Atascadero Veteran’s Memorial Committee
Executive Director
P.O. Box __________
Atascadero, CA 93422

and, when addressed in accordance with this paragraph, will be deemed given two days after deposit in the United States mail, postage prepaid. In all other instances, notices will be deemed given at the time of actual delivery. Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this paragraph.

10. NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. Neither party will be deemed to be in breach of this Agreement based on a default that is capable of being cured until it has received written notice of the default from the other party. The party charged with a default will have 15 days from the date of receiving such notice in which to cure the default or otherwise respond. If the circumstances leading to the notice of default have not been cured or explained to the satisfaction of the other party within 15
days from the date on which the party received notice, the non-defaulting party may terminate this Agreement pursuant to Section 2.

11. **WAIVER.** A waiver by the City or Veteran’s Committee of any default of any term, covenant, or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent default of the same or any other term, covenant, or condition contained in this Agreement whether of the same or different character.

12. **GOVERNING LAW.** The terms of this Agreement will be interpreted according to the laws of the State of California. Should litigation occur, venue will be in the Superior Court of San Luis Obispo County.

13. **INTEGRATED AGREEMENT.** This Agreement represents the entire Agreement between the City and the Veteran’s Committee with respect to the subject matter hereof and supersedes all preliminary negotiations and agreements. No verbal agreement or implied covenant shall be held to vary the provisions of this Agreement. This Agreement is binding and inures to the benefit of the parties to this Agreement and any subsequent successors and assigns.

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**ATTEST:**

City of Atascadero

__________________________
City Clerk

By: __________________________
City Manager

**Approved As To Form:**

Atascadero Veteran’s Memorial Committee

__________________________
City Attorney

By: __________________________
Executive Director/Chairman

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**ATTEST:**

Approved As To Form

__________________________
Secretary of the Veteran’s Committee

__________________________, General Counsel

of the Veteran’s Committee