

CITY OF ATASCADERO



**Request for Proposal (RFP)
2023-01**

City Attorney Services

October 25, 2023

**City of Atascadero
6500 Palma Avenue
Atascadero, CA 93442**

Final Day to Submit Questions: November 8, 2023, 5:00 P.M.

Submission Deadline: November 15, 2023

The City Council of the City of Atascadero (“City”) is seeking proposals from interested and qualified contract attorneys and legal firms to provide legal services and serve as primary attorney for the City.

OVERVIEW AND BACKGROUND

Background

The City of Atascadero is committed to promoting and providing for the safety, health, and welfare of its citizens, visitors, and business community. Founded in 1913, the City of Atascadero, California is well-known for its friendly atmosphere and hometown charm. This beautiful, 26 square mile Central Coast community has a population of 30,000 and is situated in the center of San Luis Obispo County along Highway 101, halfway between the metropolitan areas of Los Angeles and San Francisco. Atascadero has quite a bit to offer from its vibrant Downtown to Atascadero Lake Park that includes the Charles Paddock Zoo and the Faces of Freedom Veterans Memorial. Atascadero is also within a three-hour drive to Yosemite or Sequoia National Parks and only about two hours to Big Sur, Monterey or Carmel. The City is truly a great place to live, work and raise a family.

Incorporated in 1979, the City of Atascadero is a General Law City that operates under a Council-Manager form of government. The City is governed by a five-member Council, and a seven-member Planning Commission. Council Members are elected to four-year overlapping terms on an at-large basis and the Mayor is separately elected to a two year term on an at large basis. The City Council is the legislative body responsible for overall policy development and direction of the City. In addition, the City has a handful of committees, boards, and commissions that provide input and help conduct City business.

The City provides an extensive array of services including a police department, fire department a small public transit operation, recreation programs, facility rentals, planning services, building permits, housing programs, economic development, wastewater collection and treatment, maintenance of stormwater systems and public rights-of-way, parks and trail systems as well as all of the traditional internal management support functions. Atascadero delivers municipal services through seven (7) departments: Administrative Services, City Manager’s Office, Community Development, Community Services & Promotions, Fire & Emergency Services, Police, and Public Works.

The City has a current annual operating and capital budget of approximately \$87 million, and a regular staff of approximately 142 full-time equivalent employees. The City belongs to a risk management pool (CJPIA: California Joint Powers Insurance Authority), which provides legal assistance with workers compensation, general liability, and property claims. Normally, the City Attorney is not expected to represent the City in matters covered by the joint risk pool.

City Objectives

The City of Atascadero wishes to continue its practice of acquiring its legal services on a contract basis. The City Attorney serves at the pleasure of the City Council as a directly appointed position. The City Attorney is an integral part of the City’s management team and, aside from his/her role as legal advisor, is expected to participate in management activities and functions as directed by

the City Manager. The City Attorney is not a City employee and is not entitled to the benefits of a City employee; the position is strictly on a contractual basis. The City reserves the right to retain or employ other attorneys or special counsel as may be needed, in its sole judgement, to take charge of any litigation or legal matters to assist the City.

The City seeks a City Attorney who will provide clear, understandable, and independent legal advice. The firm/individual must be qualified to provide expertise in the area of general municipal law, including for example planning, zoning, environmental review, construction, municipal finance, the Public Records Act, Brown Act, ethics, conflict of interest laws, litigation, municipal employment law, and labor relations statutes. Through this Request for Proposals (RFP), the City intends to enter into a professional services agreement for an initial five-year agreement, with the option for renewal for additional five one-year periods unless terminated by either party.

QUALIFICATIONS

The Applicant must be a licensed and active member of the California State Bar. Qualified applicants will have a minimum of five (5) years of municipal legal experience in California as a Municipal Attorney. Further, it is required that the City Attorney have experience in the following areas:

- Designing, drafting, and updating Municipal Code sections and regulations.
- Providing support to City staff and the Council on matters including land use appeals, code enforcement, and misdemeanor violations of City code.
- Experience with and knowledge of the law governing general law cities including but not limited to, personnel law, labor/employment training and personnel investigations, workers compensation, and disability issues/ADA/FEHA, as well as administrative law including, but not limited to the Brown Act, Public Records Act, Elections Code, public bidding and procurement and contracts and other areas of municipal law.
- Experience regarding land use regulations related to public land use and planning, public utilities, and environmental law, including CEQA, general plans, housing authorities, and code enforcement actions. Knowledge of regulations pertaining to, water and sewer utilities, solid waste/recycling, hazardous materials, brownfields, and coastal issues, including urban run-off/stormwater discharge.
- Experience with and knowledge of real property proceedings, including but not limited to, condemnation/ eminent domain, unlawful detainer/eviction (commercial), development/redevelopment/compensation agreements, and real estate transactions.
- Litigation experience or experience monitoring or supervising litigation activity within a firm. Knowledge of public entity tort claims; labor and employment matters; police department legal matters, including public safety defense; matters pertaining to construction law, public works, and prevailing wage; and writ litigation and appellate procedures.
- Demonstrated ability to speak clearly, concisely, and effectively in public.
- Ability to relate easily and effectively with all members of the City Council, staff, and the public.
- Knowledge of distinct legal issues and concerns facing the City of Atascadero and the County of San Luis Obispo, including familiarity with the local court system. Local office and/or presence is preferred.

SCOPE OF WORK

The City Attorney serves at the pleasure of the City Council. The City Attorney will work directly with the City Manager and City staff in performance of his/her daily duties in the operation of City business. The City Attorney is an integral member of the City's management team. As such, the City Attorney's participation will go beyond purely legal matters and will involve City special events. The general responsibilities of the City Attorney include, but are not limited to, the following and shall be considered to be services covered by the retainer:

- Provide clear, concise, and modern legal advice and consultation as requested or required to members of the City Council, the City Manager, Committees and City staff. Contacts are typically via telephone and email, but in any case, should flow through the City Manager's Office unless otherwise directed or agreed upon. Each such request will include a response deadline, which may be the same or next day.
- Maintain office hours or availability for in-person presence at the City, during such times as mutually determined with the City Manager and/or the City Council.
- Attendance at regular and special meetings of the City Council and Planning Commission and other City bodies as necessary, unless excused by the City Manager, and advising the bodies and staff on agenda items and procedural matters.
- Provide guidance on parliamentary procedures and matters concerning requirements of such areas including the Brown Act, Public Records Act, Political Reform Act, CEQA, tort liability and risk, due process and other legal requirements imposed by statute and common law, as well as a working knowledge of municipal employment practice and public administration.
- Prepare, review, and revise documents, including, but not limited to, initiation of memoranda concerning legal issues, contracts, agreements, ordinances, resolutions, land use decisions including appeals, public improvements, deeds, easements, dedications, rights-of-way, and City Council staff reports.
- Advise and represent the City in litigation for actions and other proceedings brought against City, its elected officials, appointed officers and agents, and the keep the City Council and City Manager regularly apprised of litigation developments. Represent City in the prosecution of City ordinance violations.
- Represent the City in inter-agency projects and other legal matters.
- Review compliance with public records requests and records destruction.
- Counsel the City regarding taxes, assessments, fees, Proposition 218, and other financial advice.
- Provide legal advice and assistance to operating departments with regard to employee workers' compensation, employee disciplinary actions, and bargaining unit MOUs.
- Perform legal research and advise on issues related to land use, including interpretation of the California Environmental Quality Act ("CEQA").
- Provide legal advice and assistance to Council and Staff with regard to interaction with state agencies, including the Department of Fish and Wildlife, State Water Resources Control Board, and special districts and joint powers authorities, including Atascadero Mutual Water Company, Central Coast Community Energy, and the Integrated Waste Management Authority.
- Update the City's Municipal Code.

- Monitor pending and current state and federal legislation and court decisions, as appropriate, and provide written updates on those that have the potential to affect the City. Provide suggested action or changes in operations or procedures to assure compliance.
- Research and advise on municipal and other legal matters as requested by the City Council or the City Manager.
- Recommend specialist legal firms as needed and provide management of same.

PROPOSAL SUBMISSION REQUIREMENTS

Proposal Submittal

Proposals must be received no later than the close of City business, November 15, 2023. The delivery address follows:

City of Atascadero
Attn: Lara Christensen, Deputy City Manager
6500 Palma Avenue
Atascadero, CA 93422

Email: lchristensen@atascadero.org

General Instructions

Proposals should be a straightforward, concise description of the Applicant's firm, background, qualifications, capabilities to satisfy the requirements of this RFP, and proposed pricing. The proposing party is responsible for all costs incurred in preparation and submittal of a proposal.

Proposal Format

Letter of Transmittal. The proposal shall include a transmittal letter, signed by a duly authorized representative of the firm/attorney, and must include the name, address, telephone number and email address of the Respondent and those (if necessary) to whom any correspondence should be directed. Provide the legal entity name, Federal Employer Identification Number (EIN), and form of business (i.e. Corporation, LLP, etc.). The letter shall contain a statement to the effect that the proposal and fee schedule are valid and binding for 180 days.

Identification of Attorneys. The response to this RFP should include descriptions of the attorney or attorneys (partners/principals and associates) that may be assigned to work with and who would have primary responsibility for providing regular services to the City under the proposal. For each attorney, the RFP should identify the overall capabilities, qualifications, trainings, areas of expertise, and prior experience, as they relate to the desired qualifications and experience described in this RFP. Include names, resumes, publications, scholastic honors, and professional affiliations, and length of employment with the firm.

Support Staff. The RFP should include information about the types of support staff, such as other attorneys, paralegals, interns and others in the firm who would be assigned to perform work for the City and whose time would be billed for such work. The response should include information about how the firm plans to utilize support staff within the City's budget constraints.

Description of Services. The RFP should describe the services the firm proposes to provide in a way that demonstrates understanding of the needs of the City, the firm's overall experience with municipal law, any areas of specialty listed above, and any special qualifications that are believed to distinguish it from other law firms. Describe the nature of your/the law firm's practice, as well as qualifications for providing legal services as City Attorney for the City of Atascadero.

Rates and Charges. The proposed means of compensation, including hourly rates or fees to be charged for each individual named in the Statement of Qualifications, should be listed. A schedule of the rates or amounts for all fees, charges, and expenses to be billed by each attorney or staff member should also be included. An estimated range of anticipated monthly charges the City may expect to be billed is highly desirable.

Availability and Commitment to Provide Services. The RFP should include an indication of the commitment to provide the services by the attorney or attorneys with principal responsibility for providing services to the City. In this context, the words availability and commitment should be taken in their broadest meanings, incorporating time, flexibility in scheduling, office location of the attorney or attorneys, and firm or personal policies and practices with regard to returning calls and meeting deadlines. Any significant time period required before beginning services should be noted.

Knowledge of San Luis Obispo (SLO) County Governmental Issues. The RFP should describe familiarity with unique issues facing local governments in SLO County and the City in particular. Living experience in SLO County and in the City should be listed.

Actual or Perceived Conflicts.

- Please list any political contributions of money, in-kind services, or loans made to any member of the City of Atascadero Council within the last five years by the applicant law firm and all of its attorneys (including the attorney being proposed as City Attorney).
- Please list all public clients for which your firm currently provides legal services.
- Please list all public clients for which your firm has provided services over the last five years.
- Please identify any foreseeable potential conflicts of interest which would result from such representation and the manner in which you would propose to resolve such conflicts.
- For the proposed City Attorney, please specify current or known future professional commitments in order that the City may evaluate your continuing availability for providing legal services to the City.

Reasonable diligence to identify and disclose potential conflicts is expected of all firms submitting a response to this RFP. The proposal should also provide a statement or description of firm policy to address how conflicts of interest between two or more clients are avoided.

References. References from three to five comparable and representative public agency clients, which the firm is currently working with or has worked in the recent past, and the public agency's teams should be included, with contact information, including the contact's name, title, agency, phone and email address. Specify the client location, consultant firm members and participating individuals, and their roles on the team (City Attorney, Deputy City Attorney, legal staff, etc.), type of work, and other relevant information.

Additional Information. Statements submitted in response to the RFP may, but are not required to, provide additional information to assist a proper evaluation of the proposal. Any discussions relating to suggested strategies to reduce costs for outside legal services are appropriate in this section.

RFP Schedule of Events

RFP Event		Date
1	City Issues RFP	October 25, 2023
2	Deadline for Receipt of Proposal	November 15, 2023
3	Interview(s)	TBD
4	Agreement to City Council	December 12, 2023
5	Estimated Contract Start Date	January 1, 2024

The City reserves the right, in its sole discretion, to adjust the schedule, waive variances or irregularities, or reject all proposals.

Cost Proposal

The incumbent City Attorney has provided the services described in this RFP for a flat monthly amount. It is the expectation of the City Council that proposals submitted shall not exceed the current budget amount of \$240,000. In the event the budget amount would be exceeded, prior approval of the City Council would be required.

Billing proposals should consider the scope of work and hourly involvement by each staff/law firm member. Describe how you/your firm will aid the City in remaining within the adopted budget resulting from the award of this contract. Specify how long the prices quoted will be binding. Please describe how you/the firm intend(s) to charge for legal services and provide a fee schedule.

- If hourly rate billing is proposed, provide the structure of standard hourly billing rates for the designated City Attorney and any other partners, associates, paralegals, etc. assisting such person in providing services; provide the fee schedule/hourly rates in a table format.
- If a monthly retainer is proposed, how many hours per month would be included and what services would be performed as part of the retainer? Describe what occurs when the City requires fewer or more hours of service in a given month and a description of the sort of matters that would not be included in the monthly retainer.
- Please define any “extra” services, such as litigation, and describe if such services will be billed at a different hourly rate or basis.
- Are charges ever shared between clients, and if so, explain what method is used.
- Please describe any proposed blended rate and availability of any alternative billing options including any applicable government or discount rate offered to the City of Atascadero.
- Specify which items, if any, are billed separately and at what rate. Such items might include telephone and fax charges, postage, duplicating/printing, out-of-pocket expenses, and mileage/travel time.

These rates shall remain firm through any initial term of the agreement and any rate change for additional agreement terms requires approval by the City Council. Selected firm must be capable of tracking and billing (invoicing) all work hours and materials (if reimbursable) by specific

program or funding source as required by the City of Atascadero and as identified in the City's Attorney Services Agreement. The proposal of any firm not capable or willing to comply with this requirement will be considered non-responsive.

EVALUATION CRITERIA AND SELECTION PROCESS

The City Council anticipates making a selection of a firm or firms following a careful evaluation of all relevant information.

Calls to submitting firms or attorneys and their references may be made to clarify material in the submittals. Based upon this review, the best qualified firms may be invited to a personal interview. The main criteria used to evaluate the RFP will concern the experience and qualifications of the firm's attorneys who would be assigned to the City. The material submitted in the proposals, interviews with the firms, a thorough background check, and references will be determinative factors in making a selection. Ancillary information including the firm's fee structure and schedule of charges for ancillary services is important but will be given secondary weight.

SPECIAL PROVISIONS

Contract Award. The contract will be awarded for an initial period of five (5) years. The agreement will be then automatically renewed for additional five, one-year periods unless terminated by either party. However, the City Attorney shall work at the pleasure of the City Council and nothing herein shall limit their ability to terminate the contract at will with no notice or penalty.

Cost of Preparing and Submitting Statements. All costs incurred in preparing and submitting the RFP is to be borne by the submitter and not the City. In no event shall the City be liable for any cost whatsoever for the preparation or submittal of a response to this RFP.

Reservations and Options. The City Council reserves the rights and options to:

- Reject any or all of the submittals
- Waive any of the provisions of the RFP
- Issue subsequent RFPs
- Cancel the RFP process
- Waive technical error in the responses it receives
- Negotiate with any, all, or none of the respondents to this RFP in regards to costs or to further refine the scope of services to be provided.

WITHDRAWAL OF PROPOSAL

Any proposal may withdrawn at any time prior to the date and time fixed for the opening of the proposals by submitting a written request to the Atascadero City Manager. The request shall be signed by an individual authorized to bind the respondent.

PROPOSALS AND PUBLIC RECORDS

Until award of the contract, the proposals shall be held in confidence and shall not be available for public review. Upon award of a contract to the successful respondent, all proposals shall be public records. No proposal shall be returned after the date and time set for opening thereof. All proposals shall become the property of the City of Atascadero.

INQUIRIES

Questions regarding this RFP should be submitted in **writing** to:

Lara Christensen, Deputy City Manager

6500 Palma Avenue

Atascadero, CA 93422

lchristensen@atascadero.org

Respondents are directed not to contact other City staff or City Council in conjunction with this request. All queries must be submitted in writing.

Substantive requests for information received may be responded to in writing by the City in the form of an addendum to this RFP and sent to all RFP recipients.

ADDENDA

It shall be the respondent's responsibility to check the City of Atascadero's website to obtain any addenda that may be issued for the RFP. Addenda should be acknowledged in the Transmittal Letter.

SAMPLE CONSULTANT AGREEMENT

CITY OF ATASCADERO



CONTRACT FOR

[Name of Consultant]

for

GENERAL TITLE OF SERVICES



CONSULTANT SERVICES AGREEMENT
FOR THE
CITY OF ATASCADERO
[NAME OF CONSULTANT]

THIS CONTRACT is made and entered into between City of Atascadero, a Municipal Corporation (“City”) and [Name of Consultant] (“Consultant”). City and Consultant agree as follows:

1. **SCOPE AND STANDARDS:**

A. **CONTRACT.** Consultant shall do all work, attend all meetings, produce all reports and carry out all activities necessary to complete the services described in the SCOPE OF WORK AND STANDARDS FOR SERVICES, attached hereto and incorporated herein by this reference as Exhibit A, as requested by the City. This Contract and its exhibits shall be known as the “Contract Documents.” Terms set forth in any Contract Document shall be deemed to be incorporated in all Contract Documents as if set forth in full therein.

2. **EMPLOYMENT STATUS OF PERSONNEL:**

A. **INDEPENDENT CONTRACTOR; EMPLOYEES OF CONSULTANT.** Consultant enters into this Contract as, and shall at all times remain as to the City, an independent contractor and not as an employee of the City. Nothing in this Contract shall be construed to be inconsistent with this relationship or status. Any persons employed by Consultant for the performance of services pursuant to this Contract shall remain employees of Consultant, shall at all times be under the direction and control of Consultant, and shall not be considered employees of City. All persons employed by Consultant to perform services pursuant to this Contract shall be entitled solely to the right and privileges afforded to Consultant employees and shall not be entitled, as a result of providing services hereunder, to any additional rights or privileges that may be afforded to City employees.



B. **INDEPENDENT INVESTIGATION.** The Consultant agrees and hereby represents it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Contract is based on such independent investigation and research.

C. **COMPLIANCE WITH EMPLOYMENT LAWS.** The Consultant shall keep itself fully informed of, shall observe and comply with, and shall cause any and all persons, firms or corporations employed by it or under its control to observe and comply with, applicable federal, state, county and municipal laws, ordinances, regulations, orders and decrees which in any manner affect those engaged or employed on the work described by this Contract or the materials used or which in any way affect the conduct of the work.

D. **UNLAWFUL DISCRIMINATION PROHIBITED.** Consultant shall not engage in unlawful employment discrimination. Such unlawful employment discrimination includes, but is not limited to, employment discrimination based upon a person's race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation.

3. **TIME OF PERFORMANCE:**

The services of Consultant are to commence upon execution of this Contract by City, and shall be undertaken and completed in a prompt and timely manner, in accordance with the Scope of Work referenced in Exhibit A. Except as provided in Sections 6 and 19 below, this Contract shall terminate no later than [insert date], unless extended by the mutual agreement of both parties.

4. **COMPENSATION:**

A. **TERMS.** Compensation to the Consultant shall be as set forth in Exhibit B attached hereto and made a part hereof.

B. **NO PAY FOR ADDITIONAL SERVICES WITHOUT WRITING.** Consultant shall not be compensated for any services rendered in connection with its performance of this Contract, which are in addition to those set forth herein or listed in Exhibit A, unless such additional services are authorized in advance and in writing by the City Manager or the City Manager's designee (hereinafter "City Manager" shall include the City Manager's designee). Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City and Consultant at the time City's express written authorization signed by the City Manager is given to Consultant for the performance of said services.



5. **SUPERVISION, LABOR AGREEMENTS AND PERSONNEL:**

A. **CONSULTANT SUPERVISES PERSONNEL.** The Consultant shall have the responsibility for supervising the services provided under this Contract, hiring of personnel, establishing standards of performance, assignment of personnel, determining and affecting discipline, determining required training, maintaining personnel files, and other matters relating to the performance of services and control of personnel. The City Manager may use any reasonable means to monitor performance and the Consultant shall comply with the City Manager's request to monitor performance.

B. **PERFORMANCE NOT SUBJECT TO EMPLOYMENT AGREEMENTS.** The City acknowledges that the Consultant may be obligated to comply with bargaining agreements and/or other agreements with employees and that the Consultant is legally obligated to comply with these Contracts. It is expressly the intent of the parties and it is agreed by the parties that the Consultant's performance shall not in any manner be subject to any bargaining agreement(s) or any other agreement(s) the Consultant may have covering and/or with its employees.

C. **APPROVAL OF STAFF MEMBERS.** Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Contract. Consultant shall notify City of any changes in Consultant's staff to be assigned to perform the services required under this Contract and shall obtain the approval of the City Manager of a list of all proposed staff members who are to be assigned to perform services under this Contract prior to any such performance.

6. **TERMINATION:**

A. **30 DAYS NOTICE.** The City, upon thirty (30) days written notice, may terminate this Contract, without cause, at any time. In the event of such termination, Consultant shall be compensated for non-disputed fees under the terms of this Contract up to the date of termination.

B. **OBLIGATIONS SURVIVE TERMINATION.** Notwithstanding any termination of this Contract, Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract by Consultant, and the City may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due the City from Consultant is determined. All of the indemnification, defense and hold harmless obligations in this Contract shall survive termination.



7. **CHANGES:**

The City or Consultant may, from time to time, request changes in the scope of the services of Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of Consultant's compensation and/or changes in the schedule must be authorized in advance by both Parties in writing. Mutually agreed changes shall be incorporated in written amendments to this Contract. Any increase in the amount of Consultant's compensation and/or changes in Exhibit A and or Exhibit B must be authorized in advance by the City Manager.

8. **PROPERTY OF CITY:**

A. **MATERIALS PREPARED EXCLUSIVE PROPERTY OF CITY.** It is mutually agreed that all materials prepared by the Consultant under this Contract are upon creation and shall be at all times the exclusive property of the City, and the Consultant shall have no property right therein whatsoever. City agrees that Consultant shall bear no responsibility for any reuse of the materials prepared by the Consultant if used for purposes other than those expressly set forth in the Intended Use of Consultant's Products and Materials section of this Contract. Consultant shall not disseminate any information or reports gathered or created pursuant to this Contract without the prior written approval of City including without limitation information or reports required by government agencies to enable Consultant to perform its duties under this Contract and as may be required under the California Public Records Act excepting therefrom as may be provided by court order. Consultant will be allowed to retain copies of all deliverables.

B. **CONSULTANT TO DELIVER CITY PROPERTY.** Immediately upon termination, or upon the request by the City, the City shall be entitled to, and the Consultant shall deliver to the City, all data, drawings, specifications, reports, estimates, summaries and other such materials and property of the City as may have been prepared or accumulated to date by the Consultant in performing this Contract. Consultant will be allowed to retain copies of all deliverables to the City.

9. **CONFLICTS OF INTEREST:**

A. **CONSULTANT** covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Contract. Consultant further covenants that in the performance of this Contract, Consultant shall take reasonable care to ensure that no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Contract. Consultant agrees to include language similar to this Section 9(A) in all contracts with subcontractors and agents for the work contemplated herein.

10. **CONFIDENTIAL INFORMATION:**



A. **ALL INFORMATION KEPT IN CONFIDENCE.** All materials prepared or assembled by Consultant pursuant to performance of this Contract are confidential and Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of the City, except by court order.

B. **REIMBURSEMENT FOR UNAUTHORIZED RELEASE.** If Consultant or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, the City has the right to reimbursement and indemnity from party releasing such information for any damages caused by the releasing party's, including the non-releasing party's attorney's fees and disbursements, including without limitation expert's fees and disbursements.

C. **COOPERATION.** City and Consultant shall promptly notify the other party should Consultant or City, its officers, employees, agents, or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Contract and the work performed thereunder or with respect to any project or property located within the City. City and Consultant each retains the right, but has no obligation, to represent the other party and/or be present at any deposition, hearing or similar proceeding. Consultant and City agree to cooperate fully with the other party and to provide the other party with the opportunity to review any response to discovery requests provided by Consultant or City. However, City and Consultant's right to review any such response does not imply or mean the right by the other party to control, direct, or rewrite said response.

11. **PROVISION OF LABOR, EQUIPMENT AND SUPPLIES:**

A. **CONSULTANT PROPERTY.** Consultant shall furnish all necessary labor, supervision, equipment, communications facilities, and supplies necessary to perform the services required by this Contract **except as set forth in Exhibit _____**. City acknowledges that all equipment and other tangible assets used by Consultant in providing these services are the property of Consultant and shall remain the property of Consultant upon termination of this Contract.

B. **SPECIAL SUPPLIES.** City shall be responsible for supplying any special supplies, stationary, notices, forms or similar items that it requires to be issued with a City logo. All such items shall be approved by the City Manager and shall be provided at City's sole cost and expense.



12. **COMPLIANCE WITH LAW:**

A. **COMPLIANCE REQUIRED.** Consultant shall keep itself informed of applicable local, state, and federal laws and regulations which may affect those employed by it or in any way affect the performance of its services pursuant to this Contract. Consultant shall observe and comply with all applicable laws, ordinances, regulations and codes of federal, state and local governments, and shall commit no trespass on any public or private property in performing any of the work authorized by this Contract. Consultant shall at all times hold a valid contractor's license if performing any function or activity for which a license is required pursuant to Chapter 9 (commencing with section 7000) of Division 3 of the California Business and Professions Code, and Consultant shall provide a copy of the license(s) upon the request of the City. The City, its officials, officers, elected officials, appointed officials and employees shall not be liable at law or in equity as a result of any failure of consultant to comply with this section.

B. **PREVAILING WAGES.** In the event it is determined that the Consultant is required to pay prevailing wages for the work performed under this Agreement, the Consultant shall pay all penalties and wages as required by applicable law.

13. **SUBCONTRACTING:**

None of the services covered by this Contract shall be subcontracted without the prior written consent of the City Manager. Consultant shall be as fully responsible to the City for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, as it is for the negligent acts and omissions of persons directly employed by Consultant.

14. **ASSIGNABILITY:**

Consultant shall not assign or transfer any interest in this Contract whether by assignment or notation. However, claims for money due or to become due Consultant from the City under this Contract may be assigned to a financial institution, but only with prior written consent of the City Manager. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the City. The rights and benefits under this agreement are for the sole and exclusive benefit of the City and this Contract shall not be construed that any third party has an interest in the Contract.



15. **LIABILITY OF CONSULTANT:**

Consultant shall be responsible for performing the work under this Contract in a manner which is consistent with the generally accepted standards of Consultant's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. The City shall have no right of control over the manner in which the work is to be done but only as to its outcome, and shall not be charged with the responsibility of preventing risk to Consultant or its employees, agents, contractors or subcontractors.

16. **INDEMNIFICATION:**

A. INDEMNIFICATION FOR PROFESSIONAL LIABILITY. When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorneys fees and costs to the extent same are caused in whole or in part by any negligence or wrongful act, error or omission of Consultant, willful misconduct, or recklessness of its officers, agents, employees or subconsultants (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this agreement.

B. INDEMNIFICATION FOR OTHER THAN PROFESSIONAL LIABILITY. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which consultant is legally liable, including but not limited to officers, agents, employees or subconsultants of Consultant.

C. GENERAL INDEMNIFICATION PROVISIONS. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section for each and every subconsultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this agreement. In the event consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successor, assigns or heirs of Consultant and shall survive the termination of this agreement or this section.



17. **INSURANCE:**

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in **Exhibit** attached to and part of this agreement.

18. **RECORDS:**

Consultant shall maintain complete and accurate records with respect to labor costs, material expenses, parcels abated or serviced and other such information required by City that relates to the performance of services under this Contract. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible and in a form acceptable to the City, which the City may specify and change from time to time. Consultant shall provide free access to the representatives of City or its designees, at reasonable times, to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts therefrom as necessary, and shall allow inspection of all work, data, documents, proceedings, and activities related to this Contract. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

19. **MISCELLANEOUS PROVISIONS:**

A. **ASSIGNMENT OR SUBSTITUTION.** City has an **NONDISCRIMINATION / NONPREFERENTIAL TREATMENT STATEMENT** In performing this Contract, the parties shall not discriminate or grant preferential treatment on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, and shall comply to the fullest extent allowed by law, with all applicable local, state, and federal laws relating to nondiscrimination.

B. **UNAUTHORIZED ALIENS.** Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. & 1101 et seq.), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this contract, and should the Federal Government impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

C. **GOVERNING LAW.** The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Contract and also govern the interpretation of this Contract. Any litigation concerning this Contract shall take place in the San Luis Obispo Superior Court, federal diversity jurisdiction being expressly waived.

D. City has an interest in the qualifications of and capability of the persons and entities that will fulfill the duties and obligations imposed upon Consultant by this Contract. In



recognition of that interest, neither any complete nor partial assignment of this Contract, may be made by Consultant nor changed, substituted for, deleted, or added to without the prior written consent of City which consent shall not be unreasonably withheld. Any attempted assignment or substitution shall be ineffective, null, and void, and constitute a material breach of this Contract entitling City to any and all remedies at law or in equity, including summary termination of this Contract. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Contract.

E. **ENTIRE CONTRACT.** This Contract constitutes the entire Contract and understanding between the parties relative to the services specified herein and there are no understandings, agreements, conditions, representations, warranties or promises, with respect to this Contract, except those contained in or referred to in this Contract and this Contract supersedes all prior understandings, agreements, courses of conduct, prior dealings among the parties and documentation of any kind without limitation.

F. **AMENDMENTS.** This Contract may be modified or amended, or any of its provisions waived, only by a subsequent written agreement executed by each of the parties. The parties agree that this requirement for written modifications cannot be waived and any attempted waiver shall be void.

G. **CONSTRUCTION AND INTERPRETATION.** Consultant and City agree and acknowledge that the provisions of this Contract have been arrived at through negotiation and that each party has had a full and fair opportunity revise the provisions of this Contract and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Contract shall not be resolved against the drafting party. The titles of the various sections are merely informational and shall not be construed as a substantive portion of this Contract.

H. **WAIVER.** The waiver at any time by any party of any of its rights with respect to a default or other matter arising in connection with this Contract shall not be deemed a waiver with respect to any subsequent default or other matter.

I. **SEVERABILITY.** The invalidity, illegality or unenforceability, of any provision of this Contract shall not render the other provisions invalid, illegal or unenforceable.



J. **NOTICES.** All invoices, payments, notices, demands, requests, comments, or approvals that are required to be given by one party to the other under this Contract shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail addressed to the parties (deemed to have been received three (3) business days after deposit in the U.S. Mail) at the following addresses:

City: City of Atascadero
City Manager
6500 Palma Avenue
Atascadero, CA 93422

Consultant [NAME OF CONSULTANT]
[CONTACT PERSON]
[Street Address]
[City, state and zip code]

Each party may change the address at which it gives notice by giving ten (10) days advance, written notice to the other party.

K. **AUTHORITY TO EXECUTE.** The person or persons executing this Contract on behalf of Consultant warrant and represent that they have the authority to execute this Contract on behalf of their agency and further warrant and represent that they have the authority to bind Consultant to the performance of its obligations hereunder.

Effective to this [] day of [], 2014 by the parties as follows.

Approved as to form: [NAME OF CONSULTANT]

Counsel for consultant By: _____
[Name and Title]

Approved as to form: CITY OF ATASCADERO

By: _____ By: _____
Brian Pierik, City Attorney [Name and Title]



**CERTIFICATE OF COMPLIANCE
WITH LABOR CODE § 3700**

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I have complied or will comply with such provisions before commencing the performance of the work of this contract. (Cal. Labor C. §§1860, 1861.)

CONSULTANT

[Insert Consultant Name and Title]

EXHIBIT A

Scope of Work

EXHIBIT B

Compensation and Method of Payment

EXHIBIT C
Insurance Requirements

Exhibit E

INSURANCE REQUIREMENTS: Consultant Services

The Consultant 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 performance of the work hereunder by the Consultant, its agents, representatives, employees, or subconsultants.

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. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Errors and Omissions Liability insurance as appropriate to the consultant's profession.

Minimum Limits of Insurance. Consultant 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 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. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
4. Errors and Omissions Liability: \$1,000,000 per occurrence.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, official, employees, agents or volunteers.
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

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

Additional Insured

The City of Atascadero will need to be added to the policy as Additional Insured by endorsement to the General Liability, adding the City's name to the Certificate of Insurance is not sufficient and will not be accepted.

Verification of Coverage. Consultant shall furnish the City with a certificate of insurance showing maintenance of the required insurance coverage. Original endorsements effecting general liability and automobile liability coverage required by this clause must also be provided. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before work commences.