

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE:	§	
	§	
INTROGEN THERAPEUTICS, INC.,	§	CASE NO. 08-12442-FRM
INTROGEN TECHNICAL SERVICES, INC.,	§	CASE NO. 08-12443-FRM
TMX REALTY CORPORATION,	§	CASE NO. 08-12444-FRM
	§	CHAPTER 11
DEBTORS	§	
	§	<i>JOINTLY ADMINISTERED UNDER</i>
301 CONGRESS AVENUE, SUITE 1850	§	CASE NO. 08-12442-FRM
AUSTIN, TEXAS 78701	§	
	§	
TAXPAYER IDENTIFICATION NOS.:	§	
74-2704230, 35-2340711, 74-2896565	§	

**APPLICATION FOR AUTHORIZATION TO EMPLOY
WILSON & VARNER, L.L.P. AS SPECIAL COUNSEL
PURSUANT TO 11 U.S.C. § 327(e)**

THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO YOUR INTERESTS.

IF NO TIMELY RESPONSE IS FILED WITHIN TWENTY (20) DAYS FROM THE DATE OF SERVICE, THE RELIEF REQUESTED HEREIN MAY BE GRANTED WITHOUT A HEARING BEING HELD.

A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO BE HELD

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COME NOW Introgen Therapeutics, Inc., Introgen Technical Services, Inc., and TMX Realty Corporation (the “Debtors”), and file this their Application for Authorization to Employ Wilson & Varner, L.L.P. as Special Counsel Pursuant to 11 U.S.C. § 327(e) (the “Application”). In support of the Application, the Debtors submit the Affidavit of Rodney Varner (the “Varner Affidavit”), a copy of which is attached hereto as *Exhibit A* and incorporated herein by reference.

I.
Jurisdiction

1. This Court has jurisdiction over the subject matter of the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding under 28 U.S.C. § 157(b)(2).

II.
Background

2. On December 2, 2008, (the “Petition Date”), the Debtors filed their voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (“Bankruptcy Code”). Pursuant to Bankruptcy Code §§ 1107(a) and 1108, the Debtors are managing their affairs as a debtor-in-possession.

III.
Application To Employ

3. By this Application, the Debtors seek authorization to retain Wilson & Varner, L.L.P. (the “Firm”) as Special Counsel pursuant to Section 105(a) and 327(e) of the Bankruptcy Code. As Special Counsel, the Firm would provide the Debtors with legal representation for on-going regulatory, administrative, and corporate matters, including corporate filings and counseling on employment/operations and contracts. The Firm has been selected by the Debtors because Rodney Varner (“Varner”) has served as general counsel to the Debtors and Corporate Secretary since 1993. Varner has years of experience in dealing with the Debtors’ daily operations. Thus, the Firm would be invaluable as Special Counsel in advising the Debtors on regulatory, administrative, and corporate matters.

4. The Firm will carefully coordinate its efforts with Debtors’ bankruptcy counsel to prevent any duplication of effort to the fullest extent possible, and to aid Debtors in effectuating a timely and cost effective reorganization.

5. This Application is being filed within thirty days of the Petition Date and *nunc pro tunc* approval of the Firm as of the Petition Date is hereby requested as authorized by Local Rule of Bankruptcy Procedure 2014(c).

6. The professional services to be rendered and the proposed arrangement for compensation are set forth in the Letter Agreement attached hereto as *Exhibit "A-1."* The Firm's customary fees and expenses incurred in connection with this representation are to be paid out of the Debtors' estates. The Debtors will be jointly and severally liable for all fees and expenses incurred by the Firm for services rendered to the Debtors pursuant to the Letter Agreement.

7. To the best of Debtors' knowledge, except as disclosed in the Verified Statement of Proposed Special Counsel filed herewith as *Exhibit "A,"* Special Counsel nor the Firm have any interest adverse to the Debtors or to the Debtors' bankruptcy estate and is disinterested. Special Counsel nor the Firm have any connections with the Debtors, the Debtors' creditors, or any party in interest herein except as disclosed in the Verified Statement of Proposed Special Counsel filed herewith. Debtors believe that the Firm's employment is necessary to the orderly administration of the estate and would be in the best interest of this estate.

WHEREFORE, Debtors respectfully request that this Court enter its order allowing the appointment of Wilson & Varner, L.L.P. as Special Counsel, upon the terms described in this Application, and for such other relief as is just.

Respectfully submitted,

BROWN MCCARROLL, L.L.P.
111 Congress Avenue, Suite 1400
Austin, Texas 78701
(512) 479-1141
(512) 226-7320 (fax)

By: /s/ Patricia B. Tomasco
Patricia B. Tomasco
State Bar No. 01797600
Kell C. Mercer
State Bar No. 24007668

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of December, 2008, a true and correct copy of the foregoing document was served via the Court's CM/ECF notification system, facsimile transmission, e-mail transmission, and/or regular first class mail, on all parties set forth on the attached Master Service List.

/s/ Patricia B. Tomasco
Patricia B. Tomasco

November 25, 2008

Introgen Therapeutics, Inc.
301 Congress Avenue, Suite 1850
Austin, Texas 78701

Re: Representation by Wilson & Varner, L.L.P.

Dear David:

This letter will outline the terms of our continued representation of Introgen Therapeutics, Inc. and its subsidiaries.

Description and Scope of the Representation: Identification of Client

Wilson & Varner, LLP is being retained to represent Introgen Therapeutics, Inc. and its subsidiaries in connection with providing legal advice regarding corporate and business matters, including support of bankruptcy counsel in the preparation for and prosecution of a chapter 11 reorganization. Introgen Therapeutics, Inc. and its subsidiaries are our only clients in this matter. We want to clarify that Wilson & Varner, LLP, does not represent any other person or entity other than as set forth above, and in particular, Wilson & Varner, LLP does not represent any individual officer, director or combination thereof. The Firm understands that we are to perform all reasonable services and take all such action as may be appropriate and necessary in our professional judgment to further your interests in this matter.

It is understood that the Firm is being retained to provide legal services and that we are not responsible for providing business or financial advice to you.

Attorneys Handling Your Representation

I will be the primary attorney handling this matter. We also anticipate that there may be other attorneys who will assist in the representation from time to time. The Firm also uses legal assistants in providing professional services when we believe that their use will reduce legal costs and improve efficiency.

Legal Fees

Wilson & Varner, LLP generally charges for our services based upon the time and effort devoted to the matter and the hourly rates of the lawyers and legal assistants that work on the representation. Until further notice, I will charge \$375 per hour for this engagement, and Conny Ruthven will charge \$275. Our legal assistant's hourly rate is

Introgen Therapeutics, Inc.

November 28, 2008

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\$75.00. We review our billing rates from time to time and will let you know in advance if our hourly rates are modified.

Costs and Expenses

In addition to legal fees, the Firm charges for out-of-pocket costs and expenses incurred in representing you.

Retainer Agreement

We have agreed that Introgen Therapeutics, Inc. will provide the Firm with an initial retainer deposit of \$93,750.00. This retainer will be credited toward your legal fees and expenses billed towards the end of the representation, unless we agree to a different arrangement. We will bill you approximately monthly throughout this matter. If the retainer proves insufficient to cover current fees and other charges on a regular basis, we may ask you to increase it.

Conclusion

Once again, Wilson & Varner, LLP is pleased to represent Introgen Therapeutics, Inc. in this matter. If you have any questions or concerns about any of the above, please contact me as soon as possible. If this letter accurately reflects our agreement, please sign the enclosed copy of this letter and return it to me.

Very truly yours,

Rodney Varner

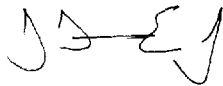
PBT/pk

Encl.

AGREED AND ACCEPTED

AS OF November 28, 2008:

INTROGEN THERAPEUTICS, INC.



By: _____

Printed Name: J. David Enloe Jr.

Its: President and CEO

3. I, Rodney Varner, and the firm of Wilson & Varner, L.L.P., maintain an office at 301 Congress Ave., Suite 1825, Austin, Texas 78701. The main telephone number is (512) 320-4160. The main fax number is (512) 495-9441.

4. I have been employed as outside general counsel and Secretary of the Corporation for the Debtors since about 1993.

5. The proposed arrangement for compensation is fully disclosed in the Letter Agreement attached as *Exhibit "A-1"* to the Application for Retention and Employment of Wilson & Varner, L.L.P. as Special Counsel Pursuant to 11 U.S.C. § 327(e) filed contemporaneously with this statement. The customary fees and expenses incurred in connection with this representation are to be paid out of the Debtors' estates. The Debtors will be jointly and severally liable for all fees and expenses incurred by the Firm for services rendered to the Debtors pursuant to the Letter Agreement. My hourly rate is currently \$375 an hour. The rates of other attorneys in our firm range are \$275 an hour and our legal assistant's rates are \$75 an hour.

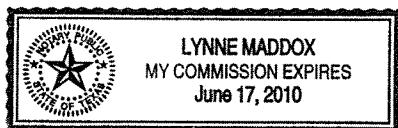
6. Wilson & Varner, L.L.P received a retainer of \$93,750.00 for services performed and to be performed in connection with and in contemplation of representation.

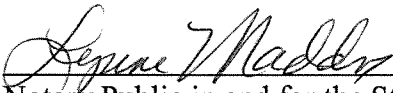
7. Neither I nor Wilson & Varner, L.L.P. have shared or agreed to share compensation with any other entity.



Rodney Varner

SWORN TO AND SUBSCRIBED before me by Rodney Varner on this the 16th day of December, 2008, to certify which witness my hand and seal of office.





Notary Public in and for the State of Texas
My Commission Expires: _____

3. I, Rodney Varner, and the firm of Wilson & Varner, L.L.P., maintain an office at 301 Congress Ave., Suite 1825, Austin, Texas 78701. The main telephone number is (512) 320-4160. The main fax number is (512) 495-9441.

4. Except as set forth herein, neither I nor Wilson & Varner, L.L.P have any connection with the above-named Debtors, the Debtors' creditors, or any other party in interest herein except as set forth. I have been engaged as Debtors' general counsel and Corporate Secretary for the Debtors since 1993. I and Wilson & Varner, LLP, have advised the Debtors on regulatory, administrative real estate, banking, and corporate matters, including corporate filings, counseling on employment/operations, contracts, business litigation, and general business matters.

5. I do not represent any interest adverse to the Debtors or to the Debtors' estates with respect to the above-referenced legal matters, and am a disinterested person within the meaning of 11 U.S.C. § 101(14). Accordingly, I seek to be retained as Special Counsel to continue providing the Debtor with advisement and representation on regulatory, administrative, real estate, contract, business and corporate matters.

6. I and/or Wilson & Varner, LLP, have the following connections with the debtors and their insiders or affiliates: (i) I serve as corporate secretary of the debtors and their subsidiary companies; (ii) I and entities controlled by my family own less than one-half of one percent of the issued and outstanding stock of debtor Introgen Therapeutics, Inc; (iii) I am the majority shareholder of a company, Introgen Research Institute, Inc., in which debtor Introgen Therapeutics, Inc. is the minority shareholder; (iv) I and Wilson & Varner, LLP, have from time to time provided estate planning and general legal advice to officers and directors of the debtors.






Rodney Varner

SWORN TO AND SUBSCRIBED before me by Rodney Varner on this the 16th day of December, 2008, to certify which witness my hand and seal of office.





Notary Public in and for the State of Texas
My Commission Expires: _____