CONTRACT SERVICES AGREEMENT

FOR HAZARDOUS WASTE AND EMERGENCY SPILL CLEAN UP SERVICES ON AN AS NEEDED BASIS

By and Between

THE CITY OF BANNING,
A MUNICIPAL CORPORATION

and

HCI ENVIRONMENTAL & ENGINEERING SERVICE

AgrHCI7-7-11

AGREEMENT FOR CONTRACT SERVICES FOR HAZARDOUS WASTE AND EMERGENCY SPILL CLEAN UP SERVICES ON AN AS NEEDED BASIS BETWEEN THE CITY OF BANNING, CALIFORNIA AND HCI ENVIRONMENTAL & ENGINEERING SERVICE

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this 7th day of July, 2011 by and between the City of Banning, a municipal corporation ("City") and HCI Environmental & Engineering Service, ("Consultant" or "Contractor"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties." "). (The term Consultant includes professionals performing in a consulting capacity.)

RECITALS

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Section 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Section 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Banning's Municipal Code, City has authority to enter into this Agreement Services Agreement and the City Manager has authority to execute this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Section 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. SERVICES OF CONSULTANT

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough,

competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Consultant's Proposal.

The Scope of Service shall include the Consultant's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Warranty.

Consultant warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Consultant agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Consultant shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at his sole cost and expense. Consultant shall act sooner as requested by the City in response to an emergency. In addition, Consultant shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other Consultants) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Consultant's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Consultant shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Consultant. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Consultant for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Consultant agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Consultant fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Consultant's sole expense. Consultant shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand. This provision may be waived in Exhibit "B" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

1.8 **Prevailing Wages.**

Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the

Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

1.9 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.10 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Agreement Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to five percent (5%) of the Agreement Sum or $25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor.

1.11 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed Twenty Five Thousand Dollars ($25,000.00) (the "Contract"), unless additional compensation is approved pursuant to Section 1.10.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses if an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories.

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission.

2.5 Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the Agency, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance.

City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant's work within forth five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section X, pertaining to indemnification and insurance, respectively.

3.5 Term.

Unless earlier terminated in accordance with Article 8 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Consultant.

The following principals of Consultant (Principals) are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

Gregory J. Parker (Name)	President (Title)
Charles R. Guy (Name)	Secretary/Treasurer (Title)
Les Livingston (Name)	_____ (Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Consultant.

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager of City. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 Independent Consultant.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent Consultant of City and shall remain at all times as to City a wholly independent Consultant with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the Agency to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the Agency. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of Agency. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of Agency.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverages.

The Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than $1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Consultant and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than $1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Professional Liability. Professional liability insurance appropriate to the Consultant's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements.

5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Consultant's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days

prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Consultant has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed] _____

Agent Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. 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.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Consultant agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages to any persons or property resulting from the Consultant's activities or the activities of any person or persons for which the Consultant is otherwise responsible nor shall it limit the Consultant's indemnification liabilities as provided in Section 5.3. .

In the event the Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

5.3 Indemnification.

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable ("indemnors"), or arising from Consultant's reckless or willful misconduct, or arising from Consultant's indemnors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

5.4 Performance Bond.

Concurrently with execution of this Agreement, and if required in Exhibit "B", Consultant shall deliver to City performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Consultant promptly and faithfully performs all terms and conditions of this Agreement.

5.5 Sufficiency of Insurer or Surety.

Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager of City ("Risk Manager") determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Consultant shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Consultant shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest.

6.2 Reports.

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost

of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Consultant, its employees, subcontractor and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, revise or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify City should Consultant, 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 Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

7.2 Disputes; Default.

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Consultant and its sureties shall be liable for and shall pay to the City the sum of _____Not Applicable_____ ($___N/A_____) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Consultant any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to Agency, except that where termination is due to the fault of the Agency, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has

initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of Agency Officers and Employees.

No officer or employee of the Agency shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

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 Agreement. Consultant further covenants that in the performance of this Agreement, 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 Contract Officer. 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 Agreement.

No officer or employee of the Agency shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

8.4 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 Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

ARTICLE 9. HAZARDOUS WASTE & INDEMINITY

(a) Except as otherwise specifically provided in this Agreement, Contractor is prohibited from the collecting, transferring, processing or disposing of Hazardous Materials. Contractor shall further be prohibited from collecting, transferring, processing or disposing of any solid waste or recyclables that Contractor is not permitted to process under its regulatory permits or applicable laws, ordinances or regulations. For purposes of any collection, handling, removal or processing of Hazardous Materials necessitated in the course of Contractor's services hereunder (to the extent Contractor is not permitted or licensed to process such materials) Contractor shall employ one or more subcontractors duly-licensed to handle such Hazardous Materials.

(b) If Contractor inadvertently collects Hazardous Waste that Contractor is not qualified, licensed, or permitted to handle (under any applicable permit conditions or applicable laws), the Contractor shall arrange, at no cost and without liability to City, for the proper disposal of the Hazardous Waste in accordance with applicable laws and regulations.

(c) Without regard to the limits of any insurance coverage, Contractor agrees to indemnify, defend with counsel appointed by the City, protect and hold harmless the City, its representatives, officers, agents and employees against any and an fines, response costs, assessments, actions, suits, injunctive relief, claims, damages to persons or property, losses, costs penalties, obligations, errors, omissions or liabilities, ("claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with (i) violations of the commerce clause of the U.S. Constitution, AB 939, the Comprehensive Environmental Response, Compensation and Liability Act, Title 42 U.S.C. §9601 *et seq.* ("CERCLA"), HSAA, RCRA, any other Hazardous Waste laws, or other federal, state or local environmental statutes, ordinances and regulations which arise from this Agreement; (ii) the negligent performance of the work or services of Contractor, its agents, employees, subcontractors, or invitees, provided for in this Agreement; (iii) the negligent acts or omissions of Contractor hereunder, or arising from Contractor's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, whether or not there is concurrent passive or active negligence, on the part of the City, its representatives, officers, agents or employees but excluding such claims or liabilities arising from the sole negligence or willful misconduct of the City, its representatives, officers, agents or employees, who are directly responsible to the City, and in connection therewith:

1. Contractor will defend any action or actions filed in connection with any of said claim or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

2. Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work or services of Contractor hereunder; and Contractor agrees to save and hold the City, its officers, agents and employees harmless therefrom;

3. In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work or services of Contractor hereunder, Contractor agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

4. Contractor's obligations hereunder shall survive the termination or expiration of this Agreement.

(d) For purposes of this section, "Hazardous Waste" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Waste" includes, without limitation, any material or substance which is: (i) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (ii) defined as a

"hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (iii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iv) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Sections 25501(j) and (k) and 25501.1 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (v) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (vi) "used oil" as defined under Section 25250.1 of the California Health and Safety Code; (vii) asbestos; (viii) listed under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, or defined as hazardous or extremely hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (ix) defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (x) designated as a "toxic pollutant" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. Section 1317; (xi) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.* (42 U.S.C. § 6903); (xii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.* (42 U.S.C. § 9601); (xiii) defined as "Hazardous Material" pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, *et seq.;* or (xiv) defined as such or regulated by any "Superfund" or "Superlien" law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Waste and/or oil wells and/or underground storage tanks and/or pipelines, as now, or at any time hereafter, in effect.

ARTICLE 10. OWNERSHIP OF MATERIALS

ARTICLE IIExcept as otherwise provided by law, once solid waste, refuse, recyclable, or hazardous materials (as applicable to Contractor's collection duties under this Agreement) have been actually discarded by an owner/generator of such materials, ownership shall transfer to Contractor upon collection by Contractor. Contractor is thereby granted the right to retain, recycle, compost, dispose of and/or otherwise use such waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by Contractor. Subject to the provisions of this Agreement, Contractor shall have the right to retain any benefit or profit resulting from its right to retain, recycle, compost, convert, dispose of or use the refuse or hazardous waste which it collects as a result of the solid and/or hazardous waste handling activities undertaken by Contractor pursuant to this Agreement. Solid waste and/or hazardous material which is disposed of pursuant to this Agreement shall, as between the City and Contractor, remain the responsibility of the Contractor, and Contractor shall retain ownership of the same.

ARTICLE 11. MISCELLANEOUS PROVISIONS

11.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, CITY OF BANNING, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

11.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

11.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

11.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

11.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

11.6 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF BANNING, a municipal corporation

Andrew J. Takata, City Manager

ATTEST:

Marie A. Calderon, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Not Required

David Aleshire, City Attorney

CONSULTANT:

HCI Environmental & Engineering Service

By: 7/12/2011
Name: Gregory J Parker
Title: President

By: 7/12/2011
Name: Charles R. Guy
Title: Secretary / Treasurer

Address: 114 Business Center Dr
Corona CA 92880

Two signatures are required if a corporation.

NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF

On July 12, 2011 before me, Tressa Stivers personally appeared Gregory J. Parker, proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose names(~~s~~) is/~~are subscribed~~ to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/her/their signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Tressa Stivers

NRO1 TRESSA STIVERS COMM. #1850305 Notary Public - California Riverside County My Comm. Expires Jun. 18, 2013 NRO1

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
- ☐ CORPORATE OFFICER

_____
TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER_____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF

On July 17, 2011 before me, Tressa Stivers, personally appeared Charles R. Gray, proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose names(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/her/their authorized capacity(~~ies~~), and that by his/her/their signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Tressa Stivers

NRO1 TRESSA STIVERS COMM. #1850305 Notary Public - California Riverside County My Comm. Expires Jun. 18, 2013 NRO1

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
- ☐ CORPORATE OFFICER

_____
TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER_____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"
SCOPE OF SERVICES

I. Consultant will perform the following Services for the period beginning July 1, 2011 and ending June 30, 2012:

Each assignment shall be indicated by a written request produced by the Director with a description of the work to be performed (the "Project), the cost, and the time for completion of the Project. All Projects shall be carried out in conformity with all provisions of the Agreement. Services may include, but are not limited to, the following:

A. Transportation and disposal of hazardous waste. Hazardous/Non-Hazardous Waste Transportation includes the following equipment: box van, roll-off, vacuum tanker, and bulk tanker.

B. Twenty four (24) hours per day, Seven (7) days per week, emergency response services with a response time of 1-2 hours for Riverside County locations, City of Banning. Vehicles and equipment will exit base facility within one hour of notification. Emergency response to a hazardous material spill or incident will include mobilizing equipment, environmental technicians and supervisors from existing projects to spill site.

C. Provide and delivery necessary supplies and materials related to the collection of hazardous waste and emergency clean up.

All waste disposal methods regarding these services will include recycling, incineration, treatment and direct landfill as a last resort following Federal, State, and Local guidelines and regulations. A list of waste "Streams" that the Contractor will be responsible to properly dispose of and transport and their disposal method are as follows:

1. Solvents-Petroleum distillates, chlorinated- recycling and incineration.
2. Asbestos, Roofing, pipe covering, asbestos containing pipe- direct landfill.
3. Contaminated Soil-Gasoline, jet fuel, kerosene, motor oil, diesel fuel, lead ash, poly chlorinated biphenyl (PCB) pesticides and herbicides – recycling, incineration and landfill.
4. Asphalt Products – emulsions, tars – recycling.
5. Oil-Lubricating, mineral, automotive – recycling.
6. Coolant – antifreeze – recycling.
7. Sludge-clarifiers and steam cleaning residue – recycling.

8. Drug Labs-precursors, glassware, including methamphetamine lab materials- treatment and incineration.

9. Laboratory Chemicals-outdated, residues from analysis – treatment and incineration.

10. Paint Products- oil base, water base, residues, lead – recycling and incineration.

11. Refrigerants-Freon (R-11, R-12, R-22) – recycling.

12. Grease-contaminated with dirt, leaves – recycling.

13. Oil Filters-drained and crushed – recycling.

14. Mixed Fuel-gasoline mixed with diesel – recycling.

15. Poly Chlorinated Biphenyl (PCB) – including transformers, switches and oils containing PCB's – recycling and incineration.

16. Chemicals – outdated, unused corrosives, caustic, cleaners – recycling, treatment and incineration.

17. Water- contaminated with oils, chemicals – recycling and treatment.

18. Fluorescent Light Bulbs and Alternative Powered Lamps, Sodium Halide and High Pressure Sodium vapor – recycling.

19. Lead-lead dust, spent lead form pistol range – recycling and direct landfill.

20. Household Hazardous Waste- Miscellaneous abandoned waste products – recycling, treatment and incineration.

21. Batteries – lead acid, ni-cad – recycling

The Contractor will only use the following disposal sites:

a.) **Pacific Resource Recovery** – (800) 499-7145; EPA CAD008252405 (solvents-petroleum distillates, chlorinated recycling and incineration, oil bas paint products, mixed fuel gasoline mixed with mixed diesel)

b.) **Siemens Water Technologies Corporation** – (800) 466-7873; EPA CAD097030993 (asphalt products emulsions, tars, coolant, antifreeze, grease contaminated with dirt, abandoned household hazardous waste products such as cleaners)

c.) **Demenno Kerdoon** – (310) 886-3400; EPA CAT080013352 (oil, mineral, automotive, coolant, antifreeze, grease contaminated with dirt, water contaminated with oils)

d.) **Filter Recycling Services** – (909) 873-414; EPA CAD982444481, (oil filters)

e.) **PSC-Phillips Services Corp,**- (800) 870-6233; EPA CAD 008364432 (laboratory chemicals, residues from analysis, refrigerants, Freon, outdated chemicals, unused corrosives)

f.) **Azusa Landfill** – EPA No. CAD009007626, (asbestos roofing, pipe covering, asbestos containing pipe, drums & boxes of asbestos)

g.) **La Paz County Landfill** – EPA AZC950823111 (asbestos roofing, pipe covering, asbestos containing pipe, drums & boxes of asbestos)

h.) **US Ecology Nevada, Inc.** – EPA NVT33001000 (15 PCB transformers, switches and oils containing PCB's, lead dust, spent lead from pistol range)

i.) **Veolia**- (626) 334-5117, EPA CAL000209381, (drug labs precursors, glassware, including methamphetamine lab, refrigerants, Freon)

j.) **Kinsbursky** – (714)738-8516, EPA CAD088504881 (batteries, lead, acid)

k.) **Western Environmental** – (760) 457-6596, EPA CAR000157206 (contaminated soil, gasoline, jet fuel, kerosene, motor oil, diesel fuel, lead ash)

l.) **Lighting Resources** – ((909) 923-7252, EPA CAL000827758 (fluorescent light bulbs)

m.) **Crosby & Overton** – (9562) 432-5445, EPA CAD028409019 (outdated chemicals, corrosives, caustics, laboratory chemicals)

n.) **Commercial Filter Recycling** – (213) 746-0237, EPA CAL000270577 (oil filters)

If it becomes necessary for the Contractor to add another disposal site, the Contract will request this change in writing, which will need to be reviewed and approved by the Director of Public Works. Upon written approval by the City, the Contract will be able to use the additional disposal site.

The contractor is responsible for ensuring that all employees and subcontractors employed by the Contractor have the minimum training and certifications required for the services performed in accordance with OSHA, EPA and DOT regulations that relates to this Agreement.

II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:

A. Project Proposal Prior to Initiation of the Project – Contractor shall prepare a written description of the services including all components and subtasks, a cost to perform the Project (the "Project Budget"), and all subtasks and how the cost was determined; and a schedule for completion of the Project (by the "Completion Date"), which shall all collectively be referred to as the "Project Proposal".

B. Project Approval – Director shall in writing approve, modify or reject the Proposal, and may issue a Notice to Proceed.

C. Performing of the Project – The Project shall be performed at a cost not to exceed the Project Budget.

D. Completion of the Project – Contractor shall complete the Project and deliver all Project deliverables to Director by the Project Completion Date.

III. In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City appraised of the status of performance by delivering the following status reports:

As requested by the director in accordance with each Project.

IV. All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.

V. Consultant will utilize the following personnel to accomplish the Services:

A. Environmental Technicians.

B. Project Managers.

C. Regulatory Compliance Personnel.

EXHIBIT "B"
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

The following Sections of the Agreement are added to the Agreement.
Article 9. Hazardous Waste Indemnity
Article 10. Ownership of Materials

EXHIBIT "C"

COMPENSATION

I. Consultant shall perform the following tasks:
Contractor shall establish a Project Budget for each Project indentifying the subtasks, based on time and rates of the personnel performing the subtasks, and itemizing all materials and equipment utilized and the costs thereof. If payment is to be made other than at completion of the services, then the phases of the performance and percentage of payment due shall also be shown in the Project Proposal.

Consultant shall use the disposal and other miscellaneous rates in performance of services:

General:
A.) 8% Energy Surcharge added on all charges.
B.) Minimum disposal charge is $145, unless otherwise noted by waste stream
C.) Transportation cost is included in rate, unless otherwise noted by waste stream

SOLVENTS – PETROLEUM DISTIALLATES:	
By Drum	$195
By Lab Pack	$325 / 55 Gallon
By Gallon	$145 / 5 Gallon Pail
SOLVENTS – PETROLEUM DISTILLANTS-CHILORINATED:	
By Drum	$275
By Lab Pack	$395 / 55 Gallon
By Gallon	$195 / 5 Gallon Pail
Minimum Disposal Charge	$195
Transportation Cost Per Ton	$78 Per Hour Reg; $97 OT
ASBESTOS ROOFING, PIPE COVERING, ASBESTOS CONTAINING PIPE:	
By Ton	$145
By Cubic Yard	$595 / Box
By Drum	$250
By Lab Pack	$250 / 55 Gallon
By Gallon	$145 / 5 Gallon Pail
Transportation cost per ton	$78 Per Hour Reg; $97 OT
CONTAMINATED SOIL – GASOLINE, JET FUEL, KEROSENE:	
By Ton	$95
By Cubic Yard	$595
By Drum	$175
Flex Bin	$145 / 5 Gallon Pail
Transportation Cost Per Ton	$78 Per Hour Reg; $97 OT
CONTAMINATED – MOTOR OIL, DIESEL FUEL	
By Ton	$65
By Cubic Yard	$595

By Drum	$175
By Gallon	$145 / 5 Gallon
Transportation Cost Per Ton	$78 Per Hour Reg; $97 OT
CONTAMINATED SOIL – LEAD ASH, POLYCHLORINATED BIPHENYL (PCB) PESTICIES, AND HERBICIDES:	
By Ton	$165
By Cubic Yard	$825
By Drum	$395
By Gallon	$225 / 5 Gallon Pail
Minimum Charge for disposal	$225
Transportation Cost Per Ton	$78 Per Hour Reg: $97 OT
ASPHALT PRODUCTS –EMULSIONS, TARS:	
By Cubic Yard	$595/ Box
By Drum	$175
By Lab Pack	$195/ 55 Gallon
By Gallon	$125 / 5 Gallon Pail
Minimum Charge for Disposal	$125
OIL LUBIRCATING, INMERAL, AUTOMOTIVE:	
By Drum	$65 Per Stop
By Lab Pack	$175 / 55 Gallon Drum
By Gallon	$0.20 Per Gallon
COOLANT – ANTIFREEZE:	
By Drum	$65 Per Stop
By Lab Pack	$175 / 55 Gallon Drum
By Gallon	$100 /5 Gallon Pail
Minimum Charge for Disposal	$100
SLUDGE-CLARIFIERS AND STEAM CLEANING RESIDUE:	
By Gallon	$0.39
Other Charge: Sludge	$1.25 / Gallon
Other Charge: Tanker Washout	$295 Ea
Minimum Charge for Disposal	$750
Transportation Cost By Gallon	$78 Per Hour Reg; $97 OT
DRUG LABS – PRECURSORS, GLASSWARE, INCLUDING METHAMPHETAMINE LAB MATERIALS:	
By Cubic Yard	$825 / Box
By Drum	$395
By Lab Pack	$425 / 55 Gallon
By Gallon	$225 / 5 Gallon Pail
Minimum Charge for Disposal	$225
LABORATORY CHEMICALS – OUTDATED, RESIDUES FROM ANALYSIS:	
By Cubic Yard	$825 / Box
By Drum	$395
By Lab Pack	$425 / 55 Gallon

By Gallon	$225 / 5 Gallon Pail
Minimum Charge for Disposal	$225
PAINT PRODUCTS – OIL BASE, RESIDUES, LEAD:	
By Cubic Yard	$825 / Box
By Drum	$395
By Lab Pack	$425 / 55 Gallon
By Gallon	$195 / 5 Gallon Pail
Minimum Charge for Disposal	$195
PAINT PRODUTCS – WATER BASE:	
By Cubic Yard	$625 / Box
By Drum	$145
By Lab Pack	$175 / 55 Gallon
By Gallon	$125 / 5 Gallon Pail
Minimum Charge for Disposal	$125
REFRIGERANTS –FREON:	
By Cubic Yard	$975 / Box
By Drum	$425
By Lab Pack	$525 / 55 Gallon
By Gallon	$225 / 5 Gallon Pail
Minimum Charge for Disposal	$225
GREASE CONTAMINATED WITH DIRT LEAVES:	
By Cubic Yard	$595/ Box
By Drum	$175
By Lab Pack	$195 / 55 Gallon
By Gallon	$125 / 5 Gallon Pail
Minimum Charge for Disposal	$125
OIL FILTERS DRAINED AND CRUSHED:	
By Drum	$55
Minimum Charge for Disposal	$55
MIXED FUEL – GASOLINE MIXED WITH DIESEL:	
By Drum	$195
By Lab Pack	$350 / 55 Gallon
By Gallon	$145 / 5 Gallon Pail
POLYCHLORINATED BIPHENYL (PCB) INCLUDING TRANSFORMERS, SWITCHES AND OILS CONTAINING PCB'S	
By Cubic Yard	$975 / Box
By Drum	$495
By Lab Pack	$550 / 55 Gallon
By Gallon	$225 / 5 Gallon Pail
Minimum Charge for Disposal	$225
CHEMICALS – OUTDATED, UNUSED CORROSIVES, CAUSTICS, CLEANERS:	
By Cubic Yard	$825 / Box
By Drum	$395

By Lab Pack	$425 / 55 Gallon
By Gallon	$225 / 5 Gallon Pail
Minimum Charge for Disposal	$225
WATER-CONTAMINATED WITH OILS, CHEMICALS:	
By Cubic Yard	$825 / Box
By Drum	$395
By Lab Pack	$425 / 55 Gallon
By Gallon	$225 / 5 Gallon Pail
Minimum Charge for Disposal	$225
FLOURESCENT LIGHT BULBS AND ALTERNATIVE POWERED LAMPS:	
By Drum	$0.25 Per Foot (Fiber Drum)
Minimum Charge for Disposal	$100
Transportation Cost By Drum	$78 Per Hour Reg; $97 OT
SODIUM HALIDE AND HIGH PRESSURE SODIUM VAPOR:	
By Drum	$2.50 Per Bulb (Fiber Drum)
By gallon – 5 Gallon Pail	$2.50 Per Bulb
Minimum Charge for Disposal	$100
Transportation Cost by Drum	$78 per hour re; $97 OT
LEAD DUST, SPENT LEAD FROM PISTOL RANGE:	
By Ton	$150
By Cubic Yard	$825 / Box
By Drum	$395
By Lab Pack	$425 / 55 Gallon
By Gallon	$195 / 5 Gallon Pail
Minimum Charge for Disposal	$195
Transportation Cost by Ton	$78 per hour re; $97 OT
HOUSEHOLD HAZARDOUS WASTE – MISCELLANEOUS ABANDONED WASTE PRODUCTS	
By Cubic Yard (Box)	$875
By Drum	$425
By Lab Pack – 55 Gallon Drum	$495
By Gallon – 5 Gallon Pail	$225
Minimum Charge for Disposal	$225
BATTERIES – LEAD ACID, NI-CAD:	
By Cubic Yard (Box)	$675
By Drum	$425
By Lab Pack – 55 Gallon Drum	$495
By Gallon – 5 Gallon Pail	$225
Minimum Charge for Disposal	$225
SHIPPING CONTAINERS CHARGES:	
By Drum	$45 85-Gallon Metal $175 95-Gallon Poly
By Oversize Drum	$75 ea

By Lab-Packs	$395 ea
By Dumpster Bins	$15 ea
5-Gallon Poly Pails	$45 ea
Roll Off Bin Liners	
MISCELLANEOUS LABOR SERVICES:	
Loading	$45 Per Hour
Packaging	$45 Per Hour
Environmental Technician	$45 Per Hour
Project Manager/Supervisor	$55 Per Hour
Other Labor	$55 Per Hour
PUMPING SERVICES:	
Portal to Portal	$750
By Gallon	$1.20 Liquids and up to 15% Solids
By Type of Waste	Non Hazardous
By Standby	$78 Per Hour; $97 OT
Washout	$295 Flat
OTHER MISCELLANEOUS CHARGES:	
Profiles and Analyses	$250 Ea
Demurrage Charges	$78 Per Hour; $97 OT

II. Payments will be made based upon the satisfactory completion of the task.

III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.10.

VI. The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:

A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.

B. Line items for all materials and equipment properly charged to the Services.

C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.

D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

V. **The total compensation for the Services shall not exceed $25,000.00 for the period beginning July 1, 2011 and ending June 30, 2012, as provided in Section 2.1 of this Agreement.**

VI. **The Consultant's billing rates for all personnel:**

Environmental Technician -$45 per hour

Project Manager/Supervisor -$45 per hour

EXHIBIT "D"
SCHEDULE OF PERFORMANCE

I. Consultant shall perform all services timely in accordance with the following schedule:

		Days to Perform	Deadline Date
A.	**Hazardous Waste Removal**	**1 day**	**TBD**
B.	**Emergency Spills**	**TBD**	**Response time with 1-2 hours, completion based on individual job**

II. Consultant shall deliver the following tangible work products to the City by the following dates.

A. Hazardous waste manifests to be provided within 15 days from the date of disposal.

B. Disposal and Quantities report to be provided on a quarterly basis.

III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.