CONSULTANT AGREEMENT

This agreement ("Agreement") entered into January 18, 2011, is between the City of Benicia, a municipal corporation (hereinafter "CITY"), and Environmental Risk Services Corporation, a California corporation, with its primary office located at 1600 Riviera Ave., Suite 310, Walnut Creek, CA 94596 (hereinafter "CONSULTANT") (collectively, "the Parties").

RECITALS

WHEREAS, CITY has determined it is necessary and desirable to secure certain services for consulting, legal and remediation regarding the Arsenal Cleanup Project. CITY solicited proposals from various firms to provide assistance for the potential review and remediation of the former Benicia Arsenal or parts thereof. The scope of work for said services (hereinafter "Project") is attached hereto as Exhibit "A" and is hereby incorporated by reference; and

WHEREAS, CONSULTANT is specially trained, experienced and competent to perform the services required by this agreement; and

WHEREAS, CITY's affirmative duty is public safety and health; and

WHEREAS, CITY desires to protect the economic activity of all property owners in the Arsenal from adverse impacts of an Arsenal Cleanup Project, including the Benicia Business Park; and

WHEREAS, it would be beneficial to CITY if an collaborative and cooperative approach to resolution of the Project was achieved with other property owners; and

WHEREAS, property owners in the Arsenal with smaller holdings, including the Benicia Business Park, do not have the resources for CONSULTANT's services if the property owners were acting alone; and

WHEREAS, CONSULTANT and CITY desire to allow CONSULTANT to provide services to property owners who would like to use CONSULTANT's services to the extent that it does not create a conflict of interest. The parties contemplate that services to other property owners may be provided either under separate contract with the property owners or, for work requiring minimal time or effort, as part of the services under this Agreement; and

WHEREAS, CONSULTANT represents it is qualified and willing to provide such services pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, IT IS AGREED by and between CITY and CONSULTANT as follows:

AGREEMENT

1. INCORPORATION OF RECITALS. The recitals set forth above, and all defined terms

set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. SCOPE OF SERVICE.

(a) Services to be Furnished. Subject to such policy direction and approvals as CITY through the City Attorney may determine from time to time, CONSULTANT shall perform the services set forth in the Scope of Work and the incorporated Consultant's proposal and the Request for Qualifications labeled Exhibit A, which is attached hereto and incorporated herein by reference. In the event of a conflict between these documents, text of this Agreement shall prevail over the Exhibit. It is anticipated by the parties that the scope of services will be conducted in at least three phases, including an initial due diligence phase to determine whether any funding sources are available to complete remediation. Funding sources are monies received by CITY from the US Treasury, State of California, insurance companies, voluntary contributions from landowners, grants, and other sources for the investigation and remediation of the Benicia Arsenal, services related to that investigation and cleanup, or from settlement, resolution, or satisfaction of any claims related to the contamination, investigation and/or remediation of the Benicia Arsenal (hereafter, "Remediation Funds"). Upon receipt of adequate Remediation Funds in the escrow account, subsequent phases will include the second phase of site investigation, risk assessment, liability allocation, and the third phase of design and implementation of remediation actions. If no funding is identified to CITY's satisfaction within eighteen months of the date of this Agreement or if insufficient funds are received to do work, the Agreement may be terminated at CITY's discretion.

(b) Schedule for Performance. CONSULTANT shall perform the services identified in Exhibit A and as expeditiously as is consistent with generally accepted standards of professional skill and care, and the orderly progress of work. The parties agree that the efficient and effective prosecution of this Project is vital to the success of the Project. CONSULTANT shall not be responsible for performance delays caused by others, or delays beyond CONSULTANT'S control, subject to City Attorney's approval, and such delays shall extend the times for performance of the work by CONSULTANT. The identification work for the initial funding phase shall be done within eighteen months of the date of this Agreement.

(c) Standard of Quality. All work performed by CONSULTANT under this Agreement shall be in accordance with all applicable legal requirements including, but not limited to, the standards of the California Department of Toxic Substances Control and any other responsible regulatory agency and shall meet the standard of quality ordinarily to be expected of competent professionals in CONSULTANT'S field of expertise. CONSULTANT shall function as a technical advisor to CITY, and all of CONSULTANT'S activities under this Agreement shall be performed to the full satisfaction and approval of the CITY ATTORNEY.

(d) Compliance With Laws. CONSULTANT shall comply with all applicable federal, state, and local laws, codes, ordinances, regulations, orders, and decrees. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its own cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for CONSULTANT to practice its

profession or are necessary and incident to the due and lawful prosecution of the services it performs under this Agreement. CONSULTANT shall maintain a City of Benicia business license. CONSULTANT shall at all times during the term of this Agreement, and for one year thereafter, provide written proof of such licenses, permits, insurance, and approvals upon request by CITY. CITY is not responsible or liable for CONSULTANT'S failure to comply with any or all of the requirements contained in this paragraph.

3. COMPENSATION.

(a) Contingency Agreement. This is a contingency fee agreement. Other than through the escrow process described herein and the $10,000 in out-of-pocket expenses set forth in Section 3(b) below, CITY shall pay no compensation from CITY's general fund or other CITY funds for the services to be provided by this Agreement. The compensation paid to CONSULTANT shall be for work actually performed and from money received by CITY from the US Treasury, State of California, insurance companies, voluntary contributions from landowners, grants, and other sources for the investigation and remediation of the Benicia Arsenal, services related to that investigation and cleanup, or from settlement, resolution, or satisfaction of any claims related to the contamination, investigation and/or remediation of the Benicia Arsenal (hereafter, "Remediation Funds"). Tendering of insurance policies is to be approved by the City Council. City Attorney shall approve any other Remediation Funds and report to council immediately said approval. CONSULTANT shall have the exclusive right to negotiate for Remediation Funds on behalf of CITY. All Remediation Funds shall be deposited into an escrow account, and paid exclusively from that escrow account to CONSULTANT in accordance with escrow instructions to be agreed on by CITY and CONSULTANT. The escrow account shall be held and managed by CITY.

(b) $10,000 for out of pocket expenses. CONSULTANT shall be reimbursed by CITY for out of pocket expenses incurred in the prosecution of this Project. The amount of out of pocket expenses shall not exceed $10,000 to be reimbursed from the City's general fund. An invoice and backup documentation shall be provided to CITY for the expenses. If Remediation Funds become available, whether through insurance or other means, and the costs and expenses associated with CONSULTANT's services have been paid as set forth in Section 3(a) of this Agreement, then the $10,000 shall be reimbursed to CITY.

(c) CONSULTANT shall have the right to timely payments from the escrow account providing fair compensation for services rendered from the effective date of this Agreement. Funds deposited into the escrow account to cover the cost to investigate, remediate and close the environmental liabilities, whether by CONSULTANT or sub-consultants, will be used to pay CONSULTANT for project management services and, in the case of the CITY, as provided in subparagraph (e). The estimated cost to investigate, remediate and close the environmental liabilities will be determined using work plans approved by the appropriate regulatory agencies and, if insurance funds are used, by the appropriate insurance companies. Fair compensation for interim payments shall not exceed the rates on the current rate schedule for when the work was performed; provided, however, that when remediation funds are first transferred into the escrow account, CONSULTANT will be reimbursed for work previously performed at the rates current when the request for reimbursements are submitted. CITY shall have the right to confirm that CONSULTANT has performed work consistent with the Scope of Work. CONSULTANT shall

submit monthly reports documenting its time and materials expended for the services performed under this Agreement during the preceding period. Invoices or reports must be submitted in duplicate and must indicate the hours actually worked by each classification and employee name, as well as all other directly related costs by line item. CITY will pay CONSULTANT within 45 days of receipt of the invoice. Fair compensation shall not exceed the rates on the current rate schedule for when the work was performed. A current rate schedule is attached as Exhibit "B". Not more than annually, CONSULTANT may increase rates, in keeping with industry standards as determined by averaging three sources, by submitting a revised rate schedule, to the City Attorney for review and approval, which will not be unreasonably withheld.

(d) Additional Services. CITY shall make no payment to CONSULTANT for any additional services unless such services and payment have been mutually agreed to and this Agreement has been formally amended in accordance with Section 7.

(i) Only the City Council can act on behalf of CITY to authorize CONSULTANT to perform additional services and any related compensation.

(ii) CONSULTANT shall not commence any work or services exceeding the Scope of Services in Section 2 without prior written authorization from CITY in accordance with Section 7. CONSULTANT'S failure to obtain a formal amendment to this Agreement authorizing additional services shall constitute a waiver of any and all right to compensation for such work or services.

(iii) If CONSULTANT believes that any work CITY has directed CONSULTANT to perform is beyond the scope of this Agreement and constitutes additional services, CONSULTANT shall promptly notify CITY of this fact before commencing the work. CITY shall make a determination as to whether such work is beyond the scope of this Agreement and constitutes additional services. If CITY finds that such work does constitute additional services, CITY and CONSULTANT shall execute a formal amendment to this Agreement, in accordance with Section 7, authorizing the additional services and stating the amount of any additional compensation to be paid.

(e) CONSULTANT agrees that any Remediation Funds in excess of the cost of remediation and closure remands to the CITY and may be used to reimburse City for City Attorney and staff time, travel expenses including City Council and other city officials expended during the time of this Agreement, for outside counsel review of this Agreement, for redevelopment or development or public work improvements for the remediated properties and public roads, or for such other Arsenal area infrastructure or other public projects as the City Council may determine. CITY will keep monthly record of hours spent and hourly rates of employees devoting time to this Project. The excess funds will be from the same sources as noted in 3(a) and available to the City at or before the final closure and sign off by the agency that has the authority to deem the remediation and closure complete.

4. PRODUCT REVIEW AND COMMENT. CONSULTANT shall provide CITY with at least two (2) paper copies of each product described in Exhibit A and one electronic version.

Upon the completion of each product, CONSULTANT shall be available to meet with CITY. If additional review and/or revision is required by CITY, CITY shall conduct reviews in a timely manner.

5. TERM OF AGREEMENT. This Agreement shall be effective immediately upon the signatures of both Parties and shall remain in effect until completed, amended pursuant to Section 7, terminated pursuant to Section 6, or if no Remediation Funds are identified within eighteen months of the date of this Agreement, whichever occurs first.

6. TERMINATION:

(a) CITY shall have the right to terminate this Agreement for non-performance or breach of the terms of this Agreement by serving upon CONSULTANT written notice of termination. CONSULTANT shall have the right to terminate this Agreement for any reason whatsoever at any time by serving upon CITY written notice of termination. The Agreement shall terminate three (3) business days after notice of termination is given. The notice shall be deemed given on the date it is deposited in the U.S. mail, certified, postage prepaid, addressed to CONSULTANT or CITY at the address indicated in Section 11. At the time of mailing, copy of the notice shall also be provided by email.

(b) If CITY issues a notice of termination,

(i) CONSULTANT shall immediately cease rendering services pursuant to this Agreement;

(ii) CONSULTANT shall deliver to CITY copies of all writings, whether or not completed, which were prepared by CONSULTANT, its employees, or its subcontractors, if any, pursuant to this Agreement. For purposes of this Agreement, the term "writings" shall include, but not be limited to, handwriting, typewriting, computer files and records, drawings, blueprints, printing, photostatting, photographs, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, symbols, or combinations thereof. CITY shall pay CONSULTANT for work actually performed according to the scope of work up to the effective date of the notice of termination, provided, however, that this payment is limited by the sum of the $10,000 for out-of-pocket expenses identified in Section 3(b) of this Agreement plus any Remediation Funds, as defined in Section 3(a) of this Agreement, that are received at any time;

(c) If CONSULTANT issues a notice of termination,

(i) CONSULTANT shall immediately cease rendering services pursuant to this Agreement;

(ii) CONSULTANT shall deliver to CITY copies of all writings, whether or not completed, which were prepared by CONSULTANT, its employees, or its

subcontractors, if any, pursuant to this Agreement. For purposes of this Agreement, the term "writings" shall include, but not be limited to, handwriting, typewriting, computer files and records, drawings, blueprints, printing, photostatting, photographs, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, symbols, or combinations thereof. CITY shall pay CONSULTANT for work actually performed up to the effective date of the notice of termination, provided, however, that this payment is limited by the sum of the $10,000 for out-of-pocket expenses identified in Section 3(b) of this Agreement plus any Remediation Funds, as defined in Section 3(a) of this Agreement, that are received by that time.

7. AMENDMENTS. Modifications or amendments to the terms of this Agreement shall be in writing and executed by both Parties.

8. NONDISCLOSURE OF CONFIDENTIAL INFORMATION. CONSULTANT shall not, either during or after the term of this Agreement, disclose to any third party any confidential information relative to the work of CITY without the prior written consent of CITY.

9. INSPECTION. CITY representatives shall, with reasonable notice, have access to the work and work records, including time records, for purposes of inspecting the same and determining that the work is being performed in accordance with the terms of this Agreement. Inspections by CITY do not in any way relieve or minimize the responsibility of CONSULTANT to comply with this Agreement and all applicable laws.

10. INDEPENDENT CONTRACTOR. In the performance of the services in this Agreement, CONSULTANT is an independent contractor and is not an agent or employee of CITY. CONSULTANT, its officers, employees, agents, and subcontractors, if any, shall have no power to bind or commit CITY to any decision or course of action, and shall not represent to any person or business that they have such power. However, the CITY authorizes CONSULTANT to meet and negotiate with others in a manner consistent with the CITY's goals and scope of work. CONSULTANT has and shall retain the right to exercise full control of the supervision of the services and over the employment, direction, compensation, and discharge of all persons assisting CONSULTANT in the performance of said service hereunder. CONSULTANT shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security and income tax withholding, workers' compensation insurance, and all other regulations governing such matters.

11. NOTICE. Any notices or other communications to be given to either party pursuant to this Agreement shall be in writing and delivered personally or by certified U.S. mail, postage prepaid, addressed to the party at the address set forth below. Either party may change its address for notices by complying with the notice procedures in this Section. Notice so mailed shall be deemed delivered three (3) business days after deposit in the U.S. mail. Nothing shall preclude the giving of notice by facsimile machine provided, however, that notice by facsimile machine shall be followed by notice deposited in the U.S. mail as discussed above.

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If to CITY:

City Attorney
City of Benicia
250 East L Street
Benicia, CA 94510

If to CONSULTANT:

Mark O'Brien
ERS Corporation
1600 Riviera Ave. Suite 310
Walnut Creek, CA 94596

12. OWNERSHIP OF MATERIALS. CITY is the owner of all records and information created, produced, or generated as part of the services performed under this Agreement. At any time during the term of this Agreement, at the request of CITY, CONSULTANT shall deliver to CITY all writings, records, and information created or maintained pursuant to this Agreement. In addition, CONSULTANT shall not use any of the writing, records, or information generated for the Project under this Agreement for any other work without CITY's consent.

13. EMPLOYEES; ASSIGNMENT; SUBCONTRACTING.

(a) Employees. CONSULTANT shall provide properly skilled professional and technical personnel to perform all services required by this Agreement. CONSULTANT shall not engage the services of any person(s) now employed by CITY without CITY's prior express written consent and shall not hire or attempt to hire any person who was a CITY employee during the year prior to the hiring or attempted hiring. The primary team members listed in CONSULTANT's Proposal on pages 18-20 shall not be substituted unless prior agreement is given by the City Attorney. Mark O'Brien of ERS shall be the primary lead for CONSULTANT.

(b) Assignment. CONSULTANT shall not assign, delegate, or transfer its duties, responsibilities, or interests in this Agreement without the prior express written consent of CITY. Any attempted assignment without such approval shall be void and, at CITY's option, shall terminate this Agreement and any license or privilege granted herein.

(c) Subcontracting. CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior express written consent of CITY. CITY hereby consents to the subcontracting of work to the primary team members listed in CONSULTANTS proposal on pages 18-20 and their firms. If CITY consents to CONSULTANT'S hiring of subcontractors, CONSULTANT shall provide to CITY copies of each and every subcontract prior to its execution. All subcontractors are deemed to be employees of CONSULTANT, and CONSULTANT agrees to be responsible for their performance. CONSULTANT shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control.

14. BINDING AGREEMENT. This Agreement shall bind the successors in interest, legal representatives, and permitted assigns of CITY and CONSULTANT in the same manner as if

they were expressly named herein.

15. WAIVER.

(a) Effect of Waiver. Waiver by either party of any default, breach, or condition precedent shall not be construed as a waiver of any other default, breach, or condition precedent or any other right under this Agreement.

(b) No Implied Waivers. The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the right to require such performance at a later time.

16. NONDISCRIMINATION.

(a) Consultant shall not discriminate in the conduct of the work under this Agreement against any employee, applicant for employment, or volunteer on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated.

(b) Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, CONSULTANT agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by CONSULTANT or CONSULTANT'S employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated. CONSULTANT agrees that any and all violation of this provision shall constitute a material breach of the Agreement.

17. INDEMNITY. CONSULTANT specifically agrees to indemnify, defend, and hold harmless CITY, its officers, agents, and employees from and against any and all actions, claims, demands, losses, expenses including attorneys' fees, damages, and liabilities resulting from injury or death of a person or injury to property, arising out of or in any way connected with the performance of this Agreement and including any Government Code 1090 actions or conflicts of interest actions, however caused, regardless of any negligence of the CITY, whether active or passive, excepting only such injury or death as may be caused by the sole negligence or willful misconduct of the CITY. The CONSULTANT shall pay all costs that may be incurred by CITY in enforcing this indemnity, including reasonable attorneys' fees.

CONSULTANT's duties to indemnify, defend and hold harmless CITY shall be limited to the extent the services provided pursuant to this Agreement are "design professional services" subject to Section 2782.8 of the California Civil Code. In accordance with Civil Code Section 2728.8, CONSULTANT shall, to the fullest extent allowed by law, with respect to all design professional services performed in connection with this Agreement, defend with counsel acceptable to CITY, indemnify, and hold CITY, its officers, employees, agents, and volunteers, harmless from and against any and all claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT, ("Claims"). CONSULTANT will bear all losses, costs, damages, expense and liability of every kind, nature

and description that arise out of, pertain to, or relate to such Claims, whether directly or indirectly ("Liability"). Such obligations to defend, hold harmless and indemnify CITY shall not apply to the extent that such Liability is caused by the sole negligence of, active negligence, or willful misconduct of CITY.

18. INSURANCE.

(a) Required Coverage. CONSULTANT, at its sole cost and expense, shall obtain and maintain in full force and effect throughout the entire term of this Agreement the following described insurance coverage. This coverage shall insure not only CONSULTANT, but also, with the exception of workers' compensation and errors and omissions insurance, shall name as additional insureds CITY, its officers, agents, employees, and volunteers, and each of them:

Policy	Minimum Limits of Coverage
(i) Workers' Compensation	Statutory
(ii) Comprehensive Automobile Insurance Services Office, form #CA 0001 (Ed 1/87 covering auto liability code 1 (any auto)	Bodily Injury/Property Damage $1,000,000 each accident
(iii) General Liability Insurance Services Office Commercial General Liability coverage on an occurrence basis (occurrence form CG 0001)	$1,000,000 per occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit shall apply separately to this Project/ location, the general aggregate limit shall be twice the required occurrence limit
(iv) Errors and Omissions/ Professional's Liability, errors and omissions liability insurance appropriate to the CONSULTANT's profession.	Generally $1,000,000 per occurrence

(b) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by CITY.

(c) Required Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(i) For any claims related to this Project, the CONSULTANT'S insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in excess of the

CONSULTANT'S insurance and shall not contribute with it;

(ii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to CITY, its officers, officials, employees, or volunteers;

(iii) The CONSULTANT'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability;

(iv) Each insurance policy required by this Section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after giving CITY 30 days' prior written notice by certified mail, return receipt requested.

(d) Acceptability of Insurers. CONSULTANT shall place insurance with insurers with a current A.M. Best's rating of no less than [A:VII] unless CONSULTANT requests and obtains CITY'S express written consent to the contrary.

(e) Verification of Coverage. CONSULTANT must provide complete, certified copies of all required insurance policies, including original endorsements affecting the coverage required by these specifications. The endorsements are to be signed by a person authorized by CONSULTANT'S insurer to bind coverage on its behalf. All endorsements are to be received and approved by CITY before work commences.

19. WORKERS' COMPENSATION.

(a) Covenant to Provide. CONSULTANT warrants that it is aware of the provisions of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code. CONSULTANT further agrees that it will comply with such provisions before commencing the performance of the work under this Agreement.

(b) Waiver of Subrogation. CONSULTANT and CONSULTANT'S insurance company agree to waive all rights of subrogation against CITY, its elected or appointed officials, agents, and employees for losses paid under CONSULTANT'S workers' compensation insurance policy which arise from the work performed by CONSULTANT for CITY.

20. FINANCIAL RECORDS. CONSULTANT shall retain all financial records, including but not limited to documents, reports, books, and accounting records which pertain to any work or transaction performed pursuant to this Agreement for four (4) years after the expiration of this Agreement. CITY or any of its duly authorized representatives shall, with reasonable notice, have access to and the right to examine, audit, and copy such records.

21. CONFLICT OF INTEREST. CONSULTANT shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with CITY'S

interest. During the term of this Agreement, CONSULTANT shall not accept any employment or engage in any consulting work which creates a conflict of interest with CITY or in any way compromises the services to be performed under this Agreement unless first authorized in writing by the CITY. CONSULTANT shall immediately notify CITY if, at any time during the performance of this contract, CONSULTANT becomes aware of any actual or potential conflicts of interest with CITY.

It is anticipated that the CONSULTANT may provide consulting services to and cooperate with other property owners so that economies and efficiencies of scale may be achieved. Such services, unless de minimus, shall be at the other property owner(s) expense and provided only if desired by said property owner or owners. For the purposes of this Agreement, the CITY shall be the CONSULTANT's primary client. If a conflict arises between the CITY and any other property owners, the CONSULTANT shall cease any consulting services and/or cooperation with those other property owners and work only for the CITY unless otherwise agreed by the CITY and CONSULTANT.

22. TIME OF THE ESSENCE. CONSULTANT understands and agrees that time is of the essence in the completion of the work and services described in Section 2.

23. SEVERABILITY. If any court of competent jurisdiction or subsequent preemptive legislation holds or renders any of the provisions of this Agreement unenforceable or invalid, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected.

24. GOVERNING LAW AND CHOICE OF FORUM. This Agreement shall be administered and interpreted under California law as if written by both parties. Any litigation arising from this Agreement shall be brought in the Superior Court of Solano County and no other place.

25. COSTS AND ATTORNEYS' FEES. If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees. In any action seeking recovery of monetary damages, the plaintiff shall not be considered to be the prevailing party unless it recovers at least 66% of the dollar amount requested in the complaint's prayer for relief.

26. CONTINGENCY ATTORNEY SUPERVISION. The City Attorney retains (1) complete control over the course and conduct of the Project; (2) a veto power over any decisions made by outside counsel; and (3) must be personally involved in overseeing litigation, if any.

27. INTEGRATION. This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained herein and supersedes all prior negotiations, representations, or agreements, both written and oral. This Agreement may not be modified or altered except in accordance with Section 7.

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Executed by CITY and CONSULTANT on the date shown next to their respective signatures. The effective date of this Agreement shall be the date of execution by the CITY as shown below.

ERS CORPORATION

BY: _____
DATED 1/21/2011

CITY OF BENICIA

BY: _____
Brad Kilger, City Manager
DATED:

APPROVED AS TO FORM

_____
City Attorney

EXHIBIT A

SCOPE OF WORK

The work to be performed under this Agreement includes the work proposed in the Consultant's proposal and the Request for Qualifications, which are incorporated by reference and are subject to the items and limitations listed below.

1. Early Meetings with the Department of Toxic Substances Control and other agencies to consider strategy per paragraph 5 below and public participation.

2. Insurance/Funding Options: In order to provide a source of funds for the Arsenal Project, the Consultant shall review and analyze historic insurance policies and insurance records of the City. Only after approval by the City Council, will the Consultant tender the Arsenal Project to the appropriate insurance companies. If gaps are found in the insurance coverage, the Consultant will perform the necessary historical research to locate other items of evidence of insurance coverage such as non-traditional evidence, e.g. leases or other items mentioning possible responsibility of a party.
    a. The Consultant may assist other property owners, especially smaller property owners holding less than a combined 10 acres, to determine if they have historical insurance policies and provide assistance with tendering their claims. Similarly, the Consultant may assist other property owners, especially the smaller property owners, to obtain grants and agreements with the Department of Defense and other state and federal agencies. The Consultant may assist other property owners to design and implement investigation and remediation efforts. The assistance provided by the Consultant pursuant to this paragraph is at the option of the property owner or owners and shall be paid for by the property owner or owners unless it involves minimal work by the Consultant.
    b. The Consultant shall determine if insurance coverage will be provided to the city only if there is litigation or if coverage is provided for a threat of litigation or for an order issued by the State or Federal government.
    c. The Consultant shall also provide advice on and broker Cost Cap containment policies and other types of insurance products that will help shield the City (and other property owners if possible) from unplanned cleanup costs. If other property owners desire this coverage and there is an additional cost required to cover other property owners, said expense shall be borne by the property owners.

3. Preliminary Strategy and Goal Setting: The Consultant shall meet with the Council Subcommittee and City Attorney to review and discuss preliminary objectives and outcomes for the Project. As a result of this meeting, a timeline and chart of decision-making and action and key milestones, deliverables, and agreements shall be prepared. For example:
    1. Early Meetings with the Department of Toxic Substances Control and other agencies: TBD
    2. Insurance Review: TBD
    3. Preliminary Strategy and Goal Setting: TBD
    4. Funding Options: TBD
    5. Develop Strategies: TBD

6. Implement Strategies: Ongoing
7. Public Participation: No less than quarterly.

4. Funding Options: The Consultant shall identify and pursue, as appropriate and reasonable, funding options available to the City beyond the insurance option. Options included, but are not limited to, grant funds such as the EPA Brownfields grant program, US O.E.A. BRAC or FUDS Cleanup grants, indemnity, California Revolving Loan program, CERCLA ability to pay and private sources as another possible funding source.

5. Develop Strategy: Based on a review of existing documents pertaining to the Arsenal, the Consultant will develop a strategy for achieving the City's goals in a cost, time efficient and effective manner. In determining a cost, time efficient and effective strategy, consideration will be given early on to limiting the scope of the Arsenal Project in terms of appropriate property owners, operators and/or geographic areas. ("Appropriate" includes if a property is determined to be free of contamination.) Property owners will have the option of participating in the City's global program for the Arsenal Projects. The Strategy should include consideration of the best regulating mechanism for the Project goals including which is the best state agency to lead the Project, which approach minimizes the out of pocket expenses and liability for City and other property owners, and which statutory method for meeting CERCLA and environmental clearance (voluntary agreements or orders).
    a. The Consultant shall analyze the City's potential liability and provide a report. Liability for public utilities as well as property ownership, among other things, shall be reviewed and considered if necessary.
    b. Various approaches shall be considered and recommended, including Hazardous Substances Accountability Act, Polanco Act, voluntary agreements with one or more PRP, CERCLA methods or orders.
    c. The Consultant shall analyze the public health and safety risks considering the existing documentation to develop cleanup levels and estimate remediation costs. The Consultant shall consider whether a CERCLA 120f approach is required.

6. Implement the Strategy:
    a. Directed by the City Attorney, the Consultant shall attend meetings as a representative of the City. Meetings include those with regulators, other PRPs, insurance companies and the public.
    b. The Consultant shall monitor implementation of the strategy and report to the City to make sure that the goals of the Arsenal Project are attained. The Consultant shall recommend additional measures to attain the goals, if necessary.

7. Public Participation:
    a. The Consultant shall provide information and recommendations, if any, for the Council Subcommittee's report to the Council and public. The reports will be initially semi-monthly and then monthly reports.
    b. The Consultant shall participate in periodic meetings for the general public and provide information for the City's website. Information shall consist of background information to assist the public's need to know as well as current

status updates on what is going on with the Project. There shall be an up to date FAQ provided by the Consultant as part of this information task. Copies of the information on the website shall be provided in hard copy for a repository of documents to be retained in the City of Benicia Library while the Project is current. Public outreach shall include all stakeholders especially the property owners and businesses of the industrial park and lower arsenal.

8. Legislation and lobbying. As needed, the Consultant will provide lobbying services to assist with any necessary state or federal legislation related directly to this scope of work.

9. Consultant will provide all of the environmental consulting, legal, and remediation services that are funded by settlements and/or agreements with insurance companies, other responsible parties, the US Department of Defense, institutions including state and federal agencies issuing grants, or similar.

10. Consultant shall provide assistance to other property owners only after consulting with outside legal counsel to make sure the City's interests are not jeopardized by such work and that an unreasonable conflict of interest is not created.

EXHIBIT B
RATE SCHEDULE

Environmental and Engineering Services:	$60 - $425/hr
- Environmental Risk Services; Inc. - Engineering/Remediation Resource Group; Inc.	
(Including project management, senior scientists, expert witnesses, MEC specialists)	
Legal Services:	$190 - $575/hr
- Briscoe, Ivester & Bazel LLP - Dongell, Lawrence Finney LLP; - Garrity & Knisely LLP	
(Including insurance, grants, environmental, regulatory and military specialists)	
Support Services:	Cost + 10%
- Office supplies and equipment - Support materials - Sub consultant and equipment vendors	