

**COUNTY OF MENDOCINO
STANDARD SERVICES AGREEMENT**

This Agreement, dated as of _____, 2012, is by and between the COUNTY OF MENDOCINO, hereinafter referred to as the "COUNTY", and **City of Ukiah Planning & Community Development** hereinafter referred to as the "CONTRACTOR".

WITNESSETH

WHEREAS, pursuant to Government Code Section 31000, COUNTY may retain independent contractors to perform special services to or for COUNTY or any department thereof; and,

WHEREAS, COUNTY desires to obtain CONTRACTOR conduct a GHG Emissions Inventory and complete a Climate Action Plan ("Services"); and,

WHEREAS, CONTRACTOR is willing to provide such services on the terms and conditions set forth in this AGREEMENT and is willing to provide same to COUNTY.

NOW, THEREFORE it is agreed that COUNTY does hereby retain CONTRACTOR to provide the services described in Exhibit "A", and CONTRACTOR accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

Exhibit A Definition of Services
Exhibit B Payment Terms
Exhibit C Insurance Requirements
Exhibit D Assurance of Compliance with Nondiscrimination
Appendix A Certification Regarding Debarment, Suspension, and other Responsibility
 Matters - lower tier covered transactions
Attachment A Mendocino County HHSA Grant Agreement
Attachment B Grantee Certification of Compliance
Attachment C Workplan and Schedule of Deliverables

The term of this Agreement shall be from November 1, 2012 through October 31, 2013

The compensation payable to CONTRACTOR hereunder shall not exceed **Sixty Thousand Dollars** (\$60,000) for the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF MENDOCINO

By _____

John McCowen, Chair and/or
Dan Hamburg, Vice Chair
Board of Supervisors

Date: _____

ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By _____

Deputy

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

CARMEL J. ANGELO, Clerk of said Board

By _____

Deputy

Date: _____

HEALTH AND HUMAN SERVICES AGENCY

By _____

STACEY CRYER, HHSA Director

Date: _____

Budgeted: ☒ Yes ☐ No

Budget Unit: 4010

Line Item (Acct String): 86-2189

Org/Object Code: PH-Sust

Grant: ☒ Yes ☐ No

Grant No.: 3010-517

INSURANCE REVIEW:

RISK MANAGER

By _____

KRISTIN McMENOMEY, Director
General Services Agency

Date: _____

CONTRACTOR/COMPANY NAME

By _____

Signature

Printed Name: _____

Title: _____

Date: _____

NAME AND ADDRESS OF CONTRACTOR:

City of Ukiah

300 Seminary Ave.

Ukiah, CA 95482

707-463-6219

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

Thomas R. Parker, County Counsel

By _____

Date: _____

EXECUTIVE OFFICE REVIEW:

APPROVAL RECOMMENDED

By _____

Carmel J Angelo, Chief Executive Officer

Date: _____

Fiscal Review:

By _____

Deputy CEO/Fiscal

Date

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; **\$50,001+ Board of Supervisors**

Exception to Bid Process Required/Completed ☒ **Exception #:** 12-194

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that CONTRACTOR is an Independent Contractor. CONTRACTOR is not the agent or employee of the COUNTY in any capacity whatsoever, and COUNTY shall not be liable for any acts or omissions by CONTRACTOR nor for any obligations or liabilities incurred by CONTRACTOR.

CONTRACTOR shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

CONTRACTOR shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which COUNTY may incur because of CONTRACTOR's failure to pay such amounts.

In carrying out the work contemplated herein, CONTRACTOR shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as Independent Contractors and shall not be treated or considered in any way as officers, agents and/or employees of COUNTY.

CONTRACTOR does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with all applicable federal, state and County laws, including but not limited to prevailing wage laws, ordinances, regulations, titles, departmental procedures and currently approved methods and practices in his/her field and that the sole interest of COUNTY is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

Notwithstanding the foregoing, if the COUNTY determines that pursuant to state and federal law CONTRACTOR is an employee for purposes of income tax withholding, COUNTY may upon two (2) week's written notice to CONTRACTOR, withhold from payments to CONTRACTOR hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. **INDEMNIFICATION:** CONTRACTOR shall indemnify, defend, and hold harmless the COUNTY, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever including damages to property and injuries to, or death of persons, reasonable attorney's fees, expert fees and court costs occurring or resulting, or alleged to be occurring or resulting, to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connections with the CONTRACTOR'S performance or its obligations under this AGREEMENT, and from any and all claims, liabilities, and losses occurring or resulting, or alleged to be occurring or resulting, to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR'S performance of its obligations under this AGREEMENT, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of COUNTY. "CONTRACTOR'S performance" includes CONTRACTOR'S action or inaction and the action or inaction of CONTRACTOR'S officers, employees, agents and subcontractors.
3. **INSURANCE AND BOND:** CONTRACTOR shall at all times during the term of the Agreement with the COUNTY maintain in force those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein.
4. **WORKERS' COMPENSATION:** CONTRACTOR shall provide Workers' Compensation insurance, as applicable, at CONTRACTOR's own cost and expense and further, neither the CONTRACTOR nor its carrier shall be entitled to recover from COUNTY any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
5. **CONFORMITY WITH LAW AND SAFETY:**
 - a. In performing services under this Agreement, CONTRACTOR shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. CONTRACTOR shall indemnify and hold COUNTY harmless from any and all liability, fines, penalties and consequences from any of CONTRACTOR's failures to comply with such laws, ordinances, codes and regulations.
 - b. **Accidents:** If a death, serious personal injury or substantial property damage occurs in connection with CONTRACTOR's performance of this Agreement, CONTRACTOR shall immediately notify Mendocino County Risk Manager's Office by telephone. CONTRACTOR shall promptly submit to COUNTY a written report, in such form as may be required by

COUNTY of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of CONTRACTOR's sub-contractor, if any; (3) name and address of CONTRACTOR's liability insurance carrier; and (4) a detailed description of the accident and whether any of COUNTY's equipment, tools, material, or staff were involved.

- c. CONTRACTOR further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the COUNTY the opportunity to review and inspect such evidence, including the scene of the accident.
6. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to CONTRACTOR as provided in Exhibit "B" hereto as funding permits.
7. TRAVEL EXPENSES: CONTRACTOR shall not be allowed or paid travel expenses unless set forth in this Agreement.
8. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the CONTRACTOR.
9. OWNERSHIP OF DOCUMENTS: CONTRACTOR hereby agrees to provide to a private, not-for-profit, successor and if there is none then assigns the COUNTY and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the COUNTY, the CONTRACTOR, the CONTRACTOR's subcontractors or third parties at the request of the CONTRACTOR (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

CONTRACTOR shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. CONTRACTOR agrees to take such further steps as may be reasonably requested by COUNTY to implement the aforesaid assignment. If for any reason said assignment is not effective, CONTRACTOR hereby grants the COUNTY and any assignee of the COUNTY an express royalty – free license to retain and use said Documents and Materials. The COUNTY's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not CONTRACTOR's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

CONTRACTOR shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the CONTRACTOR and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold the COUNTY harmless from any claims for infringement of patent or copyright arising out of such selection.

The COUNTY's rights under this Paragraph 9 shall not extend to any computer software used to create such Documents and Materials.

10. **CONFIDENTIALITY:** CONTRACTOR agrees to require its employees to comply with the provisions of Section 10850 of the Welfare and Institutions Code and Division 19000 of the State of California, Department of Social Services, Manual of Policies and Procedures, to assure that:
 - a. All applications and records concerning an individual, made or kept by any public officer or agency in connection with the administration of any provision of the Welfare and Institutions Code relating to any form of public social services for which grants-in-aid are received by this State from the Federal Government shall be confidential and shall not be open to examination for any purpose not directly connected with the administration of such public social services.
 - b. No person shall publish or disclose, or use or permit, or cause to be published, disclosed or used, any confidential information pertaining to an applicant or recipient.

Contractor agrees to inform all its employees, agents, and partners of the above provisions and that any person who knowingly or intentionally violates the provisions of said State law is guilty of a misdemeanor.

11. **MONITORING:** CONTRACTOR shall cooperate fully with any utilization review committee established by the COUNTY for the purpose of monitoring the accomplishments and effectiveness of CONTRACTOR and specific services provided to individuals.
12. **GRIEVANCE PROCEDURE:** CONTRACTOR agrees to provide a system through which recipients of service shall have the opportunity to express and have considered their views, grievances and complaints regarding the delivery of services. This system shall include notification to the recipients of their right to a state hearing.

13. ABUSE REPORTING REQUIREMENTS:

- a. CHILD ABUSE REPORTING REQUIREMENT: CONTRACTOR shall ensure that all known or suspected instances of child abuse or neglect are reported to a child protective agency as defined in Penal Code Section 11165(k). This responsibility shall include:

(1) A requirement that all employees, consultants, or agents performing services under this agreement who are required by Penal Code Section 11166, to report child abuse or neglect, sign a statement that he or she knows of the reporting requirements and shall comply with them.

(2) Establishing procedures to ensure reporting even when employees, consultants, or agents who are not required to report child abuse under Penal Code 11166, gain knowledge of, or reasonably suspect that a child has been a victim of abuse or neglect.

- b. ADULT ABUSE REPORTING REQUIREMENT: CONTRACTOR shall ensure that all known or suspected instances of elder abuse as defined in Welfare and Institutions Code 15610 are reported to Adult Protective Services. This responsibility shall include:

(1) A requirement that all employees, consultants, or agents performing services under this agreement who are required by Welfare and Institutions Code Section 15630 and 15632, to report adult abuse or neglect, sign a statement that he or she knows of the reporting requirements and shall comply with them.

(2) Establishing procedures to ensure reporting even when employees, consultants, or agents who are not required to report adult abuse under Welfare and Institutions Code Section 15630 and 15632, gain knowledge of, or reasonably suspect that an adult has been a victim of abuse or neglect.

14. HIPAA COMPLIANCE: CONTRACTOR agrees to comply with the applicable regulations for the Health Insurance Portability and Accountability Act (HIPAA) and shall hold the COUNTY harmless from any sanctions received by the CONTRACTOR, to the extent permitted by law, for breach of these regulations. CONTRACTOR also agrees: patients to whom services are rendered are third-party beneficiaries of this section; to prohibit any unauthorized disclosures or use of protected information; to put in place appropriate safeguards ensuring only permitted uses and disclosures; to immediately report to COUNTY reports of any unauthorized uses or disclosures; ensure that sub-contractors of CONTRACTOR agree to the provisions of this section; to consent to patient access to their own health information; to make protected information available to the Federal

Department of Health and Human Services as well as all internal compliance policies and procedures; to provide for the destruction of protected information upon agreement termination unless it must be retained to comply with another provision of law; and to ensure appropriate correction or amendment of records. A failure by CONTRACTOR to adhere to these provisions shall result in agreement termination.

15. ELIGIBILITY FOR SERVICES: The COUNTY shall determine eligibility for receiving services under this agreement.
16. CONFLICT OF INTEREST: The CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement.
17. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Facsimile transmission: When sent by facsimile to the facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that, (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To COUNTY:	COUNTY OF MENDOCINO
	Public Health
	1120 South Dora St.
	Ukiah, CA 95482
	Attn: Tina Tyler O'Shea

To CONTRACTOR: City of Ukiah
 300 Seminary Ave.
 Ukiah, CA 95482

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

18. USE OF COUNTY PROPERTY: CONTRACTOR shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
19. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:
 CONTRACTOR certifies that it will comply with all federal and state laws pertaining to equal employment opportunity and that it shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, age, sex, national origin, ancestry, marital status, political affiliation or physical or mental condition, in matters pertaining to recruitment, hiring, training, upgrading, transfer, compensation or termination.
 - a. CONTRACTOR shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - b. CONTRACTOR shall, if requested to so do by the COUNTY, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - c. If requested to do so by the COUNTY, CONTRACTOR shall provide the COUNTY with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
 - d. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.

- e. The CONTRACTOR shall include the provisions set forth in paragraphs a through d (above) in each of its subcontracts.
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- 20. **NONDISCRIMINATION IN STATE AND FEDERALLY ASSISTED PROGRAMS FOR RECIPIENTS OF MENDOCINO COUNTY HEALTH & HUMAN SERVICES AGENCY:** If applicable, under this agreement, the CONTRACTOR provides assistance or services to any applicant, client, participant or service recipient, hereinafter referred to as “recipient” of the Mendocino County Health & Human Services Agency, the CONTRACTOR shall administer said assistance or service in compliance with the provisions of Exhibit D “Assurance of Compliance with the Mendocino County Health & Human Services Agency Nondiscrimination in State and Federally Assisted Programs” form and shall complete and submit to the COUNTY said form prior to providing said assistance or service under this agreement. CONTRACTOR shall not charge recipients for the use of interpreters and shall insure that recipients covered under the provisions of Exhibit D are not denied or delayed in receiving assistance or services available to the other recipients under this agreement.
 - 21. **DRUG-FREE WORKPLACE:** CONTRACTOR and CONTRACTOR's employees shall comply with the COUNTY's policy of maintaining a drug-free workplace. Neither CONTRACTOR nor CONTRACTOR's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads *nolo contendere* to a criminal drug statute violation occurring at a County facility or work site, the CONTRACTOR, within five days thereafter, shall notify the head of the County department/agency for which the agreement services are performed. Violation of this provision shall constitute a material breach of this Agreement.
 - 22. **ENERGY CONSERVATION:** CONTRACTOR agrees to comply with the mandatory standards and policies relating to energy efficiency in the State of California Energy Conservation Plan, (Title 24, California Administrative Code).
 - 23. **COMPLIANCE WITH LICENSING REQUIREMENTS:** CONTRACTOR shall comply with all necessary licensing requirements and shall obtain appropriate licenses and display the same in a location that is reasonably conspicuous, as well as file copies of same with the County Executive Office.
 - 24. **AUDITS; ACCESS TO RECORDS:** The CONTRACTOR shall make available to the COUNTY, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the COUNTY, and shall furnish to the COUNTY, within sixty (60) days after examination, its authorized agents, officers or employees

such other evidence or information as the COUNTY may require with regard to any such expenditure or disbursement charged by the CONTRACTOR.

The CONTRACTOR shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the CONTRACTOR in the performance of this Agreement. If such books and records are not kept and maintained by CONTRACTOR within the County of Mendocino, California, CONTRACTOR shall, upon request of the COUNTY, make such books and records available to the COUNTY for inspection at a location within County or CONTRACTOR shall pay to the COUNTY the reasonable, and necessary costs incurred by the COUNTY in inspecting CONTRACTOR's books and records, including, but not limited to, travel, lodging and subsistence costs. CONTRACTOR shall provide such assistance as may be reasonably required in the course of such inspection. The COUNTY further reserves the right to examine and reexamine said books, records and data during the four (4) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the COUNTY, and the CONTRACTOR shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for four (4) years after the COUNTY makes the final or last payment or within four (4) years after any pending issues between the COUNTY and CONTRACTOR with respect to this Agreement are closed, whichever is later.

25. **DOCUMENTS AND MATERIALS:** CONTRACTOR shall maintain and make available to COUNTY for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 9 of this Agreement. CONTRACTOR's obligations under the preceding sentence shall continue for four (4) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by COUNTY), and CONTRACTOR shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for four (4) years following the COUNTY's last payment to CONTRACTOR under this Agreement.
26. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
27. **TERMINATION:** The COUNTY has and reserves the right to suspend, terminate or abandon the execution of any work by the CONTRACTOR without cause at any time upon giving to the CONTRACTOR prior written notice. In the event that the COUNTY should abandon, terminate or suspend the CONTRACTOR's work, the CONTRACTOR shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to CONTRACTOR for its conduct a GHG Emissions Inventory and complete a Climate Action Plan shall not exceed

\$60,000 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment or lack of funding.

28. **NON APPROPRIATION:** If COUNTY should not appropriate or otherwise make available funds sufficient to purchase, lease, operate or maintain the services set forth in this Agreement, or other means of performing the same functions of such services, COUNTY may unilaterally terminate this Agreement only upon thirty (30) days written notice to CONTRACTOR. Upon termination, COUNTY shall remit payment for all products and services delivered to COUNTY and all expenses incurred by CONTRACTOR prior to CONTRACTOR'S receipt of the termination notice.
29. **CHOICE OF LAW:** This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
30. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
31. **ADVERTISING OR PUBLICITY:** CONTRACTOR shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of COUNTY in each instance.
32. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between COUNTY and CONTRACTOR relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. This Agreement may not be modified except by a written document signed by both parties.
33. **HEADINGS:** Herein are for convenience of reference only and shall in no way affect interpretation of this Agreement.
34. **MODIFICATION OF AGREEMENT:** This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No

supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.

35. **ASSURANCE OF PERFORMANCE:** If at any time the COUNTY has good objective cause to believe CONTRACTOR may not be adequately performing its obligations under this Agreement or that CONTRACTOR may fail to complete the Services as required by this Agreement, COUNTY may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to COUNTY, to correct the observed deficiencies in CONTRACTOR's performance. CONTRACTOR shall provide such written assurances and written plan within thirty (30) calendar days of its receipt of COUNTY's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
36. **SUBCONTRACTING/ASSIGNMENT:** CONTRACTOR shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the COUNTY's prior written approval.
- a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. CONTRACTOR shall use the subcontractors identified in Exhibit A and shall not substitute subcontractors without COUNTY's prior written approval.
 - c. CONTRACTOR shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between CONTRACTOR and its subcontractors.
37. **SURVIVAL:** The obligations of this Agreement, which by their nature would continue beyond the termination or expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 9), and Conflict of Interest (Paragraph 16), shall survive termination or expiration for two (2) years.
38. **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
39. **PATENT AND COPYRIGHT INDEMNITY:** CONTRACTOR represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("CONTRACTOR Products") provided to COUNTY under

this Agreement infringe any patent, copyright or other proprietary right. CONTRACTOR shall defend, indemnify and hold harmless COUNTY of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection with an assertion that any CONTRACTOR Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party.

- a. COUNTY will: (1) notify CONTRACTOR promptly of such claim, suit or assertion; (2) permit CONTRACTOR to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable CONTRACTOR to do so. CONTRACTOR shall not agree without COUNTY's prior written consent, to any settlement, which would require COUNTY to pay money or perform some affirmative act in order to continue using the CONTRACTOR Products.
- b. If CONTRACTOR is obligated to defend COUNTY pursuant to this Section 38 and fails to do so after reasonable notice from COUNTY, COUNTY may defend itself and/or settle such proceeding, and CONTRACTOR shall pay to COUNTY any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with COUNTY's defense and/or settlement of such proceeding.
- c. In the case of any such claim of infringement, CONTRACTOR shall either, at its option, (1) procure for COUNTY the right to continue using the CONTRACTOR Products; or (2) replace or modify the CONTRACTOR Products so that that they become non-infringing, but equivalent in functionality and performance.
- d. Notwithstanding this Section 38, COUNTY retains the right and ability to defend itself, at its own expense, against any claims that CONTRACTOR Products infringe any patent, copyright, or other intellectual property right.

40. OTHER AGENCIES:

Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this agreement. The CONTRACTOR is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the CONTRACTOR elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.

[END OF GENERAL TERMS AND CONDITIONS]

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EXHIBIT A

DEFINITION OF SERVICES

CONTRACTOR shall provide the following services:

City of Ukiah Planning and Community Development Department will conduct a Greenhouse Gas (GHG) Emissions Inventory and complete a Climate Action Plan, according to the terms of the Grant Agreement with the Strategic Growth Council (Attachment A), by completing the following activities:

1. Complete GHG Emissions Inventory
2. Incorporate GHG Emissions Inventory into Climate Action Plan (CAP) initial draft
3. Hold community workshop to solicit input on draft CAP
4. Complete revised draft of CAP based on input from community workshops
5. Hold City Council workshop to adopt completed CAP
6. Submit progress reports and invoices, to Tina Tyler-O'Shea, HHSA Prevention and Planning Unit, for payment on a quarterly basis.
7. Comply with the terms of the Grant Agreement with the Strategic Growth Council, incorporated here as Attachment A.
8. Comply with the terms of the Grantee Certificate of Compliance, incorporated here as Attachment B.
9. Comply with the terms of the Work Plan and Schedule of Deliverables, incorporated here as Attachment C.
10. Comply with the Detailed Budget and Payment Provisions, incorporated here as Exhibit B.

[End of Exhibit A]

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BUDGET TERMS

Exhibit B - BUDGET						
PERSONNEL	Title	Hourly Rate	# of Hours	(D*E) Salary	Benefits	(F+G) Total
Total				0	0	0
CONSULTANTS						
GHG Emission Inventory: senior and associate level personnel at approx \$150/hr for 100 hours						15,000
Climate Action Plan: senior and associate level personnel at approx \$150/hr for 300 hours						45,000
Totals						60,000

[END OF PAYMENT TERMS]

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EXHIBIT C

INSURANCE REQUIREMENTS

Insurance coverage in a minimum amount set forth herein shall not be construed to relieve CONTRACTOR for liability in excess of such coverage, nor shall it preclude COUNTY from taking such other action as is available to it under any other provisions of this Agreement or otherwise in law.

CONTRACTOR agrees to indemnify and hold harmless COUNTY, its elected or appointed officials, employees or volunteers against any claims, actions, or demands against them, or any of them, and against any damages, liabilities or expenses, including costs of defense and attorney's fees, for personal injury or death, or for the loss or damage to the property, or any or all of them, to the extent arising out of the performance of this Agreement by CONTRACTOR.

CONTRACTOR affirms that s/he is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for the Workers' Compensation or to undertake self insurance in accordance with the provisions of the Code and CONTRACTOR further assures that s/he will comply with such provisions before commencing the performance of work under this Agreement. CONTRACTOR shall furnish to COUNTY certificate(s) of insurance evidencing Worker's Compensation Insurance coverage to cover its employees, and CONTRACTOR shall require all subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of CONTRACTOR'S and subcontractors' employees.

CONTRACTOR shall furnish to COUNTY certificate(s) of insurance evidencing malpractice insurance coverage for CONTRACTOR and his employee(s) in an amount, which is no less than \$1,000,000 in a form acceptable to the COUNTY.

CONTRACTOR shall furnish to COUNTY certificates of insurance with Automobile Liability/General Liability Endorsements evidencing at a minimum the following:

- a. Combined single limit bodily injury liability and property damage liability - \$1,000,000 each occurrence.
- b. Vehicle / Bodily Injury combined single limit vehicle bodily injury and property damage liability - \$500,000 each occurrence.

EXHIBIT D

CONTRACTOR ASSURANCE OF COMPLIANCE WITH
THE MENDOCINO COUNTY
HEALTH & HUMAN SERVICES AGENCY

NONDISCRIMINATION IN STATE
AND FEDERALLY ASSISTED PROGRAMS

NAME OF CONTRACTOR City of Ukiah

HEREBY AGREES THAT it will comply with Title VI and VII of the Civil Rights Act of 1964 as amended; Section 504 of the Rehabilitation Act of 1973 as amended; the Age Discrimination Act of 1975 as amended; the Food Stamp Act of 1977, as amended and in particular section 272.6; Title II of the Americans with Disabilities Act of 1990; California Civil Code Section 51 et seq., as amended; California Government Code section 11135-11139.5, as amended; California Government Code section 12940 (c), (h) (1), (i), and (j); California Government Code section 4450; Title 22, California Code of Regulations section 98000 – 98413; Title 24 of the California Code of Regulations, Section 3105A(e); the Dymally-Alatorre Bilingual Services Act (California Government Code Section 7290-7299.8); Section 1808 of the Removal of Barriers to Interethnic Adoption Act of 1996; and other applicable federal and state laws, as well as their implementing regulations [including 45 Code of Federal Regulations (CFR) Parts 80, 84, and 91, 7 CFR Part 15, and 28 CFR Part 42], by ensuring that employment practices and the administration of public assistance and social services programs are nondiscriminatory, to the effect that no person shall because of ethnic group identification, age, sex, sexual orientation, color, disability, medical condition, national origin, race, ancestry, marital status, religion, religious creed or political belief be excluded from participation in or be denied the benefits of, or be otherwise subject to discrimination under any program or activity receiving federal or state financial assistance; and HEREBY GIVE ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal and state assistance; and THE CONTRACTOR HEREBY GIVES ASSURANCE THAT administrative methods/procedures which have the effect of subjecting individuals to discrimination or defeating the objectives of the California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Chapter 21, will be prohibited.

BY ACCEPTING THIS ASSURANCE, CONTRACTOR agrees to compile data, maintain records and submit reports as required, to permit effective enforcement of the aforementioned laws, rules and regulations and permit authorized CDSS and/or federal government personnel, during normal working hours, to review such records, books and accounts as needed to ascertain compliance. If there are any violations of this assurance, CDSS shall have the right to invoke fiscal sanctions or other legal remedies in accordance with Welfare and Institutions Code section 10605, or Government Code section 11135-11139.5, or any other laws, or the issue may be referred to the appropriate federal agency for further compliance action and enforcement of this assurance.

THIS ASSURANCE is binding on CONTRACTOR directly or through contract, license, or other provider services, as long as it receives federal or state assistance.

Date
300 Seminary Ave., Ukiah, CA 95482
Address of CONTRACTOR

CONTRACTOR Signature

Appendix A

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, and OTHER RESPONSIBILITY MATTERS LOWER TIER COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 **Federal Register** (pages 19160-19211).

- (1) The primary principal certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment tendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsifications or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification, and
 - (d) Have not, within a three-year period preceding this application/proposal, had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (2) Where the primary principal is unable to certify to any of the statements in this certification, such principal shall attach an explanation.

_____ (Type Name)	City of Ukiah Planning and Community Development _____ (Organization Name)
_____ (Title)	300 Seminary Ave., Ukiah, CA 95482 _____ (Organization Address)
_____ (Signature)	_____ (Date)

Attachment A

California Department of Conservation – Division of Land Resource Protection
Strategic Growth Council – 2011 Sustainable Communities Planning Grants

Mendocino County Health and Human Services Agency

Grant Number: 3010-517

Fiscal Year Allocation: 2010-2011

GRANT AGREEMENT

This grant agreement (Grant Agreement) is entered into by and between the California Department of Conservation, Division of Land Resource Protection, (DEPARTMENT), the administrative agent for the Strategic Growth Council (COUNCIL), and the Mendocino County Health and Human Services Agency (GRANTEE) and its subcontractors (collectively PARTIES).

RECITALS

WHEREAS, Public Resources Code sections 75127, 75128, 75129 authorize the DEPARTMENT to develop and the COUNCIL to approve a program and associated guidelines for funding the creation of sustainable community plans, which encompasses planning programs and projects described in the Sustainable Communities Planning Grant Program Guidelines.

WHEREAS, The Sustainable Communities Planning Grant Program subsequently approved by the Council and developed by the Department is funded by Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006. Proposition 84 added Division 43 to the Public Resources Code, Chapter 9, Sustainable Communities and Climate Change Reduction, Public Resources code section 75065(a), which authorizes the Legislature to appropriate \$90 million for planning grants and planning incentives that reduce energy consumption, conserve water, improve air and water quality, and provide other community benefits.

WHEREAS, the DEPARTMENT has received and reviewed GRANTEE'S application, which included a detailed budget, specifications, and work plan in conformance with existing Sustainable Community Planning Grant Guidelines dated April 22, 2010, and approved by the COUNCIL for purposes of implementing a funding program by the Department on March 17th, 2010.

WHEREAS, the COUNCIL has reviewed all relevant documents, including those required documents necessary to comply with all existing laws and regulations and has approved the funding subject to this Grant Agreement.

WHEREAS, the DEPARTMENT and the GRANTEE now desire to enter into this Agreement for \$461,340 to be expended on the creation of the sustainable community plan described in this Grant Agreement and the exhibits which are incorporated in and attached to it.

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NOW THEREFORE, the Parties agree as follows:

DEFINITIONS

1. The term "Act" means Proposition 84, the California Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006.
2. The term "Application" means the individual application form, its required attachments for grants pursuant to the enabling legislation and/or program and any applicable materials supplied by applicant to the Department prior to award.
3. The term "Application Guidelines" means the Sustainable Planning Grant Program Guidelines Developed by the DEPARTMENT and approved by the COUNCIL on April 22, 2010.
4. The term "Grant" or "Grant Funds" means the money provided by the COUNCIL to the Grantee in this Grant Agreement.
5. The term "Project" means the sustainable community plan to be developed by GRANTEE and described in the Application and exhibits incorporated in and attached to this Grant Agreement.
6. The term "Project Budget" means the State approved cost estimate included as Appendix D to this Agreement.
7. The term "Project Scope" means the description or activity of work to be accomplished by the GRANTEE as further described in Appendix C.
8. The term "Public Agency" means any State of California department or agency, a county, city, public district or public agency formed under California law.

PROJECT EXECUTION AND SCOPE

1. Subject to the availability of funds in the Act, the DEPARTMENT hereby grants to the GRANTEE a sum of money (Grant Funds) not to exceed \$461,340 (\$97,616 for Mendocino County Planning & Building) in consideration of and on condition that the sum be expended in carrying out the purposes as set forth in the description of Project in this Grant Agreement and its attachments and under the terms and conditions set forth in this Grant Agreement.
2. GRANTEE shall furnish any and all additional funds that may be necessary to complete the Project.
3. GRANTEE shall complete the Project in accordance with the Grant End Date, unless an extension has been formally granted by the DEPARTMENT and under the terms and conditions of this Grant Agreement. Extensions may be requested in advance and will

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be considered by DEPARTMENT, at its sole discretion, in the event of circumstances beyond the control of the GRANTEE, but in no event beyond June 30, 2014.

4. GRANTEE shall at all times ensure that Project complies with all state and local laws, including, and to the extent applicable, the California Environmental Quality Act.

5. GRANTEE shall provide incremental status reports and component deliverables in accordance with the approved Project Scope as provided in Appendix C.

6. The terms and conditions of this Grant Agreement, its attachments and appendixes constitute and contain the entire Grant Agreement and understanding between the PARTIES, and may not be contradicted by evidence of any prior or contemporaneous oral agreement.

MODIFICATIONS AND AMENDMENTS

1. No amendment or variation of the terms of this Grant Agreement shall be valid unless made in writing, agreed to and signed by both PARTIES.

2. Any request by the GRANTEE for amendments must be in writing stating the amendment request and reason for the request. The GRANTEE shall make requests in a timely manner and in no event less than sixty (60) days before the effective date of the proposed amendment.

3. Changes to budget line item revisions of less than \$1,000, minor task modifications, and staff adjustments do not require amendment of the Agreement. However, the GRANTEE shall obtain prior written approval from the Grant Manager before making such changes. All change requests shall be made in writing and include a description of the proposed change and the reasons for the change.

4. GRANTEE agrees to submit in writing to the DEPARTMENT for prior approval any deviation from the original Project Scope per Appendix C. Changes in Project Scope must continue to meet the need cited in the original Application or they will not be approved. Any modification or alteration in the Project as set forth in the Application on file with the DEPARTMENT must be submitted to the DEPARTMENT for approval. At the discretion of the Department any modification or alteration in the Project must also comply with all current laws and regulations.

PROJECT COSTS AND ADMINISTRATION

1. Except as otherwise provided, the GRANTEE shall expend Grant Funds in the manner described in the Exhibit A as approved by the DEPARTMENT. The total dollars of a category in the Project Budget may be increased by up to ten percent (10%) through a reallocation of funds from another category, without approval by the DEPARTMENT. However, the GRANTEE shall notify the DEPARTMENT in writing when any such reallocation is made, and shall identify both the item(s) being

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increased and those being decreased. Any cumulative increase or decrease of more than ten percent (10%) from the original budget in the amount of a category must be approved in writing by the DEPARTMENT. In any event, the total amount of the Grant Funds may not be increased, nor may any adjustments exceed the limits for preliminary costs as described in the Application Guidelines.

2. Only direct costs are reimbursable under this contract. Indirect costs, including salaries and benefits of employees not directly assigned to the Project, and organizational functions, such as personnel, business services, information technology, salaries of supervisors or managers (not directly assigned to the Project), and overhead, such as rent, and utilities, shall not be reimbursable.

3. All costs charged against the grant shall be net of all applicable credits. The term “applicable credits” refers to those receipts or reductions of expenditures that operate to offset or reduce expense items that are reimbursable under this Agreement. Applicable credits may include, but are not necessarily limited to, rebates or allowances, discounts, credits toward subsequent purchases, and refunds. GRANTEE shall, where possible, deduct the amount of the credit from the amount billed as reimbursement for the cost, or shall deduct the amount of the credit from the total billed under a future invoice.

4. GRANTEE shall make work product acquired or developed pursuant to this Grant Agreement available for inspection upon request by the DEPARTMENT.

5. GRANTEE shall use any income earned by the GRANTEE from use of the Project to further Project purposes, or, if approved by the DEPARTMENT, for related purposes within the jurisdiction.

6. GRANTEE must report to the DEPARTMENT all sources of other funds for the Project.

FINANCIAL RECORDS

1. GRANTEE shall maintain satisfactory financial accounts, documents and records for the Project and to make them available to the DEPARTMENT for auditing at reasonable times. GRANTEE shall also retain such financial accounts, documents and records for three (3) years after final payment and one (1) year following an audit.

2. GRANTEE agrees that during regular office hours, the DEPARTMENT and its duly authorized representatives shall have the right to inspect and make copies of any books, records or reports of the other party pertaining to this Grant Agreement or matters related thereto. GRANTEE shall maintain and make available for inspection by the DEPARTMENT accurate records of all of its costs, disbursements and receipts with respect to its activities under this Grant Agreement.

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3. GRANTEE shall use applicable Generally Accepted Accounting Principles, unless otherwise agreed to by the State.

4. GRANTEE shall maintain adequate supporting documentation in such detail so as to provide an audit trail of receipts, expenditures and disbursements. GRANTEE'S records will permit tracing transactions from support documentation to the accounting records to financial reports and billings. Such documentation shall include, but shall not necessarily be limited to, subsidiary ledgers, payroll records, vendor invoices, canceled checks, bank or other financial account records, consultant contracts and billings, volunteer rosters and work logs, and lease or rental agreements. Such documentation shall be readily available for inspection, review and/or audit by the Grant Manager or other representatives of the State.

5. Subcontractor(s) employed by the GRANTEE and paid with moneys under the terms of this Grant Agreement, shall be responsible for maintaining accounting records as specified above.

PROJECT RECORDS

1. GRANTEE shall establish an official file for the Project. The file shall contain documentation of all actions taken regarding this grant.

2. GRANTEE shall establish separate ledger accounts for receipt and expenditure of grant funds and maintain expenditure detail in accordance with the approved budget detail and the Financial Records section of this Grant Agreement.

DOCUMENTATION OF TIME SPENT

1. GRANTEE shall maintain reports or other detailed records (e.g., activity logs or timesheets) documenting time spent by each employee, agent, or contractor whose work in support of this Grant Agreement is billed under the Agreement. Records used to meet this requirement shall identify the individual performing the work, the date on which the work was performed, the specific grant-related activities or tasks and deliverables to which the individual's time was devoted, and the amount of time spent. Such records shall reflect actual time spent, rather than that which was planned or budgeted.

2. Submitted time sheets must contain the signature of both the GRANTEE grants administrator and the person who manages the grants administrator (supervisor or appropriate contract official).

COPIES OF DATA, PLANS AND SPECIFICATIONS

1. The GRANTEE shall, at the request of the DEPARTMENT or as specifically directed in the Grant Summary at Appendix C, provide the DEPARTMENT with copies of any data, design plans, specifications, maps, photographs, negatives, audio and video productions, films, recordings, reports, findings, recommendations

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and memoranda of every description or any part thereof, prepared or used in the preparation of the Project funded by this Grant Agreement.

2. All departments within the State of California shall have the right to copy and distribute said copies in any manner when and where it may determine without any claim on the part of the Grantee, its vendors or subcontractors to any additional compensation.

COMPETITIVE BID REQUIREMENTS

1. GRANTEE shall maintain documentation of its normal procurement policy and competitive bid process used. This competitive bid requirement may be waived upon GRANTEE certification and grantor approval that due to the unique nature of the goods or services a sole source purchase is justified. Failure to comply with competitive bid requirements may result in the DEPARTMENT disallowing reimbursement of some portion or all of the related costs and/or other remedies for breach of contract.

INVOICING

1. Invoices shall be submitted on a quarterly basis, unless an alternate schedule is agreed upon by both parties. An invoice form will be provided to the GRANTEE, which must be used to submit any and all invoices.

2. All invoices must be submitted in triplicate, with an original and two additional copies, listing the grant and invoice numbers. The copies may be double-sided. The original invoice must have an original authorized signature.

3. In accordance with the Grant Guidelines, fifteen percent (15%) of the amounts submitted for reimbursement will be withheld and issued as a final payment upon agreement completion, at the sole discretion of the state. All expenditures must be itemized on the invoice form. This should include reimbursable costs and any in-kind or cash expenditures.

4. For each expenditure of \$500 or more, copies of supporting documentation (time sheets, payroll stubs, bids, receipts, canceled checks, sole source justification, etc.) must be submitted with the invoice. Original supporting documents are not required and should be retained by the GRANTEE for record keeping and audit purposes.

5. Invoices are to be sequentially numbered starting from one and must tie to budget line items in the approved Budget at Appendix D. Invoices must be signed by the person who signed the Agreement or his/her authorized designee. Designees must be authorized in writing and filed with the DEPARTMENT.

6. Individuals funded by this grant cannot sign invoices. If there is a question as to the authority of the signer, which cannot be resolved to the satisfaction of the DEPARTMENT, the invoice will not be paid.

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7. Each invoice is subject to approval by the Grant Manager and DEPARTMENT Management, and possible audit by the Accounting Office and the State Controller before payment may be disbursed. If an invoice is questioned by the DEPARTMENT, the Grant Manager shall contact the GRANTEE within thirty (30) working days of receipt of the invoice. Undisputed invoices take approximately six (6) weeks for payment.

PAYMENT

1. Except as otherwise provided herein, payments shall be made to GRANTEE no more than once every sixty (60) calendar days in arrears for actual costs authorized in the Budget at Appendix D of this Grant Agreement and incurred during the grant term. Payment will be made upon evidence of satisfactory progress, as determined by the Grant Manager. Such evidence shall consist of written progress reports, phased and incremental work-product production, and other documentation evidencing performance, as provided for in this Grant Agreement.

2. Final payment will be made only after completion, to the DEPARTMENT'S satisfaction, of objectives, work and activities identified in Appendix C, including timely receipt of all required reports including the Final Report, and in accordance with the Invoicing and Discharge provisions of this Grant Agreement. The Department will not reimburse costs incurred after the Grant End Date.

3. Only those items identified in the Budget are eligible for reimbursement. Any changes to the Budget must be approved by the Grant Manager before an expenditure for that item is made. Under no circumstances shall the Grantee seek reimbursement pursuant to this Agreement for a cost that has been or will be paid through another funding source.

TRAVEL

1. Reimbursement of travel is not permitted unless expressly provided in the approved Budget at Appendix D. Travel by private or GRANTEE-owned automobile, necessary for the performance of this Grant Agreement, shall be reimbursed at no more than .51 cents per mile. GRANTEE shall maintain detailed travel records showing the date and purpose of grant-related travel, destination and, in the case of travel by automobile, vehicle license number and number of miles driven.

DISCHARGE OF GRANT OBLIGATIONS

1. The GRANTEE'S obligations under this Agreement shall be deemed discharged only upon acceptance of the Final Report by the DEPARTMENT. The final report will attach and incorporate all work-product generated by the Grant Funds including the Final Sustainable Community Plan produced by the GRANTEE. The GRANTEE'S Board of Directors or Board of Supervisors shall adopt and certify as accurate the Final Plan Report prior to its submission to the DEPARTMENT.

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2. GRANTEE shall submit all documentation for Project completion and final reimbursement within ninety (90) days of Project completion, but in no event any later than September 30, 2014.

3. Final payment is contingent upon DEPARTMENT'S verification that the Project is consistent with Project Scope as described in Appendix C, together with any DEPARTMENT approved amendments.

TERMINATION

1. If the DEPARTMENT or the COUNCIL terminates the Grant Agreement without cause prior to the end of the Project Performance Period, the GRANTEE shall take all reasonable measures to prevent further costs to the DEPARTMENT under this Grant Agreement. The DEPARTMENT shall be responsible for any reasonable and non-cancelable obligations incurred by the GRANTEE in the performance of this Agreement prior to the date of the notice to terminate, but only up to the undisbursed balance of funding authorized in this Agreement.

2. If the GRANTEE fails to complete the Project in accordance with this Grant Agreement, or fails to fulfill any other obligations of this Agreement prior to the termination date, the GRANTEE shall be liable for immediate repayment to the DEPARTMENT of all amounts disbursed by the DEPARTMENT under this Grant Agreement, plus accrued interest and any further costs related to the Project. The DEPARTMENT may, at its sole discretion, consider extenuating circumstances and not require repayment for work partially completed. This paragraph shall not be deemed to limit any other remedies available to the State for breach of this Agreement.

3. Failure by the GRANTEE to comply with the terms of this Agreement or any other related obligation may be cause for suspension of all obligations of the DEPARTMENT hereunder.

4. Failure of the GRANTEE to comply with the terms of this Grant Agreement shall not be cause for suspending all obligations of the DEPARTMENT if, in the judgment of the DEPARTMENT, such failure was due to no fault of the GRANTEE. At the discretion of the DEPARTMENT, any amount required to settle at minimum cost any irrevocable obligations properly incurred shall be eligible for reimbursement under this Grant Agreement.

5. Either PARTY shall have the right to terminate this Grant Agreement at any time upon thirty (30) days written notice to the other. In the case of such "early" or "discretionary" termination by GRANTEE, defined as termination occurring before full performance of all objectives and activities described in the Grant Summary and authorized for funding herein, the DEPARTMENT will be entitled to seek full reimbursement for all costs and payments made on the Grant Agreement.

6. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Grant Agreement does not appropriate

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sufficient funds for the DEPARTMENT'S Program, as determined at the discretion of the DEPARTMENT, this Grant Agreement shall be terminated. In this event, the DEPARTMENT shall have no liability to pay any funds whatsoever to GRANTEE or to furnish any other consideration under this Agreement to GRANTEE beyond the date of written notice of termination under this provision to the GRANTEE.

7. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of funding this grant program, the DEPARTMENT shall have the option to either: cancel this Grant Agreement with no liability occurring to the STRATEGIC GROWTH COUNCIL or the DEPARTMENT, or offer an Agreement Amendment to GRANTEE to reflect a reduced amount.

8. Further, if the STRATEGIC GROWTH COUNCIL or the DEPARTMENT is unable to secure adequate funds through municipal bond sales or not able to secure the authorization to utilize such funds by the appropriate agencies, this GRANT AGREEMENT shall be terminated.

STOP WORK

1. Immediately upon receiving a written notice from the STRATEGIC GROWTH COUNCIL or the DEPARTMENT to stop work, the GRANTEE shall cease all work under this Grant Agreement.

PERFORMANCE OF SUBCONTRACTORS:

1. The GRANTEE shall be entitled to make use of its own staff and such subcontractor(s) as are mutually acceptable to the GRANTEE and the DEPARTMENT. All subcontractor(s) specifically identified in the Grant Summary, and any subsequent grant documents, are considered to be acceptable to the DEPARTMENT. Any change in subcontractor(s) or change as to how the GRANTEE intends to use the services of a subcontractor shall require a formal amendment of this Grant Agreement. All approved subcontractors shall be managed by GRANTEE subject to the terms and conditions of this Agreement. Neither the DEPARTMENT nor the State is liable or in any way responsible for, nor will it indemnify, subcontractors.

2. Nothing contained in this Grant Agreement shall create any contractual relation between the DEPARTMENT and any subcontractors and no subcontract shall relieve GRANTEE of its responsibilities and obligations under the terms of this Grant Agreement. GRANTEE agrees to be fully responsible to the DEPARTMENT for the acts and omissions of its staff, subcontractors and of persons either directly or indirectly employed by them. GRANTEE'S obligation to pay its subcontractors is an independent obligation from the DEPARTMENT'S obligation to make payments to GRANTEE.

3. GRANTEE shall manage and hereby accepts responsibility for the performance of all subcontracts arising out of or in connection with this Agreement. GRANTEE shall

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monitor subcontractor's performance of the terms and conditions set forth herein by providing sufficient staffing resources for the length of the project. Subcontractor communications with the Department shall be coordinated through the grantee's principal staff. GRANTEE and its subcontractors shall conduct all work consistent with professional standards for the industry and type of work being performed under the Agreement. The Grant Manager, without waiver of other rights or remedies, may require GRANTEE to re-perform any of said services not performed in accordance with these standards. Costs and expenses for defective services, for failure to meet the terms and conditions of the Agreement or for any redundancy that occurs due to inadequate subcontractor services shall be borne by GRANTEE.

DISPUTE RESOLUTION

In the event of a dispute, the GRANTEE shall provide written notice of the particulars of such dispute to: Assistant Director, Division of Land Resource Protection, Department of Conservation, 801 K Street, MS 18-01, Sacramento, CA 95814. Such written notice must contain the grant number. Within fifteen (15) days of receipt of such notice, the Assistant Director or the Assistant Director's designee shall advise the GRANTEE of his or her findings and a recommended means of resolving the dispute.

PUBLICITY AND ACKNOWLEDGMENT

1. The Grantee agrees that it will acknowledge the STRATEGIC GROWTH COUNCIL'S support whenever activities or projects funded, in whole or in part, by this Grant Agreement are publicized in any news media, brochures, articles, seminars or other type of promotional material. The GRANTEE shall also include in any publication resulting from work performed under this grant an acknowledgment substantially as follows:

"The work upon which this publication is based was funded in whole or in part through a grant awarded by the Strategic Growth Council."

2. The GRANTEE shall place the following notice, preceding the text, on draft reports, on the final report, and on any other report or publication resulting from work performed under this Agreement:

"Disclaimer

The statements and conclusions of this report are those of the GRANTEE and/or Subcontractor and not necessarily those of the Strategic Growth Council or of the Department of Conservation, or its employees. The Strategic Growth Council and the Department make no warranties, express or implied, and assume no liability for the information contained in the succeeding text."

3. Before any materials or other publications funded in whole or in part pursuant to this Grant Agreement are published, GRANTEE shall provide the DEPARTMENT with an opportunity to review any and all references to the STRATEGIC GROWTH

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COUNCIL or the DEPARTMENT or the programs and laws that it administers in such materials and publications.

CONFLICT OF INTEREST

1. GRANTEE shall act in accordance with the fiduciary duty attached to the receipt and expenditure of grant moneys intended to benefit the public. Consistent with that fiduciary duty and the public trust from which it flows, GRANTEE shall ensure the proper expenditure of all grant moneys for which reimbursement is sought pursuant to this Grant Agreement.

2. All expenditures for which reimbursement pursuant to this Grant Agreement is sought shall be the result of arm's length transactions and not the result of, or motivated by, self-dealing on the part of the GRANTEE or any employee or agent of the GRANTEE. For purposes of this provision, "arm's length transactions" are those in which both parties are on equal footing and fair market forces are at play, such as when multiple vendors are invited to compete for an entity's business and the entity chooses the lowest of the resulting bids. "Self-dealing" is involved where an individual or entity is obligated to act as a trustee or fiduciary, as when handling public funds, and chooses to act in a manner that will benefit the individual or entity, directly or indirectly, to the detriment of, and in conflict with, the public purpose for which all grant moneys are to be expended. Nothing in this agreement absolves the grantee from complying with California Govt. Code section 1090 or any other law.

INDEMNITY AND HOLD HARMLESS

1. GRANTEE waives all claims and recourses against the DEPARTMENT, including the right to contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to this Agreement, except claims arising from the gross negligence of DEPARTMENT, its officers, agents and employees.

2. GRANTEE shall indemnify, hold harmless and defend DEPARTMENT, its officers, agents and employees in perpetuity against any and all claims, demands, damages, costs, expenses or liability costs arising out of the Project, demands or causes of action arise under Government Code or otherwise, including but not limited to items to which the Grantee has certified or approved, except for liability arising out of the gross negligence of State, its officers, agents or employees. Grantee acknowledges that it is solely responsible for compliance with items to which it has certified.

3. GRANTEE and DEPARTMENT agree that in the event of judgment entered against the DEPARTMENT and GRANTEE because of the gross negligence of the DEPARTMENT and GRANTEE, their officers, agents or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.

NONDISCRIMINATION

1. The GRANTEE shall not discriminate against any person on the basis of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave in the use of any property or facility acquired or developed pursuant to this Agreement.
2. The GRANTEE shall not discriminate against any person on the basis of residence except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence and pursuant to law.
3. The completed Project shall be considered a public record.

INCORPORATION

1. The Grant Guidelines and the Application and any subsequent changes or additions to the Application approved in writing by the DEPARTMENT are hereby incorporated by reference into this Grant Agreement as though set forth in full in this Grant Agreement.
2. Appendixes C and D are attached to this Grant Agreement and incorporated by reference into it as though set forth in full.

SEVERABILITY

1. If any provision of this Agreement or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are severable.

WAIVER

1. No term or provision hereof will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing and signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party, whether expressed or implied, will constitute consent to, waiver of or excuse of any other, different or subsequent breach by either party.

ASSIGNMENT

1. The GRANTEE may assign its interest in and responsibilities under this Grant Agreement either in whole or in part only with the written consent of the DEPARTMENT.

AUDIT REQUIREMENTS

1. Sustainable Community Planning Grant Projects are subject to audit by the DEPARTMENT annually and for three (3) years following the final payment of Grant Funds. The audit shall include all books, papers, accounts, documents, or other records of the Grantee, as they relate to the Project for which the Grant Funds were granted.
2. The GRANTEE agrees that the DEPARTMENT and its representatives, including, but not limited to, the DEPARTMENT, the State Controller's Office and the State Auditor, shall have an absolute right of access to, and right to review and copy, all of the GRANTEE'S records pertaining to this Grant Agreement and to conduct reviews and/or audits related to this grant. GRANTEE shall, for the purpose of any such review or audit, retain and provide access to all records related to this grant including, but not necessarily limited to, those records specified above. GRANTEE shall also provide access to and allow interview of any employees who might reasonably have information related to such records. Such access to employees and records shall be provided during normal business hours throughout the grant term and for at least three years after the final payment is disbursed pursuant to this Grant Agreement, or until completion of any action and resolution of all issues which may arise as a result of any audit or review of such records, whichever is later.

GOVERNING LAW/LOCUS

1. This Agreement is governed by, and shall be interpreted in accordance with the laws of the State of California. For the purpose of any litigation related to and/or challenging any aspect of this Grant Agreement or performance there under, the locus is Sacramento, California.

INSURANCE COVERAGE

1. The GRANTEE shall obtain and keep in force for the term of this Agreement, and require its subcontractors to obtain and keep in force, the following insurance policies that cover any acts or omissions of the GRANTEE, or its employees engaged in the provision of services or performance of activities funded pursuant to and specified in this Agreement:
 - a. Worker's Compensation Insurance in accordance with the statutory requirement of the State of California.
 - b. Commercial general liability insurance in the amount of \$1,000,000 per occurrence and aggregate for bodily injury and property damage.
 - c. Automobile liability in the amount of \$1,000,000 for each accident for owned or non-owned or hired vehicles, whichever is applicable.
2. The GRANTEE shall name the State of California, its officers, agents, employees and servants as additional insured parties for all insurance required and is

Attachment A – Page 14

responsible for guaranteeing that a copy of each Certificate of Insurance is submitted to the DEPARTMENT within thirty (30) days of grant signature.

3. The certificate of insurance shall state a limit of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage combined.

4. The GRANTEE shall notify the DEPARTMENT prior to any insurance policy cancellation or substantial change of policy.

GRANTEE NOT AN AGENT OF THE STATE

1. GRANTEE agrees that it, and its agents and employees shall act in an independent capacity and are not as officers or employees or agents of the State of California, the STRATEGIC GROWTH COUNCIL or the DEPARTMENT.

TIMELINESS

1. Time is of the essence in the performance of this Agreement. Grantee is required to begin implementation of this Agreement as soon as possible following its execution and shall abide by the Grant Summary, Work Plan, and Schedule of Deliverables at Appendix C. Grantee shall not incur costs pursuant to this Agreement past the Grant End Date.

CERTIFICATION CLAUSES

1. The Grantee hereby certifies its compliance with all applicable requirements contained in the Grantee Certification of Compliance at Exhibit E of this Agreement.

BREACH OF CONDITIONS/REMEDY FOR DEFAULT

1. In the event of GRANTEE'S breach of any conditions or terms of this Grant Agreement, the DEPARTMENT will give written notice to the GRANTEE, describing the breach. Notice shall be deemed given when deposited in the U.S. Post office, postage prepaid, addressed to GRANTEE, or by personal delivery to GRANTEE'S place of business. If GRANTEE does not, within thirty (30) days after the notice is given, (1) cure the breach described in the DEPARTMENT'S notice or (2) if the breach is not curable within thirty (30) days, commence to cure the breach, then Grantee shall be in default under this Agreement.

2. In the event of a default under this Grant Agreement, the STRATEGIC GROWTH COUNCIL and the DEPARTMENT shall be entitled to all remedies available at law including, but not limited to, termination of the Grant Agreement, withholding of amounts billed and/or recovery of funds disbursed and equipment purchased pursuant to the Grant Agreement. GRANTEE may appeal such action by filing a dispute pursuant to the Dispute Resolution portion of this Agreement.

Attachment B

GRANTEE CERTIFICATION OF COMPLIANCE

By signing this Agreement, Grantee certifies that it is in compliance with all of the following requirements, to the extent that each is applicable:

1. Americans with Disabilities Act: Grantee assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 *et seq.*)

2. Nondiscrimination Clause: During the performance of this Agreement, the Grantee and its subcontractor(s) shall not discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), sexual orientation, marital status, and denial of family care leave. Grantee and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from discrimination and harassment. Grantee and its subcontractors shall comply with the provisions of the California Fair Employment and Housing Act (Government Code, Section 12900 *et seq.*), and the regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated herein by reference and made a part hereof as if set forth in full.

Grantee and its subcontractor(s) shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the grant.

3. Recycling Certification: The Department has a procurement policy that sets purchase goals for, and favors the purchase of, products containing recycled content, both post-consumer and secondary waste. When using grant funds to purchase paper products, fine printing and writing paper, plastic, glass, oil, compost and co-compost, solvents and paint, tire-derived products, and retread tires, the Grantee shall make a reasonable effort to purchase products containing recycled content. Grantee shall report any and all such purchases in status and final reports required pursuant to this Agreement.

4. Drug-Free Workplace Requirements: Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code section 8350 *et seq.*) and will provide a drug-free workplace by taking the following actions:

(a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

(b) Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and
- 4) penalties that may be imposed upon employees for drug abuse violations.

(c) Every employee who works on the Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and

GRANTEE CERTIFICATION OF COMPLIANCE

2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Grantee may be ineligible for award of any future State agreements if the Department determines that the Grantee has made a false certification, or violated the certification by failing to carry out the requirements as noted above.

5. Labor Code/Workers Compensation: Grantee needs to be aware of the provisions, which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Grantee agrees to comply with such provisions before commencing performance pursuant to this Agreement. (Labor Code Section 3700)

6. Child Support Compliance Act: For any Agreement in excess of \$100,000, the Grantee acknowledges accordance with the following:

(a) The Grantee recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

(b) The Grantee, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

7. Air or Water Pollution Violation: Under State laws, the Grantee shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. Compliance with Other Laws, Including CEQA: The Grantee shall comply fully with all applicable federal, state and local laws, ordinances, regulations and permits and shall secure any new permits required by authorities having jurisdiction over the project(s), and maintain all presently required permits. The Grantee shall ensure that any applicable requirements of the California Environmental Quality Act are met in carrying out the terms of the grant.

9. Use of State Funds to Assist, Promote or Deter Union Organizing: Grantee shall not use state funds, including grant funds, to assist, promote or deter union organizing. Government Code Section 16645.1(d) provides that Grantee shall be liable to the State for the amount of any funds expended in violation of this prohibition, plus a civil penalty equal to twice the amount of those funds. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee shall maintain records sufficient to show that state funds have not been used for those expenditures. The Grantee shall provide those records to the Attorney General upon request.

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Attachment C – Work Plan and Schedule of Deliverables	Responsible Parties	Schedule of Deliverables (Months from Start. Start year: 2011)
High Level Activities/Milestones		
Greenhouse Gas Emissions Inventory	City of Ukiah Planning & Community Development Dept.	
TASK 12.	Planning & Community Development Department Staff in conjunction with consultant	
Sub-Task A Request for Professional Services		Months 1 – 3
Sub-Task B Community Workshop		Month 4
Sub-Task C City Council Workshop		Month 5
Sub-Task D Complete Inventory		Months 6 – 7
High Level Activities/Milestones	Responsible Parties	Schedule of Deliverables (Months from Start. Start year: 2011)
Climate Action Plan	City of Ukiah Planning & Community Development Dept.	
TASK 13.	Planning & Community Development Department Staff in conjunction with consultant	
Sub-Task A Incorporate GGE Inventory into CAP initial draft		Months 8 – 11
Sub-Task B Community Workshop		Month 12
Sub-Task C Complete revised draft of CAP based on input from community workshops		Months 13 -16
Sub-Task D City Council Workshop and Adoption		Month 17