



## **AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND THE CITY OF MILPITAS GRANTING PROGRAM FUNDS FOR THE 2019 STATE HOMELAND SECURITY GRANT PROGRAM FUNDS**

THIS AGREEMENT is made effective when fully executed by the County of Santa Clara (“County”) and the City of Milpitas (“Milpitas”) for the allocation and distribution of 2019 State Homeland Security Grant Program (SHSGP) funds.

### **RECITALS**

WHEREAS, the 2019 SHSGP (CFDA #97.067) supports the implementation of State Homeland Security Strategies to address the identified planning, organization, equipment, training and exercise needs for acts of terrorism and other catastrophic events, and management and administration of the grant. In addition, SHSGP supports the implementation of the National Preparedness Guidelines, the National Incident Management System (NIMS), and the National Response Network (NRF);

WHEREAS, the State of California (“State”) has designated the County as the Operational Area for purposes of distributing SHSGP funds to the cities, special districts and other entities within the County. An Anti-Terrorism Approval Body (County Approval Authority), comprised of one County Public Health Officer, County Fire Chief, Municipal Fire Chief, County Sheriff, and Chief of Police, has been appointed for the purpose of approving the distribution of SHSGP funds at the Operational Area level;

WHEREAS, on September 1, 2019 the California Office of Emergency Services (“Cal OES”) awarded the County 2019 SHSGP funds in the amount of \$2,088,075. The allocation of the SHSGP funds will be determined by the County Approval Authority in accordance with the grant guidelines.

NOW, THEREFORE, the County and Milpitas agree as follows:

### **THE AGREEMENT**

#### **Article I. Definitions**

##### **1. Specific Terms**

- (a) **“Burdened Labor Rate”** shall mean the labor rate including benefits, taxes and other deductions from an employee’s paycheck. This rate does not include vacation benefits.
- (b) **“Milpitas”** shall mean the City of Milpitas, its officers, board members, employees, and agents.
- (c) **“County”** shall mean the County of Santa Clara, its officers, board members, employees, and agents.

- (d) **“SHSGP funds” or “SHSGP funding”** shall mean the funding Milpitas receives under this Agreement.
- (e) **“Federal Program Guidance”** shall mean guidance documents issued by the Federal Emergency Management Agency, including the SHSGP Program Funding Opportunity Announcement, for Fiscal Year 2019.
- (f) **“Grant Certifications and Assurances”** shall mean the FY19 SHSGP Agreement Articles, Assurances, Certifications, Terms, and Conditions
- (g) **“Highly Compensated Individual”** shall mean an individual whose income is \$300,000 or more per year.
- (h) **“Prime Recipient”** shall refer to County.
- (i) **“State Guidance”** shall mean the California Supplement to the Federal Program Funding Opportunity Announcement, issued by Cal OES for Fiscal Year 2019.
- (j) **“Sub-Recipient”** shall refer to Milpitas.

## **2. References to This Agreement**

Any reference to this Agreement shall include: (a) the Agreement; (b) all exhibits, appendices, schedules, and attachments to this Agreement; (c) all statutes, ordinances, regulations, rules, or other documents incorporated by reference into this Agreement; (d) all amendments, modifications, or supplements to this Agreement.

## **Article II. Payment**

### **1. Payment Eligibility**

Unless otherwise approved in advance by the County Office of Emergency Management (OEM) Grants Administrator (hereinafter “grants administrator”), only an actual cash disbursement by Milpitas for a claimed expense shall be eligible for reimbursement by the County as approved and specified in Exhibit A, SHSGP Project Funding, which is attached and hereby incorporated into this Agreement.

### **2. Amount of Payment**

The County will provide Milpitas, unless otherwise specified, with the equipment, supplies, and/or other resources as set forth in Exhibit A, SHSGP Project Funding. Specifications for such equipment shall be provided by Milpitas’s requesting agency to the County for the appropriate procurement process. Milpitas’s requesting agency will be notified when the procurement process is complete for final approval of equipment prior to the order being placed. If, through previous agreement with the County, Milpitas is to procure its own equipment, performance milestone dates will apply (refer to Article IV, Section 3(b)).

The County may reallocate SHSGP funds as specified in Article II, section 4 of this Agreement. County

does not guarantee a minimum payment to Milpitas.

Funds in the amount of \$228,244 have been set aside for the training and exercise programs from the SHSGP grant to be allocated during the term of this Agreement. OEM will allocate training and exercise funds to agencies as determined by the Training/Exercise Advisory Group.

Authorized personnel budgets are allowable within the County OEM, Central Fire, and County Emergency Medical Services. The personnel budget for these departments will reflect the expenditure authority. Reimbursement for actual cash disbursements will be requested through the County OEM. Based on the preference of the Department/Agency, reimbursement requests may be requested on a monthly or quarterly basis. For County Departments, reimbursements will be made via inter-county transfer. For all others, a County warrant will be issued.

### **3. Maximum Amount Payable**

Subject to the availability of funds and the priorities established by the County Approval Authority, the maximum amount of SHSGP funds payable by the County to Milpitas under this Agreement must not exceed \$102,000, as allocated by the County Approval Authority.

### **4. Reallocation of SHSGP Grant Funds**

For the purpose of maximizing the resources available for preparedness for acts of terrorism and other catastrophic events within the Operational Area, Milpitas agrees that the County Approval Authority may reallocate funds under this Agreement to Milpitas or to another applicant if the County determines that Milpitas is unable to utilize the amount allocated under this Agreement. The County may base its determination on factors that include but are not limited to the following: delivery timelines, fund expenditure capabilities, and timeliness of expenditure. The County will notify Milpitas in writing of any determination to reallocate funds, by issuing a "Notice of Reallocation." SHSGP funds will be put forth to the County Approval Authority for reallocation. Milpitas agrees that the County has the authority to increase or decrease the maximum amount payable under this Agreement as specified in the Notice of Reallocation document without liability and the County has the authority to amend Exhibit A, "SHSGP Project Funding," accordingly. Upon issuance, the Notice of Reallocation will automatically become part of this Agreement.

## **Article III. Requests for Reimbursement and Reimbursements**

### **1. Required Documentation for Reimbursement**

The SHSGP is a reimbursement grant under which Cal OES disburses reimbursement funds to County, and County disburses reimbursement funds to Milpitas. No cash advances are permitted under the SHSGP program.

#### **(a) Requests for Equipment**

The following documentation is required for all reimbursement requests for equipment:

- Quote or solicitation documents

- Summary of pricing and chosen vendor
- Documentation that vendor is not on the excluded parties list (<https://www.epls.gov/>) (a print-out of the search result page will suffice)
- Purchase order and/or contract
- Receiving documentation/packing slip
- Invoice
- Proof of payment

All equipment must be approved by the County Approval Authority and must be authorized per the web-based Authorized Equipment List on the Responder Knowledge Base, which is sponsored by Grants & Training and the National Memorial Institute for the Prevention of Terrorism at <https://www.rkb.us/>. (Contact the Grant Manager for a current Authorized Equipment List.)

#### (b) Subcontracts

If Milpitas awards subcontracts totaling \$25,000 or more, it must report on any such subcontracts and on Highly Compensated Individuals on the Financial Disclosure Form, Exhibit D, within 30 days of the award. The following information must be included in Milpitas's report on any sub-award exceeding \$25,000:

- Name of entity receiving award;
- Amount of award;
- Funding agency;
- Catalog of Federal Domestic Assistance program number;
- Award title (descriptive of the purpose of the funding action);
- Location of the receiving entity and primary location of performance including city, state, and federal Congressional district;
- Dun & Bradstreet (D&B) DUNS Number of the receiving entity, and of its parent if applicable; and
- Total compensation and names of receiving entity's five most highly compensated executives if:
  - In the preceding fiscal year, the subcontractor received 80 percent or more, and \$25,000,000 or more, of its gross annual revenue from federal procurement contracts or subcontracts or from federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.230; and
  - The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m(a), 78o(d), or under section 6104 of the Internal Revenue Code of 1986.
  - Milpitas must report subcontractor executive compensation by the end of the month following the month in which it makes the sub-award. For example, if the sub-award is obligated in any date in April 2020, Milpitas must report any required compensation information by May 31, 2020.

Classified information that, in the interest of national security, requires protection against

unauthorized disclosure (i.e., information deemed Top Secret, Secret, or Confidential under Executive Order 12958) is exempt from the Prime and Sub-Recipient reporting requirements, as are contracts with individuals.

(c) Sole Source Contracts

Sole source contracts of \$250,000 or more are not allowable under the SHSGP program unless first approved by Cal OES. Milpitas must obtain sole source request documentation and submit it to the Grants Manager of County's OEM. Upon Milpitas's completion and submission of the required sole source documentation, County's Grants Manager shall forward all sole source documents to the appropriate Cal OES contact for review and approval. Only after Cal OES approval is given can a sole source procurement be completed and expenditures reimbursed using SHSGP allocated funds. Sole source requests below the \$250,000 threshold must follow Milpitas's own procurement policies.

(d) Other Requests

The following documentation is required for all reimbursement requests for contractors:

- Quote or solicitation documents
- Executive summary of how contractor was chosen
- Documentation that vendor is not on the excluded parties list (<https://www.sam.gov/>) (a print-out of the search result page will suffice)
- Purchase order and/or contract
- Invoice showing deliverables and milestones completed
- Proof of payment
- Financial Disclosure Form (Exhibit D) if awarded contract exceeds \$25,000

The following documentation is required for reimbursement of Salaries:

- Functional timesheet
- Description of scope of job which includes Homeland Security-related functions
- Burdened Labor Rate
- Payroll reports showing amount paid for each pay period being claimed

The following documentation is required for reimbursement for Training activities:

- Class syllabus
- Class sign-in sheet
- Instructor/consultant contract documents
- Instructor's invoice
- Proof of payment

## **2. Submission of Requests for Reimbursement**

(a) Milpitas shall submit reimbursement requests to County's OEM on a quarterly basis. Unless pre-approved by County's OEM Director or designee, all reimbursement requests shall be

due fifteen calendar days after the end of the quarter, with the exception of the final expenditure and/or invoice, as indicated below. Any expenditure during the final period identified in the chart below shall be made by April 15, 2022, and any related invoice shall be submitted by April 30, 2022, unless otherwise pre-approved by County's OEM Director or designee, in order to meet 2019 SHSGP deadlines.

- (b) During the term of this Agreement, County is not obligated to honor any request for reimbursement that is submitted after April 30, 2022.

#### **Article IV. Use of Funds**

##### **1. Master Grant Obligations**

- (a) Milpitas shall comply with the SHSGP Federal Program Guidance, the State Guidance, and the Grant Certifications and Assurances, attached as Exhibit B. Milpitas shall require any sub-grantee, contractor, or other entity receiving SHSGP funds through or from Milpitas to execute a copy of the Grant Certifications and Assurances, and shall be responsible for ensuring that sub-grantee, contractor, or other entity complies with the Grant Certifications and Assurances.
- (b) Milpitas shall comply with all other applicable statutes, regulations, executive orders, requirements, policies, guides, guidelines, information bulletins, Cal OES grant management memos, and instructions; the terms and conditions of the grant award; and any other conditions imposed by Cal OES or by this Agreement, provided that if any provisions of this Agreement conflict with any State requirements, the State requirements will control. Milpitas shall ensure that any sub-grantee, contractor, or other entity receiving SHSGP funds through or from Milpitas complies with all applicable statutes, regulations, executive orders, requirements, policies, guides, guidelines, information bulletins, Cal OES grant management memos, and instructions; the terms and conditions of the grant award; and any other conditions imposed by Cal OES or by this Agreement.
- (c) Milpitas shall establish and maintain administrative, programmatic and fiscal management records in accordance with federal and state requirements, and:
  - i. Maintain financial management systems that support grant activities in accordance with federal and state requirements, including but not limited to requirements in 44 Code of Federal Regulations ("C.F.R.") Part 13.20, and the Office of Justice Programs Financial and Administrative Guide for Grants, Part II, Chapter 3.
  - ii. The County shall provide and affix equipment tracking numbers for all equipment purchased through its procurement process. Using the County-issued tracking number, Milpitas shall maintain an equipment tracking ledger that tracks the equipment within Milpitas and complies with federal and state requirements, including but not limited to requirements in 44 C.F.R., Parts 13.32 and 13.33, and the Office of Justice Programs Financial and Administrative Guide for Grants, Part III, Chapter 6.
- (d) By executing this Agreement, Milpitas certifies that it is not debarred, suspended, or

otherwise ineligible to receive SHSGP funds. In addition, Milpitas shall ensure and independently verify that any sub-grantee, contractor, or other entity receiving SHSGP funds through or from Milpitas complies with federal and state requirements, including but not limited to requirements in 44 C.F.R., Parts 13.32 and 13.33, and the Office of Justice Programs Financial and Administrative Guide for Grants, Part III, Chapter 6, and is not debarred, suspended, or otherwise excluded from participation in the SHSGP program. Milpitas shall maintain documentary proof of this verification in its files.

## **2. Scope of Services**

- (a) If Milpitas has been allocated funding for a project, Exhibit A, “SHSGP Project Funding,” will serve as the basis for the project. A further detailed description may be necessary and will be requested by the County if needed to be incorporated by reference herein. If future funding is allocated, Milpitas shall provide a detailed description of the approved project to be attached hereto and incorporated by reference herein.
- (b) Milpitas shall use the funds granted under this Agreement in a manner consistent with:
  - i. The applications submitted by the County to the State for the grant under this Agreement;
  - ii. The grant guidelines issued by the State for the grant under this Agreement; and
  - iii. The notifications issued by the State of the approval of the grant under this Agreement
- (c) The documents described in Exhibit B of this Agreement (collectively the “State Grant Requirements”) are on file with the County and the granting agencies of the State, and are hereby incorporated into this Agreement. Milpitas hereby acknowledges that it has received a copy of the State Grant Requirements.
- (d) Milpitas shall use the funds granted under this Agreement only for the purpose of implementing applicable initiatives under the 2019 SHSGP program, as indicated in Exhibit A, “SHSGP Project Funding”. Milpitas shall not use the funds granted under this Agreement for any other purpose. Incumbents filling positions funded by the 2019 SHSGP program shall work at a location inside of the Santa Clara County Operational Area, and the work of grant-funded personnel must be solely focused on threats to the Santa Clara County Operational Area. County will not disburse funds to or otherwise pay Milpitas for services that do not address a terrorism nexus, or for materials, equipment, or supplies provided by Milpitas that are beyond the scope of the services, materials, equipment, or supplies agreed upon in this Agreement or a lawfully executed written amendment.

## **3. Performance and Reporting Requirements**

- (a) Performance reports indicating the status of outstanding projects are due to the County Grants Administrator on a quarterly basis as follows:
- (b) The following dates represent the Grant Performance Period for the SHSGP program:

- Performance Period 1 (September 1, 2019 – December 31, 2019) – due by January 15, 2020
  - Performance Period 2 (January 1, 2020 – March 31, 2020) – due by April 15, 2020
  - Performance Period 3 (April 1, 2020 – June 30, 2020) – due by July 15, 2020
  - Performance Period 4 (July 1, 2020 – September 30, 2020) – due by October 15, 2020
  - Performance Period 5 (October 1, 2020 – December 31, 2020) – due by January 15, 2021
  - Performance Period 6 (January 1, 2021 – March 31, 2021) – due by April 15, 2021
  - Performance Period 7 (April 1, 2021 – June 30, 2021) – due by July 15, 2021
  - Performance Period 8 (July 1, 2021 – September 30, 2021) – due by October 15, 2021
  - Performance Period 9 (October 1, 2021 – December 31, 2021) – due by January 15, 2022
  - Performance Period 10 (January 1, 2022 – March 31, 2022) – due by April 30, 2022
- (c) The County will provide Milpitas with a report template (Exhibit C, “Performance Report”), and Milpitas will utilize the template to complete the performance submittal to the County.
- (d) Payments made by the County to Milpitas are conditioned upon the timely receipt of applicable, accurate and complete reports, including supporting document, to be submitted by Milpitas.
- (e) Milpitas will notify the County representative identified in Article VII, Section I, within 15 days, when Milpitas has completed all performance obligations for these grants.
- (f) Milpitas will provide single audit reports to the County by July 31<sup>st</sup> of each fiscal year.

## **Article V. Term and Termination**

### **1. Term of Agreement**

This Agreement is effective from September 1, 2019 through May 31, 2022.

### **2. Availability of Funds**

- (a) The parties acknowledge and agree that this Agreement is dependent upon the availability of county, regional, State and/or federal funding.
- (b) Budgetary Contingency: This Agreement is contingent upon the appropriation of sufficient funding by County for the products and services covered by this Agreement. If funding is reduced or eliminated by County for the products or services covered by this Agreement, County has the option to either terminate this Agreement with no liability occurring to County or to offer an amendment to this Agreement indicating the reduced amount.

- (c) The obligations of County to make payments in accordance with the provisions of this Agreement may be delayed, reduced or terminated as a result of any delay, reduction, or change in allocation or allotment in funding to County from federal, State or other regional funding sources.

#### **4. Termination**

- (a) Termination for Convenience. County shall have the option, in its sole discretion, to terminate this Agreement at any time without cause upon written notice to Milpitas. The written notice shall specify the date on which termination shall become effective, which shall be no less than seven (7) days from the date of the notice.
- (b) Termination for Cause. Either party may terminate this Agreement for cause upon written notice to the other party. The written notice shall specify the date on which termination shall become effective, which shall be no less than thirty (30) days from the date of the notice. Termination for cause includes, but is not limited to, a material breach of this Agreement, a violation of any applicable laws, or failure to comply with applicable SHSGP guidelines.
- (c) Opportunity to Cure. In the event of termination for material breach of this Agreement, the non-breaching party shall give written notice of the breach to the breaching party, specifying the breach/cause. The breaching party shall not be deemed in default and the non-breaching party shall not institute proceedings or exercise any remedies against the breaching party unless the breach has not been cured, corrected or remedied within thirty (30) days after the breaching party's receipt of the notice of breach, or within such longer period as may be reasonably required to cure, correct or remedy the breach, provided the breaching party has commenced its cure, correction or remedy within the thirty (30) day period and diligently and continuously pursues that cure, correction or remedy.
- (d) If this Agreement is terminated, Milpitas shall return SHSGP funding in accordance with SHSGP program guidelines.

#### **Article VI. Indemnification and Liabilities**

##### **1. Indemnification by Milpitas**

In lieu of and notwithstanding the pro rata risk allocation that might otherwise be imposed between the parties under Government Code section 895.6, County and Milpitas agree instead that under Government Code section 895.4, Milpitas shall fully indemnify and hold County, its officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of Milpitas, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to Milpitas under this Agreement. This indemnity shall include, without limitation, reasonable attorneys' fees, consultants and experts and related costs, and County's cost of investigating any claim.

## **2. Duty to Defend**

Milpitas acknowledges and agrees that its obligation to defend County under Article VI: (a) is an immediate obligation, independent of its other obligations under this Agreement; and (b) applies to any claim, expense, cost, damage, or liability falling within the scope of Article VI, regardless of whether the allegations made in connection with that claim, expense, cost, damage, or liability may be groundless, false, or fraudulent. County shall provide Milpitas with prompt notice of any claim, expense, cost, damage, or liability under Article VI and Milpitas shall have the right to defend, settle, or compromise that claim, expense, cost, damage, or liability, provided, however, that County shall have the right to retain its own counsel at Milpitas's expense if representation of County by counsel retained by Milpitas would result in a conflict of interest, and that Milpitas shall obtain County's prior written consent to settle or compromise if Milpitas contends that County shares in any liability. County's failure to notify Milpitas promptly of any claim, expense, cost, damage, or liability shall not relieve Milpitas of liability to County under Article VI unless that failure materially impairs Milpitas's ability to defend against the claim, expense, cost, damage, or liability.

## **3. Limitation on Liability**

County, its officers, board members, employees, and agents shall not be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of Milpitas, its officers, board members, employees, or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to Milpitas under this Agreement.

County's obligations under this Agreement shall be limited to the aggregate amount of SHSGP funds actually disbursed. Notwithstanding any other provision in this Agreement or any other document or communication between County and Milpitas relating to this Agreement, in no event shall County be liable for any damages arising out of or in connection with this Agreement, the SHSGP funds, Milpitas's Spend Plan, or any activities performed in connection with this Agreement.

## **Article VII. Miscellaneous**

### **1. Notice**

All notices required by this Agreement shall be deemed given when provided in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such other address as the party may designate in writing:

To Milpitas:

John Torrez, Police Captain  
Milpitas Police Department  
1275 North Milpitas Boulevard  
Milpitas, CA 95035

To County:

Michelle Sandoval  
Grant and Administrative Services Manager  
County of Santa Clara Office of Emergency Management  
55 W. Younger Ave., Suite 450  
San Jose, CA 95110

**2. Compliance with all Laws, Including Nondiscrimination, Equal Opportunity, and Wage Theft Prevention**

- (a) Compliance with All Laws. Milpitas shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, “Laws”), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.
- (b) Compliance with Non-Discrimination and Equal Opportunity Laws: Milpitas shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County’s policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, Milpitas shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall Milpitas discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.
- (c) Compliance with Wage and Hour Laws: Milpitas shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.
- (d) Definitions: For purposes of this Subsection (h), the following definitions shall apply. A “Final Judgment” shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual’s sex, gender, gender identity, gender expression, sexual orientation,

race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the Milpitas's Office of Equality Assurance.

- (e) **Prior Judgments, Decisions or Orders against Contractor:** By signing this Agreement, Milpitas affirms that it has disclosed any final judgments that (A) were issued in the five years prior to executing this Agreement by a court, an investigatory government agency, arbiter, or arbitration panel and (B) found that Milpitas violated an applicable wage and hour law or pay equity law. Milpitas further affirms that it has satisfied and complied with – or has reached Agreement with the County regarding the manner in which it will satisfy – any such final judgments.
- (f) **Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract:** If at any time during the term of this Agreement, Milpitas receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then Milpitas shall promptly satisfy and comply with any such Final Judgment. Milpitas shall inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. Milpitas shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.
- (g) **Access to Records Concerning Compliance with Pay Equity Laws:** In addition to and notwithstanding any other provision of this Agreement concerning access to Milpitas's records, Milpitas shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County's request, Milpitas shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records that are related to the purpose of this Section, except where prohibited by federal or state laws, regulations or rules. County's access to such records and facilities shall be permitted at any time during Milpitas's normal business hours upon no less than 10 business days' advance notice.
- (h) **Pay Equity Notification:** Milpitas shall (1) at least once in the first year of this Agreement and annually thereafter, provide each of its employees working in California and each person applying to Milpitas for a job in California (collectively, "Employees and Job Applicants") with an electronic or paper copy of all applicable pay equity Laws or (2) throughout the term of this Agreement, continuously post an electronic copy of all applicable pay equity Laws in conspicuous places accessible to all of Milpitas's Employees and Job Applicants.
- (i) **Material Breach:** Failure to comply with any part of this Section shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any

or all remedies available under this Agreement and at law. County may, among other things, take any or all of the following actions:

1. Suspend or terminate any or all parts of this Agreement.
2. Withhold payment to Milpitas until full satisfaction of a Final Judgment concerning violation of an applicable wage and hour Law or pay equity Law.
3. Offer Milpitas an opportunity to cure the breach.

- (j) Subcontractors: Milpitas shall impose all of the requirements set forth in this Section on any subcontractors permitted to perform work under this Agreement. This includes ensuring that any subcontractor receiving a Final Judgment for violation of an applicable Law promptly satisfies and complies with such Final Judgment.

### **3. County No-Smoking Policy**

Milpitas and its employees, agents and subcontractors shall comply with County's No Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where County is the sole occupant, and (3) in all County vehicles.

### **4. Food and Beverage Standards**

Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by Milpitas with County funds for County-sponsored meetings or events.

If food is to be provided, healthier food options shall be offered. "Healthier food options" include (1) fruits, vegetables, whole grains, and low-fat and low-calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans-fat per serving. Whenever possible, Milpitas shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high-calorie desserts; (3) attempt to accommodate special dietary and cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and Milpitas should consider providing a vegan option. If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans-fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving.

If beverages are to be provided, beverages that meet the County's nutritional criteria are: (1) water with no caloric sweeteners; (2) unsweetened coffee or tea, for which sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored nonfat or 1% low-fat dairy milk; (4) plant-derived milk (e.g., soy milk, rice milk, and almond milk) with no more than 130 calories per 8-ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8-ounce serving. Sugar-sweetened beverages shall not be provided.

## **5. Governing Law**

This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California.

## **6. Assignment**

The parties may not assign this Agreement or the rights and obligations hereunder without the specific written consent of the other.

## **7. Entire Agreement**

This document represents the entire Agreement between the parties with respect to the subject matter hereof. All prior negotiations and written and/or oral agreements between the parties with respect to the subject matter of this Agreement are merged into this Agreement.

## **8. Amendments**

This Agreement may only be amended by an instrument signed by the parties.

## **9. Counterparts; Contract Execution**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed Agreement, or an electronically signed Agreement, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the County.

## **10. Severability**

If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same shall either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

## **11. Waiver**

No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing, and shall apply to the specific instance expressly stated.

## **12. Conflict of Interest**

In accepting this Agreement, Milpitas covenants that is presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of services under this Agreement. Milpitas is responsible for assuring compliance of its subcontractors, if any, with the requirements of this provision.

### 13. Certified Resolution of Signature Authority

Upon request of County, Milpitas shall deliver to County a copy of the resolution(s) authorizing execution, delivery and performance of this Agreement, certified as true, accurate and complete by the appropriate authorized representative of Milpitas.

#### Signed:

COUNTY OF SANTA CLARA

CITY OF MILPITAS

By \_\_\_\_\_  
Garry Herceg  
Deputy County Executive

\_\_\_\_\_  
Date

By \_\_\_\_\_  
Steven McHarris  
City Manager

\_\_\_\_\_  
Date

By \_\_\_\_\_  
Armando Corpuz  
Chief of Police

\_\_\_\_\_  
Date

Approved as to Form and Legality:

Approved as to Form and Legality:

\_\_\_\_\_  
Kavita Narayan  
Lead Deputy County Counsel

\_\_\_\_\_  
Date

\_\_\_\_\_  
Christopher Diaz  
City Attorney

\_\_\_\_\_  
Date

#### Enclosures

- |           |  |
|-----------|--|
| Exhibit A | 2019 SHSGP Project Funding                           |
| Exhibit B | Grant Assurances                                     |
| Exhibit C | Quarterly Reporting Requirements and Report Template |
| Exhibit D | Financial Disclosure Form                            |