

**SILICON VALLEY CLEAN ENERGY**  
**COMMUNITY RESILIENCE PROGRAM – CAPITAL**  
**PROJECTS GRANT AGREEMENT BETWEEN**  
**THE CITY OF MILPITAS**  
**AND**  
**SILICON VALLEY CLEAN ENERGY**

**THIS AGREEMENT** is made and effective as of \_\_\_\_\_, 2021 (“Effective Date”), by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY (“SVCE”), an independent public agency, and CITY OF MILPITAS, a municipal corporation (“Recipient”). In consideration of the covenants, conditions and undertakings set forth herein, the parties agree as follows:

**1. RECITALS.** This Agreement is made with respect to the following facts and purposes which each of the parties acknowledge and agree are true and correct:

A. SVCE’s community resilience program (“Program”) will provide \$5M in grants to member jurisdictions to plan and develop resilience projects. The grant maximum for each jurisdiction is based on proportion of load as determined by SVCE.

B. As a condition of eligibility to receive funding under the Program, projects must: (1) support a critical facility and/or provide community services during a power outage; (2) enable self-sufficient access to power during an outage, or decrease the risk of power outages; and (3) be zero carbon.

C. Recipient submitted an application for Program funding, attached hereto and incorporated herein as Exhibit A, for installation of energy resilience infrastructure (“Project”). The scope and estimated budget for the Project are attached hereto and incorporated herein as Exhibit B.

D. SVCE finds that the use of Grant Funds described herein furthers a public purpose and meets the goals and objectives established for the Program, and desires to award Recipient a one-time grant pursuant to the terms of this Agreement.

**2. GRANT.** SVCE hereby agrees to provide funding to Recipient in an amount not to exceed \$ 700,702.00, subject to the provisions of this Agreement (“Grant Funds”). Such Grant Funds shall be disbursed to Recipient on a reimbursement basis. It is agreed and understood that the Grant Amount is a ceiling and that SVCE will only reimburse the allowable cost of services actually rendered as authorized by SVCE at or below the Grant Amount established herein.

**3. REIMBURSEMENT OF GRANT FUNDS.** Grant Funds shall be reimbursed pursuant to the following process:

A. SVCE shall reimburse Recipient for its actual and reasonable costs of constructing the Project up to the agreed upon Grant Funds.

B. Requests for payment submitted to SVCE shall include: 1) an itemized list of all expenditures; 2) supporting documentation that clearly identifies the expenditure(s) in relation to the scope of the Project set forth in Exhibit B of this Agreement; and 3) the Job Impacts Data Collection Worksheet, attached hereto as Exhibit C. Payment requests should be aggregated and submitted no more often than once per month.

C. SVCE shall process requests for payment and remit payment within 30 days.

D. If, in SVCE's sole discretion, the request for payment is incomplete, inadequate, or inaccurate, SVCE may dispute the invoice for reasonable cause and hold all or a portion of the payment request until all required information is received or corrected. Any penalties imposed on the Recipient by a contractor, or other consequence, because of delays in payment or other breach of the agreement between the Recipient and the contractor are the responsibility of the Recipient and are not reimbursable under this Agreement.

E. Unless otherwise authorized by SVCE in writing, Recipient shall submit all documentation of Project completion, including a final request for payment, within sixty (60) days of Project completion.

F. Final payment of remaining Grant Funds, including any amounts withheld from previous payments, shall be paid up to the total amount of the actual Project cost, not to exceed the Grant Funds amount set forth in this Agreement, upon completion of the Project, receipt of the final report and final request for payment from the Recipient in a form and content satisfactory to SVCE.

**4. USE OF GRANT FUNDS.** Recipient shall use the Grant Funds to support the Program as set forth in Exhibits A and B. Any use(s) of Grant Funds not contemplated in this Agreement must be approved in writing by SVCE. This Agreement was awarded to Recipient based on the application submitted by Recipient with the intention that the awarded funds would be used to implement the Project as described in Exhibit A and Exhibit B. Any substantive deviation during Project implementation may require reevaluation or result in loss of funding. In no event shall Recipient's Grant Funds or scope of work be increased. If Recipient knows or should have known that substantive changes to the Project will occur or have occurred, Recipient will immediately notify SVCE in writing. SVCE will then determine whether the Project is still consistent with the overall objectives of the Program and whether the changes would have negatively affected the Project ranking during the Grant evaluation process. SVCE reserves the right to have Grant Funds withheld from Recipient, or refunded to SVCE, due to Recipient's failure to satisfactorily complete the Project or due to substantive changes to the Project.

**5. TERM.** This Agreement shall commence on the Effective Date, and shall remain and continue in effect until the final Grant Funds are paid to Recipient, unless sooner terminated pursuant to the provisions of this Agreement. Projects must be complete no later than December 31, 2022.

**6. REPORTING AND RECORDS.** Recipient agrees to cooperate with SVCE and provide requested information, if any, related to the use of Grant Funds and the Project, including for the purposes of SVCE's evaluation, measurement, and verification activities for the Program.

Recipient will cooperate in good faith with SVCE or its authorized representative in performing evaluation, measurement and verification (EM&V) of the Program. Information accessed for EM&V may include, but is not limited to, onsite verification of Project operation, Program compliance, and Project records, analysis of facility billing metered data, analysis of data collected from facility-owned submetering, and collection of supplementary metered data on-site. All information collected will be held confidentially and will be used by SVCE or its authorized representative for Program analysis purposes only. Recipient is responsible for ensuring, through a separate agreement between Recipient and property owner, that property owner shall cooperate with SVCE to provide any documentation and assist in analysis and provide access to the Project site at reasonable times, during the construction of the Project and for a period of up to two (2) years from the completion of the Project. During the course of the Project and for three (3) years thereafter from the receipt of the final Grant Funds, the Recipient agrees to maintain, intact and readily accessible, all communications, data, documents, reports, records, contracts, and supporting materials relating to the Project, as SVCE may require. The Recipient agrees to have financial and compliance audits performed as SVCE may require.

**7. LEGAL RESPONSIBILITIES.** Recipient shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance under this Agreement. Recipient shall at all times observe and comply with all such ordinances, laws and regulations. SVCE, and its officers and employees, shall not be liable at law or in equity occasioned by failure of Recipient to comply with this Section.

**8. PREVAILING WAGES.** By accepting the Grant Funds, Recipient as a material term of this Agreement shall be fully responsible for complying with all California public works requirements including but not limited to payment of prevailing wage. Therefore, as a material term of this Agreement, to the extent required by California law, Recipient shall ensure that prevailing wages are paid, that the project budget for labor reflects these prevailing wage requirements, and that the project complies with all other requirements of prevailing wage law, including that Recipient's subcontractors also comply with all applicable public works/prevaling wage requirements.

**9. PROCUREMENT.** At minimum, Recipient shall solicit at least three bids and select the lowest bidder when procuring goods or services, where the costs are eligible for reimbursement under this Agreement. In the event the Recipient is required by statute or policy to solicit additional bids or follow a more stringent solicitation process, Recipient shall follow such process.

**10. CALIFORNIA PUBLIC RECORDS ACT.** Parties acknowledge that Parties are subject to the California Public Records Act (Gov. Code § 6250 *et seq.*). Parties acknowledge that other Party may submit information to each other that are considered to be confidential, proprietary, or trade secret information. Only such information clearly designated in writing as "confidential" shall be deemed "Confidential Information." Upon request or demand of any third person or entity ("Requestor") for the production, inspection, and/or copying of Confidential Information, Parties shall notify the other Party that such request has been made. Receiving Party shall be solely responsible for taking whatever legal steps are necessary to protect Confidential Information and to prevent its release to the Requestor. Without limiting Parties' right to disclose

Confidential Information as may be required by law, if other Party takes no such action after receiving the foregoing notice from served Party, served Party shall be permitted to release information it deems subject to disclosure.

**11. NOTICES.** Any notices provided under this Agreement must be in writing and may be given either by mail or e-mail to the following addresses:

**SVCE:** Silicon Valley Clean Energy Authority  
333 W. El Camino Real #290  
Sunnyvale, CA 94087  
Attention: \_\_\_\_\_

**RECIPIENT:** City of Milpitas, Public Works Department  
1265 N. Milpitas Blvd.  
Milpitas, CA 95035  
Attention: Elaine Marshall, Deputy Public Works Director

**12. INDEPENDENT CONTRACTOR.**

A. Recipient shall at all times remain as to the SVCE a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Recipient shall at all times be under Recipient's exclusive direction and control. Neither SVCE nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Recipient or any of Recipient's officers, employees, or agents except as set forth in this Agreement. Recipient shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the SVCE. Recipient shall not incur or have the power to incur any debt, obligation or liability whatever against SVCE, or bind SVCE in any manner.

B. No employee benefits shall be available to Recipient in connection with the performance of this Agreement. Except for the fees paid to Recipient as provided in the Agreement, SVCE shall not pay salaries, wages, or other compensation to Recipient for performing services hereunder for SVCE. SVCE shall not be liable for compensation or indemnification to Recipient for injury or sickness arising out of performing services hereunder.

**13. INDEMNIFICATION.** Recipient shall indemnify, protect, defend and hold harmless SVCE, its elected officials, officers, employees, volunteers, and representatives from any and all suits, claims, demands, losses, defense costs or expenses, actions, liability or damages of whatsoever kind and nature which SVCE, its officers, agents and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Recipient's acts or omissions arising out of or in any way related to the performance or non-performance of this Agreement.

#### **14. INSURANCE.**

A. On or before the commencement of the term of this Agreement, Recipient shall furnish SVCE with certificates showing the type, amount, class of operations covered, effective dates, and dates of expiration of insurance coverage in compliance with the requirements in this Section. Recipient shall maintain such coverage in full force at all times for the duration of this Agreement, at its sole cost and expense. Nothing herein shall be construed as a limitation on Recipient indemnification obligations under this Agreement.

B. Recipient shall maintain the following minimum insurance coverages:

- 1) Workers' compensation, as required by the State of California;
- 2) Commercial general liability coverage with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage. ISO occurrence Form CG 0001 or equivalent is required;
- 3) Comprehensive automotive liability coverage with minimum limits of \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.

C. Such coverages shall be issued by an insurer(s) licensed to conduct business in the State of California, with a minimum A.M. Best's Insurance Rating of A:VII unless otherwise approved in writing as satisfactory to SVCE.

D. The insurance limits required by SVCE are not represented as being sufficient to protect Consultant. Recipient is advised to confer with its insurance broker to determine adequate coverage for Recipient.

**15. DEFAULT AND TERMINATION.** Should an Event of Default occur, SVCE shall provide a notice of default to Recipient and shall give Recipient at least fifteen (15) calendar days from the date the notice is sent to cure the Event of Default. If Recipient fails to cure the Event of Default within the time prescribed, SVCE may, at SVCE's sole discretion, withhold Grant Funds not yet disbursed hereunder, require the return or repayment of Grant Funds already disbursed, and/or terminate this Agreement by written notice which shall be effective upon receipt by Recipient. "Event of Default" shall mean the occurrence of any one or more of the following events by Recipient: (a) any false statement, representation, or warranty contained in this Agreement, the Application, or any other document submitted to SVCE; (b) failure to comply with applicable laws; (c) a failure to maintain in effect any policy of insurance required under this Agreement; or (d) a material breach of this Agreement.

**16. NON-APPROPRIATION.** Recipient acknowledges that SVCE is a public agency. In the event that sufficient funds for the performance of this Agreement are not appropriated by the SVCE Board of Directors in any fiscal year covered by this Agreement, this Agreement may be terminated by SVCE, without penalty, by giving notice to Recipient of such facts and of SVCE's intention to terminate.

- 17. NON-WAIVER.** Failure to exercise any right the SVCE may have or be entitled to, in the event of default hereunder, shall not constitute a waiver of such right or any other right in the event of a subsequent default.
- 18. AMENDMENT OF AGREEMENT.** No modification, rescission, waiver, release or amendment of any provision of this Agreement shall be made except by a written agreement executed by the Recipient and the SVCE.
- 19. ASSIGNMENT PROHIBITED.** In no event shall the Recipient assign or transfer any portion of this Agreement.
- 20. GOVERNING LAW.** This Agreement shall be governed by the laws of the State of California. Any legal action brought under this Agreement must be instituted in the Superior Court of the County of Santa Clara, State of California.
- 21. NO THIRD-PARTY BENEFIT.** The provisions of this Agreement are for the sole benefit of the parties hereto and confer no rights, benefits, or claims upon any person or entity not a party hereto.
- 22. SEVERABILITY.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.
- 23. RECIPIENT'S AUTHORITY.** Recipient represents and warrants that (a) it has the power and authority to enter into this Agreement and to perform its obligations hereunder; (b) the person who executes this Agreement on its behalf has the necessary authority to bind Recipient; and (c) neither the execution and delivery of this Agreement nor the performance of its obligations hereunder will constitute a violation of, a default under, or conflict with any term of any governance documents or other agreements to which it is bound.
- 24. COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument. Faxed and PDF counterpart signatures are sufficient to make this Agreement effective.
- 25. ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be executed the day and year first above written.

**SILICON VALLEY CLEAN ENERGY AUTHORITY**

\_\_\_\_\_  
APPROVED AS TO FORM:

\_\_\_\_\_  
Greg Stepanicich, General Counsel

**City of Milpitas**

By: \_\_\_\_\_

Name: Steve McHarris

Title: City Manager

By: \_\_\_\_\_

Name:

Title:

*[\*Note: Signatures of two corporate officers are required for corporations – First signature must be one of the following: 1) the chairman of the board; 2) the president; or 3) any vice president. The second corporate signature must be one of the following: 1) the secretary; 2) any assistant secretary; 3) the chief financial officer; or 4) any assistant treasurer. Signature of City Manager is required for cities.]*

**EXHIBIT A**

[attach Application]

SAMPLE



## EXHIBIT B

### Scope of Work

The table below lists the locations for the solar photovoltaic (PV) installations and the structure types:

Site	Type	Minimum Ground Clearance Height	Approximate Size (kW-DC)
Community Center	Canopy	13'6"	81.0
Senior Center	Canopy and Roof Mount	13'6"	137.7

Scope of work will include:

1. Prepare and submit design drawings to the City of Milpitas Building Permit Department for approval. This includes evaluation of the existing roof structure for structural capacity.
2. Provide geotechnical evaluations necessary for design requirements.
3. Provide utility interconnection drawings and application management services.
4. Provide and coordinate installation of the NGOM and NEM metering.
5. Procure materials and equipment necessary for construction.
6. Provide project management and construction management necessary for a full and complete installation.
7. Provide labor and supervision for the installation of photovoltaic modules and supporting structures, electrical distribution and control systems.
8. Provide and install PV modules and necessary mounting hardware for each system.
9. Provide and install inverters and necessary electrical equipment and conduits to connect to the electrical switchgear or meter. Electrical shutdowns are anticipated at each site.
10. Provide and install solar canopy structures. The canopy structure design will include a canopy structure that has a 7-degree tilt and is 13'6" feet clear of grade level on the low side and a pier depth of eight feet deep and assumes no de-watering, benching, shoring, or casing. Canopies will be provided with decorative fascia and decorative radiused HSS tube steel gussets, both painted to match canopy steel.
11. Provide and install roof mounted system. Provide and install necessary commodity roofing products to flask racking standoffs and solar related penetrations to maintain waterproof integrity of the existing structure.
12. DC wiring and AC wiring within the solar canopies and roof mount structure shall be copper wire. Aluminum wire shall be used from each system's AC combiner to the main point of connection at the site's electrical switchgear.
13. Provide and install a step-down transformer at each site, with new equipment pads. Step-down transformers shall be enclosed in 6' tall chain link fence.
14. Provide and install fourteen (14) new LED lighting fixtures (RAB PRT42N or equivalent) for canopies (one for each 27' bay).
15. Provide as-built drawings and Operations & Maintenance manuals in electronic format upon project completion.

16. Provide tree removal, as required. 29 trees are expected to be removed, and any tree removed shall be replanted on site at a 2:1 ratio.
17. Provide lighting fixture, pole, and bollard removal, as required.
18. Provide miscellaneous backfill and restoration of landscaping in areas of work.
19. Start-up, test, and commission the systems in accordance with design plan and applicable industry standards.
20. Secure the Project Location and provide traffic redirection during rigging operations, and during the move-in and move-out of large equipment.

**Assumptions, Exceptions, Exclusions:**

1. Scope of Work assumes that existing Senior Center roof structure can take on the added structural load of the PV system without requiring upgrades or repairs of any kind.
2. Cost for ADA accessibility upgrades to existing buildings or parking lots for path of travel, if required, are not included and will be calculated based upon final design.
3. Fencing slats are not included.
4. Remediation and/or removal of hazardous materials, hazardous wastes, or spoils are not included.
5. The Scope of Work assumes that, unless specifically identified otherwise, all existing systems are functioning properly and are up to current codes. Repairs or upgrades to existing systems that are not functioning properly or compliant with current codes are excluded. No allowances have been made to bring existing systems up to code.
6. No allowance has been made for underground obstructions or unsuitable soil conditions encountered during trenching or other excavation.
7. The PV shade structure is not weather tight and will not provide shelter from rain.
8. Installing water hose bibs for washing the panels are excluded.
9. Painting, unless specified, is excluded.
10. Depth of piers for canopy and ground mount installations are assumed to be 8 ft. No allowances have been made should soils report indicate that depth of piers should be deeper due to soil quality and/or seismic concerns, or additional seismic concerns requires deeper footings.

## EXHIBIT C

### Job Impacts Data Collection Worksheet

**Silicon Valley Clean Energy Community Resilience Program  
Job Impacts Data Collection  
Worksheet**

**Instructions: The form should be completed and submitted with each invoice. Each contractor and subcontractor should complete a separate form. The information will be used by SVCE to better understand the economic impacts of program investments and will have no impact on payment or performance evaluation of the grantee or contractors. Please be as accurate and complete as possible.**

<b>Position Title</b>	<b>Total Employees in Position*</b>	<b>Average Hourly Wage</b>	<b>Total Hours Worked**</b>	<b>Employer-Sponsored Health Benefits? Y/N</b>
Solar Installer				
Installation Supervisor				
Add rows***				

\*Sum of all individual employees with at least (1) labor hour during the invoice period

\*\*Sum of all the hours of all employees at this title/wage for the invoice period

\*\*\*Add rows as need for additional employees

Note: If this reporting system does not align with the funding source of your project, please contact SVCE to discuss possible reporting alternatives.



<b>Summary report:</b>	
<b>Litera® Change-Pro for Word 10.8.2.11 Document comparison done on 9/2/2021 3:32:35 PM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> Revised Community Resilience Grant Agreement March 2021_Milpitas.docx	
<b>Modified DMS:</b> iw://imanage/iManage/34330762/1	
<b>Changes:</b>	
<u>Add</u>	14
<del>Delete</del>	10
<del>Move From</del>	0
<u>Move To</u>	0
<u>Table Insert</u>	0
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>24</b>