

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

GRANT AGREEMENT

GRANT NO. 2018.245

1. PARTIES - The parties to this Agreement (“Agreement”) are the Bay Area Air Quality Management District (“DISTRICT”) whose address is 375 Beale Street, Suite 600, San Francisco, CA 94105, and **City of Santa Clara dba Silicon Valley Power** (“GRANTEE”) whose address is 1500 Warburton Ave., Santa Clara, CA 95050.
2. RECITALS
 - A. DISTRICT is the local agency with primary responsibility for regulating stationary source air pollution in the Bay Area Air Quality Management District in the State of California. DISTRICT is authorized to enter into this Agreement under California Health and Safety Code Section 40701.
 - B. DISTRICT desires to award GRANTEE a grant for the activities described in Attachment A, Work Plan.
 - C. All parties to this Agreement have had the opportunity to have the Agreement reviewed by their attorney.
3. TERM - The term of this Agreement is from the date of execution by both PARTIES until January 22, 2021, unless further extended by amendment of this Agreement in writing, or terminated earlier.
4. TERMINATION
 - A. DISTRICT shall have the right to terminate this Agreement at its sole discretion at any time upon thirty (30) days written notice to GRANTEE. The notice of termination shall specify the effective date of termination, which shall be no less than thirty (30) calendar days from the date of delivery of the notice of termination, and shall be delivered in accordance with the provisions of section 10 below. Immediately upon receipt of the notice of termination, GRANTEE shall cease all activities under this Agreement, except such activities as are specified in the notice of termination. Within forty-five (45) days of receipt of written notice, GRANTEE is required to:
 - i) Submit a final written report describing all work performed by GRANTEE;
 - ii) Submit an accounting of all grant funds expended up to and including the date of termination; and,
 - iii) Reimburse DISTRICT for any unspent funds.
 - B. DISTRICT may terminate this Agreement and be relieved of any payments should GRANTEE fail to perform the requirements of this Agreement at the time and in the manner herein provided.
5. NO AGENCY RELATIONSHIP CREATED / INDEPENDENT CAPACITY - GRANTEE and the agents and employees of GRANTEE, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of DISTRICT, and nothing herein shall be construed to be inconsistent with that relationship or status. DISTRICT shall not have the right to direct or control the activities of GRANTEE in performing the services provided herein.
6. CONTRACTORS / SUBCONTRACTORS / SUBGRANTEES
 - A. GRANTEE will be entitled to make use of its own staff and such contractors, subcontractors, and subgrantees.

- B. Nothing contained in this Agreement or otherwise, shall create any contractual relation between DISTRICT and any contractors, subcontractors, or subgrantees of GRANTEE, and no agreement with contractors, subcontractors, or subgrantees shall relieve GRANTEE of its responsibilities and obligations hereunder. GRANTEE agrees to be as fully responsible to DISTRICT for the acts and omissions of its contractors, subcontractors, and subgrantees and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by GRANTEE. GRANTEE's obligation to pay its contractors, subcontractors, and subgrantees is an independent obligation from DISTRICT's obligation to make payments to GRANTEE. As a result, DISTRICT shall have no obligation to pay or to enforce the payment of any moneys to any contractor, subcontractor, or subgrantee.
7. INDEMNIFICATION - GRANTEE agrees to indemnify, defend, and hold harmless DISTRICT, its officers, employees, agents, representatives, and successors-in-interest against any and all liability, demands, claims, costs, losses, damages, recoveries, settlements, and expenses (including reasonable attorney fees) that DISTRICT, its officers, employees, agents, representatives, and successors-in-interest may incur or be required to pay arising from the death or injury of any person or persons (including employees of GRANTEE), or from destruction of or damage to any property or properties, caused by or connected with the performance of this Agreement by GRANTEE, its employees, subcontractors, subgrantees, or agents.
8. PAYMENT
- A. DISTRICT agrees to award GRANTEE a grant of \$300,000 for the activities described in Attachment A, Work Plan. Grant shall be payable in eight (8) installments, as follows:
- a) Seven (7) quarterly payments of \$37,500 each, upon DISTRICT'S receipt and approval of GRANTEE'S quarterly progress report and invoice; and
 - b) One (1) final payment of \$37,500 upon completion of all tasks identified in Attachment A, Work Plan, payable upon DISTRICT's receipt and approval of GRANTEE's invoice and GRANTEE's final report.
- B. GRANTEE shall carry out the work described on the Work Plan, and shall obtain DISTRICT's written approval of any changes or modifications to the Work Plan prior to performing or incurring costs for the changed work. If GRANTEE fails to obtain such prior written approval, DISTRICT, at its sole discretion, may refuse to provide funds to pay for such work or costs.
- C. Payment will be made only to GRANTEE.
- D. GRANTEE agrees to return any grant funds received for incentives that it does not use to provide incentives.
9. AUTHORIZED REPRESENTATIVE - GRANTEE shall continuously maintain a representative vested with signature authority authorized to work with DISTRICT on all grant-related issues. GRANTEE shall, at all times, keep DISTRICT informed as to the identity of the authorized representative.
10. NOTICES - All notices that are required under this Agreement shall be provided in the manner set forth herein, unless specified otherwise. Notice to a party shall be delivered to the attention of the person listed below, or to such other person or persons as may hereafter be designated by that party in writing. Notice shall be in writing sent by e-mail, facsimile, or regular first class mail. In the case of e-mail and facsimile communications, valid notice shall be deemed to have been delivered upon sending, provided the sender obtained an electronic confirmation of delivery. E-mail and facsimile communications shall be deemed to have been received on the date of such transmission,

provided such date was a business day and delivered prior to 4:00 p.m. Pacific Time. Otherwise, receipt of e-mail and facsimile communications shall be deemed to have occurred on the following business day. In the case of regular mail notice, notice shall be deemed to have been delivered on the mailing date and received five (5) business days after the date of mailing.

DISTRICT: Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
Attn: Axum Teferra

GRANTEE: City of Santa Clara dba Silicon Valley Power
881 Martin Avenue
Santa Clara, CA 95050
Attn: Erica Jue

11. ADDITIONAL PROVISIONS - All attachment(s) to this Agreement are expressly incorporated herein by this reference and made a part hereof as though fully set forth.
12. ACKNOWLEDGEMENTS - GRANTEE shall acknowledge DISTRICT support each time the activities funded, in whole or in part, by this Agreement are publicized in any news media, brochures, or other type of promotional material. The acknowledgement of DISTRICT support must state "Funded by a Grant from the Bay Area Air Quality Management District." Initials or abbreviations for DISTRICT shall not be used.
13. FINANCIAL MANAGEMENT SYSTEM
 - A. GRANTEE shall be responsible for maintaining an adequate financial management system and will immediately notify DISTRICT when GRANTEE cannot comply with the requirements in this section.
 - B. GRANTEE's financial management system shall provide for:
 - i) Financial reporting: accurate, current, and complete disclosure of the financial results of each grant in conformity with generally accepted principles of accounting, and reporting in a format that is in accordance with the financial reporting requirements of the grant.
 - ii) Accounting records: records that adequately identify the source and application of funds for DISTRICT-supported activities. These records must contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures and income.
 - iii) Internal control: effective internal and accounting controls over all funds, property and other assets. GRANTEE shall adequately safeguard all such assets and assure that they are used solely for authorized purposes.
 - iv) Budget control: comparison of actual expenditures or outlays with budgeted amounts for each grant.
 - v) Allowable cost: procedures for determining reasonableness, allowability, and allocability of costs generally consistent with the provisions of federal and state requirements.
 - vi) Source documentation: accounting records that are supported by source documentation.
 - vii) Cash management: procedures to minimize the time elapsing between the advance of funds from DISTRICT and the disbursement by GRANTEE, whenever funds are advanced by DISTRICT.

- C. DISTRICT may review the adequacy of the financial management system of GRANTEE at any time subsequent to the award of the grant. If DISTRICT determines that GRANTEE's accounting system does not meet the standards described in paragraph B above, additional information to monitor the grant may be required by DISTRICT upon written notice to GRANTEE, until such time as the system meets with DISTRICT approval.
14. AUDIT / RECORDS ACCESS - GRANTEE agrees that DISTRICT shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. GRANTEE agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated, or until completion of any action and resolution of all issues which may arise as a result of any litigation, dispute, or audit, whichever is later. GRANTEE agrees to allow the designated representative(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, GRANTEE agrees to include a similar right of DISTRICT to audit records and interview staff in any contract, subcontract, or subgrant related to performance of this Agreement.
15. FORFEIT OF GRANT FUNDS / REPAYMENT OF FUNDS IMPROPERLY EXPENDED - If grant funds are not expended, or have not been expended, in accordance with this Agreement, or if real or personal property acquired with grant funds is not being used, or has not been used, for grant purposes in accordance with this Agreement, DISTRICT, at its sole discretion, may take appropriate action under this Agreement, at law or in equity, including requiring GRANTEE to forfeit the unexpended portion of the grant funds and/or to repay to DISTRICT any funds improperly expended.
16. COMPLIANCE - GRANTEE shall comply fully with all applicable federal, state, and local laws, ordinances, regulations, and permits. GRANTEE shall provide evidence, upon request, that all local, state, and/or federal permits, licenses, registrations, and approvals have been secured for the purposes for which grant funds are to be expended. GRANTEE shall maintain compliance with such requirements throughout the grant period. GRANTEE shall ensure that the requirements of the California Environmental Quality Act are met for any approvals or other requirements necessary to carry out the terms of this Agreement. Any deviation from the requirements of this section shall result in non-payment of grant funds.
17. CONFIDENTIALITY – In order to carry out the purposes of this Agreement, GRANTEE may require access to certain of DISTRICT's confidential information (including trade secrets, inventions, confidential know-how, confidential business information, and other information that DISTRICT considers confidential) (collectively, "Confidential Information"). It is expressly understood and agreed that DISTRICT may designate in a conspicuous manner Confidential Information that GRANTEE obtains from DISTRICT, and GRANTEE agrees to:
- A. Observe complete confidentiality with respect to such information, including without limitation, agreeing not to disclose or otherwise permit access to such information by any other person or entity in any manner whatsoever, except that such disclosure or access shall be permitted to employees of GRANTEE requiring access in fulfillment of the services provided under this Agreement.
 - B. Ensure that GRANTEE's officers, employees, agents, representatives, subgrantees, and independent contractors are informed of the confidential nature of such information and to assure by agreement or otherwise that they are prohibited from copying or revealing, for any

purpose whatsoever, the contents of such information or any part thereof, or from taking any action otherwise prohibited under this section.

- C. Not use such information or any part thereof in the performance of services to others or for the benefit of others in any form whatsoever whether gratuitously or for valuable consideration, except as permitted under this Agreement.
- D. Notify DISTRICT promptly and in writing of the circumstances surrounding any possession, use, or knowledge of such information or any part thereof by any person or entity other than those authorized by this section. Take at GRANTEE's expense, but at DISTRICT's option and in any event under DISTRICT's control, any legal action necessary to prevent unauthorized use of such information by any third party or entity which has gained access to such information at least in part due to the fault of GRANTEE.
- E. Take any and all other actions necessary or desirable to assure such continued confidentiality and protection of such information during the term of this Agreement and following expiration or termination of the Agreement.
- F. Prevent access to such materials by a person or entity not authorized under this Agreement.
- G. Establish specific procedures in order to fulfill the obligations of this section.

Notwithstanding the foregoing, DISTRICT acknowledges that GRANTEE is a public agency subject to the requirements of the California Public Records Act. If GRANTEE receives a request or demand of any third person or entity not a party to this Agreement for production, section and/or copying of information designated by DISTRICT as Confidential Information, GRANTEE as soon practical but within three (3) days of receipt of the request, shall notify the DISTRICT that such request has been made. DISTRICT shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information by GRANTEE. If DISTRICT takes no such action, after receiving the foregoing notice from the GRANTEE, GRANTEE shall be permitted to comply with the request or demand and is not required to defend against it.

18. INTELLECTUAL PROPERTY RIGHTS - Title and full ownership rights to all intellectual property developed under this Agreement shall at all times remain with DISTRICT, unless otherwise agreed to in writing.

19. PUBLICATION

- A. DISTRICT shall approve in writing any report or other document prepared by GRANTEE in connection with performance under this Agreement prior to dissemination or publication of such report or document to a third party. DISTRICT may waive in writing its requirement for prior approval.
- B. Until approved by DISTRICT, any report or other document prepared by GRANTEE shall include on each page a conspicuous header, footer, or watermark stating "DRAFT – Not Reviewed or Approved by BAAQMD," unless DISTRICT has waived its requirement for prior approval pursuant to paragraph A of this section.
- C. Information, data, documents, or reports developed by GRANTEE for DISTRICT, pursuant to this Agreement, shall be part of DISTRICT's public record, unless otherwise indicated. GRANTEE may use or publish, at its own expense, such information, provided DISTRICT approves use of such information in advance. The following acknowledgment of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Agreement.

“This report was prepared as a result of work sponsored, paid for, in whole or in part, by the Bay Area Air Quality Management District (District). The opinions, findings, conclusions, and recommendations are those of the author and do not necessarily represent the views of the District. The District, its officers, employees, contractors, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this report.”

- D. GRANTEE shall inform its officers, employees, subgrantees, and subcontractors involved in the performance of this Agreement of the restrictions contained herein and shall require compliance with the above.
20. PROPERTY AND SECURITY - Without limiting GRANTEE’s obligations with regard to security, GRANTEE shall comply with all the rules and regulations established by DISTRICT for access to and activity in and around DISTRICT’s premises.
21. ASSIGNMENT - No party shall assign, sell, license, or otherwise transfer any rights or obligations under this Agreement to a third party without the prior written consent of the other party, and any attempt to do so shall be void upon inception.
22. WAIVER - No waiver of a breach, of failure of any condition, or of 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, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies. Further, the failure of a party to enforce performance by the other party of any term, covenant, or condition of this Agreement, and the failure of a party to exercise any rights or remedies hereunder, shall not be deemed a waiver or relinquishment by that party to enforce future performance of any such terms, covenants, or conditions, or to exercise any future rights or remedies.
23. FORCE MAJEURE - Neither DISTRICT nor GRANTEE shall be liable for or deemed to be in default for any delay or failure in performance under this Agreement or interruption of services resulting, directly or indirectly, from acts of God, enemy or hostile governmental action, civil commotion, strikes, lockouts, labor disputes, fire or other casualty, judicial orders, governmental controls, regulations or restrictions, inability to obtain labor or materials or reasonable substitutes for labor or materials necessary for performance of the services, or other causes, except financial, that are beyond the reasonable control of DISTRICT or GRANTEE, for a period of time equal to the period of such force majeure event, provided that the party failing to perform notifies the other party within fifteen calendar days of discovery of the force majeure event, and provided further that that party takes all reasonable action to mitigate the damages resulting from the failure to perform. Notwithstanding the above, if the cause of the force majeure event is due to party’s own action or inaction, then such cause shall not excuse that party from performance under this Agreement.
24. 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.

25. HEADINGS - Headings on the sections and paragraphs of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.
26. COUNTERPARTS/FACSIMILES/SCANS – This Contract may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same contract. The parties may rely upon a facsimile copy or scanned copy of any party’s signature as an original for all purposes.
27. GOVERNING LAW - Any dispute that arises under or relates to this Agreement shall be governed by California law, excluding any laws that direct the application to another jurisdiction’s laws. Venue for resolution of any dispute that arises under or relates to this Agreement, including mediation, shall be San Francisco, California.
28. ENTIRE AGREEMENT AND MODIFICATION - This Agreement represents the final, complete, and exclusive statement of the agreement between the parties and supersedes all prior and contemporaneous understandings and agreements of the parties. No party has been induced to enter into this Agreement by, nor is any party relying upon, any representation or warranty outside those expressly set forth herein. This Agreement may only be amended by mutual agreement of the parties in writing and signed by both parties.
29. SURVIVAL OF TERMS - The provisions of sections 7 (Indemnification), 14 (Audit / Records Access), 15 (Forfeit of Grant Funds / Repayment of Funds Improperly Expended), 17 (Confidentiality), 18 (Intellectual Property Rights), and 19 (Publication) shall survive the expiration or termination of this Agreement.

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

CITY OF SANTA CLARA
dba SILICON VALLEY POWER

By: _____
Jack P. Broadbent
Executive Officer/APCO

By: _____
Deanna J. Santana
City Manager

Date: _____

Date: _____

Approved as to form:
District Counsel

By: _____
Brian C. Bungler
District Counsel

ATTACHMENT A

WORK PLAN

GRANTEE will design, procure, and install a 1 MW/4.5 MWh lithium-ion battery energy storage system (BESS) for a selected data center to reduce and potentially avoid the use of diesel generators with uninterrupted power supply. The project will demonstrate the feasibility of battery storage for data centers, delaying the use of diesel generators as backup power.

Phase 1: Site/Customer Selection and Assessment

Task 1.1: Identify and select data center partner

GRANTEE will launch a solicitation to identify data centers interested in delaying the use of, and potentially replacing a diesel generator with a lithium-ion battery energy storage system. GRANTEE will use the following selection criteria for the ideal candidate: a) located within the BAAQMD CARE boundary (as defined by the Air District: <http://www.baaqmd.gov/plans-and-climate/community-air-risk-evaluation-care-program>) and SVP's service territory, b) has renewable energy and climate goals aligned with GRANTEE's climate goals, and c) is collaborative, willing and interested in potentially scaling up the project in future years.

Deliverables:

1. Criteria for site selection and decision
2. Confirmation from the data center as a partner (e.g., signed agreement, MOU, etc)

Task 1.2: Assess construction project process and preliminary site plan

GRANTEE will assess the construction project process and preliminary site plan for the placement of the battery energy storage system (including permitting and interconnection requirements and service data scheduling). GRANTEE will also ensure proper procedures aligned with city permitting, CEQA (if applicable), and other project clearance steps.

Deliverables:

1. Preliminary site plan (assess site challenges, projected load and ramp schedule, costs, schedule service date, etc.)
2. Checklist of construction project process and necessary permits, codes, standards, engineering designs, approvals, reviews (with dates of execution)
3. Interconnection requirements issued by utility and interconnection agreement

Phase 2: Collaboration and Deployment

Task 2.1: Collaborate with selected sub-contractor to size, design, purchase and install battery storage system

GRANTEE will work with the data center to size, engineer, procure and construct the battery energy storage system. The sub-contractor that will install the battery storage system will be confirmed once the data center selection is finalized and will be responsible for installing the battery, inverter, battery management system, enclosures/racks, controller, and balance of plant for integration of battery energy storage system into the facility. The selected data center will select the sub-contractor. The sub-contractor and battery storage technology provider will also carry out battery testing, verification

inspections, and training related to operation, maintenance, and emergency response procedures for the battery storage system.

Deliverables:

1. Conceptual system design
2. Sub-contractor contract
3. Certificates that ensure engineering requirements, operational testing, inspection, safety codes have been met
4. Equipment specifications
5. Installation documentation and images

Task 2.2: Deploy and test battery storage system and aggregation controller

GRANTEE will deploy and test the battery storage system and aggregation controller. The controller optimally dispatches the battery system network to maximize the lifetime of each battery system and optimizes the battery to maximize GHG reductions. The system will communicate events in real-time across the data center, the utility transmission and operations systems and GRANTEE's real-time energy trading desk.

Deliverables:

1. Battery system performance report (e.g., information on charge, health, voltage, capacity, etc.)
2. Design plan to determine user interface and software platform to manage data

Phase 3: Monitor Outcome and Results

Task 3.1: Monitor project outcome and results by metrics

GRANTEE will monitor progress and track results in terms of: Anticipated performance of the battery system, based on performance models and specifications of the system (e.g., battery cycles per year, avoided emissions from daily charge and discharge of system due to intra daily differences in the wholesale market carbon intensity, etc.) Installation's estimated (monthly, annual, and battery life (~15 years)) energy-use and GHG-emissions reductions

Deliverables:

1. Detailed results included in the project final report (see below)

Progress Reports

Beginning thirty (30) calendar days after execution of the contract, every April 15, July 15, October 15 and January 15 until the end of the Term, GRANTEE shall provide quarterly progress reports describing GRANTEE's progress toward completion of the work outlined above. Quarterly progress reports shall be prepared on the District's Quarterly Report form (provided separately).

Final Report

Within thirty (30) calendar days of completion of project, GRANTEE shall submit a Final Report. The Final Report, to be prepared on the District’s Final Report form (provided separately), should report on the outcomes of the project and learned lessons.

Grant Payments

Grant payments will be made in installments in accordance to Section 8, Payment. **Total payments under this Agreement shall not exceed \$300,000.**

Reporting and Grant Payment Schedule for Grant Funds

Payments of grant funds shall be contingent upon DISTRICT’s approval of GRANTEE’s quarterly progress reports and final report. DISTRICT approval will take into consideration adequate progress in implementing program tasks to meet the milestones set forth below. DISTRICT shall pay GRANTEE its grant payments upon receipt and approval of GRANTEE’s quarterly progress reports and final report demonstrating that the applicable project milestones have been met as provided in Section 8 of this Agreement.

Milestone	Required progress on project	Completion Date	Report	Payment
1	Task 1.1 – initiated and completed	1/31/19	Quarterly progress report (QPR) #1 (4/15/19)	\$37,500
2	Task 1.2 – initiated	4/31/19	QPR #2 (7/15/19)	\$37,500
3	Task 1.2 – completed Task 2.1 – initiated	7/31/19	QPR #3 (10/15/19)	\$37,500
4	Task 2.1 – on-going	10/31/19	QPR #4 (1/15/20)	\$37,500
5	Task 2.1 – on-going	1/31/20	QPR #5 (4/15/20)	\$37,500
6	Task 2.1 – completed Task 2.2 – initiated Task 3.1 – initiated	4/30/20	QPR #6 (7/15/20)	\$37,500
7	Task 2.2 – completed Task 3.1 – on-going	7/31/20	QPR #7 (10/15/20)	\$37,500
8 (Final)	Task 3.1 – completed	11/30/20	Final Report (1/22/21)	\$37,500