



MarketZero: Taking an existing grocery store to scalable near-ZNE

**SUBCONTRACTOR AGREEMENT BETWEEN PROSPECT SILICON VALLEY AND CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF THE ENVIRONMENT**

This Sub-Recipient Agreement is made and entered into as of the Effective Date by and between Prospect Silicon Valley (ProspectSV), a California public benefit corporation, and the City and County of San Francisco, a California local government, through its Department of the Environment (“SFE”).

**RECITALS**

- A. In November 2015, ProspectSV submitted an application to the California Energy Commission (CEC) for funding in collaboration with Whole Foods Market, Arup, Lawrence Berkeley National Lab, and SFE;
- B. The proposal for the project titled “MarketZero: Taking an existing grocery store to scalable near-ZNE” (“MarketZero”) was submitted in response to solicitation GFO 15-308 titled “Reducing Costs for Communities and Businesses Through Integrated Demand-Side Management and Zero Net Energy Demonstrations”;
- C. The CEC issued a Notice of Award dated December 28, 2015 stating that ProspectSV had been awarded grant funds in the amount of \$ 2,999,591 to implement an advanced solar, storage and energy management project described in the application;
- D. Effective on May 17, 2016, ProspectSV accepted the Award for itself and on behalf of the project partners and entered into CEC Grant Agreement # EPC-15-041 (CEC Grant Agreement) with the CEC;
- E. As prime contractor, ProspectSV will serve as the fiscal agent and project manager for the project as well as provide other services as specified in the CEC Grant Agreement. Other partner roles include Whole Foods Market, site host for the system to be installed; ARUP, provider of building technology design; Lawrence Berkeley National Lab, provider of technical analytics; and SFE, provider of local process assistance and outreach.
- F. ProspectSV and SFE desire to establish and/or acknowledge the governing rules, regulations, terms and conditions for SFE’s participation in the MarketZero project.

NOW THEREFORE, based upon the foregoing recitals, ProspectSV and SFE further agree as follows:

**1.0 APPLICABLE DOCUMENTS**

- 1.1 **CEC Contract:** The terms and conditions of that CEC Grant Agreement entered into by and between CEC and ProspectSV and attached as Attachment 3, are incorporated by reference into this Sub-Recipient Agreement as if fully set forth herein. Please note that

Exhibit C, Terms and Conditions, identifies terms and conditions that are binding on SFE and all sub-recipients, not otherwise repeated or highlighted in this Sub-Recipient Agreement.

Attachment 3: **CEC Grant Agreement No. EPC-15-041** (including the following exhibits):

- Exhibit A1: Scope of Work
- Exhibit A2: Schedule of Products and Due Dates
- Exhibit B: Budget
- Exhibit C: Terms and Conditions
- Exhibit D: Contacts List
- Exhibit E: Approved Grant Letter

- 1.2 **Scope of Work:** SFE agrees to manage all aspects of work as detailed in Attachment 1 hereby incorporated into this Sub-Recipient Agreement. The Scope of Work shall be referred to herein as "Work."
  - 1.2.1 If any description of the work or responsible party listed in Attachments 1 and 2 is identified as being in conflict with any portion of CEC Terms and Conditions, Work, schedule or budget, the CEC documents shall take precedence.
- 1.3 **Entire Agreement:** This Sub-Recipient Agreement and the CEC Grant Agreement, together with any annexes, schedules, appendices, indexes and exhibits thereto, constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the parties in connection therewith.

## 2.0 TERM OF AGREEMENT

This Sub-Recipient Agreement shall commence as of May 17, 2016, and continue until March 31, 2020, or until terminated by the CEC pursuant to the terms of the superior Grant Agreement between CEC and ProspectSV.

## 3.0 SUBAWARD AMOUNT AND PAYMENT PROTOCOLS

- 3.1 **Maximum Sub-Award Payment Amount:** Under the terms of the CEC Grant Agreement, ProspectSV will disburse a portion of the Award to SFE for carrying out its responsibilities as part of the MarketZero Project as described in the Attachments.
  - 3.1.1 The maximum amount to be funded by the CEC and disbursed through ProspectSV to SFE shall be no more than one hundred and fifty thousand (\$150,000) (Subaward Amount).
  - 3.1.2 ProspectSV reserves the right, if necessary, to reallocate funds with CEC approval to meet the objectives of the project. Such reallocations will be in consultation with SFE and apply only to remaining funds. Funds for completed work, invoiced and uninvoiced, will be disbursed to SFE if received from the CEC.
- 3.2 **Monthly Invoicing:** SFE shall submit invoices no more frequently than once per month. Invoices will describe the type and quantity of equipment ordered, construction completed, and services performed during the invoice period. Billing will reflect

completed deliverables and SFE staff hours billed. Invoices will include copies of invoices for purchased subcomponents and services from third-parties. All reported expenses and invoices must be based on auditable actual expenses. Expenses to be reimbursed must be less than or equal to the approved budget for SFE. All match funded documentation for the period will also be submitted with billings as specified in 5.4.

3.3 **Retention:** The CEC Grant Agreement provides for retention of ten percent (10%) of each disbursement and for payment of the retention upon completion of the MarketZero Project. SFE acknowledges that ProspectSV will subject each of SFE invoices to the ten percent (10%) retention and that, prior to the project end date, SFE must submit a letter stating that it has completed its portion of the MarketZero Project and requesting payment of the retention. ProspectSV will pay the retention within 15 days upon receipt of same from the CEC.

3.4 **Payment Schedule:** ProspectSV will review all invoices submitted and approve or disapprove each invoice in total, or in part, as the case may be, within fifteen (15) business days of receipt. ProspectSV will promptly forward all approved invoices to CEC for disbursement. The schedule for preparation, review, and submission of invoices shall be as follows:

Invoicing & Disbursement Steps	Date
1. SFE submits invoices from previous month’s activities with backup documentation to ProspectSV	By 5th of month
2. ProspectSV reviews invoices and documentation, queries SFE as necessary to clarify or amend documentation	By 10th of month
3. SFE responds to any requests for clarification	By 17th of month
4. ProspectSV submits approved SFE invoices and documentation to CEC	By 20th of month
5. CEC disburses funds to ProspectSV (less 10% retention)	Est. 60-120 days
6. ProspectSV disburses funds to SFE	Within 30 days following receipt from CEC

3.5 **Disbursement Follows CEC:** SFE acknowledges that payment of invoices will follow receipt of those funds by ProspectSV from the CEC. ProspectSV will provide payment of invoices for which CEC funds are received, within 30 days of receipt of said funds.

3.6 **Financial Management and Prevailing Wage:** By accepting this sub-award, SFE shall be fully responsible for complying with CEC Grant Agreement terms specified therein and all California public works requirements during the term specifically in relation to the MarketZero Project as provided in this Agreement including but not limited to payment of prevailing wage, keeping accurate payroll records, complying with all working hour requirements and apprenticeship obligations and all funds management requirements.

**4.0 PROSPECTSV OBLIGATIONS**

- 4.1 **Fiscal Agent:** ProspectSV will disburse CEC Award funds as required or permitted by the CEC Grant Agreement. Notwithstanding the foregoing, ProspectSV is not obligated to disburse any funds to SFE unless and until such are authorized and disbursed from CEC to ProspectSV.
- 4.2 **Program Lead:** ProspectSV will coordinate the activities of SFE and project partners so as to implement the MarketZero Project in accordance with the terms of the CEC Grant Agreement.
- 4.3 **Notification:** ProspectSV will promptly notify SFE of any notices given or actions taken by the Energy Commission if such notices or actions are likely to affect SFE's performance, duties, obligations or funding under this Sub-Recipient Agreement. To the extent practicable, ProspectSV will consult with SFE in carrying out ProspectSV's responsibilities.
- 4.4 **Confidential Information.** In the course of performing the work, ProspectSV may have access to confidential information of SFE and/or its clients, partners, subcontractors or affiliates, including but not limited to product and service development information, new product and service information, production and delivery/or schedules, information concerning clients or potential clients, identifying information about students or potential students and other financial or business information. ProspectSV acknowledges that all such confidential information is, as between the parties to this Sub-Recipient Agreement, the sole and exclusive property of SFE and/or its clients, partners, subcontractors or affiliates. ProspectSV will not, during the term of this Sub-Recipient Agreement or at any time thereafter, disclose or use any such confidential information other than to the extent necessary to perform the Work in accordance with this Sub-Recipient Agreement or as required by law or legal process. The foregoing obligation to refrain from using confidential information and to keep confidential information secret and confidential shall survive the termination and expiration of this Sub-Recipient Agreement.

## 5.0 SFE OBLIGATIONS

- 5.1 **Compliance with CEC Grant Agreement Terms and Conditions:** SFE is, and at all times will continue to be, in full compliance with the terms and conditions of the CEC Grant Agreement that are applicable to it. SFE understands and agrees that for purposes of the foregoing, any requirements imposed upon ProspectSV as Recipient in the CEC Grant Agreement are hereby passed-through and adopted by SFE as obligations of SFE, excepting only ProspectSV's obligations as defined in section 4 and those obligations under the CEC Grant Agreement that by their nature may only be performed by ProspectSV.
- 5.2 **Compliance with Subaward Agreement:** Without limiting subsection 5.1, SFE shall comply with the scope of any and all authorizations, limitations, exclusions, and/or exceptions for use of the Subaward Amount; and
- 5.3 **Compliance with Attachments 1 and 2:** SFE shall carry out all the tasks set forth in Attachments 1 and 2 as they may be amended or modified.

- 5.4 **Energy Commission Right to Modification:** SFE acknowledges that pursuant to the CEC Grant Agreement, the CEC has the right to modify tasks and budgets and to approve changes in personnel, subcontractors and vendors through ProspectSV. In the event of any CEC-mandated change, ProspectSV will make all reasonable efforts to secure full CEC reimbursement for all authorized program-related work performed up until the time of the CEC-mandated change. ProspectSV and SFE shall comply with any requirements imposed as a result of CEC's exercise of such rights.
- 5.5 **CEC Grant Agreement:** SFE shall not cause ProspectSV to be in violation of the CEC Grant Agreement, whether by act or omission.
- 5.6 **Insurance.** The City and County of San Francisco (CCSF) shall comply with each of the requirements of this section with the use of its self-insurance program. CCSF is also responsible for its Subcontractors maintaining sufficient limits of the appropriate insurance coverage.
- 5.6.1 Workers' Compensation and Employer's Liability Insurance, with limits of not less than \$500,000 and such additional coverages as may be required by any Employee Benefits Act or other statutes applicable where the work is to be performed;
  - 5.6.2 Comprehensive General Liability Insurance (including coverage against bodily injury or death, property damage and contractual liability and also including explosion and collapse coverage) in an amount not less than \$2,000,000 combined single limit; and
  - 5.6.3 Automobile liability Insurance, including the ownership, maintenance and operation of any automotive equipment owned, hired and non-owned insuring against bodily injury and property damage liability in an amount of not less than \$1,000,000 per occurrence.
  - 5.6.4 SFE will provide to ProspectSV evidence of insurance with sufficient coverage to meet the requirements detailed in this agreement.
  - 5.6.5 CCSF will require all of SFE subcontractors to be insured against claims arising out of or relating to their performance of any of SFE's duties under this Agreement.
- 5.7 **Confidential Information.** In the course of performing the contracted services, SFE may have access to confidential information of ProspectSV and/or its clients, partners, subcontractors or affiliates, including but not limited to product and service development information, new product and service information, production and delivery/or schedules, information concerning clients or potential clients, and other financial or business information. SFE acknowledges that all such confidential information is, as between the parties to this Sub-Recipient Agreement, the sole and exclusive property of ProspectSV and/or its clients, partners, subcontractors or affiliates. SFE shall not, during the term of this Sub-Recipient Agreement or at any time thereafter, disclose or use any such confidential information other than to the extent necessary to perform the Work in accordance with this Sub-Recipient Agreement or as required by law or legal process. The

foregoing obligation to refrain from using confidential information and to keep confidential information secret and confidential shall survive the termination and expiration of this Sub-Recipient Agreement for three years.

- 5.8 **Applicability of Federal, State, and Local Law:** SFE shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives, now existing and as such may change from time-to-time. Any such laws, rules, regulations, ordinances, and directives required thereby to be included in this Sub-Recipient Agreement are incorporated herein by reference.

## **6.0 INDEPENDENT CONTRACTOR**

It is agreed and understood that SFE shall perform services under this Sub-Recipient Agreement as an independent contractor and not as an employee or agent of ProspectSV. Nothing in this Sub-Recipient Agreement is intended to, or should be construed to create a partnership, agency, joint venture or employment relationship.

## **7.0 INDEMNIFICATION AND INELIGIBLE CLAIMS**

- 7.1 Notwithstanding any provision to the contrary, SFE agrees to indemnify, defend, and hold harmless the ProspectSV, and their respective elected and appointed officers, employees, and agents from and against liability resulting from SFE's actively negligent, grossly negligent or willful misconduct arising from and/or relating to the CEC Grant Agreement or this Sub-Recipient Agreement.
- 7.2 SFE understands and agrees that it is solely responsible for any and all of the Subaward Amount that the Energy Commission determines to be ineligible under the CEC Grant Agreement. Immediately upon request by Energy Commission or ProspectSV, SFE shall return any funds that have been disbursed to the extent that their use has been disallowed.

## **8.0 TERMINATION**

- 8.1 SFE acknowledges that pursuant to section 17 of Exhibit C to the CEC Grant Agreement, the Energy Commission has the right to terminate the CEC Grant Agreement in accordance with its terms.
- 8.2 Upon termination of the CEC Grant Agreement, this Subcontract shall terminate effective the same date as the CEC Grant Agreement and in accordance with the terms and conditions for the termination of the CEC Grant Agreement.

## **9.0 NOTICES AND ADMINISTRATIVE CONTACTS**

- 9.1 All notices or notifications under this Sub-Recipient Agreement shall be in writing addressed to the persons set forth in this section 9.0
- 9.2 All notices or notifications to ProspectSV shall be sent to:

For ProspectSV:

To: Douglas Davenport, Executive Director  
Addr: 1608 Las Plumas Ave., San Jose, CA 95133  
Email: doug.davenport@prospectsv.org

For SFE:

To: Cal Broomhead, Climate and Energy Manager  
Addr: 1455 Market St, Suite 1200, San Francisco, CA 94103  
Email: cal.broomhead@sfgov.org

#### **10.0 AMENDMENTS AND CHANGES**

Except for changes described in subsections 5.4 and 8.0, this Sub-Recipient Agreement may be changed only by a written amendment duly signed by ProspectSV and SFE.

#### **11.0 ASSIGNMENT AND DELEGATION**

SFE shall not assign its rights or delegate its duties under this Sub-Recipient Agreement. Any attempted assignment or delegation shall be null and void, and constitute a material breach of this Sub-Recipient Agreement.

#### **12.0 GOVERNING LAW AND VENUE**

This Sub-Recipient Agreement shall be governed by, and construed in accordance with, the substantive and procedural laws of the State of California. SFE further agrees and consents that the venue of any action brought between SFE and ProspectSV shall be exclusively in the County of Santa Clara.

#### **13.0 VALIDITY AND SEVERABILITY**

If any provision of this Sub-Recipient Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Sub-Recipient Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

#### **14.0 NO WAIVER**

No waiver by either party of any event of breach and/or breach of any provision of this Sub-Recipient Agreement shall constitute a waiver of any other event of breach and/or breach. Either party's non-enforcement at any time, or from time to time, of any provision of this Sub-Recipient Agreement shall not be construed as a waiver thereof.

#### **15.0 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT**

- 15.1 SFE shall maintain accurate and complete financial records of its activities and operations relating to this Sub-Recipient Agreement in accordance with the CEC Grant Agreement and generally accepted accounting principles.
- 15.2 SFE agrees that ProspectSV, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Sub-Recipient Agreement. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and relevant proprietary data and information, shall be kept and maintained by SFE and shall be made available to ProspectSV during the term of this Sub-Recipient Agreement and for a period of three (3) years thereafter unless ProspectSV's written permission is given to dispose of any such material prior to such time.
- 15.3 SFE shall deliver all materials described in subsection 15.2 and specified by ProspectSV to a location to be determined by ProspectSV. SFE shall bear its own costs and expenses in this regard. However, SFE shall not be responsible for the costs or expenses incurred by ProspectSV to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Sub-Recipient Agreement.
- 15.4 If an audit of SFE is conducted specifically regarding this Sub-Recipient Agreement by any Federal or State auditor, or by any auditor or accountant employed by SFE or otherwise, then SFE shall file a copy of such audit report with ProspectSV within thirty (30) days, unless otherwise provided by applicable Federal or State law or under this Sub-Recipient Agreement.
- 15.5 Failure of SFE to comply with this section 15 shall constitute a material breach of this Sub-Recipient Agreement, upon which ProspectSV may terminate or suspend under section 9.0 (Termination for Default).

## **16.0 AUTHORIZATION WARRANTY**

SFE represents and warrants that the person executing this Sub-Recipient Agreement on its behalf is an authorized agent who has actual authority to bind SFE to each and every term, condition, and obligation herein.

**END OF BASE DOCUMENT  
SIGNATURE PAGE TO FOLLOW**



**MARKETZERO PROJECT**

**AUTHORIZED SIGNATURES**

IN WITNESS WHEREOF, the City and County of San Francisco Department of the Environment, (SFE) has duly executed this Sub-Recipient Agreement, or caused it to be duly executed, by its \_\_\_\_\_; and the Prospect Silicon Valley (ProspectSV) has caused this Sub-Recipient Agreement to be duly executed on its behalf by its Executive Director.

Prospect Silicon Valley

By \_\_\_\_\_ Date \_\_\_\_\_  
Doug Davenport, Executive Director

Address: 1608 Las Plumas Avenue, San Jose, CA 95133  
Phone: 415-867-7498  
Email: doug.davenport@prospectsv.org

City and County of San Francisco

By \_\_\_\_\_ Date \_\_\_\_\_  
Deborah Raphael, Director

Address: 1455 Market St, Suite 1200, San Francisco, CA 94103  
Phone: 415-355-3701  
Email: deborah.rafael@sfgov.org

## **ATTACHMENT 1 – RESPONSIBILITIES UNDER THE SCOPE OF WORK**

SFE will provide services as follows, as governed by the Agreement in Exhibit B specifically in the Scope of Work (SOW). Specific requirements for SFE under the SOW are:

### **TASK 1: GENERAL PROJECT TASKS**

- **1.1 Products:** Submit any required reporting documents for the CEC in the formats specified by the CEC.
- **1.2 – 1.4 Meetings:** Provide any reasonable information requested by ProspectSV for the Kickoff Meeting with the CEC. Participate in Critical Project Review meetings if requested by ProspectSV or the CEC
- **1.5, 1.6 & 1.7 Reports, Invoices & Match:** Provide timely information necessary for CEC reports. This includes a) narrative of project progress; b) invoices of expenditures including staff hours with fringe and overhead and invoices of other service and hard costs not to exceed budgeted amounts; and c) match funding expended with staff hours and invoices on hard costs.
- **1.9 Subcontracts:** Provide copies of subcontracts and ensure they include requisite flow-down terms and conditions.
- **1.10 & 1.11 Technical Advisory Committee (TAC):** Recommend potential TAC participants, assist with vetting TAC participants, and participate in TAC meetings.

### **TASK 2: DESIGN AND CONSTRUCTION**

- Manage all aspects of SFE internal and external stakeholders to ensure execution of the project.
- Participate actively and in good faith in the design of the building upgrades to ensure a design that both meets the project objectives and SFE requirements.
- Provide assistance on project permitting to ensure timely completion of permits including where appropriate waivers to address the forward-looking technologies and strategies to be implemented as per the core objectives of the project.
- Support the production of other work products as needed.

### **TASK 3: DATA COLLECTION AND ANALYSIS**

Support the production of relevant data collection for CEC reporting.

### **TASK 4 EVALUATION OF PROJECT BENEFITS**

Support the review of project benefits for CEC reporting.

### **TASK 5 TECHNOLOGY/KNOWLEDGE TRANSFER ACTIVITIES**

- Lead development of knowledge transfer plan section in relation to internal and external stakeholders within the city of San Francisco.
- Lead execution of knowledge transfer activities in relation to internal and external stakeholders within the city of San Francisco.
- Co-lead with ProspectSV on all CEC products identified as owned by “ProspectSV & SFE” in the Work Products (Exhibit 2)

### **OTHER**

- Provide expertise, information and other reasonable support to ensure the success of the project.

**Attachment 2 – Work Products**

<list of work products, dates, owners, descriptions>

**Attachment 3 – CEC Grant Agreement # EPC-15-041**

[attached]