



Request for Proposals:
Commonwealth Hydropower Program
Round 12
RFP FY2023-CH-R12

Date of Issue: February 8th, 2023

Proposals Due: March 31st, 2023

Total Funding Available: \$300,000

All proposals must be submitted to:

hydro@masscec.com

I. SUMMARY

The Massachusetts Clean Energy Technology Center (“MassCEC”) seeks applications to its Commonwealth Hydro Program (the “Program”) to facilitate greater energy production and reduced environmental impacts from hydropower facilities that are eligible for the Massachusetts Renewable Energy Portfolio Standard (“MA RPS”).

The Program provides grant funding of up to Three Hundred Thousand Dollars (\$300,000) per project. Through the provision of this support, the Program seeks to increase the output, longevity, and ecological acceptability of hydropower facilities that are qualified for the MA RPS, or have a strong likelihood of attaining qualification, as further explained herein. Applicants’ facilities must also be licensed by the Federal Energy Regulatory Commission (“FERC”), have an order from FERC indicating that they are non-jurisdictional to FERC, or have a determination from FERC that they are a “qualifying conduit hydropower facility” in accordance with FERC Order 800.

II. ABOUT MASSCEC

MassCEC is a publicly-funded agency dedicated to accelerating the success of clean energy technologies, companies and projects in the Commonwealth—while creating high-quality jobs and long-term economic growth for the people of Massachusetts. Since it began operating in 2009, MassCEC has helped clean energy companies grow, supported municipal clean energy projects and invested in residential and commercial renewable energy installations, creating a robust marketplace for innovative clean technology companies and service providers.

MassCEC’s mission is to accelerate the clean energy and climate solution innovation that is critical to meeting the Commonwealth’s climate goals, advancing Massachusetts’ position as an international climate leader while growing the state’s clean energy economy. MassCEC is committed to creating a diverse, equitable, and inclusive organization where everyone is welcomed, supported, respected, and valued. We are committed to incorporating principles of diversity, equity, inclusion, and environmental justice in all aspects of our work in order to promote the equitable distribution of the health and economic benefits of clean energy and support a diverse and inclusive clean energy industry. MassCEC strives to lead and innovate in equitable clean energy and climate solutions.

III. PROGRAM GOALS AND DESCRIPTION

The Program provides funding for construction projects, relicensing, and feasibility studies for eligible hydropower generation facilities. Applicants may request funding in the following activity areas:

- 1) Upgrade of existing hydropower facilities, including but not limited to:
 - a) turbine replacement or refurbishment;

- b) installation or upgrade of automated controls;
 - c) replacement of wooden flashboards with rubber skirt/inflatable crest gate systems; and
 - d) enhanced fish or eel passage (in conjunction with measures to increase generation).
- 2) Existing hydropower facilities that are engaged or will soon be engaged in the FERC relicensing process and are considering means to increase efficiency, increase capacity, and/or reduce environmental impacts, including but not limited to:
- a) Installation of minimum flow turbine on bypass reach;
 - b) Installation of turbines that reduce fish passage injury and mortality;
 - c) Closer-spaced and/or self-cleaning trash racks; and
 - d) Upgrades that increase levels of dissolved oxygen downstream of facility.
- 3) Development of new hydropower facilities that are eligible for FERC conduit exemptions or FERC determinations that they are Qualifying Conduit Hydropower Facilities.
- 4) Deployment of advanced hydropower technologies, including but not limited to technologies that enable:
- a) Fish-friendly hydropower
 - b) In-stream hydrokinetic power
 - c) Hydropower digitalization
 - d) Hydropower operational flexibility
- 5) Feasibility studies for facilities described in (1-3) above.

Maximum possible grant amounts will be capped at the lesser of Three Hundred Thousand Dollars (\$300,000) or fifty percent (50%) of actual costs.

IV. ELIGIBILITY

Each Applicant must demonstrate compliance with the following minimum criteria:

Criteria	Description
Eligible Applicant	An Eligible Applicant must be a commercial, industrial, institutional, non-profit or public entity. The Applicant must demonstrate long-term site control over the project location and the rights to the water used to power the system. If the Applicant does not own the dam or conduit associated with the project, a letter of support from the dam or conduit owner is required. Note that once an Applicant has been awarded a grant and executed a grant agreement with MassCEC, that entity is referred to as the Grantee.

FERC Status	<p>Subject facilities must:</p> <ul style="list-style-type: none"> ▪ Have a FERC license or exemption and be in substantial compliance with its conditions (the need to amend a license or exemption to accommodate the proposed project will not disqualify the facility); ▪ Have a FERC order indicating the facility is non-jurisdictional to FERC (the proposed project must not jeopardize this status, as determined by MassCEC in the sole exercise of its discretion); ▪ Have a FERC determination that the facility is a Qualifying Conduit Hydropower Facility; OR ▪ Be seeking a license or exemption under one of the following conditions: <ul style="list-style-type: none"> ○ on a canal system where environmental conditions are managed by the canal system operator under an existing FERC license; OR ○ likely be eligible for a conduit exemption (the determination that a facility is likely eligible for a conduit exemption shall be at MassCEC’s sole discretion).
MA RPS Status	<p>Facilities must be qualified for the MA RPS, or demonstrate a strong likelihood of gaining qualification. See: Massachusetts RPS Regulations. In most cases, this will entail certification by the Low Impact Hydropower Institute (“LIHI”). (Note that for facilities authorized under a FERC conduit exemption or that have a FERC determination as a Qualifying Conduit Hydropower Facility, LIHI certification is not required for MA RPS qualification.) Applicants must be familiar with LIHI’s criteria for certification and how those criteria apply to their facilities. See: www.lowimpacthydro.org. To help MassCEC understand the likelihood of LIHI certification and MA RPS qualification, the application requirements include consultations with the Massachusetts Department of Fish and Game (“DFG”). For all applications, such consultations must be documented by a letter from DFG.</p>
Facility Size, Type and Location	<p>Useful Life: Applicants proposing to rehabilitate or upgrade existing facilities must affirm that the project will have a useful life of at least twenty (20) years and/or that plans and financing are in place to make additional repairs to achieve this useful life.</p> <p>Location: Facilities that are located within the service territory of an electric distribution company that pays into the Massachusetts Renewable Energy Trust are eligible. If the Applicant’s facility is located within the service territory of Massachusetts Municipal Lighting Plant (“MLP”) or interconnects with an MLP, the MLP must have executed a Renewable Energy Trust Fund Membership agreement with either MassCEC or the Massachusetts Technology Collaborative. For more information regarding eligible MLPs, see: http://www.masscec.com/municipal-lighting-plant-communities</p>
Eligible	<p>Dams associated with proposed projects must be intact (i.e., must not have</p>

Technologies	been breached). Projects requiring new dams are ineligible.
Minimum Technical Requirements	<p>Hydroelectric turbines and generators may be either new or refurbished. However, all equipment should be accompanied by warranties and service support options, which may be subject to MassCEC approval.</p> <p>Grantees must self-report annual generation data to MassCEC for five (5) years after completion of project construction.</p>
Related Parties	The Applicant must procure services from contractors using commercially responsible procurement mechanisms, and to the greatest extent practicable, using competitive procurement procedures. Furthermore, the Applicant is required to notify MassCEC in the event that it intends to or has entered into an agreement for goods or services with a related party. For purposes of this solicitation, a related party is any entity that shares any common ownership with Applicant. In the event Applicant is given an award, MassCEC must approve the use of any related party in writing prior to awardee using MassCEC funds to pay for the expenses associated with such related party.

V. ESTIMATED TIMELINE

RFP Released	February 8 th , 2023
Questions due to MassCEC via email to hydro@masscec.com	February 24 th , 2023
Questions with Answers Posted to MassCEC Website	March 3 rd , 2023
Proposals Due	March 31 st , 2023
Interviews or Site Visits of Top Applicants by MassCEC	April-May 2023
Selection Announcement	May-June 2023

VI. HOW TO APPLY

- **Commonwealth Hydro Application Form**
- **Attachment A: Lead Applicant’s Signature and Acceptance Form**

Optionally, Applicants are encouraged to complete the [30-second self-assessment](#) as part of the Certification Program for the [Supplier Diversity Office of Massachusetts \(SDO\)](#).

- MassCEC is interested in understanding the composition of its applicant and awardee pool in the Program. Applicants who choose to complete the SDO self-assessment tool are encouraged to provide a screenshot or printout of the results page with their application packages to support

MassCEC’s effort to collect data regarding the applicant and awardee pool for the Program. While this is not currently a Program requirement, applicant submission of the SDO questionnaire will help MassCEC better understand the composition of our applicant base today and may influence the selection of projects in the future.

The completed Application and all other documentation (including the project budget) should be submitted to hydro@masscec.com in a single PDF file with an additional copy of the project budget in a separate Excel file. “Commonwealth Hydro Application – [Company Name]” must appear in the e-mail subject line.

VII. SELECTION CRITERIA

All projects will be evaluated with respect to the criteria discussed in this section. MassCEC reserves the right to reject without further consideration any applications that, in its sole judgment, fail to meet the threshold requirements.

MassCEC staff may request supplemental information during the review process. MassCEC may also request an interview with qualified Applicants and/or a site visit. If MassCEC requests a site visit, the Applicant must agree to and comply with any COVID-related precautions MassCEC requires, which will be discussed prior to the visit. MassCEC may use a technical consultant or convene a panel of external reviewers to assist it in evaluating the applications.

Applications that meet the threshold criteria will be evaluated competitively with respect to the following:

Criteria	Sub-Criteria
<p>Project Characteristics</p>	<ul style="list-style-type: none"> • Descriptions of existing facility and proposed project are clear • Dam is in compliance with dam safety regulations. MassCEC prefers projects at facilities with no safety or other deficiencies, and that are in good condition • Project objectives are clear • Regulatory/licensing status is clearly explained and any new permits or amendments appear reasonable to obtain
<p>Project Programmatic Benefits</p>	<ul style="list-style-type: none"> • Quantity of incremental energy and RECs produced, and any other energy benefits to the Commonwealth of Massachusetts are clearly stated • Timeframe to completion is within three (3) years • The project offers direct economic benefits through tax payments to Massachusetts governmental entities, leases to Massachusetts property owners, increased construction or operation jobs for Massachusetts residents, or increased economic activity for Massachusetts firms, and such benefits are quantified

Criteria	Sub-Criteria
<p>Scope of Work, Status and Schedule</p>	<ul style="list-style-type: none"> • Work plan is clear and logical • Schedule is reasonable for scope of project and meets Solicitation requirements • Budget is consistent with competitive procurement of goods and services • Team is qualified to execute the remainder of the project • Team members who participated in prior MassCEC grant-funded projects did so successfully
<p>Financial Request</p>	<ul style="list-style-type: none"> • Cost share percentage provided by the Applicant meets or exceeds required minimum. • Cost-effectiveness of grant request (\$ requested per incremental kWh/year)

VIII. BUDGET

The Program awards of up to Three Hundred Thousand Dollars (\$300,000) are paid to grantees on a milestone and deliverable basis. Milestones and deliverables are to be memorialized, with target completion dates and scopes of work associated with each milestone, in a detailed workplan.

Grant funds will not be disbursed until initiation of the project, including the execution of a grant agreement and the final approval of the proposed Project Workplan by the Program Technical Consultant and MassCEC staff. Awardees will be notified in writing when each of these steps is complete. Applicants should give careful thought to their cash flow needs and must be prepared to support those needs. The grant agreement will require the Lead Applicant to obtain MassCEC approval for changes or revisions to the Project Workplan or the budget.

Applicants should be aware that, if awarded, the contract will stipulate that if after a period of six (6) months from the date of the award notification, an awardee has not completed an approved Project Workplan, the award may be rescinded at MassCEC’s sole discretion. This does not preclude the awardee from reapplying to the Program in a future funding round. If the project and final project milestones have not been completed after twenty-four (24) months from the Project Workplan approval date, MassCEC reserves the right to reduce or rescind any remaining award amounts at its sole discretion.

ELIGIBLE BUDGET ITEMS

It is MassCEC’s policy not to compensate for general administration, overhead, or general-purpose expenses including general purpose materials or facilities. Budget items must be:

- Uniquely associated with the proposed project;
- Justified as to why it is a necessary and reasonable part of the project; and
- Incurred after the execution of a grant agreement with MassCEC.

All budget items generally fall into one (1) of three (3) categories: 1) eligible cash expenses; 2) eligible cost share expenses; or 3) other budget items ineligible for grant funding or cost share. It must be clear why each budget item is necessary for the project. The following items are expenses that *may be included* in the project budget:

- Materials, Equipment, Facilities and Supplies: The equipment must be a new purchase. May include parts and equipment supplied to selected applicants as part of a lump-sum contract.
- Transport (*i.e.*, transporting a key piece of equipment): The proposal should document why transportation is required for the project.
- Travel: Allowable for consultants retained by Applicant Teams as a subcontractor only. Subcontractor travel should be included in overall subcontractor hourly rates when reported as a deliverable.
- Direct labor directly related to the Commonwealth Hydro project: For each employee, list the name, title, anticipated number of hours worked and hourly rate, if applicable. Identify the basis for the pay rate used (*e.g.*, actual salary, composite rate, labor distribution report, technical estimate, state civil service rates, etc.). If composite rates are being proposed for a particular position or group category, please state the rate basis as a composite rate. If new hires are proposed, please explain the basis for how you determined their hourly rate. If applicants are selected for award negotiations, they may be required to provide payroll information or a certification statement to verify that the proposed rates are the actual rates being paid to the proposed individuals. If direct is included, only gross wages, employer-contributed Federal Insurance Contributions Act taxes, state unemployment insurance, and Federal Unemployment Tax Act taxes may be included for such labor; fringe benefits on direct labor or Related Party Labor shall not be included. Subcontractor (including project partner or host) Labor directly related to the Commonwealth Hydro project: MassCEC must approve the use of any Subcontractor Labor in writing prior to awardee using MassCEC funds to pay for the expenses associated with such Subcontractor Labor.

Applicants are encouraged to consider MassCEC's [Clean Energy Internship Program](#) to find additional team members to assist with the project. For example, a project milestone may include the hiring of an intern in line with the commencement of any term of the tri-annual MassCEC Internship Program.

COST-SHARE REQUIREMENT

Awardees must provide cost share equivalent to at least fifty percent (50%) of the grant amount awarded. At least twenty percent (20%) of awardees' *required* cost share must consist of cash contributions as defined below. However, applications may include additional cost share of any kind (cash or in kind) over and above the minimum requirement. For example:

- If an Applicant Team requests a Two Hundred Thousand Dollar (\$200,000) grant, and the host site is not at a Public Benefit Project Site, then the Applicant Team must demonstrate that it will provide at least One Hundred Thousand Dollars (\$100,000) in cost share toward the project.
- Of this One Hundred Thousand Dollars (\$100,000), at least Twenty Thousand Dollars (\$20,000) must be in the form of cash contributions.
- Any additional cost share contributions in excess of the One Hundred Thousand Dollars (\$100,000)

requirement may be of in kind, cash, or any combination of the two.

All cost share must be used directly for the project during the awardee's contract period.

Cash cost share is an actual cash payment between the Lead Applicant and a vendor or service provider, or the equivalent thereof, and must be supported by documentation. Examples of cash cost share payments for the purposes of this RFP include, but are not limited to:

- Payment, in whole or in part, for materials or the use of equipment directly related to the demonstration project on the part of the Lead Applicant or other members of the Applicant Team; and
- Payment, in whole or in part, for services provided by contractors and consultants on the demonstration project (for monitoring or to assist in installation/maintenance for example).

Cash cost share contributed by members of the Applicant Team apart from the Lead Applicant may be provided in the form of a waived fee or a discount of a marketed product; however, such contributions must be documentable in the form of a Project deliverable.

In kind cost share may include direct labor of project team members at reasonable rates as well as services and materials used for the project; for example, use of equipment provided by a project partner.

INELIGIBLE BUDGET ITEMS

The following items should not be included in the project budget:

- Administrative expenses;
- Overhead (including, but not limited to, telephone, electricity, rent for office/lab space);
- Miscellaneous office equipment and supplies, equipment and supply costs associated with general business operations, or equipment and supplies not related to the Commonwealth Hydro project;
- Postage (including packaging and shipping materials);
- Printing; and
- Fringe benefits (including but not limited to health insurance, 401K plans or similar or other staff benefits).

IX. CONTACT INFORMATION FOR QUESTIONS

All questions regarding the Program and this RFP should be directed to: hydro@masscec.com no later than February 24th, 2023. "Commonwealth Hydro Solicitation 12 Questions" must appear in the subject line. Responses to questions will be posted on the RFP page by March 3rd.

X. GENERAL REQUEST FOR PROPOSALS CONDITIONS

NOTICE OF PUBLIC DISCLOSURE

As a public entity, MassCEC is subject to Massachusetts' Public Records Law, codified at Chapter 66 of the Massachusetts General Laws. Thus, any documentary material, data, or other information received by

MassCEC from an applicant is a public record subject to disclosure. Applicants may not send MassCEC any confidential or sensitive information in response to this RFP; if MassCEC receives any confidential or sensitive information in response to this RFP, then MassCEC shall, in its sole discretion, determine whether any particular document, material, data, or other information is exempt from or subject to public disclosure.

DISCLAIMER & WAIVER AUTHORITY

This RFP does not commit MassCEC to award any funds, pay any costs incurred in preparing an application, or procure or contract for services or supplies. MassCEC reserves the right to accept or reject any or all applications received, waive minor irregularities in submittal requirements, modify the anticipated timeline, request modification of an application, negotiate with all qualified applicants, cancel or modify the RFP in part or in its entirety, or change the application guidelines, when in its best interests.

This RFP has been distributed electronically using MassCEC's website. It is the responsibility of applicants to check the website for any addenda or modifications to an RFP to which they intend to respond. MassCEC accepts no liability and will provide no accommodation to applicants who submit an application based on an out-of-date RFP document.

CONTRACT REQUIREMENTS

Upon MassCEC's authorization to proceed with the proposal, MassCEC and the Lead Applicant(s) will execute a contract substantially in the form of the template Grant Agreement attached hereto as Attachment B which will set forth the respective roles and responsibilities of the parties. The template grant agreement is attached as Attachment B for informational purposes.

ATTACHMENT A: AUTHORIZED APPLICANT'S SIGNATURE AND ACCEPTANCE FORM

Commonwealth Hydro

The undersigned is a duly authorized representative of the Applicant named below. The undersigned has read and understands the RFP requirements and acknowledges and confirms that the Applicant and each member of its team has read and understands the RFP Requirements. The undersigned acknowledges and agrees that all of the terms and conditions of the RFP are mandatory.

The undersigned and each Applicant and each member of its team acknowledges and agrees that (i) all materials submitted as part of the application are subject to disclosure under the Massachusetts Public Records Law, as explained in the RFP; (ii) that MassCEC has no obligation, and retains the sole discretion to fund or choose not to fund the application set forth herein; and (iii) that MassCEC's receipt of the application does not imply any promise of funding at any time.

The undersigned and each member of the Applicant's team understands that, if the Application is selected by MassCEC pursuant to this RFP, the Applicant will execute and deliver an agreement to be provided by MassCEC that shall set forth the terms and conditions, together the respective roles and responsibilities of the Applicant, and each member of its team, and MassCEC, with respect to the project described in the RFP. The undersigned and each member of the Applicant's team acknowledges that they have reviewed the example grant agreement terms provided with the RFP.

I certify that the statements made in this Application, including all attachments and exhibits, are true and correct.

Applicant: _____

(Printed Name of Applicant)

By: _____

(Signature of Applicant or Authorized Representative)

Title: _____

Date: _____

ATTACHMENT B: SAMPLE COMMONWEALTH HYDRO GRANT AGREEMENT TEMPLATE

GRANT AGREEMENT

This Grant Agreement (the “Agreement”), effective as of [Date – Month DD, YYYY] (the “Effective Date”), is by and between the **Massachusetts Clean Energy Technology Center** (“MassCEC”) an independent public instrumentality of the Commonwealth of Massachusetts with a principal office and place of business at 294 Washington Street, Suite 1150, Boston, MA 02108, and [Grantee Name] with a principal office and place of business at [Grantee Address] (“Grantee”). Each of MassCEC and Grantee are at times referred to in this Agreement as a “Party,” and together the “Parties”.

WHEREAS, the development of clean energy technologies requires a successful demonstration and validation of the technology to make it viable for investment and ready for mass production;

WHEREAS, MassCEC created the Commonwealth Hydro program (the “Program”) to provide funding for construction projects, relicensing, and feasibility studies for eligible hydropower generation facilities in the Commonwealth;

WHEREAS, MassCEC has retained the Essex Partnership, a consultancy with extensive experience providing technical consulting services on hydropower projects in New England, in order to provide consultation to Grantee regarding the Project as needed (the “Technical Consultant”);

WHEREAS, pursuant to this Agreement, MassCEC will provide Grantee a grant to demonstrate [description of the Project] (the “Project”) [with CRITICAL PARTNERS] to [Describe nature of involvement with Critical Partners]; and

WHEREAS, [Critical Partner] is a [Nature of Critical Partner], with a principal office and place of business at [Critical Partner’s Address] and will [nature of Critical Partner’s contribution to Project].

NOW, THEREFORE, in consideration of the recitals, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, MassCEC and Grantee agree as follows:

1. Performance of the Work

Grantee shall conduct the Project and provide the deliverables (the “Deliverables”) described in the project workplan (the “Project Workplan”), which shall be developed after the execution of this Agreement by Grantee in collaboration with the Technical Consultant and subject to final approval in writing (email acceptable) by the MassCEC Project Manager(s) designated in Section 4(a) below.

- a. The Project Workplan shall be attached to and incorporated into this Agreement as Attachment 1 without the need to amend this Agreement. For the avoidance of doubt, the Parties agree that MassCEC’s obligations under Section 3 in this Agreement are subject to and conditioned upon a finalized approved Project Workplan in accordance with the terms of this Section 1. MassCEC shall have the right at its sole discretion to allow for additional time for the completion of Deliverables in the Work Plan without need to amend this Agreement. If Grantee cannot satisfy a completion date, it shall seek MassCEC’s prior written approval, email acceptable, of a later completion date and provide reasoning for its request. MassCEC shall approve or deny Grantee’s request, email acceptable, within a reasonable time period.

- b. Grantee is solely responsible for all Project decisions, the preparation of all plans and specifications, and completing the Project in accordance with the Project Workplan. Grantee will, for the full duration of the Agreement, ensure that the Project qualifies as “clean energy” or “clean energy research” as such terms are defined in M.G.L. c. 23J, Section 1 (collectively, the “Clean Energy Project Qualifications”).
- c. Grantee is solely responsible for selecting and entering into a written contract (or contracts) with contractors as necessary to provide the Deliverables and complete the Project Workplan, and for ensuring that the contractors Grantee retains comply with all applicable provisions of this Agreement. Grantee acknowledges that MassCEC shall have no responsibility for managing such contractors or the relationship between Grantee and its contractors. Further, Grantee shall indemnify and hold harmless MassCEC from any Damages (as defined in Section 14) associated with any disputes occurring between Grantee and its contractors arising from or in relation to the Project.
- d. Grantee acknowledges that MassCEC will have no responsibility for management of the Project, including obtaining all local, state, and federal permits, as applicable.
- e. Grantee shall be responsible for completing all required steps to receive funding from any other entity besides MassCEC, as applicable.

2. Term

The term of this Agreement shall commence on the Effective Date, and shall expire on [Date – Month DD, YYYY] (the “Term”).

3. Grant Amount; Payment; Rescission

- a. *Grant Amount.* In consideration of the various obligations to be undertaken by Grantee pursuant to this Agreement, MassCEC agrees to provide Grantee with funds in an amount not to exceed [write out amount] Dollars (\$number) (the “Grant”). The Parties acknowledge and agree that this is a maximum authorization, and MassCEC is under no obligation to transfer the full amount to Grantee, or any amount, in the event Grantee does not satisfy the requirements under this Agreement, including, but not limited to, the development of the finalized and approved Project Workplan. Grantee acknowledges and agrees that this receipt of the Grant, or any portion of this Grant, does not create any rights of preferences to receive subsequent funding from MassCEC. In no event shall the Grant exceed the amount specified in this section.
- b. *Payment.* MassCEC will pay Grant funds to Grantee in installments in accordance with the Project Workplan in Attachment 1 (each installment a “Grant Installment”). Grantee shall submit an invoice by email to MassCEC’s Project Managers listed in Section 4(a). Grantee shall submit each invoice accompanied by a completed and signed Cost Share and Expenditure Certification (Attachment 2) that certifies that the Cost Share requirement has been met, based upon Allowable Expenses incurred and payment made by Grantee. MassCEC shall pay each Grant Installment within forty-five (45) days of approval of the corresponding invoice.

- c. *Rescission.* If Grantee materially breaches any term of the Agreement, in addition to the ability to terminate as set forth in Section 8(a), MassCEC shall have the right to rescind Grant payments; provided, however, that Grantee shall have the opportunity to cure such breach within thirty (30) days of the breach and if Grantee does so, MassCEC shall not exercise the right to rescind Grant payments. If Grantee becomes insolvent, makes an assignment of rights or property for the benefit of creditors, or files for or has bankruptcy proceedings instituted against it under the federal bankruptcy law of the United States, or if MassCEC reasonably believes that such an event is imminent, MassCEC, acting in its sole discretion, may rescind the remaining undisbursed portion of the Grant. If, after a period of six (6) months from the date of the award notification, Grantee has not completed an approved Project Workplan, the award may be rescinded by MassCEC in its sole discretion. If, twenty-four (24) months after the Effective Date, the Project has not been completed, MassCEC reserves the right to reduce or rescind the remaining unfunded portion of the Grant, provided that MassCEC may waive this penalty in its sole discretion.

4. Project Managers

- a. MassCEC and Grantee have designated the following persons to serve as Project Managers to support effective communication between MassCEC and Grantee and to report on the Project's progress (the "Project Managers").

For MassCEC:

[First Name Last Name], ([phone number] / [\[email\]@masscec.com](mailto:[email]@masscec.com))

[First Name Last Name], ([phone number] / [\[email\]@masscec.com](mailto:[email]@masscec.com))

For Grantee:

[First Name Last Name], ([phone number] / [email]@)

- b. Grantee shall obtain prior written approval from MassCEC to make any change to its Project Manager. For the avoidance of doubt, MassCEC may update its Project Manager(s) listed without amending this Agreement, if done in compliance with the notice provisions of Section 5.

5. Notice

- a. Any notice in this Agreement shall be in writing and shall be sent either by (i) facsimile, email, or other electronic transmission, (ii) courier, or (iii) first class mail, postage prepaid, addressed to the Project Manager listed in Section 4(a) at the address indicated in the preamble of this Agreement (or to such other address as a Party may provide by notice to the Party pursuant to this section), and shall be effective (x) at dispatch, if sent by facsimile, email, or other electronic transmission, (y) if sent by courier, upon receipt as recorded by courier, or (z) if sent by first class mail, five (5) days after its date of posting.

6. Publicity; Use of Name

- a. Grantee shall collaborate directly with MassCEC to prepare any public statement, media strategy or announcement relating to or bearing on the work performed or data collected under this Agreement or to prepare any press release or for any news conference in which MassCEC is concerned or discussed, including, but not limited to, any media pitches, interviews, embargoed materials, photo opportunities, blogs, guest columns, media events, or editorial boards which relate to this Agreement or MassCEC (each, a "Public Statement") and shall in no event be permitted to publish, release, or otherwise disseminate any such Public Statement without MassCEC's prior written consent.
- b. Grantee agrees that MassCEC shall have the right to make use of and disseminate, in whole or in part, all work products, reports, Deliverables, and other information produced in the course of the Project, and to use the information in such materials contained to produce summaries, case studies, or similar information resources.

7. Other Requirements

- a. *Monitoring and Evaluation.* Grantee agrees to support MassCEC's program monitoring and evaluation activities, and MassCEC's dissemination of information regarding Grantee's experiences. To this end, Grantee agrees that its key personnel and contractors working on the Project will be available at reasonable times with advance notice to be interviewed by MassCEC or its authorized representatives for purposes of obtaining information on the status of the Project, evaluating the Program, and/or case study development. Grantee agrees to (a) provide Project status updates to the Technical Consultant approximately once per month during the course of the Project; and (b) respond promptly to inquiries for documentation or information from MassCEC or its Technical Consultant.
- b. *Grant Administration.* Grantee shall use the Grant funds only for the activities described in the approved Project Workplan. Grantee shall maintain financial records relating to the receipt and expenditure of all Grant funds in accordance with the terms set forth under this Agreement for a period of seven (7) years from the Effective Date.
- c. *Grant Expenditure.* All costs incurred by Grantee before the Effective Date are incurred voluntarily, at Grantee's risk and upon its own credit and expense. Grantee shall not incur any costs to be charged against Grant funds prior to the Effective Date.

- d. *Cost Share.* Grantee agrees to meet a minimum fifty percent (50%) cost share ("Cost Share") over the Grant term, including a minimum twenty percent (20%) cash cost share. "Cash Cost Share" shall consist only of cash contributed by Grantee or [CRITICAL PARTNERS], documented grants from other parties (such as other state or federal agencies or charitable organizations), or contributions of equipment, materials, or subcontractor labor. Grantee agrees and acknowledges that its Cost Share may be direct labor from Grantee or [CRITICAL PARTNERS], Cash Cost Share or a combination thereof. MassCEC shall determine, in its sole discretion, whether any funds that Grantee seeks to categorize as Cost Share for purposes of this Agreement satisfy the requirements of this Agreement, and MassCEC will pay Grant funds only upon Grantee's demonstration of Cost Share for each Grant Installment by providing (i) Deliverables as set forth in the Project Workplan; and (ii) Expenditure and Cost-Share Certifications at each milestone set forth in the Project Workplan. Grantee agrees that, in the absence of such Cost Share, MassCEC shall not be bound by this Agreement to provide any Grant Installment. Grantee's cumulative Cost Share amount at the time Grantee submits any invoice to MassCEC shall constitute no less than forty percent (40%) of total of all invoiced Grant Installments.
- e. *Allowable Expenses.* Grantee's costs uniquely associated with the Project and incurred directly in the completion of Milestones set forth in the Project Workplan and identified in the Project Budget (the "Allowable Expenses") shall be eligible for Cost Share. For the avoidance of doubt, Allowable Expenses shall not include general administration, overhead, mark-ups, travel (by Grantee) or general-purpose facilities, equipment, materials, or software.
- f. *Patent Filings.* Grantee shall notify MassCEC in writing (email acceptable) of the filing of all patent applications and all issuances to it of any and all patent(s) directed to an invention conceived, made and/or obtained, in whole or in part, by Grantee in the course of, and/or resulting or stemming from, research or development funded in whole or in part by the Grant funds that may result in a patent or patent application or patent rights within thirty (30) days following such filing(s) which commitment shall survive termination of this Agreement.
- g. *Licensing of Technologies.* Grantee shall notify MassCEC in writing (email acceptable) of the licensing of any technologies conceived, made and/or obtained, in whole or in part, by Grantee in the course of, and/or resulting or arising from, research or development funded in whole or in part by this MassCEC award within thirty (30) days of such licensing, which commitment shall survive termination of this Agreement. Under no circumstances shall Grantee be permitted to deny or fail to disclose the existence of such a licensing arrangement, regardless of whether such a nondisclosure obligation exists under the arrangement. To the extent such licensing arrangement restricts Grantee from revealing confidential terms of the arrangement, Grantee shall provide MassCEC with a non-confidential description of the arrangement by withholding or redacting any information that would violate such confidentiality obligations.

8. Termination

- a. MassCEC may terminate this Agreement at any time if Grantee has materially breached any term of the Agreement and fails to cure such breach as provided in Section 3(c).
- b. MassCEC may terminate this Agreement in the event of loss of availability of sufficient funds for the purposes of this Agreement or in the event of an unforeseen public emergency or other change of law mandating immediate action inconsistent with MassCEC performing its obligations under this agreement.

- c. Except as otherwise provided in the Agreement, the rights and obligations of each of the Parties under Sections: 5, 6(b), 7(b), 7(f), 7(g), 8, 10, 11, 14, 15, 18, 19, 20, 21, 23, 25, and 26 of this Agreement shall survive and remain in effect after the termination or expiration of this Agreement.
- d. Throughout the term of this Agreement, Grantee agrees and acknowledges that to receive payments of Grant Installments, Grantee must ensure the Project conforms with (i) the Clean Energy Project Qualifications, (ii) the Massachusetts Presence Requirement, (iii) the Project Workplan, and (iv) that the Project is completed within four (4) years of the Effective Date. The Parties agree that in the event MassCEC determines, in its sole discretion, that Grantee has failed to comply with any of the requirements of (i) through (iv) in the immediately preceding sentence, MassCEC shall have the right to immediately terminate this Agreement in accordance with this section and reduce or rescind Grant Installments. In addition, pursuant to Section 11, Grantee shall be required to refund any and all non-complying Grant Installments, or portions of such Grant Installments, made by MassCEC prior to the effective date of such termination ("Termination Date"), in the event an audit reveals the existence of a Nonconformance Event (as defined in Section 11) at any other time on or after the Effective Date.

9. Tax Forms and Grant Taxability

- a. Grantee shall provide MassCEC with a properly completed United States Internal Revenue Service ("IRS") Form W-9 (the "W-9"). Failure to provide the W-9 shall be grounds for withholding all Grant Installments until such W-9 is received. W-9s shall be emailed to finance@masscec.com.
- b. Grants may be considered taxable income by the IRS and the Massachusetts Department of Revenue. Grantee is solely responsible for any failure to timely consult with a tax professional to determine the federal and/or state implications of this Agreement. MassCEC will issue an IRS Form 1099 to each Grantee. For all tax-exempt entities (including government entities), a tax-exemption certificate or IRS tax-exemption determination letter must be emailed to finance@masscec.com.

10. Access and Use

Grantee agrees to license or otherwise make available to MassCEC in perpetuity, without charge, the Grantee's interest in and copyright (if any) to all non-confidential materials prepared and produced for the Project, including, without limitation, all plans, specifications, and analyses developed in connection with the Project and specified as being for MassCEC's use and public dissemination; provided, however, that any and all inventions that are conceived or first reduced to use during the course of the Project shall be the sole property of Grantee (except that if jointly invented, title shall flow in accordance with United States patent law), and any licensing requests for such inventions shall be subject to good faith negotiations between the Parties.

11. Audit

At any time prior to the completion of the Project and as otherwise provided in this section, MassCEC will have the right to audit Grantee's or its other agents' records to confirm the use of the Grant awarded under this Agreement. If such audit reveals that any portion of such funds was utilized for purposes not permitted under the Agreement (a "Nonconformance Event"), then Grantee shall refund to MassCEC the amount determined by such audit to have been improperly used within thirty (30) days of Grantee's receipt of such audit and demand. In the event such audit reveals a Nonconformance Event, MassCEC shall be permitted to immediately terminate this Agreement and discontinue disbursing Grant Installments to Grantee effective as of the date the audit is completed, subject to any limitations

set forth by Section 8. Grantee shall maintain books, records, and other compilations of data pertaining to the funds paid under the Agreement to the extent and in such detail as shall properly substantiate use of such payments. All such records shall be kept for a period of seven (7) years, starting on the first day after final payment under the Agreement (the "Retention Period"). If any litigation, claim, negotiation, audit, or other action involving the records is commenced prior to the expiration of the Retention Period, all records shall be retained until completion of the audit or other action and resolution of all issues resulting from audit or other action, or until the end of the Retention Period, whichever is later. MassCEC or the Commonwealth or any of their duly authorized representatives shall have the right at reasonable times and upon reasonable notice, to examine and copy at reasonable expense, the books, records, and other compilations of data of the Grantee which pertain to the provisions and requirements of this Agreement. Such access may include on-site audits, review, and copying of records.

12. Assignment and Subcontracting

Grantee shall not assign or in any way transfer any interest in Grant funds without the prior written consent of MassCEC, including subcontracting any services except as otherwise included in the Project Workplan; provided, however, that any subcontract entered into by Grantee pursuant to this Section 12 shall not relieve Grantee from any of its obligations pursuant to this Agreement, any act or omission by a subcontractor of Grantee shall be deemed an act or omission by Grantee, and Grantee shall be responsible for each of its subcontractors complying with all obligations of Grantee pursuant to this Agreement.

13. Compliance with Laws

Grantee agrees to comply with all applicable federal, state, and local statutes, rules, regulations, and permitting requirements, including, but not limited to, all laws promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged, or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits, or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation, gender identity, or for exercising any rights afforded by law.

14. Indemnification

- a. To the fullest extent permitted by law, Grantee shall indemnify and hold harmless the Commonwealth, MassCEC, and each of their respective agents, officers, directors, and employees (together with the Commonwealth and MassCEC, the "Covered Persons") from and against any and all liability, loss, claims, damages, fines, penalties, costs, and expenses (including reasonable attorney's fees), judgments and awards (collectively, "Damages") sustained, incurred or suffered by or imposed upon any Covered Person resulting from (i) any breach of this Agreement or false representation of Grantee, its officers, directors, employees, agents, subcontractors or assigns under this Agreement, or (ii) any negligent acts or omissions or reckless misconduct of Grantee, its officers, directors, employees, agents, subcontractors or assigns. Without limiting the foregoing, Grantee shall indemnify and hold harmless each Covered Person against any and all Damages that may arise out of or are imposed due to the failure to comply with the provisions of applicable law by Grantee or any of its agents, officers, directors, employees, subcontractors, or assigns.

- b. In no event shall either Party be liable for any indirect, incidental, special, punitive, or consequential damages whatsoever (including, but not limited to, lost profits or interruption of business) arising out of or related to Grantee's, its officers', directors', employees', agents', subcontractors', or assigns' performance of the Project under this Agreement.
- c. The Parties acknowledge that the Technical Consultant is an independent contractor, and in no event shall any Covered Person be liable to Grantee or any other party for any Damages sustained, incurred, or suffered by or imposed upon the Grantee or any of its officers, directors, employees, agents, subcontractors, or assigns associated with the Technical Consultant's actions, omissions, negligence, or misconduct in relation to the Project. Further, except to the extent such Damages are determined to have resulted from the willful misconduct or fraudulent behavior of the Technical Consultant, the Technical Consultant shall not be liable for any Damages sustained, incurred, or suffered by or imposed upon the Grantee or any of its officers, directors, employees, agents, subcontractors, or assigns, associated with the Technical Consultant's actions, omissions, negligence, or misconduct in relation to the Project.

15. Public Records and CTHRU

As a public entity, MassCEC is subject to the Commonwealth's Public Records Law, codified at M.G.L. c. 66. Thus, any documentary material, data, or other information received by MassCEC from an applicant is a public record subject to disclosure. Grantee acknowledges and agrees that MassCEC, in its sole discretion, shall determine whether any particular document, material, data, or other information is exempt from or subject to public disclosure. Grantee agrees and acknowledges that it shall not send MassCEC any confidential or sensitive information under this Agreement.

Grantee agrees and acknowledges that MassCEC shall have the right to disclose the name of Grantee and/or payee, the amount of the payment pursuant to this Agreement, and any other information it may deem reasonably necessary on CTHRU, the Commonwealth's online database of state spending, or any other applicable state spending website.

16. Insurance

Grantee certifies that appropriate insurance coverage for all activities under this Agreement has been obtained and shall be maintained in effect through the term of this Agreement. GRANTEE ACKNOWLEDGES THE SUFFICIENCY OF THE TYPES AND AMOUNTS OF INSURANCE COVERAGE MAINTAINED AND THE APPROPRIATENESS OF THOSE COVERAGES FOR THE DURATION OF THE TERM. At MassCEC's request, Grantee will provide MassCEC with copies of the certificates of insurance evidencing such coverage. The insurance requirements for the Project and pursuant to this Agreement are solely Grantee's responsibility and shall not relieve Grantee of any responsibility to MassCEC.

17. Conflict of Interest

Grantee acknowledges that all MassCEC employees are subject to the Commonwealth's Conflict of Interest statute, codified at M.G.L. c. 268A.

18. Lobbying

No funds awarded by this Agreement may be used to pay for or otherwise support any activities intended to influence any matter pending before the Massachusetts General Court or for activities covered by the law and regulations governing "legislative agents" or "executive agents" set forth in the Massachusetts Lobbying Law, M.G.L. c. 3, Section 39.

19. Choice of Law and Forum; Arbitration; Equitable Relief

- a. This Agreement and the rights and obligations of the Parties shall be governed by and construed in accordance with the laws of the Commonwealth, without giving effect to its conflict of laws principles. Any dispute arising out of or relating to this Agreement or its breach, termination, or invalidity, whether before or after termination of this Agreement, if not resolved by negotiation among the Parties within thirty (30) days after such dispute is raised by either Party in writing, will be settled by binding arbitration by a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction over this Agreement. Any such arbitration will be conducted in or near Boston, Massachusetts. The prevailing Party shall be entitled to receive from the other Party its reasonable attorney's fees and costs incurred in connection with any action, proceeding or arbitration under this subsection.
- b. This section shall not be construed to limit any other legal rights of the Parties. Each Party acknowledges and agrees that any breach or threatened breach of this Agreement by the other Party may result in substantial, continuing and irreparable damage to the first Party. Therefore, before or during any arbitration, either Party may apply to a court having jurisdiction for a temporary restraining order or preliminary injunction, where such relief is necessary to protect its interests pending completion of the arbitration proceedings.

20. Severability

Each provision of this Agreement shall be treated as a separate and independent clause and any decision from a court of competent jurisdiction to the effect that any clause or provision of this Agreement is null or unenforceable shall in no way impair the validity, power, or enforceability of any other clause or provision of this Agreement.

21. Amendments and Waivers

MassCEC may amend Section 15 (without any action by Grantee) to reflect changes in law or MassCEC policies and shall promptly deliver any and all such amendments to Grantee in the manner provided in Section 5. Except as provided in the immediately preceding sentence, no amendments to or modifications of this Agreement, and no waiver of any provision of this Agreement, shall be effective unless the same shall be in writing and shall be signed by each of the Parties. Any waiver by MassCEC of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or any other provision of this Agreement. Forbearance or indulgence in any form or manner by a Party shall not be construed as a waiver, or in any way limit the remedies available to that Party.

22. Force Majeure

Neither Party shall be liable or responsible to the other Party, nor be deemed to have breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) actions, embargoes, or blockades in effect on or after the date of this Agreement; (e) national or regional emergency; and (f) strikes, labor stoppages or slowdowns. The Impacted Party shall give notice within two (2) days of the Force Majeure Event to the other Party, stating the period of time the occurrence is

expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of ten (10) days following written notice given by it under this section, the other Party may thereafter terminate this Agreement upon fifteen (15) days' written notice.

23. Independent Status

Nothing in this Agreement will be construed or deemed to create a relationship of employer and employee, partner, joint venturer, or principal and agent between MassCEC and Grantee, its employees, agents, or officers.

24. Counterparts

This Agreement may be executed in two (2) or more counterparts, and by the Parties on separate counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

25. Interpretation

The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement. For purposes of this Agreement, (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references in this Agreement: (x) to sections, subsections, schedules, and exhibits mean the sections of, the subsections of, and schedules and exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions of such agreement, instrument, or other document; and (z) to a statute means such statute as amended from time to time and includes any successor legislation to such statute and any regulations promulgated under such statute. Whenever the singular is used in this Agreement, the same shall include the plural, and whenever the plural is used in this Agreement, the same shall include the singular, where appropriate. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. This Agreement is the result of negotiations between, and has been reviewed by, the Parties and their respective legal counsel.

26. Binding Effect; Entire Agreement

This Agreement shall be binding on the Parties and their respective successors and permitted assigns, and shall inure to the benefit of the Parties and their respective successors and permitted assigns. Except as provided in the immediately preceding sentence, nothing in this Agreement shall be construed to create any rights or obligations except between the Parties, and no person shall be regarded as a third party beneficiary of this Agreement. This Agreement embodies the entire understanding and agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior oral or written agreements and understandings relating to such subject matter. No statement, representation, warranty, covenant, or agreement of any kind not set forth in this Agreement will affect, or be used to interpret, change, or restrict, the express terms and provisions of this Agreement. Furthermore, neither Grantee's nor any of its subcontractors' provision of services under this Agreement implies, establishes or otherwise creates any rights or expectations of additional contracts with the MassCEC, whether related or unrelated to the subject matter of this Agreement. The following (together with all exhibits, schedules, and attachments) are hereby incorporated into this Agreement by reference:

- a. Attachment 1 —Cost Share and Expenditure Certification

[Remainder of Page Intentionally Blank]

In witness whereof, the Parties have caused this Agreement to be duly executed and delivered by their duly authorized officers effective as of the Effective Date.

Massachusetts Clean Energy Technology Center

[Grantee's full legal entity name]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Federal Tax ID No.:

Attachment 2—Cost Share and Expenditure Certification

For submission with Grantee’s invoice

Grantee Contact and Project Financing Information	
Project Title	
Grantee Contact Name, Title	
Company/Organization	
Milestone # and Name	
Grant Installment Amount Requested	
Grantee Cost Share Amount for Milestone	
Cost Share Source(s)	<i>I.e. Investors, in-kind, labor, cash, etc. Please include names of entities contributing to each type of cost share, amounts for each</i>

This Cost Share and Expenditure Certification is subject to the Agreement, by and between Grantee and MassCEC. By signing below, the undersigned certifies that:

1. They are authorized to sign on behalf of Grantee;
2. MassCEC, pursuant to Section 11 of the Agreement, has the right to audit records to confirm the use of funds is consistent with the Grant requirements and may do so at any time in compliance with the terms of the Agreement;
3. Grantee has used and/or will use all Grant funds for the Project.

By: _____
 (Signature of Authorized Representative)

Name _____

Title _____

Date _____