

**Grant Agreement
between [Grantee]
and the Massachusetts Clean Energy Technology Center**

This Grant Agreement (the “Agreement”) is effective as of [Date – Month DD, YYYY] (the “Effective Date”) by and between the **Massachusetts Clean Energy Technology Center** (“MassCEC”), an independent public instrumentality of the Commonwealth of Massachusetts (the “Commonwealth”) with a principal office and place of business at 63 Franklin Street, 3rd Floor, Boston, MA 02110, 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, MassCEC offers financial assistance in the form of grants to entities that have submitted a request for funding consistent with the requirements of the Commonwealth Hydropower program (the “Program”);

Whereas, Grantee has submitted an application for funding of [Description of project] (the “Project”); and

Whereas, MassCEC desires to provide requested funding.

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

- a. Grantee shall complete the Project and provide the deliverables described in the Scope of Work (the “Deliverables”) set forth in Attachment 1 (the “Scope of Work”).
- b. Grantee is solely responsible for all Project decisions, the preparation of all plans and specifications, and completing the Project in accordance with the Scope of Work.

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 (\$numerical amount) (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. Grantee acknowledges and agrees that receipt of this 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.* Grantee shall enroll in MassCEC's Automated Clearinghouse ("ACH") system to receive payment by completing the ACH enrollment form attached to this Agreement in Attachment 6 and submitting it to Finance@masscec.com at or before the submission of their first invoice. Any changes to the information in the ACH form must be submitted to Finance@masscec.com through an updated ACH enrollment form within thirty (30) days of any such change. MassCEC will pay Grant funds to Grantee in installments in accordance with the Schedule and Deliverable table set forth in Attachment 1 (each installment a "Grant Installment") within forty-five (45) days of approval of the corresponding Deliverable, receipt of a written invoice describing the work performed with Grant funds during the invoice period, and receipt of a completed and signed [*IF APPLICABLE: Cost Share and*] Expenditure Certification (Attachment 2).
- 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.
- d. *Budget Adjustments.* Notwithstanding the foregoing, the Parties acknowledge that the costs listed in the Project Budget in Attachment 2 ("Project Budget") are estimates. Therefore, within either the Design Phase or Construction Phase, Grantee may shift funds between line items or expense category, provided the total amount of Related Party Expenses as a percentage of total costs does not exceed fifteen percent (15%) of Allowable Expenses for any Milestone set forth in the Scope of Work.
- e. *Grant Installment Adjustments.* If Grantee submits an invoice for a Grant Installment for a given Milestone (as set forth in the Scope of Work) that is less than the Maximum Grant Installment payable for that Milestone shown on the Scope of Work, Grantee may request in writing (email acceptable) that the unpaid portion of the Grant Installment be rolled over into subsequent Grant Installment(s), subject to the relevant Cost Share requirement for the subsequent Grant Installment(s). MassCEC in its sole discretion, may approve such requests by email.
- f. *Ability to Carry Cash Balance.* Grantee hereby represents and warrants that it has sufficient cash reserves to pay its consultants, vendors, or other contractors during any interim periods before or between receipt of Grant Installments.
- g. *Grant Expenditure.* All costs incurred by Grantee before the Effective Date are incurred voluntarily, at Grantee's risk and upon its own credit and costs, and Grantee shall not incur any costs to be charged against Grant funds prior to the Effective Date.

4. Cost Share and Allowable Expenses

- a. *Cost Share.* Grantee agrees to meet and maintain a minimum fifty percent (50%) cost share for each Project Milestone ("Cost Share"). MassCEC and Grantee will share in any cost savings that result from Project expenses that are less than the amount identified in the Project Budget

(Attachment 2) by maintaining the minimum Cost Share. Grantee agrees and acknowledges that its Cost Share for either phase may be cash, documented grants from other parties (such as other state or federal agencies or charitable organizations), or a combination thereof, but that consultants or subcontractors performing work on the Project shall not provide any of the Cost Share.

- b. *Allowable Expenses.* Grantee's expenses uniquely associated with the Project and incurred directly in the completion of Milestones set forth in the Scope of Work and identified in the Project Budget (the "Allowable Expenses"), shall be eligible for Cost Share or reimbursement from Grant funds. For the avoidance of doubt, Allowable Expenses shall not include general administration, overhead, mark-ups, travel (by Grantee, Related Parties, or subcontractors to Grantee), or general purpose facilities, equipment, materials, or software. If direct labor or Related Party Labor (as defined below), are included, only gross wages, employer-contributed Federal Insurance Contributions Act taxes, state unemployment insurance, Paid Family and Medical Leave Act, 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.
- c. *Related Parties.* Grantee shall notify MassCEC if it intends to or has entered into an agreement for goods or services for the Project with an entity that shares any common ownership with Grantee (a "Related Party"). To the extent such goods or services ("Related Party Expenses") are properly identified in the Project Budget and MassCEC approves such Related Party Expenses in writing in advance, Grantee may use the Grant to pay for such goods or services. For the avoidance of doubt, work performed by the owners or employees of a Related Party ("Related Party Labor") is a type of Related Party Expense.
- d. *Commercially Reasonable Procurement.* Grantee shall procure services from contractors using commercially reasonable procurement mechanisms, and to the greatest extent practicable, using competitive procurement procedures.

5. Deliverables and Schedule

- a. *Deliverables.* Grantee shall provide the Deliverables to MassCEC's Project Manager(s) (as defined below) electronically. When applicable, Grantee shall use the Deliverables templates provided in Attachments 4 and 5.
- b. *Schedule.* The Parties acknowledge that the dates listed in the Schedule and Deliverables Table in the Scope of Work (Attachment 1) are deadlines. At MassCEC's sole discretion, any extensions to the schedule must be approved by MassCEC in writing in advance (email acceptable), and may be accepted without need for a written amendment to this Agreement; provided that such extensions shall not exceed the Term.

6. 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: [Name, title, email address, phone number]

For Grantee: [Name, title, email address, phone number]

- b. Grantee shall be required to obtain prior written approval from MassCEC to make any change to its Project Manager(s). For the avoidance of doubt, MassCEC may update the Project Manager(s) listed without amending this Agreement, if done in compliance with the notice provisions of Section 7.

7. Notice

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.

8. Publicity; Use of Name

- a. For one (1) year after expiration of the Term, 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's completion, and to use the information in such materials contained to produce summaries, case studies, or similar information resources.

9. Other Requirements

- a. *Program Evaluation.* Grantee agrees to support MassCEC's Program 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 Program evaluation or case study development. Further, upon MassCEC's reasonable request, Grantee shall provide MassCEC information including, but not limited to, (a) types of equipment installed, (b) performance history of the Project including operational challenges, (c) types and quantities of materials processed, and (d) amount of energy produced and its use. This paragraph shall survive this Agreement for a period of three (3) years from the date the final Deliverable is submitted.
- b. *Production Tracking System ("PTS") for Electrical Generation.* If the Project produces electricity, Grantee shall register the renewable energy system with MassCEC's PTS in accordance with the requirements of Attachment 7 and shall report electrical generation attributable to the funded

project for a period of not less than five (5) years, beginning on the date of commercial operation of the funded project.

- c. *RPS Notification Requirement.* If the Massachusetts Department of Energy Resources (“DOER”) rejects the facility at which the Project is located for qualification for the Massachusetts Renewable Portfolio Standard (“RPS”), or if the Low Impact Hydropower Institute (“LIHI”) rejects the facility for low impact certification, Grantee must immediately provide MassCEC notice of such rejection. Grantee may then submit an invoice for reimbursement of eligible expenses incurred up until the date of the rejection by DOER or LIHI, less Grantee Cost Share. However, if Grantee is rejected during performance on the final Milestone, the entire Grant Installment associated with the Milestone is forfeited.
- d. *Maintenance of MA RPS Qualification.* Grantee shall maintain the Project facility’s qualification as a Massachusetts RPS-qualified generator for a period of ten (10) years from the date of Project completion. This paragraph shall survive this Agreement for a period of ten (10) years from the date of Project completion.
- e. *Project Alteration or Failure to Operate.*
 - i) MassCEC shall have the right to reduce or rescind the Grant if, as determined by MassCEC in its sole discretion, Grantee will alter or has altered the system location or the system characteristics, such that the Project’s expected capacity or energy output will be reduced by more than twenty percent (20%) of the output identified in the Scope of Work.
 - ii) If the completed Project begins operations but shuts down within two (2) years of its Commissioning (as defined in the minimum technical requirements as set forth in Attachment 6), Grantee shall notify MassCEC in accordance with Section 7. Upon receipt of such notice, MassCEC shall have thirty (30) days within which to notify Grantee that it elects to demand repayment of up to fifty percent (50%) of the Grant. If the completed Project begins operations, but shuts down after two (2) years of operations, but before five (5) years of operations from its Commissioning, Grantee shall notify MassCEC in accordance with Section 7. Upon receipt of such notice, MassCEC shall have thirty (30) days within which to notify Grantee that it elects to demand repayment of up to twenty-five percent (25%) of the Grant.
 - iii) Grantee shall not remove or relocate any Grant-funded equipment for its useful life, defined for purposes of this Agreement as twenty (20) years, without prior written approval by MassCEC. In addition, Grantee will ensure that the Project complies with the minimum technical requirements as set forth in Attachment 6. Any material changes to the Project (e.g., design or technology modifications that lead to reduced energy generation or to significantly altering the permitting approach) must be approved by MassCEC in writing in advance email acceptable). This section shall survive the Agreement until the end of the useful life of the equipment.
- f. *Standard of Care.* Grantee shall perform all work related to this Agreement in a competent, complete, and professional manner with due diligence and in accordance with the highest industry standards of professionalism and competence, and shall require any and all contractors it engages to perform all work related to this Agreement in the same manner and in accordance with the same standards.

10. Termination

- a. MassCEC may terminate this Agreement at any time if Grantee has materially breached any term of the Agreement.
- 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. The rights and obligations of each of the Parties under Sections: 7, 8(b), 9(b), 9(d), 9(e), 10, 12, 13, 16, 17, 20, 21, 22, 23, 25, 27 and 28 of this Agreement shall survive and remain in effect after the termination or expiration of this Agreement.

11. 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 tax 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.

12. Access and Use

Grantee agrees to license or otherwise make available to MassCEC in perpetuity, without charge, Grantee’s interest in and copyright (if any) to all non-confidential materials prepared and produced in relation to 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.

13. Audit

At any time prior to the completion of the Project and as otherwise provided in this section, MassCEC shall 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 used 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 entitled to immediately terminate this Agreement and discontinue disbursing Grant Installments to Grantee from the date the audit is completed, subject to any limitations set forth by Section 10. Grantee shall maintain books, records, and other compilations of data pertaining to the

funds paid pursuant to this Agreement to the extent and in such detail as to 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 Grantee which pertain to the provisions and requirements of this Agreement. Such access may include on-site audits, review, and copying of records.

14. 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 specified in the Scope of Work.

15. 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.

16. 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 employees, agents, or assigns under this Agreement, or (ii) any negligent acts or omissions or reckless misconduct of Grantee. 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, or subcontractors.
- 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, its employees, agents, or assigns performance of the Project under this Agreement.

Liability [use for public entities in place of Indemnification section above ONLY if requested by Grantee]

- a. Each Party shall assume full liability for its own acts of negligence or willful misconduct in the performance of its obligations under this Agreement, and shall assume full financial and legal liability for all expenses, including reasonable attorneys' fees, resulting from or attributable to any such negligence or omission of its employees, officers, directors, and agents with respect to their failure to adhere to the terms of this Agreement.
- b. In no event shall either Party be liable for any indirect, incidental, special, or consequential damages whatsoever (including, but not limited to, lost profits or interruption of business) arising out of or related to Grantee's performance of the Project under this Agreement.

17. 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 (the "Public Records Law"). Grantee acknowledges and agrees that any documentary material, data, or other information submitted to MassCEC are presumed to be public records. An exemption to the Public Records Law may apply to certain records, including materials that fall under certain categories under a statutory or common law exemption, including the limited exemption set forth in M.G.L. c. 23J, Section 2(k) regarding certain types of confidential information submitted to MassCEC by an applicant for any form of assistance. Grantee shall be solely responsible for considering what documents, materials, data, and other information are submitted to MassCEC in connection with this Agreement.

In accordance with the Public Records Law, MassCEC generally considers the following types of information to be confidential:

- The financial terms contained in leases, power or REC purchase agreements, or service contracts with other parties;
- Project pro-formas and statements regarding financial thresholds;
- Personal information (Social Security numbers should NOT be provided to MassCEC); and
- Trade secrets.

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.

18. 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.

19. 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.

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 Commonwealth's Lobbying Law, codified at M.G.L. c. 3, Section 39.

20. 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.

21. 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.

22. Amendments and Waivers

MassCEC may amend Section 17 (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 7. 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, except as expressly set forth in this Agreement. 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.

23. 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.

24. 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.

25. Counterparts

This Agreement may be executed in two 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.

26. Headings; 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.

27. 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—Scope of Work
- b. Attachment 2—Project Budget
- c. Attachment 3—Expenditure and Cost Share Certification
- d. Attachment 4—Financing Certification Statement
- e. Attachment 5—Construction Project Report Template
- f. Attachment 6—Minimum Technical Requirements for Hydropower Projects

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In witness whereof, the Parties have caused this Agreement to be executed as a document under seal as of the Effective Date set forth in the first paragraph hereof.

Massachusetts Clean Energy Technology Center

[Grantee's full legal entity name]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Federal Tax ID No.:

ATTACHMENT 1

SCOPE OF WORK

Project Summary

[description of the project, including expected incremental energy output]

Schedule and Deliverables Table

The following table summarizes the Milestone deadlines and associated Grant Installments. Please refer to the Project Deliverable Requirements by Milestone for a detailed description of deliverables to be submitted to demonstrate completion of each Milestone.

To be eligible for a Grant Installment, Grantee must provide MassCEC with all the Deliverables listed associated with the corresponding Milestone. Each Deliverable should be submitted to the MassCEC Project Manager as an electronic (PDF, Word or Excel) file. Deliverables must be approved by the MassCEC Project Manager before a Grant Installment can be paid.

Note: MassCEC shall have the right at its sole discretion to allow for additional time for the completion of Milestones/Deliverables 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. Due dates are deadlines; deliverables and invoices may be submitted earlier and will be reviewed when received.

[If included as part of RFP: *SAMPLE – will be customized for each Project; Applicants should refer to Solicitation for further details*]

Schedule And Deliverables Table		Due	Total Grant Payout
Design Milestone (Design Awards only) – Initial Permit Applications			
<input type="checkbox"/>	1. Engineering designs and/or equipment specifications	<DUE DATE>	Up to 100% of Design-phase portion of grant <\$>
<input type="checkbox"/>	2. Copies of relevant license or permitting applications and any associated analysis including such items as environmental studies, interconnection-related studies, etc.		
<input type="checkbox"/>	3. Application for LIHI certification (for non-conduit Projects only)		
<input type="checkbox"/>	4. W-9 emailed to finance@masscec.com		
Construction Milestone #1 – Site Preparation, Financing and Equipment Order			
<input type="checkbox"/>	1. Digital photos of site showing conditions before Project begins and upon completion of site preparation	<DUE DATE>	Up to 30% of Construction Phase Grant, if MA RPS

	2. Updated Construction Phase budget (Include here if Design Phase part of Project)		qualification is obtained or imminent; otherwise, up to 15% of Construction Phase Grant <\$>
<input type="checkbox"/>	3. Financing Certification Statement (Attachment 4) signed by Grantee confirming that all construction financing is in place		
<input type="checkbox"/>	4. Application for LIHI certification (for non-conduit Construction-Only Projects only)		
<input type="checkbox"/>	5. Copies of key equipment orders (include descriptions if not previously supplied in Design Phase, or changes made since)		
<input type="checkbox"/>	6. W-9 emailed to finance@masscec.com (Include here if no Design Phase)		

Construction Milestone #2 – Delivery and Installation of Equipment			
<input type="checkbox"/>	1. Draft completed Construction Project Report template, submitted in an editable Word format	<DUE DATE>	Up to 85% of Construction Phase Grant, if MA RPS qualification is obtained or imminent; otherwise, up to 42.5% of Construction Phase Grant <\$>
<input type="checkbox"/>	2. Digital photos of new equipment/systems (MassCEC may use these pictures for publicity)		
<input type="checkbox"/>	3. Copy of warranty or service contract for key equipment		

Construction Milestone #3 – Commissioning and Final Permitting			
<input type="checkbox"/>	1. Final Construction Project Report template that addresses MassCEC comments	<DUE DATE>	Up to 100% of Construction Grant, less previous amounts disbursed <\$>
<input type="checkbox"/>	2. Commissioning report documenting that all Grant funded systems are operating as the design intended and pursuant to Attachment 6.		
<input type="checkbox"/>	3. Authorization to interconnect from the utility, if applicable		
<input type="checkbox"/>	4. Final permits, licenses or license amendments		
<input type="checkbox"/>	5. Evidence of MA RPS qualification (if not previously provided)		
<input type="checkbox"/>	6. Initial electrical generation report to the Production Tracking System (MassCEC will verify electronically)		

ATTACHMENT 2
PROJECT BUDGET

**Attachment 3
EXPENDITURE AND COST SHARE CERTIFICATION**

Required for *each* request for a Grant Installment

Grantee Name: _____

Grant Agreement Number: _____

Payment Mailing Address: _____

Date Submitted: _____

Grant Milestone: _____

Requested Amount: \$ _____

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

1. S/he is authorized to sign on behalf of Grantee;
2. MassCEC, pursuant to Section 13 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. Exhibit A* attached here sets forth a complete and accurate detailed summary of the Allowable Expenses in connection with Grantee's completion of the Grant Milestone;
4. Exhibit A, including, but not limited to, the calculation of the amount payable to Grantee, complies in all respects with the Cost Share requirements set forth in Section 4(a) of the Agreement; and
5. Grantee has used and/or will use all Grant funds for the Project.

Signature: _____

Printed Name: _____

Title: _____

*** Please complete Exhibit A, Expenditure and Cost Share Summary, and attach to this certification for submission.**

Exhibit A
ACTUAL EXPENDITURE AND COST-SHARE SUMMARY

Instructions to Grantee: Upon completion of each milestone, fill in the table below with actual allowable expenses incurred. Do not include expenses included on prior invoices.

Contractor/Consultant Expenses Incurred	\$
Direct/Related Party Labor Incurred	\$
Other Direct Costs Incurred	\$
Grand Total (total of above 3 rows)	\$
Payment Request	\$
Grantee Cost Share (Minimum 50%)	%
MassCEC Cost Share	%

ATTACHMENT 4

FINANCING CERTIFICATION STATEMENT

For Submission at Construction Milestone 1

Grantee Contact and Project Financing Information	
Project Title	
Grantee Contact Name	
Title	
Organization	
Telephone	
Email	
<p>List all required project-related financing agreements.</p> <p style="padding-left: 20px;">Include sources, amounts and dates executed (month/day/year)</p>	<p>1.</p> <p>2.</p> <p>3.</p> <p style="padding-left: 20px;">(add more if necessary)</p>

The undersigned is a duly authorized representative of Grantee listed above.

I certify that all funds required for the completion of the Project have been secured and are indicated above.

By: _____
(Signature of Authorized Representative)

Title _____

Printed Name _____

Date _____

ATTACHMENT 5

CONSTRUCTION PROJECT REPORT TEMPLATE

For Submission at Construction Milestone 2

Date Submitted: _____

- 1. Project Narrative:** Provide a brief description of the hydropower project.

Hydropower Construction Project Profile Form	
Grantee Name	
Project Title	
Increase in Nameplate Capacity, if any	
Estimated Incremental Annual Electricity Production (kWh)	
Brief Project Description	Project Photo or Rendering
Cost Breakdown	
Total Cost	
MassCEC Funding	
Other Sources of Funding	

- 2. Technical Details:** Please provide updated information about the facility upon project completion.

Technical Worksheet	
System capacity (kW):	Project location (city/town and latitude & longitude):
Technology (e.g., type of turbines or other noteworthy features):	
FERC license number, if applicable:	FERC license expiration date:
Estimated <i>Total</i> Facility Annual Production (kWh) upon project completion:	Summarize method used for estimating production:

- 3. Project Schedule:** Please fill in the following schedule with the dates projected as of execution of contract with MassCEC, and actual completion dates:

Project Schedule		
	Original Plan	Actual Dates
1. Pre-construction permitting		
2. Place order for major system components		
3. Site preparation completed		
4. Major system components delivered to the project site		
5. New systems installed		
6. All systems commissioned; final permits & MA RPS qualification obtained		
Please add comments on the reasons behind schedule changes, if any:		

4. Lessons Learned: Please describe lessons learned in each of the categories below. Think about what went well, what went wrong, what you would do differently next time, and how you would advise someone else going through this process.

Project Development Lessons Learned	
1.	<u>Initial Decision-Making Process and Feasibility Study Stage:</u>
2.	<u>Design, Permitting/Licensing, and Stakeholder Interaction:</u>

3. Procurement:

4. Site Preparation and Installation:

5. Interconnection:

6. Commissioning:

5. Operations and Maintenance: Who will be responsible for preventive maintenance? Routine maintenance and repairs? What are your anticipated operations and maintenance costs (annual and periodic major expenses)?

6. Renewable Energy Certificates (“RECs”) and/or MA Alternative Energy Certificates (“AECs”): How do you plan to sell the RECs generated by the Project? (If Grantee does not have the rights to the RECs generated, please explain.) If the facility is qualified for MA AECs?

7. System Components and Installed Costs: Please provide updated information on major system components and other cost elements, *as of project completion*. Rounded figures are acceptable. Do not include costs of feasibility studies.

Equipment Description (principal components only)	Model	Manufacturer	Location of Manufacturer (City, State, Zip, Country)	Total Cost
Main Equipment Costs				
Peripheral Equipment & Materials Costs				
Design Costs (engineering, permitting, RPS-related, etc.)				
Installation Costs (equipment, labor, electrical, etc.)				
Interconnection Fees & Expenses (if applicable)				
Total Installed Cost				

ATTACHMENT 6

MINIMUM TECHNICAL REQUIREMENTS FOR HYDROPOWER PROJECTS

All projects must demonstrate compliance with the Minimum Technical Requirements set forth in this attachment. These requirements are not intended to be all-encompassing, nor is this attachment intended to be a substitute for engineering specifications or for safety requirements. Site specific conditions and/or local requirements may require additional or specific technical requirements not contained in the following minimum requirements. MassCEC reserves the right to withhold payment to any project that does not satisfy the Minimum Technical Requirements.

Minimum Technical Requirements	
Installation General Requirements	<p>Project electrical work must be performed by a licensed professional electrician.</p> <p>Project components must be installed according to the manufacturer’s instructions and in compliance with all applicable codes and standards including:</p> <ul style="list-style-type: none"> • The provisions of the National Electric Code (NEC) (most recent available at time of installation) • Local, state, and/or federal building laws, codes and practices <p>Electric utility interconnection agreement; authorization to interconnect must be in place at the time of interconnection to the utility grid.</p> <p>All pertinent permits and inspections must be obtained and copies kept on file as required by local codes and/or state law.</p> <p>Installed equipment may not be removed from the site for its useful design life as specified in the grant agreement or terms and conditions.</p>
Mandatory Commissioning	<p>The project must be fully commissioned and a commissioning report must be prepared. Commissioning is the process of ensuring that all systems are designed, installed, functionally tested, and capable of being maintained and operated according to the approved design and owner’s operational needs. At a minimum, the commissioning report should include: inspection process and findings, system and component testing process and findings, and initial system performance findings.</p>
<i>Continued on next page</i>	

<p>All Equipment</p>	<p>The equipment and components that comprise the project must have the following characteristics:</p> <ul style="list-style-type: none"> • All equipment funded in part or in whole by MassCEC must be new and of a design suitable for the proposed installation, with the exception that refurbished turbines and generators with warranties comparable to new equipment may be accepted with MassCEC approval. • UL-listed and compliant with Institute of Electrical and Electronics Engineers (IEEE) standards • Minimum one-year full warranty or comparable service contract coverage to the purchaser against defects, failures, breakdowns, or excessive degradation of electrical output. The warranty shall cover the full cost, including labor, of repair or replacement of defective components or systems. The warranty shall cover the full cost, including labor, of repair or replacement of defective components or systems. The warranty shall also apply to the automated reporting system discussed below.
<p>Reporting to MassCEC’s PTS</p>	<p>Wherever technically feasible, projects supported by the Program must include an automated reporting system that meets the requirements described below, and must report incremental power enabled by the project to the MassCEC PTS for a minimum of five years beginning on the date of commercial operation of the Project. Where automated reporting for incremental generation is not technically feasible, MassCEC will require Grantee to manually report the monthly incremental generation to PTS, calculated by a MassCEC-approved method appropriate to the facility and the funded project.</p> <p>To facilitate automated reporting to the PTS, the facility must have a dedicated meter that:</p> <ul style="list-style-type: none"> • is readily accessible and easily understood by the system owner; • measures the system’s AC output; • is separate from the utility billing meter and does not interfere with utility billing or net-metering; • is a standard utility “revenue quality” meter that conforms to applicable American National Standards Institute (ANSI) C-12 standards and shall be installed on the output side of the renewable system's isolation transformer; and • has a visible display of cumulative energy produced by the renewable energy system and be available for periodic testing and/or re-calibration, if necessary. <p>There are three options for establishing automated reporting to the PTS:</p> <ol style="list-style-type: none"> 1) Vendor-Supplied System: A Data Acquisition System (DAS) that has local PTS-incorporated Automated Reporting features. 2) Vendor-Supplied Service: A DAS with a service that offers remote monitoring that has PTS-incorporated Automated Reporting features. 3) Sample Source Code Integration: A DAS vendor or service provider can customize the software of their system to incorporate this data transfer functionality. <p>Contact your vendor or contact MassCEC for a list of products that have incorporated automated reporting capabilities.</p> <p>More information about Automated Reporting requirements can be found at: www.masscec.com/pts .</p>

Attachment 6 – ACH Enrollment Form
Please submit completed form to Finance@masscec.com

Part I: Reason for Submission		
New Enrollment	Change Enrollment	Cancel Enrollment
Document Included		
Voided Check	Bank Letter	

Part II: Account Holder Information		
Account Holder Legal Name		
dba Name		
Legal Address Number, Street, Apartment/Suite Number		
CityStateZip Code		
Account Holder Tax Identification Number Employer Identification Number (EIN) Social Security Number (SSN)		

Part III: Financial Institution Information		
Financial Institution Name		
Routing Number	Account Number	Account Type CheckingSavings
If this is an Enrollment Modification, you must include your old financial institution information or your request will be returned.		
Old Financial Institution Name		
Old Routing Number	Old Account Number	Old Account Type CheckingSavings

Part IV: Vendor/Customer Information	
This is the person we will contact for any questions regarding this ACH Authorization	
Contact Person's Name	Contact Person's Title
Contact Person's Phone	Contact Person's Email

Part V: Authorization

By signing below, I hereby certify that the account(s) indicated on this form is under my direct control and access; therefore, I authorize the Massachusetts Clean Energy Center to initiate, change, or cancel credit entries to the account(s) as indicated on this form.

For ACH debits consistent with the International ACH Transaction (IAT) rules check one:

I affirm that payments authorized by this agreement are not to an account that is subject to being transferred to a foreign bank account

I affirm that payments authorized by this agreement are to an account that is subject to being transferred to a foreign bank account.

This authority is to remain in full force and effect until the Massachusetts Clean Energy Center has received written notification from either me or an authorized officer of the organization of the account's termination in such time and in such a manner as to afford MCEC a reasonable opportunity to act upon it.

Account Holder Authorized Signature	Print Name
Title	Date