

ATTACHMENT E: Template Community Contract

[DATE], 2018

[COMMUNITY]

Re: 2019 HeatSmart Massachusetts Program

Dear [COMMUNITY],

Congratulations on being selected to participate in the HeatSmart Massachusetts Program (the "Program"). The Massachusetts Clean Energy Technology Center ("MassCEC") is excited to collaborate with you to increase outreach, education, and adoption of clean heating and cooling technology systems within your community.

This letter (the "Letter Agreement") will set out the mutual understanding between MassCEC and [COMMUNITY] (the "Community") regarding the Community's participation in the Program and the provision of marketing materials to the Community by MassCEC.

1. Agreement to Participate in the 2019 HeatSmart Massachusetts Program

a) The Community agrees to participate in the Program, which will drive the community adoption of clean heating and cooling technology projects through a partnership with MassCEC and the installer (the "Installer") selected by the Community (with assistance from MassCEC and a technical consultant selected by MassCEC (the "Consultant") through a competitive process.

2. Marketing Grant

a) MassCEC will provide the Community with a Marketing Grant, as that term is defined herein, and in-kind services, including, but not limited to, template marketing documents and trainings materials for the Community "HeatSmart Coach" and "Municipal Representative" so designated by the Community (collectively, the "Materials"). The Materials will be specific to the Program and will assist the Community with its education, outreach, and marketing efforts in order to gain attendance at local meetings, increase lead generation, and encourage participation in the Program. MassCEC will also participate in certain community events, including leading the "Meet the Installer" presentation.

b) MassCEC will provide each municipality with a base marketing grant in the amount of Five Thousand Dollars (\$5,000) (each a "Marketing Grant") for the reimbursement of miscellaneous marketing expenses directly related to the Program and approved by MassCEC (collectively the "Reimbursement Funds"). Municipalities are eligible for additional Marketing Grant adders of \$1,000 per additional technology, \$2,500 if they meet the Affordable Access Adder requirements, and \$2,500 if they meet the Large Community Adder requirements. Such expenses include, but are not limited to, the costs of printing Materials, postage for mailings, and fees/deposits necessary to secure venues for community meetings (collectively, the "Expenses"). An amount up to One Thousand Dollars (\$1,000) of the Reimbursement Funds may be allocated, upon approval by the Community, as a stipend to the

HeatSmart Coach for services rendered during the Program (the “Stipend”). If awarded the Affordable Access Adder, an additional One Thousand Dollars (\$1,000) of the Reimbursement Funds may be allocated, upon approval by the Community, as a stipend to the HeatSmart Coach or other selected member for services rendered during the Program for outreach to low- and moderate income households (also a “Stipend”). It is the responsibility of the Community to determine whether to, and how to, allocate the Stipend to the HeatSmart Coach or other designee. Additionally, the Community will provide one or both of the following options to one or more residents who volunteer their time during the sign-up period of the Program (“Volunteer(s)”):

- i. Confirmation that the Reimbursement Funds may be used to reimburse for sales tax incurred on pre-approved Expenses and reimburse accordingly
- ii. An alternatively approved method for proving sales tax exemption, such as providing Volunteers with a Tax Exempt Certificate for use at point of purchase

The Community acknowledges that the aggregate amount of Reimbursement is a maximum authorization, and MassCEC is under no obligation to transfer all or any portion of Reimbursement Funds or any other amount to the Community in the event the Community does not satisfy any requirements described herein. Communities do not need to request the entire amount, and MassCEC will pay out the Marketing Grant in increments no greater than \$2,500.

3. Community Commitment and Deliverables

The Community agrees and acknowledges that it shall:

- a) Ensure the Community-designated installer proposal review team will be the lead participant in the competitive selection of the Installer;
- b) Cooperate and collaborate with MassCEC, the selected Installer, and the selected HeatSmart Coach;
- c) Make a reasonable effort to participate every other week in a conference call between MassCEC, the HeatSmart Coach, and the Installer;
- d) Ensure that the HeatSmart Coach agrees to, signs, and abides by the HeatSmart Coach Commitment Form;
- e) Refer to the Program as “HeatSmart Massachusetts” or “HeatSmart Mass” in all community outreach materials and marketing efforts;
- f) Direct individuals interested in participating in the Program to MassCEC’s HeatSmart Massachusetts website and/or its own website in the event that the Community sets up a website to publicize the Program;
- g) Request and receive approval from MassCEC for all Community-developed marketing materials in advance of distribution. The Community agrees that MassCEC shall have the right to make use of and disseminate, in whole or in part, all work products, reports, and other information produced by the Community in the course of the Program. Community agrees to include the

“MassCEC”, “DOER”, “HeatSmart Mass” and “Installer” logos on **any and all** outreach materials that may be developed directly by the Community;

h) Provide MassCEC, upon request, with all email addresses of leads and contacts collected through the Program;

i) Notify MassCEC in advance and collaborate with MassCEC on any events or news conferences concerning the Program. In any media produced by the Community, the Community will not represent that positions taken or advanced by it represent the opinion or position of MassCEC. All media produced by the Community is subject to MassCEC prior written approval;

j) Develop and track a plan to disperse marketing materials to be provided to MassCEC in order to evaluate how successful various disbursement methods were relative to the sign-up and adoption rate within the community;

k) License or otherwise make available to MassCEC in perpetuity, without charge, all non-confidential materials prepared and produced for the Program, including without limitation, all plan and analyses developed in connection with the Program for MassCEC’s use and public dissemination;

l) Provide feedback at the end of the Program to assist MassCEC in the analysis of the efficacy of different outreach strategies and community drivers in increasing community adoption of clean heating and cooling technologies;

m) Utilize the Reimbursement Funds only for Program-related marketing, outreach and education efforts (or for the Stipend, if applicable);

n) Maintain accurate records of cost accounting. In addition, at the close of the sign-up period of the Program, the Community shall provide MassCEC with an itemized list of Expenses or Stipend, if applicable, that were reimbursed with the Reimbursement Funds; and

o) If applicable, provide a written plan to MassCEC detailing how any remaining Reimbursement Funds will be used for clean heating and cooling-related efforts within the Community at the close of the Program.

4. Invoice and Payment Terms

a) All Expenses must be approved by MassCEC in advance (in writing, by email) in order to be considered approved for reimbursement by the Community, and;

b) The Reimbursement Funds for the first Marketing Grant shall become payable by MassCEC within thirty (30) days of receipt by MassCEC of a signed scanned copy of this Letter Agreement. If applicable, the Reimbursement Funds for the second and third Marketing Grants shall become payable by MassCEC within thirty (30) days of receipt by MassCEC proof that previous Marketing Grant has been expended, and MassCEC approval of plan for use of next Marketing Grant funds.

5. Term and Termination

a) This Letter Agreement shall take effect as of the first date listed above (the “Effective Date”), and shall remain in effect for the duration of the Program, which will last one year after the close of the customer sign-up period (the “Term”).

b) This Letter Agreement may be terminated by MassCEC with thirty (30) days written notice to the Community if the Community is in material breach of any term of the Letter Agreement, and such breach has not been cured within the thirty (30) day period. In the event of such termination, the Community shall return to MassCEC all Reimbursement Funds not utilized for Expenses approved and incurred prior to termination.

c) MassCEC may terminate this Letter Agreement in the event of loss of availability of sufficient funds for the purposes of this Letter Agreement or in the event of an unforeseen public emergency or other change of law mandating immediate MassCEC action inconsistent with performing its obligations under this Letter Agreement.

d) The rights and obligations of each of MassCEC and the Community under Sections 5(d), 6(a), 6(c), 6(d), 6(e), 6(h) of this Letter Agreement shall survive and remain in effect after the termination or expiration of this Letter Agreement.

6. General Terms and Conditions

a) Indemnification. To the fullest extent permitted by law, the Community shall indemnify and hold harmless the Commonwealth, MassCEC, and each of their respective agents, officers, directors and employees (together with the Commonwealth, 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 related to or arising out of the Materials or Reimbursement Funds (collectively, "Damages") sustained, incurred or suffered by or imposed upon any Covered Person related to or arising out of the Materials or Reimbursement Funds resulting from (i) the breach of any of the terms of this Letter Agreement or any false representation by the Community, or (ii) any negligent acts or omissions or reckless or intentional misconduct of the Community or any of the Community's agents, officers, directors, employees or subcontractors. Without limiting the foregoing, the Community shall indemnify and hold harmless each Covered Person against any and all Damages that may directly or indirectly arise out of or may be imposed because of the failure to comply with the provisions of applicable law by the Community or any agents, officers, directors, employees or subcontractors. The foregoing notwithstanding, the Community shall not be liable for (i) any Damages sustained, incurred or suffered by or imposed upon any Covered Person resulting from any negligent acts or omissions or reckless misconduct of MassCEC, and (ii) except for liability for death or personal injury caused by the negligence or willful misconduct of Community or for claims of infringement of a third party's intellectual property by Community, the aggregate liability of the Community under this Letter Agreement shall not exceed the greater of the amount of the Materials and Reimbursement Funds received or the amount recovered under any applicable insurance coverage.

b) Compliance with Law. Community 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.

c) Audit. At any time prior to the conclusion of the Program and as otherwise provided in this section, MassCEC shall have the right to audit Community's or its other agents' records to confirm the use of the Grant awarded under this Letter Agreement. If such audit reveals that any portion of such funds was used for purposes not permitted under the Letter Agreement (a "Nonconformance Event"), then Community shall refund to MassCEC the amount determined by such audit to have been improperly used within thirty (30) days of Community's receipt of such audit and demand. In the event such audit reveals a Nonconformance Event, MassCEC shall be entitled to immediately terminate this Letter Agreement and discontinue disbursing Reimbursement Funds to the Community from the date the audit is completed, subject to any limitations set forth by Section 5. Community 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 Letter 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 therefrom, 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 Community which pertain to the provisions and requirements of this Letter Agreement. Such access may include on-site audits, review, and copying of records.

d) Lobbying. No Reimbursement Funds may be used for any activities to influence any matter pending before the Massachusetts General Court or for activities covered by the law and regulations governing "legislative agent" or "executive agent" set forth in the Massachusetts Lobbying Law, M.G.L. c.3, §39.

e) Public Records and CTHRU. As a public entity, MassCEC is subject to Massachusetts' Public Records Law, codified at M.G.L. c. 66. Thus, any documentary material, data, or other information received by MassCEC is a public record subject to disclosure. Community 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. Community agrees and acknowledges that it shall not send MassCEC any confidential or sensitive information under this Letter Agreement. Community agrees and acknowledges that MassCEC shall have the right to disclose the name of Community and/or payee, the amount of the payment, and any other information it may deem reasonably necessary on CTHRU, the Commonwealth of Massachusetts' online database of state spending, or any other applicable state spending website.



f) Waivers. Conditions, covenants, duties, and obligations contained in this Agreement may be waived only by written agreement between the parties. Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the remedies available to that party.

g) W-9 Tax Forms and Grant Taxability. Community 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 Reimbursement Funds until such W-9 is received. W-9s shall be emailed to finance@masscec.com. Reimbursement Funds may be considered taxable income by the IRS and the Massachusetts Department of Revenue. Community is solely responsible for any failure to timely consult with a tax professional to determine the federal and/or state tax implications of this Letter Agreement. MassCEC will issue an IRS Form 1099 to each Community. 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.

h) Independent Status. Nothing in this Agreement will be construed or deemed to create a relationship of employer and employee, partner, joint venture, or principal and agent between MassCEC and the Community, its employees, agents, or officers.

i) Disclaimer. Following the date hereof, the Consultant shall provide Community with written or oral advice, guidance and recommendations in connection with its participation in the Program regarding technology applicability or performance, economic benefits, project performance, marketing guidance, environmental impacts, etc. (collectively, “Technical Advice”). Community agrees and acknowledges that (i) any and all such Technical Advice is being provided solely and exclusively by the Consultant; and (ii) MassCEC does not make any representations and warranties or guarantees of any kind or nature, either expressed or implied, as to any Technical Advice provided by the Consultant to the Community at any time during the Term.

j) Counterparts. This Letter Agreement may be executed in two or more counterparts, and by different parties hereto on separate counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

k) Amendments and Entire Agreement. All conditions, covenants, duties and obligations contained in this Letter Agreement may be amended only through a written amendment signed by the Community and MassCEC. The parties understand and agree that this Letter Agreement supersedes all other verbal and written agreements and negotiations by the parties regarding the Program set forth herein.

MassCEC is excited to work with the Community to launch this innovative business model and increase clean heating and cooling adoption. If you accept the terms and conditions referenced herein, please sign and scan one copy of this letter and email to HeatSmart@MassCEC.com. Please maintain the original copy of this letter for your records.



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Very truly yours,

Stephen Pike
Chief Executive Officer

Accepted & Agreed

[COMMUNITY]

By: _____

Name: _____

Title: _____

Date: _____