

WENHAM, MASSACHUSETTS
COMMUNITY PRESERVATION ACT
GRANT AGREEMENT WITH

This Grant Agreement (this "Agreement") is entered into on this ____ day of _____, 201____, by and between the **Town of Wenham** (the "Town"), a Massachusetts municipal corporation, acting by and through the Board of Selectmen, having its usual place of business at Wenham Town Hall, 138 Main Street, Wenham, MA 01984, and _____ ("Grantee"), a _____, having an address of _____.

WITNESSETH:

WHEREAS, Grantee is the owner of certain property located at _____, Wenham, shown on Assessors Map _____ as Parcel _____, and described in a deed recorded with the Essex South Registry of Deeds/Essex South Registry District of the Land Court (the "Registry") in Book _____, Page ____ / Certificate of Title No. ____ (the "Property"); and

WHEREAS, the Wenham Community Preservation Committee (the "CPC") invited submission of proposals for grants of funds for purposes consistent with the Community Preservation Act, G.L. c. 44B (the "Act");

WHEREAS, Grantee submitted to the CPC an application for funds under Act, a copy of which is attached hereto as Exhibit A and incorporated herein (the "Proposal"), in the amount of \$ _____ for the purpose of _____ (the "Project"), which work is more specifically described in the Proposal and in the Scope of Work described in Exhibit B, attached hereto and incorporated herein (the "Scope of Work"); and

WHEREAS, the CPC reviewed and approved the Proposal and recommended that Town Meeting appropriate CPA funds in the amount of \$ _____ for the purposes of performing the Scope of Work; and

WHEREAS, Town Meeting thereafter appropriated \$ _____ by vote under Article _____ of the _____ Annual/Special Town Meeting to fund the Work, a copy of which vote is attached hereto as Exhibit C.

NOW THEREFORE, the Town and Grantee wish to set forth in this Grant Agreement the terms and conditions of the Grant, and hereby agree as follows:

Agreement

1. Recitals. The recitals above are true and accurate and are incorporated herein by reference.

2. Funding. As recommended by the CPC under Article _____ of the _____ Annual/Special Town Meeting, and as appropriated by said Town Meeting, the Town agrees to grant Grantee up to the sum of \$_____ (the “Funds” or the “Grant Amount”) on the condition that Grantee shall use the Funds only for the purposes of the Project, as set forth more particularly in the Proposal and Scope of Work and documents attached thereto, and in accordance with the terms of this Agreement.
3. Conditions. The award of the Grant Funds to Grantee is conditioned upon the following conditions:
 - a) Work on the Project (the “Work”), as set forth in the Proposal, the Scope of Work, and this Agreement, shall be completed by _____. The Town may grant extensions of the completion deadline for good cause.
 - b) Any excess or remaining Funds shall be returned to the Community Preservation Act Fund if the Project has not been completed as provided for in Sections 3(a) and/or 8.
 - c) [As applicable], Grantee agrees that, prior to the receipt of any Funds, Grantee shall grant and deliver to the Town a recordable _____ [conservation/affordable housing/historic preservation] restriction on the Property on terms acceptable to the Town and meeting the requirements of G.L. c. 184, Sections 31-33, surviving the foreclosure of any lien or other encumbrance on the Property, and substantially in the form of the _____ Restriction attached hereto as Exhibit D and incorporated herein (the “Restriction”). The Restriction shall be conveyed to the Town free of liens, easements and restrictions that would interfere with the Town’s exercise of its rights under the Restriction, and all mortgages on the Property, if any, shall have been subordinated to the Restriction, as evidenced by the mortgagee(s) execution of the Restriction and/or separate subordination agreement, at the Town’s option. Grantee shall promptly record the Restriction with the Registry at its sole cost and expense and provide the Town with evidence thereof before the Town will disburse any Funds.
 - d) Grantee shall seek the approval of, and work closely with, the Permitting Coordinator in the implementation of the Project.
 - e) [For historic preservation projects: Grantee shall perform the Work in accordance with “The Secretary of the Interior’s Standards for the Treatment of Historic Properties” (36 CFR 67 and 68), as these may be amended from time to time (the “Secretary’s Standards”).]
4. Budget/Other Sources of Funding. Prior to the commencement of any work, Grantee must submit a complete budget for the Project, including all final bids that account for: (a) the expenditure of all Funds awarded under this Agreement, (b) all other sources of funding, if necessary, to complete the Project as described herein, and (c) proof of compliance with all applicable procurement requirements. Reimbursement for funds spent will not commence unless sufficient sources of funding have been secured to complete the work/phase of work and the Project budget has been approved by the Town. If the Town determines that the Funds have been spent on goods and/or services not included in the Project budget or

otherwise not authorized under the Act, reimbursement may not be authorized or, if Funds have already been granted, Grantee shall be responsible for repayment of such Funds to the Town.

5. Contract Documents. The Contract Documents consist of this Agreement, the Proposal, the Scope of Work, and all documents attached hereto or referenced therein, including, without limitation, the Restriction [as applicable]. The Contract Documents constitute the entire agreement between the parties concerning the Project.
6. The Work. The Work shall be performed in a good and workmanlike manner, by contractors who are licensed in their respective disciplines, or by Grantee if so licensed, and shall conform to all applicable laws, bylaws, rules and regulations. Grantee shall be responsible for obtaining from federal, state and local agencies all relevant permits, licenses, and approvals prior to commencing the Work. No local permit or license or fee is waived by the award of this grant. The Town shall have the right to review plans and specifications showing the Work to be done for compliance with the Contract Documents.
7. Contact. Grantee shall identify in writing a contact person responsible for administration of the Work. The contact person is _____, who can be reached at _____ [phone] and _____ [email].
8. Payment; Inspections. The Town shall make regular disbursements to Grantee for the cost of performing the Work, which shall be apportioned based on the Work done and made no more than once a month and paid only upon the presentment of detailed invoices from Grantee or Grantee's contractor listing in detail the Work performed and the cost thereof and a completed Project Status Report in the form attached as Exhibit E. The Town shall have the right to ask for supplementary information. Prior to any payment, the Town shall have the right, upon reasonable prior notice to Grantee, to enter the Property, including any building thereon, for the purpose of inspecting the work of Grantee and/or ensuring that Grantee is in compliance with the Restriction. No payment shall be made until the Town reasonably determines that the Work has been done in a good and workmanlike manner and substantially in compliance with the Contract Documents and with legal requirements applicable to the Work. Grantee shall use all such sums only for the purpose of performing the Work, as described in the Contract Documents. The entire cost of performing the Work in excess of the Grant Amount shall be paid by Grantee. Notwithstanding anything herein to the contrary, if the actual total cost of performing the Work is less than the Grant Amount (the difference between the two amounts referred to hereinafter as the "Excess"), the Town shall have no obligation to pay the Excess, and said Excess shall be returned to the Community Preservation Act Fund.
9. Progress Reports. Grantee shall provide the Town with progress reports at six (6)-month intervals beginning one hundred and eighty (180) days from the date of the signing of this Agreement for as long as the Funds remain unexpended, and with final notification within thirty (30) days after the Project has been completed. The Town reserves the right to require supplementary information from Grantee regarding the quarterly reports or final notification. Grantee shall submit a final report to the CPC and the Town, including digital photographs and other documents [if applicable], within thirty (30) days from the Project completion date.

10. Record-Keeping. Grantee agrees to keep, for a period of six (6) years after the Project is completed, such records with respect to the utilization of the Funds as are kept in the normal course of business and such additional records as may be required by the Town. During normal business hours and as often as the Town may deem necessary, the Town shall have full and free access to such records and may examine and copy such records.
11. Default; Termination. In the event Grantee fails to fulfill any of its obligations under this Agreement (including the provision requiring Grantee to comply with the Restriction), as determined by the Town, and such failure is not cured within thirty (30) days after the Town has given written notice to Grantee specifying such failure, the Town shall have the right, in its sole discretion, to terminate this Agreement upon written notice to Grantee. Upon receipt of said termination notice, Grantee shall cease to incur additional expenses in connection with this Agreement. Upon termination, the Town shall be free to pursue any rights or remedies provided within this Agreement, including without limitation, recapture of Funds as set forth in Section 16 below. Upon the expiration or earlier termination of this Agreement, all rights and obligations of the parties hereunder shall expire and be of no further force and effect, except that the provisions of Sections 8, 10, 11, 12, 13, 14, and 20 shall survive said expiration or earlier termination. In the event the Town is required to take legal action under this Agreement, for enforcement or otherwise, Grantee shall be liable for all of the Town's costs expended for the enforcement of this Grant Agreement, including but not limited to reasonable attorney's fees and court costs.
12. Return of Funds. In the event Grantee fails to fulfill any of its obligations under this Agreement and the Agreement is terminated pursuant to Section 11, any funds paid to Grantee under this Agreement and not yet expended shall be returned forthwith to the Town without further expenditure thereof. If Grantee fails to fulfill its obligations under the terms of this Agreement as a result of negligent or intentional acts or omissions of Grantee, Grantee shall be liable to repay to the Town the entire amount of the Grant Amount provided under this Agreement, and the Town may take such steps as are necessary, including legal action, to recover such funds. Any funds so returned or recovered shall be placed in the Town Community Preservation Fund. In the event that the Town takes legal action under this Agreement, Grantee shall pay any and all costs, including reasonable attorneys' fees, expended by the Town in enforcing this Agreement.
13. Liability of the Town. The Town's sole obligation hereunder shall be to make the payment specified in Section 2 of this Agreement, provided that Grantee complies with the terms hereof, including the conditions set forth in Section 3, and the Town shall be under no further obligation or liability. Nothing in this Agreement shall be construed to render the Town liable for any other obligation under this Agreement or to render any elected or appointed official or employee of the Town, or their successors in office, personally liable for any obligation under this Agreement.
14. Indemnification. Grantee shall indemnify, defend, and hold the Town and its departments, officers, employees, representatives and agents harmless from and against any and all claims, demands, liabilities, actions, causes of actions, costs and expenses, including attorney's fees, of any nature whatsoever arising as a result of (a) any injury to person or property resulting

from the Work, (b) the quality of the Work, (c) Grantee's performance of the Work or the negligence or misconduct of Grantee or Grantee's agents, employees, contractors and invitees, (d) the failure of any contractor hired by Grantee to perform the Work or any other act or omission of any such contractor, and (e) any and all claims for the payment by the Town of any amount in excess of the Grant Amount.

15. CPA Signage. Prior to commencement of construction on the Property or reimbursement of these funds, Grantee shall prepare and install, at its own cost and expense unless provided by the Town, a temporary sign placed at the Property, which identifies the Project and acknowledges the CPA grant. The sign shall contain the following phrase: "This project has been generously supported by the Town of Wenham Community Preservation Act Funds.". The sign and language must be approved by the Town. The Grantee shall acknowledge Community Preservation Act financial support in all materials publicizing or resulting from Grant activities. All print, publicity, and other production materials shall include an explicit and conspicuous acknowledgement of CPA Grant support.
16. Independent Status. Grantee acknowledges and agrees that it is acting in a capacity independent of the Town, and shall not be considered an employee or agent of the Town for any purpose.
17. Successors and Assigns. This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives. Grantee shall not assign, subcontract or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the Town, which may be withheld in the Town's sole discretion.
18. Compliance with Laws. Grantee shall comply with all federal, state and local laws, rules, regulations and orders applicable to the Work performed pursuant to this Agreement. Grantee and Grantee's contractors shall indemnify and hold the Town harmless for and against any and all fines, penalties or monetary liabilities incurred by the Town as a result of the failure of Grantee to comply with the previous sentence.
19. Representations and Warranties. Grantee hereby represents and warrants that no taxes are due by Grantee to the Town, and shall execute the Certificate as to Payment of Taxes attached hereto as Exhibit F, and, further, that this Agreement constitutes a valid and binding agreement of Grantee. Grantee has executed the Certificate of Vote, attached hereto as Exhibit G [as applicable].
20. Notice. Any and all notices, or other communications required or permitted under this Agreement, shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, to the parties at the addresses set forth on page 1 or furnished from time to time in writing hereafter by one party to the other party. Any such notice or correspondence shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service or, if sent by private overnight or other delivery service, when deposited with such delivery service.

21. Severability. If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.
22. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts and Grantee submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.

Exhibits:

Exhibit A: Proposal

Exhibit B: Scope of Work

Exhibit C: Town Meeting Vote

Exhibit D: Restriction

Exhibit E: Certificate as to Payment of Taxes

Exhibit F: Corporate Vote, if applicable

Exhibit G: Project Status Report Form

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day and year first above written.

GRANTEE:

TOWN OF WENHAM,
By its Board of Selectmen

(signature)

_____, _____
(print name) (title)

By its Community Preservation Committee

_____, _____
(print name) (title)

_____, _____
(print name) (title)

EXHIBIT A
PROPOSAL

EXHIBIT B
SCOPE OF WORK

EXHIBIT C
TOWN MEETING VOTE

EXHIBIT D
RESTRICTION

EXHIBIT E

PROJECT STATUS REPORT FORM

Agreement #:

Project Name:

Report Date: for the date ending:
or accompanying the invoice dated:

Is this is a final project close out report?

CPA Award Amount:

CPA Award expended to date:

% of CPA Budget expended to date:

List up to five accomplishments or progress towards meeting the goals, objectives, and requirements of this CPA grant.

Use separate pages as necessary

Have there been any delays in meeting the goals, objectives, and requirements of this CPA grant? If so, please explain them.

Use separate pages as necessary

*** Attach documentation that shows the purposes and conditions of this grant award are being met (for example, photos of CPA signage, photos of construction work and completed work, copies of signed contracts, copies of reports from professional consultants, deed restrictions, funding award/commitment letters from other participating grantors, etc.)*

EXHIBIT F

CERTIFICATE AS TO PAYMENT OF STATE TAXES

Pursuant to M.G.L. Chapter 62C, Section 49A, I certify under the penalties of perjury that Grantee has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Social Security Number
or Federal Identification Number

Corporate/Entity Name

by: _____
Signature of Individual

EXHIBIT G
CERTIFICATE OF VOTE
(Entities Only)

At a duly authorized meeting of the Board of Directors of the _____
Name of Corporation

held on _____, it was voted, that
Date

Name

Officer

of this company, be and hereby is authorized to execute contracts and bonds in the name and on behalf of said company, and affix its corporate seal hereto; and such execution of any contract or obligation in this company's name on its behalf by such officer under seal of the company, shall be valid and binding upon this company.

I hereby certify that I am the clerk of the above named corporation and that

_____ is the duly elected officer as above of said company, and that the above vote has not been amended or rescinded and remains in full force and effect as of the date of this certificate.

Date

Clerk

Corporate Seal