

BILLERICA, MASSACHUSETTS
COMMUNITY PRESERVATION ACT
GRANT AGREEMENT

THIS GRANT AGREEMENT (this "Agreement") is entered into on this _____ day of _____, 201____, by and between the Town of Billerica (the "Town"), a municipal corporation duly organized under the laws of Massachusetts and acting by and through its Board of Selectmen, having a usual place of business at Billerica Town Hall, 365 Boston Road, Billerica, MA 01821, and _____ ("Grantee"), having a usual place of business at _____, collectively the "Parties."

WHEREAS, Grantee is the owner of certain property located at _____, shown on Assessors Map _____ as Parcel _____, and described in a deed recorded with the Middlesex North District Registry of Deeds / Registry District of the Land Court in Book _____, Page _____ (the "Property"); and

WHEREAS, Grantee submitted an application, a copy of which is attached hereto as Exhibit A and incorporated herein (the "Proposal") to the Community Preservation Committee (the "CPC") for funds under G.L. c.44B, §1, et seq., the Community Preservation Act (the "CPA"), in the amount of \$_____ for the purpose of _____ (the "Project"), which work is more specifically described in the Proposal and 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 the funds therein requested 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 shall grant to 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.

- a) Work on the Project (the “Work”), as set forth in the Proposal, the Scope of Work, and this Agreement, shall be completed by _____.
- b) Any remaining Funds shall be returned to the Community Preservation General Fund if the Project has not been completed as provided for in Section 3(a). The Town may grant extensions of the completion deadline for good cause.
- c) Grantee agrees that: (i) _____ [describe the Work/Project]; (ii) 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”); (iii) 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; and (iv) Grantee shall promptly record/file the Restriction with the Middlesex North District Registry of Deeds / Registry District of the Land Court at its sole cost and expense.
- d) Grantee shall seek the approval of, and work closely with, the _____ in the implementation of the Project. All Work must be approved by the _____; such approval shall not be in lieu of any local permit, license, or approval that is applicable to the Property, the Building, and/or 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, and (b) all other sources of funding, if necessary, to complete the Project as described herein. 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 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. The Town’s consent shall not be unreasonably withheld.

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. 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. Provided that the Restriction granted to the Town has been recorded, the Town shall disburse an amount not to exceed 75% of the Grant Amount (or \$_____) to Grantee for the cost of performing the Work, which disbursements 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. The Town shall have the right to ask for supplementary information. Prior to any payment, the Town shall have the right to enter the Property to inspect the Work. 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. The balance of the Grant Amount (or \$_____) shall be paid following 100% completion of 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.
9. Reports; Inspections; 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. Grantee shall provide the Town with progress reports at three (3)-month intervals beginning sixty (60) 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.

The Town shall have the right, upon reasonable prior notice to Grantee, to enter the Property, including the Building, for the purpose of inspecting the work of Grantee and/or ensuring that Grantee is in compliance with the Restriction. Grantee further agrees to meet from time to time with _____ or its designee(s), upon reasonable request, to discuss expenditures under this Grant Agreement.

10. 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 forty-five (45) 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 9, 10, 11, 12, 13, and 20 shall survive said expiration or earlier termination.
11. 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 10, 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.
12. Liability of the Town. The Town's sole obligation hereunder shall be to make the payment specified in Section 8 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.
13. 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.

14. 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: "Project Funded in part by Community Preservation Funds." The sign and language must be approved by the Town.
15. 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.
16. 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.
17. 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.
18. 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.
19. 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.
20. 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

IN WITNESS THEREOF, the Parties hereto have executed this Grant Agreement effective on the day written above:

GRANTEE:

By: _____
Name:
Title:

TOWN:

TOWN OF BILLERICA,
By its Board of Selectmen

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Exhibit A

Proposal

Exhibit B

Scope of Work

Exhibit C

Town Meeting Vote

Exhibit D

Restriction