

Terms and Conditions Applicable to Projects Awarded CPA Funding

1. The person/entity submitting the application (the “Applicant”), by affixing his/her/its signature to its Application with the Town of Scituate Community Preservation CPC (“CPC”), agrees to be bound by the terms and conditions set forth herein (the “Terms and Conditions”). In the event of any conflict between these Terms and Conditions and any other Laws, including but not limited to all rules regarding the CPC or the Community Preservation Act (the “CPA”), the provisions hereof shall be automatically revised only to the extent necessary to comply with such Laws. All rights of the CPC hereunder shall be also for the benefit of the Town of Scituate (the “Town”).
2. The funds provided to the Applicant by the CPC (the “Proceeds”) shall be used by the Applicant only for the project and purposes (the “Project”) set forth in its Application, subject to any modifications expressly set forth in the vote of the CPC and/or the Town in approving such Application (“Eligible Project Costs”). No expenditure not expressly authorized is permitted.
3. Capitalized terms not otherwise defined and used herein have the meanings defined below:
 - “Application” means the Application from the Applicant to the CPC for the Project.
 - “Default” means any default of the Applicant of its Obligations.
 - “Eligible Project Costs” means costs directly related to the Project as approved by the CPC and/ the Town as defined above.
 - “Expenses” means all costs incurred by the CPC or the Town in connection with exercising any rights provided herein.
 - “Governmental Authority” means the United States, the Commonwealth of Massachusetts, the Town, or any of their subdivisions, or agencies, including any local authority having jurisdiction over any aspect of the Project.
 - “Laws” means any current or future federal, state and local laws, statutes, rules, ordinances, regulations, codes, decisions, interpretations, orders, or decrees of any court or Governmental Authority having jurisdiction.
 - “Obligations” means all duties of payment, performance, completion or otherwise owed by the Applicant to the CPC or the Town, including the obligation to strictly observe and perform all of the provisions hereof, time being of the essence.
4. The disbursement shall be either by payment of approved invoices to the vendor or directly to the Applicant, at the CPC’s or Town’s election, on each occasion. The Applicant shall present all invoices, or other satisfactory proof of payments to pay/reimburse the vendor/Applicant for payments made for Eligible Project Costs. The obligation of the CPC or the Town to disburse the Proceeds is at all times subject to, among other limitations of Law, satisfaction of the following conditions as of the date the disbursement is made:
 - The CPC shall have received a fully and properly completed request for disbursement with all supporting documentation in the form required by the CPC and/or the Town, as it may be amended periodically.
 - No representation or warranty of the Applicant shall be or have become materially incorrect or inaccurate and there shall be no Default, and no event shall exist which with the giving of notice or the passage of time, would constitute a Default.
 - The Applicant shall have provided satisfactory evidence of Eligible Project Costs incurred in the request for disbursement.

- The Applicant’s right to request funds under this Application shall automatically terminate no later than three (3) years after the date of approval of this Application by the Town, and any balance of appropriated funds shall be returned to CPC general fund and reserves in accordance with the CPA guidelines. The CPC may extend this deadline in its discretion.
- The CPC reserves the right to vote to terminate funding for any project not commenced by July 1st of the fiscal year which is one (1) year after the Town Meeting at which the project funding was approved.
- The Applicant shall execute and record any deed restriction or other form of restriction required by the CPC, the CPA or applicable Laws to protect any repayment of CPC funds in the event of any transfer or other use of the property triggering repayment obligation pursuant to CPC regulations, the CPA or applicable Laws.
- Disbursement of Proceeds is subject to approval and continuing compliance with all requirements of the Town, the continuing availability of funds for the Project, and compliance with the provisions hereof, the CPA and all other Laws.
- The Applicant shall be required to request and obtain a certificate from the CPC (a “Certificate of Completion”) evidencing that the Applicant has met its Obligations with respect to the Project. The CPC may withhold disbursement of a portion of the Proceeds pending the Applicant meeting the requirements for issuance of a Certificate of Completion. The Applicant has not complied with all of its Obligations hereunder until such Certificate of Completion is requested by the Applicant and issued by the CPC.
- The Applicant must conspicuously credit the CPC as a funding source for the Project. This credit must appear on any promotional materials involving the Project (i.e. press releases, brochures, etc.) In addition, temporary signage will be required during construction and a permanent sign will be required to be incorporated and prominently displayed upon completion, in a form acceptable to the CPC as part of the Eligible Project Costs and the Applicant is required to display the sign on the Project as long as the project remains in such use as implemented with CPC funding.

5. The Applicant represents and warrants as follows:

- If the Applicant is an entity, such entity is duly organized, validly existing, and in good standing under the laws of the Commonwealth of Massachusetts and has the power to consummate the transactions contemplated by this Application. The person executing this Application on behalf of such entity has executed and delivered it in the manner and form that complies with all requirements necessary to make it valid, legally binding, and enforceable act of the Applicant.
- This Application has been duly executed by the Applicant and will not violate any Laws, any provision of the Applicant’s organizational documents, nor result in a breach, of any other agreement binding on the Applicant; and constitutes the valid and binding obligation of the Applicant, fully enforceable against the Applicant in accordance with its terms.
- All information in the Application was true and complete in all material respects as of the date of (i) of the Application; (ii) as of the date of its approval by the CPC; (iii) as of the date of approval by Town Meeting; and (iv) again as of the date of each funding request for the Project by the Applicant. The Applicant is aware of no event or other fact that should have been, and has not been, reported in the Application as material information, or to make the Application not misleading.
- The Applicant has obtained, or expects to obtain prior to the commencement of construction of the Project, all approvals and/or permits from all Governmental Authorities for the Project.

6. The Applicant covenants as follows:
 - The Applicant shall use the Proceeds for Eligible Project Costs and for no other purpose.
 - Any duly authorized representative of the CPC shall, at reasonable times, have access to all portions of the Project.
 - The Applicant shall keep any books, records, and documents (collectively the “Project Records”) required to reasonably document all transactions and in accordance with the rules and procedures now or hereafter applicable to such Proceeds under the CPA, made by the CPC, if any, and as may be reasonably necessary to disclose fully the disposition of the Proceeds, all costs incurred to complete the Project and the source of all funds expended towards the Project. All Project Records shall be maintained at the offices of the Applicant within Massachusetts for five (5) years after the date of the last disbursement of Proceeds or issuance of a Certificate of Completion, whichever shall occur last. All such Project Records shall be made available for inspection, copying, audit and examination at all reasonable times by any duly authorized representative of the CPC.
 - The Applicant releases the CPC, the Town, their respective members, employees, agents and representatives from, and agrees to protect, indemnify and save them harmless against, any claims asserted against, any of them, arising in connection with the Proceeds or the Project. All money expended by the CPC or the Town as a result of such claims, together with attorney’s fees and costs and interest at judgment rate from the date of such payment, shall constitute an indebtedness of the Applicant and shall be immediately and without notice due and payable by the Applicant to the CPC. This Section shall survive the termination of this Application.
 - The Applicant will comply with the CPA and all other applicable Laws, and the rules regarding projects and funding established by the CPC as they may be amended.
7. The following events shall constitute a Default under this Application:
 - Any Proceeds are used for any purpose other than Eligible Project Costs; or
 - The Applicant breaches any Obligation, covenant, representation, warranty, or other provision hereof or any other document submitted in connection with the Application; or
 - Any statement made (or omission) in any Application, presentation to the CPC or the Town, certificate or other document furnished in connection with the Application was materially incorrect or misleading in any material respect when made.
8. Upon the occurrence of any Default, the CPC or the Town may:
 - Require immediate repayment of all or any portions of the Proceeds; and
 - Proceed to protect and enforce all rights and remedies under this Application or by applicable Laws; and
 - Suspend or terminate the Applicant’s authority to receive any undisbursed Proceeds at any time.

9. Miscellaneous.

- All remedies provided for herein or by Laws are cumulative and are in addition to any other rights and remedies available. The exercise of any right or remedy shall not constitute a cure or waiver of any Default, nor invalidate any act done pursuant to any notice of Default, nor prejudice the CPC or the Town in the exercise of those rights. The failure of the CPC or the Town to insist upon performance of any term shall not constitute a waiver of any such term. No act of the CPC or the Town shall be construed as an election to proceed under any provision in this Application to the exclusion of any other provision.
- If the CPC or the Town suspends or terminates this Application, the rights and remedies available to the CPC or the Town shall survive the suspension or termination.
- No benefit or burden of the Applicant under this Application may be assigned without the written consent of the CPC, except the Town shall have the rights to all such benefits.
- This Application shall inure to the benefit of, and shall be binding upon, the Applicant and their successors and assigns.
- The invalidity of any provision herein shall not affect the validity of the remaining provisions.
- This Application constitutes the entire agreement between the Applicant and the Town and supersedes all prior oral and written agreements, representations, and negotiations between the parties concerning the Application and the Obligations. The provision hereof may be amended only in writing executed by the Town and the Applicant.
- The headings used herein are for convenience only and do not constitute a part of this Application.
- The Applicant acknowledges that nothing in this Application, and no act of the CPC or the Town or the Applicant, shall be deemed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any other relationship between the Applicant and the CPC or the Town.
- This Application shall be governed by the laws of the Commonwealth of Massachusetts.
- This Application shall remain in force and effect until the date the Applicant has no Obligations under this Application.
- If performance of any obligation under this Application would require the performing party to violate any Law, then the performance shall be reduced to the level permitted by Law.