



c/o State Coastal Conservancy
1515 Clay Street, 10th Floor
Oakland, CA 94612

(510) 286-7193

sfbayrestore.org
info@sfbayrestore.org

Memorandum

Date: February 02, 2018

To: Governing Board
San Francisco Bay Restoration Authority

From: Amy Roach, Counsel

Subject: San Francisco Bay Restoration Authority Grant Agreements

This memorandum describes the provisions that staff anticipates including within most grant agreements for grants of Measure AA funds. After the Authority authorizes a grant of Measure AA funds for a project, staff will prepare and execute a grant agreement with the grantee. A grant agreement is a contract between the Authority and the grantee that sets forth the Authority's commitment to disburse the grant funds and the grantee's obligation to use the funds to carry out the project and to comply with other conditions of the grant. The grant agreement will include provisions that provide assurance that the project will be completed and provisions to protect the Authority financially.

I. Approach to Grant Agreements

Staff intends to follow the Conservancy approach to grant agreements, which is to have model agreements that have most of the potentially applicable terms but are intended to be tailored by project and legal staff as necessary to address the circumstances of each project. This approach is efficient while allowing flexibility.

II. Grant Agreement Terms

Grant agreements will have a variety of provisions that serve different purposes. The basic grant agreement provisions, organized by the purpose served, are described below.

A. Assure Use of Grant Funds for the Project

To ensure that grant funds are expended for their authorized purpose, a grant agreement will include the following:

1. A description of the project in general terms, with a requirement that the project details, schedule, and budget be set forth in a work program that can be approved after execution of the grant agreement and that is incorporated into the grant

agreement. The grantee will be required to complete the project in accordance with the work program. This allows for describing the scope of work in a flexible format that is more easily amended by the parties.

2. Provisions for the Authority to disburse funds only after: a) the grantee has incurred costs, b) the grantee has submitted invoices that include sufficient documentation of such costs, and c) the Authority (through a project manager) has confirmed that the costs incurred are consistent with the approved work program.
3. A provision for the Authority to pay only 90% of each invoice, and to pay the withheld 10% upon the Authority's determination that the project has been satisfactorily completed. This encourages grantees to plan carefully and to complete the project.
4. A requirement that the grantee demonstrate project completion by providing an inspection report, signed by a public works director or a licensed professional, confirming that the project was constructed consistent with approved plans, along with submittal of as-built plans and/or photographs.
5. A requirement that the grantee retain financial records in accordance with Generally Accepted Accounting Principles and make such records available to the Authority and auditors upon request.

B. Assure Timely Completion of Project

Since timely implementation of a project is a factor in the selection criteria, the grant agreement will include terms to assure the project will be completed in accordance with the schedule set forth by the grantee. These terms include:

1. A deadline for the grantee to complete all work under the grant, and a deadline for submittal of the final request for disbursement.
2. A requirement that the grantee obtain performance and labor bonds for contracted work over a certain amount.

C. Protect Authority Finances

Although low, there is a risk that problems with a project could affect the Authority finances. For example, the Authority might disburse funds for a project that is not completed because the grantee decides not to proceed or has financial problems. If an accident at a project site resulted in damage to persons or property, there could be a lawsuit alleging negligence and seeking damages. There will be several grant agreement terms intended to protect the Authority in the unlikely event a problem occurs. These include:

1. A requirement that the grantee and its contractors have general liability, automobile, and worker's compensation insurance.
2. A provision that gives the Authority the right to terminate the agreement.

3. A provision that gives the Authority the right to repayment of all funds disbursed if a project is not completed.
4. A requirement that the grantee indemnify the Authority if the Authority incurs costs and damages due to the grantee's negligence.

D. Other Requirements

There are other typical grant agreement provisions that will be used depending on the facts of a project. Some of these are:

1. At its meeting on November 30, 2016, the Authority adopted Resolution 22, requiring grantees to enter into a project labor agreement for construction projects that meet certain thresholds. Grant agreements for such projects will include the requirement for a project labor agreement.
2. In most cases, a grant for a construction project will require grantees to maintain the completed project for twenty years. This ensures that the use of public funds benefits the public in the long term.
3. For projects constructed on private property not owned by the grantee, a grantee will be required to enter into a written agreement with the landowner reflecting the landowner's authorization for the project and commitment to maintaining (or not interfering with) the project. In some cases, the landowner might be required to record a document on title to property to protect the project for twenty years.

Any other requirements imposed by the Authority as a condition of authorizing a grant for a particular project will also be included in the grant agreement.