

## **EXPLORE THE COAST: SAMPLE GRANT TERMS**

### Standard Explore the Coast Provisions

#### **CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT AND DISBURSEMENT**

The grantee shall not commence the project and the Conservancy shall not be obligated to disburse any funds under this agreement until the following conditions precedent have been met:

1. The authorized body of the grantee has adopted a resolution designating positions whose incumbents are authorized to negotiate and execute this agreement and amendments to it on behalf of the grantee.
2. The Executive Officer of the Conservancy (“Executive Officer”) has approved in writing:
  - a. The work program for the project as provided in the “WORK PROGRAM” section, below.
  - b. If grantee intends to retain contractors, all contractors retained in connection with the project.
  - c. A plan for acknowledging Conservancy funding.
  - d. Any other applicable agreements determined necessary for the project by the Executive Officer.
3. The grantee has provided written evidence to the Conservancy that:
  - a. The grantee has provided for required insurance coverage, including additional insured endorsement, as described in the “INSURANCE” section, below.
  - b. If permits are required for the project, all permits and approvals necessary to the completion of the project under applicable local, state and federal laws and regulations have been obtained.

#### **WORK PROGRAM**

Before beginning the project, the grantee shall submit a detailed work program to the Executive Officer for review and written approval of its consistency with the purposes of this grant agreement. The work program shall include:

1. The specific tasks to be performed.

2. A schedule of completion for the project, specifically listing the completion date for each project component and a final project completion date.
3. A detailed project budget. The project budget shall describe all labor and materials costs of completing each component of the project. For each project component, the project budget shall list all intended funding sources including the Conservancy's grant and all other sources of monies, materials, or labor.

If all or any part of the project to be funded under this agreement will be performed by third parties ("contractors") under contract with the grantee, then the grantee shall, prior to initiating any contractor selection process, submit the selection package to the Executive Officer for review and written approval as to consistency with the purposes of this grant agreement. Upon approval by the Executive Officer, the grantee shall proceed with the contractor-selection process. Prior to final selection of a contractor, the grantee shall submit to the Executive Officer for written approval the names of all contractors that the grantee intends to hire. The grantee shall then comply with the above paragraph regarding submission and approval of a work program prior to project commencement.

The work program shall have the same effect as if included in the text of this agreement. However, the work program may be modified without amendment of this agreement upon the grantee's submission of a modified work program and the Executive Officer's written approval of it. If this agreement and the work program are inconsistent, the agreement shall control.

The grantee shall carry out the project in accordance with the approved work program.

## **PROGRESS REPORTS AND FINAL REPORT**

The grantee shall submit regular Progress Reports as described in the COSTS AND DISBURSEMENTS section below. Progress Reports should use the progress report template provided in Exhibit C. Progress Reports should be provided in both hard copy and electronic format. When the project is complete, the grantee shall submit a Final Report using the Final Report template provided in Exhibit C. The Final Report should be provided in both hard copy and electronic format.

## **PHOTO RELEASE**

The Conservancy encourage grantees to share photographs and other media demonstrating the benefits of Conservancy grants with the Conservancy. Unless the grantee states otherwise, the Conservancy will assume that it is permissible to use photographs and other media (including photographs of children and other vulnerable populations) shared by the grantee with the

Conservancy for publicity and education by the Conservancy. The grantee shall consider issues of copyright, consent, and privacy before sharing media with the Conservancy.

## **COORDINATION AND MEETINGS**

The grantee shall coordinate closely with Conservancy staff and other involved entities, including local, state and federal agencies, and shall participate in meetings and other communications as necessary to ensure coordination.

## **WORK PRODUCTS AND ACKNOWLEDGMENT OF CONSERVANCY SUPPORT**

If material, data, information, and written, graphic or other work (collectively referred to as “work products”) is produced, developed or acquired under this agreement, the Conservancy shall have the unqualified and unconditional right to use, reproduce, publish, display, and make derivative use of all such work, or any part of it, free of charge and in any manner and for any purpose; and to authorize others to do so. If any of the work is subject to copyright, trademark, service mark, or patent, the Conservancy is granted and shall have a perpetual, royalty-free, nonexclusive and irrevocable license to use, reproduce, publish, use in the creation of derivative works, and display and perform the work, or any part of it, and to grant to any third party a comparable and coextensive sublicense.

The grantee shall include in any contract with a third party for work under this agreement terms that preserve the rights, interests, and obligations created by this section, and that identify the Conservancy as a third-party beneficiary of those provisions.

The grantee shall not utilize the work products created under this agreement for any profit-making venture or sell or grant rights to a third party for that purpose.

In order to acknowledge the Conservancy’s support of the project, the grantee shall mention the Conservancy’s support in its project-related press releases, contacts with the media, and social media postings, and on its website.

## **COSTS AND DISBURSEMENTS**

When the Conservancy determines that all “CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT AND DISBURSEMENT” have been fully met, the Conservancy shall disburse to the grantee, in accordance with the approved project budget, a total amount not to exceed the amount of this grant, as follows:

The withholding for this agreement is five percent. The Conservancy shall disburse funds for costs incurred to date, less five percent, upon the grantee’s satisfactory progress under the

approved work program and upon submission of a "Request for Disbursement" form, which shall be submitted no more frequently than monthly but no less frequently than quarterly. The Conservancy shall disburse the five percent withheld upon the grantee's satisfactory completion of the project and compliance with the "PROJECT COMPLETION" section, below, and upon the Conservancy's acceptance of the project.

The Conservancy will reimburse the grantee for expenses necessary to the project when documented by appropriate receipts. The Conservancy will reimburse travel and related expenses at actual costs not to exceed the rates provided in Title 2, Division 1, Chapter 3, Subchapter 1, Article 2 of the California Code of Regulations ("CCR"), except that reimbursement may be in excess of these rates upon documentation that these rates are not reasonably available to the grantee. Reimbursement for the cost of operating a private vehicle shall not, under any circumstance, exceed the current rate specified by the State of California for unrepresented state employees as of the date the cost is incurred. The Conservancy will reimburse the grantee for other necessary expenses if those expenses are reasonable in nature and amount taking into account the nature of the project, its location, and other relevant factors.

The grantee shall request disbursements by filing with the Conservancy a fully executed "Request for Disbursement" form (available from the Conservancy). The grantee shall include in the form its name and address, the number of this agreement, the date of the submission, the amount of the invoice, the period during which the work was actually done, and an itemized description, including time, materials, and expenses incurred, of all work done for which disbursement is requested. Hourly rates billed to the Conservancy, and specified in the approved Work Program budget, shall be equal to the actual compensation paid by grantee to employees, which may include employee benefits. The form shall also indicate cumulative expenditures to date, expenditures during the reporting period, and the unexpended balance of funds under the grant agreement.

An authorized representative of the grantee shall sign the form. Each form shall be accompanied by:

1. All receipts and any other source documents for direct expenditures and costs that the grantee has incurred.
2. Invoices from contractors that the grantee engaged to complete any portion of the work funded under this agreement and any receipts and any other source documents for costs incurred and expenditures by any such contractor, unless the Executive Officer makes a specific exemption in writing.
3. A supporting progress report using the template provided in Exhibit C summarizing the current status of the work and comparing it to the status required by the work program (budget, timeline, tasks, etc.), including written substantiation of completion of the portion of the project for which the grantee is requesting disbursement.

The grantee's failure to fully execute and submit a Request for Disbursement form, including attachment of supporting documents, will relieve the Conservancy of its obligation to disburse funds to the grantee unless and until the grantee corrects all deficiencies.

## **EXPENDITURE OF FUNDS AND ALLOCATION OF FUNDING AMONG BUDGET ITEMS**

The total amount of this grant may not be increased except by written amendment to this agreement. The grantee shall expend funds consistent with the approved project budget. Expenditure on items contained in the approved project budget, other than overhead and indirect costs, may vary by as much as ten percent without prior approval by the Executive Officer, provided the grantee submits a revised budget prior to requesting disbursement based on the revised budget. Any deviation greater than ten percent or any change from the approved budget for overhead or indirect costs must be identified in a revised budget and approved in advance and in writing by the Executive Officer. The Conservancy may withhold payment for items which exceed the amount allocated in the project budget by more than ten percent and which have not received the approval required above. Any increase in the funding for any particular budget item shall mean a decrease in the funding for one or more other budget items unless there is a written amendment to this agreement.

## **PROJECT COMPLETION**

The grantee shall complete the project by the completion date provided in the "TERM OF AGREEMENT" section, above. Upon completion of the project, the grantee shall supply the Conservancy with evidence of completion by submitting:

1. Any work products, including monitoring and evaluation reports, specified in the work program for the project. Work products should be provided in digital format unless another format is approved by the Executive Officer.
2. Documentation that the grantee has implemented and completed the approved plan for acknowledgement of Conservancy funding.
3. A fully executed final "Request for Disbursement."
4. A final progress report using the template provided in Exhibit C. The final report should be provided in both hard copy and electronic format.

Within thirty days of the grantee's submission of the above, the Conservancy shall determine whether the grantee has satisfactorily completed the project. If so, the Conservancy shall issue to the grantee a letter of acceptance of the project. The project shall be deemed complete as of the date of the letter.

## **EARLY TERMINATION, SUSPENSION AND FAILURE TO PERFORM**

Before the project has commenced, either party may terminate this agreement for any reason and the Conservancy may suspend the agreement for any reason by providing the other party with seven days' notice in writing.

Before the project is complete, the Conservancy may terminate or suspend this agreement for any reason by providing the grantee with seven days notice in writing. In this case, the grantee shall immediately stop work under the agreement and take all reasonable measures to prevent further costs to the Conservancy. The Conservancy shall be responsible for any reasonable and non-cancelable obligations incurred by the grantee in the performance of this agreement prior to the date of the notice to terminate or suspend, but only up to the undisbursed balance of funding authorized in this agreement. Any notice suspending work under this agreement shall remain in effect until further written notice from the Conservancy authorizes work to resume.

If the grantee fails to complete the project as required or fails to fulfill any other obligations of this agreement prior to the termination date, the grantee shall be liable for immediate repayment to the Conservancy of all amounts disbursed by the Conservancy under this agreement. The Conservancy may, at its sole discretion, consider extenuating circumstances and not require repayment for work partially completed. This paragraph shall not be deemed to limit any other remedies the Conservancy may have for breach of this agreement.

Before the project is complete, the grantee may terminate this agreement for any reason by providing the Conservancy with seven days notice in writing and repaying to the Conservancy all amounts disbursed by the Conservancy under this agreement. The Conservancy may, at its sole discretion, consider extenuating circumstances and allow early termination without repayment for work partially completed.

On or before the date of termination of the agreement under this section, whether terminated by the grantee or the Conservancy, the grantee shall provide the Conservancy with all work, material, data, information, and written, graphic or other work produced, developed or acquired under this agreement (whether completed or partial), in appropriate, readily useable form.

The parties expressly agree to waive, release and relinquish the recovery of any consequential damages that may arise out of the termination or suspension of this agreement under this section.

The grantee shall include in any agreement with any contractor retained for work under this agreement a provision that entitles the grantee to suspend or terminate the agreement with the contractor for any reason on written notice and on the same terms and conditions specified in this section.

## **INDEMNIFICATION AND HOLD HARMLESS**

The grantee shall be responsible for, indemnify and hold harmless the Conservancy, its officers, agents and employees from any and all liabilities, claims, demands, damages, or costs, including without limitation litigation costs and attorneys' fees, resulting from or arising out of the willful or negligent acts or omissions of the grantee, its officers, agents, contractors, subcontractors and employees, or in any way connected with or incident to this agreement, except for the active negligence of the Conservancy, its officers, agents or employees. The duty of the grantee to indemnify and hold harmless includes the duty to defend as set forth in Civil Code Section 2778. If the grantee is a public entity, this agreement supersedes any right the grantee may have as a public entity to indemnity and contribution as provided in Gov. Code Sections 895 *et seq.*

The grantee waives any and all rights to any type of express or implied indemnity or right of contribution from the State, its officers, agents or employees, for any liability resulting from, growing out of, or in any way connected with or incident to this agreement.

Nothing in this agreement is intended to create in the public or in any member of it rights as a third-party beneficiary under this agreement.

## **LIMITED WAIVER OF SOVEREIGN IMMUNITY** (*If grantee is a Native American tribe*)

The grantee hereby grants to the Conservancy a limited waiver of its sovereign immunity from unconsented suit, solely for actions brought with respect to any claim, demand or cause of action arising out of or related to this agreement. The limited waiver does not extend to any claim, demand or cause of action for consequential, punitive or treble damages. Any action within the scope of this limited waiver shall be brought exclusively in State court located in the county in which the project is located, and such causes of action shall be governed by the laws of the State of California. The grantee does not waive its immunity from suit on any other claims, demands or causes or actions.

## **INSURANCE**

Throughout the term of this agreement, the grantee shall procure and maintain insurance, as specified in this section, against claims for injuries to persons or damage to property that may arise from or in connection with any activities by the grantee or its agents, representatives, employees, volunteers, or contractors associated with the project undertaken pursuant to this agreement. As an alternative, with the written approval of the Executive Officer, the grantee may satisfy the coverage required by this section in whole or in part through: (a) its contractors' procurement and maintenance of insurance for work under this agreement, if the coverage otherwise fully satisfies the requirements of this section; or (b) the grantee's

participation in a “risk management” plan, self-insurance program or insurance pooling arrangement, or any combination of these, if consistent with the coverage required by this section. The grantee shall maintain property insurance, if required below, throughout the term of this agreement. Any required errors or omissions liability insurance shall be maintained from the effective date through two calendar years after the completion date. The grantee shall maintain all other required insurance from the effective date through the completion date.

1. **Minimum Scope of Insurance.** Coverage shall be at least as broad as:

- a. Insurance Services Office (“ISO”) **Commercial General Liability** coverage occurrence basis (Form CG 00 01 or comparable).
- b. **Automobile Liability** coverage - ISO Form Number CA 0001, Code 1 (covering owned, hired and no-owned autos). If the project will utilize multiple-passenger commercial vehicles, such as bus or van (i.e. common carrier vehicle(s)): coverage consistent with California Public Utilities Commission General Orders 101E, 115F and 160A and minimum limits below.
- c. **Workers Compensation and Employer’s Liability** – Grantee shall maintain statutory worker’s compensation for all its employees who will be engaged in the performance of this grant and employer’s liability coverage with limits of \$1,000,000. If applicable, grantee shall provide a Maritime Coverage Endorsement as well as any other endorsements required by federal and state law or regulations. By signing this agreement, grantee acknowledges compliance with these regulations.
- d. **Watercraft Liability:** If the project will utilize any other watercraft, endorsement to Commercial General Liability policy or Protection and Indemnity Insurance. Such insurance shall cover liability arising out of the maintenance and use of any watercraft covering owned, hired and non-owned vessels.
- e. **Vessel Damage or Destruction Insurance.** Grantee shall maintain insurance to cover damage or destruction of watercraft or vessel(s) acquired under this grant,

2. **Minimum Limits of Insurance.** The grantee shall maintain coverage limits no less than:

<p>a. General Liability: <i>(Including operations, products and completed operations, as applicable)</i></p>	<p>\$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the activities under this agreement or the general aggregate limit shall be twice the required occurrence limit.</p>
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b. Automobile Liability:	\$1,000,000 per accident for bodily injury and property damage. If the project will utilize multiple-passenger commercial transportation vehicles, such as bus or van (i.e. common carrier vehicle(s)): \$5,000,000 per vehicle or such lower limits as are allowed by the applicable CPUC General Order.
c. Worker's Compensation	As required by law with Employer's Liability of no less than \$1,000,000
d. Watercraft Liability (for private vessel) Coverage, if required in 1.d., above.	<p>In the following amounts:</p> <p>a. Vessels under 30 ft.: \$1,000,000 combined single limit.</p> <p>b. Vessels over 30 ft. or vessel involved in research: \$2,000,000 combined single limit.</p>

3. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the Executive Officer.

4. **Required Provisions Concerning the Conservancy and the State of California.**

- a. Each insurance policy required by this section shall be endorsed to state that coverage shall not be canceled by either party, except after thirty days' prior written notice by first class mail has been given to the Conservancy; or in the event of cancellation of coverage due to nonpayment, after ten days prior written notice to the Conservancy. The grantee shall notify the Conservancy within two days of receipt of notice that any required insurance policy will lapse or be cancelled. At least ten days before an insurance policy held by the grantee lapses or is cancelled, the grantee shall provide the Conservancy with evidence of renewal or replacement of the policy.
- b. The grantee hereby grants to the State of California, its officers, agents, employees, and volunteers, a waiver of any right to subrogation which any insurer of the grantee may acquire against the State of California, its officers, agents, employees, and volunteers, by virtue of the payment of any loss under such insurance. Grantee agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the grantee has received a waiver of subrogation endorsement from the insurer.

- c. The general liability and automobile liability policies are to contain, or to be endorsed to contain, the following provisions:
    - (i) The State of California, its officers, agents and employees are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the grantee; and with respect to liability arising out of work or operations, including completed operations, performed by or on behalf of the grantee including materials, parts or equipment furnished in connection with such work or operations.
    - (ii) For any claims related to this agreement, the grantee's insurance coverage shall be primary insurance with respect to the State of California, its officers, agents and employees, and not excess to any insurance or self-insurance of the State of California.
    - (iii) The limits of the additional insured coverage shall equal the limits of the named insured coverage regardless of whether the limits of the named insurance coverage exceed those limits required by this agreement.
  - d. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.
5. **Acceptability of Insurers.** Insurance shall be placed with insurers approved to transact business in the State of California and having a current Best's rating of "B+:VII" or better or, in the alternative, acceptable to the Conservancy and approved in writing by the Executive Officer.
6. **Verification of Coverage.** The grantee shall furnish the Conservancy with original certificates and amendatory endorsements, including the required loss payee and additional insured endorsements, effecting coverage required for adding the Conservancy and the State of California as additional insureds. If common carrier vehicle or commercial or private vessel insurance is required, then in addition, the grantee shall provide proof of compliance with the common carrier vehicle and/or vessel insurance requirements of this section and the applicable California Public Utilities Commission General Order. All certificates and endorsements are to be received and approved by the Executive Officer before work commences. The Conservancy reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage, at any time.
7. **Contractors.** The grantee shall include all contractors as insureds under its policies or shall require each contractor to provide and maintain coverage consistent with the requirements of this section. To the extent generally available, grantee shall also require each professional contractor to provide and maintain errors and omissions liability insurance

appropriate to the contractor's profession and in an amount no less than \$1,000,000 is required in light of the nature of the project.

8. **Premiums and Assessments.** The Conservancy is not responsible for premiums and assessments on any insurance policy.

## **AUDITS/ACCOUNTING/RECORDS**

The grantee shall maintain financial accounts, documents, and records (collectively, "records") relating to this agreement, in accordance with the guidelines of "Generally Accepted Accounting Principles" ("GAAP") published by the American Institute of Certified Public Accountants. The records shall include, without limitation, evidence sufficient to reflect properly the amount, receipt, deposit, and disbursement of all funds related to work under the agreement. Time and effort reports are also required. The grantee shall maintain adequate supporting records in a manner that permits tracing from the request for disbursement forms to the accounting records and to the supporting documentation.

Additionally, the Conservancy or its agents may review, obtain, and copy all records relating to performance of the agreement. The grantee shall provide the Conservancy or its agents with any relevant information requested and shall permit the Conservancy or its agents access to the grantee's premises upon reasonable notice, during normal business hours, to interview employees and inspect and copy books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this agreement and any applicable laws and regulations.

The grantee shall retain the required records for a minimum of three years following final disbursement by the Conservancy. The records shall be subject to examination and audit by the Conservancy and the Bureau of State Audits during the retention period.

If the grantee retains any contractors to accomplish any of the work of this agreement, the grantee shall first enter into an agreement with each contractor requiring the contractor to meet the terms of this section and to make the terms applicable to all subcontractors.

The Conservancy may disallow all or part of the cost of any activity or action that it determines to be not in compliance with the requirements of this agreement.

## **COMPUTER SOFTWARE**

The grantee certifies that it has instituted and will employ systems and controls appropriate to ensure that, in the performance of this contract, state funds will not be used for the acquisition, operation or maintenance of computer software in violation of copyright laws.

## **NONDISCRIMINATION**

During the performance of this agreement, the grantee and its contractors shall not deny the agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The grantee shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. The grantee and contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the Conservancy to implement such article. The grantee shall permit access by representatives of the Department of Fair Employment and Housing and the Conservancy upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or the Conservancy shall require to ascertain compliance with this clause. The grantee and its contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

The grantee shall include the nondiscrimination and compliance provisions of this clause in all contracts to perform work under this agreement.

## **DRUG-FREE WORKPLACE**

The grantee's signature on this agreement constitutes the certification required by Government Code Section 8355, which requires that all state grantees provide a drug-free workplace by doing all of the following:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions that will be taken against employees for violations of the prohibition.
2. Establishing a drug-free awareness program to inform employees about all of the following:
  - a. The dangers of drug abuse in the workplace.
  - b. The person's or organization's policy of maintaining a drug-free workplace.
  - c. Any available drug counseling, rehabilitation, and employee assistance programs.

- d. The penalties that may be imposed upon employees for drug abuse violations.
3. Requiring that each employee engaged in the performance of the grant be given a copy of the drug-free workplace statement and that, as a condition of employment on the grant, the employee agrees to abide by the terms of the statement.

### **INDEPENDENT CAPACITY**

The grantee, and the agents and employees of the grantee, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

### **ASSIGNMENT**

Without the written consent of the Executive Officer, this agreement is not assignable by the grantee in whole or in part.

### **TIMELINESS**

Time is of the essence in this agreement.

### **EXECUTIVE OFFICER'S DESIGNEE**

The Executive Officer shall designate a Conservancy project manager who shall have authority to act on behalf of the Executive Officer with respect to this agreement. The Executive Officer shall notify the grantee of the designation in writing.

### **AMENDMENT**

Except as expressly provided in this agreement, no change in this agreement shall be valid unless made in writing and signed by the parties to the agreement. No oral understanding or agreement not incorporated in this agreement shall be binding on any of the parties.

### **LOCUS**

This agreement is deemed to be entered into in the County of Alameda.

**SURVIVAL**

The obligations in the “WORK PRODUCTS” and “INDEMNIFICATION AND HOLD HARMLESS” sections, above, shall survive the termination of this agreement.