

CONDITIONS OF MDE GRANT AWARD TO PRIVATE ENTITY

Project Name: _____

Project Number: _____

Upon the receipt of grants from the Maryland Department of the Environment (the "Department"), the following conditions are understood and accepted by the applicant as conditions binding upon the recipient organization.

1. The recipient agrees to utilize the State grant funds for the project described in the Application for Financial Assistance and as approved by the State Board of Public Works.
2. The recipient agrees to make a good faith effort to secure sufficient funds to cover all project costs not covered by State grant funds.
3. The recipient agrees to adhere to the schedule submitted in its Application for Financial Assistance and will take all appropriate actions to ensure the project phase (planning, design and/or construction) is initiated within the fiscal year in which the state grant funds are appropriated. Failure to proceed within the funding fiscal year may result in loss of grant funding. The recipient will have an opportunity to re-apply for funding in a future year.
4. The recipient agrees to submit to the Department for review all Architectural/Engineering (A/E) service contracts prior to execution if state grant is to cover the costs.
5. The recipient agrees to select A/E consulting firm(s) for planning, design, construction management/inspection and/or grant management in accordance with pertinent Local, State and Federal laws and regulations.
6. The recipient agrees that it will only award a contract to an A/E consulting firm upon proof of professional liability insurance in an amount reasonable and customary for the services being performed.
7. The recipient agrees not to advertise for bids for construction contracts prior to obtaining written approval of the plans and specifications from the Department.
8. The recipient agrees to provide the Department (if requested) an updated project construction cost estimate prior to advertising for bids for construction.
9. For construction contracts greater than \$100,000, the recipient agrees to procure contractors using formal bidding procedures by advertising the request for bids in publications having appropriate widespread circulation. For contracts less than \$100,000, the recipient has the option to use the small purchase procurement procedures or the formal bidding procedures. For additional information, please contact the Department.
10. The recipient agrees to select the contractor for construction of the project in accordance with applicable Local, State, and Federal laws and **not award a construction contract** until:
 - a. the contractor has posted a Performance Bond and a Payment Bond for 100% of the contract price (generally applicable to contracts over \$100,000 or as determined by the Department);
 - b. the contractor has signed the assurances provided in the "State Insert" included with the contract documents;
 - c. the recipient can certify that adequate A/E inspection and supervision will be provided at the construction site to ensure project construction conforms with the approved plans and specifications; and
 - d. a written approval to award the contract has been received from the Department.
11. Prior to construction start, the recipient agrees to secure all necessary permits, rights-of-way and easements, and undertake any reasonable action resulting from the environmental, design, permitting or state clearinghouse reviews.
12. The recipient agrees to follow best construction management and inspection practices to construct the project in accordance with plans and specifications approved by the Department.
13. Unless waived by the Department, the recipient agrees to post a project sign in the manner and format prescribed by the Department prior to initiating construction.
14. The recipient agrees to obtain prior written approval from the Department for all change orders that significantly alter the project. Change orders that do not significantly alter the project do not require prior approval; however, they must be submitted to the Department within 30 calendar days of execution if grant is to cover change order costs.
15. The recipient agrees to permit and assist State employees to monitor the project construction during normal working hours.
16. The recipient agrees to allocate sufficient funds and operate and maintain the facilities, in accordance with applicable sections of Title 9 of the Environment Article, for the purposes for which it was constructed.
17. The recipient agrees to provide any reasonable information concerning the project in a manner and form prescribed by the Department.
18. The recipient agrees to seek all payments on a reimbursement basis only, unless otherwise authorized by the Department.
19. The recipient agrees to maintain adequate accounting records for a period of three years following the Department's administrative closeout of the project and make them available to the Department for inspection and audit when requested. The recipient's accounting records will at a minimum provide the following:
 - a. provision that the recipient must provide a detailed budget (breakdown of category and cost) including any advances on costs to be incurred;
 - b. A provision requiring the recipient to provide a schedule of spending (related to the budget detail);
 - c. A provision requiring a deliverable schedule from the recipient (linked to the spending schedule);
 - d. A provision requiring a periodic financial summary (defining expended funds in association with the budgeted categories and schedule of spending);
 - e. A provision requiring the contractor to maintain all records relating to the grant until the grant has been audited or three years from the completion of the project, which ever is earlier; and
 - f. A provision indicating that MDE may audit any records in conjunction with a project at any time, in person, or request that a copy of the records be forwarded to MDE for verification.
20. The recipient agrees to comply with Title VI of the Civil Rights Act of 1964 - no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under program or activity for which the applicant received State grant.



21. The recipient is required to make good-faith efforts to utilize Minority and Women's Business Enterprises (M/WBE) to participate in procurements involving MDE state grant funds. This requirement applies to projects receiving any grant funding from the Bay Restoration Fund and projects receiving more than \$500,000 in any other MDE grant funding. Please visit MDE's website for guidance.
22. For grant under the Bay Restoration Fund Act from tax-exempt bond proceeds, the recipient hereby certifies that all project activities will comply with the tax-exempt bond provisions of the Internal Revenue Code and will not constitute a change in use or private activity.
23. For drinking water and sewerage projects, the recipient certifies that the proposed project is consistent with and is included in an approved water and sewerage area as outlined in the County Water and Sewerage Plan adopted by the County governing body pursuant to §9-501, et seq., of the Environment Article.
24. For grant under the "Sewerage Supplemental Assistance Program", the recipient agrees to adhere to the provisions of COMAR 26.03.08 - Water Pollution Control Fund Construction Financial Assistance Regulations.
25. For grant under the "Nutrient Removal Cost-Share Programs", the recipient agrees to adhere to the provisions of the cost-share agreement and contribute local match for each phase of the project accordingly.
26. For grant under the "Water Supply Financial Assistance Program", the recipient agrees to adhere to the provisions of COMAR 26.03.09 - Water Supply Construction Financial Assistance Regulations, to provide salvage rights by the State upon default by the recipient and contribute at least 12.5% of the total eligible project cost as local match. Unless waived by the Department, all costs exceeding 5% of the original total grant/loan award or costs not authorized by the Department are the responsibility of the recipient. The Department may void the grant if construction has not commenced within 6 months of the award for construction and the recipient agrees to repay all funds with interest.
27. For grant under the "Energy-Water Infrastructure Program," the recipient shall comply with the program guidance provided and any regulations promulgated by the Department.
28. For grant under the Bay Restoration Fund Act, the recipient shall be required to comply with Subtitle 16 of Title 9 of the Environment Article of the Annotated Code of Maryland as applicable, regulations under COMAR 26-03-13, and any applicable bond resolutions.
29. For grant under the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund, the recipient is required to comply with Subtitle 16 of Title 9 of the Environment Article of the Annotated Code of Maryland as applicable, and any regulations and directives promulgated thereafter.
30. At the completion of the construction of the project, the recipient agrees to submit, if appropriate to the project, a set of "as built" drawings certified by a professional engineer or a soil conservation district engineer.
31. The recipient agrees to submit a final claim for reimbursement of costs within sixty days of the Department's final inspection of the project.
32. The recipient agrees that the Department may deny any request for funds if the recipient fails to comply with any of the above conditions of financial assistance award.
33. The recipient agrees that the State Board of Public Works may terminate financial assistance upon the recommendation of the Department if the Department determines in its discretion that there is:
 - a. failure to perform without good cause; or
 - b. gross abuse or corrupt practices in the administration of the project; or
 - c. poor, non-standard, or unsafe construction procedures; or
 - d. failure to comply with any of the conditions of grant award or applicable State laws, regulations, or Departmental policies; or
 - e. failure to adhere with the approved project schedule.
34. The recipient agrees to repay the State (with interest, based on current bond rate and assessed from the date the said funds were received), on demand, any funds received that were misapplied (i.e., not expended in accordance with the terms of these conditions of grant award or applicable State laws, regulations and Departmental policies). In the event that the recipient fails to refund upon demand any misapplied funds, the State shall have the right to offset or withhold any funds in the possession of any State agency (that may be due to the recipient) in an amount equal to the misapplied funds plus interest.
35. The recipient agrees to return, within 30 days of a written request by the Department, any excess funds received (i.e., total funding received from several funding sources exceeds 100% of project costs). In the event that the recipient fails to refund upon demand any excess funds released by the State, the State shall have the right to offset or withhold any funds in the possession of any State agency (that may be due to the recipient) in an amount equal to the overpayment.
36. The recipient agrees to repay the State, immediately upon demand, the depreciated value (on a straight line basis) of the State grant, if the project assets are sold by a public entity or non-profit entity, to a for-profit entity anytime within 20-years of project completion.

I certify that this Bay Restoration Fund Act Grant is NOT from tax-exempt bond proceeds.

Signature of Authorized Department Official

Name and Title

I certify that the information provided with the financial assistance application is true to the best of my knowledge and agree to comply with the above Conditions of MDE Grant Award.

Signature of Recipient's Authorized Representative

Date

Name and Title