



Grant Agreements:

What to Include and What to Look Out For



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Purpose of a Grant Agreement

- With some exceptions (e.g., expenditure responsibility), not required by law
- Sets out the terms of the grant (amount, timing, reporting)
- Clarifies the rights and responsibilities of the parties
- Satisfy auditors – internal and external
- Best practices

When to Use a Grant Agreement

- Not a “one size fits all”
 - Whether to use a grant agreement at all
 - Simple versus “complex” agreement
- Factors to consider:
 - Size of the grant
 - Purpose of the grant – specific purposes versus general operating grant
 - Level of grantor’s interest in the outcome of the grant
 - Grantee reporting requirements
 - Grant is for an “unusual” purpose

The Effective Date

THIS GRANT AGREEMENT (the “Agreement”), is made effective as of the date of signature of the last signatory hereto (the “Effective Date”), by and between GRANTOR (“Grantor”), a California nonprofit public benefit corporation, and GRANTEE (“Grantee”), a Maryland nonstock corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”). Grantor and Grantee are also referred to herein collectively as the “Parties” and each as a “Party.”

- Starts the clock on transfer of funds by Grantor
- Triggers obligations of Grantee

Grant Amount and Payment Schedule

*Grantor agrees to pay to Grantee the sum of **Fifty Thousand U.S. Dollars (\$50,000.00 USD)**, (the “Grant Funds”) under the terms and conditions set forth in this Agreement. Grantor shall transfer the Grant Funds to Grantee **within thirty (30) days following the Effective Date**.*

- Verify correct amount and currency
- Note whether payment may be made in assets other than cash (e.g., marketable securities)
- Installment payments may be tied to Grantee benchmarks or reporting obligations

Grant Purpose and Required Notification

Grantee agrees that the Grant Funds will be expended to support Project X (the “Grant Purposes”). In furtherance thereof, the Grant Funds will be expended by Grantee solely for Grantee’s charitable, scientific, literary, or educational purposes within the meaning of Section 170(c)(2)(B) of the Code.

Grantee shall provide Grantor with immediate written notification (i) of any inability to expend the Grant Funds for the Grant Purposes; and (ii) prior to any expenditure of Grant Funds deviating from the Grant Purposes. Any expenditures deviating from the Grant Purposes shall require Grantor’s prior written approval.

- Improper purposes may jeopardize Grantor’s exemption or result in taxable expenditures (if PF)
- Overly narrow purposes may be burdensome for Grantee

Prohibited Uses

Grantee shall not use any of the Grant Funds to carry on propaganda or otherwise attempt to influence legislation; to influence the outcome of any specific public election; to carry on, directly or indirectly, any voter registration drive; to award grants to individuals for travel, study, or other similar purposes; to award grants to any other organization(s), unless preapproved by Grantor in writing; or for any purpose other than religious, charitable, scientific, literary, or educational within the meaning of Section 501(c)(3) of the Code.

- Required if Grantor is exercising expenditure responsibility
- May be overly restrictive for Grantee

Withholding and Repayment

*Grantor reserves the right to **discontinue, modify, or withhold any payments** . . . or to **require a total or partial refund** of any Grant Funds . . . **if, in Grantor's sole discretion, such action is necessary**: (i) because Grantee has not fully complied with the Grant Purposes or with terms and conditions of this Agreement; (ii) to protect the Grant Purposes or any other charitable activities of Grantor; (iii) to comply with the requirements of any law or regulation applicable to Grantee, Grantor, or this grant; or (iv) because, by action or omission, Grantee or any of Grantee's representatives . . . have committed fraud with respect to the Grant Purposes . . . or any report or communication to Grantor is found by Grantor to be inaccurate or misleading in any material respect **Grantor does not waive any additional rights it may have beyond this refund.***

- Required if Grantor is exercising expenditure responsibility
- Grantee may want to limit Grantor's discretion

Publicity and Acknowledgment

Grantor may include the name of Grantee in any publications, press releases, or other public communications to factually describe its support of Grantee and the Grant Purposes without Grantee's prior written consent. The Parties agree that Grantor will be recognized as a sponsor of the activities funded by the Grant Funds in all publications or public communications made in connection with the Grant Purposes, unless Grantor indicates otherwise.

- Consider whether grant or grant purposes can or should be confidential
- Either party or both parties may want prior approval of any publications
- Grantee should limit all publicity to “use or acknowledgment”

Intellectual Property

The Parties acknowledge and agree that any intellectual property funded, created, or developed through Grantee's use of the Grant Funds (collectively, the "Developed IP") shall be Grantee's sole property and Grantee shall hold all rights and copyrights therein.

Grantee hereby grants to Grantor, a perpetual, nonexclusive, non-sublicensable, nontransferable, irrevocable, and royalty-free right and license to use, reproduce, and publish the Developed IP and any derivatives thereof, solely in connection with Grantor's noncommercial, charitable, and tax-exempt purposes.

- Consider who should own any developed IP (beware of fee for services)
- May impact future use of co-branded programs or materials
- Limit license to noncommercial, tax-exempt purposes

Recordkeeping and Reporting

Grantee shall maintain records of receipts and expenditures of the Grant Funds and shall provide such records to Grantor upon Grantor's reasonable request. [. . .] Grantor may, at any time and at its own expense, examine, audit, or have audited the records of Grantee insofar as they relate to activities supported by the Grant Funds or carried out pursuant to this Agreement.

Grantee will provide a final report and accounting (the "Final Report") to Grantor no later than sixty (60) days after the one-year anniversary of the Effective Date. The Final Report shall include a brief narrative account of what was accomplished by the grant, accompanied by copies of any materials produced with Grant Funds, if applicable, and a complete and accurate financial accounting of how the Grant Funds were expended. Grantor reserves the right to request additional reports if the Grant Funds are not fully expended at the time the Final Report is provided.

- Minimal reporting required for expenditure responsibility
- Frequent reporting may be burdensome for Grantee

Compliance with Law (Int'l Grantmaking)

Grantee shall comply with all applicable laws and regulations in the course of performing its obligations set forth in this Agreement. Grantee agrees to administer and disburse the Grant Funds in compliance with all applicable United States financial sanctions and embargo programs . . . as well as related U.S. laws that prohibit money laundering or any activity that facilitates money laundering or the funding of terrorist or criminal activities, . . . and any other applicable laws, regulations, rules, and executive orders in countries in which the Parties are transacting business.

- Helps Grantor comply with international grantmaking requirements
- Grantee may wish to pushback if it is a domestic charity

Representations and Warranties

Grantee represents, covenants, and warrants that: (i) it is a tax-exempt charitable organization under Section 501(c)(3) of the Code, qualified to receive charitable contributions; (ii) it is in compliance with all applicable laws, regulations, statutes, and other legal requirements of any governmental, municipal, statutory, or regulatory authority, . . . and Grantee has not received any notice or communication from any governmental authority regarding any actual, alleged, or potential violation of or failure to comply with any Legal Requirements; (iii) it shall exercise due care and act in good faith at all times in performance of its obligations under this Agreement; (iv) it possesses all right, power and authority to enter into this Agreement; and (v) it does not discriminate against any individual or entity on the basis of . . . any protected characteristic.

- Overly broad or stringent reps and warranties may be burdensome on Grantee or result in inadvertent violation of the agreement

Indemnification

Grantee shall indemnify, defend, and hold harmless Grantor and its officers, directors, employees, agents, parents, subsidiaries, affiliates, successors, and permitted assigns from and against all claims, actions, costs, expenses (including reasonable attorneys' fees), or liabilities arising out of or caused by (i) the negligent act or omission or willful misconduct of Grantee, its affiliates, directors, officers, employees, or agents; (ii) Grantee's breach of this Agreement, or any covenants, representations or warranties herein; or (iii) any infringement of the intellectual property rights of a third party including patent, copyright, trademark, trade secret, or other proprietary right by Grantee.

- Protects Grantor in the event of Grantee's negligence or misuse of grant funds
- Generally one-sided – consider whether Grantee needs similar protection

Termination

Grantor may terminate this Agreement at any time if Grantee fails to adhere to the terms and conditions of this Agreement and does not cure such failure within a period of ten (10) days after receipt of written notice.

Grantee shall provide to Grantor, no later than thirty (30) days following termination, a full financial accounting of the receipt and disbursement of all Grant Funds by Grantee and a Final Report of the use of such funds as of the effective date of termination. Any Grant Funds that are unexpended as of the date of termination shall be returned to Grantor.

- Grantee may wish to limit termination for cause only
- Consider whether the right to terminate should be mutual
- May trigger repayment of grant funds

Relationship of the Parties

Nothing in this Agreement shall be construed as creating a partnership, joint venture, agency, or any other relationship other than grantor/grantee between the Parties or any beneficiaries of either Party. No Party has any right or authority to obligate or bind the other Party in any manner whatsoever.

- Protects Grantee if Grantor is noncharitable
- Clearly defines the limits of the relationship

Governing Law

This Agreement shall be construed and governed by the laws of the State of California, without regard to conflicts of laws principles, and any dispute pertaining to this Agreement shall be brought exclusively in a court of competent jurisdiction within the State of California, County of Los Angeles.

- Limits the available jurisdictions to address disputes
- Consider each party's burden required to defend
- In most cases, the governing law should be of the place where the funded activities occur

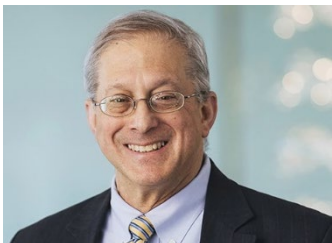
No Assignment or Modifications

This Agreement and the obligations hereunder may not be assigned by Grantee without prior written approval from Grantor.

This Agreement shall constitute the complete understanding of the Parties and shall supersede all prior written or oral agreements or understandings. This Agreement shall not be modified or amended except in writing signed by the authorized representatives of each Party.

- Limits the ability of a party (generally Grantee) to assign obligations to a third party
- Reminder to put ALL understandings related to the grant into the agreement

Questions?



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