

PRESENTED AT

39th Annual Nonprofit Organizations Institute

January 13-14, 2022

Austin, TX

Master Class: Anatomy of a Grant Agreement

**Vanessa Goodwin
Kristy Bernard Tsadick**

Author Contact Information:

Vanessa Goodwin
Arnold Ventures LLC
Houston, TX
VGoodwin@arnoldventures.org
352.219.9719

Kristy Bernard Tsadick
The William and Flora Hewlett Foundation
Menlo Park, CA
ktsadick@hewlett.org
650.234.4771

MASTER CLASS: ANATOMY OF A GRANT AGREEMENT

SAMPLE PROVISIONS AND GRANT AGREEMENTS

Contents:

1. Public Charity Grant Agreement Sample Provisions
 - a. Tax Status
 - b. Prohibited Use of Funds
 - c. Lobbying (2 samples; both sample provisions with project grant rule language)
 - i. Limitations on Lobbying Activity
 - ii. Special Provisions for Lobbying
 - d. Intellectual Property (2 samples; one sample provision with open licensing language)
 - e. Grant Disclosure and Acknowledgement
2. Expenditure Responsibility Grant Agreement Sample Provisions
 - a. Grant Purpose
 - b. Repayment
 - c. Reporting
 - d. Records
 - e. Restrictions
 - f. Segregation of Funds
3. Individuals Grant Agreement Sample Provisions
 - a. Grant Purpose
 - b. Return of Funds
 - c. Reporting
4. Selected “Good to Have” and Optional Provisions
 - a. #Me Too
 - b. Clawback/Redirection
 - c. Diversity Reporting
5. Sample Grant Agreements
 - a. Sample Grant Agreement for Domestic Public Charities Described in Code Section 509(a)(1) or 509(a)(2)
 - b. Sample Public Charity Grant Agreement
 - c. Sample Expenditure Responsibility Grant Agreement for Grant to a Private Non-Operating Foundation
 - d. Sample Expenditure Responsibility Grant Agreement
 - e. Sample Individual Grant Agreement
 - f. Sample Scholarship Grant Agreement

1. Public Charity Grant Agreement Sample Provisions

Tax Status. Grantee represents that it is a tax-exempt organization described in Section 501(c)(3) of the Internal Revenue Code and that it is not a “private foundation” as defined in Code Section 509(a), or a “Type III” supporting organization as described in Code Section 509(a)(3)(C), (other than a “functionally integrated” Type III supporting organization as defined in Code Section 4943(f)(5)(B)).

Prohibited Use of Funds. Grantee agrees to not use any portion of the grant funds to any extent for any of the following:

- a. To participate in any political campaign on behalf of or in opposition to any candidate for public office or to otherwise influence the outcome of any specific public election as described in Section 4945(d)(2) of the Internal Revenue Code; or
- b. For any non-charitable purposes.

Limitations on Lobbying Activity. Grantee attests that the lobbying amount shown on the project budget is a good faith estimate of the lobbying expenses expected to be incurred in connection with the activities described in its proposal. Grantee represents that the amount of this grant, together with the amount of any other grants that Grantee has received from the Foundation for the same project for the same year does not exceed the amount of Grantee’s budget for project activities that are not attempts to influence legislation. Grantee acknowledges that the Foundation has not designated or earmarked any part of the grant funds for the carrying on of propaganda or attempting to influence legislation within the meaning of Internal Revenue Code Sections 501(h), 4945(d)(1) and 4945(e) and related regulations (these provisions include local, state, federal, and foreign legislation), and neither Grantee nor the Foundation has entered into any agreement, oral or written, to the contrary. Please note that in the event Grantee uses any of the grant funds to influence governmental action in ways permissible under the Internal Revenue Code and the terms of this Agreement, Grantee may have lobby reporting or other disclosure requirements under the laws of a particular state or other jurisdiction; note further, that state law may include influencing state administrative agencies within the definition of lobbying. Grantee acknowledges that Grantee is solely responsible for complying with any and all applicable lobby reporting or other disclosures.

Special Provisions for Lobbying. The Parties expressly agree as follows:

- a. In the event that any portion of the Grant will be used for lobbying, Grantee will exercise exclusive control over the selection of lobbyists and supervision over lobbying activity. Lobbyists retained by Grantee will, at all times, act solely on behalf of Grantee and will not represent the interest of GRANTOR before any governmental entity. [Notwithstanding anything in this Agreement to the contrary, any line item related to lobbying in the Budget and Milestones may be utilized in the discretion of Grantee in furtherance of the Purpose.]
- b. Under no circumstances shall Grantee undertake any action that would require GRANTOR to register as a lobbying entity or lobbying client.
- c. Grantee will not use these funds to make campaign contributions to candidates or political committees supporting candidates for office or to make any expenditure containing express advocacy, or its functional equivalent, supporting or opposing a candidate for elected office. The

parties acknowledge that GRANTOR will not direct or control Grantee's interactions with any government officials or employees, candidates for office, or political committee.

d. Grantee will exercise sole and exclusive control over the use of funds related to any lobbying activity including, but not limited to, the following actions:

i. Hiring or firing any political consultant; or

ii. Making any lobbying communication expenditure, including the selection of the markets, budget, content, medium, and final approval of the communication.

e. Grantee is knowledgeable about, complies with, and will continue to comply with all applicable local, state, federal, and foreign laws, statutes, rules, and regulations, as amended from time to time, as they pertain to lobbying, campaign finance, and government ethics or gifts that may be applicable to Grantee's activities.

f. The parties acknowledge that GRANTOR will not direct or control Grantee's interactions with any government officials or employees, candidates for office, or political committee.

g. Grantee agrees that it will provide advance notification to GRANTOR before it or any of its agents engage in activity that could give rise to any disclosure of the Grant or GRANTOR under federal, state, or local lobbying disclosure rules and/or campaign finance laws. Grantee further agrees that if GRANTOR is required to file any report or notice as a result of this contribution, such as with a state campaign finance regulator, that Grantee will provide GRANTOR with prompt notice of such fact.

Intellectual Property. Grantee will retain all rights, including intellectual property rights, in and to final works resulting from projects supported by Foundation grant funds (the "Work Product"), and nothing in this Agreement will be deemed or interpreted to transfer ownership of any such rights to the Foundation. Nevertheless, to ensure that Foundation's grants have as broad an impact as possible, the Foundation requires grantees to license Work Product through an open license. Accordingly, Grantee agrees to make Work Product available to the public in a readily accessible format (e.g., on Grantee's public website) under the most recent version of the Creative Commons Attribution license (CC BY). In addition, the Foundation acknowledges that Grantee retains the right to also make the Work Product available under separate license terms, in its discretion.

Full legal text of the above referenced license is available at the following URL and Grantee should take the time to read and understand the license terms and conditions:

- <http://creativecommons.org/licenses/by/4.0/legalcode> (a summary may be found at <http://creativecommons.org/licenses/by/4.0/>)

The Foundation respects the intellectual property rights of others. Accordingly, the Foundation requires, and Grantee represents and warrants to the Foundation, that the Work Product produced hereunder are the original work of Grantee, or that Grantee has obtained sufficient rights, licenses, and permissions to distribute and license Work Product under CC BY, except and solely with respect to any particular item in the Work Product that is expressly identified in writing as owned by a third party not licensed under CC BY.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: MASTER CLASS: Anatomy of Grant Agreement

Also available as part of the eCourse

[2022 Nonprofit Organizations eConference](#)

First appeared as part of the conference materials for the
39th Annual Nonprofit Organizations Institute session
"(3:15 p.m.) MASTER CLASS: Anatomy of Grant Agreement"