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### **Private Foundation Grant Agreements -- Are Yours Complete?**

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It is a recommended best practice for a private foundation to enter into a written agreement with each nonprofit grantee. A comprehensive grant agreement serves as a guide for your future relationship with the grantee and helps to avoid any confusion about each party's expectations related to the grant. Typically the terms of such an agreement are included in the initial grant award letter.

*Summary Information:* The agreement should clearly state the amount of the grant, the time frame over which it will be paid and the charitable purposes for which the grant must be used (instead of repeating the specified purposes listed in the grant application, it is sufficient to reference and incorporate the grant application).

*Grantee Tax Status:* The grantee should affirmatively represent and warrant to the foundation that it is currently classified as a Section 509(a)(1) or 509(a)(2) public charity or as a Section 170 governmental unit and that receipt of the grant will not adversely affect its tax status. The grantee also should be obligated to inform the foundation of any changes in its tax status during the term of the grant.

*Right of Return:* The grantee should be obligated to return unexpended funds to the foundation (a) if the grantee's tax status changes, (b) if the specified purposes of the grant will not be pursued or (c) if the time period of the grant expires. The obligation of return described in clauses (b) and (c) may be waived in the discretion of the foundation. That is, the foundation may permit the grantee to retain the unexpended funds even if there is a change in the nature of the funded project or if the timeline for the project is extended.

*Reports and Record Keeping:* The agreement should state, with particularity, the required narrative and financial reports with deadlines for submission to the foundation. The agreement also may specify other records to be maintained by the grantee and give the foundation the right to inspect such records.

*Public Disclosures:* The grantee's right to publicize the grant should be limited to the information that appears in the grant agreement. Other disclosures by the grantee should be

approved in advance by the foundation. The grantee should be required to provide copies of any news releases or media coverage to the foundation for its information and records.

*Optional Provisions:* The grant agreement may also require that no items of value be provided to officers, directors or employees of the foundation. The grantee may be required to state that it will not use the grant for lobbying or in connection with any political campaign (this is more important if the grant is unrestricted as to purpose). The grantee may be required in the grant agreement to indemnify the foundation. Finally, the foundation may affirmatively state that there is no assurance that the grant will be renewed.

*Signatures:* An authorized representative of the foundation should sign two copies of the agreement and request that the grantee sign both originals and return one copy to the foundation for its records.

If you have questions or would like a sample gift agreement, please do not hesitate to contact the author, Dianne Chipps Bailey, at [dbailey@rbh.com](mailto:dbailey@rbh.com) or (704) 377-8323. Dianne is a corporate attorney at Robinson, Bradshaw & Hinson, P.A. who regularly advises nonprofit organizations, their senior management and volunteer leaders.

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