

## AGREEMENT

### THE GRANTEE AND GRANTOR (AS SET FORTH BELOW) HEREBY AGREE AS FOLLOWS:

EFFECTIVE DATE: May 25, 2023

GRANT NO.: 22-2004-154610-CJ

GRANTEE: City & County of San Francisco  
d/b/a San Francisco District Attorney Office  
350 Rhode Island Street  
North Building, Suite 400N  
San Francisco, CA 94103  
**("your organization")**

GRANTOR: John D. and Catherine T. MacArthur Foundation  
140 South Dearborn Street, Suite 1200  
Chicago, Illinois 60603-5285  
**(the "Foundation")**

GRANT AMOUNT: U.S. \$1,200,000

PURPOSE OF GRANT: To support and sustain the City and County of San Francisco's comprehensive efforts to reduce jail incarceration and racial and ethnic disparities in jail usage as a site in the Safety and Justice Challenge (**the "Purpose"**)

FOR USE OVER THE PERIOD: January 1, 2023 - December 31, 2025

EXPECTED PAYMENT SCHEDULE: This grant is expected to be paid in the following installment amounts (the **"Payment Schedule"**):

Initial Installment: U.S. \$575,000, paid in a single lump sum  
Installment 2: U.S. \$625,000, paid in a single lump sum

WRITTEN REPORTS DUE, as may be amended from time to time upon written authorization from the Foundation (the **"Due Dates"**):

August 31, 2023: Interim Report (Disparity Work), as further described in Paragraph 4(C) herein  
November 30, 2023: Interim Report (Amended DUA), as further described in Paragraph 4(D) herein  
February 29, 2024: Annual Report, covering the period January 1, 2023 through December 31, 2023  
February 28, 2025: Annual Report, covering the period January 1, 2024 through December 31, 2024  
February 28, 2026: Annual Report, covering the period January 1, 2025 through December 31, 2025  
February 28, 2026: Final Report, covering the entire life of the grant

### OTHER TERMS AND CONDITIONS:

1. PAYMENT TERMS: (A) Payment of the grant funds is expected to be made as indicated in the Payment Schedule above, *provided* your organization is in compliance with all terms and conditions of this agreement at the time of each scheduled payment.

(B) The initial installment of the grant funds will be made within thirty (30) days after receipt by the Foundation of fully-executed copies of (i) this agreement; (ii) the Foundation's Electronic Payment Authorization Form ("**Payment Form**"); and (iii) all necessary tax documents, if all conditions described in this agreement are satisfied. The Payment Form must be delivered through the DocuSign links provided to your organization by the Foundation or other secured means approved by the Foundation in writing in advance. The fully-executed agreement and tax documents may be submitted through DocuSign, uploaded to the Foundation's online Grants Management System ("**GMS**"), or submitted through other secured means approved by the Foundation in writing in advance. The scheduled dates of estimated payment for any subsequent installments, which dates may be amended by the Foundation from time to time, are available in GMS.

2. BANK ACCOUNTS: Grant funds shall be deposited in an interest-bearing account whenever feasible. Any grant funds, not expended or committed for the purposes of the grant, will be returned to the Foundation unless otherwise agreed by the Foundation. Interest earned may be expended for your organization's charitable purposes.
3. USE OF FUNDS: (A) EXEMPT PURPOSES: Under United States law, Foundation grant funds, and income earned thereon, may be expended only for charitable, religious, scientific, literary or educational purposes. This grant is made only for the Purpose stated above. It is understood that these grant funds will be used only for such Purpose, substantially in accordance with the document uploaded into GMS by the Foundation on February 17, 2023 and entitled "Final Proposal 154610", and the budget uploaded into GMS on September 15, 2022, relating thereto (the "**Approved Budget**"), subject to the terms of this agreement. Your organization agrees to obtain the Foundation's prior approval in writing should there be any material changes or variances to the Approved Budget, including the timing of expenditures, at any point during the course of this grant.

(B) CONTROL OF PROJECT: Your organization confirms that this project is under its complete control. Your organization further confirms that it has and will exercise control over the process of selecting any secondary grantee or consultant and that there does not exist an agreement, written or oral, under which the Foundation has caused or may cause the selection of a secondary grantee or consultant.

(C) RESTRICTIONS ON USE OF FUNDS: (1) In connection with the activities to be funded under this grant, your organization acknowledges that it is responsible for complying with all relevant laws and regulations of the countries in which such activities are conducted.

(2) Your organization agrees that no Foundation grant funds will be used for any of the following purposes:

- (a) To carry on propaganda, or otherwise to attempt to influence any legislation (within the meaning of Section 4945(d)(1) of the United States Internal Revenue Code ("**Tax Code**"));
- (b) To influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drive (within the meaning of Section 4945(d)(2) of the Tax Code);
- (c) To undertake any activity for any purpose other than one specified in Section 170(c)(2)(B) of the Tax Code;
- (d) To offer or provide money, gifts, or any other things of value, directly or indirectly, to anyone in order to improperly influence any act or decision relating to the Foundation or the project, including by assisting any party to secure an improper advantage in violation of the Foreign Corrupt Practices Act or similar laws of the countries in which the grantee operates;
- (e) To use directly or indirectly to assist in, sponsor, or provide support for acts of terrorism or to support organizations or persons listed as terrorists on lists maintained by the United States government, the United Nations, the European Union, and other entities (each, a "**Prohibited Party**"); or
- (f) To use in or with respect to countries or individuals under sanctions by the U.S. government, including prohibited travel to and from those countries, or for the unauthorized provision of funds or services to any person, entity, or organization from those countries.

Attachment A and Attachment B are summaries of the types of activities prohibited under Section 4945 of the Tax Code.

(3) Further, your organization agrees to provide the Foundation such information as the Foundation may reasonably request, including (a) information about persons or organizations that will or have received funds in connection with this grant and (b) information regarding the steps and procedures that your organization uses to ensure that grant funds are not used to pay a Prohibited Party either through regranteeing or by contract.

4. WRITTEN REPORTS: (A) Written reports are to be furnished to the Foundation covering each year in which your organization receives or expends any portion of the grant funds until the Foundation's grant funds are expended in full or the grant is otherwise terminated. The written reports for this grant are due no later than the Due Dates specified on Page 1 of this agreement. The written reports should be submitted electronically through GMS.

(B) Each written report should contain a narrative and financial account of what was accomplished by the expenditure of the grant funds during the period covered by the report. The narrative account should

contain a detailed description of what was accomplished by the grant, including a description of the progress made toward achieving the goals of the grant and an assurance that the activities under the grant have been conducted in conformity with the terms of the grant. The financial account should contain a financial statement reporting, in U.S. dollars, all expenditures of the grant funds during the period covered by the report.

(C) INTERIM REPORT (DISPARITY WORK): Your organization's Interim Report (Disparity Work) shall contain a narrative detailing progress on efforts to meet your organization's jail population target, address and reduce racial disparities, improve community engagement, and enhance stakeholder involvement.

(D) INTERIM REPORT (Amended DUA): Your organization's Interim Report (Amended DUA) should include a copy of a fully executed Amendment to the Data Use Agreement ("**Amended DUA**") and any additional information reasonably requested by the Foundation. If your organization has not entered into the Amended DUA by the date the Interim Report is due, your organization shall include, in such Interim Report, a narrative describing your organization's good faith efforts toward finalizing the Amended DUA, including when the Amended DUA is expected to be fully-signed. The Amended DUA is an amendment to the comprehensive agreement between your organization and the City University of New York's Institute for State and Local Governance regarding the disclosure, maintenance, and use of the criminal justice-related information that your organization will provide, as part of the Safety and Justice Challenge. A draft of the Amended DUA, in a form substantially similar to what your organization will be asked to sign, is attached hereto and incorporated herein as Exhibit 1.

5. INTELLECTUAL PROPERTY: (A) In countersigning this agreement, your organization acknowledges that it has read the Foundation's Policy Regarding Intellectual Property Arising Out of Foundation Grants (the "**Policy**"; Attachment C hereto). Except as may otherwise be provided herein, all copyright interest in materials produced as a result of this grant (the "**Grant Work Product**") shall be owned by your organization and made available consistent with the terms of the Policy. To effect the widest possible distribution of the Grant Work Product and to ensure that it furthers charitable purposes and benefits the public, your organization hereby grants to the Foundation a non-exclusive, transferable, perpetual, irrevocable, royalty-free, paid-up, worldwide license to use, display, perform, reproduce, publish, copy, and distribute, for non-commercial purposes, the Grant Work Product and any other work product arising out of or resulting from your organization's use (including digital, electronic or other media) of these funds, including all intellectual property rights appurtenant thereto, and to sublicense to third parties the rights described herein. Without limiting the foregoing, such license includes the right of the Foundation to publish the Grant Work Product on the Foundation's website in connection with the Foundation's work with and support of your organization, and for use in periodic public reports, press releases, and fact sheets about the Foundation's grantmaking. Your organization further acknowledges and agrees, at the Foundation's request, to execute any additional documents necessary to effect such license.

(B) To the extent that, as part of any arrangement with any subcontractor, subgrantee, or other party working on matters related to this grant and receiving the benefit of the grant funds (a "**Third Party**"), the intellectual property rights in the Grant Work Product is to be owned by such Third Party, your organization agrees to require that the Foundation be granted a license in such Grant Work Product in a form reasonably acceptable to the Foundation.

(C) Except as stated in Paragraph 5(A) herein, and as you may be otherwise notified by the Foundation, it is the Foundation's policy not to ordinarily use the license granted herein if the Grant Work Product is otherwise made widely available through a means and on terms (including any cost to the public and timeliness of publication) satisfactory to the Foundation. Under the Foundation's Policy, the Foundation will consider also releasing such license at the request of your organization if it is demonstrated to the Foundation's satisfaction that such release is necessary in connection with a publication or distribution plan that will make the Grant Work Product widely available at a reasonable or little cost, such as through scholarly publication, open access journals, or use of a suitable Creative Commons license.

(D) In connection with the narrative reports required to be submitted in the GMS under this agreement, your organization will be required to address a series of questions related to intellectual property that are available on the narrative report form in the GMS.

6. USE OF NAME: Your organization acknowledges that the name and mark "John D. and Catherine T. MacArthur Foundation" and all variations thereof and any other names and marks comprising the name or mark "MacArthur" (the "**MacArthur Name**"), are the sole and exclusive property of the Foundation, that any and all uses of the MacArthur Name by your organization shall inure solely to the benefit of the Foundation, and that your organization shall not acquire any right, title or interest in any MacArthur

Name. All uses of any MacArthur Name by your organization in any manner shall be subject to inspection by and approval of the Foundation, which approval may be granted or withheld in the sole and absolute discretion of the Foundation. Upon termination of this agreement, or at the request of the Foundation at any time, your organization shall immediately discontinue and forever thereafter desist from any and all use of any MacArthur Name and shall either destroy or deliver to the Foundation, at no charge to the Foundation, stationery, brochures, proposed paid media and other similar materials bearing any MacArthur Name that then are in the possession or control of your organization.

7. PUBLICATIONS: Publications produced or disseminated wholly or in part with Foundation funds will be made available to the Foundation electronically or by hard copy as your organization may elect. Unless otherwise notified by the Foundation, such publications should include a simple acknowledgment of the grant support from the Foundation.
8. NOTIFICATION: Your organization will promptly notify the Foundation upon the occurrence of any of the following: (i) A change in the executive director, chief executive officer, president, or comparable senior level executive of any agency that is engaged materially in the activities funded by the Foundation ("**Agency**"); (ii) receipt by the Agency of notification by another significant funder, if any, that the funder is ceasing further funding; or (iii) unless prohibited by court or agency order, the filing of a claim in any court or federal, state, or local agency alleging (a) sexual or other harassment, discrimination, a hostile work environment, or similar claims regarding the activities of the Agency; (b) financial impropriety by the Agency; or (c) breach of fiduciary obligations by senior leadership or the board of the Agency. Written notification will be given to the signatory of this agreement at the e-mail address under the signature line below.
9. WORKPLACE CONDUCT STANDARDS: (A) Your organization represents that it aspires to a tolerant and civil workplace, one that is free of discrimination, harassment, and misconduct of any kind. Your organization further represents that it has in place or is committed to putting in place policies, procedures, or practices that will help ensure a tolerant and civil workplace, including the following: Staff training regarding workplace misconduct; mechanisms for complaints to be made to an impartial person; fair processes for investigation and adjudication; and prohibitions against retaliation against persons making good faith complaints.  
  
(B) In the event the Foundation learns of allegations of workplace misconduct as a result of notification by your organization or by third parties, your organization agrees to cooperate with reasonable requests of the Foundation to understand the policies, procedures, and practices in place and what steps were taken in response to the allegations. In making such requests, the Foundation is not seeking to determine the truth or falsity of the underlying allegations and is not accepting any such allegations as true. If the Foundation concludes that your organization lacks the necessary workplace protections or has failed to adhere to appropriate practices in its investigation, the Foundation may take such action as is appropriate under the circumstances, including suspending future grant payments until your organization has implemented additional steps to addressing the situation or, in extreme cases, terminating the grant. Prior to taking any action, the Foundation will discuss with you the proposed course of action and provide your organization an opportunity to respond and suggest corrective action.
10. EVALUATING OPERATIONS: The Foundation may monitor and conduct an evaluation of operations under this grant, which may include a visit from Foundation personnel to observe your organization's program, discuss the program with your organization's personnel, and review financial and other records and materials connected with the activities financed by this grant.
11. FOUNDATION GRANT REPORTS: The Foundation may include basic information about this grant through a variety of public channels, including press releases, publications, videos, social media, and the Foundation's website. If there are special considerations concerning the public announcement of this grant at your organization, if you plan to issue a public announcement of the grant, or if you would like to coordinate a public announcement of the grant with the Foundation's announcement, please reach out to Communications at the Foundation.
12. RIGHT TO DISCONTINUE FUNDING, RESCIND PAYMENTS, AND REQUIRE RETURN OF UNSPENT FUNDS: The Foundation may, in its sole discretion, discontinue or suspend funding, rescind payments made or demand return of any unspent funds based on any of the following: (a) the written reports required herein are not submitted to the Foundation on a timely basis, (b) the reports do not comply with the terms of this agreement or fail to contain adequate information to allow the Foundation to determine the funds have been used for their intended charitable purposes, (c) grant funds have not been used for their intended charitable purposes or have been used inconsistent with the terms of this agreement, (d) the Foundation is not satisfied with the progress of the activities funded by the grant, (e) the purposes for which the grant was made cannot be accomplished, or (f) making any payment might, in the

judgment of the Foundation, expose the Foundation to liability, adverse tax consequences, or constitute a taxable expenditure. The Foundation will provide notice of any determinations made under this paragraph. In the event the Foundation takes action permitted by this paragraph solely based on (d) and (e), and your organization provides documentation that it has incurred obligations consistent with the terms of the grant in good faith reliance on the grant agreement and the Approved Budget, the Foundation will consider in good faith permitting grant funds to be used to pay such obligations.

13. RIGHT TO RECOVER SPENT FUNDS: Your organization will repay the Foundation, upon demand, the amount of any funds spent for purposes inconsistent with or contrary to the grant agreement or the Approved Budget.
14. U.S. TAX STATUS: By countersigning this agreement, your organization confirms that it is a governmental entity. If such status changes during the course of this grant, your organization hereby agrees to notify the Foundation and, upon request, promptly return any unspent grant funds to the Foundation as of the date of such change.
15. MODIFICATION OF TERMS: The terms of this agreement may be modified only by an agreement signed by an officer of your organization and a corporate officer of the Foundation. Any modifications made by your organization to this printed agreement (whether handwritten or otherwise) will not be considered binding on the Foundation until written confirmation of such modification is obtained from the Foundation.
16. HEADINGS: The section headings in this agreement are for convenience only and are not intended, and shall not be construed, to alter, limit or enlarge in any way the scope or meaning of the language contained in this agreement.
17. ENTIRE AGREEMENT: This agreement represents the entire agreement between your organization and the Foundation with respect to the subject matter herein and supersedes any and all prior agreements, understandings, negotiations, representations and discussions with respect thereto. This agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts delivered using digital signatures via the Foundation's DocuSign process or other secured means approved in advance by the Foundation shall be deemed to have been duly and validly delivered and shall have the same force and effect as if the signature was an original thereof. In the event that any original wet signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.
18. **DUE AUTHORITY: The person(s) signing this agreement on behalf of your organization represents and warrants to the Foundation that s/he is an officer of your organization and has requisite legal power and authority to execute this agreement on behalf of your organization and bind your organization to the obligations herein.**

IN WITNESS WHEREOF, the parties have caused this agreement to be effective as of the Effective Date.

**JOHN D. AND CATHERINE T.  
MacARTHUR FOUNDATION**

DocuSigned by:  
  
By: \_\_\_\_\_  
C5D13B7643314D2...

Joshua J. Mintz  
Its: Vice President, General Counsel, and Secretary  
E-Mail: [jmintz@macfound.org](mailto:jmintz@macfound.org)

**CITY & COUNTY OF SAN FRANCISCO D/B/A  
SAN FRANCISCO DISTRICT ATTORNEY OFFICE**

DocuSigned by:  
  
By: \_\_\_\_\_  
5A6746C0513C47B...

Signature  
Its: Chief Financial Officer  
Title

**Payment should be made payable to CITY & COUNTY OF SAN FRANCISCO D/B/A SAN FRANCISCO DISTRICT ATTORNEY OFFICE**

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*To facilitate receipt of the grant funds:*

- (1) Please upload the fully-signed agreement (and attachments) to the Foundation's Grants Management System.
  - (2) Please complete, sign, and return the MacArthur Electronic Payment Authorization Form to the Foundation using DocuSign.
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**ATTEMPTS TO INFLUENCE LEGISLATION  
BY MacARTHUR FOUNDATION GRANTEES**

Under United States law, MacArthur Foundation grant monies may not be used to pay for attempts to influence legislation, unless they qualify under certain specific exceptions. (These laws do not affect how grantees may spend money received from other sources.) This paper will generally describe what activities are regarded as attempts to influence legislation and some of the exceptions available. Also, attached is a chart describing some permissible and prohibited public policy activities.

**Lobbying**

Attempts to influence legislation, commonly known as lobbying, may be of two types, direct or indirect:

*Direct Lobbying*

Direct lobbying refers to certain communications directly with government personnel who are involved in the legislative process. They may be legislators or employees of legislative bodies, or other government personnel who participate in the formulation of the legislation concerned.

A communication with these government personnel will be lobbying only if it both refers to specific legislation and indicates a view on that legislation.

*Indirect Lobbying*

Indirect (or "grass roots") lobbying refers to communications with members of the general public. Certain "public relations" or educational activities may constitute indirect lobbying, and others will not.

Indirect lobbying communications include only communications that (1) refer to specific legislation, (2) indicate a view on the legislation, and (3) encourage the recipient of the communication to take action with respect to the legislation.

*Specific Legislation*

"Specific legislation" includes both legislation that has already been introduced in a legislative body and a specific legislative proposal.

*Legislation*

Legislation refers only to action by a legislative body -- such as a congress, senate, chamber of deputies, house of representatives, state legislature, local council or municipal chamber of representatives -- or by the public in a referendum or similar procedure. Legislation of

the United States or any other country or of any local government is included.

Legislation also includes proposed treaties required to be submitted by the President of the United States to the Senate for its advice and consent from the time the President's representative begins to negotiate its position with the prospective parties to the proposed treaties.

Action by an executive or by a judicial or administrative body does not constitute legislation, so attempts to influence such action do not constitute lobbying.

*Encouraging Recipient to Take Action*

A communication may encourage the recipient to take action with respect to legislation, and therefore meet the third test for indirect lobbying, in any one of the following four ways:

1. It may state that the recipient should contact a legislator (or other government official or employee who may be involved in the legislation).
2. It may state the address, telephone number, or similar information of a legislator or an employee of a legislative body.
3. It may provide a petition, tear-off postcard, or similar materials for the recipient to send to a legislator or other government official or employee.
4. It may specifically identify one or more legislators who will vote as:
  - a. opposing the communication's view with respect to the legislation,
  - b. undecided about the legislation,
  - c. the recipient's legislative representative, or
  - d. a member of the legislative committee that will consider the legislation.

**Exceptions**

There are a few specific exceptions from prohibited lobbying. The most important of these for MacArthur Foundation grantees are the exception for examinations and discussions of broad social, economic, and similar problems and the exception for nonpartisan analysis, study, or research.

A communication regarding broad social, economic, and similar problems will not constitute lobbying, even if the problems discussed are of a type with which government would be expected to deal eventually. Accordingly, it is permissible to speak to

legislators or the general public about problems that the legislature should address. These communications may not, however, discuss the merits of a specific legislative proposal or directly encourage recipients to take action with respect to the legislation.

Nonpartisan analysis, study, or research means an independent or objective exposition of a particular subject matter. It may advocate a particular position or viewpoint, so long as there is a full and fair discussion of the pertinent facts, which is sufficient to enable an individual to form an independent opinion or conclusion.

The results of nonpartisan analysis, study, or research may indicate a view on specific legislation, and they may be communicated to a legislator or government official or employee involved in the legislative process. They may not, however, be communicated to members of the general public with a direct encouragement to the recipient to take action with respect to the legislation.

A grantee may not use the nonpartisan analysis, study, or research exception, such as by omitting the direct encouragement to take action, and then later use the communication for lobbying purposes. If it does, and if the

grantee's primary purpose in preparing the original communication was for use in lobbying, the amounts spent to prepare the original communication will be treated as funds used for lobbying.

#### **Related Issues**

The use of any MacArthur Foundation grant monies to participate in any political campaign on behalf of or in opposition to any candidate for public office is also prohibited by United States law. This applies to elections both inside and outside the United States.

Also, no MacArthur Foundation grant monies may be used to make any payments that would be illegal under local law, such as to offer money to a public official to perform an official action or to omit or to delay an official action.

#### **Questions**

If you have any questions regarding the rules discussed in this memorandum, or if you would like further information please contact the Office of the General Counsel, at the John D. and Catherine T. MacArthur Foundation, 140 South Dearborn Street, Chicago, Illinois 60603-5285, U.S.A.; telephone (312) 726-8000.



**PERMISSIBLE AND PROHIBITED ACTIVITIES**

***Some Permissible Public Policy Activities***

1. Meetings with or letters to government officials, including legislators, about a problem needing a legislative solution, so long as there is either no reference to specific legislation or no view expressed on specific legislation.
2. Communications with members of the general public about a social problem, so long as there is either no reference to specific legislation, no position taken on the legislation or no encouragement of the public to contact legislators or other government personnel concerning the legislation.
3. Meetings with or letters to government personnel other than legislators or their staff (such as mayors, governors or their staff) about specific legislation if the personnel contacted are not participating in formulating the legislation.
4. Efforts to influence regulations or other actions of an executive, judicial or administrative body.
5. Public interest lawsuits.
6. Communications directly to legislators or their staff regarding legislation that might affect the communicating organization's existence, powers and duties, or its exemption from taxes.
7. Responding to written requests from a legislative body or committee (but not one legislator) for technical advice or assistance on particular legislation.
8. Communicating the results of nonpartisan analysis, study or research on a legislative issue, so long as there is no direct encouragement of members of the general public to contact legislators or other government personnel concerning the legislation.

***Some Prohibited Public Policy Activities***

1. A letter to or meeting with a legislator encouraging the legislator to vote either for or against specific legislation or to submit a specific legislative proposal to the legislature.
2. An advertisement or pamphlet encouraging people to contact their legislators and to urge them to vote for or against specific legislation.
3. A public meeting where individuals are asked to sign a petition urging legislators to vote for or against specific legislation.
4. Publishing articles and producing radio and television broadcasts urging recipients to become involved in a political campaign on behalf of or in opposition to a candidate.
5. Preparing a fact sheet for a legislative committee describing one view of proposed legislation important to an organization's objectives, when such fact sheet has not been requested in writing by the committee.

## ELECTIONEERING ACTIVITIES

This document provides guidance regarding the rules prohibiting participation in political campaigns. This overview is simplified for educational purposes. It is not legal advice and should not be relied on as such. Your organization should consult qualified legal counsel with questions.

The general rules are clear and easy to state: **Organizations described in section 501(c)(3) of the Internal Revenue Code -- or their equivalent as determined in accordance with applicable law -- may not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.** For ease of reference, this general prohibition will be referred to as “electioneering activities”. The MacArthur Foundation is a section 501(c)(3) private foundation and it is subject to the prohibition on the use of its funds for electioneering activities (and lobbying).

There are no bright line rules defining electioneering activities, although they generally arise when there is (1) a candidate,<sup>1</sup> (2) that candidate is seeking public office, and (3) the activities involve participation or intervention in the candidate’s political campaign. The IRS applies a “facts and circumstances” test to determine whether an activity constitutes campaign intervention. **Nonpartisan voter education is not treated as campaign intervention.** Educational activities include “the instruction or training of the individual for the purpose of improving or developing his capabilities.” Educational activities also must present “a sufficiently full and fair exposition of the pertinent facts.”

To help evaluate whether a particular activity involves prohibited political campaign intervention, the following chart compares examples of situations in which the IRS has ruled that an activity constitutes prohibited campaign intervention with examples involving nonpartisan voter education:

Political Campaign Intervention	Nonpartisan Voter Education
<b>Basic Advocacy</b>	
Expressly advocating for the election or defeat of an identified candidate or party, including through the use of code words or issues that are clearly associated with one candidate or party.	Providing neutral information about candidates, such as posting links to each candidate’s official campaign websites if the links are presented on a consistent neutral basis for each candidate with text saying, “For more information on Candidate X, you may consult ____.”

<sup>1</sup> A candidate is defined under Section 1.501(c)(3)-1(c)(3)(iii) of the Treasury Regulations as “an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local.”

Electioneering Activities

Political Campaign Intervention	Nonpartisan Voter Education
<b>Guides on Voter Issues and Voting Records</b>	
<p>Publishing a single-issue voter guide reflecting candidates' positions on an area of interest to the organization. [<b>Consequently, a voter guide that reflected a candidate's position on only a single issue related to corruption would be problematic.</b>]</p> <p>Preparing voter guides that convey a bias regarding candidates' positions on certain issues and distributing the guides to particular congressional districts close to the date of the election.</p>	<p>Publishing and making widely available the results of a questionnaire identifying the candidates' positions on a broad range of issues selected by the organization solely on the basis of their importance and interest to the electorate as a whole.</p> <p>Publishing and making widely available a compilation of voting records of Congressional members on a broad range of subjects when there is <b>no editorial opinion</b> and the content and structure of the publication do not imply approval or disapproval of any Congressional members or their voting records.</p> <p>Publishing a summary of the voting records of all incumbent members of Congress on selected legislative issues that are important to the organization, along with the organization's position on those issues, when there is limited distribution, no attempt to target distribution to areas where there are elections, and the timing coincides with the end of congressional sessions (the guide also included a caveat about judging the qualifications of an incumbent based on a few selected votes).</p>
<b>Get Out the Vote Efforts</b>	
<p>Calling registered voters before an election, emphasizing the importance of particular issues, asking about the voters' views on those issues, and only engaging voters whose views are favorable to the organization's positions.</p>	<p>Conducting or funding "get out the vote" drives that treat all voters equally, regardless of party affiliation or candidate preference (if known).</p> <p>The IRS has also ruled that an organization can focus voter education and outreach efforts on women voters, particularly in minority communities, through a variety of public events and locations if the organization provides assistance to anyone who requests it, regardless of party affiliation, and the organization does not comment on any candidate's qualifications and does not rate any candidates.</p>
<b>Candidate Forums and Debates</b>	
<p>Holding a candidate forum that involves biased questioning procedures.</p>	<p>Sponsoring candidate debates or forums that include all qualified candidates if the moderator's questions cover a range of issues and do not reflect a bias for or against a candidate.</p>

## Electioneering Activities

Political Campaign Intervention	Nonpartisan Voter Education
<b>Use of Resources and Facilities</b>	
<p>Permitting directors, officers, and employees to use the organization’s resources (e.g., email or mailing list) to engage in campaign activities, even if these directors, officers, and employees are only supporting the campaign in their personal capacities.</p> <p>Offering special support, services, or resources (e.g., reviewing issue papers) to one campaign, without making such support or services available on an even-handed basis to all candidates and failing to charge fair market value for such support or services.</p>	<p>Permitting directors, officers, and employees to engage in political campaign activities on a <b>personal basis</b> so long as they do not use the organization’s resources (e.g., email or mailing list) to engage in campaign activities.</p> <p>Making the organization’s facilities and other resources available to individuals or groups for political campaign purposes, provided they are made available on the same basis as to non-political groups or individuals, the organization doesn’t promote or endorse the event, and ensures the facilities are equally available to all candidates and political parties.</p>
<b>Rating Candidates</b>	
<p>Rating candidates for elective public office, even if there is no mention of the candidates’ party affiliation and the ratings are based on a standard of professional competence (e.g., approved as highly qualified, approved, or not approved) as opposed to a comparison of candidates.</p> <p>This can include hosting a platform for members of the public to learn more about candidate positions and express their preferences for candidates and publishing the ratings.</p>	<p>Hosting a platform for members of the public to listen to candidate positions and express their preferences for candidates without publishing or otherwise making available the ratings.</p>
<b>Appearances at Public Meetings and Events</b>	
<p>Acknowledging the presence of an elected official who is also a candidate at a public event and highlighting the importance of his or her re-election in order to advance an issue.</p>	<p>Referencing the presence of an elected official who is a candidate attending a meeting or event without referencing that person’s candidacy or the election.</p>

The following are additional activities that are **impermissible** under the rules:

- Candidate pledges, such as asking candidates to sign pledges (or covenants) to support your issue.
- Making financial contributions to candidates.
- Expressly advocating a vote for or against a candidate.
- Increasing the amount or volume of criticism of sitting officials who are also candidates in close proximity to an election.
- Endorsing a candidate.
- Making campaign contributions or expenditures on behalf of candidates.
- Restricting rental of mailing lists or facilities to only certain candidates or engaging in such business transaction for the first time with candidates.
- Publishing or communicating anything that explicitly or implicitly favors or opposes a candidate.

## Electioneering Activities

- Criticizing sitting legislators or other elected officials by attacking their personal characteristics or attacking them in their status as a candidate.

### Acting in a Personal Capacity

While 501(c)3 organizations cannot intervene in political campaigns, individuals that may be associated with the organization can in their personal capacity intervene in campaigns. It becomes very important, however, for the individual to be clear that he or she is acting as an individual and not on behalf of the organization. Written or spoken disclaimers indicating that the actions or words are in a personal capacity are critical to making the distinction especially if the individual occupies a high-profile place in the organization. In addition, the resources of the organization should not be used to advance the individual's political activity. This means the following types of resources or equipment belonging to the organization should not be used by the individual to further his/her own political activity: machines, phones, computers, mailing lists, email, office space, newsletters, internal communications or stationary among other items.

### Conclusion

This overview provides some examples of how the IRS has distinguished between political campaign intervention and nonpartisan voter education to help grantees comply with the Foundation's prohibition on the use of grant funds for political campaign activities. It is important to note that some of these activities may also intersect with the Foundation's prohibition on the use of funds for lobbying activities. In these cases, the grantee should ensure that the activities qualify under a relevant exception to the lobbying rules, such as the exceptions for nonpartisan analysis and research or the examination and discussion of broad social, economic, or other issues.

# Policy Regarding Intellectual Property Arising Out of Foundation Grants

## Introduction

Foundation grants often result in tangible products, such as reports, papers, research, software, data sets, curriculum, books, film or television documentaries, or radio programs (“Grant Work Product”). This Policy articulates the principles guiding the Foundation’s approach to the ownership and use of Grant Work Product. It addresses specifically the ownership, use, copyright to, distribution and licensing of the Grant Work Product arising from project grants by balancing the interests of the Foundation with the interests of the grantee and other interested parties.

Recipients of general operating support grants are expected to have policies in place reasonably consistent with the underlying philosophy and principles reflected in this Policy.

The Foundation is cognizant that fast-evolving technological advances are impacting the manner and method by which knowledge in whatever form can be protected and distributed and the Foundation will evaluate this policy in light of this understanding. The attached glossary defines certain underscored terms used in this Policy.

## Policy

The Foundation's policy is to ensure that use of the Grant Work Product furthers charitable purposes and benefits the public. To that end, the Foundation seeks prompt and broad dissemination or availability of the Grant Work Product at minimal cost to the public or, when justified, at a reasonable price.

Distribution at a reasonable price may be justified when integral to the business plan and sustainability of a charitable organization or when the Foundation is satisfied that net revenues derived from the distribution will be used for charitable purposes.

- Grant Work Product should, whenever feasible, be licensed under a Creative Commons license appropriate for the circumstances or other similar scheme that provides for wide distribution or access to the public.
- Software created with grant funds should be ordinarily licensed under an open source license.
- The Foundation also expects openness in research and freedom of access to research results and, when feasible, to the underlying data by persons with a serious interest in the research. This means that grant-funded impact studies should generally be registered in a field-appropriate registry, preferably before data are collected or at least before statistical analyses are performed.

The Foundation recognizes there may be circumstances where limited or delayed dissemination of Grant Work Product, delayed or non-registration of impact studies, or limited or delayed access to data may be appropriate to protect legitimate interests of the grantee, other funders, principal investigators or participants in research studies. Such circumstances will be evaluated on a case-by-case basis.

We will apply these same general principles to our contract-funded evaluation work and make the relevant information available under our Policy on Information Sharing.

Ownership of intellectual property rights (including copyright and patent rights) should not be used to limit or deny access to the Grant Work Product, to result in exclusive use of such Grant Work Product, or to create revenue that is not used substantially for charitable purposes. Copyright to or patent rights in the Grant Work Product will ordinarily remain with the grantee, but the Foundation will be granted a no-cost assignable license to use or publish the Grant Work Product consistent with this Policy. The Foundation may forego or limit the requirement of a license if the Foundation is reasonably satisfied that other appropriate arrangements will be implemented that will assure the goals of this Policy.

In all instances, the Foundation will agree to suitable terms at the time a grant is made based on the facts to ensure the objectives of the Policy are met while respecting appropriate interests of others.

This Policy was initially adopted by the Foundation on September 18, 2008. It was last revised on September 10, 2015 and applies to grants awarded after that date.

## **Glossary**

**Creative Commons License:** A license that allows creators of intellectual property to retain copyright while allowing others to copy, distribute, and make some uses of their work — at least non-commercially. <http://creativecommons.org/licenses/>

**Data:** All materials created during the research process including raw data and metadata required to replicate and assess the trustworthiness of reported findings in their entirety.

**Impact Study:** A study that investigates how an intervention affects outcomes based on a model of cause and effect. It requires a credible counterfactual (typically, a control group or a comparison group) of what those outcomes would have been in the absence of the intervention. An impact study must control for factors other than the intervention that might account for the observed change.

**Open Source License:** A license that allows software or other products to be used, modified, and shared under defined terms and conditions.

**Registry:** An access point for collaborators, other scholars, students, and the interested public that provides links to data sets, survey instruments, impact studies, and experimental protocols. The purpose is to enhance the transparency and quality of research/evaluations studies funded by foundations.

**Research:** The general field of disciplined investigation, covering the humanities, the sciences, jurisprudence, evaluation and so on.

Source: Evaluation Thesaurus. Michael Scriven.

## **EXHIBIT 1**

### **TEMPLATE AMENDMENT TO DATA USE AGREEMENT**

WHEREAS, the John D. and Catherine T. MacArthur Foundation (“Foundation”) initiated and is providing funding for the “Safety and Justice Challenge” (“SJC”), the goal of which is to reduce the use of local incarceration by reducing the flow of individuals into jail, shortening the lengths of stay in jail, and diminishing racial and ethnic disparities in jail populations, without compromising public safety; and

WHEREAS, the Foundation has awarded funding to states, counties, cities, and other jurisdictions (“Sites”) to implement plans to further the goal of the SJC; and

WHEREAS, the Foundation has awarded [•] County, as the Lead Agency of a Site, to implement such a plan; and

WHEREAS, as part of such implementation, the Lead Agency, on behalf of its Site, entered into a Data Use Agreement dated [•], as amended [•], with the Research Foundation of the City University of New York on behalf of The City University of New York Institute for State and Local Governance (“ISLG”) (the “DUA”), so that ISLG could collect, consolidate, and analyze data from the Site for the purposes of establishing performance measures and monitoring those measures; transferring such data to other entities working on the SJC for evaluation; the development of jail population projections, provision of data-driven technical assistance; and research to further understand the outcomes of the SJC; and

WHEREAS, the DUA establishes a schedule according to which the Site will provide such data to ISLG during the term of the DUA, which expires on [•]; and

WHEREAS, the Foundation, the Site, and ISLG wish to extend the term of the DUA to allow the Site to provide data to ISLG for the purposes described herein to run concurrently with the term of additional funding granted by the Foundation;

NOW, THEREFORE, the parties agree as follows:

- I. Section I of the DUA shall be amended to read as follows (new text indicated by underline, deletions indicated by strikethrough):

This Agreement shall be effective upon execution by all parties, and will continue until [•][insert end date of data use agreement or current grant cycle, as appropriate], or, if additional grant funding is awarded by the Foundation, the termination date of such additional grant funding (“Scheduled Termination Date”), unless it is:



- a. extended, as provided pursuant to Section [IX] herein, or
- b. terminated earlier than the Scheduled Termination Date, pursuant to Section [X] herein.

II. The other provisions of the DUA shall remain in full force and effect.

III. This Agreement may be executed in counterparts and will be considered as one executed agreement, and facsimile or electronic signatures (in PDF) received by the appropriate party will be treated as originals.

IV. The individuals signing below certify that they have the authority to execute this Amendment on behalf of the named entity.

V. IN WITNESS WHEREOF, the parties undersigned executed this Amendment effective as of the later of the dates of the signatures below.

A. For the Site:

Name of Lead Agency:

Address:

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name:

Title:

Other Agencies:

Name of Agency:

Address:

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name:

Title:

B. Research Foundation of The City University of New York  
on behalf of The City University of New York  
Institute for State and Local Governance  
230 West 41st Street, 7th FL  
New York, NY 10036

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: Matthew R. Drost

Title: Chief Counsel and Secretary of the Board