

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

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Release Date: 9/8/2017
Date: **June 13, 2017**

Employer Identification Number:

Contact Person - ID Number:

Contact Telephone Number:

LEGEND

C = Charity Name
D = State
F = State
G = Building

UIL:
4942.03-07

H = Date
J = Date
K = Date
L = Date
M = Date
N = Date

x dollars = Amount
y dollars = Amount
z dollars = Amount

Dear _____ :

Why you are receiving this letter

This is our response to your December 9, 2016 letter requesting approval of a set-aside under Internal Revenue Code section 4942(g)(2). You've been recognized as tax-exempt under section 501(c)(3) of the Code and have been determined to be a private foundation under section 509(a).

Our determination

Based on the information furnished, your set-aside program is approved under Internal Revenue Code section 4942(g)(2). As required under section 4942(g)(2), the set aside amount must be paid within the 60-month period after the date of the first set-aside.

Description of set-aside request

You were incorporated in the state of D. You wish to set aside a grant totaling x dollars to C as part of a matching grant program. C is a 501(c)(3) public charity under Section 170(b)(1)(A)(vi) organized under the laws of the State of F. C among other things wants to restore G and hopes to revitalize the historical neighborhood surrounding G which at one time was a center of art, craftsmanship, music and culture. G has been closed for several years and has deteriorated greatly. C has proposed a project to restore and make improvements to G which will also help stabilize the surrounding neighborhood. The purpose of the grant is to assist C to restore G's steeple and tower. The estimated total cost of the restoration project is y dollars.

You submitted a detailed agreement with C. Pursuant to the terms of this agreement with C, you will make a matching grant of x dollars to C to fund approximately one-third of the estimated cost of the restoration project. You anticipate that the remaining two-thirds of the cost of the project will be funded by donations and grants made to C resulting from fundraising activities undertaken by C in response to your matching grant challenge.

In addition, the agreement with C stipulates, if C raises the matching funds and satisfies certain other conditions of the agreement, you will disburse the funds to C in a lump sum within 21 business days.

Upon receipt of the funds from you, C will deposit the funds in a separate interest bearing account to pay reimbursable costs of the project. Disbursements are limited to one-third of the total reimbursable costs incurred in connection with the project to the date of disbursement. The agreement states reimbursable costs shall mean costs actually incurred by C for labor, materials, other items described in the proposal.

Reimbursable costs will not include costs of publicity, planning, fundraising, legal and accounting services, financing, staff salaries, and other soft costs not directly incurred for labor, materials, or services for the project.

Specific conditions to the grant are as follows: (a) On or before H, C shall have received eligible matching contributions in an amount not less than z dollars (two thirds of the total grant needed) and shall have provided evidence satisfactory to you in your sole discretion that such eligible matching contributions have been received.

To qualify as an eligible matching contribution, (i) a contribution must be a contribution or government grant of cash or marketable securities earmarked for the project actually paid to or received by C after J (being the date of your board meeting at which the grant was awarded) and prior to H (loans and amounts not earmarked for the project shall not be eligible matching contributions), (ii) an irrevocable, unconditional, binding pledge from a private donor or an irrevocable,

unconditional commitment from a governmental agency to contribute or grant cash or marketable securities for the project made after J and prior to H and payable not later than the projected date for substantial completion of the project or (iii) an irrevocable, unconditional, binding commitment made after J and prior to H for an in-kind contribution for the project that has a readily ascertainable market value. In-kind contributions of materials and services shall be valued based upon the prices customarily charged by the provider of such materials and services at the time of contribution. Services performed by volunteers or other persons who are not regularly engaged in the business of providing such services shall not be considered as eligible matching contributions.

Eligible matching contributions shall not include: interest earned on amounts deposited in the project account or the value of any new market, historic or other tax credits attributable to the project.

(b) On or before K, you shall have received assurances that C has engaged a qualified architectural or contracting firm approved by you as the supervising architect or construction manager for the project.

(c) On or before L, C shall have submitted to you and you shall have approved in writing, the drawings, plans and specifications for the project.

(d) On or before M, you shall be satisfied, in your sole discretion, that C has sufficient funding to complete the project as embodied in the plans.

(e) Prior to the disbursement of any portion of the grant from the project account for the purchase of any materials or performance of any work on the project, C shall have received written approval from you on the contractor, the vendor or other supplier and all final contracts exceeding 5% of the total project costs for the labor and/or materials.

(f) At the time the grant is initially paid to C and the time of any disbursement of any portion of the grant, C shall be an organization currently described in Sections 501(c)(3) and 509(a)(1) or (2) of the Internal Revenue Code.

Specifically, the purpose of the grant requires the use of a matching-grant program and the preservation of control over the long-term project, both of which can be better accomplished by the use of a set-aside. With regard to the matching-grant program, you believe that the program is necessary to increase grant funding to C from the community-at-large. Because of the extent and cost of restoration needed for the project, grants from the community-at-large must form an essential and significant part of the project funding. Through your matching grant program, you hope to encourage other donors to support the project. The approximate three year period provided in the agreement to raise the necessary matching funds has been mutually agreed by you and C as allowing sufficient time for C to complete its anticipated capital campaign for the project. Pursuant to the terms of your signed

agreement with C, payment of the grant must be made within 21 business days after the specific conditions are satisfied.

Accordingly, you provided a signed statement by your officer that the payment must be made not later than N (21 business days after the latest possible date for satisfaction of the specified conditions) which is less than 60 months from J, the date of the set-aside.

Finally, you have previously submitted multiple set aside requests similar to this request which have received set aside approval under Code Section 4942(g)(2)(B)(i); however, typical grants of yours are not subject to Set Aside Requests.

Basis for our determination

Internal Revenue Code section 4942(g)(2)(A) states that an amount set aside for a specific project, which includes one or more purposes described in section 170(c)(2)(B), may be treated as a qualifying distribution if it meets the requirements of section 4942(g)(2)(B).

Section 4942(g)(2)(B) of the Code states that an amount set aside for a specific project will meet the requirements of this subparagraph if, at the time of the set-aside, the foundation establishes that the amount will be paid within five years and either clause (i) or (ii) are satisfied.

Section 4942(g)(2)(B)(i) of the Code is satisfied if, at the time of the set-aside, the private foundation establishes that the project can better be accomplished using the set-aside than by making an immediate payment.

Section 53.4942(a)-3(b)(1) of the Foundations and Similar Excise Taxes Regulations provides that a private foundation may establish a project as better accomplished by a set-aside than by immediate payment if the set-aside satisfies the suitability test described in section 53.4942(a)-3(b)(2).

Section 53.4942(a)-3(b)(2) of the Foundations and Similar Excise Taxes Regulations provides that specific projects better accomplished using a set-aside include, but are not limited to, projects where relatively long-term expenditures must be made requiring more than one year's income to assure their continuity.

In Revenue Ruling 74-450, 1974-2 C.B. 388, an operating foundation converted a portion of newly acquired land into a public park under a four-year construction contract. The construction contract payments were to be made mainly during the final two years. This constituted a "specific project." The foundation's set-aside of all its excess earnings for four years was treated as a qualifying distribution under Internal Revenue Code section 4942(g)(2).

What you must do

Your approved set-aside(s) will be documented on your records as pledges or

obligations to be paid by the date specified. The amounts set aside will be taken into account to determine your minimum investment return under Internal Revenue Code section 4942(e)(1)(A), and the income attributable to your set aside(s) will also be taken into account in computing your adjusted net income under section 4942(f) of the Code.

Additional information

This determination is directed only to the organization that requested it. Internal Revenue Code section 6110(k)(3) provides that it may not be used or cited as a precedent.

Please keep a copy of this letter in your records. We have sent a copy of this letter to your representative as indicated in your power of attorney.

If you have any questions, please contact the person listed in the heading of this letter.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure