FISCAL SPONSORSHIP

TOOLKIT

COMMUNITIES OF OPPORTUNITY
LEARNING COMMUNITY

COMMUNITIES RISE
Partners for
Thriving Organizations

INTRODUCTION

We put together this **Fiscal Sponsorship Toolkit** to help you navigate the ins and outs of entering into a fiscal sponsorship relationship and creating written documents that capture the spirit and details of your collaborative work together. The Fiscal Sponsorship Toolkit has written materials that help you understand the nature of fiscal sponsorship relationships, a video highlighting some of the key fiscal sponsorship concepts and there are two written document templates:

1) The Fiscal Sponsorship Agreement Template and **2) the Statement of Shared Values Template**.

It is important to have a written **Fiscal Sponsorship Agreement,** to be sure that both the sponsoring organization (the "Sponsor") and the sponsored organization ("Sponsored Organization"") are on the same page and so that you don't have to rely on different people's memories of what was agreed to.

DISCLAIMER: *This Fiscal Sponsorship Agreement Toolkit is for educational purposes only. This is not meant to be comprehensive, and in no way will this content be considered legal or any other form of professional advice or counsel. For legal or professional advice, please contact the relevant professional for your needs licensed in your jurisdiction.*

HOW TO USE THIS TOOLKIT

The Fiscal Sponsorship Agreement Toolkit has six components:

1. **This Introduction to the Fiscal Sponsorship Agreement Toolkit** — acquainting you with this toolkit, with instructions on how to use it.

2. **Recommendations for a Fiscal Sponsorship Relationship** — which give you an overview of what a fiscal sponsorship relationship is, why organizations need or want to be in a fiscal sponsorship relationship, and important legal and relational considerations to think about before you enter into a fiscal sponsorship relationship and agreement.

3. **Fiscal Sponsorship Agreement Checklist** — which provides easy-to-understand explanations of each of the components of a Fiscal Sponsorship Agreement, including definitions of legal terms used in the agreement, explanations of each of the components in plain language, and "things to consider" for each of the components, including non-legal considerations.

4. **Fiscal Sponsorship Agreement Template** — a template agreement that is a legal contract. This template is a form that you can use as a guide to creating the written agreement for your fiscal sponsorship relationship. It has relevant information for most fiscal sponsorships. You will have to fill in the blanks and add or take out some provisions to customize it for your particular collaboration.

5 **Statement of Shared Values Template** — a template document that documents a conversation and agreements of the relational norms or ways the two organizations want to be in relationship with each other. This document is not necessary, but we recommend it because it provides a format to capture your shared values, communication norms, and conflict resolution methods.

6 **The Fiscal Sponsorship Toolkit Video** — a short 13-minute video that provides highlights of the written materials and additional insight on fiscal sponsorships from Community Advocate Alejandra Perez, Attorney Madhu Singh and Communities Rise Executive Director Jodi Nishioka.

RECOMMENDATIONS FOR A FISCAL SPONSORSHIP RELATIONSHIP

This document provides an overview of various aspects of the fiscal sponsorship relationship. For more in depth information and resources we created an Appendix to this document (on page 10).

I. What is a Fiscal Sponsorship?

A fiscal sponsorship means an arrangement between two organizations where one organization that lacks 501(c)(3) status ("Sponsored Organization" or "Sponsored Project") enters into an agreement with an existing 501(c)(3) nonprofit ("Sponsor") so that the Sponsor will receive and process donations and grants on behalf of the Sponsored Organization. Sponsors typically provide additional administrative and other supportive services to Sponsored Organizations but the practical need of the Sponsored Organization for access to funding is what spurs the arrangement. Sponsors are typically established organizations while Sponsored Organizations are typically newly-formed organizations or projects.

We want to take a moment to highlight some common terms that we will use in this section and throughout this toolkit:

"Fiscal Sponsorship": The arrangement previously described between a Sponsored Organization and a Sponsor that should be captured into a written agreement called a fiscal sponsorship agreement.

"Fiscal Sponsor" or **"Sponsor"**: The established organization that has 501(c)(3) tax-exemption.

"Sponsored Organization" or **"Sponsored Project"**: The organization or project that does not have its own 501(c)(3) status and is "borrowing" the fiscal sponsor's 501(c)(3) status. For purposes of brevity in this document, we will use these terms interchangeably, unless specifically noted otherwise.

From a legal perspective there are different models to structure a fiscal sponsorship relationship. Depending on the model, the roles and responsibilities of Sponsor and Sponsored Organization will be different. Read more in the Appendix (page 10) about the different aspects of the two most common models to help you understand these models and how they impact the Sponsor's and Sponsored Organization's roles and responsibilities.

II. What are the potential benefits of fiscal sponsorships for Sponsored Organizations/ Projects?

Access to Funding

The practical need to obtain funding to grow their programs is what typically pushes new community organizations or projects to consider fiscal sponsorship as a worthwhile option. Groups learn that obtaining funding necessitates 501(c)(3) status, because individual donors generally make donations to nonprofits if they can be tax deductible; and only donations to 501(c)(3)s are deductible under IRS rules. Likewise, for grant funding, eligibility guidelines of most foundations require grantees to have 501(c)(3) tax-exemption This is because the IRS rules require foundations to give their funding to 501(c)(3) charitable organizations, with few exceptions. Faced with this practical obstacle, new community groups often view fiscal sponsorship as a means to overcome this problem.

Other Potential Benefits to Fiscal Sponsorships

In addition to access to funding, there are other benefits of Fiscal Sponsorships for Sponsored Organizations to consider as well.

- **Back office services**. The role of a Sponsor can include a variety of back office functions on behalf of the Sponsored Organization ranging from managing donations and grants (including assistance with recordkeeping and grant reporting), bookkeeping, managing human resource needs, and filing tax and other compliance reports. These roles fill not only practical needs for the new organization or project but also ensure legal and financial compliance.
- **Reputation of established organization assists with funders**. The Sponsor's reputation can be critical to help funders view the Sponsored Organization as having stability and legitimacy in the new groups' ability to manage funds.
- **More time to focus on programs and relationships**. The Sponsor's handling of numerous management tasks frees up time for the Sponsored Project to focus on program work and community building.
- **Access to expert guidance**. Close connection to an established organization provides expert guidance on a regular basis.
- **Sponsor's board of directors provides oversight**. When Sponsors' take in a new Project (under the Comprehensive Model of fiscal sponsorship, see the Appendix on page 10 for the definition of "Comprehensive Model"), it means the Sponsor's board of directors will provide oversight of the Project — like any other program of the Sponsor — guided by board members' duties of care and loyalty. This can benefit Sponsored Projects.
- **Capacity building needs**. Another benefit of fiscal sponsorship is that Sponsors may be able to help meet capacity building needs of Sponsored Organizations. The fiscal sponsors leading this effort are typically BIPOC-led intermediaries who see fiscal sponsorship services as a means to advance systemic change and racial equity goals by building the capacity of BIPOC-led and serving organizations and projects. Such Sponsors' services can include:
    - Offering guidance on nonprofit survival skills

- Providing strategy and coaching related to fundraising, program development, and advocacy
- Connecting to donors

National equity-focused Sponsors can be an option for potential Sponsored Organizations interested in a deeper level of support. There are local Sponsors in Washington with a similar equity focus that may be able to provide such services as well. (See the Appendix on page 10 for examples of local organizations providing this type of support.)

The variety of needs that a Sponsor can meet illustrate how fiscal sponsorship can be a critical tool to help new organizations succeed, particularly with racial equity in mind.

III. What are the potential challenges for Sponsored Organization/Projects?

Fiscal sponsorships can also present challenges for Sponsored Organizations/Projects. Some of those include:

- **Sponsorship may be a barrier to building trust with donors.** Donors may not understand why they are making a donation to a differently named organization — the Sponsor — in order to benefit the Sponsored Organization.
- **No control over administrative practices geared toward Sponsor's needs.** Sponsored Organizations may need to adapt to the Sponsor's practices for practical issues such as when checks are cut or what financial reports look like. The Sponsor may not be able to address urgent circumstances for the Sponsored Organization as easily as the Sponsored Organizations might if they were an independent organization.
- **Fees.** Sponsors typically charge Sponsored Organizations an administrative fee of 10-15% of the revenue generated by the Sponsored Organization to cover the cost of Sponsor's administrative work in managing the fiscal sponsorship. Some Sponsored Organizations may find the fee to be a barrier to choosing fiscal sponsorship as an option.
- **Can be time consuming to find a good match in a Sponsor.** It takes a solid investment of time and energy to find a good fit between Sponsored Organization and Sponsor.

IV. What are the benefits of fiscal sponsorships for Sponsors?

Turning to Sponsors, the following is a list of potential benefits for Sponsors.

- **Sponsors can advance their goals and vision through sponsorships of new groups.** Fiscal sponsorships can help advance Sponsors' goals and vision of change as they nurture new organizations and projects. This connects to race equity and systemic change goals of certain dedicated fiscal sponsors that are focused on supporting BIPOC-led organizations. Sponsorships can also be viewed as a means to develop the next generation of organizations and leaders to carry common concerns forward.

- **Sponsors can enhance their reputations and attract new donors.** Sponsors can build their reputations with funders by sponsoring and incubating new and innovative efforts of Sponsored Organizations.

- **Fees.** For Sponsored Organizations the fee can be a critical part of agreeing to enter into a fiscal sponsorship given the level of service involved. For dedicated Sponsors that sponsor several groups, this can be an important aspect of their financial model.

V. What are the challenges for Sponsors — including legal considerations and risks?

For Sponsors, some challenges mirror these potential benefits. Other challenges relate to legal considerations as we detail below.

Reputation: The flip side of the possibility of enhancing the Sponsor's reputation is that the reputation could be negatively impacted by a disappointing or problematic project. It is important for Sponsors to carefully vet Sponsored Organizations/Projects.

Capacity: Sponsors have to make sure they have the adequate capacity and expertise to handle such issues as financial and accounting responsibilities and employment-oversight related to the Sponsored Project.

Sponsor's legal considerations and related risks: IRS legal requirements related to fiscal sponsorships arise from the fact that the IRS has done a detailed review and approval of 501(c)(3) status of the Sponsor — and not the Sponsored Organization. Therefore, legal responsibilities are directed at the Sponsor to oversee the Sponsored Project and ensure the Project's compliance with 501(c)(3) law. Some of these responsibilities bring up challenges for a Sponsor of engaging in fiscal sponsorships.

- **Mission alignment requirement and oversight role of Sponsor.** For a fiscal sponsorship to be legally compliant under IRS rules, the Sponsored Organization's mission and activities must fall within the IRS-approved mission and purposes of the Sponsor. This IRS requirement puts Sponsors in an oversight role over the Sponsored Organization's mission and activities to ensure the project is not causing a "mission drift" problem for the Sponsor. If a violation is found it's the Sponsor who would face penalties — which in a worst case scenario could involve having its 501(c)(3) status revoked by the IRS. Therefore, it's important for both parties to be aware of this issue. It is critical for the Sponsor to continue to monitor the activities of the Sponsored Organization to ensure that its activities are aligned with the Sponsor's mission.

- **Control and discretion over funds.** A key part of the Sponsor's oversight responsibilities relates to the flow of funds. Fiscal sponsorships satisfy legal requirements so long as the Sponsor — as the established 501(c)(3) — is the official recipient and maintains discretion and control over the use of donation and grant funds raised by the Sponsored Organization. Just being a mere conduit or "pass-through" for funds to the Sponsored Project is not allowed by the IRS. In practical terms, this means that the Sponsor needs to have financial procedures in place that monitors the use of the funds and ensures that it is used for the stated purposes of the donors, agreed upon activities of the Sponsored Organization and aligned with the Sponsor's mission.

- **Liability for Sponsor's activities.** Another risk factor for Sponsors is that, legally, the Sponsored Project's activities become the activities of the Sponsor (under the Comprehensive Model of fiscal sponsorship, see the Appendix on page 10). If someone is hurt by or suffers damage as a result of negligent actions of a staff member of the Sponsored Project, generally the Sponsor will be responsible. Potential liability in that sense could range from employment-related actions, to intellectual property issues among others. The Sponsor's risk protections of limited liability clauses and insurance become important — and protect both the Sponsor and Sponsored Organization or Project. A Sponsor may require a Sponsored Organization to contribute funds where the activities require greater insurance protection. Note that Sponsored Organizations that are incorporated and are separate legal entities provide a layer of protection of liability. This layer of protection is not complete and Sponsors could still have some liability for incorporated Sponsored Organizations' activities.

VI. Considerations on finding the right match Sponsored Organization and Sponsor

Finding the right organizational fit between Sponsored Organization and Sponsor is critical to the success of the fiscal sponsorship. Some important considerations and suggestions for identifying the right fit are the following:

Develop a mutual understanding of who is doing what and how: Before entering into a fiscal sponsorship relationship, it is important for the Sponsored Organization and Sponsor to discuss the basics of who is going to do what, and what the process will be for getting the work done together. Questions like the following would be good to check in about:

- What are the fiscal sponsorship services that are needed?
- What is the fiscal sponsorship fee going to be?
- What is the Sponsor's schedule for cutting checks and generating reports, and other financial needs?
- What is the Sponsored Organization's process of decision-making that affects the Sponsor?
- Are there any unique circumstances that either party should be aware of?

Maintain clear communication: Both organizations should agree on the best way of communicating with each other, (email, Slack, text, phone, etc.), and on a set of communication norms (e.g. how to make sure they are responsive to each other), and set a schedule of regular meetings. See the Statement of Shared Values Template, which is included in this Toolkit, that includes a place for writing down communication norms.

Partner with those who have similar values and aligned culture: Finally, an organizational culture fit between Sponsored Organization and Sponsor is critical to the success of a fiscal sponsorship. Sharing values and commitment to each other's mission is the glue that can hold the relationship together through the stresses and strains of nonprofit work. Each group should understand what's important to the other and have ground rules on how to be in a respectful and productive relationship. For a new generation of BIPOC leaders, organizational culture is particularly important for a match between Sponsors and Sponsored Organizations. As Seattle-based Community Advocate and Activist Alejandra Pérez states:

I'm seeing young leaders who have passion and energy for community work, but may not have the capacity to deal with the administrative, record keeping, legal, and financial management tasks that are required if they raise any funding for their work, especially if their organizing is volunteer-led and grassroots. Many young leaders are also interested in not further perpetuating the nonprofit industrial complex. They want to be sure their work is focused on solving issues in their communities. So they are looking for fiscal sponsors to support them as they navigate the complexity of the nonprofit sector.

Questions such as the following may be helpful to discuss between Sponsored Organizations and potential Sponsors to help determine if there is a culture fit:

- What are each organization's values?
- What are each organization's mission and goals?
- What are the expectations of each organization?
- What kind of relationship is each organization seeking from the fiscal sponsorship (e.g. a more involved relationship that is relational in nature and involves a range capacity building services vs. a more practical and transactional relationship that just covers the basic administrative and financial services)?

Finally, a helpful tip for Sponsored Organizations to identify aligned organizational cultures is to speak to other Sponsored Organizations about their experiences with Sponsors.

This Toolkit includes a Statement of Shared Values Template to help develop your own written document to capture your discussions and agreements about your shared values in a concrete way. Discussing your values will help you to assess if there is a solid organizational culture fit between the organizations. The Statement of Shared Values Template is not a legally enforceable document, but it provides a format for the parties to discuss and capture how you want to be in relationship with each other, and the values you want to work under. It could also address how you plan to deal with conflict. This template should be adjusted to your specific needs.

Conclusion

As we have described, fiscal sponsorships can be an important tool to help support new and innovative projects that are in an early phase of growth. Fiscal sponsorship relationships can also advance race equity goals while also benefiting Sponsors by helping advance their missions, helping grow the next generation of leaders and organizations, and enhancing their reputations. But there are also challenges that need to be considered by both Sponsors and Sponsored Organizations. These factors point to the importance of a written fiscal sponsorship agreement that clarifies the relationship as well as mutual duties and responsibilities.

APPENDIX

1. Fiscal Sponsorship Legal Models

While fiscal sponsorships can be set up in a number of ways, there are two models that are most common: the Comprehensive Model and the Re-grant Model.

Under the **Comprehensive Model,** the Sponsored Organization becomes a Project of the Sponsor as opposed to remaining an independent incorporated entity (as under the Re-grant Model). This means all of the Sponsored Organizations employees become employees of the Sponsor, and the Sponsor is responsible for HR-related administration. Likewise, all liabilities of the Sponsored Organization become liabilities of the Sponsor.

Under the Re-Grant Model, the Sponsored Organization remains an independent entity and does not become a program of the Sponsor. Instead the relationship is one of grantor–grantee and is focused on the flow of funds that are raised by the Sponsored Organization. These funds move from Sponsor to Sponsored Project structured as a grant.

Under both models, the Sponsor cannot be a simple conduit of funds for the Sponsored Organization as previously mentioned. Instead, to comply with IRS requirements, the Sponsor has to be treated as the official recipient of any funds raised by the Sponsored Organization for its activities. Then the Sponsor makes the funds available to the Sponsored Organization while maintaining discretion and control over the use of such funds.

2. Resources on Race Equity and Fiscal Sponsorship

Reports/Articles

For a deeper examination of the issue of how race equity can be advanced through fiscal sponsorship, see the following three reports from 2020 and 2021 that address this issue from slightly different vantage points as explained thusly:

- TSNE, Feb 2021, *Reimagining Fiscal Sponsorship in Service of Equity: A Case Study Report of Emerging Practices and Recommendations for Fiscal Sponsors*

  This study focused on how fiscal sponsorship can better support and assist the success of BIPOC-led NPOs, grassroots organizations, coalitions and movements with budgets of under $1 million given the unique capacity building needs and challenges such organizations face due to structural racism and cultural misunderstandings. Specifically, the report focuses on the following question while examining the practices of four large scale fiscal sponsors from across the U.S. that all offer fiscal sponsorships as a core business model of their organizations: “How can fiscal sponsors reimagine their services and delivery models to provide holistic, responsive, and culturally aligned fiscal management and capacity building services to support these under-resourced grassroots groups working to support marginalized communities?” Based on the case study findings, the report lifts up six emerging practices as recommended actions aimed to provide essential administrative, financial management, and capacity building supports to these under-resourced nonprofit groups working to support marginalized communities.

- New Venture Fund, Provoc, June 2021, *Leveraging Fiscal Sponsorship for Racial Equity*

  This report provides recommendations for how fiscal sponsors — with an emphasis on large technical service-focused fiscal sponsors who have fiscal sponsorship as a primary business model — can deploy their skills, resources, expertise, and networks with more impact to advance racial equity based on the needs and requests of the grassroots groups included in this research, and inspired by the ideas and practices of participating and researched fiscal sponsors.

- Change Elemental, August 2021, *Centering Equity in Intermediary Relationships: an opportunity for Funders*

  This report also focuses on the needs of emerging and small social justice groups led by youth, people of color, members of the LGBTQI+ community, immigrants, and other groups outside of traditional spheres of power and the role nonprofit intermediaries, including funders and fiscal sponsors can play to better support such groups.

  The report finds an existing problem for such groups is that they struggle to find fiscal sponsors and other intermediaries that share their values and can provide services that are deeply rooted in racial equity. For a number of reasons, funders — who can't otherwise support constituent-led groups — often prioritize partnering with intermediaries with a high capacity for scaling services and distributing resources and funds. Though equity values are important to funders in selecting intermediaries to partner with, many funders don't know what equity-centered services look like or how to support intermediaries in deepening this work.

  The report focuses on successful efforts of such deep equity focused intermediaries and with recommendations for how funders can better support their work and center equity in relationship with intermediaries, namely:

  1. Fund intermediaries' internal transformation to deepen equity in their services and meet growing demand.
  2. Ground partnership decisions in an understanding of intermediaries' unique offerings and the needs of constituent-led groups.
  3. Resource field-strengthening strategies that "fees" don't cover.
  4. Advocate to center equity in foundational practices and decision-making.

Local Organizations that offer fiscal sponsorship services

The following three organizations are examples of Washington-based fiscal sponsorship programs that seek to advance race equity through their fiscal sponsorship programs.

- Sustainable Seattle's fiscal sponsorship program
- RVC's fiscal sponsorship program
- Scholar Fund's fiscal sponsorship program

FISCAL SPONSORSHIP AGREEMENT CHECKLIST

This checklist is a tool created for nonprofit organizations to use when they are entering into a fiscal sponsorship relationship. It is best to formalize the relationship so the terms are clear to both sides by entering into a written Fiscal Sponsorship Agreement ("Fiscal Sponsorship Agreement" or "Agreement"). Fiscal Sponsorship Agreements are legal contracts. This checklist is designed to provide easy-to-understand information about common terms or sections of a typical Fiscal Sponsorship Agreement that can be used to capture the roles and responsibilities of the two sides — the Sponsor and the Sponsored Organization or Sponsored Project.

DISCLAIMER: *This checklist is for educational purposes only. This is not meant to be comprehensive, and in no way will this content be considered legal or any other form of professional advice or counsel. For legal or professional advice, please contact the relevant professional for your needs licensed in your jurisdiction.*

STEPS TO CREATING A FISCAL SPONSORSHIP AGREEMENT:

STEP 1: Purpose and Participants.

- Have a written statement of what the Sponsored Organization hopes to achieve and a copy of the Sponsor's mission handy.
- Have a general understanding between the Sponsor and the Sponsored Organization of why they are choosing each other to partner in this fiscal sponsorship relationship.
- Identify whom from participating organizations are authorized to sign contracts.

STEP 2: Roles and Responsibilities.

Identify roles and responsibilities of each of the participating organizations who will be signing the collaboration agreement.

- Have a list or written statement of the agreed upon Sponsor's responsibilities. The parties should discuss what the Sponsored Organization needs from the Sponsor and whether the Sponsor has the ability to meet those needs.
- Have a list or written statement of the agreed upon responsibilities of the Sponsored Organization.
- See the Fiscal Sponsorship Agreement Template for a list of potential responsibilities for both the Sponsor and Sponsored Organization.

STEP 3: Clarify how money will be raised and how the money will be spent and distributed.

- Discuss what sources of funding are expected. Will the money be raised primarily through individual unrestricted donations, foundation grants, or government contracts? For each of these methods of raising funds, the parties should discuss who will be doing what. For example, for individual donations, it is likely that the Sponsored Organization will be doing the fundraising asks to individuals. For foundation and government grants, who will be researching and preparing the written grant proposals? The Sponsor will have to sign/submit the grant proposal and if received sign the grant agreement. Discuss and determine who will be doing the reporting to funders. All of this should be included in the list of roles and responsibilities mentioned in Step 2.
- Prepare a written budget for the project. At a minimum there should be an annual budget. Many Sponsors require an annual budget. If possible a three-year projected budget would be ideal. The budget should include the expected

income and expenses for the Sponsored Organization.

- Clarify a process for both parties for applying for, receiving and disbursing funds.

STEP 4: Develop an agreed-upon decision-making process for the group.

Discuss and determine how decisions will be made for the Sponsored Organization and how those decisions will impact the Sponsor's responsibilities. For example, if the Sponsored Organization has decided to start a new program, there should be a process for the Sponsored Organization to communicate with the Sponsor before the new program is implemented to inform the Sponsor about the program, new program revenues and new expenses. There should be an understanding that the Sponsored Organization's activities/ programs must all fall within the Sponsor's mission.

STEP 5: Key Values, Communications and Conflict.

Being on the same page on key values, communication norms and conflict management speak to the relational aspect of the fiscal sponsorship relationship. Although the logistical communication norms and conflict resolution can be included in the Fiscal Sponsorship Agreement, which is legally enforceable, we have chosen to address these areas in the Statement of Shared Values Template. When community-based organizations collaborate to do community-based work, our work is relational and based on trusted relationships rather than being transactional. For this reason, we designed this Toolkit to have a Statement of Shared Values to give space to discuss and capture the more relational part of the fiscal sponsorship including values, communication, and conflict. All of these areas impact the way we share space together. See the Statement of Shared Values Template, in this Toolkit for more information.

STEP 6: Customize and Draft.

Go through each of the sections of the Fiscal Sponsorship Agreement and this Checklist and customize the Fiscal Sponsorship Agreement Template to your collaboration.

STEP 7: Review and Understand.

Every partner should review the Fiscal Sponsorship Agreement and understand each of the sections before signing it.

Please recognize:

- This checklist is simply a guide; it does not contain or should not be relied upon as legal advice.
- Laws and rules can change, and this checklist may become out-of-date.
- This checklist is intended to assist you in providing you explanations of common terms in Fiscal Sponsorship Agreements and help you to identify potential legal questions and problems. If you have a potential problem

which you are unsure how to resolve or have questions on matters not covered in this checklist or that are specific to your situation, we recommend that you consult an attorney. Communities Rise may be able to help you with finding an attorney. If your organization needs an attorney, please contact Communities Rise at contact@communities-rise.org or 206-324-5850 to see if your organization is eligible for free legal services.

THE KEY TO OUR CHECKLIST

For each section of the Fiscal Sponsorship Agreement Template, we may have:

Definition

This visually denotes the definition of key terms. To the extent legal terms are used, we have provided definitions of such terms.

Explanation

This visually denotes an explanation of the section.

Things to Consider

This visually denotes that there is a checklist of things to consider and do in connection with your review and negotiation of the Fiscal Sponsorship Agreement.

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1. INTRODUCTORY STATEMENT

Explanation of Section:

The Introductory Statement states the name of the parties to the agreement.

- **Names of the Parties:** The names should be the full legal name of the organization and an abbreviated version of the name should be defined. This allows for reference to the party in other parts of the agreement to be made with a clearly defined abbreviation. The legal name should be consistent with the names used on tax documents like the IRS Form W-9.

2. BACKGROUND AND CONTEXT

Explanation of Section:

The next two paragraphs describe parties to the agreement. For legal purposes, there is nothing in this that the parties are agreeing to. Specifically, these paragraphs state that the Fiscal Sponsor has 501(c)(3) tax-exempt status and describes the Sponsored Organization's programs.

Things to Consider:

- This section should state that the fiscal sponsor is a nonprofit corporation with 501(c)(3) tax-exemption status.
- The section should state that the sponsored organizations activities and programs fall within the sponsor's mission. This is important because it is a requirement of the IRS of all fiscal sponsorship relationships.

3. AGREEMENT CLAUSE

Explanation of Section:

The Agreement clause is required in every contract and clearly states that the parties are agreeing to the terms of the agreement.

Definition:

Parties or Party: The Parties or a Party refers to the two organizations, the Sponsored Organization and the Sponsor, that are participating in the fiscal sponsorship and signing the Fiscal Sponsorship Agreement. By signing the agreement they are binding themselves to the terms of the agreement. In other words, they are obligated to the terms of the agreement.

4. ROLES AND RESPONSIBILITIES

(PARAGRAPHS #1-8 IN THE TEMPLATE)

Definition:

Fiscal Sponsorship: Fiscal sponsorship is a relationship between a fiscal sponsor ("Sponsor") and a sponsored organization or project ("Sponsored Organization") that allows for a Sponsored Organization to have another nonprofit organization with 501(c)(3) tax exemption, to hold and manage the funds and finances of the Sponsored Organization. Sponsors typically charge Sponsored Organizations a fiscal sponsorship fee for their services. (See Recommendations for a Fiscal Sponsorship Relationship on page 4 of this toolkit for more details on the benefits and challenges to the Sponsor and Sponsored Organization of a fiscal sponsorship relationship.)

Explanation of Section:

Paragraphs 1- 8 of the body of the agreement describes the Parties responsibilities

Things to Consider:

- Be explicit in articulating the responsibilities that the Sponsor and Sponsored Organization are expected to hold.
- Most of the responsibilities fall on the Sponsor.
- Consider how to equitably approach the distribution of work and power dynamic between the Sponsor and the Sponsored Organization.

5. FISCAL SPONSORSHIP FEE

(PARAGRAPH #9 IN THE TEMPLATE)

Definition:

In most fiscal sponsorship relationships, the Sponsor provides fiscal sponsorship services to the Sponsored Organization in exchange for a fee. That fee is called the **fiscal sponsorship fee.**

Explanation of Section:

This section should clearly state how much the fiscal sponsorship fee is and how it is calculated. Because it is most common for the fee to be a percentage of the donations received we have included language describing the fee structure as a percentage. However, as described below the fee structure could be a flat fee.

Things to Consider:

- The fiscal sponsorship fee provision obligates the Sponsored Organization to pay the fiscal sponsorship fee to the Sponsor.
- There are different fee payment scenarios. The Sponsored Organization and Sponsor should think about what is the best way to compensate the Sponsor for their services that make sense to both sides. Things to consider in setting a fee structure:
    - Timing of revenue and expenses. Is the cash flow of the Sponsored Organization or the Sponsor cyclical so that there is a part of the year or cycle that is better to make a payment of the fee?
    - Is it preferable to do a percentage of the revenue or expenses as a fee or a flat fee? Is the percentage off of the total annual revenue or expenses? Typically revenues are higher than expenses, so that could impact the amount of the total fee. Paying out expenses takes more time than receiving the funds because it requires ensuring that the expenses are appropriate and part of the budget. Some prefer that the percentage be of the expenses.
    - If the Sponsored Organization and Sponsor decide on a percentage of revenue is there a maximum fee per year that the parties want to set?
    - If the Sponsored Organization and Sponsor decide on a percentage of revenue do they want to have a sliding percentage. For example, 10% of the first $500,000 revenues, and 5% for all other revenue over $500,000 received annually.

6. TERM

(PARAGRAPH #10 IN THE TEMPLATE)

Explanation of Section:

This is the section of the agreement that sets the dates the fiscal sponsorship relationship and agreement starts and ends. Some fiscal sponsorship relationships are temporary, because the project is temporary or because the Sponsored Organization will be incorporating and obtaining their own 501(c)(3) tax-exemption.

If the intent is to be in an ongoing or permanent fiscal sponsorship relationship, the parties may still want to have the term be for a year or more, so they can renegotiate the Agreement after a certain period of time.

7. TERMINATION

(PARAGRAPH #11 IN THE TEMPLATE)

Explanation of Section:

The Termination provision describes how the Sponsored Organization and Sponsor can leave the fiscal sponsorship relationship and get out of the agreement.

The termination provision in the Template has language that says that the Sponsor can terminate or end the agreement if they believe the Sponsored Organization activities are not aligned with their mission or otherwise jeopardizing the fiscal sponsor's tax-exempt status. This is important because the Fiscal Sponsor could lose their 501(c)(3) tax-exemption if the Sponsored Organization is engaging in activities that are not aligned with the Sponsor's mission or otherwise violating IRS 501(c)(3) rules.

The Termination provision could also clearly state what happens to the money and who will now be responsible for the leaving party's responsibilities. With fiscal sponsorship relationships, it is the responsibility of the Sponsor to make sure the money is used for any restricted purposes. If the fiscal sponsorship relationship ends, the Sponsor must pay off any money that is due, and any remaining balance must be transferred to another 501(c)(3) organization with a charitable purpose that can carry out the financial obligations as stated in the grant or contract agreements or other donor restrictions.

Things to Consider:

- Determine how much notice the parties need if one of the parties wants to end the relationship. Are there considerations around timing or things that would need to get done if any particular party left the group?
- What happens to the money if one or more parties leave?
    - Do they get to keep the money they have already received?
    - If they have to give it back, how much do they have to give back?
    - Will the money go to another Sponsor or to the Sponsored Organization if it now has its own 501(c)(3) tax-exemption.
- What happens to the roles and responsibilities of the leaving party?
- What if either the Sponsored Organization or Sponsor is not living up to their responsibilities and the other party wants to end the relationship? Under what circumstances would this happen?
- What happens when the term expires? Will the Sponsored Organization and Sponsor want to renew the agreement?

8. LIMITATION OF LIABILITY

(PARAGRAPH #12 IN THE TEMPLATE)

Definitions:

- **Liability:** Liability means being accountable or responsible for certain costs. For purposes of the Fiscal Sponsorship

Agreement, the limitation of liability provision should clearly describe what happens and who will pay for expenses/costs that are created when something goes wrong.

Explanation of Section:

In general, Limitation of Liability clauses in this Template are intended to limit the liability of both the Sponsor and the Sponsored Organization, if something goes wrong. When something goes wrong and the activities don't happen as planned, without an agreement otherwise, the parties to an agreement could hold each other accountable by suing each other in court for those costs that arose out of what went wrong. In the case of fiscal sponsorship relationships, generally speaking, most community partners would agree to not sue each other or hold the other party liable for costs that might come up due to the events under the agreement. We've put in a provision that says the parties will not have to pay each other for costs that arise under this agreement. However, if one party is responsible for a significant portion of the activities, the other parties may want to limit their own liability around the activities they do not have control over.

Things to Consider:

- A Limitation of Liability clause is a best practice to protect against risk of liability for both the Sponsor and Sponsored Organization.
- Insurance is the other best practice that goes hand in hand with a limitation of liability clause, which is discussed in the Insurance section below.

9. INSURANCE

(PARAGRAPH #13 IN THE TEMPLATE)

Explanation of Section:

The Insurance provision describes what the Sponsor and Sponsored Organization decide about needing insurance.

The first thing to determine in addressing Insurance is if the Sponsored Organization programs/activities carry a risk that someone could get hurt or that property could be damaged. If there is no risk of injury or damage to property, then the Sponsor typically will already have a general liability insurance policy that covers general risks, and most likely this policy would now also cover the Sponsored Organization as a program of the Sponsor (under the Comprehensive Model, see Appendix for definition of Comprehensive Model). The Sponsor and Sponsored Organization may want to discuss whether the Sponsored Organization will contribute to the cost of the general liability policy in such a case.

If the Sponsored Organization is engaging in activities that carry a special risk of liability, then the purchase of insurance that covers that risk is a best practice. For example, if the Sponsored Organization is providing outdoor activities for children or youth, and there is risk that a child could get injured, there should be liability insurance to cover the potential cost of the child being injured. The Sponsor and Sponsored Organization parties should agree upon who will purchase that insurance and state it in the Agreement. The Sponsor may require that the Sponsored Organization purchase insurance given the risk the Sponsored Organization is adding. This will require that the Sponsored

Organization become a legal entity if it is not one already. Remaining unincorporated would put liability on individual members of the Sponsored Organization. Incorporation protects individuals in the organization (employees, board members, and volunteers) from personal liability.

Things to Consider:

- Is there special risk created by the Sponsored Organization's activities?
    - Will there be in-person events and will food be served? Someone could slip and fall or get food poisoning at an in-person event. General liability insurance would protect against costs that would come out of that type of situation.
    - Are children and youth involved?
    - Are cars involved in the Sponored Organization's activities? For example, will there be transportation provided to children or seniors, or will delivery of food or other items be involved? If so, auto insurance would protect against costs that arise out of an auto accident.
    - If there are meetings where people transport themselves and the goal is to come up with a report or change a policy. The risk for physical or property damage may be low and you may determine that you don't need insurance.

10. INTELLECTUAL PROPERTY

(PARAGRAPH #14 IN THE TEMPLATE)

Definitions:

Intellectual Property: Intellectual Property is any product created by human intellect that is not made of physical materials. Examples include trademarks, copyrights of written works, patents and trade secrets. The most common types of intellectual property for community organizations include research results, reports, logos or names of projects, collaborations or organizations.

Explanation of Section:

In the Intellectual Property section of the agreement, the Sponsored Organization and Sponsor will agree to who owns the intellectual property created by the Sponsored Organization's activities during the fiscal sponsorship, and how the intellectual property can be used in the future. In a fiscal sponsorship relationship, the Sponsored Project is often not a legal entity. That means that it is not incorporated as a nonprofit corporation or a limited liability corporation. If the Sponsored Project is not a legal entity it cannot own any property, including intellectual property. In this situation, it makes sense that the Sponsor will own the intellectual property. If there is intellectual property, the Agreement should state if the intellectual property will be transferred or a license for use granted to the Sponsored Project once they become a legal entity.

Things to Consider:

- Equity.
  - What is the agreement of who between the Sponsored Organization and Sponsor on who owns the intellectual property?
  - Who actually contributed to the creation of the intellectual property?
  - Who was intended to benefit from the creation of the intellectual property?
  - Can anyone benefit financially from the intellectual property? If so, who should be able to benefit financially? Should there be limits on who benefits?
  - Do we want as many people as possible to benefit from the use of the intellectual property?
- If the fiscal sponsorship is time limited, meaning it will end after a certain period of time, will the Sponsored Organization or the Sponsor hold the ownership of the intellectual property beyond the term of the Fiscal Sponsorship Agreement? If the Sponsored Organization becomes its own 501(c)(3) nonprofit corporation, the two parties might agree that the intellectual property rights will be transferred to the Sponsored Organization. If the Sponsored Organization does not become a 501(c)(3) or become a legal entity, the parties could agree the Sponsored Organization owns the intellectual property and the Sponsored Organization has a license to use it. If the Sponsored Organization is moving to another fiscal sponsor, they should agree to transfer the intellectual property rights to the new fiscal sponsor.

11. CONFIDENTIALITY

(PARAGRAPH #15 IN THE TEMPLATE)

Explanation of Section:

The Confidentiality provision describes what the Sponsored Organization and Sponsor want to keep confidential. In our template, we included language that says that conversations between and among the Sponsored Organization and Sponsor, in person or by email, should be kept confidential. That allows both parties to feel safe to communicate fully without worrying if what they say will be repeated outside the relationship.

Things to Consider:

- If the Sponsored Organization involves providing client services, particularly around health care, educational outcomes or legal services, there should be language that refers to keeping client information confidential.
- If the Sponsored Organization will be hiring employees, consider language about keeping employee information confidential.

12. ENTIRE AGREEMENT

(PARAGRAPH #16 IN THE TEMPLATE)

Explanation of Section:

The entire agreement provision states that with respect to the fiscal sponsorship relationship, the written Fiscal

Sponsorship Agreement includes all the agreements made between the parties. There are no other agreements other than this agreement between the parties with respect to this particular community collaboration. This is important because having other agreements between the Sponsor and Sponsored Organization in addition to the Fiscal Sponsorship Agreement would cause confusion, particularly if there are conflicting agreements.

Things to Consider:

- If there are other contracts, agreements or MOUs between the Sponsor and Sponsored Organization (or subsets of the Sponsored Organization and Sponsor)s, make sure that there are no overlapping or contradictory provisions between those agreements.

13. SIGNATURE LINES

Explanation of Section:

- Authorized representatives of both the Sponsored Organization and Sponsor must sign the agreement. Typically, it is the Executive Director or the Board President.
- There can be separate signature pages that are stapled together or scanned to create a complete document.
- You can use a docusign application to get electronic signatures.

ADDITIONAL RESOURCES

Templates

The Fiscal Sponsorship Agreement Template and the Statement of Shared Values Template can both be found on the Communities of Opportunity website:

Access the Fiscal Sponsorship Agreement and Statement of Shared Values Templates

Video

This short (13-minute) video provides highlights of the written materials and additional insight on community collaborations from Community Advocate and Activist Alejandra Pérez, Attorney Madhu Singh, and Communities Rise Executive Director Jodi Nishioka.

Watch the Fiscal Sponsorship Toolkit video

ABOUT THIS SERIES

This toolkit is a part of a series intended to support community-driven organizations and partnerships working to advance racial, economic, and health equity. The series was made possible through a collaboration between Communities of Opportunity and Communities Rise.

Other toolkits in this series:

Community Collaboration Toolkit

HR and Equity Toolkit

Alternative Leadership Toolkit

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