

Fiscal Sponsorship Agreement

This is a Fiscal Sponsorship Agreement (“Agreement”), dated as of _____, 20____, between Client, a California nonprofit corporation, and _____, an individual (“Project Director”).

Background

A. Client is a [_____] nonprofit that [_____]. In line with that mission, Client through its fiscal sponsorship program provides infrastructure and services to projects that further its charitable goals. The program enables projects to focus on their mission and resource development, not on the back office.

B. Project Director wishes to have a project sponsored by Client. The project (“Project”) is described in a proposal that Project Director previously submitted to Client. The Client Board of Directors has determined that fiscal sponsorship of the Project advances Client’s charitable goals and has approved Client’s entry into this Agreement.

Client and Project Director agree as follows:

1. Documents

1.1 This Agreement

This Agreement covers the terms of the sponsorship. It covers, among other things:

- Basic structure of the relationship, including Client’s ownership and control of assets
- Project personnel
- Project fundraising and minimum funds requirement
- Project budgeting and spending
- Fees charged by Client
- External communications
- Project oversight and legal compliance
- Sponsorship termination

1.2 Client Policies and Procedures

Client also maintains policies and procedures relating to employees, budgeting, disbursements, communication, branding, and other matters. The key to making this arrangement work is the Project operating within, and taking full advantage of, Client’s infrastructure, way of working, and resources.

2. Basic Structure

2.1 Structure and Ownership

Project is a constituent part of Client. Project is not a separate entity and does not have a separate legal status.

2.2 Charitable Status

Project operates under the umbrella of Client’s status as a tax-exempt nonprofit organization under Section 501(c)(3) of the Internal Revenue Code (“Code”).

2.3 Property Ownership

Client owns all Project assets while this Agreement is in effect. All tangible or intangible property, including, without limitation, intellectual property, created or acquired by Project during the term of this Agreement, is the property of Client.

2.4 Contracts

Legal agreements, such as grant agreements, vendor contracts, leases, and independent contractor agreements, must be signed by Client on behalf of Project.

2.5 Personnel and Benefits

Client is the legal employer of all Project staff. Client has the sole authority to determine whether an individual is hired as an employee or retained as a contractor, extend job offers, terminate employment, and select benefit plans, but will consult with Project Director before terminating any Project staff member. All Project staff are subject to Client employment policies, including, without limitation, those relating to at-will status, harassment, and discrimination.

2.6 Project Director

Project Director is an employee of Client. Project Director is responsible for the day-to-day management and operation of Project, including, without limitation, all fundraising, strategy, branding, financial planning, staff responsibilities, and service delivery matters, all within the framework established by this Agreement. Project Director serves as Project's primary contact with Client and will be treated by Client as the only individual authorized to communicate on behalf of the Project.

2.7 Compliance with Client Policies

Project will comply with all Client policies and procedures applicable to fiscal sponsorship relationships, including, without limitation, those set out in **Exhibit A**.

2.8 Legal and Tax Requirements

Project must operate in accordance with applicable laws, including, without limitation, the complex legal and tax rules applicable to charitable organizations that are tax-exempt under Section 501(c)(3) of the Code.

3. Fundraising

3.1 Fundraising Responsibilities; Minimum Available Funds

Project has sole responsibility for raising and maintaining funds for Project. Project must maintain at all times [available funds sufficient for its operations and to cover ongoing expenses for at least ___ months]. Project Director acknowledges that failure to meet this requirement may result in termination of this Agreement under Section 9.

3.2 Funding Sources and Documents

Project funding sources and the text of Project's fundraising materials are subject to Client's prior written approval. All grant agreements, pledges, or other commitments with funding sources to support Project may only be signed by Client.

3.3 Client Control of Funds

All funds raised by Project will be held in a restricted fund owned by, and under the full control of, Client, to be used as provided in this Agreement.

[3.4 Client Assistance

Client may assist Project with its voluntary fundraising activities from time to time. Such activity will not constitute acceptance of responsibility for fundraising, and, as a general matter, Client does not fundraise or advance funds for Project.]

3.5 No Obligation to Provide Financial Support

Project Director acknowledges that Client has no obligation to provide any financial support to Project in any form, including, without limitation, making loans or grants, advancing cash, covering direct expenses, or deferring or waiving fees.

3.6 Variance Power

Client and Project Director intend for this Agreement to be interpreted to provide Client with variance powers necessary to enable Client to treat the restricted fund as Client's asset in accordance with Accounting Standards Codification (ASC) paragraphs ASC 958-

605-25-25 and -26, formerly expressed in Statement No. 136 issued by the Financial Accounting Standards Board (FASB). Because the restricted fund is held under the charitable trust doctrine for the purposes of Project as understood by and with funding sources, Client and Project Director intend that assets in the restricted fund are not subject to the claims of any creditor or to legal process resulting from activities of Client unrelated to Project.

4. Budgeting and Spending

4.1 Project Budget

Each year, Project Director will prepare and submit Project's annual operating budget to Client for approval in a form and with the level of detail acceptable to Client. Client will not disburse any funds until it has received and approved the budget.

4.2 Spending

Project cannot spend or commit money beyond its ability to pay, measured by its cash balances, without including anticipated grants or contributions. [Project Director will be personally responsible for paying Project expenses [or reimbursing Client] to the extent that available Project funds are insufficient to pay Project expenses or obligations as they come due.] Client will disburse Project funds only for Project's staff costs; external expenses; insurance, legal, and other allocated overhead amounts; and fees payable to Client.

5. Fees Charged by Client

5.1 Administrative Fees

Client will charge an administrative fee of ___% on all funds deposited into Project's account. This fee will be deducted from each deposit upon receipt by Client. For deposits attributable to grants from government entities or public agencies, Client will deduct a ___% administrative fee.

5.2 Startup Fee

Client will charge a one-time startup fee of \$_____.

5.3 Interest

All interest earned on any cash held by Client on behalf of Project will accrue to Client. Client will use such interest to offset general and administrative operating expenses.

5.4 Additional Fees

Client will deduct any special or unusual costs, including, without limitation, banking fees, penalties, late fees or stop-payment charges, or similar fees resulting from contributions. Client will deduct the cost of any reports or other compliance measures required by funding sources. If Project desires additional services from Client or its staff beyond the support described in this Agreement, Client may assess additional fees for those services.

5.5 Changes in Fees

If Client proposes to change fee amounts, Client will notify Project Director in writing at least 30 days before the changes take effect.

6. Communications and Outreach

6.1 Project Branding and Materials; Publicity

All Project materials and external communications, including, without limitation, any websites, letterheads, brochures, program materials, grant proposals, fundraising solicitations, donation acknowledgments, and other related materials must communicate that Project is a project of Client and comply with the requirements set out in **Exhibit B**.

6.2 Not Representative of Client; Media Inquiries

Project will not hold itself out as a representative of or purport to speak or act on behalf of Client, including, without limitation, making statements that purport to be official positions

of Client. Project will advise Client promptly of any media inquiries received regarding Project or Project's relationship with Client.

6.3 Use of Project's Work, Name, and Image

Client may describe its work with Project in internal and external communications, including, without limitation, the Client website and marketing materials. Client may use excerpts of Project's work in digital and print communications and promotional materials. Client will properly credit Project's work. Client may also use Project Director's name, likeness, image, voice, and biography in its digital and print communications, including, without limitation, identifying Project as a participant in Client's fiscal sponsorship program. For clarity, Client will own all right, title, and interest, including, without limitation, copyright, in these materials. Project will not be entitled to inspect or approve use of these materials, receive notice of their use or publication, or receive payment for their use.

6.4 Political and Lobbying Activities

Project may not use any funds to support candidates for public office, encourage violations of law or public policy, or cause any private inurement or improper private benefit. All lobbying plans and expenditures must be submitted to Client in advance for approval. Project will not fund or engage in excessive lobbying or any other activities that could jeopardize Client's charitable tax-exempt status, as determined by Client in its sole discretion.

7. Oversight and Support

7.1 Client Board of Directors

The Client Board of Directors has full governing authority over Project.

[7.2 Advisory Committee

Client requires that all fiscally sponsored projects establish an advisory committee to provide oversight, guidance, and support. While Project's advisory committee and its members have no legal or governing authority, the committee can serve as an important mechanism of accountability and management support for Project. The advisory committee may also provide assistance with strategy, fundraising, and programmatic development.]

7.3 Communication and Cooperation

Project Director and Client will cooperate on a day-to-day basis by (a) keeping the other party advised about potential issues; (b) promptly responding to e-mail, text, and phone messages from the other party; and (c) providing the other party with information as may be appropriate in connection with Project activities.

7.4 Reports to Client

Project Director will provide reports to Client as Client may reasonably request, including, without limitation, year-end reports describing Project's programmatic and financial activity for that year and its plans for the upcoming year. The reports must be in a form and content that is acceptable to Client.

7.5 Project Review

Client may periodically review Project and require adjustments, including, without limitation, refinements in mission, operating model, cost structure, and governance.

7.6 Notification and Approval of Changes

Project Director will not change the purpose, scope, or budget of Project without first obtaining the written approval of Client. Project Director will notify Client immediately of any change in the key personnel involved in the Project.

8. Acknowledgments

8.1 Other Client Projects

Project Director acknowledges that Client may serve or sponsor other projects whose interests may differ from those of Project, including, without limitation, parties with whom Project competes for funding, have current or potential programming relationships, or have markedly different strategies or viewpoints.

8.2 No Guarantee

Project Director acknowledges that Client does not guarantee the success of Project or the fulfillment of Project's mission, and that Client is not making any promises or guarantees about fundraising, visibility, effectiveness, or other matters.

8.3 Capacity and Rights

Project Director acknowledges that Project Director is signing this Agreement in Project Director's individual capacity but for the benefit of Project, and that Project Director will exercise such rights and responsibilities under this Agreement solely for the benefit of Project. The fact that Project Director has rights and responsibilities under this Agreement will not affect in any way Project Director's status as an at-will employee of Client. For convenience, this Agreement refers to the rights and duties of "Project." All rights and duties are those of Project Director.

9. Termination

9.1 Termination by Party Election; Successor

This Agreement will terminate if either Client or Project Director desires to terminate Client's fiscal sponsorship of Project. Either Client or Project Director may terminate this Agreement on 90 days' written notice to the other party. In that case, the following will apply:

- Upon receipt (or delivery) of the notice, Project Director may identify another nonprofit corporation which (i) is tax-exempt under Section 501(c)(3) of the Code, (ii) is not classified as a private foundation under Section 509(a) of the Code, (iii) is willing and able to sponsor the Project, and (iv) is approved by Client (a "Successor").
- Client has sole discretion to approve Project Director's proposed Successor. The Successor may be an existing organization or a new organization that has been formed by Project Director and that has obtained, or applied for, a determination letter from the IRS as to its tax-exempt status.
- If the parties agree upon a Successor within the 90-day notice period, Client will transfer the balance of assets in Client's restricted fund for Project, together with all other assets held or liabilities incurred by Client in connection with Project, to the Successor as soon as reasonably practicable, subject to the approval of any third parties that may be required, and under terms (including, without limitation, terms providing for indemnification by Successor and holdback by Client of a specified amount of Project cash to cover Project liabilities) of a project transfer or other agreement in form and content acceptable to Client.
- If Project does not find such a Successor within the 90-day notice period, Client may dispose of Project assets and liabilities in any manner consistent with applicable tax, charitable trust laws, and other laws.

9.2 Objectives Can No Longer Be Accomplished

This Agreement will terminate when the objectives of Project can no longer reasonably be accomplished, as Client may determine in its sole discretion. In that case, Client, in consultation with Project Director, will apply remaining Project funds and assets towards purposes that are as close as possible to Project's goals and mission. Client will provide

Project Director with a written notice of any termination under this Section 9.2. The termination will be effective on the date specified in such notice.

9.3 Termination if Inactivity or Insufficient Funds

This agreement will terminate if: (a) Project has not maintained minimum available funds under Section 3.1, or (b) Project has not engaged in any significant programmatic or financial activity for one year or longer. Client will provide Project Director with a written notice of any termination under this Section 9.3. The termination will be effective on the date specified in such notice. Client will dispose of Project's assets and liabilities at the end of the notice period in a manner consistent with the provisions of Section 9.1(d).

9.4 Termination if Breach

Client may terminate this Agreement at any time if there is a material breach by Project Director that is not cured within 30 days after Client gives written notice of the breach. Client will in its sole discretion determine whether the breach has been cured. Such a termination will be effective on the date Client gives Project Director a written notice that the breach has not been cured. Client will dispose of Project's assets and liabilities at the end of the notice period in a manner consistent with the provisions of Section 9.1(d).

9.5 Effect of Termination

Upon termination of this Agreement, the Client employees who are dedicated to Project will be terminated at a time determined by Client in its sole discretion. Client and Project Director will cooperate in transition activities and use reasonable efforts to minimize interruption and adverse impacts of the termination. Sections 2.3, 3.3, 3.6, 8.3, 9.5, and 10 will survive termination of this Agreement.

10. General Provisions

10.1 Entire Agreement

This Agreement, together with its exhibits, expresses Project Director and Client's final, complete, and exclusive agreement, and supersedes any and all prior or contemporaneous written and oral agreements, negotiations, communications, courses of dealing, or understandings between Project and Client relating to its subject matter. If there are any differences between this Agreement and any exhibits, other documents, communications, Client policies, or any other materials, then this Agreement will control.

10.2 Amendment

This Agreement may be amended only as described in a written document signed by Project Director and Client that refers specifically to this Agreement and recites that it is amending this Agreement.

10.3 Modification of Client Policies and Procedures

Client may modify any of its policies and procedures, including, without limitation, those described in Section 1.2, at any time in its sole discretion. Client will use reasonable efforts to notify Project Director of such changes, but its failure to do so does not relieve Project from its obligation to comply with the policies and procedures then in effect.

10.4 Severability

If any provision in this Agreement is held invalid or unenforceable, the other provisions will remain enforceable, and the invalid or unenforceable provision will be considered modified so that it is valid and enforceable to the maximum extent permitted by law.

10.5 Waiver

Waiver of any breach or provision of this Agreement will not be considered a waiver of any later breach or future waiver of any provision of this Agreement.

10.6 Assignment

Project Director may not assign rights or delegate duties under this Agreement to anyone without the prior written consent of Client. Any successor Project Director must sign this Agreement.

10.7 Governing Law; Jurisdiction

This Agreement is governed by California law. Project Director and Client consent to the exclusive jurisdiction of the state and federal courts for the City and County of San Francisco, California.

10.8 Counterparts

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument. Transmission by fax or PDF of executed counterparts constitutes effective delivery.

* * * * *

This Agreement was signed by the parties as of the date set out in its first paragraph:

CLIENT

PROJECT DIRECTOR

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit A

Client Policies and Procedures

Finance and Accounting

- **Fiscal year.** Project's fiscal year will be the same as Client's fiscal year, from July 1 through June 30 of the following year.
- **General ledger and chart of accounts.** Project Director will work with Client finance and accounting staff to determine optimal chart of accounts and general ledger accounting structure.
- **Financial statements.** Client will provide Project Director with monthly statements of Project's activity [and a detailed trial balance] by the 30th of each month following month end. Project Director may request corrections within 30 days after receipt of a statement.
- **Bank accounts.** Project may not maintain any bank accounts other than those maintained on its behalf by Client.
- **Accounts payable.** Project Director will work with Client's finance and accounting staff to determine approval authority and limits for all cash disbursements. Acceptable bills or invoices and requests for expense reimbursement and other check requests will be properly coded and approved per policy. Bills will be processed, paid and mailed in a timely manner. "Acceptable bills or invoices" must be original, approved, coded documents (small receipts to be mounted on 8.5 x 11 paper). It will be the responsibility of the Project Director to submit a completed IRS Form W-9 for each new vendor.
- **Accounts receivable.** If Project needs to create an invoice for a customer created, Project Director will work with Client's finance and accounting staff to provide all data required to generate and deliver the invoice. Project Director is responsible for keeping accounts receivable as current as possible by examining accounts receivable aging report on a regular basis and following up with customers on late payments.
- **Loans.** Projects may not accept loans through Client.
- **Grants, Awards, and Scholarships from Project.** For any grants, awards, or scholarships awarded by a Project to a third party, Client management requires a copy of the signed grant agreement along with a completed check request form. Client's CEO's signature is required on the check request for amounts over \$[_____]. If the grant is made to an organization that is not a 501(c)(3) charity currently listed in IRS Publication 78, additional paperwork may be required. All related forms and procedures are subject to review by Client's CEO; it is recommended that this review take place before the documents are fully executed.

Grants and Donations

- **Grants received.** Client's CEO must co-sign all original grant agreements and be copied at least one week in advance on all progress and final report submissions. The preparation of grant reports is the responsibility of the Project. Grants involving government or public agency monies have very heavy reporting and auditing requirements that a Project must discuss in advance of acceptance with Client's CEO.
- **Donations.** Client will accept, process, and acknowledge contributions to each Project, unless Project indicates they wish to do donor acknowledgements

themselves. This includes issuing receipts for tax deductions. Donations should be made payable to "(), a Project of Client," or to Client with the Project identified on the memo line of the check. All donations will be individually receipted. It is not Client's responsibility to meet with Project's donors and walk them through paperwork. Client will work with Projects to educate them on necessary forms to liquidate noncash gifts. It is Client policy not to disclose the identities of donors and Client recommends that Projects make no external disclosure of any donor's identity without the donor's permission.

- **Communications with potential donors.** In the course of fundraising, a Project may solicit commitments from donors prior to receiving the funds. In general, Client regards such promises to give as mere statements of intention, which Client will not enforce through legal action. In the unusual situation where a Project wishes to have a donor sign a legally enforceable pledge, contact Client's CEO. The collection of any amounts for which potential donors have expressed intention to contribute will be the responsibility of the pertinent Project.
- **Fundraising activities.** Fundraising activities are very labor intensive to administer. Client management requires at least two months' notice of any fundraising events. Charities may not conduct any fundraising activities involving an element of chance, such as bingo or raffles, unless they notify Client in advance and adhere to pertinent state regulations. For instance, any Project's intention to hold a raffle may require Client to file certain forms with the California Attorney General's office both prior to and following the raffle. Client management is available to discuss the rules governing charity raffles and bingo, and to answer any other questions a Project may have regarding fundraising activities.

People

- **Staffing generally.** Project will recruit and retain sufficient and qualified staff, paid or volunteer, capable of attending to the day to day operation of Project.
- **Job descriptions.** Client expects Project to develop and maintain job descriptions for each employee.
- **Employee vs. independent contractor classification.** Client does not allow Projects to pay any individual as a contractor if that individual meets the IRS definition of an employee. Client is available to discuss employee vs. contractor classification issues with Projects. Contracts with independent contractors must be approved by Client management in advance. Projects must get prior approval from Client management before changing an individual's status from employee to independent contractor.
- **Independent contractor agreements.** Any Project that requests more than \$[] of services from an independent contractor in any calendar year must have a written agreement with that contractor. Client can provide Projects with a contract template for this purpose. (Independent contractors who cumulatively have over \$[] of activity with Client during any fiscal year may be asked to maintain at least \$[] in general liability insurance in addition to any other insurance that may be required by law.)
- **Employee and benefits costs.** It is understood that Client, by hiring Project personnel as Client employees, takes on additional costs and risks that are not covered by administrative fees, costs of which are billable in full to Project. These include direct costs of processing payroll, as well as costs that may be incurred should a Project employee be terminated, including any liability incurred by Client related to claims for unemployment made by Project employees, the maximum potential liability for which may be significant. The direct costs of employee benefits, including medical and dental insurance, worker's compensation

insurance, paid time off, and retirement plan contributions, are fully billable to the Project.

- **Payroll.** Any request to change a payroll record (e.g., pay rate, termination, regularly scheduled hours) must be communicated to Client via a “personnel status change form” at least five business days prior to the desired effective date of the change. To receive a paycheck, an employee must have submitted the following completed items: INS Form I-9, IRS Form W-4, California Development Department Form DE-4 (if applicable), signed acknowledgment of receipt of a personnel policies manual, and personnel status change form at least five business days prior to payday. Client will provide personnel status change forms, file all payroll tax returns, and IRS Form W-2’s. [An authorized representative of each Project will need to sign a statement agreeing that the Project will not deviate from the personnel policies manual.]
- **Bonuses.** The payment of bonuses by tax-exempt organizations is highly regulated; in fact, the payment of discretionary bonuses for past service is expressly prohibited. Client management is available to discuss incentive compensation arrangements with Projects to help avoid conflicts with regulatory agencies.
- **Benefits.** No Project can offer or deny benefits to its employees that differ from the personnel policies manual of Client.
- **Volunteers.** The use of volunteers exposes Client to additional liability. All persons who provide services to, or perform services for, Project without compensation for their time must sign the standard volunteer indemnification and release form that is available from Client. (Reimbursement of expenses does not constitute compensation.)
- **Advisory Committee.** Each Project must maintain a current listing of the names, addresses, and phone numbers of all members of its advisory committee. A majority of the members of each advisory committee must serve the Project as unpaid volunteers. The advisory committee must promptly provide the following items to Client’s CEO on request: the advisory committee roster and minutes of all advisory committee meetings.
- **Project Email Accounts.** Each Project must provide Client with the active email addresses of (1) the advisory committee chair, (2) the Project Director, and (3) each Project employee.

External Communications

- All Project letterhead and external communications must include the following identifying line: “..., a fiscal sponsorship Project of Client” and be pre-approved by Client.

Contracts

- Any agreement that Client enters into on behalf of a Project that involves over \$[] will require signatures both by a representative of the Project and by the CEO of Client.

Insurance

- **Insurance provided by Client.** Client maintains general liability insurance, and other employee insurance programs. If additional charges are incurred on behalf of Project, the amounts will be charged to the Project.

- **Automobile usage.** Client carries an automobile insurance policy called Employers' Non-Ownership Liability. This policy provides coverage for Client only. Client employees and volunteers are not considered covered, nor are they considered insureds. The Client policy is supplemental to an individual's own policy and only provides coverage for Client as a corporation. This policy is not in any way intended to replace an individual driver's obligation to maintain his or her own insurance. The individual's own insurance is primary for any loss. Anyone (employee or volunteer) driving on Client business must maintain personal auto liability insurance. In addition, drivers will be required to provide Client with the information necessary to complete a driving record check and positively affirm compliance (via Client's "Automobile and Personal Belongings" memo) on an annual basis.

Extra Services

- From time to time a Project may need services (e.g., insurance coverage, credit card charges for processing donations, legal advice, inventories of intellectual property, staff search and recruitment, consulting services) over and above those included in the regular administrative fee. When the specific costs of these services are identifiable, Client will charge them directly to the Project's Client fund. Client will inform Projects when such charges are necessary. In addition, Projects may from time to time, at their own discretion, wish to contract with Client to provide additional services such as space rental, consulting services or technical assistance. Additional services will be billed according to Client policies then in force and applicable to other clients.

Client may maintain additional and more detailed policies and procedures relating to these and other matters. Project adherence to such policies and procedures is a requirement of this Agreement. Client may amend these policies from time to time and will notify Project Director of any such amendments.

Exhibit B

Project Branding Requirements

Project website

- Home page: *[describe requirements]*
- “About” section: *[describe requirements]*
- *[describe other requirements]*

Letterhead and business cards

- *[describe requirements]*

Fundraising materials

- *[describe requirements]*

Clothing, logo items, etc.

- *[describe requirements]*

Use of Client logo

- When displaying the Client logo or any other Client trademarks, Project must use them in the exact, original graphical form and may not alter them in any way.
- Project may not combine the Client logo or any other Client trademarks with any other trademark, word, symbol, letter, design, or mark, without Client’s prior written consent.
- Any use of Client’s logo or other trademarks must be consistent with any trademark use guidelines that Client may establish.
- *[describe other requirements]*

[Other]

- *[describe requirements]*