

Maine Annotated Fiscal Sponsorship Agreement Template

Version Date: May 11, 2021

Note: This annotated template is provided as a free resource, but does not constitute legal advice specific to any organization or individual, and does not replace the need for qualified legal counsel. Also, make sure you can read the comments below, as MS Word does not show them automatically in all view settings.

This Fiscal Sponsorship Agreement (the “Agreement”) is between the _____ (the “Sponsor”), a Maine nonprofit corporation, qualified as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code (IRC) and classified as a public charity under IRC Section 509(a)(1), having a mailing address of _____, and _____ (“Sponsored Organization”), a Maine nonprofit corporation having a mailing address of _____.

The charitable purpose of the Sponsor is to _____. Having determined that the Sponsored Organization’s project described in the _____ dated _____, attached hereto as Exhibit A (the “Project”) would further the charitable purposes of the Sponsor, the Sponsor Board of Directors has resolved to sponsor the Project and to establish a restricted account or sub-account to receive and disburse funds for the Project.

In consideration of the above and the mutual covenants and commitments contained herein, the Sponsor and the Sponsored Organization agree as follows:

- 1) Program of Sponsored Organization. The parties understand and acknowledge that the Project is not a program of the Sponsor, but rather is a program of the Sponsored Organization. Notwithstanding the foregoing, the Sponsor shall assume responsibility for the proper expenditure and accounting of all funds received and disbursed for Project activities and shall be responsible for ensuring that the Project’s activities are in furtherance of the charitable purposes of the Sponsor.
- 2) Administration of Funds.
 - a) The Sponsor shall receive tax-deductible charitable contributions, private foundation or public charity grants, and government grants, expressly earmarked for the Project (the “Funds”). The Sponsor shall disburse such Funds to the Sponsored Organization for payment of Project expenses, under the terms of this

Agreement. The Sponsor shall establish a restricted account or sub-account into which all Funds will be deposited as received by Sponsor.

- b) The Sponsor shall transfer available Funds to Sponsored Organization upon request by Sponsored Organization, subject to the terms of this Agreement. Sponsored Organization shall use the Funds substantially in accordance with the Project expenses set forth in Exhibit A, subject to amendment upon the mutual written agreement of the parties. Sponsored Organization shall repay to Sponsor any portion of the Funds which is not used for the Project. All Funds received and any income from amounts held in the restricted account or sub-account shall be reported as the income of the Sponsor for both tax and financial reporting purposes. Funds transferred to Sponsored Organization shall be reported as grant income to Sponsored Organization and grant expense to the Sponsor for both tax and financial reporting purposes.
- 3) Fundraising. The Sponsored Organization shall be responsible for initiating all fundraising activities for the Project, whether grant applications or solicitation of individuals and for-profit entities. All of the Sponsored Organization's fundraising solicitation activities and materials related to the Project are subject to advance written approval of the Sponsor, provided that the Sponsor shall promptly, and in no event greater than seven (7) days, respond to requests for such approval. The Sponsor shall have the right, in its sole discretion, to prohibit the Sponsored Organization from soliciting certain individuals or entities or applying for certain grants if such activities are seen to conflict with the fundraising activities of the Sponsor. Subject to said approval rights, the Sponsor agrees to provide support for such fundraising activities by signing grant applications, grant agreements, pledges, or other commitments with funding sources. The cost of any reports or other compliance measures required by such funding sources shall be borne by Sponsored Organization. The Sponsor shall be responsible for filing any registration for charitable solicitations with the Maine Department of Professional and Financial Regulation. The Sponsor shall promptly provide donors with contemporaneous written acknowledgment letters and any other substantiation requirements for any donations earmarked for the Project.
- 4) Compliance with Tax-Exempt Laws. The Board of Directors of Sponsored Organization shall have the authority to develop and manage the Project, subject at all times to the ultimate direction and control of the Sponsor. Notwithstanding the foregoing, Sponsored Organization agrees not to use Funds in any way which would

jeopardize the tax-exempt status of the Sponsor. Sponsored Organization agrees to promptly comply with any written request by the Sponsor that it cease activities which might jeopardize the Sponsor's tax status, and further agrees that the Sponsor's obligation to make Funds available to Sponsored Organization is suspended in the event that Sponsored Organization fails to comply with any such request. Any changes in the purpose for which Funds are spent must be approved in writing by the Sponsor before implementation. The Sponsor retains the right, if Sponsored Organization breaches this Agreement, or if Sponsored Organization or the Project jeopardizes the Sponsor's legal or tax status, to withhold, withdraw, or demand immediate return of Funds provided under this Agreement, and to spend such Funds so as to accomplish the purposes of the Project as nearly as possible within Sponsor's sole judgment.

- 5) Deductibility of Donations. The Sponsored Organization understands that contributions to the Sponsor for the purposes of the Project are only tax-deductible under the Internal Revenue Code to the extent that they are motivated by donative intent. Anyone making a contribution for the purposes of the Project who has questions about deductibility should consult a professional tax advisor. The Sponsor reserves the right to not accept any contribution. The Sponsor assumes no responsibility for ensuring that contributions to the Sponsor for the purposes of the Project are tax-deductible to any particular donor. The Sponsor does not provide individual tax advice; therefore, all donors are encouraged to consult their own outside professional advisers to address questions on deductibility or donative intent.
- 6) Financial Procedures. For the purposes of receiving and disbursing the Funds, the Sponsored Organization must act within the financial policies outlined in the Sponsor's Financial Procedures Manual.
- 7) Reports. Sponsored Organization shall prepare and deliver quarterly reports to the Sponsor regarding use of all Funds disbursed by the Sponsor to Sponsored Organization, and an annual report summarizing programs and expenditures within ninety (90) days of the conclusion of Sponsored Organization's fiscal year. At completion of the Project, Sponsored Organization submits a final report to the Sponsor, including impact data and allocation of funds. The Sponsor shall prepare and deliver periodic income/expense statements to report the disbursement of funds to Sponsored Organization for the Project.
- 8) Political Activities. No Funds may be used by the Sponsored Organization in any attempt to influence legislation, to participate or

intervene in any political campaign on behalf of or in opposition to any candidate for public office, to induce or encourage violations of law or public policy, to cause any private inurement or improper private benefit to occur, or to take any other action inconsistent with Sponsor's status as an organization described in IRC Section 501(c)(3).

- 9) Employees and Contractors. Any employees or contractors of Sponsored Organization shall not be employees or contractors of the Sponsor, and the Sponsor shall have no employment or contractor responsibilities or duties, as a result of this Agreement.
- 10) Tangible and Intangible Property. Any tangible or intangible property, including copyrights, obtained or created by Sponsored Organization as part of this project shall remain the property of Sponsored Organization. The Sponsor hereby appoints Sponsored Organization and Sponsored Organization accepts appointment, as the Sponsor's non-exclusive agent for the limited purpose of receiving from Donors proposed contributions to the Sponsor of non-monetary assets for the purposes of the Project ("In-Kind Items"). Sponsored Organization agrees to promptly report to the Sponsor each In-Kind Item it receives or proposes to receive, such reports to include photographs of such In-Kind Items as may be required, so that the Sponsor may decide whether it wishes to accept or not to accept such In-Kind Item. In furtherance of such appointment, Sponsored Organization agrees to hold each In-Kind Item solely for the benefit of the Sponsor until such time as the Sponsor, in its sole discretion, requests that Sponsored Organization transfer such In-Kind Item to the Sponsor, grants such In-Kind Item to Sponsored Organization for the purposes of the Project, or instructs Sponsored Organization that it does not wish to accept such In-Kind Item and to return such In-Kind Item to the donor.
- 11) Public Relations. Sponsored Organization and the Sponsor agree that each may promote or publicize its relationship with the other party, receipt of any grant awards, program description and program impacts on its website or using other forms of mass communication.
- 12) No Agency or Partnership. Nothing in this Agreement shall constitute the naming of Sponsored Organization as an agent or legal representative of the Sponsor for any purpose whatsoever. This Agreement shall not be deemed to create any relationship of agency, legal partnership, or joint venture between the parties hereto, and Sponsored Organization shall make no such representation to anyone.

- 13) Administrative Charge. An administrative charge of [____ percent (____%) of the Funds] [____ Dollars (\$____) per year, prorated for partial years] [the greater of: (a) ____ percent (____%) of the Funds, or (b) ____ Dollars (\$____) per year, prorated for partial years] shall be deducted by the Sponsor to defray the Sponsor's costs of administering the Fund and this Agreement. Such deductions shall be calculated and transferred quarterly.
- 14) Office Space and Administrative Support. In addition to serving as fiscal sponsor for the Project, the Sponsor will provide limited office space and administrative support on an "as available" basis to the Sponsored Organization. The Sponsored Organization will reimburse the Sponsor for office and administrative costs including reception, payroll and accounting support, rent, telephone, internet access, access to copy and fax machines, supplies, postage, printing, and long distance telephone. From __ (date) to __ (date), the monthly fee related to the use of office space and administrative support will be \$____. This amount will be adjusted by the Sponsor on _____, and annually thereafter.
- 15) Maine Annual Report; Changes to Status. If the Sponsored Organization is an incorporated entity, it shall be responsible for filing an Annual Report and to remain in good standing with the Maine Secretary of State. The Sponsored Organization shall notify the Sponsor immediately of any change in (a) its legal or tax status, and/or (b) its executive or key staff or volunteer responsible for achieving the Project purposes.
- 16) Indemnification. Because the Funds are held for the purposes for which such funds were given, the parties intend that the Sponsor's assets are not subject to the claims of any creditor or to legal process resulting from activities of the Sponsor unrelated to such purposes. Sponsored Organization hereby irrevocably and unconditionally agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the Sponsor, its officers, directors, employees, volunteers, and agents, from and against any and all claims, liabilities, losses and expenses (including reasonable attorneys' fees) directly, indirectly, wholly or partially arising from or in connection with any act or omission of Sponsored Organization arising from or in connection with this Agreement, and including those claims sounding in negligence, except to the extent that such claims, liabilities, losses or expenses arise from or in connection with any malicious or willful act or omission of Sponsor, its officers, directors, employees, volunteers, or agents. In addition, the Sponsored Organization agrees to reimburse the Sponsor for any additional fees owed by the Sponsor

for adding the activities of the Sponsored Organization to its insurance coverage.

- 17) Effective Date; Termination. This Agreement shall become effective on _____, 202_ and shall continue until terminated by either party upon the submission of thirty (30) days written notice. Upon termination, the Sponsor shall first pay off any Project liabilities and then, upon completion of any final reports owed under Section 7, distribute to the Sponsored Organization any remaining Funds; provided, however, that the Sponsor shall not be obligated to transfer such assets if the Sponsored Organization has used Funds (a) other than for expenses set forth in the Fiscal Sponsorship Proposal attached hereto as Exhibit A or (b) in any way that would jeopardize the tax-exempt status of the Sponsor.
- 18) Dispute Resolution. Except as noted below, prior to commencing any litigation, any controversy or claim arising out of or relating to this Agreement, or breach thereof, which cannot be first settled amicably and satisfactorily between the parties without the assistance of a neutral party, will be mediated in or near _____, Maine by a mediator agreed to by the parties. The costs of the mediator shall be paid for equally by the parties, unless the mediation settlement agreement provides otherwise. If the parties are unable to resolve the dispute by mediation within thirty (30) days of the first joint mediation session conducted by the mediator with the parties, either party may declare an impasse and commence litigation. Further, either party may commence litigation without first subjecting the dispute to the mediation process if the party is seeking either a temporary restraining order or preliminary injunction to protect any of its interests.
- 19) General. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. This Agreement may not be amended or modified, except in a writing signed by all parties to this Agreement. This Agreement shall be interpreted and construed in accordance with the laws of the State of Maine. Each provision of this Agreement shall be separately enforceable, and the invalidity of one provision shall not affect the validity or enforceability of any other provision.

Sponsor Name

_____, **President or Executive Director** Date

Sponsored Organization Name

_____, **President or other title** Date

EXHIBIT A
FISCAL SPONSORSHIP AGREEMENT BETWEEN

and

Overview of the Project

Ideally will include budget, but that can be done later.