

This exemplar is designed for general use in a Model A direct project situation, where the project is new. If the project already exists and there are assets or liabilities to be transferred in from a prior sponsor, a different form may be needed. Words in italics may need to be replaced or deleted and footnotes should be deleted.

. The contracting parties

here are the 501(c)(3) sponsor and the project's advisory committee, which is an unincorporated association with no financial existence, but with certain rights and duties created by this Agreement. {"Advisory Comm." could be the Friends of Occupy Boston entity} The committee will oversee the {finances?} of Occupy Boston project under authority delegated to it by United for a Fair Economy's the sponsor's board. This exemplar also gives the committee a degree of "portability" whereby Friends of Occupy Boston the committee can terminate the Agreement and take up to X days to find another sponsor willing and able to sponsor Occupy Boston take over the project, but the current sponsor and the committee must agree on the choice. Charitable trust restrictions and other clauses are strengthened in this version. Greg Colvin 11/3/11


FISCAL SPONSORSHIP AGREEMENT

This Fiscal Sponsorship Agreement ("Agreement") is made by and between United for a Fair Economy - Good City Fund ("Sponsor"), and the Exiting New Project Advisory Committee ("Committee"). Friends of Occupy Boston
Sponsor is a Massachusetts California nonprofit public benefit corporation located in Boston, Massachusetts San Francisco, California, 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 Sections 509(a)(1) and 170(b)(1)(A)(vi). The Committee is an unincorporated nonprofit association established to oversee the affairs of the Occupy Boston as Project described below.¹

RECITALS

A. The United for a Fair Economy Sponsor Board of Directors has approved the establishment of a restricted fund to receive donations of cash and other property designated for support of Occupy Boston of the project known as the Exiting New Project (the "Project") and to make disbursements in furtherance of the Occupy Boston's Project's mission to be a center for efforts to restore American democracy, curb the power of corporate elites, and foster economic and social justice, through organization, education, and direct action... ^{ADVERTISE} help foster children in California make the transition to adulthood. Currently, the principal office of Occupy Boston the Project is located in Boston, Massachusetts New Suburb, California.⁺ **LOCATION**

¹ Some sponsors prefer to contract with the project director individually, with or without the presence of an advisory committee. In some incubation situations, the contracting party may be the new nonprofit corporation that will take over the project after it receives IRS approval. This form may be modified accordingly.



AGREES

B. United for a Fair Economy Sponsor ~~desires~~ to act as the fiscal sponsor of the Occupy Boston Project, by receiving assets and incurring liabilities identified for the purposes of the Occupy Boston Project and using them to pursue those purposes, which the United for a Fair Economy Sponsor's Board has determined are in harmony with will further UFE's Sponsor's charitable and educational goals. Friends of Boston ~~The Committee~~ ^{AGREES} desires to oversee the Occupy Boston's finances ~~Project on behalf of UFE. Sponsor,~~ subject to ~~Sponsor's discretion and control.~~ ^{CO CHARITABLE & EDUCATIONAL}

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Term of Agreement. On _____ (the "effective date"), United for a Fair Economy Sponsor shall assume sponsorship operation of Occupy Boston, ^{said} ~~the Project~~, which operation shall continue in effect unless and until terminated as provided herein.

2. Occupy Boston Project Activities and Sponsorship Policies. ~~All community programs, public information work, fundraising events, p~~rocessing and acknowledgment of cash and noncash revenue items, accounts payable and receivable, negotiation of leases and contracts, disbursement ~~of of~~ Project funds (including grants), and other activities conducted by the Occupy Boston Project shall be the ultimate responsibility of United for a Fair Economy Sponsor and shall be conducted in the name of UFE Sponsor, beginning on the effective date.

a. Unless otherwise agreed, and subject to their consent, all personnel to be compensated for working ~~for on the Occupy Boston Project shall become at-will employees of Sponsor on the effective date and shall be subject to the same personnel policies and benefits as are required by law to apply to all employees of Sponsor.~~ ^{QUALIFIED} ~~if properly classified, others may work for on the Occupy Boston Project as independent contractors pursuant to a written service agreement.~~

b. The parties shall abide by the Administrative Terms and Policies of United for a Fair Economy Sponsor set forth on the attached Exhibit 1, 2 which UFE Sponsor may amend from time to time with advance written notice to the Friends of Occupy Boston Committee and which include administrative fees,

2 United for a Fair Economy ~~The sponsor~~ should compile a list of administrative policies applicable generally to its

sponsorship practice, and terms (if any) specific to this agreement, and attach the list as an exhibit to this agreement. The policies should address the percentage fee (if any) that the UFE sponsor will charge, identification of those authorized to act as agents on behalf of the project

and the limits of that authority, procedures for issuing checks, employment matters, timetables for reports, and other similar issues.

interest, and charges for extra services, to be paid to the general fund of UFE Sponsor from the restricted fund described in Paragraph 4 below. Such fees, interest, and charges are necessary to compensate UFE Sponsor for its services administering the Occupy Boston Project, and thus become unrestricted rather than restricted assets when paid.

(? what's diff Between RESTRICTED VS. UNRESTRICTED ASSETS)

c. Unless otherwise agreed, any tangible or intangible property, including intellectual property, such as copyrights, obtained from third parties or created in connection with ~~the~~ Occupy Boston Project shall be the property of UFE Sponsor, held for the charitable purposes of Occupy Boston. ~~the~~ NOTE: THIS INTEL PROPERTY ISSUE IS NOT LIKELY TO COME UP- BUT IF OB AS A GROUP CREATES SOME—ART, SOFTWARE, ETC—OB COULD NOT CONTROL IT. BECAUSE WE'D HAVE NO CLEAR LEGAL STATUS??—IT COULD BE USED, COOPTED ETC BY ANY CORP OR OTHER INTEREST... or—we could just say it is all open source, up for grabs....? Project.

d. Occupy Boston ~~The Project~~ may solicit gifts, contributions, and grants ~~to~~ UFE Sponsor identified as in support of OB ~~the purposes of the Project~~, Occupy Boston's ~~The Project's~~ choice of funding sources ~~to be approached, and~~ the text of the OB Project's fundraising materials, are subject to Sponsor's prior written approval and shall include an express disclosure of UFE's Sponsor's variance power under Paragraph 4 below. All grant agreements, pledges, or other commitments with funding sources ~~to support Occupy Boston this Project~~ shall be executed by UFE Sponsor.

SUPPORTING

3. Delegation. As of the effective date, oversight (as defined in the Administrative Terms and Policies) of the ~~program~~ activities of Occupy Boston ~~the Project~~ is delegated by UFE Sponsor Board of Directors to the individual members of Friends of Occupy Boston ~~the~~ Committee, subject to the ultimate direction and fiduciary responsibility of UFE Sponsor Board. Acting in their individual capacities, the members of Friends of Occupy Boston ~~the~~ Committee serve ~~the~~ as a subordinate body to Sponsor Board by ~~to~~ assisting with the fulfillment of the ~~purposes of Occupy Boston the Project~~. In matters governed by this

Agreement: (a) the Friends of Occupy Boston's ~~Boston's~~ ~~Committee's~~ separate legal existence as an unincorporated nonprofit ~~ital. added for emphasis~~ association will be solely for the limited purpose of holding, exercising, and enforcing the contractual duties and obligations UFE Sponsor may owe to Friends of Occupy Boston ~~the~~ Committee under this

Agreement, and (b) those participating ~~on the Committee~~ do not serve as representatives or agents of any funding source, employer, or any party other than Sponsor. ~~If the Committee will not actively oversee the Project, modify this Paragraph.~~

4. Restricted Fund / Variance Power. Beginning on the effective date, United for a Fair Economy ~~Sponsor~~ shall place all gifts, grants, contributions, and other revenues it receives ~~by~~ Sponsor for the purposes of the Occupy Boston Project into a restricted fund to be used for the sole benefit of the Occupy Boston Project's

~~mission as that mission may be defined by the Friends of Occupy Boston Committee from time to time with the~~

~~approval of UFE Sponsor. Neither party shall spend or otherwise obligate United for a Fair Economy Sponsor to pay for an amount or amounts exceeding the balance in the restricted fund, nor shall either party authorize or permit anyone to do so. Occupy Boston Sponsor retains the unilateral right to spend such funds~~

~~so as to accomplish its the purposes of the Project as nearly as possible within its Sponsor's sole judgment, subject to any more specific donor-imposed restrictions, on the charitable use of such assets. The parties agree that all money and the fair market value of all property in the restricted fund be reported as the income of United for a Fair Economy Sponsor on its Sponsor's financial statements and~~

~~tax returns. It is the intent of the parties that this Agreement be interpreted to provide United for a Fair Economy Sponsor with variance powers necessary to enable it Sponsor to treat the restricted fund as~~

~~its Sponsor'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 the Occupy Boston Project as understood by and with funding sources, the parties intend that assets in the restricted fund are not subject to the claims of any creditor or to legal process resulting from activities of Sponsor unrelated to the Project.~~ *Occupy Boston* *UFE*

5. Performance of Charitable Purposes. All of the assets received by United for a Fair Economy Sponsor

~~under the terms of this Agreement shall be devoted to the purposes of Occupy Boston, the Project,~~ *Mass 91*
within the

tax-exempt purposes of United for a Fair Economy Sponsor. Expenditures for any attempt to influence legislation

within the meaning of IRC Section 501(c)(3) shall be subject to limitations imposed by

United for a Fair Economy UFE Sponsor. ~~Sponsor shall not use any portion of the assets 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, nor to take any other action inconsistent with IRC Section

501(c)(3). United for a Fair Economy Sponsor has determined, based on the advice of tax-exempt legal counsel, that

the restricted fund is not a donor-advised fund within the meaning of IRC Section

4966(d)(2) as presently interpreted under federal tax authorities. United for a Fair Economy ~~The sponsor should have~~

~~legal counsel review the proposed arrangement and confirm the statement in the last sentence of this paragraph.]~~

6. Termination. This Agreement shall terminate when either United for a Fair Economy or Occupy Boston Sponsor determines that their

~~the objectives of the Project can no longer reasonably be accomplished through the agreement. by Sponsor. If the~~

objectives of ~~the Occupy Boston Project~~ can still be accomplished but either the Friends of Occupy Boston Committee or United for a Fair Economy Sponsor

desires to terminate ~~its Sponsor's~~ fiscal sponsorship of ~~the Occupy Boston Project~~, the following understandings shall apply. Either United for a Fair Economy Sponsor or the Friends of Occupy Boston Committee may terminate this Agreement on xx days' written notice to the other party, so long as another nonprofit organization acceptable to both parties³ is found that is tax-exempt under IRC Section 501(c)(3), is not classified as a private foundation under Section 509(a) (a Successor), and is willing and able to sponsor Occupy Boston~~the Project~~. (As used in this Paragraph 6, the word "able" shall mean that the Successor has charitable purposes compatible with the purposes of Occupy Boston~~the Project~~ and has the financial and administrative capacity to competently manage Occupy Boston~~the Project~~.) The balance of assets in United for a Fair Economy's ~~Sponsor's~~ restricted fund for ~~the Occupy Boston Project~~, together with any other tangible and intangible assets held and liabilities incurred by United for a Fair Economy Sponsor in connection with Occupy Boston~~the Project~~, shall be transferred to the Successor at the end of the notice period or any extension thereof, subject to the approval of any third parties that may be required. If ~~the Committee~~ has ^{→ FOIB} formed a new organization qualified to be a Successor as set forth in this Paragraph, such organization shall be eligible to receive all such assets and liabilities so long as it has received a determination letter from the Internal Revenue Service, indicating that such qualifications have been met, no later than the end of the notice period or any extension thereof. If no Successor acceptable to both parties is found within a reasonable time, United for a Fair Economy Sponsor may dispose of Occupy Boston~~the Project~~ assets and liabilities in any manner consistent with applicable tax and charitable trust laws. Either party may terminate this Agreement, based upon a material breach of this Agreement by the other party, by giving xx days' written notice to the other party, and ~~any Occupy Boston~~ ^{the} Project assets and liabilities shall be disposed of at the end of the notice period in a manner consistent with the provisions stated above in this Paragraph.

7. Miscellaneous. In the event of any controversy, claim, or dispute between the parties arising out of or related to this Agreement, or the alleged breach thereof, the prevailing party shall, in addition to any other relief, be entitled to recover its reasonable attorneys' fees and costs of sustaining its position. 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. This Agreement shall be interpreted and construed in accordance with the laws of the Commonwealth of Massachusetts, ~~State of California~~ applicable to contracts to be performed entirely within such State. Time is of the essence of this Agreement and of each and every provision hereof. The failure of ~~Sponsor~~ ^{UFE} to exercise any of its rights under this Agreement shall not be deemed a waiver of such rights.

8. Entire Agreement. This Agreement constitutes the only agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties

3 Some sponsors, committees, and their legal counsel may prefer that the power to determine the successor reside solely in the sponsor or solely in the committee. This form contains a middle position: both must agree on the choice of successor.

with respect to the subject matter hereof. All Exhibits hereto are a material part of this Agreement and are incorporated by reference. This Agreement, including any Exhibits hereto, may not be amended or modified, except in a writing signed by all parties to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Fiscal Sponsorship Agreement as of the effective date set forth in Paragraph 1 above.

UNITED FOR A FAIR ECONOMY ~~GOOD CITY FUND~~

By:

, Executive Director

Dated: _____

OCCUPY BOSTON ~~EXCITING NEW PROJECT ADVISORY COMMITTEE~~

[members]

By:

Dated: _____

Last revised 11/3/11