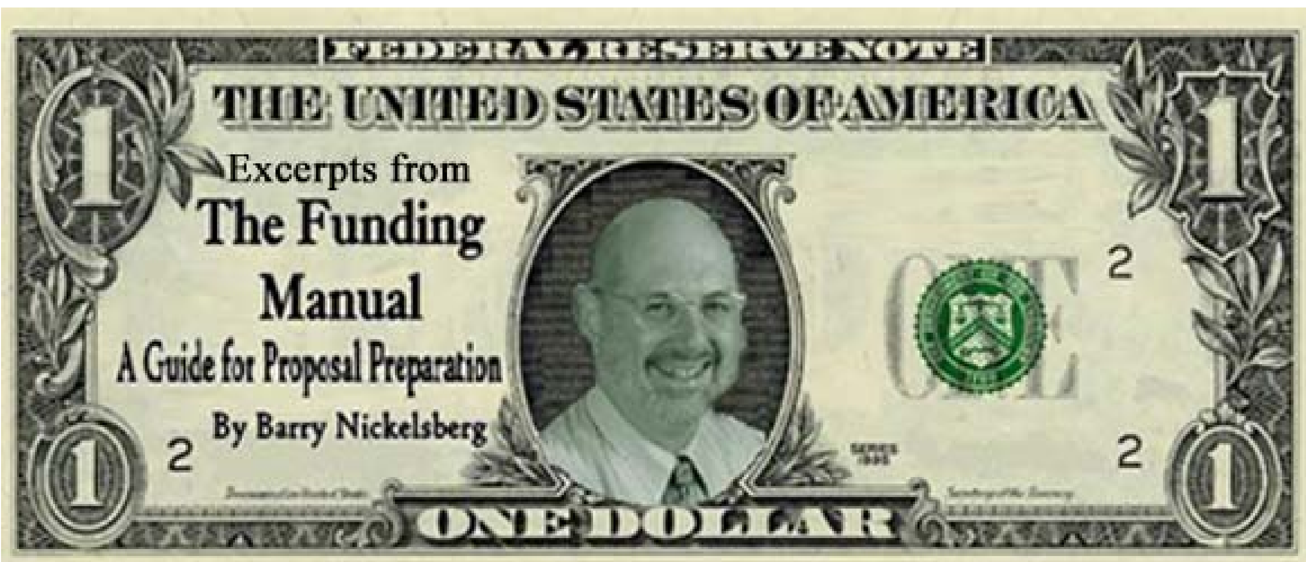
The Pass Through Agency



THE PASS THROUGH AGENCY

All foundations and corporations and most federal agencies will only make grant awards to non-profit, tax-exempt, 501(c)(3) organizations. These are organizations with an IRS ruling stating that they are educational, religious or charitable in nature. Contributions to 501(c)(3) organizations are tax deductible. Most colleges, universities, hospitals, social service organizations, churches, libraries, etc. have a 501(c)(3) ruling.

If your organization decides to apply for funding, from a source that requires that its funds be given to 501(c)(3) organization, and it does not have this ruling, then you are allowed to use another organization, that does have this ruling, as a "pass through agency."

The organization (pass through agency) that you found to accept the funds on your behalf becomes the applicant. The funds that are then awarded to the pass through agency are simply earmarked for your project. This practice is perfectly acceptable to funding agencies, corporations and foundations.

The advantage to the pass through agency is that it can use 8% of the grant for administrative expenses such as bookkeeping. (This 8% can be built right into the total budget.)

The disadvantage is that the pass through agency's business manager, executive director and board of directors will be held accountable for the money that went through their organization.

Although pass through agencies are used frequently, be sure each party's responsibilities are outlined in a contract <u>before</u> an application is made.

Remember: The pass through agency is the one applying for the funds and whose name must appear as the applicant. The Chairman of that Board of Directors will sign the application, even though you may have written the entire proposal.

If the application asks for the organization's total fiscal activity and wants to see an audit of the organization, it is the pass through agency's figures and books that are being requested.

POINTS TO KEEP IN MIND WHEN PREPARING A CONTRACT WITH A PASS THROUGH AGENCY

Whenever you are working with a pass through agency, you should have a contract to protect both parties. The contract should help avoid any future misunderstandings or concerns about cash flow.

<u>The following is a list of items which should be addressed in such a contract:</u>

- Percent of gross withheld by pass through agency for administrative overhead (usually 8 percent).
- How funds will be disbursed from the pass through agency to the organization that does not have the 501(c)(3) ruling. (It is best for the pass through agency to provide the organization with all the money for which it can show receipts. Naturally, these receipts must be for items or salaries that were stipulated in the grant that was awarded.)

- Cash advances by the pass through agency are acceptable but should not be for amounts greater than the pas through agency is willing to lose if the organization without the 501(c)(3) ruling should misuse the funds.
- Since the pass through agency is financially liable for the funds, it is the pass through agency that will be audited, if such an audit is required or necessary. Therefore, it should be specified in the contract that the pass through agency is entitled to all financial records concerning the expenditures for the funds used with this grant and also that if an audit is required, that the organization without the 501(c)(3) ruling will be financially liable for those costs. (Since the audit costs are unknown, and there is nothing that says an audit will be required, it is advisable to include an estimate of the audit costs to allow the organization without the 501(c)(3) ruling time to financially prepare for such an expenditure, should it occur.)
- Funds provided by the funding source to the pass through agency should be put into a special escrow account and should not be released without two signatures: One from the pass through agency and the other from the organization without the 501(c)(3) ruling.
- Depending upon how the grant monies are awarded, the escrow account may produce interest. It should be determined in the contract who receives the interest on these funds. Quite frequently, the pass through agency receives all the interest, although this is negotiable.
- It should be stipulated that the escrow account cannot be included as an asset for the pass through agency (to avoid a freezing of these funds in case of bankruptcy or if the IRS freezes the accounts of the pass through agency.)
- In the case of default by the organization without the 501(c)(3) ruling, stipulations should be made that the remaining funds will be returned to the grantrnaking source and that a complete explanation will be provided by the organization without the 501 (c)(3) ruling.
- It should be stipulated that the organization without the 501(c)(3) ruling does not represent the pass through agency but representatives of the organization without the 501(c)(3) ruling can inform potential funding sources that arrangements have been made with an organization
  a 50l(c)(3) ruling to accept the funds.
- It should be stipulated that representatives from the organization without the 501(c)(3) ruling will prepare all necessary proposals, documentation, and reports for the funding sources.

SAMPLE CONTRACT BETWEEN A 501(c)(3) ACTING AS A PASS THROUGH AGENCY AND ANOTHER ORGANIZATION

WHEREAS, (Name of the Pass Through Agency), a 501(c)(3) is a (name of State) non-profit corporation with offices at ( ) which is tax-exempt under 501(c)(3) of the Internal Revenue Code of 1986 and (explanation of the organization's purpose) and

WHEREAS, (Name of Other Organization) is a (name of State) business corporation with offices at (business address) and

WHEREAS, the Project will further the 501(c)(3)'s
charitable and educational objectives and programs; and

WHEREAS, the 501(c)(3) acknowledges receipt from the (other organization) of a proposal containing an outline, schedule, and budget for the Project; and the *501(c)(3)* has reviewed said Proposal, and wishes to sponsor the Project's production in furtherance of the 501(c)(3)'s charitable and educational objectives and programs pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth herein, and for other good and valuable consideration, the parties contract and agree as follows:

1. 501(c)(3)'s obligations

[a] The 501(c)(3) will sponsor the Project's production; provide advice, assistance, and funding as it deems appropriate, accept contributions to support the Project, and make grants to support such production pursuant to the terms hereof

[b] The 501(c)(3) will provide funding to the (other organization) and additional grants to providers of goods and services needed to produce the Project, per (other organizations') written request, all subject to funds being available for this project and 501(c)(3)'s reasonable judgment that (other organization) is carrying out the project's objectives, per the Proposal.

[c] Any restriction imposed upon Project related funding by a contributor to the 501(c)(3) only with the (other organization's) authorization.

[d] All monies contributed to the Project will be placed in escrow and only accessible with two signatures: one of a representative of the 501(c)(3) and one of a representative of the (other organization).

[e] The 50l(c)(3) will keep 8% of all monies contributed to the Project to cover administrative costs. Although the (other organization) will be responsible for providing a complete and proper accounting of all monies expended, the *501(c)(3)* must verif' that, to the best of its knowledge, the accounting is accurate. See 3 (a).

[f] Any interest accrued by the monies held in escrow will become an asset of the 501(c)(3) and may be used in any way it sees fit.

2. (Other <u>Organization's) Obligations</u>

[a] The (other organization) will be responsible for the Project which will conform substantially with the Proposal (copy attached) and any amendments thereto approved in writing by the 50l(c)(3) and the (other organization).

[b] The (other organization) bears full responsibility for soliciting contributions to the 501(c)(3) for the Project, subject to the 501(c)(3)'s reasonable requirements regarding any solicitations made in its name, and fulfilling all obligations and liabilities to funding sources.

[c] The (other organization), as producer, will be solely responsible for securing all necessary authorizations, licenses, and other permissions and authorizations necessary for the project from appropriate persons and entities, including (but not limited to) trademark and copyright owners and licensees.

[d] The (other organization's) performance will be under the supervision of (name of principal) whose personal services are of the essence of the Agreement.

3. <u>Books and Records.</u>

[a] The 501(c)(3) will maintain adequate books and records accounting for all contributions and grants it receives to support the Project, including any terms or conditions pertaining thereto, and disbursements thereof. The (other organization) or its agent may, upon reasonable written notice to the 501(c)(3), review said books and records regarding receipts and expenses pertaining to the Project, which shall be available for review by the 501(c)(3) or its agent, upon reasonable written notice, during the regular business hours at the (other organization's) principal place of business.

4. <u>Reporting.</u> The (other organization) will report to the 501 (c)(3) periodically, as the 501 (c)(3) may reasonably require, concerning the Project. Report(s) shall include proper documentation of all expenses and fees to be reimbursed, including those charged by the (other organization) for its services rendered to the Project, as well as income and expense projections, estimated completion time, and such other pertinent information as the 501(c)(3) may reasonably require.

5. <u>Ownership Rights. Licenses, Programmatic Control.</u>

[a] Subject to the 501(c)(3)'s rights hereunder: (1) all rights, titles and interest in any materials of the project shall be and remain the (other organization's) property, free from any claims by the 50l(c)(3) or any person(s) deriving any rights or interests from the 501 (c)(3) and (2) all copyrights in and to any materials shall be and remain the (other organization's) sole and exclusive property.

[b] The (other organization) agrees to cause to be affixed to the Project a copyright notice pursuant to law.

[c] The (other organization) shall have fill creative control over the Project, subject to the terms of this Agreement.

[d] The (other organization) has the sole and exclusive right (except for the 501(c)(3)'s rights hereunder) to distribute and exhibit the Project to sell, assign or otherwise dispose of the Project in any medium and in any manner, in segments or otherwise. The word "Project" herein will be deemed to include a television film (or program) produced, exhibited and/or accompanied by sound program and voice recording, reproducing and/or transmitting devices, radio devices, television devices, phone records, videocassettes, and all improvements and devices that are now

or may hereafter be used in connection with the production, exhibition and/or transmission of any present or signature kind of film or television production or other means of recording sound and/or images for future reproduction.

6. Project Credits. Upon completion of the terms of this Agreement, the (other organization) will be credited as the producer of the Project and the 501(c)(3) will be credited as a sponsoring organization. The 501(c)(3)'s funding sources also will be given appropriate credits. The (other organization) will determine the specific form of the credits upon completion of the Project.

7. independent Contractor. The 501(c)(3) and the (other organization) are independent contractors. Nothing in this Agreement shall constitute any relationship of agency, partnership, joint venture or employment between parties. Without limiting the generality of the foregoing, neither party may hold itself as being authorized to commit nor bind the other contractually or financially without the express written consent of the other.

8. Warranties: No Conflicting Outside Agreements.

[a] The *501(c)(3)* warrants that it is a non-profit corporation duly incorporated and validly existing in good standing under the laws of the (State of) and passes an operative IRS determination of tax-exempt status under sub-section 501(c)(3) of the Internal Revenue Code 1986, and has the full right, power, legal capacity and authority to enter into thig Agreement and to carry out its obligations hereunder.

[b] Each party warrants that it has made no agreement of undertaking with any person, firm, corporation, or other entity that conflicts, interferes and/or is inconsistent with any term or provision to this Agreement, and agrees not to enter into any such agreement.

[c] Except as stated in this Agreement, neither party has made any warranty nor assurance regarding the subject matter of this Agreement upon which the other party has relied.

9. Indemnification. Each party agrees to indemnif' and hold harmless the other from and against all loss, damages, and expenses, including reasonable legal fees and expenses, which the proceeding caused by a breach of any condition, warranty, representation or other term of this Agreement, including (without limitation) any claim against the 501 (c)(3) by any governmental or administrative body concerning the 501(c)(3)'s improper use of grants from the 501(c)(3)'s tax- exempt status arising out of the (other organization's) improper use of grants from the 501(c)(3) hereunder. The 50 I(c)(3) at its discretion, may attach any of the (other organization's) rights and/or interests in the Project to the extent the (other organization) is obligated to the 501(c)(3) under the terms of this paragraph.

10. Project Expectations/Duration. This Agreement is for a period commencing on __________ and terminating on ________________.

11. Termination. Once all the other obligations are fulfilled under this Agreement, the 501 (c)(3)'s only interest in the Project shall be a royalty free license to display the Project for fund raising purposes.

If the (other organization) is or becomes bankrupt or insolvent, and is by virtue thereof or otherwise unable to complete the Project, and the 501(c)(3) is obligated to funder or other party pursuant to the terms hereof to complete the Project, the 501(c)(3) in its discretion, may (a) take the (other organization's) rights, title and interest in the Project (or any part thereof) and (b) make appropriate arrangements to complete the Project and/or arrange for its distribution.

12. Breach of Agreement: Governing Law, Complete Agreement: Modification. No waiver of any default or breach to this Agreement by either party shall be deemed a continuing waiver or a waiver of any other breach or default, no matter how similar. This Agreement shall be interpreted and construed under the laws of the (State of).

This Agreement constitutes and contains the entire agreement between the parties regarding its subject matter; it may be modified only by means of a writing signed by the party charged with agreeing to the modification.

13. No Assignments. Except as specifically provided herein, neither party shall make any assignment, transfer, pledge nor other disposition of its obligations hereunder without the written consent of the other.

14. Headings. Paragraph headings are used herein for convenience of reference and shall not be considered when construing or interpreting this Agreement.

15. Notice. Any report or notice required or permitted hereunder shall be given in writing and delivered by U.S. Mail or personal delivery to the recipient party's address listed above, or such substitute address a party may notify the other.

WHEREFORE, the parties, each by its duly authorized officer, have caused this Agreement to be executed as of Date__.

(501(c)(3) (Other organization)

By: ____________________ By:_________________

Date: _______________________ Date:__________________

The terms 501(c)(3) and (other organization) must be replaced by actual organizational/individual names.