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Chapter One: Purpose of this Collaborations Guide

A collaboration is a “relationship of two or more organizations that includes a jointly–developed structure and shared responsibility and goals, mutual authority and accountability for success and sharing of resources and rewards.”¹

Nonprofit organizations usually engage in collaborations in order to deliver more and better services than they can deliver alone. By collaborating, nonprofit organizations are able to draw upon outside expertise, expand geographic reach, and tap financial and personnel resources that are otherwise unavailable to them. Working with others – including other nonprofit organizations, businesses, associations, and government agencies – enables nonprofit organizations to fill gaps and offer successful programs that build on the strengths of the various participants.²

The drive towards nonprofit collaboration is particularly strong in the area of workforce development. Because of the rapidly changing job market workforce development groups need to rapidly change program design and services in order to respond to market shifts.³ Given the specialized nature of many needed skills, collaborations between nonprofits allow consumers to access the right training expertise to prepare them for suitable jobs. The Guide uses hypothetical examples from the workforce arena, but the teachings are also relevant to other types of nonprofits that provide important services. Also, while the focus is on collaborations between nonprofits, many of these principles are applicable to other types of collaborations among nonprofits and for-profits or between exclusively for-profit entities.

¹ PAUL MATTESICH & BARBARA R. MONSEY, AMHERST H. WILDER FOUNDATION, *COLLABORATION: WHAT MAKES IT WORK*, (1992).

² See, e.g., LINDA HOSKINS & EMIL ANGELICA, FIELDSTONE ALLIANCE, *FORMING ALLIANCES, WORKING TOGETHER TO ACHIEVE GOALS* (2005).

³ KAREN CHAPPLE, *Building Institutions from the Region Up: Regional Work Force Development Collaborations in California*, INSTITUTE OF URBAN & REGIONAL DEVELOPMENT (2005), available at <http://repositories.cdlib.org/iurd/wps/WP-2005-01>.

Building Successful Collaborations: A Legal Guide for Nonprofits

Chapter One: Purpose of this Collaborations Guide

This Guide seeks to provide nonprofit organizations with tools to make the collaboration process easy, effective, and legally strong. Nonprofit organizations frequently consider working together but often do not focus on how the relationship will work until they are on the brink of beginning a new endeavor. We encourage you to take steps early on to assess the relationships, options, and likely scenarios for operating. Consider such factors as the organizational capacity of your own organization and the prospective collaborators; assets that each of the parties can provide; benefits that your organization seeks from the relationship; hard and soft costs; and risks of collaborating. Defining clearly the rights and responsibilities of each of the collaborators in advance can help make the collaboration more successful.

Because of the complexity of a collaborative relationship, it is prudent to memorialize the understanding among the parties in a written agreement. Some nonprofits have a visceral, negative reaction to signing a document called a “Contract” and, therefore, will either opt not to put the agreement in writing or label it a “Memorandum of Understanding” or a “Letter Agreement”. Regardless of its name, the agreement is at its core a contract if each organization promises the other that it will do something and the parties rely upon one another’s promises. Legally binding obligations can even be created orally. This Guide is intended to help nonprofit managers understand how different types of collaboration documents work in day-to-day practice.⁴

For purposes of discussion, we refer to the organizations that enter into the collaboration as the “Participants”. A collaboration agreement is not the same as a simple services or product sale agreement, where one party buys a product or service from another at a set price. Rather, a collaboration agreement will reflect the intention of the Participants to create a framework for their ongoing interaction, which enables the shared objectives of both to be achieved efficiently.

⁴ Common names and formats include: Agreement; Linkage Agreement; Cooperation Agreement; Coordination Agreement; Memorandum of Agreement; Memorandum of Understanding; Letter Agreement; and Contract.

Three main sections of this Guide are devoted to establishing the collaborative relationship. Chapter 2 of this Guide examines common elements of collaborations and their dynamics in more detail. Chapter 3 examines the role of the lawyer and looks at the negotiation process. Chapter 4 provides an overview of the primary collaboration agreement document and the issues and risks the collaboration agreement should try to address.

Afterwards, in Chapter 5, we look at the collaboration at work. Collaborative relationships are marked by the need for flexibility and refinement and fine-tuning over time to reflect the changing needs of the Participants. For example, as the Participants discover better ways to work together, one or more of them may want to modify the Collaboration Agreement to reflect this new reality. The process of adjusting and modifying the relationship may produce the desired “win-win” that prompted the idea of collaborating in the first place.⁵

We use the terms “collaboration” or “working together” rather than “partnership” because a “partnership”, from the legal perspective, often implies that the actions of one “partner” are binding on both the “partnership” and the other “partners”. The types of collaboration arrangements that we discuss in this Guide usually do not entail that degree of liability risk. Instead, typically each Participant maintains and functions independently while at the same time working together with the other Participants.

Although it is written by lawyers, we intend for this Guide to be used mainly by non-lawyers who encounter opportunities for their organization to collaborate. The focus is on explaining the legal issues commonly associated with such arrangements. Our objective is to improve the ability of the non-lawyer to recognize the main legal issues, interact productively with their counsel, and create a viable framework for a meaningful collaboration.

⁵ DAVID GRUBER, THE WORKFORCE STRATEGY CTR., BUILDING COMMUNITY COLLEGE/CBO PARTNERSHIPS 11 (2005), *available at* http://www.workforcestrategy.org/publications/WSC_Report_9_15.pdf.

Building Successful Collaborations: A Legal Guide for Nonprofits

Chapter One: Purpose of this Collaborations Guide

This Guide will not negate the need to seek the assistance of an experienced lawyer or other advice or guidance. Nor is it intended to in any way be used as a substitute for competent advice and counsel, legal or otherwise. Nonprofit organizations should obtain advice and counsel that is appropriate and relevant to the particular facts and circumstances of each specific situation. We hope that this Guide will facilitate and enhance the attorney-client relationship and, in turn, result in better outcomes for the Participants and the individuals and communities they serve.

This Chapter concludes with a chart listing the steps for collaboration discussed throughout the Guide. We welcome you to refer to it as your organization considers collaborations.