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Briefing Memorandum

To: Mayor Jenny Wilson
From: Kerri Nakamura, Chief of Staff
Subject: 501c3 Creation
Date: January 18, 2023
Due: January 25, 2023

Summary

Salt Lake County's program funding options are generally limited to federal or state grant pursuits, due to the limited availability of foundation funding for government entities. In order to expand and pursue all funding opportunities, particularly those best-suited to local impact projects that may not adequately support the outcomes and evaluation requirements of state or federal grants, staff was directed to explore creation of a 501c3 Foundation for the purpose of supporting Salt Lake County's programs, divisions, departments, and initiatives.

Background

The ability of Salt Lake County to accept program support from private foundations has been complicated by the nearly-universal foundation policy requirement for 501c3 organizations to be the funding recipient. For example, in 2021 and 2022, Bank of America funded the Salt Lake County internship program. The program's goals align directly with Bank of America's goals. However, Bank of America's giving standards require a 501c3 recipient, so Salt Lake County has partnered with United Way to serve as a pass-through for the funding. United Way graciously did not charge an administrative fee to Salt Lake County for this pass through. If we continue to partner with a community agency, Salt Lake County should expect to pay an administrative fee. As such, Salt Lake County determined that rather than relying upon this type of pass-through arrangement, a more transparent process would include creation of a 501c3 foundation for the purpose of supporting the programs, divisions, departments, and initiatives of Salt Lake County government.

Similarly, the opportunity exists for foundation support for some of the innovative programs Salt Lake County is operating in refugee support, diversity & inclusion, criminal justice reform, arts & culture, parks & recreation, and youth services to name a few. However, absent the existence of a 501c3, Salt Lake County cannot apply for these funding opportunities.

Finally, Salt Lake County has discussed potentially embarking upon large-scale fundraising for private partnership support of capital projects. A 501c3 Foundation will, undoubtedly, make such fundraising easier.

Analysis

Lee McCullough, of McCullough Law, has assisted other public entities in creating 501c3 foundations to support the programs and missions of the public entities. His McCullough Foundation graciously funded the creation of documents for the “Salt Lake County Foundation”. The drafted documents include:

- Articles of Incorporation
- Bylaws
- Consent Resolution

The Salt Lake County Foundation’s purpose will be to support the programs, divisions, departments, and initiatives of Salt Lake County government. The Foundation, modeled after Salt Lake County’s New Market Tax Credits (NMTC) 501c3, will be a separate entity from Salt Lake County government. Like NMTC, the Foundation will pay independently for accounting and legal services as well as officers’ and directors’ liability insurance. It is the Foundation’s intention to utilize the service providers used by the NMTC for accounting services and maintain a relationship with McCullough Law for needed legal services.

As drafted, the initial directors and voting members of the Foundation are the

- Mayor of Salt Lake County, President;
- Salt Lake County Council Member At-Large, Vice-President;
- Treasurer of Salt Lake County, Treasurer;

The Chief Financial Officer of Salt Lake County is a non-voting member and will serve in the officer role of Secretary.

The registered agent, following the NMTC model, will initially be the Salt Lake County Finance Director Greg Folta. The Foundation Board can amend Bylaws to include other members, including members who are not County officials or employees, by a 2/3 majority vote. They can also change the registered agent by a majority vote.

The newly created Articles of Incorporation and Bylaws are explicit that no official serving as an employee or official of the Foundation who is also a government employee may receive compensation from the Foundation.

Similar to NMTC, any County official or employee serving on the Foundation’s Board or as the registered agent would need to disclose the Salt Lake County Foundation as part of Salt Lake County’s conflict of interest disclosure policy and process.

Recommendation

The organizing documents anticipate that an At-Large member of the County Council will also serve as a voting Director. We will work with the At-Large members to see if one member has time to serve.

Once that appointment is made, we will finalize documents with the State of Utah and the Internal Revenue Service creating the Salt Lake County Foundation.