

# Partnership Agreements, Contracts, MOA's, MOU's

## What is a contract?

The legal definition of a contract is: "An *agreement* between two or more persons that **creates an obligation** to do (or not to do) a particular thing."



The "parties" to the contract are the groups that sign them. A "third party" for contract purposes means a party did not sign the contract. The legal purpose of a contract is to document each party's obligation, and to distribute and minimize each party's risks during the performance of the agreement. In general, a contract includes "standard terms and conditions" that outline the contract, and a statement of work (that is referred to or attached) that serves as the core of what the contract is about. See our "Standard Contract" document (at <http://www.zender-engr.net/MOA.htm>) to read a list of standard contract provisions.

**If you are signing a contract with someone**, make sure that the contract has been legally reviewed and that you understand what your obligation is. If you are a Tribe, there are a number of free legal services that are available. To get a referral or advice, try contacting Alaska Inter-Tribal Council at 563-9334, <http://www.aitc.org>, or Alaska Office of the Native American Rights Fund, 276-0680, or use the NARF resource guide to finding free services at <http://www.narf.org/nill/resources/lawyer.htm>. If you are a non-profit or low-income community group and do not have a lawyer, there are a number of low-cost or no-cost options. The American Bar Association has established a policy of increasing pro bono assistance to rural areas. Try contacting their Pro Bono Center at (312) 988-5759, <http://www.abanet.org/legalservices/probono/home.html>

Also see the Alaska State Department of Community and Economic Development's webpage on Contractual Agreements Between Municipal and Tribal Governments or Non-profits at <http://www.commerce.state.ak.us/dca/LOGON/admin/admin-moa.htm>

## What Are MOU's And MOA's And What Is The Difference Between Them?

MOA stands for **Memorandum of Agreement** and MOU stands for **Memorandum of Understanding**. They are both used as written agreements between two parties. There is no established legal difference. The two terms are interchangeable. Because it contains the word "agreement", and a contract is an agreement, some people believe that an MOA signifies a more significant commitment than an MOU. So if you are having difficulty with entering a partnership using an "MOA", then see whether your potential partner wants to sign an "MOU".



## Why Use MOA's and MOU's?

MOA's and MOU's are frequently developed between municipal and Tribal governments to benefit a variety of environmental services, including solid waste, and to try to maximize funds available to the community by looking at sources that are available to each party, and by not duplicating each other's efforts.

An MOU/MOA is like a contract, but it doesn't *have to* carry the same legal weight. That is because an agreement doesn't need to be intended as a **legally enforceable** arrangement, but a "Contract" always is intended that way.

However, **an MOA can include any or all of a contract's terms and conditions**. If it includes all of them, but is just titled an MOA, it *can* carry as much legal weight as a contract.



Most often, **an MOA is just a statement of cooperation or understanding** about a specific or general topic between two (or more) parties. It is often **used to clarify the roles and responsibilities of each party** in a shared situation of interest. For example, when both the Tribe and City want to clean up the dump to protect their subsistence, they can write an MOA stating that they will cooperate together in making that happen.

If none (or just some) of the standard "terms and conditions" are included, an MOA can be an attractive option to a standard contract, because it will be simpler to use. And it can **avoid the potential insult, resentment, or distrust**, that can result from asking someone to sign a fully-provisioned contract, rather than accepting that they honor their word.

Usually, **the point to MOA's is building a cooperative effort**. So an MOA is useful when both (or multiple) parties have developed, or would like to establish, a partnership based on a level of trust, rather than just legal obligation. Even in a work situation, if the parties have an established working relationship and trust each other, an MOA can be used in lieu of a standard work contract, and serves simply to clarify the workplan or scope of work.

**MOAs are good ways to start off a formal, recognized partnership with someone**. They can contain



as little or as much obligation as both parties are willing to sign, and be as specific or general as needed. In the end, even a general and short MOA can be the start of working towards a more meaningful relationship or goal. As a community, **the more MOA's and letters of support you can show funding agencies and other potential partners, the better**. MOA's and demonstrated partnerships will help to bring you the services or funds that you lack for the work you want done.

However, regardless of how an MOA is used, **without the standard contract terms and conditions, MOA's don't offer the same legal assurances or protections**.

Is there a substantial obligation that is being committed to that involves a significant amount of funds or services? **And** is there distrust or different goal motivations between the signers? Then you should consider a standard contract or MOA with the full range of standard contract terms and conditions-- or at least as many that make sense for your situation.

See our "MOU tips" document to read about some tips on creating MOA's and MOU's.



## Sample MOA's

Click on the name of the Village in the table below to view MOA's/MOU's from Villages around the State (or go to <http://www.zender-engr.net/MOA.htm>). If your Village has an MOA or MOU that you would like to share on this site, please email the Institute of Tribal Environmental Professionals (ITEP's) Alaska Solid Waste Technical Assistance Program through [jennifer.williams@nau.edu](mailto:jennifer.williams@nau.edu).

Village	Parties Involved	Type of Agreement
<a href="#">Selawik</a>	The Native Village of Selawik and The City of Selawik	To better the lives of the people of Selawik, through using their governmental duties and authorities to improve community economic, cultural, social, and physical well-being.
<a href="#">Lower Kalskag</a>	City of Lower Kalskag and Lower Kalskag Traditional Council	To provide, operate, and maintain the City Water and Sewer Department within the city limits of Lower Kalskag for the residents of Lower Kalskag.
<a href="#">Hydaburg</a>	City of Hydaburg and the Hydaburg Cooperative Association	To enable the City to contract with the HCA for maintenance and operation of City services and functions including, but not limited to: water/sewer, fire protection, public safety, roads, and the maintenance of the dump site
<a href="#">Petersburg</a>	Petersburg Indian Association-Tribal Resources Division And Petersburg Economic Dev. Council	To establish a general framework for cooperation and information exchange. Their MOU serves as a vehicle through which the PIA-TRD and the PEDC will openly communicate to work cooperatively on projects and programs of interest
<a href="#">Kasaan</a>	The Organized Village of Kasaan and the Kasaan School	To provide assistance and education on environmental issues to students.
<a href="#">Goodnews Bay</a>	The City of Goodnews Bay and The Goodnews Bay Water & Sewer Utility Board	For the Goodnews Bay Water and Sewer Utility to provide services as the City's agent for the operation of community sanitation facilities.
<a href="#">Chevak</a>	The Chevak Traditional Council and the City of Chevak	For the Municipality of Chevak to provide landfill equipment and for the Chevak TC to provide landfill staff for the common goal of improving the Chevak landfill.
<a href="#">Anvik</a>	The Anvik City Council and The Anvik Tribal Council	To cooperatively pursue State and Federal funding, and develop environmentally sound waste management strategies to modernize current waste management practices.
Kiana	The City and Tribe of Kiana	To re-organize the City and Tribe under one umbrella organization in order to cut down duplicative services and costs. To retain both individual Tribe and City status, with a single operating structure, under a single Executive Director. For example, the Tribal Environmental Department is officially the Environmental Department for the community. Their re-organization effort was the first of its kind, and they have adjusted their organization as they learn what works best.

<p>Toksook Bay, Holy Cross, Grayling, Upper Kalskag, Alakanuk, Russian Mission, Chevak</p>	<p>To lower the costs of maintenance of water and sewer and/or to prevent shutdown of the systems. These communities signed agreements and joined RUC - the Rural Utility Cooperative.</p>	<p>RUC is a water and sewer utilities cooperative that was created in 2002 by a partnership of YKHC, ANTHC, Denali Commission, Environmental Protection Agency, and the Rasmussen Foundation. The first village joined RUC in the summer of 2003. RUC is operated by Yukon Kuskokwim Health Corporation. RUC is a cooperative utility management program for water and wastewater treatment utilities that pays and trains the operators, takes on the responsibility of fee collection and structure, proper system operation and maintenance, and program administration. The RUC Board, which provides oversight, is comprised of representatives from member communities to ensure that the program is operated in a manner consistent with what they consider fair and practical.</p>
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## What is a Letter of Support?

A letter of support is almost like a non-provisioned MOA, except that it generally implies simply "support" of, not "obligation" to, your goal or project. It should be from a party that is in a position to realize the goal's importance, and/or a party that benefits from the goal directly. It can be from an individual or a group. Letters of support generally do not carry legal weight, and so can be signed by groups without legal review. Letters of support sometimes include, or imply, a level of commitment to the project. For example, an agency might offer technical assistance as part of their mission. If that commitment is something that you want to be highlighted, clarified, prioritized, or viewed as more formal, than you can work towards an MOA.



## What are Cooperative Agreements?

Federal guidelines for using a cooperative agreement (as distinct from a contract or grant) are basically the same as those for a grant. The difference is that the funding agency expects to be substantially involved with the recipient of the research funds in carrying out the funded activities. The legal consequences of not following through are spelled out in the CA.



The first Alaska Tribal Conservation District was created in 2005 through a Cooperative Agreement (CA) and a lot of hard work. Read about the Tyonek Conservation District at <http://www.ak.nrcs.usda.gov/news/082506a.html>. This CA was made possible through a Cooperative Agreement between Tyonek Native Village, U.S. Department of Agriculture, and Tyonek Native Corporation.

## What are Funding Agreements (FA)s?

Under the "Indian Self-Determination Act Amendments of 1994," Public Law 103-413 (also known as the "Tribal Self-Governance Act of 1994"), Native Tribes can enter into Annual Funding Agreements (AFAs) with agencies within the Department of the Interior (DOI), including the FWS. These AFAs authorize Tribes "to plan, conduct, consolidate, and administer programs, services, functions and activities" administered by the DOI that are of special geographic, historical, or cultural significance to the participating Tribe that requests an agreement.

Funding agreements are similar in nature to a cooperative agreement, but the agency may or may not be substantially involved in the work performance, and they always involve funding. Like CA's, they are not a standard contract or grant either, but are generally built on much preliminary work and documentation between the two parties about what the funding agreement entails. They might eventually follow from an MOA that establishes first the goal of working together to develop a set of circumstances under which a funding agreement will result.

An example of a funding agreement is the co-management of the Yukon Flats National Wildlife Refuge, made between Council of Athabascan Governments and the USFWS.

### **Yukon Flats National Wildlife Refuge Annual Funding Agreement (AFA):**

On April 29, 2004, the DOI approved an Annual Funding Agreement (AFA) between the Council of Athabascan Tribal Governments (CATG) and the U.S. Fish and Wildlife Service (FWS) allowing the CATG to perform some of the FWS's work on the Yukon Flats National Wildlife Refuge (NWR) in Alaska. Work includes: (1) Locating and marking public easements across private lands within the refuge boundary; (2) Assisting with environmental education and outreach in local villages; (3) Wildlife harvest monitoring; (4) Moose population surveys; and (5) Maintenance of government property on or near Fort Yukon.

To view the agreement that was used, go to: <http://www.r7.fws.gov/media/catg/afa.pdf>

## What is a Partnership?

A partnership is a relationship between parties to accomplish a common goal. It can be a legalized relationship with obligated responsibilities through, for example, a Partnership Agreement contract, or a legal business organization. But it can be also a non-legal relationship, with or without written documents, that is based on mutual cooperation, responsibility, and hopefully, trust. If your traditional form of working with each other is not through contracts and documents, as long as you are working together, you have an established partnership.

