

# Tips on Creating MOU's and MOA's

## 1. Should it be General or Specific?

**General example** - Cooperating on solid-waste related activities (or more generally on environmental protection activities). See the [Native Village of Selawik and the City of Selawik MOA](#) for an example.

### Advantages of being general include:

- ◆ You can use a general MOU for many different projects/activities. So when you are writing a grant, you can mention the MOU, and attach it, without having to spend time developing one.
- ◆ You have flexibility in what the MOA covers and what is accomplished in the projects.
- ◆ In some cases, it can be easier to agree on a general MOA, as it is not likely to raise specific "red flags". You can insert clauses that protect parties from committing to specific projects.



### Disadvantages include:

- ◆ You may not get cooperation on specific projects.
- ◆ Roles may not be defined clearly enough.
- ◆ You may not get both parties to sign a general MOA, as they may not want to commit to unknowns.

**Specific example** - Cooperating on the operation and maintenance of a recycling center. You can get even more specific by defining exactly what cooperation will take place, such as sharing costs, what those shared costs will be, and what roles each party will have.

### Disdvantages of being specific include:

- ◆ Less flexibility.
- ◆ You will need to draft a separate MOA each time a related activity is proposed.

### Advantages of being specific include:

- ◆ Provides both parties the opportunity to decide whether they want to cooperate on projects on a case-by-case basis.
- ◆ Ethical protection - provides parties a way to demonstrate that they did not agree to cooperation on activities that are not explicitly stated.



## 2. Legal Issues

Anything that might start a legal suit or might not be considered legal will probably not work, and might be made void down the line. Here, one of the primary considerations is that all community members must be treated equally, Tribal or non-Tribal. So for example, cooperation in operating a recycling center for just Tribal members, or agreeing to offer different services to Tribal members versus non-Tribal, etc. may be something to avoid or word very carefully.



Speaking of, **Tribal sovereignty** is defined as time goes on by a whole complex of court cases, trends, Acts, and situations that might seem to not have any bearing on Tribal sovereignty. But all of these factors can (and have had) significant impacts. MOA's and MOU's are not generally considered to be legally binding contracts unless the provisions are included. But they are written agreements, and as such should be reviewed if it is a Tribe-City (or other non-Tribal government) MOA, **and** specific provisions or roles are spelled out. For example, use of

"Tribal members" in a document could catch up either party in a legal arena where they do not wish to be. Use of the word "community" is often a better term to use. Any use of the words "jurisdiction" or "authority" over land or residents is a tip to go seek a legal opinion before final signing. Better yet, avoid these words when possible. Instead of worrying about future legal implications, you can get the work done that both parties want to get accomplished.

## 3. Time Period Of Agreement

Are there reasons you can foresee where you might want the agreement to be reviewed later on? Will circumstances change? There are advantages and disadvantages in fixing a time period. Usually, you don't want the agreement to be subject to changing political administrations, but in some cases this can be a wise choice.

