

SAMPLE LANGUAGE

STEP 3 NEGOTIATION: BUILDING PARTNERSHIP AGREEMENTS

LAYING THE FOUNDATION

Shared Goals:

"Joint fire plans between TNC, BLM and USFS implemented for 100,000 acres by 2011 in County X."

"The purpose of this MOU is to develop jointly a watershed management plan that will document values and identify priority watershed management activities."

"Transportation planners have joined forces with organizations x, y and z to perform mitigation over the Central Shortgrass Prairie Ecoregion for highway projects over the next 20 years."

Communication:

"All joint communication requires approval by both parties to ensure that any representation is consistent with the respective parties' policies regarding such communication."

Roles and Responsibilities:

"Both Partner A and Partner B shall agree to clear roles and responsibilities for each organization. Unless otherwise stated, these include:

- o Partner A shall assume the primary responsibility for all onsite activities. Partner B shall provide technical expertise and advice to each project and, in the absence of onsite capacity to implement specific activities, shall provide staff assistance until Partner A counterpart staff can be recruited or trained.*
- o Partner A and Partner B shall cooperate to develop annual workplans for certain projects and shall meet as needed to review progress and amend workplans.*
- o Partner A shall, where possible, recruit the best available science and conservation expertise to serve as staff on certain projects.*
- o Partner B shall provide expertise to help train, advise, and build science and conservation capacity in the region to implement conservation projects."*

Exiting or Moving-On Strategy:

"The terms of this agreement may be amended or terminated at any time by mutual agreement of the signatures 90 days after prior written notice."

"This Memorandum will continue for three years from the date of signature, at which time it shall expire unless renewed in writing signed by both parties. Either party may notify the other in writing of its intention to terminate this agreement ninety days prior to its expiration. Either party may request in writing revision or amendment of this MOU. Any amendment or revision must be in writing and signed and agreed to by both parties. It is understood that under this MOU, each project will be supported by a more specific work program plan and agreement that will be signed by both parties to this memorandum."

"Partners reserve the right to withdraw from the partnership in the event of any material change in the underlying factors, especially the conservation benefits and activities that have unintended tax or legal consequences."

"This MOU will begin on [date] and will remain in full force and effect until [date] ("Expiration Date"), or until terminated, whichever occurs first. Any extension beyond the Expiration Date must be in writing and signed by the Parties before the Expiration Date."

ESTABLISHING GOVERNANCE

Dispute Resolution:

"In the event of a dispute between any members of the Partnership, the nominated representatives of the relevant partners shall meet to resolve the matter.

If the dispute cannot be resolved within a reasonable period of time (having regard to the nature of the dispute) it will be referred to the Chief Executive Officer (or equivalent) of the relevant Partners for resolution.

If the dispute cannot be resolved within a reasonable period of time (having regard to the nature of the dispute) by the Chief Executive Officer (or equivalent) of the relevant Partners, it will be referred to Executive Group (or in the case of the Executive Group to the Full Board) for resolution.

If the dispute does not involve the Council but does impact on the continuing business of the Partnership, the Council shall, if the parties in dispute agree, act as mediator, to resolve the dispute.

If in the case of any dispute that cannot be resolved by agreement or mediation then the Exit or Moving on provisions shall be invoked."

Accountability:

“Each organization agrees that it will be responsible for its own acts and the results thereof, and shall not be responsible for the acts of the other organization or the results thereof. Each organization, therefore, agrees that to the extent it may legally do so, it shall assume all risk and liability to itself, its officers, employees or agents, under the memorandum, for any claims, damages, losses, judgments, expenses or other costs including litigation costs and attorney’s fees, arising out of, in connection with, or resulting at any time from any and all causes due to any act or acts, negligence, or failure to exercise proper precautions, of or by itself, or its own officers, employees or agents, in the performance of this memorandum.”

ADDRESSING FUNDING AND RESOURCES

Transfer of Funds:

“Expenses arising from implementation of this Agreement will be generated and paid for by the party initiating such expense unless otherwise agreed to in writing between the parties.”

“This MOU does not obligate either Party to provide financial support of any sort. Any transfer of funds between the Parties will be the object of an independent contract, with the inclusion of clauses and other conditions in accordance with the internal procedures of each Party, and will be duly signed by both Parties.”

ADDITIONAL LEGAL CONSIDERATIONS

Intellectual Property Rights:

“All intellectual rights, data, and information generated by activities within this agreement will be the property of both parties. Both parties shall have the unrestricted license to use the property for non-profit, academic or conservation purposes only. Any other use requires prior written approval of the other party. The parties agree that any intellectual property, data and other proprietary information previously owned by the party and used to fulfill certain activities under this MOU shall remain the property of that party.”

“Under the provisions of this MOU, the Parties may produce documents, reports, studies, photographs, and maps, as well as documents as well as product-specific documents (collectively “Works”). Unless otherwise agreed to by the Parties in writing, the copyright and other intellectual property rights in any such Work will belong to the Party that produces the Work.”

“Neither Party X nor Party Y can publish or distribute the results of this Project without the written consent by the other party, and must recognize the contribution of the other party in the publication.”

🎬 Confidentiality:

“During the course of the performance of this Agreement, the Partners may have access to materials, data, strategies, systems, or other information relating to the Partners and their programs, which are intended for internal use only. Any such information acquired by the Partners shall not be used, published, or divulged by the Partners to any person, firm, or corporation or in any advertising or promotion regarding the Partners or the Partners’ services, or in any manner or connection whatsoever without first having obtained the written permission of the Partners, which permission the Partners may withhold in their sole discretion.”

🎬 Logo Use and Visual Identity:

“The names and logos of the Parties are trademarks; as such, they may not be used for any purpose without the prior express written permission of their owners.”

🎬 Types of Documentation (non-binding agreement):

Where the terms partner and partnership has a specific legal meaning, use appropriate language to clarify your intent:

“This memorandum and the Owner’s Manual (if any) are not intended to create a “partnership” as contemplated under Sections 15501, 15611 and 16100 of the California Corporations Code, nor does a joint venture or principal-agent relationship exist between the organizations.”

Where the intention is a non-binding agreement, make sure this is clear:

“This MOU has as its objective the collaboration and participation of both organizations for the conservation of biodiversity in Australia; and for this reason this MOU facilitates the establishment of channels of communication that permit the creation and interchange of information, as well as scientific, technical, financial and institutional collaboration in the area of biodiversity conservation.”

“This collaboration is based on a mutual intent to generate benefits that lead to conservation of biological diversity and their supporting habitats, and an enhancement of science and technology beneficial to fulfilling the missions of both parties in particular and to society in general.”

“This MOU is intended to provide a framework for ongoing cooperation between Organization A and Organization B, building on the parties’ history

of close collaboration and cooperation. It sets out, in broad terms, areas of cooperation and agreed mechanisms to facilitate this.”

“The purpose of this MOU is to provide a framework for cooperation and coordination between Organization A and Organization B in achievement of mutual goals. Through the MOU the parties will continue to work together to maintain and enhance their ongoing partnership activities as well as explore new options.... This MOU provides a mechanism to support and streamline project and program development; it does not provide the authority for nor does it obligate funds.”

“Nothing in this MOU shall obligate either Organization B or Organization A to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of Organization B and Organization A will require execution of separate instruments and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide this authority. ...”

Where the agreement includes detailed responsibilities of specific partners:

“ . . .making its personnel available for the implementation of actions for which Party X is responsible, as set forth in the work plans.”

“. . .presenting a strategic agenda, programs, and projects, aiming at identifying joint agendas and possibilities for cooperation with Party X.”

“. . . providing equipment, infrastructure, human resources, and services necessary for the execution of the proposed actions, as specified in the work plans.”

“. . . drawing up the work plans together with Party X and Party Y and other possible partners.”

“. . . providing technical support, logistics, and infrastructure necessary for full implementation of the proposed activities, established in the respective agreed-upon work plans.”

Where the agreement includes detailed goals pending funding:

“Subject to available funding and resources, Partner A shall:

- ✧ Contribute to forest research;*
- ✧ Establish technical guidelines on sustainable forest management;*
- ✧ Facilitate transfer of forestry science;*
- ✧ Socialize and gain support for program implementation with local government, provincial and central government, as well as other multi-stakeholders;*
- ✧ Support Partner B on establishment of research areas that are important as conservation areas;*
- ✧ Support certification and conservation on sustainable forest management in x country;*

- ❖ *Human resources development through guiding and training activities;*
- ❖ *Provide supporting facilities owned by Forestry Faculty of University on approved programs for implementation of this MOU;*
- ❖ *Appoint quality staff on all activities that are mutually agreed upon by both parties based on this MOU; and*
- ❖ *Share forestry data that are related to this cooperation between the parties to support sustainable forest management.”*