



FACT SHEET

Presented by the Intellectual Property Issues in Cultural Heritage Project.

Collaborative Projects and Memoranda of Agreement (MOA)*

WHAT IS A MOA?

A Memorandum of Agreement (MOA), or Memorandum of Understanding (MOU), is a document that describes the terms of a cooperative agreement between two or more parties, as well as the goals of the cooperation. A MOA typically marks the beginning of a collaborative project, and is an opportunity for stakeholders to outline their visions, conduct debates, and resolve issues. A MOA is normally *not* considered to be a legal contract. The main difference is that a contract is an agreement where something of value is exchanged (for example goods or labor) – “John agrees to pay Jane \$500 to create a website about his family’s history.” A MOA is an agreement for parties to work together to meet an objective, without necessarily exchanging anything – “John and Jane agree to work together on such and such terms in a collaborative project to document family histories.”

WHY CRAFT A MOA FOR A CULTURAL HERITAGE PROJECT?

All cultural heritage projects, whether they are education, research, or community-based advocacy focused, include multiple stakeholders exchanging resources, such as time and knowledge. Crafting a MOA will promote exchanges that are fair, equitable, and culturally appropriate to all parties involved, and may help reveal potentially troublesome or contentious areas of the future project before it even begins. Developing a MOA also helps to define important terms of collaboration — *Who* will be involved? What mutual *benefits* or potential *harms* are involved? How will *heritage* be defined? How will *dispute resolution* take place? What are the *costs*? Who *owns* products resulting from the partnership? When will the project be *completed*?

WHERE TO BEGIN

The process of crafting, revising, and executing a MOA, rather than the signed document itself, leads to relationship-building and successful collaborations. Parties involved in a collaborative project should agree to meet, preferably face-to-face, to work together on an outline for the MOA. All parties should strive to maintain excellent communications throughout the process, and consult with others who have been through this process before. Once a community has created a Cultural Heritage MOA, it can be used as a template for future projects, customized as needed for each project or to address different concerns.

TYPICAL MOA OUTLINE

A MOA can include as many or few sections as necessary. Typically, a MOA includes tailored versions of the following components:

- I. Detailed Background //** A history of relationship between the parties, including past injustices and past successful collaborations.
- II. Purpose //** A description of why the MOA is being crafted, and what each of the parties hopes to gain.
- III. Definition of Terms and Parties //** The inclusion of a glossary and detailed list of stakeholders may help avoid confusion later in the project. Stakeholders relevant to collaborative cultural heritage projects could include: Indigenous individuals, Indigenous organizations, museum staff, archaeologists, anthropologists, historians, and government officials.
- IV. Principles of Collaboration //** What ethical, moral, religious and/or legal principles/protocols/codes will guide the spirit of collaboration outlined in the MOA? Examples include the World Archaeological

*This Fact Sheet describes MOAs governing collaborative research and community-based projects, and does not provide specific guidance for MOAs developed per the United States National Historic Preservation Act (1966) or other cultural resources laws.



Congress Code of Ethics, Code of Ethics of the American Anthropological Associations, Indigenous protocols or codes for research on their lands/people, as well as overall principles of inclusiveness, generosity, respect, empowerment, gratitude, and transparency.

V. Statement of Mutual Benefit and Potential Harms

// Many collaborative projects involve both benefits and potential harms to the parties involved. Crafting the MOA provides an opportunity to communicate honestly about these benefits and potential harms before commencement of the project. Mutual benefits might include the creation of a new communication network, the documentation of a resource (for example, cultural heritage sites), technical training, or even financial gain from tourism. Potential harms could include disruption of privacy, sharing of protected information, or personal injury if the responsibilities outlined in the MOA include physical tasks.

VI. Agreed Upon Actions and Responsibilities //

Every MOA should include a detailed list of the actions each party will take during the collaborative project. For example, if consent of individual project participants or communities will be sought, who in the project will be responsible for obtaining and archiving evidence of consent? If research materials are created, who will keep the originals and how will authorship be decided?

VII. Modification and/or Termination of the MOA //

What is the process by which the MOA can be altered or terminated? How will disputes about the MOA be resolved?

VII. Reporting // How, when and to whom reports will be submitted or presented.

IX. Timeline for Action and Future Meetings // The crafting of a MOA often marks the beginning of a collaborative project. It is important that the MOA include a timeline for when future actions or responsibilities should be met, including when the project is scheduled to end. MOAs should also be seen as living documents that need to be revised at appropriate times, as stakeholders, resources, or other terms of the agreement change.

X. Signatures // The MOA must be signed and dated to come into official effect. In some cases, it may be appropriate to include the signatures of all “signatory parties,” who have listed responsibilities in the text of the MOA and are the people involved in amending or terminating the agreement, and “concurring parties,” who are people consulted about the project but who do not have responsibilities or the authority to execute the MOA.

INTELLECTUAL PROPERTY CONCERNS

The terms of an MOA can help determine ownership or use of intellectual or intangible Indigenous property or heritage. For example, for a MOA that guides an Indigenous cultural heritage research project where participants will interview community members, parties involved may consider including a statement about publication or ownership of Indigenous intellectual or intangible property, such as: “Researchers may use information collected during this project for educational purposes, but researchers cannot claim copyright or any exclusive rights

to the acknowledged Indigenous intellectual property of [XXX community] such as traditional teachings or songs. The community retains the right to review and edit all reports and publishable documents that result from the research prior to publishing.” If products were generated as a result of the actions/projects within the MOA, the agreement may state where they will be housed and who will oversee this action.



SOURCES & FURTHER READING

- Alaskan Native Science Commission Code Of Research Ethics Sample. <http://bit.ly/1zMZGIh>
- Bannister, Kelly. 2009. Non-Legal Instruments for the Protection of Intangible Cultural Heritage: Key Roles for Ethical Codes and Community Protocols. In *Protection of First Nations Cultural Heritage: Laws, Policy, and Reform*, edited by Catherine Bell and Robert Paterson. UBC Press, Vancouver.
- *Community-Campus Partnerships for Health, University of Washington MOUs/MOAs*. <http://bit.ly/1Baq8gF>
- Nissley, Claudia, and Thomas King. 2014. *Consultation and Cultural Heritage: Let us Work Together*. Left Coast Press, Walnut Creek.
- *The Navajo Nation and the Central Consolidated School District MOA*. <http://bit.ly/1ungeU0>
- *The Navajo Nation Human Rights Commission MOA*. <http://bit.ly/1xtuniy>
- *Who Should Use a Memorandum of Understanding?* <http://bit.ly/1BaeLFs>
- *Is a Memorandum of Understanding Legally Binding?* <http://bit.ly/10WQwda>

This Fact Sheet was developed by Dru McGill, Davina Two Bears, Julie Woods and the Research Ethics and IP Working Group, and published in January 2015 (photo: Hasmat Ali, 2013, pdpics.com).