

JOINT PROJECT AGREEMENTS

The Joint Project Authority (JPA), 15 U.S.C. '1525 (second paragraph), permits DOC operating units to enter into projects with nonprofit, research or public organizations (such as state and local governments) if the project is of mutual interest to the parties and the costs of the project are apportioned equitably. It is DOC policy that joint projects may be undertaken only if the project cannot be done at all or as effectively without the participation of the other party and the project is essential to further a DOC's program. It may be possible to obtain a waiver from the provision that the costs of the project be equitably apportioned; contact the Office of the Assistant General Counsel for Administration for assistance regarding waivers under the JPA.

The purpose of the JPA differs significantly from authorities that permit the Department to enter into procurement contracts or to award financial assistance. Thus, while under some circumstances there may be an element of money transfer between the parties to a JPA agreement, caution must be taken to ensure that the JPA is not used to circumvent statutory and regulatory requirements relating to the award of procurement contracts or financial assistance. For example, an agreement that sets forth as DOC's main responsibility the transfer of funds to the other party to the agreement is not a type of agreement which the JPA authorizes.

NOTE: Agreements are subject to legal review and clearance in accordance with your office's policies and procedures. For advice on whether a certain transaction should be undertaken pursuant to the Joint Project Authority or some other authority, contact the General Law Division, Office of the Assistant General Counsel for Administration, at (202) 482-5391.

Model Joint Project Agreement.

MEMORANDUM OF AGREEMENT

ESTABLISHING A JOINT PROJECT

BETWEEN THE

[name of your line office/agency]
U.S. DEPARTMENT OF COMMERCE

AND

[name of qualifying partner]

Agreement No. _____

***NOTE: The purpose of the Departments Joint Project Authority (JPA), 15 U.S.C. Section 1525 (second paragraph), differs significantly from authorities which permit the Department to enter into procurement contracts or to award financial assistance.*

The JPA cannot be used to circumvent statutory and regulatory requirements relating to the award of procurement contracts or financial assistance. If there is any question regarding whether an agreement you are contemplating is a contract, financial assistance, or a JPA, contact the General Law Division, Office of the Assistant General Counsel for Administration, for guidance.

Text that is in brackets and bold typeface indicates information you must add to the agreement in place of the bracketed text.

I. PARTIES

This document constitutes an agreement between the **[name of operating unit]**, U.S. Department of Commerce, and **[name of qualifying partner]**, which is a **[describe the nature of the partner, i.e., whether it is a non-profit organization, research organization, or public organization or agency--under the Joint Project statute, a qualifying partner must be one of these]**.

II. AUTHORITIES

[Name of operating unit] has authority to participate in the **[project/activity]** with **[name of partner]** under:

- (1) 15 U.S.C. Section 1525, the Department's Joint Project Authority, which provides that the Department may enter into joint projects with nonprofit, research, or public organizations on matters of mutual interest, the cost of which is equitably apportioned;
- (2) **[citation to the U.S. Code, or other statutory authority that allows your operating unit to undertake the project and a brief summary of the statute/legal authority]**; and
- (3) **[if the agreement is with another Federal agency or is with a state agency, citation to the U.S. Code, other statutory authority, or state statutory authority that allows that Federal agency or state agency to undertake the project and a brief summary of the statute/legal authority]**.

III. PURPOSE

Pursuant to this agreement, the parties will **[provide a clear and succinct description of the project, (e.g., Apursuant to this agreement, the parties will co-sponsor a conference that will be held in Argentina on January 30, 2002 concerning telecommunications trade opportunities in Latin America@), and provide a brief explanation of the objective and purpose of the agreement; it may be necessary to provide background so that it is clear why the Department is undertaking this particular project]**.

This project is necessary and essential to further the mission of the Department in that it will **[explain how it will further the mission of the Department in relation to the statutory authorities cited--this explanation is required by internal DOC policy]**.

[Name of operating unit] has determined that this project cannot be done at all or done as effectively without the participation of **[name of qualifying partner]** because **[provide an explanation why the project cannot be done at all or as effectively without the partner's participation---this explanation is required by internal DOC policy]**.

IV. MUTUAL INTEREST OF THE PARTIES

This [activity] is of mutual interest to the parties because [provide an explanation of how it benefits each party].

V. RESPONSIBILITIES OF THE PARTIES

[Name of DOC operating unit] agrees to perform the following activities and provide the following resources in support of the [joint project activity]:

a. [list all activities your operating unit promises to undertake as its responsibilities under the agreement, e.g., perform research, provide speakers, create brochures, conduct a study, etc.. There must be substantial participation in the activity.]

[Name of qualifying partner] agrees to perform the following activities and provide the following resources in support of the [joint project activity]:

a. [list all activities the joint project partner promises to undertake as its responsibilities under the agreement; note that the partner's activities must be new obligations to the Department--pre-existing obligations which the party is already obligated to perform for the Department's benefit cannot be considered when determining whether the costs of the activity are "equitably apportioned" under the Joint Project statute].

***NOTE: Again, be advised that the JPA cannot be used to circumvent statutory and regulatory requirements relating to the award of procurement contracts or financial assistance. However, if there is an element of funds transfer in the agreement between the parties, the agreement must make clear that the Department's monies are not being used to pay for goods or services that the Department does not have authority to obtain by itself. For example, the Department generally may not use appropriated funds to purchase food for events. If the qualifying partner is providing food as part of the joint project, the agreement must make clear that the Department is not paying for this item. Furthermore, if the Department gives money to the project partner for a good or service that is a part of the agreement, it must be clear that the payment is for actual costs only; generally there may be no element of profit in the Department's payment to the qualifying partner for goods or services. You should contact the Office of the Assistant General Counsel for Administration if you have questions about these issues. Otherwise, use the appropriate terms listed in the A Supplemental Fiscal Provisions for Model Joint Project Agreements that appear at the end of this Model Agreement.*

VI. EQUITABLE APPORTIONMENT OF COSTS

The costs of this activity are equitably apportioned; [provide an explanation that establishes that the costs of the project are equitably apportioned. This may be done, among other ways, by stating the percentage of overall costs, including in-kind, that each party is contributing to the project, e.g., The Departments estimated percentage of total costs of this project are ___%. The [name of qualifying partner]'s estimated percentage of costs of this project are ___%.@]

***NOTE: If it is questionable whether the costs are equitably apportioned, or if your operating unit*

specifically requires the preparation of a budget, it may be necessary to prepare a budget showing the value of each parties contribution to the project. If this is necessary, the agreement would include the following language: AThe costs of this activity are equitably apportioned. The Department's estimated costs for this project are \$_____. The [name of qualifying partner]'s estimated costs for this project are \$_____. Attached is a copy of the estimated budget for this project which shows each partner's contribution to the project.]

If costs are not equitably apportioned, then the project will NOT BE LEGAL under the Joint Project Authority. While preparing the agreement, if there is any question regarding whether the project's costs are equitably apportioned, please contact the General Law Division, Office of the Assistant General Counsel for Administration, for guidance regarding whether the proposed agreement would be legal under the Joint Project Authority.

VII. CONTACTS

The contacts of each party to this agreement are:

[Name of DOC contact]

[title of DOC contact]

[Address of DOC contact person]

phone:**[phone number of DOC contact person]**

fax : **[fax number of DOC contact person]**

E-mail: **[E-mail address of DOC contact person]**

[Name of other party's contact person]

[title of other party's contact person]

[address of other party's contact person]

phone:**[phone number of other party's contact person]**

fax : **[fax number of other party's contact person]**

E-mail: **[E-mail address of other party's contact person]**

The parties agree that if there is a change regarding the information in this section, the party making the change will notify the other party in writing of such change.

VIII. PERIOD OF AGREEMENT AND MODIFICATION/TERMINATION

This agreement will become effective when signed by all parties. The agreement will terminate on **[date]**, but may be amended at any time by mutual consent of the parties.

***NOTE: If the agreement will last longer than 3 years, the following sentence should be included in the agreement: The parties will review this agreement at least once every three years to determine whether it should be revised, renewed, or canceled.]*

Any party may terminate this agreement by providing ___ days written notice to the other party. In the event this agreement is terminated, each party shall be solely responsible for the payment of any expenses it has incurred. This agreement is subject to the availability of funds.

IX. OTHER PROVISIONS

Should disagreement arise on the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within thirty days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

Under the Inspector General Act of 1978, as amended, 5 USC App. 3, a review of this agreement may be conducted at any time. The Inspector General of the Department of Commerce, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the parties to this agreement, whether written, printed, recorded, produced, or reproduced by any mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law.

***NOTE: The following paragraph is to be used only when the agreement is with another Federal Government partner:*

Nothing herein is intended to conflict with current Department of Commerce or [name of other agency] directives. If the terms of this agreement are inconsistent with existing directives of either of the agencies entering into this agreement, then those portions of this agreement which are determined to be inconsistent shall be invalid; but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the agreement, all necessary changes will be accomplished by either an amendment to this agreement or by entering into a new agreement, whichever is deemed expedient to the interest of both parties.]

[You should also consider adding any supplemental provisions that you believe would address any special concerns you may have with your partner. Attached to the end of this form in the Supplemental Fiscal Provisions for Model Joint Project Agreements@ are two examples dealing with controlling publicity of the project and vetting of partners.]

**[signature--must be an Operating
Unit Head or official designee with
authority to sign Joint Project Agreements]**

[typed name]

[typed title]

[typed office at DOC]

U.S. Department of Commerce

[address]

[date]

**[signature of person who has authority to
commit Joint Project partner to the agreement]
[typed name]
[typed title]
[typed name of Joint Project partner's organization]
[address of Joint Project partner]**

[date]

Supplemental Fiscal Provisions for Model Joint Project Agreement

Below is a series of special provisions that address concerns that may arise with particular joint projects you may enter into. If they apply, add them to Section IX of the agreement.

A. If funds are to be transferred, include the following sections:

Fiscal controls

1. Department funds are available to the Partner only for authorized purposes under the agreement, and are subject to restrictions and requirements on the use of appropriated funds under Federal law and policy. All travel using appropriated funds must comply with Federal Travel regulations, including transportation and per diem limitations. Department funds may not be used for entertainment expenditures or other unauthorized expenditures.
2. Any transfer of funds by the Department to Partner to pay the Department's equitable share of costs will be through reimbursement rather than cash advance, where possible. The timing and amount of any cash advance by the Department will be as close as administratively feasible to the Partner's actual disbursements of those funds to pay for project costs. Any interest earned by Partner on Federal funds must be returned to the Department within 30 days for deposit in the Treasury.
3. Partner agrees to maintain adequate accounting records of all expenditures of Department funds, and to make such records available to the Department for audit purposes as requested. Within 30 days of completion of the project, partner will provide a report concerning its use of Department funds, and will return any unused funds to the Department.

Rationale: On rare occasions, joint project agreements are used to transfer funds from the Department to a partner. The Department of Commerce Inspector General has strongly cautioned against transferring funds in this manner because (1) the transfer may be done more appropriately as a procurement contract or a financial assistance grant or cooperative agreement, and (2) joint projects typically do not have highly regulated procedures to ensure that Federal funds are spent by the non-Federal partner in an appropriate manner. If you anticipate a project where it is appropriate for the Department to transfer funds to the partner (instead of spending the money ourselves) to further the goals of the project, then you must include these provisions to ensure U.S. Government funds are spent appropriately.

B. In order to guard against inappropriate statements and publicity made by the partner, include the following section:

- Any materials or statements offered to inform the public of the nature of this joint project, or to promote the existence of the project and the parties, shall only be released to the public upon the mutual agreement of the parties.

Rationale: Non-government partners consider a partnership with the Department to be valuable, and sometimes overstate the significance of our joint project with them in an effort to gain prestige, future sales or revenue, or some other competitive advantage over similarly-situated entities. You should use this clause in order to gain control over this situation.

C. In order to guard against affiliating ourselves with an objectionable partner, you should either thoroughly vet the prospective partner before entering into a joint project relationship, or include one of the following sections:

- Partner represents that it has not been placed or proposed for placement on any list of parties debarred, suspended, or otherwise excluded from Federal procurement or nonprocurement programs, and that no circumstances exist which may compromise Partner's current eligibility to participate in this joint project.

OR

- Because the Department of Commerce is a Federal agency which holds the trust of the American citizens, the Department must avoid any appearance of impropriety, preferential treatment, discriminatory action or inaction, or other activities that could lead to justifiable public criticism or otherwise undermine the faith of the American people in their Government. Accordingly, by signing this agreement, the partner warrants that any information about the partner, its employees, or its activities which is inconsistent with the above-mentioned principles has been explained to the appropriate Department of Commerce officials. Failure to disclose such information, or upon the Department's learning of such information, the Department may immediately terminate this agreement without further recourse by the Partner.

Rationale: Entering into a joint project is like entering into any kind of partnership B the actions and reputation of one party will reflect on the actions and reputations of all parties. Therefore, you should be sure that your prospective joint project partners possess appropriate reputations, both in the corporate sense, as well as its individual officers. Your staff should institute a simple vetting process (search for news reports of the organization and its officers using electronic subscription databases such as LEXIS/NEXIS or similar internet resources) before you enter into the prospective relationship. However, if you do not have the resources to protect you in this way, you should ask your prospective partner whether they do possess any undesirable information, and then use one of the above-mentioned clauses to protect ourselves against undue criticism.