

Agreements



Types of Agreements:

Agreements range from friendly hand-shakes to legally binding contracts. They are means to:

- Clarify expectations and responsibilities
- Ensure minimum delivery of performance/goods
- Lay out consequences of failed expectations or responsibilities

Considerations as to what type of agreement is necessary hinge on elements such as:

- How much serious investment or risk is at stake – what is there to lose
- Whose other interests and additional liabilities is the district responsible and liable for – financiers for example
- How familiar are the relationships – how much mutual understanding of roles and capabilities is already in place
- How enduring and what is the scope of the agreement – is it a short term rental to a single landowner, or a long term working agreement with a partner involving various and changing individuals.
- Independent contractors – agreements can protect the district against the person being reclassified by the IRS as an employee and incur liability for back-taxes. (However, a person must indeed be hired as an independent contractor as defined by the IRS)
- Signatures AND dates are needed to make a document legally binding
- Agreements often work best if all parties have input on their development

Agreements are not always legally binding, but even if they are not, they can offer significant protection should arrangements go awry - particularly if they are signed and dated by all the contributing parties. Unless recorded or witnessed in some way, verbal agreements are less weighty because there is no enduring evidence of agreement.

Affixing the party seal adds authority to a document, since it represents an official mark of the organization. As electronic signatures and other electronic ways of doing business develop, it may be that seals will become less commonly used.



Legally Binding Agreements

Legally binding documents are those whose conditions are enforceable in a court of law and district boards do have the authority to enter into such agreements. Legal interpretation is always dependent on the arguments of attorneys should a dispute take place. If the district needs the strongest possible protection against risk, they should hire an attorney to draw up or review an agreement. This is the best insurance to ensure a document is legally binding. Certain legal language is required in some types of agreements in order for them to be classified as legally binding.

Legally binding documents are always signed and dated by contributing parties and need to be specific enough to be meaningful yet broad enough not to unintentionally hamstring the parties. Attorneys can help ensure everything that is needed is included without incurring unintended consequences or leaving loopholes. Government contracts are good examples of the need for legally binding agreements –accountability requirements and risk of lawsuits tend to be higher for government agencies as well as often involving partnerships more removed from personal connections.

Law firms offer boilerplate templates for legal agreements which can be obtained free or purchased for a moderate fee and then adapted for specific circumstances. They can be obtained from local law offices or via the internet. Districts can use these templates and, if the stakes are high, pay to have their local attorney review them



Memorandums of Understanding (MOUs)

These are not necessarily legally binding documents but are useful as frameworks to describe expectations between partners towards a common goal or achievement. Private law often uses “letter of intent” interchangeably with MOU. They are a kind of “gentleman’s agreement”, written cooperatively and signed and dated by all parties.

MOU’s help keep relationships on track and can be useful to reference when a partner begins to feel expectations or responsibilities are not being met. They can help prevent animosity or misunderstandings and provide an agreed record of expectations. MOUs are a very good practice when a district is working with a trusted partner without catastrophic risk implications.

District Operating Agreements

NRCS Cooperative and Local Working Agreements



The NRCS-District partnership originates in the formation years of the districts in the 1930s and 1940s and is an unusually close partnership. The basis for the partnership was that the federal government provided infrastructure, personnel, and financial resources at a time when soil erosion was a national concern, and the districts provided local direction and resources to address the erosion issue most efficiently at the local level. Over time interests have come to encompass all natural resource issues and districts have taken on larger roles in providing resources to add to those that the federal government continue to provide. The formation of the CSCB in 1937 added a state component to what was envisioned as a local, state, and federal partnership for natural resource conservation.

Today conservation district and NRCS partnerships still reflect the original value of working together to promote and implement conservation on private working lands. But factors such as changing federal budgets and priorities, changing population demographics, changes in agricultural practices/trade, cultural changes in environmental values, and expanding district

development and roles all contribute to changes in the NRCS-district partnerships as they serve the local conservation needs.

The Colorado NRCS has a state level cooperative working agreement to work with conservation districts and other partners – such as the CSCB and CACD. Each district also has a local working agreement with the NRCS office they work alongside. These local agreements, signed at the local level, honor the roles NRCS and conservation districts are statutorily expected to carry out, but are also specific in terms of expectations within the local office. They are an example of an MOU. An effort to review these agreements statewide was implemented in 2008-9 and each district office should have a copy of their most recent agreement. The agreements are drafted with input from both the district and NRCS. CSCB Conservation Specialists are available to facilitate this process..

New board members and district and NRCS staff should read the agreement as part of their orientation process. As local situations change, there may be a need to rewrite these agreements and the district board can discuss with their NRCS district conservationist if they believe this is the case.

[CLICK HERE for state agreement](#)

[CLICK HERE for Local Operating Agreement template](#)

Cooperative Working Agreements With Other Public Agencies



Other public agency partners – such as the Bureau of Land Management, Division of Wildlife, or the County – may have statewide or local cooperative working agreements (or MOU's) with conservation districts. Or, districts may themselves work with partners to draw up such agreements. They are an excellent tool to promote harmonious relationships, promote understanding of expectations, help ensure partners remain aware and faithful to the partnership, and provide an objective framework should discourse occur. As with similar NRCS agreements, keeping all parties aware of the existence and relevance of such agreements is key to them being effective tools for synergistic relationships rather than dusty, redundant pieces of paper.

Counties are required by state statute (C.R.S. 35-70-117) to cooperate with conservation districts in carrying out the articles of the Colorado Soil Conservation Act.

[CLICK HERE](#) to link to Colorado State Statutes



Landowner Cost-Share Agreements



District funds are public monies (most poignantly if tax sourced) and when a district provides cost-share to a landowner for conservation, they take responsibility for ensuring the funds are appropriately and well spent on behalf of Colorado citizens. This means showing good faith and due diligence to ensure:

- The funds are spent on the intended work
- The work is appropriate and necessary
- The work is carried out to effective standard
- The practice is maintained and implemented for a time that ensures cost-benefit reward

Landowner cost-share agreements are designed to address these issues as well as protect the district against liability as far as possible. Signatures are the accepted way of obtaining attestation although photographic evidence and receipts, etc. are also evidence of compliance.

Obtaining signatures in a timely manner is important. For example, it does not show due diligence to obtain a signature for technical specification requirements/need after the work is done; the board signature to authorize the work needs to be done after the work is planned but before it is carried out to provide best errors and omissions liability protection for the Board. Note that state errors and omissions protection for the board only applies to official board decisions so it is best if the signatures are obtained and recorded in the minutes at a board meeting.

Elements to consider in a cost-share agreement:

Planning Elements:

- Identification of practice location and landowner information (may need to be stored as confidential information)
- Clause for conditions of payment – adherence to described standards and specifications, completion of work, maintenance of practice, time limits, refund of payment for failure to comply, presentation of financial records for payment, partial or installment payments if applicable
- Description of work needed and estimated cost (based on field visit)
- Rate of cost share and any maximum cap payment
- Landowner's approval for work to be carried out
- Technical expert assessment that work is necessary and appropriate (based on field visit)
- Board approval signature for work to be carried out and funds designated

Completion Elements

- Technical certification signature that work was carried and met specifications and standards (based on field visit)
- Description of work completed and actual cost
- Landowner certification for completion and maintenance of practice and attestation of true financial/match records presented
- District signature that landowner submitted records examined for sufficiency and payment authorized.
- Record of cost-share payment date/details

It is generally much safer for the district to pay cost-share only once the work is satisfactorily completed to avoid the problems of recouping payments should the work be uncompleted or unsatisfactory.

[CLICK HERE for link to a landowner cost-share agreement example.](#)



District Service and Equipment Rental Agreements



If the district is providing services or rental equipment, they will need to carry appropriate insurance (see Insurance section of this handbook). However, they will probably also want to have agreements in place to try to protect their financial interests and help mitigate liability risks.

An attorney can help the district draw up agreements or they can implement their own. Consider :

Equipment Rental

- Identification of the equipment (type, make, model, serial number)
- Deposit requirements and conditions for return of deposit
- Charge rates
- Payment terms
- Identification and contact information of renter (may need to be stored as confidential information)
- Delivery/pick-up and return responsibility – who/charges
- Date and time of rental start and finish and any expectation/penalties around cancellation or failure to return on time
- Liability for payment of “consumables” – fuel etc
- Liability for damages (may need to define normal wear and tear)
- Use at own risk clause
- Certification of any training required prior to use
- Certification to any prohibitive uses or adherence to procedures/regulations
- Procedure, expectations, and contact information for renter if equipment fails
- Signature of current condition of equipment– district and renter
- Signature of return condition of equipment– district

In addition, the district should keep inspection and maintenance records for the equipment in case any disputes arise as to the worthiness of the equipment.

Service Agreements

- Identification of place of practice and landowner information (may need to be stored as confidential information)
- Clause stating district adherence to any applicable standards and specifications and/or regulations
- Description of service to be provided/work done
- Actual or cost estimate as applicable
- Payment terms
- Guarantee of work terms
- Landowner authorization signature for work and agreement of charge rates
- Time and date(s) if scheduled service – any procedures around weather delays or other time considerations
- Any post-service safety or performance considerations (keeping stock off sprayed land for a certain time for example)
- Description of work completed and actual cost
- District signature that work carried out
- Signature of landowner that work satisfactorily carried out
- Record of payment made

[CLICK HERE for example of equipment rental agreements](#)