DEVELOPING PARTNERSHIP AGREEMENTS

When developing a project that involves partnership working and funding, an agreement of some kind will be necessary. This is good practise and ensures that all financial and contractual arrangements are clearly defined. This reduces project risk. Legal advice should be sought early by all partners and it is the responsibility of the lead partner to ensure that agreements are in place. The following information aims to highlight the issues any agreement may need to cover. However, each individual partnership may have specific issues to consider.

Governance

The key partners of any project will need to be part of a suitable partnership funding governance, and management arrangement, between partners at the appropriate strategic, programme, and project level. These must be proportionate to the value and risk of the proposed investment, but should ensure that public money is spent appropriately.

Project mandates and legal agreements

A legally binding agreement will be needed before any significant expenditure is incurred by the lead organisation on a qualifying project.

The lead organisation is responsible for developing an agreement with funding partners. Agreements will include details on the proposed project and the investment required to deliver the planner outcomes. The use of standard contract terms will reduce the input required to draw up agreements for lower risk projects, particularly where the external contribution covers a small proportion of the overall cost.

A confirmation of intent to contribute can underpin the early stages of project development. Legal advice should be sought at or before this stage. A legally binding agreement is required before a project can progress beyond the detailed business case into design and planning. This agreement will need to cover:

- aims and objectives
- membership and governance arrangements
- roles and responsibilities
- financial or other contributions, including in-kind contributions and access to, or contributions of, land
- the split between construction and maintenance contributions
- key decision-making processes and break points
- technical and operational factors

- mechanisms to procure services
- risks, liabilities and securities, including the liability for any cost overruns
- timescales, including timing of payments
- products and deliverables
- outcomes expected – including research reports and data sharing
- change and exit management, and resolution of disputes
- security of payment, including the consequences of default
- intellectual property rights
- public availability of information

Funding partners must commit to the development of a detailed business case with a letter of intent or similar before a commitment can be given to allocate further grant in aid. Agreements may be needed at each decision point, depending on the risk of progressing to the next project stage without a secured contribution. In general contracts making a commitment to contribute will only be required just before construction of the agreed assets.

Contribution Agreements

Contribution agreements can only be made between legal entities, for example, public organisations, private companies or community-based trusts which may be established for the purpose of funding a project.

Contribution agreements should only be entered into by those within a partner organisation who have the appropriate authority. It should be in accordance with the costs, liabilities and obligations required by, or placed on, the lead organisation by agreement. The statues of the agreement must be able to withstand changes to personnel, or ownership, of the contributor.

It should be made clear that contributions made by private organisations are likely to be fixed and the legal contribution agreements will reflect that. The lead organisation takes on the risk of an overspend on the project as they have the role of managing the project.

Legal agreements are location specific, however we do encourage discussions between partner organisation solicitors.

Charitable or Limited Company Status

Large organisations are unable to deliver funds to individuals. This is for a variety of reasons including financial risk, potential lack of broader benefits and the ability to produce an audit trail. Therefore, community groups are encouraged and supported to set up charitable trusts or limited companies and the following government guidance may be useful:

A company or social enterprise: https://www.gov.uk/set-up-a-social-enterprise

Charities: https://www.gov.uk/setting-up-charity

or here http://www.charitycommission.gov.uk/start-up-a-charity/

(Whilst this focuses on registered charities it contains a link to the charities commission website information on 'small' charities that are below the threshold for registration)

Licences and Permits

When considering the costs of any project do not forget to factor in licence and permit fees. These can be complex and time consuming and, for small projects, represent a significant proportion of the costs.