

**DATED**

**2018**

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**MEMORANDUM OF UNDERSTANDING**

In relation to the Borderlands Inclusive Growth Deal

between

**CARLISLE CITY COUNCIL**

and

**CUMBRIA COUNTY COUNCIL**

and

**DUMFRIES AND GALLOWAY COUNCIL**

and

**NORTHUMBERLAND COUNTY COUNCIL**

and

**SCOTTISH BORDERS COUNCIL**

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Annex A: Governance Structure Plan

**PARTIES**

- (1) CARLISLE CITY COUNCIL of Civic Centre Carlisle CA3 8QG (**Party One**)
- (2) CUMBRIA COUNTY COUNCIL of Cumbria House Botchergate Carlisle (**Party Two**)
- (3) DUMFRIES AND GALLOWAY COUNCIL a Local Authority constituted under the Local Government (Scotland) Act 1994 and having its headquarters at Council Offices, 109-115 English Street, Dumfries DG1 2DD (**Party Three**)
- (4) NORTHUMBERLAND COUNTY COUNCIL of County Hall, A197, Morpeth NE61 2EF (**Party Four**)
- (5) SCOTTISH BORDERS COUNCIL a Local Authority constituted under the Local Government (Scotland) Act 1994 and having its headquarters at Council Headquarters, Newtown St Boswells, TD6 0SA (**Party Five**)

who shall collectively be referred to in this Agreement as **the Parties**.

**1. BACKGROUND**

- 1.1 The Parties who represent the administrative regions comprising the Borderlands Area have agreed to work together to submit an application to secure investment from UK Government and Scottish Government for the Borderlands Inclusive Growth Deal to support inclusive economic growth across the Borderlands (**the Programme**).
- 1.2 The Programme will set out a number of projects intended to deliver inclusive economic growth across the Borderlands Area (the Projects)
- 1.3 The Parties wish to record in this Memorandum of Understanding the basis on which they will collaborate with each other during the period leading up to and including formal sign off and submission of the Programme to the respective Governments and acceptance of a subsequent deal with said Governments (the Deal).
- 1.4 This Memorandum of Understanding (**MoU**) sets out:
  - (a) the key objectives of the Programme;
  - (b) the principles of collaboration;
  - (c) the governance structures the Parties will put in place; and
  - (d) the respective roles and responsibilities the Parties will have during the Programme.

## 2. KEY OBJECTIVES FOR THE PROGRAMME

2.1 The Parties shall undertake the Programme to achieve the following key objectives (**Key Objectives**):

- (a) To secure transformative investment from the UK and Scottish Governments to secure inclusive economic growth across the Borderlands Area;
- (b) To develop a range of projects that will form part of the Programme to be submitted to both the UK and Scottish Governments; and
- (c) To prepare an effective governance structure for the implementation of the Projects once the Deal has been agreed.

## 3. PRINCIPLES OF COLLABORATION

The Parties agree to adopt the following principles when collaborating together on the Programme (**the Principles**):

- (a) collaborate and co-operate. Establish and adhere to the governance structure set out in this MoU to ensure that activities are delivered and actions taken as required;
- (b) be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this MoU;
- (c) be open. Communicate openly about major concerns, issues or opportunities relating to the Programme;
- (d) learn, develop and seek to achieve full potential. Share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
- (e) adopt a positive outlook. Behave in a positive, proactive manner;
- (f) adhere to statutory requirements and best practice. Comply with applicable laws and standards including EU procurement, equality, data protection and freedom of information legislation;
- (g) treat confidential information as confidential not to be shared outside of the Programme without the agreement of the Party which owns that information;
- (h) act in a timely manner. Recognise the time-critical nature of the Programme and respond accordingly to requests for support;
- (i) manage stakeholders effectively;
- (j) deploy appropriate resources. Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this MoU; and

- (k) act in good faith to support achievement of the Key Objectives and compliance with these Principles.

#### 4. PROGRAMME GOVERNANCE

##### 4.1 Overview

- (a) The governance structure shown at Annex A and further defined below provides a structure for the development of the Programme;
- (b) Each Party will comply with its own governance and decision making powers governing their participation in the Programme;
- (c) Following the sign off of the Deal with UK Government and Scottish Government, a more formal governance structure will be put in place for the subsequent delivery of the Deal..

##### 4.2 Guiding principles

The following guiding principles are agreed. The Programme's governance will:

- (a) provide strategic oversight and direction;
- (b) be based on clearly defined roles and responsibilities at organisation, group and, where necessary, individual level;
- (c) align decision-making authority with the criticality of the decisions required;
- (d) be aligned with Programme scope (and may therefore require changes over time);
- (e) leverage existing organisational, group and user interfaces;
- (f) provide coherent, timely and efficient decision-making; and
- (g) correspond with the key features of the Programme governance arrangements set out in this MoU.

##### 4.3 Borderlands Partnership Board

- (a) The **Borderlands Partnership Board (the Board)** provides overall strategic oversight and direction to the Programme and shall define the boundaries of the Programme and ultimately make the decision whether or not to recommend that the individual local authorities sign off the Deal. This group will consist of the Leaders of each Party accompanied by their Chief Executives.
- (b) The Board shall normally meet on a monthly basis.
- (c) The Board will be supported by the Programme Executive Group.

#### 4.4 Programme Executive Group

- (a) The **Programme Executive Group (the Executive Group)** will provide strategic management at Programme and workstream level. It will provide assurance to the Board that the Key Objectives are being met and that the Programme is progressing within the boundaries set by the Board.
- (b) The Executive Group consists of senior representatives from each of the Parties, which will be either the Chief Executives of the Parties or their nominees. In the event that the named representative is unavailable to attend a meeting or to respond to an issue escalated to the Executive Group pursuant to clause 7 below then such representative shall be free to nominate a substitute to attend in his or her place.
- (c) The Executive Group shall have responsibility for defining the method of execution of the Programme plan and deliverables as set by the Board.
- (d) The Executive Group will be supported by officers from the Parties and by the Programme Office and can draw technical, commercial, legal and communications resources as appropriate into the Executive Group.
- (e) The Executive Group shall meet fortnightly.

#### 4.5 The Programme Office

- (a) The **Programme Office** shall be responsible for preparing and developing the business cases for each Project (“**Business Case**”).
- (b) For each business case within the Programme, the Programme Office shall develop a delivery plan (“**Delivery Plan**”) which shall identify the following:
  - (i) The Lead ;
  - (ii) The key milestones for delivery of the Key Objectives;
  - (iii) Which officers are required to work on the Project;
  - (iv) Whether any staff will need to be seconded from one Party to another;
  - (v) Which officers will require access to the premises of another Party.
- (c) Each Business Case and Delivery Plan must be approved by the Executive Group which will then submit the same to the Board for final approval before submission to the UK Government and Scottish Government.
- (d) The Programme Office shall comprise such officers from each Party as have the appropriate technical skills and expertise as the Programme Executive Group considers necessary.
- (e) The Programme Office shall meet as often as necessary and at least fortnightly to align with Executive Group meetings.

#### 4.6 **Reporting**

Programme reporting shall be undertaken at three levels:

- (a) **Borderlands Partnership Board:** Minutes and actions shall be recorded for each Board meeting. Each Party shall report to its appropriate local authority committee or meeting as required by that Party's own governance arrangements.
- (b) **Programme Executive Group:** Minutes and actions will be recorded for each Executive Group meeting. Reports to the Borderlands Partnership Board shall be monthly or more frequently where necessary to align with Board meetings, based on the minutes from the Executive Group meetings and highlighting the following:
  - (i) Progress this period;
  - (ii) Issues being managed;
  - (iii) Issues requiring help (that is, escalations to the Borderlands Partnership Board); and
  - (iv) Progress planned next period.

the Programme Executive Group members shall be responsible for drafting reports into their respective local authority as required for review by the Executive Group before being issued.

- (c) **Programme Office:** Regular reports on day to day management and development of the Programme shall be provided to the Programme Executive Group at such intervals as align with the frequency of the Executive Group meetings.

#### 4.7 **Decision Making**

- (a) The Borderlands Partnership Board and the Programme Executive Group shall normally make decisions by consensus. Where it is necessary to take a vote, each Party shall have one vote and the matter will be decided by a simple majority of those Parties voting.
- (b) Any decisions which are required to be taken by the Programme Office shall be by consensus and, in the event that consensus is not reached, the decision shall be referred to the Executive Group.

### 5. **PRIORITISATION**

- 5.1 Projects to be included within the Deal will be assessed according to criteria that will be approved by the Board.
- 5.2 At its first meeting following the date of this MoU, the Programme Office shall agree:

- (a) The criteria against which each project will be assessed: and
- (b) To forward the criteria to the Board for approval.

5.3 As each business case is developed by the Programme Office, at the meeting at which the Programme Executive Group considers that business case, it shall:

- (a) Assess that particular project against the agreed criteria; and
- (b) Refer the business case and assessment to the Board for approval.

## 6. ROLES AND RESPONSIBILITIES

6.1 The Parties shall agree in each delivery plan the roles and responsibilities of each Party to deliver the Programme.

6.2 Particular roles and responsibilities to be allocated include:

- (a) **Lead:** the Party that has principal responsibility for undertaking the particular task, and that will be authorised to determine how to undertake the task. The Lead must act in compliance with the Key Objectives and Principles at all times, and consult with other Parties in advance if the other Parties are identified as having a role to Assure the relevant activity;
- (b) **Assure:** the Parties that will defer to the Lead on a particular task, but will have the opportunity to review and provide input to the Lead before they take a final decision on any activity. All assurance must be provided in a timely manner. Any objections raised must be limited to raising issues that relate to specific needs that have not been adequately addressed by the Lead and/or concerns regarding compliance with the Key Objectives and Principles.

## 7. ESCALATION

7.1 If any Party has any issues, concerns or complaints about the Programme, or any matter in this MoU, that Party shall notify the other Parties and the Parties shall then seek to resolve the issue by a process of consultation. If the issue cannot be resolved within a reasonable period of time, the matter shall be escalated to the Programme Executive Group, which shall decide on the appropriate course of action to take.

7.2 If any Party receives any formal inquiry, complaint, claim or threat of action from a third party (including, but not limited to, claims made by a supplier) in relation to the Programme, the matter shall be promptly referred to the Executive Group. No action shall be taken in response to any such inquiry, complaint, claim or action, to the extent that such response would adversely affect the Programme, without the prior communication of the inquiry, complaint, claim or threat to the Executive Group.



7.3 Where any request for information (being a request made under the Freedom of Information Act 2000, the Freedom of Information (Scotland) Act 2002, the Environmental Information Regulations 2004 or the Environmental Information (Scotland) Regulations 2004) is received in relation to the Programme, the matter will be referred to the Programme Executive Group (or its nominated representatives) for its views. Those views will be expressed to the Party receiving the request (**the Receiving Party**) forthwith so that the Receiving Party is able to comply with the request for information. The Receiving Party shall take into the account the views of the Programme Executive Group, in particular where the information requested is confidential information, but shall itself make the final determination, at all times acting in accordance with legislation and guidance, as to whether or not to release the information held.

## **8. INTELLECTUAL PROPERTY**

8.1 The Parties intend that, notwithstanding any secondment, any intellectual property rights created in the course of the Programme shall vest in the Party whose officer created them (or in the case of any intellectual property rights created jointly by employees of two or more Parties in the Party that is the Lead for the relevant part of the Programme) for the part of the Programme that the intellectual property right relates to.

8.2 Where any intellectual property right vests in a Party, in accordance with the intention set out in clause 8.1 above, that Party shall grant an irrevocable licence to the other Parties to use that intellectual property for the purposes of the Programme.

## **9. TERM AND TERMINATION**

9.1 This MoU shall commence on the date of signature by all Parties, and shall expire on completion of the Deal or when new governance arrangements are in place to deliver the Programme whichever is the earlier .

9.2 Any Party may withdraw from this MoU by giving at least one month's notice in writing to each of the other Parties and notifying the Programme Executive Group of such withdrawal. Any Party which withdraws shall have no future financial liability, other than in accordance with clause 10 below.

## **10. CHARGES AND LIABILITIES**

10.1 Except as otherwise provided, the Parties shall each bear their own costs and expenses incurred in complying with their responsibilities under this MoU.

10.2 The Parties agree to share the costs and expenses arising in respect of the Programme between them.

- 10.3 Each Party shall agree to commit such financial resources to the Programme as shall be approved by its relevant decision maker . In the event of that Party subsequently withdrawing from the MoU, those contributions already committed shall be retained by the remaining Parties to be spent on the Programme. At the date on which the Deal is signed by the Parties, any unspent funds shall be apportioned between the Parties on a pro rata basis and any Party which has already withdrawn shall be entitled to have those apportioned remaining funds returned to it.
- 10.4 All Parties shall remain liable for any losses or liabilities incurred by them due to their own or their employee's actions and no Party shall be liable for any loss suffered by the other Parties as a result of participating in this MoU.

**11. STATUS**

- 11.1 This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the Parties from this MoU. The Parties enter into the MoU intending to honour all their responsibilities.
- 11.2 Nothing in this MoU is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party as the agent of the other Parties, nor authorise any of the Parties to make or enter into any commitments for or on behalf of the other Parties.

**12. VARIATION**

This MoU, including the Annexes, may only be varied by written agreement of the Borderlands Partnership Board.

**13. GOVERNING LAW AND JURISDICTION**

This MoU shall be governed by and construed in accordance with English law and, without affecting the escalation procedure set out in clause 7, each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

Signed for and on behalf of  
Carlisle City Council

Signature: .....  
Name: .....  
Date: .....

Signed for and on behalf of  
Cumbria County Council

Signature: .....

Name: .....

Date: .....

Signed for and on behalf of  
Dumfries and Galloway Council

Signature: .....

Name: .....

Date: .....

Signed for and on behalf of  
Northumberland County Council

Signature: .....

Name: .....

Date: .....

Signed for and on behalf of  
Scottish Borders Council

Signature: .....

Name: .....

Date: .....

## Annex A. Governance Structure Plan

