

EXE ESTUARY PARTNERSHIP

MEMORANDUM OF AGREEMENT FOR CORE FUNDING ORGANISATIONS

1 General

- 1.1 This Memorandum of Agreement, hereinafter called the “Agreement”, is made between the core funding organisations, hereinafter referred to as the “Partners”. This is a legally binding agreement under the law of England and Wales and commits the signatories to undertake certain actions and to work together and form a wider community based partnership called the Exe Estuary Partnership hereinafter called the “Partnership”. Partners are any bodies that make a contribution of funds towards the costs of the agreed business of the Partnership, including those made “in kind” (such as those made as part of a European Union Programme) where the contributor has made an agreed commitment to support the work of the Partners.
- 1.2 Annex 1 and Annex 2 form part of this agreement.
- 1.3 The Partners shall, for the duration of this agreement, comprise the following organisations:-

Devon County Council
Lucombe House
County Hall
Topsham Road
Exeter
EX2 4QW.

East Devon District Council
Council Offices
The Knowle
Sidmouth
EX10 8HL

Teignbridge District Council
Forde House,

Brunel Road
Newton Abbot
Devon TQ12 4XX

Exmouth Town Council
St Andrews Road
Exmouth
Devon
EX8 1AW

English Nature
Level 2, Renslade House
Bonhay Road
Exeter
Devon
EX4 3AW.

Environment Agency
Exminster House
Miller Way
Exminster
Devon
EX6 8AS.

Devon Sea Fisheries Committee
Office No. 9
Fish Market
The Quay,
Brixham
TQ5 8AW

1.4 This Agreement provides the framework for the delivery of the Exe Estuary Management Plan which involves, inter alia:

- 1.4.1 Forming a partnership to manage the Exe Estuary.
- 1.4.2 Employing an officer to act on behalf of the Partners.
- 1.4.3 Publishing, reviewing and monitoring management plans, action plans and strategies for the Exe Estuary and the Partnership's activities.
- 1.4.4 Agreeing and implementing an annual action plan.
- 1.4.5 Organising and attending appropriate meetings that will include the Management Group, the Exe Estuary Forum, appropriate Focus Groups integral to the Forum and any other meetings or events that the Partners see fit to deliver the business of the Partnership..

- 1.4.6 Making contributions to the costs incurred in so doing.
- 1.5 This Agreement will run for a period of three years commencing 01st April 2006.
It may be reviewed for a further three-year period subject to the agreement of all Partners.
- 1.6 This agreement replaces all previous agreements except those made for the Exe Estuary Cycleau project.

2 Organisational Structure

2.1 The constitution of the organisation established by this Agreement is set out in **Annex 1** to this Agreement. The Partners will establish and operate through the following organisational structure:

- 2.1.1 The Management Group
- 2.1.2 The Exe Estuary Forum and integral Focus groups.
- 2.1.3 Officers Working Group
- 2.1.4 The Estuary Officer.
- 2.2 The Terms of Reference of the Partners are set out in **Annex 2** to this agreement.

3 Financial Arrangements

- 3.1 . The costs of the agreed business of the Partnership shall be met in the first instance by Devon County Council who will act as the financial manager and employer of any staff. The County Council's costs will be offset in part by the contributions of the other Partners. A schedule of contributions to the costs of the Partnership is given at clause 3.5 of this agreement.
- 3.1 Devon County Council will be responsible for the exercise of proper financial control and for collecting agreed contributions from the other Core Funding Bodies by debtor invoice annually in advance commencing for the financial year April 2006 to March 2007 and external funding sources, where appropriate.

- 3.2 A draft budget will be prepared for the Management Group for its consideration.
- 3.3 The budget will be agreed by the Management Group by the 28th February annually, in accordance with the agreed Action Plan outlining the proposed activity to be undertaken in a detailed work programme based upon an estimate of actual costs.
- 3.4 A recommendation on the annual budget, Action Plan and contributions requested from the Core Funding Bodies will be made by the Exe Estuary Management Group to the Core Funding Bodies by the 31st October each year. The Core Funding Bodies will confirm to Devon County Council their respective contributions by 28th February each year.
- 3.5 The contributions by the Core Funding Bodies to the core costs of the Exe Estuary Partnership will comprise both cash contributions and contributions-in-kind in accordance with the following schedule for the first year of this agreement and thereafter be increased by the annual rate of inflation :-

Organisation	Amount
Devon County Council	£11,000 (plus support services and in-kind contribution)
East Devon District Council	£11,000 (plus in kind contribution)
Teignbridge District Council	£9,700 (plus in kind contribution)
Exmouth Town Council	£2,000
Environment Agency	£5,000 (plus in kind contribution)
English Nature	£4,000 (plus contribution and contribution in-kind)
Devon Sea Fisheries Committee	(in-kind contribution)

The details of the core costs and funding will be set out in the Annual Plan.

- 3.6 The Management Plan and Annual Action Plan will determine the activity of the Exe Estuary Partnership and any variation to this as agreed by the Exe Estuary Partnership. From time to time, any members of the Exe Estuary Partnership may contribute additional funding for projects.
- 3.7 The Exe Estuary Partnership may, by agreement, apply for additional funding from other sources to augment its programme of activity. Applications for grant in aid may be made on behalf of the Partners by any agreed body. Applications for grant in aid must be approved by Devon County Council as the financial manager of the Partnership's budget..
- 3.8 In the second and subsequent years, contributions will be agreed according to the projected core and project costs, taking account of contributions from elsewhere. In general Core Funding Bodies will be expected to maintain contributions at similar levels to those set out in clauses above throughout the period of this Agreement adding a figure, to be provided by Devon County Council, for inflation annually. Additional funding for projects may be sought from a variety of sponsors and sources.
- 3.9 Subject to the conditions below each of the Core Funding Bodies shall reimburse the Employing Body as the employer of the Estuary Officer to the extent of their respective percentage contributions for the relevant financial year in respect of:
- any losses, cost and expenses which are the result or consequence of any act or default (whether unlawful or otherwise) of the Estuary Officer, including legal costs, fees and expenses and any excess sums which may

be applied to any insurance policy held by the Employing Body. This will apply to both core and project costs;

- any payments due to Estuary Officer upon termination of employment including (but not limited to) statutory or contractual notice payments and redundancy payments under the Employment Rights Act 1996;
- any losses, cost and expenses in relation to any claim or complaint by the Estuary Officer relating to his/her employment or the termination thereof; including (but not limited to) claims under the Employment Rights Act 1996, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Trade Union and Labour Relations (Consolidation) Act 1992, the Disability Discrimination Act 1995, the Equal Pay Act 1997, the Equal Rights Act 1998, Article 141 of the Treaty of Rome, the Race Relations (Amendment) Act 2000, the Public Interest Disclosure Act 1998 and other claims at common law or under statute law or regulation or otherwise;
- all costs and expenses in relation to public and employers liability insurance policy premiums and payments and costs in the event of personal injury, injury at work or industrial injury of the Estuary Officer, insofar as these are not met by policies of insurance held by the Employing Body.

3.10 The Core Funding Bodies shall not be liable to reimburse the Employing Body in respect of any costs or expenses pursuant to clause 3.9 where such costs or expense arise as a consequence of an unlawful or negligent act of an employee working for the Employing Body. Each of the Core Funding Bodies shall ensure

that its own employer's liability and public liability insurance fully covers its involvement in the Exe Estuary Partnership.

3.11 The Core Funding Bodies reserve the right to audit financial procedures under this Agreement at any time during the subsistence or following termination thereof.

4 **Intellectual Property**

4.1 All documents, drawings, models and designs and the intellectual property rights in them and in any part thereof arising out of this Agreement shall belong jointly and equally to the Partners.

4.2 The Partners shall not use the documents, drawings, models and designs produced or procured by the Partners or the intellectual property rights therein for commercial gain.

4.3 All property issued by the Partners in connection with the Partnership shall be used only for the Partnership, and for no other purpose whatsoever.

4.4 The individual Partners will continue to own any intellectual property rights in all things made available to the Partnership but hereby grant the other Partners non-exclusive licence to use such things for the sole purpose of the Partnership.

4.5 Each of the Partners hereby warrants that it has no knowledge of any infringement of intellectual property rights and hereby indemnifies each of the other Partners in respect of such infringement occurring before or during the subsistence of this Agreement.

4.6 The Partners acknowledge that there is a presumption that all data and information collected on behalf of the Partnership should be placed in the public domain, unless so doing would compromise commercial confidentiality and/or security, or contravene the provisions of the Data Protection Act 1998.

5 Press Releases & Publicity

5.1 Any Press Release issued on behalf of the Partnership shall reflect the objectives, agreed actions and policy of the Partners and shall be approved in advance by the Chairman for the time being of the Management Group for all issues that may in the opinion of the Chairman be significant or controversial.

5.2 All publications, web sites, information and any other material produced on behalf of the Partnership shall acknowledge the Partners as the Exe Estuary Partnership and, where the Chairman of the Management Group considers it to be appropriate the individual Partners.

5.3 Partners, through their participation in the Partnership, do not endorse the use of any particular product or business activity.

5.4 Nothing in this Agreement shall prejudice or affect the Partners in the exercise of their functions, duties, powers, rights, jurisdiction or any enactment, bylaw or regulation whatsoever.

5.5 Nothing in this Agreement shall operate as a statutory consent or licence from any of the Partners that may be required for the purposes of this Agreement.

6 Jurisdiction

6.1 The Law of England and Wales shall govern this Agreement.

7 **Force Majeure**

7.1 The Partners shall be released from their respective obligations pursuant to this Agreement in the event that a national emergency, war, or any other situation beyond the reasonable control of the Partners renders the continued performance of this Agreement impossible.

8 **Termination**

8.1 Any of the Partners may, by giving not less than 6 months' written notice to the other Partners, expiring on the 31st March, reduce its level of contribution to or terminate its participation in the Partnership. The remaining Partners will carry out a review of the viability of the continuation of the Partnership. Prior to any such notice taking effect, the Partner giving it shall continue to be responsible for its share of the expenditure incurred by the Partners pro rata to the extent of that Partner's percentage contribution for the relevant financial year.

8.2 In the event of termination of the Agreement, the Partners will be liable to meet all the net costs or receive a financial refund (after disposal of any assets) in the same proportion as their percentage financial contribution to the costs of the Partnership for the relevant financial year.

8.3 In the event of the proposal of new arrangements for the management of the Exe Estuary being made or required by legislation the Partners shall continue, amend or terminate the Agreement in such manner as they deem appropriate.

9 **Miscellaneous Provisions**

- 9.1 Each of the Partners shall ensure that it has in place sufficient public liability and employer's liability policies and insurance covering its activities pursuant to this agreement.
- 9.2 All equipment materials and supplies acquired by any of the Partners for the purposes of the Partnership shall remain the property of the purchaser who shall be responsible for the maintenance and (at the discretion of the purchaser) the insurance of it. Devon County Council will not undertake the responsibility for maintenance or the insurance of such items or equipment.
- 9.3 Each of the Partners will keep confidential any information acquired by it pursuant to its participation in the Partnership and which is not already in the public domain but nothing in this Agreement shall prejudice or affect the discharge by any of the Partners of their respective obligations under the Freedom of Information Act 2000 ("the Act").
- 9.4 Each Partner shall comply promptly and fully with all reasonable requests made to it by any of the Partners to enable the Partner making the request to comply with its obligations under the Act.
- 9.5 The Partners will comply with the Data Protection Act 1998.

9.6 Each Partner shall use its best endeavours to secure those permissions, licences, consents and approvals (if any) as it may need for its participation in the Partnership.

9.7 None of the Partners shall represent itself as being the agent of any of the other Partners nor is authorised to commit any of the others to any obligation.

9.8 Each of the Partners undertakes with the others that it has full power and authority to enter into this Agreement.

10 **Arbitration**

10.1 Any dispute arising from the interpretation of the terms of this Agreement, shall, at the option of the aggrieved party, be referred to the arbitration of a single arbitrator to be agreed upon by the parties involved. Failing such agreement the President of a mutually acceptable institution shall be invited to nominate an arbitrator.

11 **Spirit of Co-operation and Partnership**

11.1 The key to the success of the Agreement and the Partnership will be the communication skills and attitude of the organisations and individuals concerned. In signing up to this Agreement the Partners agree to participate in a spirit of co-operation, openness and understanding. Decisions will be taken for the good of the Partners and the Partnership as a whole.

11.2 If differences of opinion develop with regard to the overall direction and scope of the Partnership, early resolution will be sought. In order to maximise the potential for this, all signatories will ensure that:-

11.3 All communications are constructive, comprehensive, timely and open.

11.4 Issues are raised as soon as they arise.

11.5 All parties to discussions aim to reach agreement for the good of the Partnership,
rather than individual gain.

11.6 The aim of fulfilling the Partners' and the Partnership's objectives, actions and
policy remains of paramount importance.

Signed for and on behalf of Devon County Council:

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County Environment Director and Deputy Chief Executive

Date:

Signed:

For and on behalf of:

Date:

Position in organisation:

DRAFT