Community Hubs: Strategies for Lead Agency De-Risking

May 24, 2016

How organizations can de-risk compliance with the conditions often associated with grant funding for large projects, such as the construction or renovation of community hub space.

In August 2015, Premier Wynne's Community Hubs Framework Advisory Group released a report titled *Community Hubs in Ontario: A Strategic Framework and Action Plan* (the "Community Hubs Action Plan"). The report identified barriers to community hub development and presented recommendations, which the Ontario government is considering as it operationalizes its commitment to fostering community hub development.

For more information on the Community Hubs Action Plan, please see BLG's April 22, 2016 Bulletin: "Introduction to Ontario's Community Hubs Strategic Framework and Action Plan".

In this Bulletin, we will discuss how organizations can de-risk compliance with the conditions often associated with grant funding for large projects, such as the construction or renovation of community hub space.

Financing Risks Facing Community Hub Participants

The relationships between organizations participating in a community hub are in many cases contractual, that is, structured by the agreements signed by the participants. The type of agreement and appropriate terms will depend on the needs of the parties and the type of activities that will be carried out in the community hub. Financing or capital agreements from public or private sources may involve reporting obligations, space use obligations, minimum tenancy lengths, or penalty provisions for failing to uphold certain conditions of the agreement. Experts should be consulted in order to understand the project-specific risks. These may include engineers, accountants, lawyers, and environmental consultants.

When one organization owns the property and rents it out to participating organizations through a lease, the landlord organization will likely take the lead on risk-management planning required to fund and execute capital development. Most of the risks of the

project will fall on this organization. As such, the lead organization, as landlord, should structure the hub property leases in order to account for any conditions of funding commitments and other risks. Risks should be allocated to the parties best able to manage them, and in some cases, the funding program will explicitly require such allocation. For example, the Ministry of Education's "Capital Priorities and School Consolidation Capital" program, announced in 2015 and providing for the construction of new child care spaces owned by school boards, requires as a condition of funding that all facility operation and renewal costs be covered in any leases for these spaces and not paid for by the landlord school boards. For more information on issues faced by school boards, please see BLG's May 11, 2016 Bulletin: "Dispositions of Surplus Property by School Boards: How New Rules Benefit Community Hubs and Impact Others".

Community hub partner organizations should include in their contracts how responsibility for the capital funding, construction, insurance and project management responsibilities should be divided. Partner organizations should also consider whether there will be a lead organization making decisions or whether governance will occur by committee, and how disputes will be resolved.

Lead organizations may be relying on rent or other contributions from other hub partners in order to meet payment obligations for the capital development work. All hub parties, but particularly the lead organization, should consider the options available if one of the participating organizations is unable to pay or drops out of the project and strategies to mitigate against the risk of this occurring.

We now present a case study to illustrate how some of the above problems can be addressed during community hub development.

Case Study: De-Risking Conditional Grant Funding for a Major Hub Renovation

Who: One lead organization working with a district social services administration board (DSSAB) and four partner organizations to set up a community hub that would consolidate partner organizations and services in a single location which better served the families of the district.

What: Funding received for renovation valued at over $2.5 M to create the community hub space. The lead organization owned the present facilities and the DSSAB provided the capital funding in the form of a conditional grant. The four partner organizations were to provide services in the new space following the completion of renovation.

How: First, the lead organization obtained the conditional grant funding. Next, the lead organization equitably allocated some risk to its four partner organizations through agreements.

Step 1:
The lead organization was not required to pay back the conditional grant funding received from the DSSAB if the DSSAB's conditions were met for five years following the completion of the renovation (the “Conditional Period”). Under the capital funding

agreement, the lead organization took on the responsibility for meeting these conditions, some of which were:

- taking responsibility for any cost overruns and sourcing additional funding;
- making "reasonable commercial efforts" to provide or cause partners to provide the contemplated community services during the Conditional Period;
- keeping the community hub open and maintaining ownership of the property during the Conditional Period.

Failure to meet these conditions could result in the lead organization being required to pay back some or all of the grant funding.

Step 2:
The lead organization structured its relationship with the partner organizations by setting up a landlord-tenant relationship. Through carefully-drafted lease agreements, the lead organization was able to pass on certain risks that the partners were in the best position to manage. Some of the terms of the leases provided for:

- structuring the rent provisions to achieve full cost-recovery;
- obtaining the partner's covenant to use its portion of the hub property during the term of the lease to provide the contemplated community services;
- preventing assignment of the partner's lease except with the written consent, and at the discretion of, the lead organization; and
- clearly defining acts of default (especially in relation to the partner's continuous provision of community services) to ensure that any failure to meet grant conditions caused by the partner would result in corresponding grant funding payments owing becoming recoverable from the responsible partner.

Although the above example illustrates an effective way of managing risk, the terms of the agreement between the funding agency and the lead organization may determine the extent to which risk can be passed on to partners. In some cases, funding agreements may not permit the assignment of rights or obligations, or may require that consent to any assignments be obtained from the lead agency, usually in writing. During negotiations, or prior to entering into a funding agreement, it is always prudent to get an opinion on how they may impact an organization's ability to manage risk and to consider making reasonable amendments to these funding agreements to allow the community hub to be developed in an efficient manner. This is especially true of community hubs, where the organization subject to the funding agreement may have no alternative but to rely on the other community hub partners' co-operation to meet the agreement's conditions. Depending on the terms of the agreement, reliance may exist even where there is no lead organization acting as a landlord and all of the hub partners receive their own funding, or are equally responsible for a unified funding package.

Borden Ladner Gervais LLP has a diverse group of lawyers across many sectors that can help face these challenges head-on. We have particular experience in working with the “MUSH” (Municipalities, Universities (Colleges), Schools and Hospitals) sector with respect to all types of issues. We also have worked on public / private partnership arrangements, from both sides of the arrangement. We look forward to working with our clients to create dynamic community hubs.

By

Brennan M. Carroll, Nick G. Pasquino, Webnesh Haile

Expertise

Commercial Real Estate, Health Law, Corporate Commercial, Leasing, Public Infrastructure, Education, Charities & Not-For-Profit

---

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.