



**LEE VALLEY REGIONAL PARK AUTHORITY**  
**EXECUTIVE COMMITTEE**  
**22 OCTOBER 2015 AT 10:30**

**Agenda Item No:**

**11**

**Report No:**

**E/423/15**

**LEE VALLEY HOCKEY AND TENNIS CENTRE  
FUNDING AGREEMENTS**

Presented by the Head of Sport & Leisure

**EXECUTIVE SUMMARY**

At the Executive Committee meeting held on 18 December 2014, Members approved the release of capital funding for the legacy enhancement project at the Lee Valley Hockey and Tennis Centre (Paper E/386/14) and were informed that the Authority had submitted funding applications to both Sport England and England Hockey for partner funding for this project. The report sets out the outcome of those funding applications and the subsequent negotiation that officers have undertaken with both Sport England and England Hockey and sets out broadly the obligations imposed on the Authority by the relevant bodies when accepting the funding. The report seeks Member approval to enter into both funding agreements following consideration of the details which are set out in the report.

**RECOMMENDATIONS**

- Members Approve:
- (1) entering into the Funding Agreements; and
  - (2) subject to (1) above the signing and sealing of the documentation in due course in accordance with Standing Orders.

**BACKGROUND**

- 1 At the Executive Committee meeting held on 18 December 2014, Members approved the release of capital funding for the legacy enhancement project at the Lee Valley Hockey and Tennis Centre (LVHTC) (Paper E/386/14) and were informed that the Authority had submitted funding applications to both Sport England (SE) and England Hockey (EH) for partner funding for this project.
- 2 Both funding applications, each in respect of a maximum amount of £300,000, were subsequently approved by the two organisations, subject to contract.
- 3 As Members will be aware from the earlier report, the legacy enhancements relate to the hockey facilities and the development/installation of:

- (a) a large LED TV screen;
- (b) a storage compound;
- (c) press tribunes;
- (d) a south terrace; and
- (e) flag poles,

(together, the **Facilities**).

4 This report seeks Member approval to enter into:

- (i) a Lottery Funding Agreement with Sport England (the **SE LFA**); and
- (ii) a Funding Agreement with England Hockey (the **EH Agreement**),

each in relation to legacy enhancements to be made at the Lee Valley Hockey and Tennis Centre (together, the **Funding Agreements**).

5 The SE Lottery Funding Agreement (LFA) which sets out the terms and conditions on which SE will provide its funding to the Authority is in an almost identical, and no more onerous, form to the LFA's for SE funding the Authority has previously entered into in respect of the Lee Valley Athletics Centre (LVAC), the Lee Valley White Water Centre (LVWWC) and the Lee Valley VeloPark (LVVP).

6 The EH Agreement which sets out the terms and conditions on which EH will provide its funding to the Authority is based on a Conditional Commitment Letter from EH to the Authority dated 8 June 2015.

7 A description of each Funding Agreement is set out below.

#### **THE SE LFA**

8 The SE LFA is a comprehensive document containing a number of conditions to the Authority drawing down on the funding. As mentioned above, the agreement is based on, and consistent with, the other LFAs entered into between SE and the Authority.

9 The following paragraphs set out an overview of the conditions that are considered by officers to be key conditions but this report does not seek to set out all of the conditions in their entirety. These conditions will apply from the first date of drawdown of the funds and for a grant term of 21 years (**Grant Term**).

- A) The Lottery Grant must be used solely for the purposes of funding the Project to achieve the Strategic Purpose (that (aa) the LVHTC is an events venue for hockey and (bb) to grow hockey participation in the locality/region) in accordance with the Cost Plan and is non-transferable to fund any other project or for any other purpose.
- B) The Authority must procure all Partnership Funding required to enable it to perform its obligations under this Deed and achieve the Strategic Purpose.
- C) The Authority provides evidence of full compliance with all planning conditions and the approach to discharging conditions.
- D) The Authority providing a Risk Register identifying all key risks to the

Project and the measures for risk mitigation.

- E) The Authority provides a procurement strategy/plan for the Project.
- F) The Authority must ensure that there is no promotion, advertising, sponsorship, merchandising or sale of tobacco based products, whether by the Authority or any other person, at or in connection with the Facilities or the Site at any time during the Grant Term.
- G) The Authority must not grant to any party any rights that would give that party a prior ranking debt over any debts that may become due to SE without SE's prior written consent.
- H) The Authority must draw down the funds by the grant expiry date of 30 August 2017.
- I) During the Grant Term, the Authority shall not sell, transfer, assign, grant or otherwise dispose of any interest in the whole or part of the Facilities or the Site (or any assets or goods wholly or partially acquired, restored, conserved, enhanced or improved with the Lottery Grant) without the prior written approval of SE, such approval not to be unreasonably withheld or delayed. Should any such approval be given it will be deemed to be on the condition that SE receives a proportion of the net sale proceeds equal to, at SE's absolute discretion, either:
  - (i) the proportion of the original cost of such goods or assets met through the Lottery Grant; or
  - (ii) where SE so agrees in writing, the proportion of the costs of the Project as set out in the Cost Plan met through the Lottery Grant.

Unlike the Authority's other SE LFA's, these provisions do not apply to the granting of naming rights or intellectual property rights in the Facilities or the Site.

- J) Within 25 Business Days following the date of this Deed, and after providing a certificate of title to SE's satisfaction, the Authority shall apply to the Land Registry for a restriction to be noted on its registered title to the Site to protect SE's interest in the Site which restricts the Authority's use of the land without the consent of SE.
- K) The Authority is obliged to ensure that:
  - The Facilities and the Site are only used to carry out the Project to achieve the Strategic Purpose;
  - The Facilities and the Site are at all times kept in good repair and condition and maintained and operated in accordance with all applicable laws and relevant codes of practice;
  - The Site is secured to prevent access by unauthorised persons;
  - The Facilities and the Site are covered by a comprehensive policy of insurance with reputable insurers to cover the Facilities and the Site against all risks it would be prudent to insure against, including terrorism, to its full replacement value (and the Authority shall provide a copy of the current policy or policies and evidence of premium payment to SE on or before the entry into effect of such policies and upon any material changes or replacement of such policy or policies

- from time to time);
  - The Facilities and the Site continue to meet the specifications set out through the design stage;
  - It informs SE in writing within five (5) Business Days after it has become aware of any significant loss or damage to a Facility (including loss or damage to any chattel or fixture forming part of a Facility that would have a material adverse effect on the ability of the Authority to operate a Facility in accordance with this Deed) and shall effect prompt replacement or repair of the same at no cost to SE.
- L) The Authority must prepare and update at least once every 12 months an Operations Plan in relation to the Facilities which is to be approved by SE.
- 10 The Authority agrees to use reasonable endeavours to ensure that the Facilities will be completed and available for use by 30 August 2016.
- 11 The Authority has to ensure that after the Facilities are operational, the LVHTC meets certain KPIs based on the number of participants in activities or events at the LVHTC and on throughput (the numbers for each of which for the first 5 years of the Grant Term have been agreed with Lee Valley Leisure Trust Limited (the Trust)).

The Authority has to further ensure that during the Grant Term the LVHTC maintains accreditation to Quest Facility Management and a ranking in a benchmarking mechanism for the assessment of sports facilities in England as may be reasonably required by SE.

- 12 As with the other venues for which there is a LFA in place, under the SE LFA the Authority may only contract with a third party to operate a Facility on its behalf where SE has provided its prior written consent to the appointment of any such third party, which consent, in the case of this LFA, SE have agreed shall not be unreasonably withheld or delayed.

Essentially this means that the Authority will need SE's consent to enter into another leisure services contract in respect of the LVHTC after the expiry or termination of the current Leisure Services Contract (LSC) with the Trust, as it needs SE's consent in relation to LVAC, LVWWC and LVVP.

- 13 As with the other LFAs in place, the SE LFA contains provisions on monitoring and audit access in connection with the Project.
- 14 If the Authority breaches the SE LFA, or otherwise commits and does not remedy one of a standard list of events of default, SE may:
- wholly or partially suspend or cancel any future payments of the Lottery Grant; and/or
  - terminate this Deed; and/or
  - require repayment of all or any part of the Lottery Grant as has then been drawn down.

When considering whether to require repayment of all or part of the Lottery Grant, SE shall take into account:

- any factors leading to an Event of Default that were outside of the Authority's control;
- the stage in the Project and the extent to which the Strategic Purpose has been achieved at the time the Event of Default occurred;
- the ability and willingness of the Authority to remedy the Event of Default;
- the ongoing ability of the Authority to achieve the Strategic Purpose and comply with the obligations under this Deed notwithstanding the Event of Default.

These repayment provisions are the same as those contained in the Authority's other LFA's with SE.

## THE EH AGREEMENT

- 15 The EH Agreement is a much more short-form document than the SE LFA and contains fewer conditions to funding and fewer obligations on the Authority. There is nothing in the EH Agreement which is more onerous than the provisions in the SE LFA which have been described in some detail above and therefore officers note in the next paragraph of this report only those provisions unique to the EH Agreement.
- 16 If, following completion of the Project, any of the Facilities are materially adversely altered or removed during the 5-year period following the entering into of the agreement (the **Five-Year Period**), England Hockey reserves the right to request repayment of any money paid to the Authority pursuant to this Agreement to the sum of the amount which England Hockey can demonstrate relates to its investment in the relevant Facility and which is pro rata to any sum repaid by the Authority to any other party funding the Project. Notwithstanding the above, the parties further agree that any repayment will be pro rata to the number of years remaining in the Five-Year Period at the relevant time (by way of example, if it is agreed that £50,000 would be repayable in accordance with the above and it is three years into the Five-Year Period, £20,000 will be the amount refunded).

As it has been agreed that EH will provide their funding upfront, it has been further agreed that if any amount of EH funding remains unspent following the completion of the Project, the parties shall discuss together with Sport England how such monies shall be applied.

The Authority (and therefore the Trust) will not during the Five-Year Period be permitted to charge EH increased venue hire fees or service fees in respect of the LVHTC as a direct result of the presence of the additional Facilities at the LVHTC. The parties acknowledge, however, that there may be other factors which cause such fees to be increased during this period and the Authority (and therefore the Trust) reserves the right to do so. This provision is included as an acknowledgement that the funding being provided by EH is in lieu of expenditure that EH would have made hiring items when hosting events at the LVHTC.

- 17 It should be noted that the Authority is still waiting to hear formally from EH on their acceptance of the EH agreement although they have advised informally that it is accepted. Any further update will be advised verbally at the Meeting. If any material changes were requested at this late stage by EH then a further report would be brought to Members before the signing of either funding

agreement.

## **MEASURES PUT IN PLACE TO MITIGATE RISK OF NON-COMPLIANCE**

- 18 As with all other funding agreements, the Authority must ensure that it is in a position to meet the conditions of the Funding Agreements and mitigate against the risk of claw back.
- 19 To do this, a number of measures have been put in place. These measures include, but are not limited to:
  - Authority and Trust officers have been working together on this Project. Officers have prepared the Operations Plan and obtained SE's approval for KPIs for the first five years of the agreement. In relation to the link between the Authority and the Trust more generally on this Project, please refer to paragraphs 20 and 21 below.
  - The Authority's Sports Development officers will work closely with SE on this Project, as they do in relation to all other projects which are the subject of external funding. The Authority's Senior Contracts & Quality Manager - Parklands & Venues is ultimately responsible for tracking the Authority's compliance with all relevant contractual targets and maintains an up-to-date document of the current status.
  - The Authority has a proven track record for securing quality accreditation. Systems, procedures and officer resource are in place to ensure this quality accreditation continues at the LVHTC, as required under the SE LFA.

## **THE TRUST**

- 20 The Authority recognises that it requires the cooperation and compliance of the Trust in order for the Authority to comply with its obligations under the Funding Agreements. This principle was enshrined in the LSC in respect of the existing funding agreements ("Prior Agreements" as defined in the LSC) and in the Memorandum of Understanding (MOU) in respect of new funding agreements. Indeed, Members will remember that the LSC contains specific provisions which had to be included to satisfy SE, the inclusion of which were conditions to SE giving its consent to the transaction as it related to the "Grant Funded Facilities" (LVAC, LVVP and LVWWC).

The Authority and the Trust have worked together on matters relating to the Funding Agreements.

- 21 Although the MOU makes specific reference to the SE LFA as a new funding agreement, it does not make reference to the EH Agreement. For completeness, therefore, it has been proposed that the Authority and the Trust enter into a short side letter (Appendix A to this report) essentially to the effect that the Funding Agreements are deemed to be and shall be treated as "Prior Agreements" for the purposes of the LSC.

Broadly, this means that the Trust agrees to (i) ensure that the Authority is able to comply with the service provision and other obligations in all respects of the Funding Agreements; and (ii) promptly take all reasonable steps and do all acts

and things reasonably within its power, and otherwise cooperate with the Authority as the Authority may reasonably request, to assist the Authority with it complying with the Funding Agreements subject to the Authority providing adequate funding in accordance with the LSC.

The compliance by the Trust with its obligations under the LSC is monitored by the Authority through regular monitoring review meetings between senior officers.

#### **ENVIRONMENTAL IMPLICATIONS**

- 22 There are no environmental implications arising directly from the recommendations in this report.

#### **FINANCIAL IMPLICATIONS**

- 23 As previously noted in Paper E/386/14, the Authority will be the funder of last resort for the project.

Entering into the Funding Agreements will place a contingent liability on the Authority up to the value of £600,000 for 21 years in aggregate which will be included in the Authority's annual accounts for the period of the agreements. The Authority envisages the cost of the entire project to be £900,000 and Members have approved that £300,000 will come from the Authority's capital programme, a contribution of 33% with external funding of 67%.

- 24 SE's description of their position on repayment of funding is that they never exercise their rights to claw back unless the purpose of the award ceases being carried out and no alternatives are available. Officers have, however, identified that the financial repayment provisions in the SE LFA may apply for a period beyond the asset life of a particular Facility and that the liability is not explicitly stated to reduce during the Grant Term. These provisions are SE's standard terms and are included in the other LFA's entered into by the Authority with SE. While the link between repayment terms and the number of years remaining in the Grant Term is not direct, as set out in paragraph 12 above, SE will, however, take into account when considering whether to require repayment, the stage in the Project and the extent to which the Strategic Purpose has been achieved at the time the event of default occurred and the ongoing ability of the Authority to achieve the Strategic Purpose and comply with the obligations under the agreement notwithstanding the event of default.

Whilst officers would have preferred for the agreement to directly link repayment obligations to the remaining life of an asset (as has been included by the Authority in the EH Agreement), as officers consider that the risk of an event of default occurring triggering a repayment is low and due to the factors which Sport England must take into account, officers' view is that these provisions although carrying a small risk should not prevent the Authority from entering into the agreement and receiving the funding available.

#### **HUMAN RESOURCE IMPLICATIONS**

- 25 There are no human resource implications arising directly from the recommendations in this report.

## **LEGAL IMPLICATIONS**

26 The legal issues are set out in the main body of the report.

## **RISK MANAGEMENT IMPLICATIONS**

27 These are dealt with in the main body of the report. These risks are monitored (quarterly) by the Head of Sport and Leisure.

## **EQUALITY IMPLICATIONS**

28 There are no equality implications arising directly from the recommendations in this report.

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Author: D Buck, 01992 709896, [dbuck@leevalleypark.org.uk](mailto:dbuck@leevalleypark.org.uk)

## **PREVIOUS COMMITTEE REPORTS**

Executive Committee	E/386/14	Lee Valley Hockey & Tennis Centre Legacy Enhancements	18 December 2014
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## **APPENDIX ATTACHED**

Appendix A Authority – Trust Side Letter

## **LIST OF ABBREVIATIONS**

EH	England Hockey
SE	Sport England
LFA	Lottery Funding Agreement
LVAC	Lee Valley Athletics Centre
LVHTC	Lee Valley Hockey and Tennis Centre
LVVP	Lee Valley VeloPark
LWWC	Lee Valley White Water Centre
the Trust	Lee Valley Leisure Trust Limited
MOU	Memorandum of Understanding
LSC	Leisure Services Contract



**Letter agreement relating to funding agreements in respect of the Lee Valley Hockey and Tennis Centre (Centre):**

**Date:** 2015

**The Parties:**

**LEE VALLEY REGIONAL PARK AUTHORITY (Authority) and LEE VALLEY LEISURE TRUST LIMITED (Trust)**

In consideration of each party continuing to receive benefits under the terms of the leisure services agreement between the parties dated 31 March (the LSC), the parties agree and acknowledge:

1. The Authority shall enter into two funding agreements in respect of enhancements to the facilities at the Centre (the **Project**), namely:
  - a. a lottery funding agreement with Sport England (**SE Agreement**); and
  - b. a funding agreement with England Hockey (**EH Agreement**),together, the **Funding Agreements**.
2. The Trust has been involved with the discussions relating to the Funding Agreements and has been provided with a copy of each Funding Agreement.
3. Paragraph 6 of the memorandum of understanding between the parties dated 31 March 2015 (the **MOU**) notes the Authority's intention to enter into the SE Agreement and the Trust's agreement to (i) ensure that the Authority is able to comply with the service provision and other obligations in all respects of the SE Agreement, (ii) promptly take all reasonable steps and do all acts and things reasonably within its power, and otherwise cooperate with the Authority as the Authority may reasonably request, to assist the Authority with it complying with the SE Agreement subject to the Authority providing adequate funding in accordance with the LSC.
4. With effect from the date of this letter agreement, the Funding Agreements shall be deemed to be and shall be treated as "Prior Agreements" for the purposes of the LSC and, without limitation, clause 38 of the LSC shall apply to the Funding Agreements and Schedule 17 of the LSC (the Sport England Conditions) shall apply to the SE Agreement.
5. The Authority shall enter into various other agreements with suppliers and other third parties in connection with the Project (including, without limitation, a deed of variation in relation to the contract between the Authority and Daktronics (UK) Limited dated 30 January 2014 for LED screens) (collectively, **Project Agreements**), and the Trust consents to the Authority entering into the Project Agreements and shall cooperate with the Authority and the relevant supplier/third party and take all steps necessary to ensure that the Authority can comply with its obligations under each Project Agreement, including granting all necessary access to the Centre to ensure all equipment in relation to the Project can be installed in accordance with any Project implementation plans and timetables.

Signed on behalf of LEE VALLEY REGIONAL PARK AUTHORITY:

Authorised Signatory

Signed on behalf of LEE VALLEY LEISURE TRUST LIMITED:

Director

