

Dated: 14 March 2024

**THE ENGLISH SPORTS COUNCIL**

- and -

**ESSEX COUNTY COUNCIL**

**VARIATION AGREEMENT  
TO LOTTERY FUNDING AGREEMENT DATED 23 JULY 2019**

**URN: 2018001701**

**CONFIDENTIAL**



Sport England  
SportPark, 3 Oakwood Drive  
Loughborough  
Leicestershire, LE11 3QF

14 March 2024

**THIS AGREEMENT** is made on

**BETWEEN:**

- (1) **The English Sports Council**, Company Registration Number RC000766, of SportPark, 3 Oakwood Drive, Loughborough Leicestershire LE11 3QF ("**Sport England**");
- (2) **Essex County Council**, a county council whose principal place of business is at County Hall, Market Road, Chelmsford, Essex, CM1 1QH ("**the Applicant**").

**WHEREAS:**

- (A) By the Lottery Funding Agreement ("LFA") dated 23 July 2019, Sport England agreed to make available to the Applicant a lottery grant of up to £5,902,500 (Five million, nine hundred and two thousand, five hundred pounds) ("the Award") of hard commitment funding for the purpose of funding the Project and an in-principle award of £3,937,500 (Three million, nine hundred and thirty-seven thousand, five hundred pounds) subject to further conditions in the LFA.
- (B) Pursuant to a decision of Sport England's Chief Executive Officer on 7 August 2020, Sport England varied the LFA to award the Applicant with additional funding of a maximum of £1,997,656 (One million, nine hundred and ninety-seven thousand, six hundred and fifty-six pounds) for Core Capacity and Evaluation Costs for the period 2021-2025. The additional award was recorded in a variation agreement dated 28 April 2021 ("First Variation Agreement").
- (C) Pursuant to a decision of Sport England's Chief Executive Officer on 17 March 2021, Sport England varied the LFA to award the Applicant part of the in-principle funding amounting to £2,357,500 (Two million, three hundred and fifty-seven thousand, five hundred pounds) for the Project. The initial in-principle funding included £2,057,500 (Two million, fifty-seven thousand, five hundred pounds) of revenue funding and £300,000 (Three hundred thousand pounds) of capital funding. The award of the initial in-principle funding was recorded in a variation agreement dated 9 September 2022 ("Second Variation Agreement").
- (D) Pursuant to a decision of Sport England's Director of Place Relationships on 22 May 2023 Sport England approved the de-commitment of £134,000 (One hundred and thirty-four thousand pounds) from the funding awarded to the Applicant.

- (E) Pursuant to a decision of Sport England's Chief Executive Officer on 15 December 2023, Sport England approved the conversion of £1,580,000 (One million, five hundred and eighty thousand pounds) previously awarded as in-principle funding to hard commitment funding and also approved the budget re-profiling of £920,925 for the funds previously awarded.
- (F) The parties have entered into this Agreement to record the conversion of the In-Principle Funding, to de-commit part of the original lottery grant and to vary the terms of the LFA.

## 1 DEFINITIONS AND INTERPRETATION

<b>"Effective Date"</b>	the date of this Agreement;
<b>"Lottery Funding Agreement" or "LFA"</b>	the agreement made between Sport England and the Applicant dated 23 July 2019;
<b>"Lottery Grant"</b>	The sum of £11,703,656 (Eleven million seven hundred and three thousand six hundred and fifty six pounds) being the total sum awarded to the Applicant;
<b>"First Variation Agreement"</b>	the Variation to the LFA made between Sport England and the Applicant dated 28 April 2021;
<b>"Second Variation Agreement"</b>	the Variation to the LFA made between Sport England and the Applicant dated 9 September 2022;
<b>"Hard Commitment"</b>	The sum of £11,837,656 being the element of the Award granted under the LFA and classed as Hard Commitment amounting to £5,902,500, and the additional funding of £1,997,656 awarded under the First Variation Agreement, the portion of the in-principle funding which was converted to Hard Commitment by the Second Variation Agreement amounting to £2,357,500 and the In-Principle Funding which will be converted to Hard Commitment by this Agreement amounting to £1,580.000;
<b>"Project"</b>	has the meaning set out in the LFA;

<b>“In-Principle Funding”</b>	the sum of £1,580,000 being the element of the Lottery Grant referred to in Recital E of this Agreement and subject to further conditions as set out in the LFA;
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## **2 CONVERSION OF IN-PRINCIPLE FUNDING**

- 2.1 In accordance with the LFA, Sport England has agreed to offer the award of the In-Principle Funding to the Applicant amounting to £1,580,000 (One million five hundred and eighty thousand pounds).

## **3 DE-COMMITMENT OF PART OF THE LOTTERY GRANT**

- 3.1 Sport England has agreed to de-commit the sum of £134,000 (One hundred and thirty-four thousand pounds) and reduce the total lottery grant sum.

## **4 VARIATION**

- 4.1 From the Effective Date, the LFA is amended by inserting the following into Schedule 6 – Award Approvals:

- (a) Test and learn: There is an increase of £266,665 for ‘test and learn’ initiatives within Tendring. This includes a new programme to support disability cycling, a project to work collaboratively within care homes, training of health professionals to embed physical activity within their work and an increase to the communications budget to publicise opportunities for physical activity.
- (b) Scale and replication: There is an overall increase of funding of £1,939,407 to undertake significant ‘test and learn’ initiatives across their three areas and then seek to ‘scale and replicate’ based on the impact that is being secured.
- (c) Staff costs: An increase of £394,855 to enable the Applicant to retain the essential team that is leading on the work with places until 2025.
- (d) Active design: An additional £50,000 allocated to maximise the reach of the Livewell Accreditation and more effectively incorporate Active Design principles into new developments across Essex.

The increases to planned expenditure that are referenced above have been funded through a combination of the In-Principle Funding and a reduction in some previously anticipated areas of expenditure.

The reduced areas include:

- (a) Community Microgrants: A reduction of £533,838. This is in part, due to the £1m per annum funding secured from the London Marathon Charitable Foundation as part of the hosting of Ride London in Essex.
- (b) Community Hubs: A reduction of £826,665, due to changing local priorities and circumstances following the Covid pandemic.
- (c) Strategic Infrastructure: An underspend of £394,855 which was originally allocated for Essex-wide strategic infrastructure work. This did not develop as expected with the work the system was undertaking this space was too large a scale for this budget to influence.
- (d) Community Infrastructure: An underspend of £745,568.

4.2 The Applicant agrees to continue to be bound by the provisions of the LFA, as now varied by this Agreement.

## **5 CONFIDENTIALITY**

5.1 Subject to clause 8 of the LFA, the parties agree to keep the provisions of this Agreement and the matters referred to herein confidential and not to disclose them to any person other than:

- (a) with the prior written consent of the non-disclosing party (such consent not to be unreasonably withheld or delayed);
- (b) to their professional advisers provided that such professional advisers are under an equivalent or greater duty of confidentiality;
- (c) to His Majesty's Department of Culture, Media and Sport, the Treasury Solicitor or any other governmental, parliamentary or regulatory authority including the National Audit Office;
- (d) if required to do so by law or any regulatory or governmental authority or as a result of any accounting requirements.

5.2 Each of the Parties hereby undertakes to the other to:

- (a) keep confidential all information (written and oral) concerning the business and affairs of the other Party that it obtains or receives as a result of the Exchequer Funding Agreement and this Agreement ("the Information"); and
- (b) not without the other Parties prior written consent to disclose the Information in whole or in part to any person save as required by law.

5.3 The provisions of this clause 5 shall not apply to the whole or any part of the Information to the extent that such Information is in the public domain.

## **6 GENERAL**

- 6.1 In consideration of the sum of £1, receipt of which is hereby acknowledged, the Applicant agrees to undertake the Project in accordance with its obligations under this Agreement to achieve the Strategic Purpose.
- 6.2 Each of the Parties shall sign, execute and complete all such documents and deeds as shall be necessary for the purpose of carrying out the terms of this Agreement or bringing this Agreement into effect.
- 6.3 The provisions of this Agreement shall endure for the benefit of and shall bind the successors in title of each Party.
- 6.4 This Agreement is personal to the parties and no party shall, without the prior written consent of the other party (such consent not to be unreasonably conditioned, withheld or delayed), assign, transfer, mortgage, charge or deal in any manner with this Agreement or any of its rights and obligations under or arising out of this Agreement (or any document referred to in it), or purport to do any of the same. No party shall sub-contract or delegate in any manner any or all of its obligations under this agreement to any third party or agent.

## **7 ENTIRE AGREEMENT**

- 7.1 This Agreement (together with the documents referred to herein) represents the entire agreement between the parties and supersedes all prior agreements, understandings or arrangements (both written and oral) relating to the subject matter of this Agreement.
- 7.2 Nothing in this Agreement excludes any liability for fraud or any other liability which cannot be limited or excluded by law.

## **8 PREVAIL**

In the event of any conflict and/or contradiction and/or inconsistency between the terms of this Agreement and the terms of the Exchequer Funding Agreement, the terms of this Agreement shall prevail.

9     **THIRD PARTIES**

- 9.1    No person other than a party to this Agreement and the Comptroller and Auditor General of the National Audit Office may enforce this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 9.2    For the avoidance of doubt the parties may by agreement in writing rescind or vary this Agreement without the consent of the Comptroller and Auditor General of the National Audit Office.

10    **GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with English law and the parties hereby irrevocably submit to the exclusive jurisdiction of the English Courts.

The parties hereto have caused this Agreement to be executed as of the date first written above.

Signed for and on behalf of  
**The English Sports Council**

Signed for and on behalf of  
**Essex County Council**

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86E47046A4F94C3.....  
Signature  
  
Tim Hollingsworth  
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Name  
  
CEO  
.....  
Title

  
.....  
Signature  
  
Name: Tom Walker  
  
Title: Executive Director,  
Economy, Investment and  
Public Health