

DATED

2015

(1) THE KENT COUNTY COUNCIL

(2) CYCLOPARK

DEED OF VARIATION

relating to

the Operator Agreement

Governance and Law
The Kent County Council ©
County Hall
Maidstone
ME14 1XQ
draft 23.06.15
www.kent.gov.uk/Legal
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THIS DEED is made the day of Two Thousand and Fifteen

BETWEEN:

- (1) **THE KENT COUNTY COUNCIL** of Sessions House, County Hall, County Road, Maidstone ME14 1XQ (the "Council"); and
- (2) **CYCLOPARK** a private company limited by guarantee whose registered address is situated at Watling Street, Gravesend, Kent DA11 7NP and whose company registration number is 07762463 ("the Operator")

WHEREAS:

- (A) The Council and the Operator have entered into the Operator Agreement dated 26th May 2012 for the day to day management and operation of Cyclopark.
- (B) The Council and the Operator have agreed for the Operator Agreement to be varied in accordance with this Deed of Variation.
- (C) The Council agreed to make available to the Operator funding of up to £125,000.00 (one hundred twenty five thousand pounds) per annum for the Contract Period for the day to day management and operation of Cyclopark.
- (D) Pursuant to a decision made by the Council in 2012, the Council further agreed to increase the funding of up to £125,000.00 (one hundred twenty five thousand pounds) for the day to day operation and management of Cyclopark by granting additional funding of up to £120,000.00 (one hundred twenty thousand pounds) per annum for a period of 3 (three) years.
- (E) The Council and the Operator have agreed to enter into a further lease in relation to the land at Watling Street, Northfleet, Gravesend and land lying to the South of Old Watling Street, Gravesend with the Operator providing relevant services and maintaining the property referred to in the additional lease as if it was originally included within the Operator Agreement.
- (F) Subject to the Operator entering into the additional lease the Council agrees to provide the Operator with additional funding, limited up to that part of the funding received from the Secretary of State and not yet spent for the purposes by the Council, subject to the terms and conditions of this Deed of Variation.

1. DEFINITIONS AND INTERPRETATION

- 1.1 This Deed of Variation shall be read in conjunction with the Operator Agreement and any definitions set out within the Contract, other than where differently set out below, shall be applicable to this Deed of Variation.

"Effective Date" The date of this Deed of Variation.

"Lease" Means the lease for the land known as

- a) land at Watling Street, Northfleet, Gravesend; and
- b) land lying to the South of Old Watling Street, Gravesend

“Operator Agreement” The agreement made between the Operator and the Council dated 26th May 2012.

“Parties” The Council and the Operator whether together referred to and each of them shall be a “Party”.

2. VARIATION OF THE OPERATOR AGREEMENT

ADDITIONAL FUNDING

- 2.1 The Parties have entered into this Deed of Variation to record the terms on which they agreed to increase the funding in relation to the day to day operation and management of Cyclopark arising out of or in connection with the obligations under the Operator Agreement prior to the date of this Deed of Variation.
- 2.2 The increase in the funding by up to £120,000.00 (one hundred twenty thousand pounds) per annum was for a period of 3 (three) years to be used for specific purposes as agreed between the Parties and in any event only to deliver the original full scope of the services at Cyclopark which was subject to budgetary constraints.
- 2.3 The Operator was entitled to the additional annual funding referred to in clause 2.2 subject to being able to demonstrate, to the entire satisfaction of the Council, that the Operator required additional funding for the day to day operation of Cyclopark and subject to invoicing the Council in accordance with the Operator Agreement.
- 2.4 The County Council shall be entitled to claim back a negotiated proportion of the additional funding should the Operator’s budget demonstrate a sustained and robust position within 18 (eighteen) months of the final payment being received subject to this not having any materially detrimental effects on the operation of Cyclopark.

ADDITIONAL LAND

- 2.5 The Council and the Operator have agreed to enter into the Lease for additional land in accordance with the terms of the Operator Agreement.
- 2.6 The Operator warrants and agrees to provide the Services on the additional land referred to in the Lease as set out in the Operator Agreement.

COMMUTED SUM LINKED TO THE LEASE OF ADDITIONAL LAND

- 2.7 Subject to the Operator having entered into a Lease the Operator shall be entitled to invoice the Council for up to the remaining funding provided by the Secretary of State for Transport in accordance with the Operator Agreement at levels to be agreed from time to time between the Parties.
- 2.8 The Operator warrants and agrees that any such funding shall only be used for the management of the existing landscape scheme and the delivery of conditions

attached to the shared cycleway and footway subject to the Council's prior written approval of the property referred to within the Lease.

3. CONFIDENTIALITY

3.1 The terms of this Deed of Variation are confidential and the Parties agree not to disclose them or any part of the contents to any other person (save for their respective professional advisors, the Council's funders and as required by law).

3.2 Each of the Parties hereby undertakes to the other:

3.2.1 to 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 funding and this Deed of Variation and the Operator Agreement (collectively "the Information"); and

3.2.2 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 or by the Council's funders.

3.3 The provisions of this clause 3 shall not apply to the whole or any part of the Information to the extent that such Information is in the public domain.

4. GENERAL

4.1 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 Deed of Variation and/or bringing this Deed of Variation into effect.

4.2 This Deed of Variation is personal to the Parties and the Operator shall not, without the prior written consent of the Council assign, delegate or sub-contract any of its rights and/or obligations under or arising out of this Deed of Variation (or any document referred to in it), or purport to do any of the same.

5. TERMINATION

The termination provisions of the Operator Agreement shall be amended to include reference to the Lease and the Council shall be entitled to terminate the Operator Agreement in the event that the Operator breaches any terms of the Lease and, for the avoidance of doubt, the Lease shall terminate when the Operator Agreement terminates.

6. ENTIRE AGREEMENT

6.1 The terms of this Deed of Variation together with the Operator Agreement constitute the entire agreement between the Parties and supersede all previous agreements between the Parties relating to its subject matter.

6.2 Each Party acknowledges that, in entering into this Deed of Variation, it has not relied on, and shall have no right or remedy in respect of, any statement, representation assurance or warranty (whether made negligently or innocently) other than expressly set out in this Deed of Variation and/or the Operator Agreement.

7. PREVAIL

In the event of any conflict and/or contradiction and/or inconsistency between the terms of this Deed of Variation and the terms of the Operator Agreement, the terms of this Deed of Variation shall prevail.

8. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a party to this Deed of Variation shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

9. GOVERNING LAW AND JURISDICTION

This Deed of Variation and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England and the Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises in connection with this Deed of Variation.

THIS Deed of Variation has been executed as a Deed by the Parties or their duly authorised representatives.

EXECUTED as a Deed by

THE KENT COUNTY COUNCIL

By affixing its Common Seal in the

Presence of:

Authorised signatory

EXECUTED as a Deed by

CYCLOPARK

By affixing its Corporate Seal in the

Presence of:

Director

Director/Secretary