

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 30 September 2020	<b>Meeting Name:</b> Strategic Director for Environment and Leisure
<b>Report title:</b>		Leisure Centre Contract – COVID19 Emergency support package August 2020 to March 2021	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Director of Leisure	

## RECOMMENDATION(S)

That the Strategic Director for Environment and Leisure approves the following;

1. That the council enter into an agreement in the form attached to this report setting out the terms on which the council will provide COVID19 emergency financial support for the Leisure Centre Contract with Sport & Leisure Limited (SLM) covering the period 1 August 2020 until 31 March 2021 (the Support Period)

## BACKGROUND INFORMATION

2. On the 21 June 2016 the council entered into a 7 year contract with an option to extend for a period or periods of up to a further 7 years at the council's discretion with SLM for the management of the council's 8 leisure facilities and for the operation of the sports booking service. SLM operate under the name of Everyone Active (EA).
3. EA are required to operate the centres in line with the terms and conditions of the contract. Leases at a peppercorn rent are granted to them subject to them fulfilling these terms. A management fee is payable to the council under the contract.
4. On Friday 20 March 2020 the Government instructed that all leisure centres should close the following day for public health reasons in relation to the Coronavirus pandemic.
5. The council then agreed a support package for March to June 2020 followed by a further package of support for July 2020.
6. This report considers the package that the council has put in place in partnership with SLM to re-open all sites in the leisure management contact from 1 August 2020 following the government announcement on 9 July 2020 that leisure centres could re-open on 25 July 2020.
7. SLM submitted to the council a financial forecast which covers the Support Period on the basis that SLM would re-open the centres from 1 August 2020, which the council swiftly reviewed and sought clarification which SLM provided. On the basis of that proposal a paper was submitted to cabinet on 14 July 2020 (Background Documents 1).

8. The Leader in cabinet granted delegated authority for the Strategic Director of Environment and Leisure in consultation with the Strategic Director of Finance and Governance, the Deputy Leader and Cabinet Member for Culture, Leisure, Equalities and Communities, and the Cabinet Member for Finance, Performance and Brexit, to negotiate a deal under which SLM would re-open the centres with financial support from the council.
9. The cabinet paper was also submitted to the Overview & Scrutiny committee on 22 July 2020 and directors from EA attended alongside council officers. The committee raised a number of issues for officers to consider when negotiating with EA. However the decision was not formally called in by the committee and cabinet's decision to delegate authority was implementable with effect from 23 July 2020.

The emergency financial support package is based on SLM's forecast to the council that SLM is not reasonably able to generate pre-covid 19 levels of income from the Southwark leisure centres, and that it is not able to draw on reserves of cash to help it to meet the costs referred to below. During this period SLM have agreed to operate on an open book basis. This will enable the council to confirm that the sums remitted have been used for the purposes agreed.

#### **KEY ISSUES FOR CONSIDERATION**

10. Negotiations were carried out between EA and the council and a capped sum was agreed in principle for the opening of all sites in the leisure management contract. SLM has agreed that in the event of any income generated above its forecast 50 percent will be returned to the council. Any shortfall in income or increases above forecasted expenditure will be the liability of EA and no further monies will be requested from the council during the Support Period. On the basis of these agreed heads of terms EA re-opened all the centres on 1 August 2020.

#### **Management Fee**

11. The council will waive its entitlement to payment of the contracted management fee for the period from 1 August 2020 to 31 March 2021.
12. The monthly figure for the management fee is £210,400. The total is £210,400 X 8 = £1,683,200.

#### **Payments to EA to run the centres until 31 March 2021**

13. The council will monitor SLM's income on a weekly basis initially and then will be provided with management accounts on a monthly basis to check whether EA are on track, ahead or behind on their projections.
14. In the event that there is any shortfall in income over the 8 month Support Period EA will have to absorb the impact from their business.
15. In the event of a greater amount of income being received at the centres than forecast, the income received in excess of the forecast will be split 50/50

between the council and EA at the end of the Support Period.

16. SLM's expenditure covers the running of all sites and this level of expenditure is expected to ensure a high level of service is provided to residents including all appropriate covid security measures.

### **Next steps**

17. Officers and SLM remain in regular contact in relation to the monitoring of the income and expenditure levels throughout the period
18. The arrangements set out above will expire on 31 March 2021. For avoidance of doubt, the Council will be under no obligation to provide further support beyond that set out in this report.
19. Officers will be meeting with SLM later in September when both parties will jointly and formally review these arrangements to consider the performance of the centres, and also the future of the contractual relationship in the wider post-covid context.
20. A cabinet paper will be submitted in October looking at the costs of insourcing the service compared to continuing the contract with SLM until June 2023.

### **Policy implications**

21. The Council Plan 2018-19 – 2021-22 sets out a series of commitments across eight themes:
  - A place to call home
  - A place to belong
  - A greener borough
  - A full employment borough
  - A healthier life
  - A great start in life
  - A safer community
  - A vibrant Southwark
22. Leisure centre provision contributes to the delivery of these commitments. In addition leisure centre provision is an important part of the Active Southwark strategy which was agreed by Cabinet in April 2019. The themes of the strategy are:
  - Active People – understanding the circumstances of individuals to better shape our services and offer
  - Active Places – shaping our environment and facilities so that they encourage more people to be more active
  - Active Communities – maximising resources and building partnerships with our communities that promote physical activity.

### **Community impact statement**

23. N/A

### **Resource implications**

24. Staffing and any other costs connected with this report to be contained within existing parks and leisure division revenue budgets.

### **Legal implications**

25. Please see comments from the director of law and democracy.

### **Financial implications**

26. .Please see closed version

### **Consultation**

27. N/A

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Democracy**

28. The report refers to the Government's order (made in the Health Protection (Coronavirus, Business Closure) (England) Regulations 2020) (the 'Regulations'), that all leisure centres should close in order to slow the spread of the covid 19 coronavirus. The Regulations were repealed and replaced shortly afterwards by the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (the 'New Regulations'), which also contained closure requirements in relation to leisure centres. The New Regulations were also repealed and the centres were permitted to re-open with effect from 25 July 2020.
29. On 11 May 2020 central government published guidance for leisure centre operators to use once facilities were permitted to re-open, including social distancing requirements, in order to support operators in complying with their health and safety, employment and equalities obligations in light of the risks posed by covid 19.
30. The 'qualifying change in law' provisions in the contract require the parties to act reasonably in agreeing how a relevant change in law (which includes guidance with which the operator is bound to comply) should be implemented, necessary mitigation measures, and any adjustments to the management fee to reflect the financial impact of the change, using the structure and pricing in the original pricing schedules as a base. This can (with LBS' agreement) result in a capital payment being made by LBS to SLM.
31. Within this framework officers have negotiated an extension to the financial support package, to enable SLM to continue to operate the centres until the end of the financial year.
32. This is consistent with the guidance from Government in its public procurement policy notes in response to the pandemic. PPN 02/20 encouraged local authorities

to work on an open-book basis to support their suppliers, with a view to avoiding widespread insolvency and redundancies. PPN 04/20 requires that local authorities and suppliers work up individual transition plans to allow service delivery to resume on a sustainable basis.

33. As the report outlines, decisions have already been taken by the Strategic Director of Environment and Leisure and the Strategic Director of Finance and Governance to approve short term financial support for March – July 2020.
34. The recommendation is consistent with the provisions of the Public Contracts Regulations 2015 para 72, which deals with modification of contracts in accordance with their terms and in response to unforeseen changes in circumstances.
35. The decision to approve a contract variation of this value is reserved by the council's contract standing orders to the cabinet. As noted in the report, on 14 July 2020 the Leader delegated the decision to negotiate and agree the detailed terms of the support package to the Strategic Director of Environment and Leisure in consultation with the Strategic Director of Finance and Governance, the Deputy Leader and Cabinet Member for Culture, Leisure, Equalities and Communities, and the Cabinet Member for Finance, Performance and Brexit,
36. This is a key decision as the value exceeds £500k and it has significant cross-borough impact. As it was not practicable to give 28 days' notice via the forward plan, a general exception notice has been published giving 5 clear days' notice of this decision, in accordance with the council's access to information rules.
37. In the exercise of all its functions, the council must have due regard to the public sector equality duty in Section 149 of the Equality Act 2010. Specifically to have due regard to the need to (a) eliminate discrimination, harassment, victimisation or other prohibited conduct, (b) to advance equality of opportunity and (c) foster good relations between persons who share a relevant protected characteristic and those who do not share it. The relevant protected characteristics for this purpose are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.
38. In accordance with the council's access to information procedure rules, the financial forecasts provided by SLM have been removed from the open version of this report.

#### **Strategic Director of Finance and Governance (EL20/041)**

39. This report is requesting the Strategic Director of Environment and Leisure to approve the agreement in the form attached to this report setting out the terms on which the council will provide COVID19 emergency financial support for the Leisure Centre Contract with Sport & Leisure Limited (SLM) covering the period 1<sup>st</sup> August 2020 until the 31<sup>st</sup> March 2021 (the Support Period) for a sum reflected in the closed version, together with relief from the Management Fee payable to the council during the Support Period as reflected in the closed version. Full details are contained within the financial implication section of the closed version of this report.
40. The strategic director of finance and governance notes the financial implication and understands that SLM will maintain a separate account of all expenditure and income to facilitate open book accounting and ensure that supporting detail

is retained and available for inspection as necessary. It is further noted that a detailed reconciliation will be carried out at the end of the support period to calculate any sums due back to the Council from this arrangement.

- 41. The financial implications from these proposals will be monitored and reported as part of the overall monitoring of the financial impact of Covid 19 pandemic situation on council services and resources.
- 42. The financial impact of the Covid 19 pandemic situation from this report together with the impact on all services across the council will be reviewed against council resources and any additional funding available from government.

**Other officers**

- 43. N/A

**PART A – TO BE COMPLETED FOR ALL DELEGATED DECISIONS**

Under the powers delegated to me in accordance with the council’s constitution, I authorise action in accordance with the recommendation(s) contained in the above report (and as otherwise recorded in Part B below).

Signature           C. Bruce          ...                      Date...6 October 2020.....

Designation .....

**PART B – TO BE COMPLETED BY THE DECISION TAKER FOR:**

- 1) All key decisions taken by officers (including contract reports)
- 2) Any non-key decisions which are sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available.

<b>1. DECISION(S)</b>

<b>2. REASONS FOR DECISION</b>

<b>3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED BY THE OFFICER WHEN MAKING THE DECISION</b>

<b>4. ANY CONFLICT OF INTEREST DECLARED BY ANY CABINET MEMBER WHO IS CONSULTED BY THE OFFICER WHICH RELATES TO THIS DECISION (IF APPLICABLE)*</b>

\*Contract standing order 4.5.1 states that for contracts with an Estimated Contract Value of over £100,000, the lead contract officer (LCO) must consult with the relevant cabinet member before a procurement strategy is implemented.

<b>5. NOTE OF ANY DISPENSATION GRANTED BY THE MONITORING OFFICER, IN RESPECT OF ANY DECLARED CONFLICT OF INTEREST</b>
<i>If a decision taker or cabinet member is unsure as to whether there is a conflict of interest they should contact the legal governance team for advice.</i>

## 6. DECLARATION ON CONFLICTS OF INTERESTS

I declare that I was informed of no conflicts of interests.\*

or

I declare that I was informed of the conflicts of interests set out in Part B4.\*

(\* - Please delete as appropriate)

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
1) Report to Cabinet: Leisure Management contract post Co-vid 19 review and management arrangements.	<a href="http://modern.gov.southwark.gov.uk/document/s/b50011932/Supplemental%20Agenda%20No.2%20Tuesday%2014-Jul-2020%2016.00%20Cabinet.pdf?T=9">http://modern.gov.southwark.gov.uk/document/s/b50011932/Supplemental%20Agenda%20No.2%20Tuesday%2014-Jul-2020%2016.00%20Cabinet.pdf?T=9</a>	

## APPENDICES

No.	Title
Appendix 1	Redacted SLM support Aug_Mar agreed

## AUDIT TRAIL

<b>Lead Officer</b>	Rebecca Towers, Director of Leisure	
<b>Report Author</b>	Ashoke Chaudhury, Group Manager Physical Activity	
<b>Version</b>	Final	
<b>Dated</b>	07/08/20	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	No	No
<b>Date sent to Constitutional Team</b>	6 October 2020	