



Arun District Council
Civic Centre
Maltravers Road
LITTLEHAMPTON
BN17 5LF

Tel: 01903 737500
DX 57406 LITTLEHAMPTON
email: robin.wickham@arun.gov.uk
www.arun.gov.uk

8 May 2020

Please ask for:
Robin Wickham

David Talbut
Finance Director
Freedom Leisure
Unit 1-6 The Paddocks
Carriers Way
East Hoathly BN8 6AG

By email: david.talbut@freedom-leisure.co.uk

Dear David,

Leisure Operating Contract dated 31st March 2016 (as amended by a Letter Variation dated 1st November 2017, Letter Variation dated 18th January 2018, Letter Variation dated 27th April 2018 and a Deed of Variation dated 23rd July 2019) between (1) Arun District Council (the "Authority") and (2) Wealden Leisure Ltd (the "Supplier") in respect of Littlehampton Swimming and Sports Centre, Arun Leisure Centre, Bersted Park Community Centre and Windmill Theatre & Cinema (the "Contract")

Supplier relief due to COVID-19 in accordance with Procurement Policy Note 02/20

We refer to the Contract. Unless otherwise defined, terms defined in the Contract and used in this letter shall have the meaning set out in the Contract.

1 Background

- 1.1 The purpose of this Variation is for the Authority to give relief to the Supplier on the terms of this Variation. The Authority and the Supplier acknowledge that the relief is given in accordance with the policy set out in PPN 02/20 and that both parties shall act in good faith and work together towards the principles set out in PPN 02/20. The Supplier acknowledges that any relief given to it is at the sole discretion of the Authority.
- 1.2 The Authority reasonably anticipates that the Procurement Regulations will apply to this Variation and the Parties shall ensure that there is lawful basis for agreeing the Variation under the Public Contracts Regulations 2015 and/or any applicable procurement rules. Due to the current COVID-19 pandemic, this may include in particular justifications under Regulation 72 and Regulation 32 of the Public Contracts Regulations 2015 or such other applicable or equivalent provision.
- 1.3 The Contract, including any previous variations, will remain effective and unaltered except as amended by this Variation.

2 Variation

2.1 The following terms shall have the meaning as set out below and shall be incorporated into the Contract:

- “Covid Related Hardship”** means that as a result of the COVID-19 pandemic the Supplier’s ability to meet its contractual obligations under the Contract have been adversely affected.
- “Covid Relief Period”** means the period from the Variation Date until the Relief Expiry Date.
- “Covid Relief Proposals”** means the proposal to:
- waive payment obligations of the Supplier under the Contract in respect of Net Monthly Payment of the Annual Payment due under Clause 28 (Payment of Monthly Payment) of the Contract for the months of April, May and June 2020; and
 - amend the Expiry Date by 6 Months so that Contract expires on 30th September 2026; and
 - provide for the Supplier and the Authority to agree a profile for payment to the Authority during the period by which the Contract has been extended of an amount equal to the waived payments inflated by CPI to the date of payment in addition to the Net Monthly Payment of the Annual Payment due for that period; and
 - close the Facilities in accordance with Law and Guidance; and
 - make payment to the Supplier of up to £45,436 (or otherwise as agreed in writing between the parties) in respect of exceptional costs incurred or to be incurred by the Supplier in respect of the Covid Related Hardship (as the same have been detailed by the Supplier to the Authority in an Excel spreadsheet 'Partner Support – Basic 3) as further provided in clause 6 of this Variation.

“Open Book Interim Data”

means the complete and accurate financial and non-financial information to be provided to the Authority by the Supplier within ten (10) Business Days of the end of each month in addition to and not in substitution for the provisions of Clause 70 (Contractors Records and Open Book Accounting) to enable the Authority to understand all COVID-19 related relief, grants, interventions or other measures received by the Supplier in the operation of the Facilities in relation to the following items:

- repairs and maintenance;
- utilities;
- cleaning;
- telephone and ICT;
- insurance;
- finance;
- professional fees;
- irrecoverable VAT
- all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- full details of the payment of employee wages, and
- full details of the payment of Sub-Contractors.

“Procurement Regulations”

means the Public Contracts Regulations 2015.

“PPN 02/20”

means Procurement Policy Note 02/20 (as updated or amended from time to time) setting out information and guidance for public bodies on how they may amend payment provisions in contracts or consider other contractual relief in order to assist suppliers to combat the impact of COVID-19.

“Variation”

means the terms set out in this variation.

“Variation Date”

means the date the second party signs this Variation

- 3 Notwithstanding any other term of the Contract, the Parties agree to vary the Contract by incorporating the following terms into the Contract:**
- 3.1 Where the Supplier is subject to Covid Related Hardship, the Supplier may at any time during the Covid Relief Period, propose a change to the Contract which has the aim of providing interim relief and support to the Supplier, pursuant to the aims and principles set out in PPN 02/20.**
- 4 Pursuant to the aims and principles set out in PPN 02/20 and subject to this Variation, the Supplier and the Authority have at the effective date agreed the Covid Relief Proposals subject to the terms of this letter Variation.**
- 5 The Parties have agreed the Covid Relief Proposals in substitution for and not in addition to any other relief or remedy which the Supplier may otherwise claim under the Contract for Covid Related Hardship. Further, the Supplier shall, subject to using reasonable endeavours to mitigate the consequences of Covid Related Hardship, be entitled to appropriate relief directly arising therefrom namely:**
- relief against performance indicators;**
 - relief and/or changes to relevant dates, targets or other requirements for performance;**
 - relief against termination.**
- 6 The Supplier shall:**
- 6.1 promptly provide evidence of the Supplier's actual costs, expenses, cash flow, cash balances and profits of providing the Services over the 3 months prior to the date of this letter Variation;**
- 6.2 make available to the Authority upon request any information and/or evidence (including the Open Interim Book Data) which the Authority may reasonably require in order to verify and assure that the Supplier:**
- has incurred or will incur the costs and expenses specified in the Covid Relief Proposals**
 - continues to meet its payment obligations to Sub-Contractors and supply chain immediately on receipt, including copies of accounts, ledgers, cash-flow forecasts and statements, balance sheets, profit and loss accounts and any other documentary evidence;**
 - Makes proper and prompt payment of monies due to employees.**
- 6.3 maintain full records and a written audit trail of all activity during the Interim Payment Deferral Proposal period in accordance with the general financial records provisions in the Contract (and such records shall be made available promptly to the Authority on reasonable request);**

6.4 The Supplier shall not be entitled to combine the Covid Relief Proposals with any other government or public sector COVID-19 related relief, grant, intervention or other measure which results in the Supplier receiving more than one benefit/relief for the same underlying cash-flow issue.

7 The Authority may at any time and in its sole discretion designate one or more additional Covid Relief Periods by notice to the Supplier from time to time. Any such notice shall specify which, if any, PPN contains the applicable rules and principles for the relevant Covid Relief Period and provide for the Supplier's Covid Relief Proposals.

8 If, in the reasonable opinion of the Authority, the Supplier:

8.1 fails to meet any obligation set out in this Variation;

8.2 receives any payment and fails to apply it so as to meet its obligations under this Variation;

8.3 takes undue advantage of any relief; or

8.4 fails to act transparently and with integrity,

the Authority may take all action necessary to recover any payments made to the Supplier during the relevant Covid Relief Period, including without limitation recovering all or part of the amount waived or by retaining or setting-off payment of any amount it owes to the Supplier at any time under this Contract or any other contract, to the extent that clauses 7.1 – 7.4 apply to such payments.

9 Miscellaneous

9.1 The terms of this Variation shall be effective from the Variation Date.

9.2 Except to the extent set out in this Variation, this Variation shall not constitute a waiver of any right or remedy of the Authority or the Supplier arising before, during or after this Variation.

9.3 The Authority and the Supplier agree that without prejudice to any relief provided herein any event arising from COVID-19 shall not give rise to any force majeure, Compensation Event, Change in Law, Relief Event, Relevant Event or frustration rights set out in the Contract.

9.4 If there is an inconsistency between any of the provisions of this Variation and the provisions of the Contract, the provisions of this Variation shall prevail.

Please confirm your acceptance of the Variation countersigning this letter and returning a scanned copy to robin.wickham@arun.gov.uk.

If you have any queries, please contact Robin Wickham.

Yours faithfully,



Robin Wickham
Group Head of Community Wellbeing
Directorate of Services

For and on behalf of the Authority

We hereby acknowledge receipt and accept the terms of this Variation.

Signed: DAVID TARBUT DAVID TARBUT

For and on behalf of the Supplier

Position: FINANCE DIRECTOR

Date: 21 MARCH 2020.