

**Report of the Chief Officer (Culture and Sport) and the Chief Officer (PPP and Procurement Unit)**

**Report to Deputy Chief Executive and Chief Officer (Resources and Strategy)**

**Date: 28 February 2014**

**Subject: Tour de France 2014 Agreements – Sign-Off**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: 10.5 Category 5 Appendix number: 1 - 4	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

**Summary of main issues**

1. This report confirms that the Partnership Agreement in relation to the Tour de France has been signed, along with funding terms between UK Sport and TdFHUB 2014 Ltd.
2. The report also sets out the main risks and issues which need to be considered and managed in relation to the outstanding contract documents.

**Recommendations**

3. That the Deputy Chief Executive:
  - 3.1. note the overview, implications, risks and other information set out in this report in relation to the outstanding Event Agreements;
  - 3.2. approve the Council entering into those Event Agreements which are identified in this report as within his delegated authority, on the terms proposed.
4. That the Chief Officer (Resources and Strategy):
  - 4.1. note the overview, implications, risks and other information set out in this report in relation to the revised Hosting Agreement;
  - 4.2. approve the Council entering into the revised Leeds Hosting Agreement which is identified in this report as within his delegated authority, on the terms proposed.

## **1 Purpose of this report**

- 1.1 The purpose of this report is to detail the arrangements which are currently in place for the delivery of the Tour de France 2014 and to provide an overview of those which remain to be agreed and finalised.
- 1.2 This report will detail the structure of the agreements to be agreed and set out the implications of entering into these agreements or otherwise, together with the risks of each of the proposed agreements.
- 1.3 The Deputy Chief Executive and the Chief Officer (Resources and Strategy) each have delegated authority in relation to the Tour de France, for separate elements of the delivery. Each is asked to approve the Council entering into those agreements which are identified in this report as within his delegated authority, on the terms proposed and described in this report.

## **2 Background information**

- 2.1 Pursuant to an agreement entered between Welcome to Yorkshire (WTY) and the Amaury Sports Organisation (ASO) (“the ASO Agreement”), WTY has been granted the right to host and organise Stages 1, 2 and part 1 of Stage 3 of the Tour de France 2014 (“the Event”). ASO has also entered into an agreement with Transport for London (TfL) which grants TfL the right to host and organise part 2 of Stage 3 of the Tour de France 2014 which passes through Greater London.
- 2.2 The ASO Agreement provides that WTY will deliver the Event through the relevant local authorities within each administrative area through which the Tour will pass (“the Local Authorities”). These are Harrogate Borough Council, City of York Council, Sheffield City Council, Bradford Metropolitan District Council, the Borough Council of Calderdale, Kirklees Council, North Yorkshire County Council (for itself and North Yorkshire Districts), Barnsley Metropolitan District Council, Derbyshire County Council, Rochdale Borough Council, Cambridge City Council (for itself and Cambridgeshire County Council) and Essex County Council. Leeds entered into a local Hosting Agreement with WTY for the Grand Depart in November 2012.
- 2.3 The UK Government’s Department for Culture Media and Sport (DCMS) has, through UK Sport (UKS) agreed to make funding available for the Event of up to £9.936m. UKS has established a company, TDFHub2014 Limited (“the Company”), to help coordinate the delivery of the Event and provide financial and technical support to WTY, TfL and the Local Authorities. UKS and the Company have entered into a funding agreement to set out how the DCMS funding to UKS will be granted to the Company (“the UKS Funding Agreement”).
- 2.4 WTY, UKS, the Company and Leeds City Council (“Leeds”) have entered an agreement (“the Partnership Agreement”). The Partnership Agreement provides that Leeds will act as the lead local authority and be the conduit for funding and contractual matters between UKS and/or the Company, and the Local Authorities. Leeds has also agreed to commit to delivery of resources and funding by the

Local Authorities (approximately £11m) comprising specific costs which are set out in the Partnership Agreement.

- 2.5 Reports to Executive Board in October 2012 and July 2013 detailed the financial implications for Leeds, and anticipated that further legal agreements would be developed as set out in this report. Executive Board resolved:

*That approval be given to the principle of Leeds City Council acting as the accountable body for the new company and underwriting the £11,000,000 of Local Authority contributions (of which £3,600,000 is from Leeds City Council), thus unlocking the £10,000,000 of Government funding and Government underwriting the event, subject to final confirmation from government and parliament. That the necessary authority be delegated to the Chief Executive, in consultation with the Leader of the Council and Executive Member for Leisure and Skills, to work on the detail of TDF 2014 Ltd agreement for the benefit of Leeds and other local authorities.*

*That the financial and contractual requirements of the Grand Départ of the Tour de France be approved, subject to final confirmation from Government and Parliament, as set out within the submitted report*

### 3 Main issues

- 3.1 The Partnership Agreement requires that a number of agreements be established between the various parties to deliver the Event, some of which have now been completed. The remaining agreements are required to be agreed by 7 March 2014.

- 3.2 The remaining agreements (the Event Agreements) are as follows:

- **The WTY Hosting Agreements.** These agreements are between WTY and each Local Authority in respect of delivery of the Event within the administrative area of the Local Authority by provision of certain services, resources and other obligations relating to the staging of the Event. As indicated Leeds already has one in place however once a refreshed 'standard' agreement is finalised it is anticipated Leeds will enter into a refreshed agreement in place of the existing one.
- **The Company Funding Agreement.** This agreement is between the Company and Leeds to set out the terms on which the Company will pay grant funding to Leeds (for itself and the other Local Authorities) in connection with the delivery of the Event.
- **The Local Staging Agreements.** These agreements are between Leeds and each Local Authority to set out the basis on which Leeds will coordinate the provision of funding for and/or delivery of services from Local Authorities, in connection with the staging of the Event.
- Arrangements with the Highways Agency to provide for the necessary road closures required for the event.

- Arrangements between Leeds and the Police Authority to provide for the delivery of police support for the Event.

- 3.1 Leeds has worked together with all of the other parties to develop the Event Agreements. In the case of the WTY Hosting Agreements Leeds has sought to broker standard terms between WTY and the other Local Authorities. The latest drafts are available as confidential appendices 1- 4 of this report. These agreements now need to be approved and agreed in order to sign-off on all of the responsibilities for delivering the Event.
- 3.2 The Partnership Agreement requires that all of the agreements be signed by the deadline (which has already been extended from 31 January to 7 March), otherwise *“the parties shall convene a meeting as soon as possible following this date to establish why such agreements have not been signed and the corresponding impact on the Event's ongoing viability and the parties' respective ability to fulfil their obligations under this Agreement and other Event Agreements.”*
- 3.3 It is necessary to put the structures in place to support the delivery of the Event which will be held in under 20 weeks in order to confirm the roles and responsibilities held and the allocation of identified risk. It is also essential that Leeds understand the risks of each of the agreements in order to appropriately mitigate and manage these both in delivery of the Grand Depart and as lead local authority.

### **The WTY Hosting Agreements**

- 3.4 Leeds entered a hosting agreement with WTY in late 2012 which was a direct flowdown of the responsibilities upon WTY in the ASO agreement. Discussions have now been ongoing since November 2013 with each of the Local Authorities to draft a WTY Hosting Agreement with which all parties are comfortable, and which allocates risk as far as possible to the party best able to manage that risk. This has involved WTY seeking fuller clarification from ASO of a number of practical responsibilities as well as on specific legal drafting.
- 3.5 One technical issue has arisen around the fact that WTY are the contractual link between ASO and the local authorities. In the unlikely event that the authorities need some form of recourse to ASO they can only do this if WTY suffers loss by express liability to the authorities, and WTY wish to limit this to amounts they can recover from ASO. It is proposed that if this should arise, a loan arrangement can be called upon which has been drafted to enable the authorities to loan an equivalent amount to WTY to pay off the liability back to them, such loan repayable only to the extent they recover from ASO.
- 3.6 The Local Authorities and WTY will approve and enter the agreements, subject to final determinations upon the indemnity and termination provisions (outstanding at the date of this report). It is proposed that Leeds also at that time enter a new hosting agreement with WTY on these terms in place of the originally signed agreement. The purpose for this is:

- i. to provide Leeds with better certainty of terms given that there have been significant clarifications made; and
- ii. to manage risk by placing Leeds on the same footing in this relationship as the other Local Authorities.

## **The Company Funding Agreement**

- 3.7 The Company Funding Agreement is a direct flowdown of the obligations placed upon the Company under the UKS Funding Agreement. It is established that the funding will be granted to Leeds who will then distribute this as grant funding to the relevant Local Authorities in accordance with the Event budget. The funding which will come through Leeds will include uplift costs for stages 1 and 2 of the Event (up to £1.928m), central event costs (up to £1.306m) and Stage 3 costs (up to £0.189m).
- 3.8 The main risks and issues around this agreement are VAT, termination rights and clawback of funding.
- 3.9 Event cancellation insurance is a requirement of the funding under the UKS Funding Agreement, which is flowed down. All of the parties, including UKS, are currently considering the cost and value for money of such insurance. There is currently no budget allocated for such insurance. UKS has been asked to confirm with DCMS the extent to which this requirement will remain.
- 3.10 **VAT**
- 3.10.1 The key area of VAT risk has arisen in the amount of DCMS funding it was envisaged would be retained by the Company to fund the cost of their activities in managing and overseeing the event. Under the initial plan, for the Company to utilise this funding to buy in resources from Leeds and to commission external parties to provide goods and services, there has been identified potential incurrence of irrecoverable VAT.
- 3.10.2 In order to resolve this in accordance with the Partnership Agreement, which requires the parties to seek to ensure that any irrecoverable VAT liabilities are reduced to the maximum possible extent, the following position has been reached:
- i. The Company shall remain as a grant funding body not registered for VAT. In order to register for VAT the Company would require a business activity for which they would charge the Local Authorities. However there is neither Local Authority budget nor Company funding budget to cover any management fees to facilitate this.
  - ii. All of the DCMS funding, save that being passed to other bodies (including up to £1m to WTY), that is capable of being granted shall be granted to Leeds who will utilise this for all procurements on behalf of the Company and Local Authorities.
  - iii. Where the Company has commenced its own procurement exercises, which would result in a VAT liability, Leeds will look to take on the resulting

contracts which shall be funded through grant payment from the Company to Leeds.

3.10.3 The Company Funding Agreement therefore provides that additional amounts to those set out in paragraph 3.6 can be awarded to Leeds for the delivery of the Event. There is a risk here that Leeds will be taking on liability for contracts in respect of which it has not drawn up tender documents (although it is understood that the Company has used terms similar to Leeds terms), and which will be managed by other parties, so each contract will need to be considered in that light, however mitigation of this risk has been sought by providing that the funding arrangements shall not detract from the obligation of the party managing the contract so to do. Additionally, to the extent Leeds receives more grant aid, there is a risk of clawback under the funding terms.

### 3.11 **Termination and clawback**

3.11.1 The funding from UKS to the Company is subject of a large number of termination and clawback rights for UKS. These run to nearly 4 pages in the terms but below is a basic summary. Some of the clauses allow remedy periods and proportionality but others do not:

- Funding can only be guaranteed to the extent that UKS remains entitled to receive and distribute funds from DCMS or if DCMS reduce the award and can be amended or terminated by UKS but only exercising such rights in good faith;
- It can be terminated:
  - i. On material breach (including records/returns/applying funding incorrectly etc)
  - ii. If the Event is cancelled
  - iii. If there is a material change in the Event
  - iv. following a decision by the European Commission or as a result of any obligation arising under European Community law
  - v. If UKS is required to do so by a direction issued by Secretary of State for Culture Media and Sport or the Minister for Sport & Tourism or DCMS
  - vi. Insolvency
  - vii. Upon change in ownership
  - viii. Failure to achieve Key Delivery milestones
  - ix. If UKS reasonably consider the event cannot be delivered
  - x. If the Company believes there is a VAT liability in respect of the Funding
  - xi. Upon breach of warranties.

- 3.11.2 UKS power to claw back funding is linked to a number of these termination rights.
- 3.11.3 Whilst these are drawn from standard UKS funding conditions, it must be noted that Leeds has limited control over many of the matters which might result in termination or clawback as these are in the control or management of the Company. The availability of the funding must be viewed in that light and consideration given to how best to manage the risks including the reporting/monitoring obligations.

### **Options**

- 3.12 Drafting has been proposed and accepted, subject to verification of the Company's insurance provisions, to:
  - 3.12.1 Restrict the amount of clawback from Leeds to the amount of grant which has been received by Leeds or which can be recovered from Local Authorities.
  - 3.12.2 Restrict clawback to unexpended funds.
  - 3.12.3 Restrict the definition of the grant award to the cash amounts received by Leeds as opposed to the full event budget including the costs retained for the Company costs.
  - 3.12.4 Provide that in relation to the funding that Leeds receives for the Local Authorities the UKS terms and conditions apply to the extent they are applicable to that funding so that all the termination and clawback triggers are effectively flowed down.
  - 3.12.5 Remove Leeds' liability for clawback if the Company defaults, and limit it in circumstances where it has already been expended.

### **The Local Staging Agreements**

- 3.13 These have been drafted on two bases. For the Local Authorities in Stages 1 and 2 of the Event the staging agreement at appendix 3 has been drafted.

### **Stage 3 Part 1**

- 3.14 For the different relationship with Local Authorities in Stage 3 Part 1 of the Event, the agreements are the subject of separate consideration and will not be in place by 7 March. A further decision will be required for these.

### **The Highways Agency and Police Authority Agreements**

- 3.15 These agreements have not as yet been finalised but are intended to be short letters of agreement which set out the roles and responsibilities of each Party and ensure the delivery of the Event.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

4.1.6 All local authority stakeholders have been fully involved in the development of the agreements, through the Local Authority Delivery Group, and meetings between legal representatives.

### **4.2 Equality and Diversity / Cohesion and Integration**

4.2.1 No specific issues arise.

### **4.3 Council policies and City Priorities**

4.3.1 Hosting the Tour de France is part of the ambition to be the best city in the UK. The policy and priority implications are unchanged from the Executive Board report of October 2013.

### **4.4 Resources and value for money**

4.4.1 The budget implications were set out in the Executive Board report in October 2013.

### **4.5 Legal Implications, Access to Information and Call In**

4.5.1 This decision is the implementation of Executive Board decision from July 2013 and as such is not a key decision nor is it subject to call-in. Due to the value and impact of the decision it is considered that this is a significant operational decision.

4.5.2 Appendices 1- 4 are considered exempt from publication under the Access to Information Procedure Rules under Rule 10.4 Category 5. "Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings."

4.6 Each Local Authority will need to approve the agreements, as well as the Company and WTY.

### **4.7 Risk Management**

4.7.1 This report sets out the main risks in relation to the agreements. The Leeds Project Board maintains a live risk register in relation to the event.

4.7.2 The key risks in the agreements are as follows:

- Funding claw back and management of terms
- Leeds responsibility generally under the Partnership Agreement to act as 'lead authority' and 'guarantee' the £11m costs.
- The Hosting Agreements are drawn from the English translation of the French ASO Agreement (also subject to French law). There are also a number of



different stakeholders and complex contractual arrangements between them. In some cases there are limits to liability of some parties. These factors combine to increase the risk of the actions of one party impacting on another, and the role of Leeds and the Company is key to manage the interface and any risks as they arise

- Leeds acts as lead authority for central procurements. The agreements do not set out expressly how risks around management of the contractors is allocated
- The fact that WTY has the primary contract relationship with ASO. This leads to risks around the extent to which Leeds or any other Local Authority has any direct rights against ASO for any default on their part which affects the event or causes losses/additional costs, however low that risk might be regarded. In any event the ASO agreement limits its own liability to WTY.

## **5 Conclusions**

- 5.1 The draft agreements are necessary to complete the contract structure anticipated and approved by Executive Board.

## **6 Recommendations**

- 6.1 That the Deputy Chief Executive, subject to agreement with other parties upon the terms proposed:

6.1.1 note the overview, implications, risks and other information set out in this report in relation to the outstanding Event Agreements;

6.1.2 approve the Council entering into the Company Funding Agreement, the Local Staging Agreements and the negotiation of arrangements with both the Highways Agency and the Police Authority, which are identified as within his delegated authority, on the terms proposed.

- 6.2 That the Chief Officer (Resources and Strategy), subject to agreement with other parties upon the terms proposed:

6.2.1 note the overview, implications, risks and other information set out in this report in relation to the refreshed Hosting Agreement developed for the Local Authorities.

6.2.2 approve the Council entering into the refreshed WTY Leeds Hosting Agreement which is identified as within his delegated authority, on the terms proposed.

- 6.3 A further update will be provided in the event that the proposed terms are altered in any way.

## **7 Background documents<sup>1</sup>**

- 7.1 None.

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.