

**DATED**

**2019**

**BETWEEN**

**[INSERT]**

**and**

**[INSERT] BMX CLUB**

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**A SERVICE LEVEL AGREEMENT RELATING TO THE COMMUNITY CYCLING  
FACILITY AT [INSERT]**

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**REF:**

This Agreement is made on \_\_\_\_\_ day of \_\_\_\_\_ 2019

BETWEEN

- (1) [INSERT] (called in this Agreement "the Council")
- (2) [INSERT] (called in this Agreement "the Contractor")

and reference to the "Parties" shall mean both the Council and the Contractor and reference to "the Party" shall mean either the Council or the Contractor as the context allows.

## WHEREAS

- (A) The Council is appointing the Contractor to provide certain services in respect of the community cycling facility at [INSERT] and the Contractor is agreeing to deliver such services to the Council always in accordance with the terms of this Agreement.
- (B) By entering into this Agreement the Parties are agreeing to be bound by the terms of the Agreement in respect of the services referred to in paragraph A.

**NOW IT IS HEREBY AGREED** as follows:

### 1. Definitions

- 1.1. The headings in this Agreement shall not affect its interpretation.
- 1.2. References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
- 1.3. References to a statutory provision shall include any subordinate legislation made from time to time under that provision.
- 1.4. References to Sections, clauses and Appendices are to the Sections, clauses and Appendices of this Agreement, unless expressly stated otherwise.
- 1.5. References to any body, organisation or office shall include reference to its applicable successor from time to time.

- 1.6. Use of the singular includes the plural and vice versa.
- 1.7. In this Agreement the following capitalised words shall have the relevant meanings ascribed to them as detailed below:
- 1.7.1. **Business Day means a day other than a Saturday, Sunday, bank or public holiday in England.**
  - 1.7.2. **“Club”** means the volunteer-led community cycling group set up for the purpose of animating the track and maintaining it.
  - 1.7.3. **“Club Participants”** means the people that participate in sessions organised by the Club
  - 1.7.4. **“Club Volunteers”** means the community club volunteers that have responsibility for leading the Club
- 1.1.1. **“Commencement Date”** means the date on which this Agreement comes into force and is of effect between the Parties being the **[INSERT]**.
- 1.1.2. **“Contract Period”** means the period during which this Agreement is of effect between the Parties as described in clause 2.1
- 1.1.3. **Data Protection legislation** means the Data Protection Act 1998 and any subsequent amendments or enactments thereto
- 1.1.4. **“Expiry Date”** means the date when this Agreement ceases to be of effect between the parties subject always to the terms of this Agreement being the **[INSERT]**.
- 1.1.5. **“Health and Safety Regulations”** means those health and safety regulations and Law which are applicable to the Services and which the Contractor knows or ought to be reasonably aware of and understand for the provision of the Services
- 1.1.6. **“Law”** means:
- 1.1.6.1. any applicable statute or proclamation or any delegated or subordinate legislation or regulation;
  - 1.1.6.2. any enforceable EU right within the meaning of Section 2(1) of the European Communities Act 1972;
  - 1.1.6.3. any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;
  - 1.1.6.4. National Standards; and

1.1.6.5. any applicable industry code,

in each case in force in England and Wales

1.1.7. **“Personnel”** means all persons employed by the Contractor to perform its obligations under this Agreement together with the Contractor’s servants, agents, suppliers and sub-Consultants used in the performance of its obligations under this Agreement

1.1.8. **“Track”** means the community cycling facility at [INSERT]

1.1.9. **Variation Notice** means written correspondence sent by either of the Parties requesting a change to any of the terms of this Agreement

## **2. Contract Period**

2.1. This Agreement shall come into force on the Commencement Date and continue until the Expiry Date. This Agreement will automatically expire without notice on the Completion Date unless it has been terminated earlier in accordance with the provisions of this Agreement and or by the operation of the Law.

2.2. This Agreement shall comprise the following documents:

2.2.1. the clauses in the body of this Agreement;

2.2.2. the Appendices attached hereto

## **3. Responsibility for the Track**

3.1. Ownership of the Track will remain with the Council at all times.

3.2. Overall responsibility of the Track will remain with the Council at all times.

## **4. The Contractor’s Obligations**

4.1. The Contractor will oversee a volunteer-led community cycling club that will operate from the Track. The Contractor will train Club Volunteers in its responsibilities for Health and Safety and Track Maintenance (see below), be affiliated to the cycling governing body (British Cycling) and deliver structured activity on the site.

## **5. Track Maintenance**

5.1. Overall inspection and maintenance responsibility of the Track will remain with the Council at all times and for a minimum of 7 years. However, the Club is to be responsible and take an active role in routine maintenance of the track, including:

5.1.1. The track surface start hill should be kept free and clean from organic materials especially in and around the start-gate system (if present). Typically a sweeping brush and/or an air blower can be used to sweep the start hill clean and blow away any debris from the track surface. Ideally this should be done 1-2 times per week

5.1.2. The Club is responsible for inspecting the whole of the track for any safety defects prior to each and every session including removing and disposing any debris, glass, litter, leaves and grass from the track surface. The Club shall not proceed with the session if the track is not deemed to be in a safe condition.

5.1.3. The Club is responsible for the cleanliness of the site during its clubs sessions to ensure that it is free from accumulations of litter, debris and alike, the Club will remove and dispose of these items. Litter removal is the responsibility of the Council.

5.1.4. The Club Volunteers to report any major faults with the facility or cases of vandalism in the park to the Council.

## **6. Insurance**

6.1. Activities delivered by the Club will be covered by the club's public liability insurance.

6.2. The Club must maintain appropriate up to date public liability insurance cover with a reputable insurable company against all relevant liabilities and indemnities that may arise under this Agreement.

6.3. The Club will have responsibility for contents insurance for the Club's equipment.

6.4. The Club shall be responsible for any injury, loss and damage which occurs under their surveillance howsoever caused.

6.5. The insurance above must cover a minimum indemnity limit of £ per claim and £ in aggregate. The Contractor must provide an up to date Certificate of Insurance policy and all other relevant documentation at the request of the Council.

6.6. Given this is an open access facility all other users would fall under the Councils own public liability insurance.

## **7. Health and safety**

- 7.1. The Contractor will develop and train Club Volunteers to follow the correct procedures for running structured cycling activities at the Track, as set out by the cycling governing body British Cycling, including:
  - 7.1.1. A detailed risk assessment is completed prior to the commencement of any activities that Club Participants will be participating in.
  - 7.1.2. Implement a policy of clear accident and incident reporting for the Club Participants
  - 7.1.3. Meet all health and safety requirements and without limitation provide suitably trained first aiders at every session.
  - 7.1.4. Establish a method to record bike checks and inspections and ensure that this is done on a regular basis
  - 7.1.5. Take due care to ensure that Club Volunteers and Club Participants are not causing nuisance or disrupting local residents and are considerate when accessing, using or leaving the site.

## **8. The Council's obligations**

- 8.1. The Council will facilitate and introduce the Club to key local agencies and providers who can support the overall success of the Club. This is to ensure the Track and Club provides community access, facilitates both formal and informal use and ensures that target groups such as children and younger people, and ethnic minorities will be able to access and take advantage of the facilities.
- 8.2. The Council will ensure the Club will not be charged any rent or lease fee for use of the track
- 8.3. The Council will provide appropriate storage facilities for the Club
- 8.4. The Council is responsible for maintaining appropriate signage that specifies the rules for using the facility
- 8.5. The Council will advise in advance of any events, activities or maintenance operations planned for the Track which may affect the Club Volunteers and Club Participants' use of the Track

- 8.6. The Council will supply the provision of materials & equipment needed for the maintenance of the track and will take a role in the maintenance of the track, including:
  - 8.6.1. The Council will be responsible for removing any litter and waste from the site
  - 8.6.2. Landscaping - grass should be strimmed when it gets to around 6" in length. Any collectable grass should be raked off and taken from site. Any organic material arising and going onto the track surface should be blown or swept off. This should be done as and when necessary, typically every other month.
  - 8.6.3. Drainage - Drains should be kept free from organic material. Typically organic matter may need to be removed from these areas by physically pulling them out from the drainage trenches. Any spills or blockages of the drains should also be taken care of to make sure water can always enter the drains unhindered. This should be done as and when necessary, typically once a month.
- 8.7. The Council to arrange for an annual professional maintenance service of the track, including:
  - 8.7.1. Evaluate track. Check all aspects are safe.
  - 8.7.2. Cut grass to sides and backs of all jumps, turns and start hill.
  - 8.7.3. Remove all organic material and grass from track footprint
  - 8.7.4. Application of cold lay tarmac to any unsightly and unsafe tarmac areas.
  - 8.7.5. Re applying and topping up of white lines where necessary on the berms to the inside and outside edge to show a clear indication of the tracks edge.
  - 8.7.6. Overseeing of any problematic or unsightly grass areas.
  - 8.7.7. Making good any areas disturbed by works, typically soiled and seeded.
- 8.8. The Council's parks management team shall include the Track under their regular maintenance and inspection regimes.

## **9. The Contractor's Personnel**

- 9.1. The Personnel must have appropriate DBS checks in place prior to working with the Club Participants. The Contractor must provide the Council with this information upon request
- 9.2. The Personnel must ensure that Club Participants attending sessions complete registration forms and equalities information prior to participation (form to be completed by parent/carer for those aged under-16 years) and a copy made available to the Council upon request
- 9.3. The Personnel must complete an attendance register at each session and a copy made available to the Council upon request
- 9.4. The Personnel must produce a schedule of activities to be undertaken by the Club which is to be made available to the Council upon request.
- 9.5. For the avoidance of doubt, nothing in this Agreement shall create a business tenancy and the Council will remain the owners of the Track throughout this Agreement and upon termination

## **10. No Partnership or Agency**

- 10.1. The Parties operate independently of each other and are not partners, principal and agent or employer and employee and this Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have nor shall represent that they have any authority to make any commitments on the other's Party's behalf.

## **11. Equalities Monitoring**

- 11.1. The Contractor must maintain a policy of equality of opportunity for the Club Participants and abide by the requirements of the Equality Act 2010 and any subsequent amendments and/or enactments thereto in force during the period of this Agreement
- 11.2. The Contractor will provide all information to the Council within its control in order to assist the Council to meet the Council's obligations under the same Equality Act 2010 and any subsequent amendments and/or enactments thereto.



## **12. Variations**

- 12.1. Either of the Parties to this Agreement may request a variation to the terms of this Agreement by serving on the other a Variation Notice. The party in receipt of a Variation Notice shall have 14 business days in which to notify the server of its response.

## **13. Termination**

- 13.1. Either party may terminate this Agreement upon giving three months' notice in writing to the other party. In any event this Agreement will naturally expire on the xxx
- 13.2. However, in fairness to all parties of this Agreement, and at the first indication of any such possibility, the implications of not being able to fulfil their obligations should be discussed without prejudice at the very earliest opportunity.

## **14. Breach of Agreement**

- 14.1. If either party to the Agreement believes that the terms of this Agreement have been breached they will submit written details of the alleged breach and, unless the matter is otherwise resolved, a meeting will be arranged between the Council and the Contractor to discuss the alleged breach.
- 14.2. If there is agreement that a breach has taken place, the action required to remedy the breach and the timescale for such action will be agreed and recorded in writing.
- 14.3. If there is no agreement, or the agreed action is not implemented, the alleged breach will be referred to the relevant departments within the Council in order for further action to be taken.
- 14.4. If there is a persistent and or serious failure to meet the terms of the Agreement, the Agreement will be terminated.
- 14.5. The Council retains the right to refuse access at any time if there is a breach of this Agreement. If this course of action is taken, the relevant Council representative will inform the Contractor of this decision. This also extends to the right to terminate activities whilst the event is in progress, if this is felt to be necessary in order to protect the Council's reputation.

## **15. Data Protection**

15.1. Place elsewhere

15.2. The Contractor must comply with relevant data protection legislation in all circumstances, including but not limited to all its marketing activities and communications where the personal data of the Club Participants are involved.

## **16. Entire Agreement**

This Agreement constitutes the entire agreement between the Parties and supersedes all previous agreements, understandings, and arrangements between the Parties, whether in writing or oral in respect of its subject matter.

Each Party acknowledges that it has not entered into this Agreement in reliance on and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement.

## **17. Law and Jurisdiction**

17.1. This Agreement shall be subject to the Law(s) of England and Wales and both parties submit to the exclusive jurisdiction of the English courts.

### **17.2. Severability**

17.3. If any provision or any part of any provision of this Agreement is declared invalid or otherwise unenforceable the provision or part of the provision as applicable will be severed but this will not affect the enforceability or validity of the remaining part or other provisions of this Agreement.

**THIS AGREEMENT HAS BEEN EXECUTED ON THE DATE SHOWN ON THE FRONT COVER**

**THE COMMON SEAL** of **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF XXX** is attached to this Agreement in the presence of:

.....  
(Authorised Officer)

**SIGNED** by **[insert]** under the hands of  
(a Director) and (Director / Company Secretary)

.....  
(Director)

.....  
(Director / Company Secretary)