

Service Level Agreement for Grant-Funded Services

Date:

Parties

- (1) Fylde Borough Council ("the Council")
- (2) Lowther Gardens (Lytham) Management Ltd. ("the Provider") as the operating company of Lowther Gardens Trust

Interpretation

In this agreement the following words have the following meanings:

Default Notice	A notice fulfilling the requirements of clause 29 and a Default Notice is "unresolved" at any time that the concerns raised in it have not been addressed to the reasonable satisfaction of the Council
Grant	The Initial Grant and any Subsequent Grant
Grant Period	The Initial Grant Period and any Subsequent Grant Period
Initial Grant	£71,417
Initial Grant Period	1 April 2012 to 31 March 2013
Performance Measures	The performance measures set out in the Second Schedule
Poster Sites	The advertising poster sites listed in the third schedule including, where the context permits, part of such a site.
Scheme	The scheme governing the charity known as Lowther Gardens, Lytham dated 3 June 2009, as amended 17 January 2011 (or any subsequent amendment)
Services	The services provided at Lowther Pavilion set out in the First Schedule
Subsequent Grant	Any grant paid by the Council to the Provider in respect of the Subsequent Grant Periods, the amount of which is to be decided by the Council in its discretion but subject to the matters set out in this Agreement, but which is not to exceed: 2013/14 - £59,167 2014/15 - £50,667

	2015/16 - £38,667 2016/17 - £31,667
Subsequent Grant Periods	Any of the following periods in respect of which a Subsequent Grant is to be paid: 1 April 2013 to 31 March 2014; 1 April 2014 to 31 March 2015; 1 April 2015 to 31 March 2016; 1 April 2016 to 31 March 2017.
TUPE	The Transfer of Undertakings (Protection of Employment) Regulations 2006

Status of Agreement

1. The Council has agreed to pay a grant to the Provider to enable it to provide the Services at Lowther Pavilion. The Council is satisfied that paying a grant for these purposes is likely to achieve the promotion or improvement of the economic, social or environmental well being of the Council's area. The Services provided by the Provider contribute towards delivery of the Council's strategic themes.
2. This Agreement sets out what the Provider is to do, how its performance will be measured and what happens if the Services are not provided as required by this Agreement.
3. This Agreement is not intended to constitute a contract between the Council and the Provider and the Council shall not be legally bound to pay the Grant.

The Grant and the Grant Period

4. The Council will (subject to as hereinafter provided) pay the Initial Grant to the Provider to enable the Provider to deliver the Services during the Initial Grant Period.
5. The Initial Grant will be paid in the following instalments:

Date	Amount
1 June 2012	£35,709
1 October 2012	£17,854
1 January 2013	£17,854

6. The Council may pay the Subsequent Grant to the Provider to enable the Provider to deliver the Services during the Subsequent Grant Periods. Any

Subsequent Grant will be paid in quarterly instalments on 1 April, 1 July, 1 October and 1 January each year.

7. In deciding whether to pay a Subsequent Grant and the amount of any Subsequent Grant, the Council shall have regard to the financial position of the Provider, as evidenced by the accounting information required to be provided, and to the principle of limiting the amount of Subsequent Grant to that required to fulfil its obligations under this agreement, taking into account the need for the Trust to build a reserve of Working Capital and future development funding.
8. In each Subsequent Grant Period, and at least three months prior to 1 April of the relevant period, the parties to this Agreement shall make best endeavours to negotiate a level of Service provision that reflects the Subsequent Grant which the Council (acting reasonably) will pay. In the unlikely event the parties to this Agreement are unable to reach mutually acceptable terms on the provision of the Services this Agreement shall terminate on 31 March in that current Grant Period.
9. The Provider must comply with the Performance Measures and any specific guidance issued by the Council in deciding how it will spend the Grant.
10. In addition to a Grant, the Council may (at its discretion) pay a termination payment of up to the equivalent of one instalment of that Grant for any Grant Period to the Provider on the last day of the Grant Period, if and to the extent that:
 - The Council does not propose to pay a Grant in respect of the year immediately following the end of the Grant Period;
 - The Provider does not intend to provide the Services or services similar to the Services during that year; and
 - The Provider demonstrates to the Council's satisfaction that the termination payment is needed to facilitate a reasonably justifiable winding-down of its service

The Services

11. The Provider will deliver the Services at the times and in the manner set out in this Agreement and in accordance with the Performance Measures.
12. The Provider will supply such information as the Council may reasonably demand from time to time about its provision of the Services to enable the Council to assess the Provider's compliance with the Performance Measures.

Lead Officers

13. Each party has nominated an officer to be the primary point of contact and an address for service on all matters concerning the Grant, this agreement or the Services. The nominated officers are:

Council: Director Community Services, Town Hall, Lytham St Annes, Lancashire FY8 1LW

Provider: Chairman, Lowther Gardens Trust, Lowther Pavilion, West Beach, Lytham St Annes, Lancashire FY8 5QQ

Ancillary Provisions

14. The Provider will be wholly responsible for the day-to-day financial and accounting functions in relation to the delivery of the Services from within its own resources. It must ensure that there are proper financial management arrangements in place in accordance with the UK Generally Accepted Accounting Practice (GAAP). These will include the following:
- A financial audit trail from allocation of spend to activity or service delivery
 - Records of spending decisions
 - Evidence of spend and payments made
 - Evidence of activity undertaken
 - Records of income generated
 - Records of all other funding secured
 - Professionally audited annual accounts
 - Quarterly management accounts
 - Evidence of contracting and procurement procedures carried out for significant items of expenditure, to ascertain value for money
15. The Provider will keep accurate financial records in accordance with GAAP and will make them available to the Council on request, including access to all relevant receipts and invoices. The records must in particular provide a clear audit trail of how any Grant has been used.
16. The Provider will supply to the Council a copy of its pre-audited accounts 3 months after the end of the Initial Grant Period and each Subsequent Grant Period and a copy of the professionally audited accounts within 6 months of the end of those periods.
17. The Provider will supply a copy of its annual budget to the Council one month in advance of the commencement of each Grant Period, which must reflect the Initial Grant or any Subsequent Grant payable by the Council for the provision of the Services.
18. The Provider will supply quarterly management accounts to the Council showing details of expenditure and income in the period and accumulated figures against budget for the year to date. Where the financial statements are inconsistent with the reasonable expectations of the Council the

Provider will clarify and give reasons for the situation, explaining how the agreed budget will be achieved.

19. All spending decisions of the Provider must be within the known resources available to the Provider at the time of making the decision.
20. Any costs, allowances or expenses incurred by the Provider as a result of providing financial information, documents or records to the Council or for attendance at any meetings with Council representatives will be the responsibility of the Provider.
21. The Provider will supply the Council with a schedule of dates when any external audit or accreditation inspection of the Services will be undertaken and provide the Council with a copy of any resulting report.
22. The Provider will, both in providing the Services and generally, comply with all relevant statutory requirements, including those related to health and safety and equalities. The Provider acknowledges that such compliance is the sole responsibility of the Provider and agrees to indemnify the Council against all costs, claims, demands, proceedings and liabilities whatsoever arising out of the performance of the Services. The Council does not, either by the payment of any Grant, by entering into this agreement or otherwise take, accept or assume any responsibility for any non-compliance by the Provider.
23. The Provider will ensure that there are appropriate internal procedures in place to manage risks and ensure good governance practice. The Provider will provide to the Council such evidence as the Council reasonably requires that risk management measures are being undertaken to mitigate threats to the future operation of the Services and that good governance practice is operational. Performance on risk management and governance measures will form a part of the quarterly monitoring meetings, including details of any changes to the register of interests maintained by the Trust.
24. The Provider provides the Services in its own right and not as agent or partner of the Council. The Council will not indemnify the Provider for negligence or any other breach of duty other than for death or personal injury caused by the negligence of the Council or its servants or agents.
25. The Provider will maintain adequate insurance to cover any liabilities arising from the performance of the Services. It will allow the Council to inspect its policies on request and submit copies of such policies to the Council's Lead Officer on an annual basis.
26. Throughout the Grant Period, the Provider will prominently acknowledge the funding the Council provides on official stationery, all main promotional material and publications of the Provider, incorporating the logo of the Council where space allows. Where relevant, all publicity and PR undertaken by the Provider must also clearly acknowledge and make reference to the Council as a funder.

27. Any approaches to the press with respect to any matter relating specifically to the terms of this Agreement should be jointly agreed through consultation between the Provider and the Council.
28. The Council agrees to reserve the Poster Sites for the use of the Provider, subject to the Provider complying with the following conditions:
- At any given time, at least 50% of the Poster Sites (not including those in the Lowther Grounds) are to be available for use by community groups or other non-commercial organisations (within a reasonable period of advertising).
 - Not to charge any community group or other non-commercial organisation a rate for using any Poster Site which could be deemed unreasonable in relation to the costs involved in displaying the poster, administration and its eventual removal.
 - Any bookings made with the Council for use of a Poster Site before the date of this agreement will be honoured.
 - The Provider will maintain the Poster Sites at its own expense in a safe and fit condition, including removing fly posting and graffiti.
 - The Provider will remove out-of date advertising.
 - The Provider acknowledges that the Council may, in its discretion, remove a Poster Site after consulting the Provider.
 - The Provider acknowledges that upgrading of the Poster Sites will be subject to the usual planning process and require the approval of the Council.
 - The Provider co-operates with Lancashire County Council concerning the use of the Poster Site at St Anne's library.

Default in Performance

29. In the event that the Provider ceases to provide the Services the Council:
- will cease to be under any obligation to pay any further instalment of any Grant ;and;
 - may, at its absolute discretion (but subject to clause 33), require the Provider to repay any or all of the most recent instalment of any Grant that has been paid to the Provider
30. If, having regard to the Performance Measures, and having previously provided written adequate notification of its concerns to the Provider, the Council considers that the performance of the Services unacceptably below the standard the Council reasonably requires pursuant to this Agreement, the Council may, notwithstanding anything else in this agreement, withhold the payment of any instalment of a Grant until it considers that the performance of the Services have returned to an acceptable standard.
31. If, having, withheld three or more instalments of a Grant pursuant to clause 31 of this agreement, the Council considers that there is no reasonable likelihood that the performance of the Services will return to an acceptable

standard within eight weeks, it may give notice to that effect to the Provider and the Provider will then, for the purposes of clause 29, be deemed to have ceased to provide the Services.

32. For the purposes of clause 30 the Council will only be deemed to have provided adequate notification of its concerns if the notification:

- was made in writing to the Provider's representative named in clause 14; and
- contained (in the opinion of the Council) sufficient detail about the Council's concerns to have given a reasonable organisation in the place of the Provider an adequate opportunity to address them to the reasonable satisfaction of the Council

33. In deciding what proportionate part of the Grant it considers appropriate to require the Provider to repay under clause 29, the Council will have regard to the following principles:

- If the Provider informs the Council, that it will cease to operate (but not if the Provider has already ceased to provide the Services), the need for the Provider to be able to bring about an orderly closure of the Services including but not limited to the termination of employment contracts and any statutory redundancy payments
- The Council will only require the Provider to repay sums in respect of Grant that was paid in respect of the current financial year of a Grant Period.

34. The Provider may bid to the Council for capital funding to support any major redevelopment of Lowther Pavilion. This will be considered alongside other demands on the Council's capital resources.

35. The Provider acknowledges that the Grant is not consideration for any taxable supply for VAT purposes to the Council by the Provider.

36. The Provider accepts that the Council may share information about the Grant with any parties of the Council's choice as well as those making requests for information under the Freedom of Information Act 2000.

37. The Provider may not assign any of their rights under this Agreement to any successor or other body.

38. The Provider may not transfer any part of the Grant or this Agreement to another organisation or individual.

39. It is agreed between the parties that the purpose of Grant is to fund any potential operating deficit in the Provider's resources in respect of the reasonable performance of the Services by the Provider during the Grant Period, taking into account the need for the Trust to build a reserve of Working Capital and future development funding. If during the course of

this Agreement it becomes reasonably apparent to the Council that the Grant is no longer required and the Provider is no longer operating at a loss, the Council (at its entire discretion) shall be at liberty (in consultation with the Provider) to withhold payment (in whole or part) of the Subsequent Grant for such time or periods as it shall deem appropriate. This clause shall not be invoked if the provider is successful in securing revenue and/or capital grants which require specific performance measures beyond those specified in this agreement.

Dispute Resolution

40. For the purposes of this clause:

- 'Dispute' means a dispute issue difference question or claim as between Fylde Borough Council and Lowther Gardens (Lytham) Management Ltd relating to or arising at any time out of this agreement;
- 'Party' means a party to the Dispute;
- 'Specialist' means a person qualified to act as an independent expert in relation to the Dispute having experience in the profession in which he practises for the period of at least 10 years immediately preceding the date of referral.

41. Either party may give to the other notice (a 'Dispute Notice') requiring a dispute to be referred to a Specialist and proposing an appropriate Specialist.

42. The Party served will be deemed to accept the proposals made in the Dispute Notice unless that Party within 10 Working Days of service of the Dispute Notice gives notice rejecting one or more of the proposals or unless each Party serves a Dispute Notice on the other contemporaneously.

43. Unless the Parties agree or are deemed to agree the appropriate Specialist:

- if the Parties do not agree which type of Specialist is appropriate to resolve the Dispute either Party may refer that question to the President or next most senior available officer of the Institute of Chartered Accountants England and Wales ('the Institute') who will (with the right to take such further advice as he may require) determine that question and nominate or arrange to have nominated the appropriate Specialist;
- 4.2 if the Parties do agree the appropriate type of Specialist but do not agree the identity of the Specialist he will be nominated on the application of either party by the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist but if no such

organisation exists then by the President or next most senior available officer of the Institute.

44. The fees and expenses of the Specialist, including the cost of his appointment, shall be borne as he shall direct and in default of direction are to be borne equally between the parties.
45. The Specialist must afford the Parties an opportunity to make written representations to him and an opportunity to make written counter-representations on any representations made to him by the other Party but is not in any way limited or fettered by such representations and counter-representations and is to be entitled to rely on his own judgment and opinion.
46. If a Specialist dies or refuses to act or becomes incapable of acting either Party may apply to the President or next available most senior officer to discharge him and appoint another in his place.
47. The Parties agree that the decision of the Specialist shall be final and binding upon them.

Transfer of Staff

48. The Council agrees that:

- (i) in so far as this agreement effects the transfer of an undertaking operated by the Council, and that the TUPE applies to such a transfer, it has and will comply with its obligations under the TUPE

- (ii) it will support an application by the Provider or the Lowther Gardens Trust to join the Lancashire County Pension Fund as an admissible body, and will, if requested by the Provider or the Lowther Gardens Trust, act as guarantor for that body's admission to the scheme in relation only to such persons who transfer to the employment of that body as a result of TUPE and who were, before such transfer, members of that fund.

- (iii) it shall retain any pension liabilities it may have for the transferred employees and those pensioners previously employed at Lowther Gardens up to 1 June 2012, under the Lancashire Local Government Pensions Scheme.

- (iv) it shall retain any redundancy liabilities it may have accrued for the transferred employees up to 1 June 2012.

- (v) In the event of any claim being made against the Council, it shall immediately notify the Provider and no agreement or settlement shall be reached or entered into by the Council, without the prior consent of the Provider, (which shall not be unreasonably withheld or delayed).

49. The Provider agrees that:

- (i) in so far as this agreement effects the transfer of an undertaking operated by the Council, and that the TUPE applies to such a transfer, it has and will comply with its obligations under the TUPE
- (ii) it accepts that the following four persons presently employed by the Council for the purposes of the undertaking to be transferred will, by virtue of TUPE, be transferred to the employment of the Provider on the 1 June 2012:

INFORMATION REDACTED DUE
TO PERSONAL DATA

The First Schedule

The Services

- (i) The maintenance and development of Lowther Pavilion as a cultural community facility, for the benefit of residents of and visitors to the Borough.
- (ii) The provision of a balanced and diverse programme of performing arts and entertainment, including dance, drama, music, musical theatre, variety and comedy; encouraging innovation through the use of new technology and the support of new writing and performing talent.
- (iii) The development of new audiences and encouragement of existing audiences to visit more frequently, building participation in the arts locally; accessible to all sectors of the community through programming, marketing and community engagement work.
- (iv) The promotion of the performing arts in Fylde, supporting and developing local amateur groups, volunteers and the wider community. The pavilion shall be available for hire by local community/amateur groups for a minimum of 120 sessions per year.
- (v) The free use by the Council of Lowther Pavilion and its facilities for up to 10 Council meetings per year and the annual Mayor

making ceremony on dates to be provided to the Provider in advance by the Council as soon as reasonably practicable. Dates of meetings for 2012/13 as follows –

- 30th July 2012 , from 19:00
- 24th September 2012 from 19:00
- 3rd December 2012 from 19:00
- 28th January 2013 from 19:00
- 4th March 2013 from 19:00
- 25th March 2013 from 19:00
- 15th May 2013 from 2pm

- (vi) The Provider shall make best endeavours to make available the Pavilion for use in the event of a civil emergency as a rest centre or similar facility.
- (vii) The development of service provision may change over time to reflect the current nature of standard business practice in the entertainment industry. All development will encompass the core values as presented in the Trust's artistic policy.

The Second Schedule

The Performance Measures

Quarterly meetings will be held between representatives of the Provider and the Council, where the information required by this agreement will be reviewed.

If requested to do so, the Provider will make an annual presentation to the Council's Community Focus Scrutiny Committee (or other such appropriate elected member group) at the conclusion (or as near to as possible) of each year of the operation of the Service Level Agreement summarising its performance and service during the year, including financial performance – annual outturn against the budget.

Quantitative

- The Services to be provided within the operating budget, provided in accordance with clause 18.
- A breakdown of the number of complaints received from service users and how they have been resolved.
- Number of sessions utilised by local amateur groups, volunteers and the wider community.

- Number and percentage of self-promoted shows which breakeven and/or make a profit

Qualitative

- The Trust will provide evidence that it is meeting art council and theatre management association industry standards in relation to customer satisfaction, audience profiling and quality of opportunity both for the visitor, local population and visiting companies. Income generation to develop the service offered and development work to encourage greater community use of the facilities. The Trust and the Council will work together to develop a greater understanding of all creative activities across the Borough.

The Third Schedule

The Poster Sites


Twelve double-crown boards at the Crescent, St Annes

Two double-crown boards at St Annes Library

Four double-crown boards at St Pauls Avenue, St Annes

Four double-crown boards at the entrance to Fairhaven Lake


Signatures



Fylde Borough Council

8/6/12.

Date



Lowther Gardens (Lytham) Management Ltd
(as operating company of Lowther Gardens Trust)

8th June 2012.

Date