

## **Appendix 3:**

### **Service Level Agreement for the Delivery of Ancillary Services by Fylde Council**

**This Agreement is made the 2016**

**Between**

- (1) FYLDE BOROUGH COUNCIL of Town Hall, Lytham St Annes, Lancashire FY8 1LW ('FBC') and**
- (2) LOWTHER GARDENS TRUST of Lowther Pavilion, West Beach, Lytham, Lancashire FY8 5QQ ('LGT').**

#### **1.0 Introduction**

1.1. FBC will provide the services described in this Agreement for the period 1<sup>st</sup> April 2017 31<sup>st</sup> of March 2022. These services are listed below and more particularly described in clause 5 ('the Services').

- Schedule 1. Parks management
  - Grounds maintenance service
  - Children's play area maintenance
  - Arboricultural service
  - Parks development & project function
- Schedule 2. Public convenience service
- Schedule 3. Car parking service
- Schedule 4. Building Maintenance & Engineering service
- Schedule 5. Leisure services

#### **2.0 Operating Framework**

2.1 The aim of the agreement is to set out a framework and approach to the delivery of the services that will assist Lowther Trust's commitment towards sustaining and continuously improving the standards of Lowther Gardens including all current services, facilities and site infrastructure

2.2 The details of this agreement provide a basic formal framework between Lowther Trust (LGT) and Fylde Borough Council (FBC) within which both parties have stated objectives. The agreement has capacity for flexibility, sustainability, change and evolution.

#### **3.0 Key Aims and Objectives**

3.1 **LGT:** *"To maintain, improve and sustain Lowther Gardens including all facilities, assets and infrastructure to a high quality standard that meet all the needs and expectations of local residents and visitors"*

3.2. **FBC:** *“To provide and sustain a range of quality services and facilities that meet the standards set by LGT”*

3.3. **Joint:** *“The aims of both parties is to forge a strong and positive working relationship and share the commitment towards achieving the highest possible service delivery and value for money”*

#### **4.0 Terms and Conditions**

4.1 This Agreement relates to the period from 1st April 2017 to 31st March 2022 and may be extended by agreement between the parties. Any extension to this initial period will be subject to negotiation and on full agreement of both parties.

4.2 **Warranties, liability and indemnities.** FBC warrants that it will use reasonable care and skill in performing the Services (to the standard generally accepted within the relevant industry, sector or profession)

4.3 If in the opinion of LGT, FBC performs the services negligently or materially in breach of this Agreement, then, LGT shall give written notice to FBC to complete the relevant services. FBC shall consider the contents of the notice and if accepted will re-perform the relevant part of the Service in accordance with the notice within a reasonable time. LGT’s notice must be served no later than 12 months from the date of expiry of this agreement or any extension of it. In the event that FBC shall dispute the contents of any notice received, it shall refer the matter for resolution in accordance with the procedure for dealing with disputes under this Agreement.

4.4 Neither party shall be liable to the other party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other party of an indirect or consequential nature including without limitation any economic loss or other loss of turnover, profits, business or goodwill.

4.5 This Agreement shall not constitute or imply any formal partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement. Neither party shall have, nor represent that it has, any authority to make any commitments on the other party's behalf.

4.6 Each party shall indemnify and hold harmless the other from and against all Claims and Losses arising from loss, damage, liability, death and injury to employees and third parties, infringement of third party intellectual property, or third party losses by reason of or arising out of any information supplied to each other, their employees or consultants, within or without the scope of this Agreement. 'Claims' shall mean all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise); and 'Losses' shall mean all losses including without limitation financial losses, damages, legal costs and other expenses of any nature whatsoever and pursuant to this indemnity both parties shall take out a policy of insurance with a reputable insurance company containing an indemnity limit of at least

£5 million, in any one claim, unlimited in any one year, in respect of such claims and to produce a copy of such insurance to each other on demand.

4.7 Each of the parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.

4.8 **Force majeure.** Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party. The party affected by such circumstances shall promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 6 months, either party may terminate this Agreement by written notice to the other party.

4.9 **Amendments.** This Agreement may only be amended or varied in writing when signed by a duly authorised representative of both parties.

4.10 **Entire agreement.** This Agreement contains the whole agreement between the parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement excludes liability for fraud.

4.11 **Confidentiality.** Each Party ('Receiving Party') shall keep the confidential information of the other Party ('Supplying Party') confidential and secret, whether disclosed to or received by the Receiving Party subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 ('the FOI'). Subject thereto, the Receiving Party shall only use the confidential information of the Supplying Party for the Purpose and for performing the Receiving Party's obligations under the Agreement. The Receiving Party shall inform its officers, employees and agents of the Receiving Party's obligations under the provisions of this clause, and ensure that the Receiving Party's officers, employees and agents meet the obligations. In the event that the parties receive an information request they shall consult each other prior to disclosing information. The parties shall promptly respond to such consultation within the statutory timescale and if no response is received within that period the other party shall be at liberty to respond without further reference to them. Any response received shall be taken into consideration by the Receiving Party but they shall have absolute discretion to apply or not to apply any exemptions under the FOI

4.12 **Announcements.** Subject to the requirements of FOI referred to in clause 4.11, no party shall issue or make any public announcement or disclose any information regarding this Agreement unless prior to such public announcement or disclosure it furnishes the other party with a copy of such announcement or information and obtains the approval of the other Party to its terms. However, no party shall be prohibited from

issuing or making any such public announcement or disclosing such information if it is necessary to do so to comply with any applicable law or the regulations of a recognised stock exchange.

#### **4.13 DISPUTE RESOLUTION**

All disputes shall in the first instance where possible be dealt with in accordance with in the manner referred to in clause 7.7. Thereafter, or if LGT or FBC shall so elect, the matter shall be dealt with as follows:

4.13.1 If a dispute arises between the parties either party may refer the dispute for determination in accordance with the procedure set out in this clause.

4.13.2 A dispute referred for determination under this clause shall be resolved by referral in the first instance to the operational director of FBC and the steering group of LGT (clause 7.2 refers) who shall endeavor to jointly resolve the dispute within 21 days.

4.13.3 If any dispute is not resolved within 21 days of its referral pursuant to clause 4.13.2 then the dispute shall be referred to an expert to be agreed between the parties for determination (at their joint expense) provided always that the period of 21 days can be extended by agreement of both parties.

4.13.4 If the parties cannot agree on an expert to act within 14 days of the date of the request to appoint an expert, such independent expert will be appointed by the President or deputy President for the time being of the Chartered Institute of Arbitrators on the application by either party.

4.13.5 The parties agree that the decision of the expert will be final and binding on the parties unless and until set aside by the decision of a Court and the parties agree that this Agreement shall be governed by and construed in accordance with English law and the parties submit to the jurisdiction of the English courts

4.14 **Health and Safety.** FBC shall comply with all health and safety legislation in force.

#### **4.15 NOTICES**

4.15.1 Any notice required by this Agreement to be given by either party to the other shall be in writing and shall be served personally, or by sending it by registered post or recorded delivery to the address of the parties as stated in this Agreement or such other address as shall be notified to each other from time to time;

4.15.2 Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served 48 hours after it was posted.

#### **4.16 WAIVER**

The failure of FBC to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all the terms and conditions of this Agreement

#### **4.17 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 it is agreed that nothing in this Agreement shall confer on any third party any right to enforce or any benefit of any term in this Agreement.

#### **4.18 INTELLECTUAL PROPERTY AND RECORDS**

4.18.1 All plans, photographs, illustrations, sketches, diagrams, specifications, calculations, records, computer data, codes of practice or any documents or any other information in whatsoever form (including that accessible by computer) provided by or on behalf of FBC in connection with this Agreement shall at all times be and be deemed for the purposes of this Agreement to be the sole property of FBC. FBC shall have and be deemed for the purposes of this Agreement to have the sole and exclusive ownership of all copyrights and any other intellectual property rights therein.

4.18.2 LGT shall, at the request of FBC or upon the termination of this Agreement, deliver within 28 days all the documents produced, generated, prepared, acquired or created by or on behalf of FBC for the purposes of this Agreement, to FBC's offices.

4.19 **Data Protection.** The parties shall at all times comply with the provisions and obligations of the Data Protection Act 1998 as amended from time to time.

#### **4.20 LAW AND CHANGE IN LAW**

4.20.1 'The Law' shall mean any applicable Act of Parliament, sub-ordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which FBC is bound to comply.

4.20.2 FBC shall comply at all times with the Law in its performance of this Agreement.

4.20.3 On the occurrence of a change in the Law which has a direct effect upon the any contract prices referred to herein the parties shall meet within fourteen (14) days of FBC notifying LGT of the change in the Law to consult and seek to agree the effect of the change in the Law and any change in the said contract prices as a result following the principle that this clause is not intended to create an artificial cushion from market forces for FBC. If the parties, within fourteen (14) days of this meeting, have not agreed the occurrence or the impact of the change in the Law, either party may refer the matter to dispute resolution in accordance with clause 4.13.

4.20.4 Any agreed additional sums payable as a result of the operation of clause 4.20.3 shall be included in the said contract price. For the avoidance of doubt nothing in this Agreement is intended to allow FBC double recovery of any increase in costs.

#### **4.21 Bribery and Corruption**

4.21.1 LGT shall not offer or give, or agree to give, to any employee, agent, servant or representative of FBC any gift or consideration of any kind as an inducement or reward for doing, any act in relation to the obtaining or execution of the Agreement or any other contract with FBC, or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement or any such contract. The attention of the LGT is drawn to the criminal offences under the Bribery Act 2010.

4.21.2 LGT warrants that it has not paid commission nor agreed to pay any commission to any employee or representative of FBC by the LGT or on its behalf.

4.22.2 Where LGT engages in conduct prohibited by clauses 4.21.1 and 4.21.2 in relation to this or any other contract with FBC, FBC has the right to:

4.22.1 Terminate the Agreement and recover from LGT the amount of any loss suffered by FBC resulting from the termination, or

4.22.2 Recover in full from LGT any other loss sustained by FBC in consequence of any breach of this clause whether or not the Agreement has been terminated.

**4.23 SEVERANCE.** If any provision of this Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

4.24 Insurance Cover. Both LGT and FBC will hold the relevant insurance cover.

4.241 FBC business insurance is placed with Zurich Municipal Insurance Company, and the policy renewal date is 1<sup>st</sup> April each year. The two main policies held by the Council are:

- Employer's Liability Insurance £25,000,000
- Public Liability Insurance £25,000,000

4.242 LGT will be responsible for providing its own insurance cover in respect of buildings, employer's liability and public liability as necessary.

## **5.0 Description of the Services**

5.1 **General Obligations.** The sites and facilities included in this Agreement are the responsibility of "LGT". However, it is agreed that FBC will be responsible for the day to day maintenance of these sites and facilities under the terms of this Agreement. FBC will assist "LGT" in undertaking and delivering any improvements or long term strategic development, but final authorisation and decision making shall remain the responsibility of "LGT".

### **5.2 Schedule 1: Parks Management**

5.2.1 Ground maintenance service: This Agreement includes the grounds maintenance of Lowther Gardens. Activities will include but are not limited to: Grass cutting, weeding,

hedge cutting, litter picking, shrub border maintenance, general cleansing, supply, planting and maintenance of seasonal bedding, installation and watering of floral containers.

#### 5.2.2 Children's play area inspection, maintenance and repair service:

- All inspections and maintenance recommended by the equipment manufactures in accordance with the relevant standards BS.EN 1176/1177
- The supply and replacement of worn parts, such as swing seats, chains, shackles and bearings
- The supply and replacement of damaged parts resulting from vandalism.
- De-scale and painting of playground equipment in accordance with BS.EN 1176/1177
- Immobilization of dangerous or damaged playground equipment
- Removal but not replacement of condemned equipment.
- Repairs to damaged safety surfacing up to 1.5m square
- Repair and maintenance of playground perimeter fencing and access gates.

5.2.3 Arboricultural Service: "LGT" and FBC will agree an arboricultural action plan to agree the activities to be undertaken each year. All works will be undertaken on the agreement of both partners.

5.2.4 Parks development & project function: This service will be provided by a fully qualified landscape architect. "LGT" and FBC will agree a list of priority projects at the start of the agreement. The development function coordinates all the maintenance, development and longer term strategic direction, to ensure a clear long term vision that is sustainable and meets the need of "LGT" and its partners. The two main purposes of this function are:

5.2.5 To provide "LGT" with the ability to strategically develop and sustain its assets and facilities

- Production of strategies and policies relating to the services and assets included in this SLA
- Production of site masterplans and management plans
- Landscape design & project management
- Preparation of tenders, specifications & bills of quantity
- Preparation of estimates
- Tender / cost evaluation
- Seasonal Bedding and planting designs
- External funding bids and grants
- Working with community groups
- Implementation of environmental initiatives

#### 5.2.6 Land stewardship issues

- Public consultation and community management
- Events preparation and management
- Boundary / party wall issues
- Drainage issues
- Land ownership issues / enforcement
- Anti - social behaviour issues
- Management of small day to day improvements / projects
- Working with 3rd parties – fairgrounds, contractors, residents, war memorial trust, football foundation, UU, allotment association, LCC, LWT & environmental partners
- Green Flag assistance
- North West / Britain in Bloom assistance

#### 5.2.7 Projects and improvements

Works include but are not limited to:

- Fence and gate repairs
- Installation of fences and gates
- Furniture repairs and installations –seats, picnic benches, litter bins etc
- Installation of bollards and signs
- Graffiti removal & power washing
- Paving, edging & minor footpath repairs
- Painting
- Soft landscaping

5.2.8 Larger capital works, such as large landscape changes or wholesale replacement of facilities are outside the scope of this agreement. However, officers from the Parks & Greenspace Team will assist “LGT” to constantly improve and conserve the site with regard to external funding bids & project management.

### **5.3 Schedule 2: Public Conveniences Service**

5.3.1 Fylde Council provides a number of public conveniences across the borough under section 87 of the Public Health Act 1936. The provision of public conveniences is not a statutory responsibility, however, such facilities are deemed vital to the Council’s tourist economy. As such, the public conveniences situated at the front of Lowther Gardens have proved to be very popular with visitors to the area.

5.3.2 The operation of these facilities has been contracted out to Danfo (UK) Limited and are outside the scope of this agreement. Danfo are fully responsible for providing operational, repair, maintenance and cleansing services in respect of these conveniences. Danfo is also required to provided and maintain all necessary equipment and must refrain from using any parts of the premises for any purpose other than the performance of the service.



5.3.3 Council staff conduct regular and thorough inspections of the premises and quality assurance procedures to ensure the correct standards and levels of cleanliness are maintained at all times.

5.3.4 The income is collected by Danfo on behalf of Fylde Council. This income is used to part fund the contract. It should be noted however, that the value of the income does not cover the full contract price for providing these facilities.

#### **5.4 Schedule 3: Car Park Service**

5.4.1 This agreement includes the operation and enforcement of Lowther Gardens Car Park under FBC's The Fylde Borough (Off-Street Parking Places) (Consolidation) Order 2007 in line with the Traffic Management Act 2004. This includes enforcing the car park's conditions of use, provision of a pay and display machine linked to FBC's back-office and collecting and banking of pay and display machine income. To enable these tasks to be delivered FBC will carry out minor maintenance and repair of the car park surface including but limited to the in-filling of pot holes, keeping drainage gullies clear, ensuring adequate lining and signs and maintaining the pay and display machine. Larger capital works, such as car park resurfacing and replacement of the pay and display machine are outside the scope of this agreement.

5.4.2 Income generated by the pay and display machine on Lowther gardens car park as well as the costs associated with operating the car park will be divided 50/50 between FBC and LGT. Income and costs relating to the enforcement of parking conditions will be wholly retained/borne by FBC as required by the Traffic Management Act 2004.

#### **5.5 Schedule 4: Technical Services Building & Engineering Service**

5.5.1 Repairs & maintenance, technical services will be responsible for reactive & planned maintenance on the current asset list of buildings and structures at Lowther Gardens (excluding Lowther Pavilion).

5.5.2 The Maintenance will be provided as outlined and include, Legionella testing, electrical and mechanical testing, and all other statutory duties, that are included with Fylde Borough Council buildings.

#### **5.6 Schedule 5: Leisure Service**

5.6.1 FBC will be responsible for the management of all the leisure facilities within the Gardens including crazy golf, bowling pavilion, aviary, and tennis courts. FBC will also be responsible for providing all apparatus and equipment.

5.6.2 Income from use of the leisure facilities will be taken by the Lowther Pavilion staff. LGT will retain 15% of the income with 85% being paid to FBC at the end of the financial year (early March) via the BACs system, to ensure that the income is included in FBC's previous year's account.

5.6.3 FBC and Lowther Gardens Trust will agree a procedure for verifying and auditing income to the satisfaction of FBC and in accordance with audit best practice.

## **6.0 Miscellaneous**

6.1. **Insurances.** LGT will be responsible for providing its own insurance cover including any public liability and building insurance. FBC will be responsible for providing its own insurance cover including any public liability and employee liability insurance.

## **7.0 Communications**

7.1. **FBC Representatives.** The designated contract Supervisor for the service delivery will be Mick Sumner. Mick will be the first point of contact for all day to day parks operational issues including complaints, requests or issues. Mick will be supported by a service delivery team. Below shows the service delivery team and their specialisms:

<b>Issue / Request</b>	<b>Contact</b>	<b>Contact Details</b>
Parks Operational	Mick Sumner	<u>Mobile</u> <u>Office</u>
Play & Projects	Mick Sumner	Mobile Office
Arboriculture	Gail Isbister	<a href="mailto:gaili@fylde.gov.uk">gaili@fylde.gov.uk</a> Mobile 07966890688 Office 01253 658471
Customer Service / Office	Vicky Healy	<u>Office</u>
Parks Development	Amy Docherty	Mobile Office
Landscape Design	Johanna Wood	Mobile Office
Quality / Finance / Management	Lisa Foden	Mobile Office
Public Conveniences	Sarah Wilson	<a href="mailto:sarahw@fylde.gov.uk">sarahw@fylde.gov.uk</a> Mobile 07971097839 Office 01253 658432
Car Park	Andrew Loynd	<a href="mailto:andrewl@fylde.gov.uk">andrewl@fylde.gov.uk</a> Mobile 07966890715 Office 01253 658527
Technical Services Building & Engineering	Shafkat Shzhad	<a href="mailto:shafkats@fylde.gov.uk">shafkats@fylde.gov.uk</a> Office 01253 658459
Technical Services Building & Engineering	Peter Downs	<a href="mailto:peter.downs@fylde.gov.uk">peter.downs@fylde.gov.uk</a> Office 01253 658582
Leisure	Ian Brookes	

7.2 **LGT Representatives.** The Steering group will consist of a minimum of 4 members of the Lowther Trust Board who will authorise any key service changes and development and will be responsible for any key decision making,

Administration of the Agreement will be undertaken by the trust Board and its representatives.

Role	Contact	Contact Details
Acting Chair	Timothy Lince	<a href="mailto:trustees@lowtherpavilion.co.uk">trustees@lowtherpavilion.co.uk</a> 01253 839375
Lowther Pavilion Manager	Theatre Manager	<a href="mailto:trustees@lowtherpavilion.co.uk">trustees@lowtherpavilion.co.uk</a> 01253 794221

7.3. **Progress Meetings.** LGT and FBC will meet once per quarter to discuss any parks management service issues including:

- Play and projects
- Grounds Maintenance
- Arboriculture
- Development
- Customer Care and Quality

7.4. **Community Management.** LGT will be responsible for making all decisions with regard to all community projects and initiatives including events. The development officer will work with community groups and stakeholders with all proposals being presented to LGT for approval and authorisation.

7.5 **Public Complaints & Customer Service.** FBC will provide office cover to receive any public enquiries Monday to Thursday 9.00am – 5.00pm and Friday 09:00am 4.30pm. All enquiries will be responded to as a matter of priority and recorded. These will be reported to LGT at the monthly progress meeting.

7.6 **Publicity.** All media involvement and marketing information will be subject to the agreement of both parties and clause 4.12 refers.

7.7. **Service Failures.** Concerns or complaints about the level or quality of the parks management service (including that provided by a specific individual) should in the first instance be raised with the Head of Parks & Greenspace. Concerns with the other services should be raised with the specified officer on the communications list. An investigation will be undertaken and a report provided to the Customer on the findings and service improvements to be made. In the event that LGT remains dissatisfied with the Services the matter shall then be dealt with in accordance with the dispute procedure referred to in clause 4.13.

**Signatures**

Signed on behalf of Lowther Trust

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Signed on behalf of Fylde Borough Council

(Director of Development Services)

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