

DECISION ITEM



REPORT OF	MEETING	DATE	ITEM NO
DEVELOPMENT SERVICES DIRECTORATE	TOURISM & LEISURE COMMITTEE	3 NOVEMBER 2016	5
LOWTHER GARDENS TRUST – ANNUAL REPORT AND RENEWAL OF SERVICE LEVEL AGREEMENTS INCLUDING NEW SUBSIDY REQUEST			

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY:

The Council currently has a five-year Service Level Agreement with the operating company of Lowther Gardens Trust, Lowther Gardens (Lytham) Management Ltd, to provide services at Lowther Pavilion. As part of this agreement, the Trust must provide a report to the appropriate elected member group, (in this case the Tourism and Leisure Committee) at the conclusion of the financial year, summarising performance over the previous year. This report is included as Appendix 1, and representatives from Lowther Gardens Trust will be attending the committee meeting to summarise the performance of the service over the previous year.

The current Service Level Agreement expires 31 March 2017, and Members are requested to consider the proposed terms and continuation of this Agreement, including a new subsidy request of £31,667 per annum over a 5 year term commencing 1 April 2017, as detailed in the report.

In addition to the above, there is a supplementary Service Level Agreement between Fylde Council and Lowther Gardens Trust, to cover activities which are not part of the original Service Level Agreement relating to parks management, public convenience service, car parking service, building maintenance & engineering service and leisure services. This Agreement also expires 31 March 2017, and Members are requested to consider the terms and continuation of this Agreement, as detailed in the report.

RECOMMENDATION

The Tourism and Leisure Committee is requested:

1. To consider the proposal and recommend to Council an annual unfunded revenue budget increase of £31,667 to provide an annual subsidy to Lowther Gardens Trust in the years 2017/18, 2018/19, 2019/20, 2020/21 and 2021/22.
2. To consider the proposal and recommend to Council the continuation of the Service Level Agreement (Appendix 2) regarding the provision of services at Lowther Pavilion by the operating company of Lowther Gardens Trust, Lowther Gardens (Lytham) Management Ltd.
3. To consider and agree the terms and continuation of the supplementary Service Level Agreement between Fylde Council and the Lowther Gardens Trust (Appendix 3) as summarised in this report.

SUMMARY OF PREVIOUS DECISIONS/REPORTS (Only recent)

Tourism & Leisure Committee 10 September 2015

Information item 8: Annual Report – Lowther Gardens Trust

This was an Annual Report for Lowther Gardens Trust summarising the performance over the previous year. Representatives from Lowther Gardens Trust attended the committee to present the key points arising from the report.

Cabinet Meeting 25 June 2014

In reaching its decision, Cabinet considered the details set out in the report before it and at the meeting and RESOLVED to approve the completion of a supplementary Service Level Agreement between Fylde Borough Council and the Lowther Gardens Trust as summarised in the report and the Heads of Terms.

Cabinet Meeting 23 May 2012

Item 6: Policy Development Scrutiny Committee - Recommendations

The Policy Development Scrutiny Committee of 19 April 2012 recommended the following to Cabinet for approval:

Lowther Gardens Trust – Recommendations of the Working Group

1. To recommend that the proposed funding for the Lowther Pavilion element of the Trust's business should be released as long as there are checks and balances in place outlined below.
2. That the Trust should provide the Working Group with a copy of their policy relating to the management of conflicts of interest, and a copy of the register of interests
3. At the quarterly meeting required by the Service Level Agreement, alongside the management accounts detailing actual expenditure and income against budget, any updates to the register of interest should be declared,
4. That the Trust should report annually to the Scrutiny Committee regarding their performance measured against the Service Level Agreement.

Cabinet RESOLVED to approve the recommendations made by the Policy Development Scrutiny Committee held on 19 April 2012

Cabinet Meeting 23 May 2012

Item 10: Lowther Gardens Trust

Cabinet RESOLVED:

1. To approve the release of the following revenue budget provision to the Lowther Gardens Trust to support the management of the Pavilion, in line with the business plan / financial forecast previously provided, whilst recognising the financial implications identified in the report:

2012/13 - £71,417; 2013/14 - £59,617; 2014/15 - £50,667; 2015/16 - £38,667;

2016/17 - £31,667.

2. To delegate to the Leader in consultation with the Director of Community Services and the Council's Section 151 Officer, agreement of the final terms of the Service Level Agreement.
3. To pass on Cabinet's thanks and appreciation to the Working Group for their work on the matter

CORPORATE PRIORITIES	
Spending your money in the most efficient way to achieve excellent services (Value for Money)	√
Delivering the services that customers expect of an excellent council (Clean and Green)	√
Working with all partners (Vibrant Economy)	√
To make sure Fylde continues to be one of the most desirable places to live (A Great Place to Live)	√
Promoting Fylde as a great destination to visit (A Great Place to Visit)	√

REPORT

BACKGROUND

1. Lowther Gardens was registered as a charitable trust in 2006, with the Council as sole trustee. Since 2006 a number of independent trustees have subsequently been appointed, with a total of six presently in post. The Council remains as a trustee, and is represented at trust meetings by the chairman of the Tourism and Leisure Committee.
2. Lowther Gardens (Lytham) Management Ltd was set up in February 2011 as the operating company of Lowther Gardens Trust, to deliver the day-to-day operation of Lowther Pavilion.
3. The current service level agreement between Fylde Council and Lowther Gardens (Lytham) Management Ltd. was agreed by Cabinet in May 2012 for a 5-year period commencing 1 April 2012. In the agreement, the Council agreed to pay a reducing subsidy over the five year period as follows:

Year	Amount of Subsidy
2012/13	£71,417
2013/14	£59,167
2014/15	£50,667
2015/16	£38,667
2016/17	£31,667

4. The existing Agreement (2012 to 2017) specifies that Lowther Gardens (Lytham) Management Ltd ("the Provider") as the operating company of Lowther Gardens Trust will deliver the services in accordance with identified performance measures:
 - The maintenance and development of Lowther Pavilion as a cultural community facility, for the benefit of residents of and visitors to the Borough.

- 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.
 - 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.
 - 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.
 - 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.
 - 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.
 - 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.
 - 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.
 - The Services to be provided within the operating budget, provided in accordance with clause 18¹.
 - 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
 - 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.
5. In June 2014 Cabinet agreed to continue to provide several ancillary services to Lowther Trust under a supplementary Service Level Agreement relating to the maintenance of Lowther Gardens. Services include Parks Management, Public Conveniences, Car Parking Service, Building Maintenance (excluding Lowther Pavilion) & Engineering Service and Leisure Services. The budget for the delivery of these services is retained by the Council and delivered with no charge to the Trust. This Agreement also expires 31 March 2017.
6. The costs of delivering these services have been delivered from existing approved revenue budgets. There has been no additional costs to Fylde Council arising from the delivery of this supplementary Service Level Agreement.

¹ Clause 18 relates to supplying a copy of the annual budget to the Council

CURRENT PERFORMANCE

7. There are regular meetings between the Trust and council officers to review performance. A representative of the Trust will be in attendance at the committee meeting to give an overview on performance for the past year.

FINANCIAL SUBSIDY FROM FYLDE COUNCIL

8. In August 2016, representatives of Lowther Gardens Trust approached the Council for a continuation of the Service Level Agreement for a further period of 5 years, and asked that the current annual subsidy of £31,667 be retained throughout the proposed 5 year Agreement, to be paid to the operating company of Lowther Gardens Trust, Lowther Gardens (Lytham) Management Ltd by Fylde Council, to ensure the sustainable management of Lowther Pavilion.
9. Over the period of the existing agreement Lowther Gardens Trust has been successful in reducing significantly the net operating cost of the facility at the same time as increasing the range and quality of programme of and activities. However local theatres of this type and size do often struggle to make a profit and require some continued public subsidy to maintain the quality and range of cultural offer.
10. The current medium term financial strategy shows the existing subsidy of £31,667 dropping out of the budget at the end of 2016/17, with no budget identified for 2017/18 onwards. If members are minded to provide further financial support for Lowther it will need to be on the basis of a revenue budget growth item.
11. The Budget Working Group has considered this request and recommends that the existing subsidy of £31,667 continues for the period of the five year SLA. If any further subsidy is sought after this it would need to be subject to a subsequent request from the Trust and considered by the Council.
12. Officers have reviewed the current Service Level Agreement for consideration and the proposed Agreement is included as appendix 2, including the annual subsidy of £31,667.
13. If the proposed agreement is supported, the Council would be required to increase the council's revenue budget as per the table below, through an unfunded revenue budget increase:

Year	Amount of Subsidy
2017/18	£31,667
2018/19	£31,667
2019/20	£31,667
2020/21	£31,667
2021/22	£31,667

14. The proposed revenue subsidy is shown in the Lowther Gardens Trust business plan / financial forecast attached at appendix 1.

15. As the Supplementary Operational Service Level Agreement also expires 31 March 2017, it is recommended to agree a new 5 year Agreement. This Agreement includes parks management of Lowther Gardens, public conveniences, car parking service, building maintenance (excluding Lowther Pavilion) & engineering services and leisure services.
16. During the term of the Supplementary Service Level agreement the standard of maintenance relating to grounds and structures throughout the Gardens has remained high. The site has retained Green Flag accreditation and is part of the successful Lytham 'In Bloom' annual submission which has constantly reached gold standard.
17. The costs of delivering these services will be delivered from existing approved revenue budgets held by Fylde, and delivered to the Trust at no cost.
18. The Council currently operates the car park on behalf of the Trust with income shared. The Trust has indicated it wishes to propose a different model of operating the car park, although this has not been received at the time of publication of this report.

FUTURE REVENUE BUDGET IMPACT

19. If a continuation to the Service Level Agreement between Fylde and Lowther Management Company is agreed containing financial support for the Trust for the next five years, an unfunded revenue budget increase of £31,667 will be required from 2017/18 to 2021/22.
20. If a continuation to the Service Level Agreement for the delivery of the Ancillary Services by Fylde council to Lowther Gardens Trust is supported there will be no impact on existing revenue budgets for the services within this agreement. The costs of delivering these services will be delivered from existing approved revenue budgets held by Fylde.
21. The level of annual subsidy provided to the Trust has reduced over the term of the existing Service Level Agreement from £71,417 to £31,667, demonstrating a decrease in operating costs for Fylde Council. Lowther Pavilion is the Borough's only theatre and the current Agreement is providing a sustainable service, at a reduced revenue cost.

IMPLICATIONS	
Finance	<p>If a continuation to the Service Level Agreement for grant aid is agreed, an unfunded revenue budget increase will be required of £31,667 per annum for the five year duration of the SLA.</p> <p>This report details the Heads of Terms for a supplementary service Level agreement between Fylde BC and the Lowther Trust. The costs of delivering the services as detailed in the revised Service Level Agreement will be delivered from existing approved revenue budgets.</p>
Legal	The legal implications are covered in the proposed Service Level Agreements at Appendix 2 and 3
Community Safety	None arising from this report
Human Rights and Equalities	None arising from this report
Sustainability and Environmental Impact	For the duration of the existing Service Level Agreements, the Council and the Trust have worked well together in partnership to deliver sustainable services at Lowther Pavilion and Gardens
Health & Safety and Risk Management	Risk assessment template at Appendix 4

LEAD AUTHOR	TEL	DATE	DOC ID
Mark Wilde	01253 648475	3 October 2016	

LIST OF BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
T & L committee agenda & minutes	10 Sep 2015	CMIS > Meetings Calendar
Cabinet agenda and minutes	25 June 2014	CMIS > Meetings Calendar
Cabinet agenda and minutes	23 May 2012	CMIS > Meetings Calendar
Policy Development Scrutiny Committee agenda and minutes	19 April 2012	CMIS > Meetings Calendar
Policy Development Scrutiny Committee agenda and minutes	8 December 2011	CMIS > Meetings Calendar
Cabinet agenda and minutes	16 November 2011	CMIS > Meetings Calendar
Cabinet agenda and minutes	28 June 2011	CMIS > Meetings Calendar
Cabinet agenda and minutes	15 December 2010	CMIS > Meetings Calendar

Appendices

Appendix 1: Lowther Gardens Trust business plan / financial forecast

Appendix 2: Service Level Agreement for the Management of Lowther Pavilion

Appendix 3: Service Level Agreement for the Delivery of Ancillary Services by Fylde Council

Appendix 4: Risk Assessment

LOWTHER GARDENS TRUST BUSINESS PLAN / FINANCIAL FORECAST
APPENDIX 1

LOWTHER GARDENS (LYTHAM) MANAGEMENT LTD						
5 YEAR PLAN 2017 - 2022						
INCOME	Year 1	Year 2	Year 3	Year 4	Year 5	
	2017/18	2018/19	2019/20	2020/21	2021/22	
Joint Venture shows						
Income	343,400	346,834	350,302	353,805	357,343	1% Yearly Increase
Expenditure	274,720	277,467	280,242	283,044	285,875	
Net Income	68,680	69,367	70,060	70,761	71,469	Gross Profit Margin 20%
Hires						
Hire Fee	90,000	92,700	95,481	98,345	101,296	3% Yearly Increase
Box Office Commission	16,000	16,480	16,974	17,484	18,008	Commission on BO Income 8.25%
Total income	106,000	109,180	112,455	115,829	119,304	
BO Agency						
Sales	139,380	140,774	142,182	143,603	145,039	1% Yearly Increase
Commission	11,499	11,614	11,730	11,847	11,966	Commission 8.25%
Bar						
Sales	80,800	81,608	82,424	83,248	84,081	1% Yearly Increase
Costs	28,280	28,563	28,848	29,137	29,428	
Gross profit	52,520	53,045	53,576	54,111	54,653	Gross profit margin 65%
Ice Cream						
Sales	7,070	7,211	7,356	7,503	7,653	2% Yearly Increase
Costs	3,535	3,606	3,678	3,751	3,826	
Gross Profit	3,535	3,606	3,678	3,751	3,826	Gross profit margin 50%
Games						
Income	17,500	17,500	17,500	17,500	17,500	
Expenditure	14,875	14,875	14,875	14,875	14,875	
Net income	2,625	2,625	2,625	2,625	2,625	
Technical						
Income	9,000	10,000	10,200	10,404	10,612	
Expenditure	3,000	3,000	3,060	3,121	3,184	
Net income	6,000	7,000	7,140	7,283	7,428	
Theatre Tokens						
Sales	2,500	2,500	2,500	2,500	2,500	
Payments and Commission	2,500	2,500	2,500	2,500	2,500	
Net income	0	0	0	0	0	
Gift Shop Outlet						
Sales	10,000	12,000	15,000	18,000	20,000	
Costs	5,000	6,000	7,500	9,000	10,000	
Net Income	5,000	6,000	7,500	9,000	10,000	Gross profit margin 50%
Additionality Projects						
Income	16,000	16,320	16,646	16,979	17,319	
Expenditure	30,000	30,600	31,212	31,836	32,473	
Net Income	(14,000)	(14,280)	(14,566)	(14,857)	(15,154)	
LOWTHER GARDENS (LYTHAM) MANAGEMENT LTD						
5 YEAR PLAN 2017 - 2022						
INCOME	Year 1	Year 2	Year 3	Year 4	Year 5	
	2017/18	2018/19	2019/20	2020/21	2021/22	
Other Income						
Café Rental	13,500	26,000	27,000	28,000	29,000	
Car Parking	3,500	3,500	3,500	3,500	3,500	
Advertising	2,500	2,500	2,500	2,500	2,500	
Community Sponsorship	1,000	1,000	1,000	1,000	1,000	
Show Merchandise	2,300	2,300	2,300	2,300	2,300	
Foyer Additionalities	2,000	2,000	2,000	2,000	2,000	
Bank Interest	100	100	100	100	100	
Miscellaneous	750	750	750	750	750	
Total	25,650	38,150	39,150	40,150	41,150	
Fylde Borough Council	31,667	31,667	31,667	31,667	31,667	
Total Net Income	299,176	317,974	325,016	332,168	338,934	

LOWTHER GARDENS (LYTHAM) MANAGEMENT LTD						
5 YEAR PLAN 2017 - 2022						
OVERHEADS	Year 1	Year 2	Year 3	Year 4	Year 5	
	2017/18	2018/19	2019/20	2020/21	2021/22	
Staff Salaries	160,680	175,500	180,000	184,000	188,000	
Employer NI	10,043	10,969	11,250	11,500	11,750	
Employer Pension	3,214	3,278	3,343	3,410	3,479	
Rent/Rates & Insurance	4,794	4,890	4,988	5,087	5,189	
Heat, Light & Power	16,830	17,167	17,510	17,860	18,217	
Motor Expenses	1,561	1,592	1,624	1,657	1,690	
Travelling & Entertainment	510	520	531	541	552	
Printing Stationary & Postage	14,566	14,857	15,154	15,458	15,767	
Promotion	12,750	13,005	13,265	13,530	13,801	
Credit Card & Internet charges	10,913	11,023	11,134	11,246	11,358	
Telephone and IT	15,300	15,606	15,918	16,236	16,561	
Professional Fees	7,140	7,283	7,428	7,577	7,729	
Equipment Hire, Rental, Repairs	15,300	15,606	15,918	16,236	16,561	
Property Maintenance	10,866	11,083	11,305	11,531	11,762	
General Expenses	2,000	2,040	2,081	2,122	2,165	
Bank Charges	2,040	2,081	2,122	2,165	2,208	
Irrecoverable VAT						
Depreciation	2,081	2,123	2,165	2,208	2,253	
Contingencies	8,718	9,259	9,472	9,671	9,871	
						3% of Expenses
						Unused Contingencies transferred
Total	299,305	317,881	325,209	332,037	338,912	
Net Surplus / (Deficit)	(129)	93	(193)	131	21	

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:

Annual Grant	£31,667
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 Periods	Each period of one year commencing on 1 April in each of 2017, 2018, 2019, 2020 and 2021
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 and 18 May 2015 (or any subsequent amendment)
Services	The services provided at Lowther Pavilion set out in the First Schedule

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 Annual Grant.

The Annual Grant and the Grant Period

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

Date	Amount
1 April	£7,916.75
1 July	£7,916.75
1 October	£7,916.75
1 January	£7,916.75

6. At least three months prior to the end of each Grant Period (except the Grant Period beginning 1 April 2021), the parties shall make best endeavours to negotiate a level of Service provision that reflects the Annual Grant for the next Grant Period. 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.
7. The Provider must comply with the Performance Measures and any specific guidance issued by the Council in deciding how it will spend the Annual Grant.
8. In addition to the Annual Grant, the Council may (at its discretion) pay a termination payment of up to the equivalent of one instalment of the Annual Grant for any Grant Period to the Provider on the last day of that Grant Period, if and to the extent that:
 - The Council does not propose to pay the Annual Grant in respect of the year immediately following the end of that 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

9. 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.
10. 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

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

Council: Director of Development 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

12. 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
13. 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.

14. The Provider will supply to the Council a copy of its pre-audited accounts 3 months after the end of each Grant Period and a copy of the professionally audited accounts within 6 months of the end of each Grant Period.
15. 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 Annual Grant payable by the Council for the provision of the Services.
16. 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.
17. All spending decisions of the Provider must be within the known resources available to the Provider at the time of making the decision.
18. 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.
19. 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.
20. 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 the Annual Grant, by entering into this agreement or otherwise take, accept or assume any responsibility for any non-compliance by the Provider.
21. 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.
22. 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.
23. 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.

24. Throughout each 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.
25. 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.
26. 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

27. 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 Annual Grant ;and;
 - may, at its absolute discretion (but subject to clause 31), require the Provider to repay any or all of the most recent instalment of any Annual Grant that has been paid to the Provider
28. 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 has fallen 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 an Annual Grant until it considers that the performance of the Services have returned to an acceptable standard.
29. If, having, withheld three or more instalments of an Annual Grant pursuant to clause 28 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 27, be deemed to have ceased to provide the Services.

30. For the purposes of clause 29 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 identified in clause 11; 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

31. In deciding what proportionate part of any Annual Grant it considers appropriate to require the Provider to repay under clause 27, 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 Annual Grant that was paid in respect of a Grant Period falling within the financial year then current.

32. 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.

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

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

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

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

37. It is agreed between the parties that the purpose of each Annual 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 relevant Grant Period, taking into account the need for the Trust to hold a reserve of working capital and future development funding. If during the course of this Agreement it becomes reasonably apparent to the Council that an Annual 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 any Annual 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

38. For the purposes of this clause:

- 'Dispute' means a dispute issue difference question or claim as between the parties relating to or arising at any time out of this agreement;
- '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.

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. The parties agree that the decision of the Specialist shall be final and binding upon them.

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 the annual meeting of the Council and up to 10 other council or committee meetings per year on dates to be provided to the Provider in advance by the Council as soon as reasonably practicable. Dates of meetings for 2017/18 include 10 May 2017 from 2.00 pm.
- (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 Tourism and Leisure 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 17.
- 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 Arts Council England and UK Theatre 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 Council's area.

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

Date

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

Date

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 1st April 2017 31st 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 1st 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 provide 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 FBCs 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:

Issue / Request	Contact	Contact Details
Parks Operational	Mick Sumner	<u>Mobile</u> <u>Office</u>
Play & Projects	Mick Sumner	Mobile Office
Arboriculture	Gail Isbister	gaili@fylde.gov.uk 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	sarahw@fylde.gov.uk Mobile 07971097839 Office 01253 658432
Car Park	Andrew Loynd	andrewl@fylde.gov.uk

		Mobile 07966890715 Office 01253 658527
Technical Services Building & Engineering	Shafkat Shazhad	shafkats@fylde.gov.uk Office 01253 658459
Technical Services Building & Engineering	Peter Downs	peter.downs@fylde.gov.uk 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	trustees@lowtherpavilion.co.uk 01253 839375
Lowther Pavilion Manager	Theatre Manager	trustees@lowtherpavilion.co.uk 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

Signed on behalf of Fylde Borough Council

(Director of Development Services)

Committee Risk Assessment Template

Directorate: Development Services		Date of Assessment: October 2016		
Section: Parks & Greenspace		Assessment Team: Mark Wilde & Paul Walker		
Assessment Activity / Area / Type: Transfer of Managerial & Operational Responsibilities for Lowther Pavilion to Lowther Gardens Trust				
Do the hazards create a business continuity risk? Yes				
RISK DESCRIPTION	RISK SCORE (Likelihood x Impact)	RISK MITIGATION	RESIDUAL RISK SCORE (Likelihood x Impact)	RISK OWNER / RISK REGISTER
The Trust cannot meet its financial commitments (revenue and/or capital)	4 x 4 = 16	The council can exert some influence through the terms of the SLA and as a Trustee. The Trust may approach the Council for further revenue and/or capital support which would require consideration by the council as an unfunded budget increase.	3 x 4 =12	The risk lies with the Trust, but the Council, as a trustee, will still have a responsibility
The current standard of the grounds and general maintenance of the structures and facilities is not maintained	1 x 2 = 2	The revenue budgets for the delivery of the parks management services are held by Fylde Council. The Council will continue to work in partnership with the Trust to ensure high quality standards of Lowther Gardens.		Trustees / Mark Wilde

Risk Likelihood

6 = Very High

5 = High

4 = Significant

3 = Low

2 = Very Low

1 = Almost impossible

Risk Impact

1= Negligible

2 = Marginal

3 = Critical

4 = Catastrophic

Multiply the likelihood by the impact and if the score is above 12 then mitigating action should be undertaken to reduce the risk. This action should be recorded and monitored in either a directorate or corporate risk register.