

Key Decision Required:	No	In the Forward Plan:	No
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CABINET

6 SEPTEMBER 2013

REPORT OF ENVIRONMENT AND COAST PROTECTION PORTFOLIO HOLDER

A.3 CHANGING PLACE FACILITIES CLACTON-ON-SEA AND WALTON-ON-THE-NAZE

(Report prepared by Ian Taylor)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To report the latest position with regard to the proposal for the introduction of changing place facilities in Tendring and to seek approval for recommendations necessary to complete the project.

EXECUTIVE SUMMARY

- The Changing Place project involves the provision of changing places on behalf of people with profound and multiple learning disabilities, as well as other serious impairments such as spinal injuries, muscular dystrophy, multiple sclerosis or an acquired brain injury who need extra facilities to allow them to use the toilets comfortably.
- The provision of such facilities in tourist areas will widen the scope of services available and affords an opportunity to improve and regenerate the appearance of existing Council buildings or the site of existing buildings and is anticipated to increase visitor numbers to the District.
- This report provides the latest information and options available to TDC with regard to the provision of Changing Place facilities in the District and reports on a proposed new time table for the project and an offer to increase the number of facilities by the addition of a changing place to be built in Walton-on-the-Naze.
- Both schemes to be funded entirely by means of grant payable to Tendring District Council from Essex County Council (ECC).
- Up to £80,000 has been agreed and set aside by ECC for each of the schemes which need to be completed by the end of March 2014.

This report seeks agreement in principle for the project and to delegate authority for deciding the design and specific site location of the two Changing Place facilities.

RECOMMENDATION(S)

That

- (a) That Cabinet supports the construction of 2 x Changing Places facilities in the District using a grant from Essex County Council.**

- (b) The design and specific location of the Changing Places facilities to be agreed by the Portfolio Holder for the Environment and Coast Protection in consultation with the Leader of the Council following discussions with local ward members for the area where a Changing Places facility is proposed.
- (c) That the Council agrees to take on the maintenance and security of the Changing Places facilities within existing budgets.

Subject to a) and b) above

- (d) The Corporate Director for Public Experience is authorised to enter into a service agreement with Essex County Council for the respective locations as set out in the document(s) attached to this report as Appendices A(i) and A(ii).

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The construction of Changing Places facilities within prime tourist areas of the District reflects wider Council priorities contained within the Corporate Plan and Sustainable Community Strategy.

FINANCE, OTHER RESOURCES AND RISK

The proposal if agreed will ensure the provision of high quality facilities available to the most vulnerable members of the community at no cost to the District Council.

There are implications for on-going future maintenance of such facilities. Exterior damage and wear and tear is likely to be minimal based on the design which is intended to be sufficiently robust and relatively maintenance free.

Internal fittings will have a life of up to 10 years from new. Servicing, cleaning and replacement of fittings when required can be accommodated within the existing budgets for public conveniences.

These facilities are not open to the general public and are only accessible by prior appointment. They will therefore not be subject to the level of wear and tear and damage of standard facilities.

LEGAL

The options for consideration in this report are within the Council's legal powers.

OTHER IMPLICATIONS

Consideration has been given to the implications of the recommendations proposed and any significant issues are set out below.

The proposal if agreed will improve seafront assets in line with tourism and inward investment strategies and policies.

Consultation/Public Engagement – The proposal if agreed will raise the profile of the seafront both from within the District and extensively outside of it. Interest in such facilities is considerable.

Crime and Disorder – Improving seafront assets is part of a wider strategy to combat anti-social behaviour by developing an evening economy on the seafront and extending the traditional summer season.

Equality and Diversity – The proposal if agreed will support existing Council policies and further support the most vulnerable members of the community, raising the profile and reputation of the Council.

Health Inequalities –As above.

Area or Ward affected – St James and Walton-on-the-Naze

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The Changing Places Consortium has launched a campaign on behalf of those people who cannot use standard accessible toilets. This includes people with profound and multiple learning disabilities and their carers, as well as many other disabled people.

Standard accessible toilets do not provide changing benches or hoists. Most are too small to accommodate more than one person. Without Changing Places toilets, the person with disabilities can be put at risk, and families are forced to risk their own health and safety by changing their daughter or son on a toilet floor.

Changing Places toilets are different to standard disabled toilets with extra features and more space to meet these needs. A link is available for more detailed information <http://www.changing-places.org/>

Essex County Council work in partnership with the Changing Places consortium and provide all funds for the projects. The first approach to TDC in respect of this project was made by Essex County Council in January 2013.

At that time the proposal was for one facility – to be located in Clacton-on-Sea with a maximum budget of £80,000 and the project time table required completion by 31 August 2013.

CURRENT POSITION

Planning services advised that no planning application was necessary for this project as the size of the proposed structure is below requirements and therefore falls within permitted development.

Since the first approach to the Council in January 2013 Essex County Council has offered to further fund an additional Changing Places facility in Walton-on-the-Naze.

The project time table for completion has also been extended to the end of March 2014.

The combined budget allocated for the construction of the 2 facilities is £159,000.

Utilising funds available from 2012/2013 budgets, Essex County Council provided purchase orders for the value of £35,000 to TDC for the procurement of sanitary equipment and fittings for the changing place facility proposed for Clacton and to secure the services of suitably qualified architects for the design and project management of the scheme, once approved.

Essex County Council and TDC accepted that should the scheme(s) not go forward the sanitary equipment would be returned to ECC.

Essex CC further accepted that fees for the design of the facility would be paid regardless of whether the scheme was approved and agreed by TDC but that no fees would be paid in respect of project management until TDC and ECC agreed the project and completed signed agreements.

The equipment and architectural services were procured in accordance with TDC procurement and tender rules and requirements.

Further purchase orders to the value of £144,000 have been received from ECC payable subject to agreement for this project.

The proposed locations for the changing places are the lower promenades in Clacton-on-Sea and Walton-on-the-Naze. This supports the aim of the project which is to improve access to the seaside.

The specific locations and design of the buildings is proposed to be delegated to the Portfolio Holder for the Environment and Coast protection in consultation with the Executive Leader of the Council following discussions with local ward members.

Proposed service agreements for the project have been received and are attached to this report as Appendix A

Informal discussions with local ward members indicate full support for the project in principle and that they would welcome the opportunity to be included in discussions around specific site location and design.

CONCLUSION

Essex County Council and the Changing Places consortium are particularly enthusiastic about the possibility of introducing Changing Places facilities in seafront locations and they are very keen to combine these facilities where possible with other options for families with disabled children.

These additional facilities could be the purchase of new beach huts in nearby locations and exploring funding opportunities to provide access to other facilities such as the beach by way of ramps or beach wheel chairs, local car parks, kiosks and other seafront attractions.

Access to the seaside provides significant benefits to families with disabled children (or adults) and improved access to the Tendring seafronts for these families would be a considerable benefit to the Council.

Tendring District Council is promoting the improvement of seafront assets as part of its wider corporate aims.

This project supports TDC tourism and inward investment strategies and will enable the Council to either utilise existing buildings which are currently under used or in need of major repair and refurbishment, or to enhance existing seafront sites at no cost to the Council.

Future maintenance and servicing / operating costs can be incorporated into existing seafront budgets and will be offset against the current requirement to maintain buildings in a poor state of repair and the possibility of the need to fund their demolition in the near future.

Maintaining buildings of a high quality will also offset some of the cost associated with anti-social behaviour and buildings in poor repair.

The introduction of these facilities will attract a great deal of positive attention and will enhance the reputation of Clacton-on-Sea and Walton-on-the-Naze as tourist / visitor destinations both regionally and nationally.

APPENDICES

Appendices A(i) and A(ii) – Proposed Service Agreements between TDC and ECC

BACKGROUND PAPERS FOR THE DECISION

None

DATED NOVEMBER 2012

ESSEX COUNTY COUNCIL

AND

TENDRING DISTRICT COUNCIL

SERVICES AGREEMENT

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SERVICES AGREEMENT

DATED NOVEMBER 2012

BETWEEN:

- (1) **ESSEX COUNTY COUNCIL** of County Hall, Chelmsford, Essex, CM1 1LX (the “**Authority**”);
and
- (2) **Tendring District Council** whose principal place of business is at Town Hall, Station Road Clacton Essex CM15 1SE (the “**Contractor**”).

RECITALS

- (A) The Authority has selected the Contractor to provide the Services and the Contractor undertakes to provide the Services on the terms set out below.

1. COMMENCEMENT AND DURATION

- 1.1 This Services Agreement and the rights and obligations of the Parties under this Services Agreement shall take effect on the Commencement Date and shall continue for the Agreement Term.

2. THE SERVICES

- 2.1 The Contractor shall provide the Services during the Agreement Term to the Authority in accordance with:
 - 2.1.1 the Authority’s requirements as set out in The Schedules;
 - 2.1.2 all applicable Legislation;
 - 2.1.3 the Authority’s Policies as the same may be updated by the Authority from time to time and as notified by the Authority to the Contractor; and
 - 2.1.4 Good Industry Practice.

3. SERVICES PAYMENT

- 3.1 In consideration of the provision of the Services, the Authority shall pay the Services Payment of £80,000 to the Contractor in accordance with Schedule 3 (Payment).
- 3.2 The Contractor shall not, whether himself, or by any person employed by him, solicit or accept any gratuity, tip or any other form of money taking or reward, collection or charge for any part of the Services other than the Services Payment.

4. STAFF

- 4.1 The Contractor will ensure that at all times they have sufficient numbers of people of appropriate ability, qualification, skill, knowledge, training and experience available to provide and supervise the provision of the Services and cater for staff holiday, sickness and absence.
- 4.2 Where the Services may involve contact with Children or Young People the Contractor shall ensure that safe recruitment procedures are in place and the recruitment and selection procedures include the following matters:
- a) The Contractor shall be registered with the Criminal Records Bureau ("The CRB") or an umbrella agency and shall ensure that all employees and volunteers who may work with or have access to information about children or young people (or vulnerable adults) are checked to an enhanced level through the CRB, which includes the Protection of Children Act (POCA) and this is repeated a minimum of every three years. The Contractor shall provide written confirmation of the enhanced CRB Check to the Authority's Authorised Officer where requested. No member of staff shall be employed or work in the delivery of this service with children or young people (or vulnerable adults) prior to receipt of satisfactory enhanced CRB checks by the Contractor. No agency staff or volunteer will work in the delivery of this service with children or young people (or vulnerable adults) prior to receipt of satisfactory enhanced CRB checks by the Contractor.
 - b) Staff will be trained on safeguarding and promoting the welfare of children. This training will be made available for all staff working with or in contact with children and families.
 - c) All such questions as shall reasonably be required to assess the suitability of the applicant for the position and are permitted by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended).
 - d) The Contractor shall ensure that two written references are obtained.
 - e) With effect from the date of implementation as advised by the Department of Education the Contractor shall:
 - (i) to the extent required at law ensure that no person is engaged in the delivery of the Services except as permitted in accordance with the Vetting and Barring Scheme; and
 - (ii) on demand furnish the Authority with written proof that the engagement of any person engaged (or reasonably believed or reasonably expected by the Authority to be engaged) in the delivery of the Services and identified by the Authority is permitted in accordance with the Vetting and Barring Scheme.
 - f) The Contractor shall ensure that all employees and volunteers are aware of their obligation to limit contact with the Service Users to that required in order to deliver the Service. Authorisation must be sought from the Authority's Authorised Officer for any contact or relationship beyond that.
 - g) The Contractor will fully comply with the Statutory Guidance (voluntary Contractors will comply with the Statutory Guidance as a matter of Good Practice) on making arrangements to safeguard and promote the welfare of children under Section 11 of the Children Act 2004.

Breach of this requirement shall be a fundamental breach of this Agreement notwithstanding that the individual concerned is subsequently removed from the delivery of the Service or that proof is furnished other than on demand.

- 4.3 The Contractor shall be responsible for all acts and omissions of its employees and agents and the Authority shall not be responsible, and cannot be held liable, for any act or omission of any person engaged by the Contractor in relation to the Service provided under this Partnership Agreement.
- 4.4 The Contractor shall be responsible for the payment of all fees, income, taxes, national insurance contributions, and levies of any kind, relating to or arising out of the engagement of any person employed or contracted by the Contractor in relation to the provision of Services under this Services Agreement.
- 4.5 The Contractor shall maintain up to date records on employees and volunteers such as monitoring, supervision, training, absenteeism and complaints monitoring of incidents/accidents. The Contractor shall issue all employees with an up-to-date job description and a written contract of employment. These records shall be made available to the Authority's Authorised Officer as required and on request.

5. WARRANTIES AND REPRESENTATIONS

- 5.1 The Contractor warrants and represents that:
 - 5.1.1 it has full capacity and has taken all steps and obtained all approvals to enable it to lawfully enter into and to perform each of its obligations under this Services Agreement;
 - 5.1.2 it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Services Agreement;
- 5.2 The Contractor shall not in any way be relieved from any obligation under this Services Agreement nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

6. INDEMNITY

- 6.1 Nothing in this Services Agreement is to be deemed to exclude or limit either party's liability in respect of death or personal injury arising as a result of that party's negligence, fraud or any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982.
- 6.2 The Contractor shall be responsible for and indemnify the Authority, its employees, agents and contractors on demand from and against all Losses arising out of or in connection with this Services Agreement including in respect of death and personal injury, loss of or damage to property and breach of statutory duty which is caused directly or indirectly by the performance or non-performance by the Contractor of its obligations under this Services Agreement.

- 6.3 This clause 6 shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, loss or damage to property or breach of statutory duty was not caused or contributed to by its negligence or default, or the negligence or default of its staff or sub-contractors, or by any circumstances within its or their control.

7. INSURANCE

- 7.1 The Contractor shall during the Agreement Term take out and maintain or procure the maintenance of the following insurances:
- 7.1.1 Employer's liability insurance to provide an indemnity of not less than five (5) million pounds (£5,000,000) in respect of any one claim or series of claims arising out of one incident;
- 7.1.2 Third party public liability to provide an indemnity of not less than five (5) million pounds (£5,000,000) in respect of any one claim or series of claims arising out of one incident;
- 7.1.3 Professional Indemnity insurance to provide an indemnity of not less than two (2) million pounds (£2,000,000) in respect of any one claim or series of claims arising out of one incident; and
- 7.1.4 any other insurances that may be required by law.
- 7.2 The Contractor shall provide to the Authority evidence and copies on request of all insurance policies required under this clause 7.
- 7.3 If the Contractor is in breach of this clause 7, the Authority may pay any premia required to keep such insurances in force or itself procure such insurance and may in either case recover such amounts from the Contractor on written demand.
- 7.4 Failure to comply with the insurance provisions of this Services Agreement shall not limit or relieve the Contractor of its liabilities and obligations under this Services Agreement.

8. TERMINATION

Termination on Authority Break Point

The Authority may terminate the Services Agreement by complying with its obligations under clauses 8.1 to 8.2 below.

- 8.1 If the Authority wishes to terminate the Services Agreement under clause 8, it must give notice to the Contractor stating:
- 8.1.1 that the Authority is terminating the Services Agreement under clause 8; and
- 8.1.2 that the Services Agreement will terminate on the date specified in the notice, which must be a minimum of sixty (60) Days after the date of receipt of the notice.
- 8.2 The Services Agreement shall terminate on the date specified in the notice referred to in clause 8.1 above.

Termination on Contractor Default

- 8.3 Subject to clause 8.4, the Authority may terminate the Services Agreement, or terminate the provision of any part of the Agreement by written notice to the Contractor with immediate effect if the Contractor commits a Contractor Default and if:
- 8.3.1 the Contractor has not remedied the Contractor Default to the satisfaction of the Authority within twenty five (25) Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Contractor Default and requesting it to be remedied; or
 - 8.3.2 the Contractor Default is not, in the opinion of the Authority, capable of remedy; or
 - 8.3.3 the Contractor Default is a material breach of the Agreement.
- 8.4 If the Contractor Default which has occurred is an Insolvency Event of Default, the Authority may in its sole discretion give notice terminating this Services Agreement whereupon this Services Agreement shall terminate with immediate effect.

9. CONSEQUENCES OF EXPIRY OR TERMINATION

- 9.1 The Contractor and the Authority shall each carry out their respective responsibilities in accordance with this Services Agreement until the Expiry Date or earlier termination in accordance with this Services Agreement.
- 9.2 The Contractor shall use all reasonable endeavours to assist the Authority to effect an orderly continuation of the Services after termination or expiry of this Services Agreement in such a manner as the Authority may reasonably require.
- 9.3 The costs of any assistance provided by the Contractor under clause 9.2 shall be borne by the Contractor.
- 9.4 On termination or expiry of this Services Agreement, neither Party shall have any further obligations or rights with respect to the other Party provided that termination of this Services Agreement shall not affect the continuing rights and obligations of the Parties under clauses 6 (Indemnity), 10 (Dispute Resolution Procedure), 12 (Confidentiality), 13 (Assignment and Sub-Contracting) and 22 (Law and Jurisdiction) or under any other provision of this Services Agreement that is expressed to survive termination or is required to give effect to such termination or the consequences of such termination.

10. DISPUTE RESOLUTION PROCEDURE

- 10.1 Any dispute or difference arising out of or in connection with this Services Agreement (whether such disputes are in contract or tort or arise out of or under any rule of common law or equity or under any statute) shall be resolved pursuant to this clause 10.
- 10.2 The Parties shall each use reasonable endeavours to resolve a Dispute by means of prompt, bona fide discussion at a managerial level appropriate to the Dispute in question.
- 10.3 In the event that a Dispute is not resolved within fourteen (14) Days of it having been referred to a managerial level for discussion then either Party may refer it to Chief Executive

or equivalent officer of each Party for resolution and the same shall meet for discussion within fourteen (14) Days thereafter or such longer period as the Parties may agree.

10.4 If the dispute is not resolved within twenty (20) Days of escalation of the dispute in accordance with clauses 10.1 to 10.3, the parties shall refer the dispute to mediation in accordance with the CEDR Model Mediation Procedure.

10.5 If the parties cannot agree on a mediator, the parties shall appoint a mediator nominated by CEDR.

10.6 The parties shall use their reasonable endeavours to conclude the mediation within [forty (40)] Days of referral of the dispute to mediation.

10.7 If

10.7.1 either Party is dissatisfied with or otherwise wishes to challenge the Mediator's decision;
or

10.7.2 both Parties agree

then either Party may, within fifteen (15) Days of the conclusion of the mediation, notify the other Party of its intention to refer the dispute to litigation and for such purposes the parties agree that the Courts shall have exclusive jurisdiction in relation to all matters in respect of this Agreement.

10.8 Where any Dispute is referred to litigation pursuant to clause 10.7 the Courts shall have full power to disregard, open-up, review and/or revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement, to vary or cancel the recommendations of the Mediator and, where appropriate, to order financial compensation to be paid by one party to the other.

10.9 The Parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution under this clause and shall give effect forthwith to every recommendation of the Mediator and the Courts delivered under this clause.

11. INTELLECTUAL PROPERTY

11.1 Copyright, patent rights or other intellectual property rights and title in any material produced by the Contractor for the Authority during the Agreement Term and in all reports submitted under the terms of the Services Agreement shall vest in the Authority unless otherwise expressly agreed or approved by the Authority's Authorised Representative in writing.

11.2 Such materials shall not be used, reproduced or disseminated for any other purposes without the prior written permission of the Authority's Authorised Representative.

12. CONFIDENTIALITY

12.1 The parties shall, and shall use reasonable endeavours to ensure that their employees, agents and sub-contractors, keep confidential all information and documents received by them in connection with and all matters relating to the Services and this Services Agreement.

12.2 Schedule 5 shall be of effect.

13. ASSIGNMENT AND SUB-CONTRACTING

13.1 Subject to any express provision of this Services Agreement, the Contractor shall not without the prior written consent of the Authority, assign all or any benefit, right or interest under this Services Agreement or sub-contract any of the Services.

13.2 Notwithstanding any sub-contracting permitted under this Services Agreement, the Contractor shall remain responsible for the acts and omissions of its sub-contractors as though they were its own.

13.3 The Authority shall be entitled to:

13.3.1 assign, novate or otherwise dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in Regulation 3(1) of the Public Contracts Regulations 2006); or

13.3.2 transfer, assign or novate its rights and obligations where required by law and only to a body assuming the whole or part of the Authority's business.

14. CHANGE CONTROL PROCEDURE

14.1 Either Party may request a change to the Services in accordance with the Change Control Procedure.

15. VARIATION

This Services Agreement can only be varied or amended provided that such variation or amendment is agreed in writing by an authorised representative of the Authority and the Contractor.

16. ENTIRE AGREEMENT

The Parties acknowledge that this Services Agreement sets forth the entire agreement between them with respect to the provision of the Services and supersedes and replaces all prior communications, drafts, representations, warranties, stipulations, undertakings and agreements of whatsoever nature, whether oral or written, between the Parties.

17. NO WAIVER

17.1 No waiver of any of the provisions of this Services Agreement shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause 19 (Notices).

17.2 No waiver under clause 17.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Services Agreement unless (and then only to the extent) expressly stated in that waiver.

18. SEVERANCE

- 18.1 If any term, condition or provision contained in this Services Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision of this Services Agreement shall not affect the validity, legality or enforceability of the remaining parts of this Services Agreement.

19. NOTICES

- 19.1 Any notice required by this Services Agreement to be given by either Party to the other shall be in writing and shall be served personally, by fax or by sending the same by registered post or recorded delivery to the following:

	Contractor	Authority
Address	Tendring District Council Town Hall, Station Road CM16 4LU	Essex County Council PO Box 47, County Hall Chelmsford, Essex CM1 1LX
For the Attention of:	Ian Taylor	Georgina Parkin
Telephone Number:	01255 686982	01245 435805

- 19.2 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 forty eight (48) hours after it was posted and any notice sent by fax will be deemed to have been served twenty four (24) hours after it was despatched.

20. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The Parties agree that this Services Agreement shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and any rights contained therein are excluded.

21. BUSINESS CONTINUITY

The contractor is required to establish, test and maintain robust plans in order to ensure Business Continuity through the life of this Agreement and on demand to demonstrate compliance with this clause to the reasonable satisfaction of the Authority

22. LAW AND JURISDICTION

This Services Agreement shall be governed by the laws of England and Wales and the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS whereof the Parties have executed this Services Agreement as a deed and delivered it on the date first written.

Execution by the Contractor

Signed Director/Secretary

Dated

Execution by the Authority

Signed Authorised Signatory

Dated

APPENDIX 1

Schools, Children's and Families Additional Clauses

1. DUTY OF CARE

The Contractor shall be responsible for ensuring that reasonable skill, care and diligence are exercised in carrying out the Services properly and efficiently in accordance with the Contract.

2. MONITORING AND EVALUATION

2.1 The Contractor is required to maintain records to account for the payments made in accordance with schedule 3 (payment schedule). Such records shall be maintained (a) in accordance with generally accepted accounting principles, (b) in a form enabling the Authority to compare actual expenditure in total and by individual budget head with the expenditure indicated in the Contract and (c) in sufficient detail to enable the Authority to satisfy itself that the Service is being delivered in accordance with this Contract. Such records are to be made available to the Authorities Authorised Officers upon request.

2.2 The Contractor shall comply with the monitoring and evaluation arrangements. The Contractor shall liaise with the Authority's Authorised Officer to ensure a planned programme is in place to undertake Equality Impact Assessments (EIA)

2.3 Communication with the Authority shall be maintained through the Authority's Authorised Officer, who shall be the first point of contact between the Authority and the Contractor and may attend the meetings and activities of this Contractor as an observer, both announced and unannounced (however, these powers may be delegated as appropriate). The Contractor is required to notify the Authority upon the departure and replacement of its nominated officers for contact purposes within the scope of this Contract within one calendar month of the departure/new appointment.

3. CONTINUOUS IMPROVEMENT

Both parties shall work to continually improve the provision of Services against this Contract to achieve the highest level of Service user satisfaction within the delivery of a high quality Service.

4. RECOVERY OF SUMS DUE

4.1 Any amount of Funding which is over and above the value of activity completed by the expiry of this Agreement shall be returned to Essex County Council. Such monies shall be payable by any of the following methods:

4.1.1 Recovery direct from the Contractor to the Authority,

4.1.2 Payable by the Contractor from a payment under this Agreement, or

4.1.3 Payable by the Contractor from a payment under another Contract with the Authority.

5. EQUAL OPPORTUNITY FOR STAFF AND SERVICE USERS

- 5.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provision of the Race Relations Acts 1976 and 2000, the Sex Discrimination Act 1975 and 1986 and the Amendment Regulations 2003, the Equal Pay Act 1970, the Disability Discrimination Act 1995 and 2005, or any statutory modification or re-enactment thereof relating to discrimination in employment. The Contractor shall take all reasonable steps to secure the observance of these provisions or agents of the Contractor and all sub-contractors employed in the execution of the Contract.
- 5.2 The Contractor must operate an Equal Opportunities Policy which complies with the recommendations set out in the Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equal Opportunity in Employment issued by the Commission for Racial Equality pursuant to section 47(1) and (7) of the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 ("The Act") and in reference to the Disability Discrimination Codes of Practice. The Contractor shall provide its Equal Opportunities Policy to the Authority's Authorised Officer as required and on request, and shall ensure Services are equally accessible to all.
- 5.3 If a complaint is made pursuant to the Race Relations Act 1976 and 2000, the Sex Discrimination Act 1975 and 1986, the Equal Pay Act 1970 or the Disability Discrimination Act 1995 and 2005 about the acts or omissions of the Contractor or its employees, volunteers or agents when undertaking work for the Authority, the Contractor may be the subject of an investigation by the Authority. In such circumstances the Contractor shall make documents available and co-operate with the investigation, and to the extent that breaches of the Authority's duties under the Act(s) are found to have occurred due to the acts or omissions of the Contractor, its employees, volunteers or agents, then in such circumstances the Contractor shall indemnify the Authority in respect of any loss, damages/ compensation, fines and costs which may be suffered or imposed and the Contractor shall pay any such loss, damages/compensation, fines or costs incurred awarded or recommended by the court, tribunal or ombudsman.

6. HEALTH AND SAFETY

- 6.1 The Contractor shall observe the provisions of the Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999 and all other regulations, approved Codes of Practice and amendments thereto. The Contractor shall provide its Health & Safety Policy to the Authority's Authorised Officer as required and on request.
- 6.2 The Contractor shall maintain a record of any Health and Safety incidents /hazards arising and shall promptly notify the Authority's Authorised Officer of those incidents/hazards that arise in connection with the performance of the Services. The Contractor shall provide access of these records to the Authority's Authorised Officer as required and on request.

7. HUMAN RIGHTS ACT

When the Contractor is performing a public function pursuant to this Contract the Contractor shall indemnify the Authority against all actions, claims, demands, losses, proceedings, damages, costs and expenses whatsoever arising out of any breach of the Human Rights Act 1998 by the Contractor.

8. SAFEGUARDING, CHILD PROTECTION AND VULNERABLE ADULT MATTERS

- 8.1 All safeguarding, child protection and vulnerable adult matters that arise in relation to this Contract, shall be acted upon in accordance with the SET and/or POVA procedures (see appendix 3). The Contractor shall ensure that the children, young people, families and vulnerable adults that they work with understand that whilst in general their confidentiality shall be upheld, any potential child protection and vulnerable adult concerns shall be reported utilising the SET and/or POVA procedures.
- 8.2 The Authority and the Contractor shall take all reasonable steps to ensure that all information concerning Service Users is treated as confidential. Any significant breach of confidentiality is a breach of this Contract and as such can be the basis for terminating this Contract.

9. IMPROPER CONDUCT

- 9.1 The Contractor shall have a policy acceptable to the Authorised Officer to ensure that Service Users are consistently treated with respect and courtesy and shall have written procedures for investigating allegations of improper conduct by their staff.
- 9.2 The Contractor shall ensure that all staff are fully aware of such procedures and are supported, through supervision and training, in identifying and addressing potential areas of concern.
- 9.3 In cases of alleged gross misconduct the Contractor will be expected to take immediate appropriate action to ensure the safety of the Service User, initiate the investigation of the allegation/s and notify the Authorised Officer within 24 hours. The following would constitute gross misconduct:
- 9.3.1 Sexual/physical/mental/financial abuse; including: assault, verbal abuse, acts of cruelty, threatening behaviour, harassment, physical restraint, deprivation, neglect, wilful inaction fraud or theft
- 9.3.2 Exploitation or harassment
- 9.3.3 Racist comments or discriminatory behaviour

10. STATUTORY AND OTHER REGULATIONS

The Contractor shall at its own expense comply with all statutory and other provisions to be performed and observed in connection with the Service and shall indemnify the Authority against any claims, actions, proceedings, loss, liability, penalties, costs or expenses made or incurred as a result of any failure in compliance.

SCHEDULE 1

Definitions and Interpretation

1. The terms and expressions used in this Services Agreement shall have the meanings set out below:

“Agreement Term”

means the period from and including the Commencement Date to the Expiry Date or, if earlier, the date of termination of the Services Agreement for any reason;

“Authority’s Policies”

means

- i. Health & Safety
- ii. Equal Opportunities
- iii. Safeguarding
- iv. Risk Assessment
- v. Race Relations
- vi. Insurance
- vii. Safe Recruitment

“CEDR”

means the Centre for Effective Dispute Resolution;

“Change Control Procedures”

means the change control procedures set out in Schedule 4 (Change Control Procedures);

“Commencement Date”

means the date of this Services Agreement

“Contractor Default”

means one of the following events:

- (a) in relation to the Contractor:
 - i. a court makes an order that the Contractor be wound up or a resolution for a voluntary winding-up of the Contractor is passed;
 - ii. any receiver or manager in respect of the Contractor is appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge;
 - iii. any voluntary arrangement is made for a composition of debts or a scheme or arrangement is approved under the Insolvency Act 1986 or the Companies Act 1985 in respect of the Contractor;
 - iv. an administration order is made, or an administrator is appointed in respect of the Contractor;

- (b) a breach by the Contractor on any of its obligations under this Services Agreement which materially and adversely effects the performance of the Services;
- (c) a breach by the Contractor of its obligation to take out and maintain the insurances referred to in clause 7;
- (d) a breach of the Contractor of its obligations in clause 13 (Assignment and Sub-Contracting);

“Day”

means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;

"Dispute"

shall have the meaning given to it in clause 10 (Dispute Resolution Procedure);

“Dispute Resolution Procedure”

means the procedure to deal with disputes as set out at clause 10 (Dispute Resolution Procedure);

“District Lead”

Means Ian Taylor or some other representative provided by Tendring District Council to ensure delivery by the contractor against this contract

“Expiry Date”

means 31 March 2013;

“Good Industry Practice”

means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor in the delivery of the Services seeking in good faith to comply with its contractual obligations, complying with all applicable Legislation and engaged in the same type of undertaking and under the same or similar circumstances and conditions;

“Insolvency Event of Default”

means any of the events listed in limb (a) of the definition of Contractor Default;

“Intellectual Property Rights”

means any and all patents, trademarks, service marks, copyright, data base rights, moral rights, rights in a design, know-how, confidential information, and all or any other intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;

“Legislation”

means any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of section 2 of the European Communities Act 1972, in each case in the United Kingdom;

“Loss”

means all losses, liabilities, damages, costs, claims, actions, proceedings, compensation, demands, fines, awards, expenses (including reasonable legal fees and disbursements), penalties and interest;

“Party”

means a party to this Services Agreement and “Parties” shall be construed accordingly;

“Progress Review meeting”

Means a meeting in which both parties agree that the proposal is being delivered to specification and within the given timescales.

“Project Lead”

Means Georgina Parkin or some other representative as provided by Essex County Council to review delivery by the contractor against this contract.

“Services”

means the whole or any part of the services set out in Schedule 2 (Output Specification) to be provided by the Contractor to the Authority under this Services Agreement;

“Services Payment”

means the payment by the Authority to the Contractor for the provision of the Services as set out in Schedule 3 (Payment);

“Sub-Contractor”

means a person to whom the Contractor sub-contracts any of its obligations under this Services Agreement;

- 1.1 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
- 1.2 Save where it is stated to the contrary, any reference to this Services Agreement or to any other document shall include any permitted variation, amendment or supplement to such document.
- 1.3 Headings are included in this Services Agreement for ease of reference only and shall not affect the interpretation or construction of this Services Agreement.

- 1.4 References to clauses, paragraphs, Parts and Schedules are, unless otherwise provided, references to the clauses, paragraphs, Parts and the Schedules to this Services Agreement.
- 1.5 Except as otherwise expressly provided in this Services Agreement, all remedies available to the Contractor or to the Authority under this Services Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

SCHEDULE 2

Services Specification

Project Outcomes (Project Specification)

The aim is to improve accessibility and expand the range of short break opportunities for disabled children, young people and their families within nominated localities.

Critical Success Factors

- The proposed development(s) must build upon and enhance current provision and must be in addition to Disability Discrimination Act requirements
- The proposed development(s) have been informed by and agreed through a consultation process with nominated representatives from Families Acting for Change (FACE)
- There is identified and agreed ongoing commitment and funding to ensure improvements are maintained and are fit for purpose.
- The installation work will be completed by 31st March 2014
- The proposed development(s) will also conform to any other Aiming High requirements that may arise during implementation.

Disabled Children Short Breaks (Aiming High) – Walton Changing Places Proposal

District	Tendring District Council
District lead	Ian Taylor Parks and Seafront
Contact details Address:	Parks Seafront Civic Centre, Duke Street, Chelmsford CM1 1JE
Email:	itaylor@tendringdc.gov.uk
Phone:	01255 686982
Capital funding requested	£80,000
Consultation undertaken	Via the report provided from FACE to Essex County Council. Also previous audit of consultations within both Essex and Tendring
Description of project(s)	The provision of accessible Changing Places facilities and toilets on Walton seafront. These facilities to be in accordance with the Changing Places specification attached in Schedule 6.
Rationale for site(s) chosen	This builds upon the previous Aiming High projects to provide a strategic range of equipment across Essex. This location has been selected because of accessibility and suitable parking facilities, ability to serve a wide range of users and ability to integrate with existing play equipment and promote inclusive play and short break opportunities. Infrastructure and services are already in place at the location
Additionality – how will accessibility and participation be increased	These are specialist facilities which can be used by any member of the population but especially those with locomotion difficulties.

Timescales – please outline key stages and confirm completion before 31.3.2014	Quotation ASAP. Work to be completed by end March 2014.
Is there continuing funding /resources to ensure the site (s) / equipment is maintained and sustainable	Yes with Tendring District Council.

SCHEDULE 3

Payment

1. SERVICES PAYMENT

- In respect of the project, the Council will pay the total sum of £80,000.00 during the financial year 20013-14. This will be made up instalments on receipt of invoices.

- The Agreement sum is net of VAT. Where appropriate, VAT should be added to relevant invoices at the extant rate.

- Payment of the first instalment of £40,000.00 will be made within 30 days of receipt of two signed copies of this Agreement, together with a valid invoice for that amount.

- The second instalment shall be paid following the Progress Review meeting and approval by the Council in accordance with schedule 1 and upon the Council receiving;
 - a. An invoice for the second instalment, and
 - b. evidence of capital cost incurred, of £40,000.00 of actual and projected spend , and
 - c. evidence that project is progressing to agreed design and outcomes in accordance with Schedule 1

- The nominated District Lead as stated in schedule 1 to provide full and final invoices at the completion of the project costs setting out the full expenditure against Aiming High for Disabled Children Capital for Changing Places - Walton funding of £80,000.00 No later than 1 month after the formal review carried out in accordance with Schedule 3. The Project Lead will review in December 2014.

SERVICES PAYMENT TERMS

- 2.1 The Council will not be liable to pay for Services unless requisitioned by an Official Order through the marketplace system
- 2.2 The Council will pay any invoice issued under schedule 3 clause 2 within 30 days of receipt of a valid and correct invoice following the delivery of the service. On the thirtieth day the payment will leave the account of Essex County Council. The Council will not be liable for any time after that taken to clear through the banking system

- 2.3 Subject to Clause 12, the Council will make payment direct to the Contractor or his/her lawful attorney or a legal equitable assignee of the Contract but not to any agent of the Contractor, nor to a sub-contractor.
- 2.4 The receipt or payment of any sum by either party shall be without prejudice to the correctness of the sum and either party may require the correction of incorrect payments.
- 2.5 All sums payable under this Contract unless otherwise stated are exclusive of VAT.
- 2.6 Any VAT payable in respect of such sums shall be payable in addition to such sums.

SCHEDULE 4

Change Control Procedure

1. PRINCIPLES

- 1.1 Either Party may at any time request a change to the Services in accordance with the procedure set out in paragraph 2 below.
- 1.2 Neither the Authority nor the Contractor shall unreasonably withhold its agreement to any change.
- 1.3 The obligations of the Parties shall not be effected until a change control note in the form attached to this Schedule 3 (a "**Change Control Note**") has been signed by the authorised signatory of both Parties.
- 1.4 The Authority shall not be responsible for the cost of any work undertaken or goods or materials ordered by the Contractor or its Sub-Contractors which has not been authorised in advance by a Change Control Note.

2. PROCEDURE

- 2.1 The Authority and the Contractor shall discuss changes proposed by either Party to this Services Agreement and such discussion shall result in:
 - 2.1.1 a decision not to proceed further; or
 - 2.1.2 a written request for a change by the Authority; or
 - 2.1.3 a recommendation for a change by the Contractor.
- 2.2 Where a written request for a change is received from the Authority, the Contractor shall submit two signed copies of a Change Control Note to the Authority within seven (7) days of such request.
- 2.3 A recommendation to amend this Services Agreement by the Contractor shall be submitted direct to the Authority in the form of two copies of a Change Control Note signed by the Contractor.
- 2.4 Each Change Control Note shall contain details of the change including, where applicable:
 - 2.4.1 the title of the change;
 - 2.4.2 the originator and the date of the request or recommendation for the change;
 - 2.4.3 the reason for the change;
 - 2.4.4 full details of the change including any specifications;
 - 2.4.5 the price, if any, of the change;
 - 2.4.6 a timetable for implementation together with any proposals for acceptance of the change;
 - 2.4.7 a schedule of payments, if applicable;

- 2.4.8 the impact, if any, of the change on other aspects of the Services Agreement;
 - 2.4.9 the date of expiry of validity of the Change Control Note; and
 - 2.4.10 provision for signature by the Authority if the change is agreed.
- 2.5 For each Change Control Note submitted to the Authority, the Authority shall, within the period of the validity of the Change Control Note, evaluate the Change Control Note and, as appropriate:
- 2.5.1 request further information from the Contractor in which case the Contractor shall provide such information as soon as reasonably practicable and in any event within seven (7) Days. The request for information and the information once provided shall be deemed to be part of the Change Control Note, and the Authority may approve or reject the Change Control Note upon receipt of the new information; or
 - 2.5.2 notify the Contractor of the rejection of the Change Control Note.
- 2.6 A Change Control Note signed by both Parties shall constitute a variation to this Services Agreement in accordance with the terms of clause 14 of the Services Agreement.

3. AUTHORISED SIGNATORIES

- 3.1 Where the change incurs no additional charges for the Authority the authorised representatives for both Parties will act as authorised signatories.
- 3.2 The authorised signatory for the Authority will be the Authority's Authorised Representative and the Head of Procurement and Direct Services for changes up to £70,000 in value and the Authority's Authorised Representative and the Head of Procurement and Direct Services reported to the Service Cabinet Member for changes above £70,000 in value.
- 3.3 The authorised signatory for the Contractor shall be deemed to be the Contractor's Authorised Representative in the absence of any written notification to the contrary from the Contractor to the Authority.

Change Control Note

Ref No:

Date:

Title of Change:

Details of Change:

Reasons for Change:

Impact of Change:

Timetable:

Price:

Contractor:

Signed:

Authority Response: Accept/Reject

Signed:

Note: The format of the Change Control Note may vary from time to time in circumstances where additional information is deemed necessary by the Authority or the Contractor in order to accurately reflect the nature of the change.

SCHEDULE 5

Data Protection Act, Caldicott Principles and Freedom of Information Act

1 DATA PROTECTION ACT 1998

1. In order that the Authority may comply with paragraphs 11 and 12 (relating to the seventh data protection principle) of Part II of Schedule 1 to the Data Protection Act 1998 the Contractor hereby undertakes as follows:
 - 1.1 The Contractor will have in place at all times when processing personal data technical and organisational security measures sufficient to ensure that the Data Protection Act 1998 is complied with.
 - 1.2 The Contractor shall so far as concerns personal data obtained under or for the purposes of this Contract:
 - 1.2.1 comply with the Data Protection Act 1998 and all relevant codes of practice issued under the Act;
 - 1.2.2 maintain the confidentiality of personal data to which he has authorised access under the terms of this Contract;
 - 1.2.3 indemnify the Authority against loss, destruction or processing contrary to the Data Protection Act 1998 of data by himself, his servants or agents; and
 - 1.2.4 in accordance with paragraph 12 of Part II of Schedule 1 to the Data Protection Act 1998 (a) process any personal data supplied to him by the Authority only on instructions from the Authority (but including any set out in this Agreement) and (b) comply with obligations equivalent to those imposed on a data controller by the seventh principle of Part I of the said Schedule.

2. Caldicott Principles

The Contractor must also observe the Caldicott Principles, which are set out below.

The purpose must be justified.

Every proposed use or transfer of personal data within or from the organisation should be clearly defined and scrutinised, with continuing uses regularly reviewed by an appropriate guardian.

Personal data must not be used unless it is absolutely necessary.

Personal data should not be used unless there is no alternative.

The minimum necessary personal data information is to be used.

Where use of personal data is considered essential, each individual item of information should be justified with the aim of reducing identifiability.

Access to personal data should be on a strict need to know basis.

Only those individuals who need access to personal data should have access to it, and they should only have access to the data that they need to see.

Everyone should be aware of their responsibilities.

Those handling personal data - both frontline and support staff - must be aware of their responsibilities and obligations to respect personal confidentiality

All persons handling personal data must understand and comply with the law.

Every use of personal data information must be lawful.

3. Freedom of Information Act 2000

- 3.1 The Contractor shall nominate a contact or contacts who will be responsible for ensuring that the Contractor's obligations as set out in this schedule are met.
- 3.2 It shall be a contractual obligation that, if under Section 5(1)(b) of the Freedom of Information Act 2000 the Lord Chancellor designates the Contractor as a public authority for the purposes of the Act, the Contractor shall comply with the Act.
- 3.3 It shall be a contractual obligation that the Contractor shall provide promptly to the Authority any information required to allow the Authority to respond to requests under Freedom of Information or Data Protection within the statutory deadline. the Authority shall only request such information from the Contractor as is required to meet their statutory duty.
- 3.4 The Authority shall consider any advice from the Contractor regarding information that may be exempt from disclosure but responsibility for disclosure decisions rests with the Authority.

4. Breach, termination and continuance

- 4.1 The Contractor shall permit the Authority to take all reasonable steps to ensure that the provisions of this Schedule (and in particular that the measures referred to in paragraph 1.2) are being complied with.
- 4.2 Failure on the part of the Contractor to comply with the provisions of this Schedule shall entitle the Authority to terminate the contract with immediate effect and to recover the costs incurred in consequence as a civil debt from the Contractor.
- 4.3 On termination of this Contract howsoever arising the Contractor shall, if so requested by the Authority, (a) transfer to the Authority the whole or any part of the personal data and other information received or acquired by the Contractor for the purposes of or in the course of the delivery of the Services and (b) destroy or erase the whole or any part of such personal data and other Information retained by the Contractor.
- 4.4 The provisions of this Schedule shall continue in effect notwithstanding termination of this Contract.

SCHEDULE 6

Specification and Requirements for A Changing Places Facility and Toilet

Specialist equipment needed in a Changing Places toilet	Requirements to meet the Changing Places standard
A height adjustable, adult sized changing bench	The changing bench must be a minimum length of 1.8m The bench must be height-adjustable The bench can be either free-standing or wall mounted.
A tracking hoist system, or mobile hoist	A track hoist system (either wall or ceiling mounted) is preferable, providing access to the toilet, washbasin, changing bench and open space to transfer
Adequate space in the changing area for the disabled person and up to two carers	The changing places facility must be 3m x 4m or the equivalent floor space of 12m ² , with a minimum ceiling height of 2.4m
A centrally placed toilet with space either side for the carers	A peninsular toilet must be provided
A screen or curtain to allow the disabled person and carer some privacy	A dignity screen/curtain should be provided
Wide tear off paper roll to cover the bench	Wide tear off paper roll must be provided
A large waste bin for disposable pads	A large waste bin for disposable pads must be provided
A non-slip floor	A non-slip floor must be provided
Washbasin	A hydraulic/manual or power-operated height-adjustable washbasin should be considered for provision
Shower/floor drain	A shower/floor drain should be installed in specific relevant types of managed buildings such as leisure centres, travel hubs or for specific projects. A shower is not required for all Changing Places toilets.

List of Changes

- 15.1.08 Cl. 3.2 (gratuities) added.
- Cl. 6.4 – addition of “not”.
- Data protection, etc. Cl. 11.2 and Schedule 5 incorporate Procedure 2g.
- Marker re liquidated damages and KPIs in Schedule 3, para. 2.

DATED NOVEMBER 2012

ESSEX COUNTY COUNCIL

AND

TENDRING DISTRICT COUNCIL

SERVICES AGREEMENT

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SERVICES AGREEMENT

DATED NOVEMBER 2012

BETWEEN:

- (1) **ESSEX COUNTY COUNCIL** of County Hall, Chelmsford, Essex, CM1 1LX (the “**Authority**”);
and
- (2) **Tendring District Council** whose principal place of business is at Town Hall, Station Road Clacton Essex CM15 1SE (the “**Contractor**”).

RECITALS

- (A) The Authority has selected the Contractor to provide the Services and the Contractor undertakes to provide the Services on the terms set out below.

1. COMMENCEMENT AND DURATION

- 1.1 This Services Agreement and the rights and obligations of the Parties under this Services Agreement shall take effect on the Commencement Date and shall continue for the Agreement Term.

2. THE SERVICES

- 2.1 The Contractor shall provide the Services during the Agreement Term to the Authority in accordance with:
 - 2.1.1 the Authority’s requirements as set out in The Schedules;
 - 2.1.2 all applicable Legislation;
 - 2.1.3 the Authority’s Policies as the same may be updated by the Authority from time to time and as notified by the Authority to the Contractor; and
 - 2.1.4 Good Industry Practice.

3. SERVICES PAYMENT

- 3.1 In consideration of the provision of the Services, the Authority shall pay the Services Payment of £65,000 to the Contractor in accordance with Schedule 3 (Payment).
- 3.2 The Contractor shall not, whether himself, or by any person employed by him, solicit or accept any gratuity, tip or any other form of money taking or reward, collection or charge for any part of the Services other than the Services Payment.

4. STAFF

- 4.1 The Contractor will ensure that at all times they have sufficient numbers of people of appropriate ability, qualification, skill, knowledge, training and experience available to provide and supervise the provision of the Services and cater for staff holiday, sickness and absence.
- 4.2 Where the Services may involve contact with Children or Young People the Contractor shall ensure that safe recruitment procedures are in place and the recruitment and selection procedures include the following matters:
- a) The Contractor shall be registered with the Criminal Records Bureau ("The CRB") or an umbrella agency and shall ensure that all employees and volunteers who may work with or have access to information about children or young people (or vulnerable adults) are checked to an enhanced level through the CRB, which includes the Protection of Children Act (POCA) and this is repeated a minimum of every three years. The Contractor shall provide written confirmation of the enhanced CRB Check to the Authority's Authorised Officer where requested. No member of staff shall be employed or work in the delivery of this service with children or young people (or vulnerable adults) prior to receipt of satisfactory enhanced CRB checks by the Contractor. No agency staff or volunteer will work in the delivery of this service with children or young people (or vulnerable adults) prior to receipt of satisfactory enhanced CRB checks by the Contractor.
 - b) Staff will be trained on safeguarding and promoting the welfare of children. This training will be made available for all staff working with or in contact with children and families.
 - c) All such questions as shall reasonably be required to assess the suitability of the applicant for the position and are permitted by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended).
 - d) The Contractor shall ensure that two written references are obtained.
 - e) With effect from the date of implementation as advised by the Department of Education the Contractor shall:
 - (i) to the extent required at law ensure that no person is engaged in the delivery of the Services except as permitted in accordance with the Vetting and Barring Scheme; and
 - (ii) on demand furnish the Authority with written proof that the engagement of any person engaged (or reasonably believed or reasonably expected by the Authority to be engaged) in the delivery of the Services and identified by the Authority is permitted in accordance with the Vetting and Barring Scheme.
 - f) The Contractor shall ensure that all employees and volunteers are aware of their obligation to limit contact with the Service Users to that required in order to deliver the Service. Authorisation must be sought from the Authority's Authorised Officer for any contact or relationship beyond that.
 - g) The Contractor will fully comply with the Statutory Guidance (voluntary Contractors will comply with the Statutory Guidance as a matter of Good Practice) on making arrangements to safeguard and promote the welfare of children under Section 11 of the Children Act 2004.

Breach of this requirement shall be a fundamental breach of this Agreement notwithstanding that the individual concerned is subsequently removed from the delivery of the Service or that proof is furnished other than on demand.

- 4.3 The Contractor shall be responsible for all acts and omissions of its employees and agents and the Authority shall not be responsible, and cannot be held liable, for any act or omission of any person engaged by the Contractor in relation to the Service provided under this Partnership Agreement.
- 4.4 The Contractor shall be responsible for the payment of all fees, income, taxes, national insurance contributions, and levies of any kind, relating to or arising out of the engagement of any person employed or contracted by the Contractor in relation to the provision of Services under this Services Agreement.
- 4.5 The Contractor shall maintain up to date records on employees and volunteers such as monitoring, supervision, training, absenteeism and complaints monitoring of incidents/accidents. The Contractor shall issue all employees with an up-to-date job description and a written contract of employment. These records shall be made available to the Authority's Authorised Officer as required and on request.

5. WARRANTIES AND REPRESENTATIONS

- 5.1 The Contractor warrants and represents that:
 - 5.1.1 it has full capacity and has taken all steps and obtained all approvals to enable it to lawfully enter into and to perform each of its obligations under this Services Agreement;
 - 5.1.2 it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Services Agreement;
- 5.2 The Contractor shall not in any way be relieved from any obligation under this Services Agreement nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

6. INDEMNITY

- 6.1 Nothing in this Services Agreement is to be deemed to exclude or limit either party's liability in respect of death or personal injury arising as a result of that party's negligence, fraud or any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982.
- 6.2 The Contractor shall be responsible for and indemnify the Authority, its employees, agents and contractors on demand from and against all Losses arising out of or in connection with this Services Agreement including in respect of death and personal injury, loss of or damage to property and breach of statutory duty which is caused directly or indirectly by the performance or non-performance by the Contractor of its obligations under this Services Agreement.

- 6.3 This clause 6 shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, loss or damage to property or breach of statutory duty was not caused or contributed to by its negligence or default, or the negligence or default of its staff or sub-contractors, or by any circumstances within its or their control.

7. INSURANCE

- 7.1 The Contractor shall during the Agreement Term take out and maintain or procure the maintenance of the following insurances:
- 7.1.1 Employer's liability insurance to provide an indemnity of not less than five (5) million pounds (£5,000,000) in respect of any one claim or series of claims arising out of one incident;
- 7.1.2 Third party public liability to provide an indemnity of not less than five (5) million pounds (£5,000,000) in respect of any one claim or series of claims arising out of one incident;
- 7.1.3 Professional Indemnity insurance to provide an indemnity of not less than two (2) million pounds (£2,000,000) in respect of any one claim or series of claims arising out of one incident; and
- 7.1.4 any other insurances that may be required by law.
- 7.2 The Contractor shall provide to the Authority evidence and copies on request of all insurance policies required under this clause 7.
- 7.3 If the Contractor is in breach of this clause 7, the Authority may pay any premia required to keep such insurances in force or itself procure such insurance and may in either case recover such amounts from the Contractor on written demand.
- 7.4 Failure to comply with the insurance provisions of this Services Agreement shall not limit or relieve the Contractor of its liabilities and obligations under this Services Agreement.

8. TERMINATION

Termination on Authority Break Point

The Authority may terminate the Services Agreement by complying with its obligations under clauses 8.1 to 8.2 below.

- 8.1 If the Authority wishes to terminate the Services Agreement under clause 8, it must give notice to the Contractor stating:
- 8.1.1 that the Authority is terminating the Services Agreement under clause 8; and
- 8.1.2 that the Services Agreement will terminate on the date specified in the notice, which must be a minimum of sixty (60) Days after the date of receipt of the notice.
- 8.2 The Services Agreement shall terminate on the date specified in the notice referred to in clause 8.1 above.

Termination on Contractor Default

- 8.3 Subject to clause 8.4, the Authority may terminate the Services Agreement, or terminate the provision of any part of the Agreement by written notice to the Contractor with immediate effect if the Contractor commits a Contractor Default and if:
- 8.3.1 the Contractor has not remedied the Contractor Default to the satisfaction of the Authority within twenty five (25) Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Contractor Default and requesting it to be remedied; or
 - 8.3.2 the Contractor Default is not, in the opinion of the Authority, capable of remedy; or
 - 8.3.3 the Contractor Default is a material breach of the Agreement.
- 8.4 If the Contractor Default which has occurred is an Insolvency Event of Default, the Authority may in its sole discretion give notice terminating this Services Agreement whereupon this Services Agreement shall terminate with immediate effect.

9. CONSEQUENCES OF EXPIRY OR TERMINATION

- 9.1 The Contractor and the Authority shall each carry out their respective responsibilities in accordance with this Services Agreement until the Expiry Date or earlier termination in accordance with this Services Agreement.
- 9.2 The Contractor shall use all reasonable endeavours to assist the Authority to effect an orderly continuation of the Services after termination or expiry of this Services Agreement in such a manner as the Authority may reasonably require.
- 9.3 The costs of any assistance provided by the Contractor under clause 9.2 shall be borne by the Contractor.
- 9.4 On termination or expiry of this Services Agreement, neither Party shall have any further obligations or rights with respect to the other Party provided that termination of this Services Agreement shall not affect the continuing rights and obligations of the Parties under clauses 6 (Indemnity), 10 (Dispute Resolution Procedure), 12 (Confidentiality), 13 (Assignment and Sub-Contracting) and 22 (Law and Jurisdiction) or under any other provision of this Services Agreement that is expressed to survive termination or is required to give effect to such termination or the consequences of such termination.

10. DISPUTE RESOLUTION PROCEDURE

- 10.1 Any dispute or difference arising out of or in connection with this Services Agreement (whether such disputes are in contract or tort or arise out of or under any rule of common law or equity or under any statute) shall be resolved pursuant to this clause 10.
- 10.2 The Parties shall each use reasonable endeavours to resolve a Dispute by means of prompt, bona fide discussion at a managerial level appropriate to the Dispute in question.
- 10.3 In the event that a Dispute is not resolved within fourteen (14) Days of it having been referred to a managerial level for discussion then either Party may refer it to Chief Executive

or equivalent officer of each Party for resolution and the same shall meet for discussion within fourteen (14) Days thereafter or such longer period as the Parties may agree.

10.4 If the dispute is not resolved within twenty (20) Days of escalation of the dispute in accordance with clauses 10.1 to 10.3, the parties shall refer the dispute to mediation in accordance with the CEDR Model Mediation Procedure.

10.5 If the parties cannot agree on a mediator, the parties shall appoint a mediator nominated by CEDR.

10.6 The parties shall use their reasonable endeavours to conclude the mediation within [forty (40)] Days of referral of the dispute to mediation.

10.7 If

10.7.1 either Party is dissatisfied with or otherwise wishes to challenge the Mediator's decision;
or

10.7.2 both Parties agree

then either Party may, within fifteen (15) Days of the conclusion of the mediation, notify the other Party of its intention to refer the dispute to litigation and for such purposes the parties agree that the Courts shall have exclusive jurisdiction in relation to all matters in respect of this Agreement.

10.8 Where any Dispute is referred to litigation pursuant to clause 10.7 the Courts shall have full power to disregard, open-up, review and/or revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement, to vary or cancel the recommendations of the Mediator and, where appropriate, to order financial compensation to be paid by one party to the other.

10.9 The Parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution under this clause and shall give effect forthwith to every recommendation of the Mediator and the Courts delivered under this clause.

11. INTELLECTUAL PROPERTY

11.1 Copyright, patent rights or other intellectual property rights and title in any material produced by the Contractor for the Authority during the Agreement Term and in all reports submitted under the terms of the Services Agreement shall vest in the Authority unless otherwise expressly agreed or approved by the Authority's Authorised Representative in writing.

11.2 Such materials shall not be used, reproduced or disseminated for any other purposes without the prior written permission of the Authority's Authorised Representative.

12. CONFIDENTIALITY

12.1 The parties shall, and shall use reasonable endeavours to ensure that their employees, agents and sub-contractors, keep confidential all information and documents received by them in connection with and all matters relating to the Services and this Services Agreement.

12.2 Schedule 5 shall be of effect.

13. ASSIGNMENT AND SUB-CONTRACTING

13.1 Subject to any express provision of this Services Agreement, the Contractor shall not without the prior written consent of the Authority, assign all or any benefit, right or interest under this Services Agreement or sub-contract any of the Services.

13.2 Notwithstanding any sub-contracting permitted under this Services Agreement, the Contractor shall remain responsible for the acts and omissions of its sub-contractors as though they were its own.

13.3 The Authority shall be entitled to:

13.3.1 assign, novate or otherwise dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in Regulation 3(1) of the Public Contracts Regulations 2006); or

13.3.2 transfer, assign or novate its rights and obligations where required by law and only to a body assuming the whole or part of the Authority's business.

14. CHANGE CONTROL PROCEDURE

14.1 Either Party may request a change to the Services in accordance with the Change Control Procedure.

15. VARIATION

This Services Agreement can only be varied or amended provided that such variation or amendment is agreed in writing by an authorised representative of the Authority and the Contractor.

16. ENTIRE AGREEMENT

The Parties acknowledge that this Services Agreement sets forth the entire agreement between them with respect to the provision of the Services and supersedes and replaces all prior communications, drafts, representations, warranties, stipulations, undertakings and agreements of whatsoever nature, whether oral or written, between the Parties.

17. NO WAIVER

17.1 No waiver of any of the provisions of this Services Agreement shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause 19 (Notices).

17.2 No waiver under clause 17.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Services Agreement unless (and then only to the extent) expressly stated in that waiver.

18. SEVERANCE

- 18.1 If any term, condition or provision contained in this Services Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision of this Services Agreement shall not affect the validity, legality or enforceability of the remaining parts of this Services Agreement.

19. NOTICES

- 19.1 Any notice required by this Services Agreement to be given by either Party to the other shall be in writing and shall be served personally, by fax or by sending the same by registered post or recorded delivery to the following:

	Contractor	Authority
Address	Tendring District Council Town Hall, Station Road CM16 4LU	Essex County Council PO Box 47, County Hall Chelmsford, Essex CM1 1LX
For the Attention of:	Ian Taylor	Georgina Parkin
Telephone Number:	01255 686982	01245 435805

- 19.2 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 forty eight (48) hours after it was posted and any notice sent by fax will be deemed to have been served twenty four (24) hours after it was despatched.

20. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The Parties agree that this Services Agreement shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and any rights contained therein are excluded.

21. BUSINESS CONTINUITY

The contractor is required to establish, test and maintain robust plans in order to ensure Business Continuity through the life of this Agreement and on demand to demonstrate compliance with this clause to the reasonable satisfaction of the Authority

22. LAW AND JURISDICTION

This Services Agreement shall be governed by the laws of England and Wales and the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS whereof the Parties have executed this Services Agreement as a deed and delivered it on the date first written.

Execution by the Contractor

Signed Director/Secretary

Dated

Execution by the Authority

Signed Authorised Signatory

Dated

APPENDIX 1

Schools, Children's and Families Additional Clauses

1. DUTY OF CARE

The Contractor shall be responsible for ensuring that reasonable skill, care and diligence are exercised in carrying out the Services properly and efficiently in accordance with the Contract.

2. MONITORING AND EVALUATION

2.1 The Contractor is required to maintain records to account for the payments made in accordance with schedule 3 (payment schedule). Such records shall be maintained (a) in accordance with generally accepted accounting principles, (b) in a form enabling the Authority to compare actual expenditure in total and by individual budget head with the expenditure indicated in the Contract and (c) in sufficient detail to enable the Authority to satisfy itself that the Service is being delivered in accordance with this Contract. Such records are to be made available to the Authorities Authorised Officers upon request.

2.2 The Contractor shall comply with the monitoring and evaluation arrangements. The Contractor shall liaise with the Authority's Authorised Officer to ensure a planned programme is in place to undertake Equality Impact Assessments (EIA)

2.3 Communication with the Authority shall be maintained through the Authority's Authorised Officer, who shall be the first point of contact between the Authority and the Contractor and may attend the meetings and activities of this Contractor as an observer, both announced and unannounced (however, these powers may be delegated as appropriate). The Contractor is required to notify the Authority upon the departure and replacement of its nominated officers for contact purposes within the scope of this Contract within one calendar month of the departure/new appointment.

3. CONTINUOUS IMPROVEMENT

Both parties shall work to continually improve the provision of Services against this Contract to achieve the highest level of Service user satisfaction within the delivery of a high quality Service.

4. RECOVERY OF SUMS DUE

4.1 Any amount of Funding which is over and above the value of activity completed by the expiry of this Agreement shall be returned to Essex County Council. Such monies shall be payable by any of the following methods:

4.1.1 Recovery direct from the Contractor to the Authority,

4.1.2 Payable by the Contractor from a payment under this Agreement, or

4.1.3 Payable by the Contractor from a payment under another Contract with the Authority.

5. EQUAL OPPORTUNITY FOR STAFF AND SERVICE USERS

- 5.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provision of the Race Relations Acts 1976 and 2000, the Sex Discrimination Act 1975 and 1986 and the Amendment Regulations 2003, the Equal Pay Act 1970, the Disability Discrimination Act 1995 and 2005, or any statutory modification or re-enactment thereof relating to discrimination in employment. The Contractor shall take all reasonable steps to secure the observance of these provisions or agents of the Contractor and all sub-contractors employed in the execution of the Contract.
- 5.2 The Contractor must operate an Equal Opportunities Policy which complies with the recommendations set out in the Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equal Opportunity in Employment issued by the Commission for Racial Equality pursuant to section 47(1) and (7) of the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 ("The Act") and in reference to the Disability Discrimination Codes of Practice. The Contractor shall provide its Equal Opportunities Policy to the Authority's Authorised Officer as required and on request, and shall ensure Services are equally accessible to all.
- 5.3 If a complaint is made pursuant to the Race Relations Act 1976 and 2000, the Sex Discrimination Act 1975 and 1986, the Equal Pay Act 1970 or the Disability Discrimination Act 1995 and 2005 about the acts or omissions of the Contractor or its employees, volunteers or agents when undertaking work for the Authority, the Contractor may be the subject of an investigation by the Authority. In such circumstances the Contractor shall make documents available and co-operate with the investigation, and to the extent that breaches of the Authority's duties under the Act(s) are found to have occurred due to the acts or omissions of the Contractor, its employees, volunteers or agents, then in such circumstances the Contractor shall indemnify the Authority in respect of any loss, damages/ compensation, fines and costs which may be suffered or imposed and the Contractor shall pay any such loss, damages/compensation, fines or costs incurred awarded or recommended by the court, tribunal or ombudsman.

6. HEALTH AND SAFETY

- 6.1 The Contractor shall observe the provisions of the Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999 and all other regulations, approved Codes of Practice and amendments thereto. The Contractor shall provide its Health & Safety Policy to the Authority's Authorised Officer as required and on request.
- 6.2 The Contractor shall maintain a record of any Health and Safety incidents /hazards arising and shall promptly notify the Authority's Authorised Officer of those incidents/hazards that arise in connection with the performance of the Services. The Contractor shall provide access of these records to the Authority's Authorised Officer as required and on request.

7. HUMAN RIGHTS ACT

When the Contractor is performing a public function pursuant to this Contract the Contractor shall indemnify the Authority against all actions, claims, demands, losses, proceedings, damages, costs and expenses whatsoever arising out of any breach of the Human Rights Act 1998 by the Contractor.

8. SAFEGUARDING, CHILD PROTECTION AND VULNERABLE ADULT MATTERS

- 8.1 All safeguarding, child protection and vulnerable adult matters that arise in relation to this Contract, shall be acted upon in accordance with the SET and/or POVA procedures (see appendix 3). The Contractor shall ensure that the children, young people, families and vulnerable adults that they work with understand that whilst in general their confidentiality shall be upheld, any potential child protection and vulnerable adult concerns shall be reported utilising the SET and/or POVA procedures.
- 8.2 The Authority and the Contractor shall take all reasonable steps to ensure that all information concerning Service Users is treated as confidential. Any significant breach of confidentiality is a breach of this Contract and as such can be the basis for terminating this Contract.

9. IMPROPER CONDUCT

- 9.1 The Contractor shall have a policy acceptable to the Authorised Officer to ensure that Service Users are consistently treated with respect and courtesy and shall have written procedures for investigating allegations of improper conduct by their staff.
- 9.2 The Contractor shall ensure that all staff are fully aware of such procedures and are supported, through supervision and training, in identifying and addressing potential areas of concern.
- 9.3 In cases of alleged gross misconduct the Contractor will be expected to take immediate appropriate action to ensure the safety of the Service User, initiate the investigation of the allegation/s and notify the Authorised Officer within 24 hours. The following would constitute gross misconduct:
- 9.3.1 Sexual/physical/mental/financial abuse; including: assault, verbal abuse, acts of cruelty, threatening behaviour, harassment, physical restraint, deprivation, neglect, wilful inaction fraud or theft
- 9.3.2 Exploitation or harassment
- 9.3.3 Racist comments or discriminatory behaviour

10. STATUTORY AND OTHER REGULATIONS

The Contractor shall at its own expense comply with all statutory and other provisions to be performed and observed in connection with the Service and shall indemnify the Authority against any claims, actions, proceedings, loss, liability, penalties, costs or expenses made or incurred as a result of any failure in compliance.

SCHEDULE 1

Definitions and Interpretation

1. The terms and expressions used in this Services Agreement shall have the meanings set out below:

“Agreement Term”

means the period from and including the Commencement Date to the Expiry Date or, if earlier, the date of termination of the Services Agreement for any reason;

“Authority’s Policies”

means

- i. Health & Safety
- ii. Equal Opportunities
- iii. Safeguarding
- iv. Risk Assessment
- v. Race Relations
- vi. Insurance
- vii. Safe Recruitment

“CEDR”

means the Centre for Effective Dispute Resolution;

“Change Control Procedures”

means the change control procedures set out in Schedule 4 (Change Control Procedures);

“Commencement Date”

means the date of this Services Agreement

“Contractor Default”

means one of the following events:

- (a) in relation to the Contractor:
 - i. a court makes an order that the Contractor be wound up or a resolution for a voluntary winding-up of the Contractor is passed;
 - ii. any receiver or manager in respect of the Contractor is appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge;
 - iii. any voluntary arrangement is made for a composition of debts or a scheme or arrangement is approved under the Insolvency Act 1986 or the Companies Act 1985 in respect of the Contractor;
 - iv. an administration order is made, or an administrator is appointed in respect of the Contractor;

- (b) a breach by the Contractor on any of its obligations under this Services Agreement which materially and adversely effects the performance of the Services;
- (c) a breach by the Contractor of its obligation to take out and maintain the insurances referred to in clause 7;
- (d) a breach of the Contractor of its obligations in clause 13 (Assignment and Sub-Contracting);

“Day”

means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;

"Dispute"

shall have the meaning given to it in clause 10 (Dispute Resolution Procedure);

“Dispute Resolution Procedure”

means the procedure to deal with disputes as set out at clause 10 (Dispute Resolution Procedure);

“District Lead”

Means Ian Taylor or some other representative provided by Tendring District Council to ensure delivery by the contractor against this contract

“Expiry Date”

means 31 March 2013;

“Good Industry Practice”

means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor in the delivery of the Services seeking in good faith to comply with its contractual obligations, complying with all applicable Legislation and engaged in the same type of undertaking and under the same or similar circumstances and conditions;

“Insolvency Event of Default”

means any of the events listed in limb (a) of the definition of Contractor Default;

“Intellectual Property Rights”

means any and all patents, trademarks, service marks, copyright, data base rights, moral rights, rights in a design, know-how, confidential information, and all or any other intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;

“Legislation”

means any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of section 2 of the European Communities Act 1972, in each case in the United Kingdom;

“Loss”

means all losses, liabilities, damages, costs, claims, actions, proceedings, compensation, demands, fines, awards, expenses (including reasonable legal fees and disbursements), penalties and interest;

“Party”

means a party to this Services Agreement and “Parties” shall be construed accordingly;

“Progress Review meeting”

Means a meeting in which both parties agree that the proposal is being delivered to specification and within the given timescales.

“Project Lead”

Means Georgina Parkin or some other representative as provided by Essex County Council to review delivery by the contractor against this contract.

“Services”

means the whole or any part of the services set out in Schedule 2 (Output Specification) to be provided by the Contractor to the Authority under this Services Agreement;

“Services Payment”

means the payment by the Authority to the Contractor for the provision of the Services as set out in Schedule 3 (Payment);

“Sub-Contractor”

means a person to whom the Contractor sub-contracts any of its obligations under this Services Agreement;

- 1.1 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
- 1.2 Save where it is stated to the contrary, any reference to this Services Agreement or to any other document shall include any permitted variation, amendment or supplement to such document.
- 1.3 Headings are included in this Services Agreement for ease of reference only and shall not affect the interpretation or construction of this Services Agreement.

- 1.4 References to clauses, paragraphs, Parts and Schedules are, unless otherwise provided, references to the clauses, paragraphs, Parts and the Schedules to this Services Agreement.
- 1.5 Except as otherwise expressly provided in this Services Agreement, all remedies available to the Contractor or to the Authority under this Services Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

SCHEDULE 2

Services Specification

Project Outcomes (Project Specification)

The aim is to improve accessibility and expand the range of short break opportunities for disabled children, young people and their families within nominated localities.

Critical Success Factors

- The proposed development(s) must build upon and enhance current provision and must be in addition to Disability Discrimination Act requirements
- The proposed development(s) have been informed by and agreed through a consultation process with nominated representatives from Families Acting for Change (FACE)
- There is identified and agreed ongoing commitment and funding to ensure improvements are maintained and are fit for purpose.
- The installation work will be completed by 31st March 2014
- The proposed development(s) will also conform to any other Aiming High requirements that may arise during implementation.

Disabled Children Short Breaks (Aiming High) – Clacton Changing Places Proposal

District	Tendring District Council
District lead	Ian Taylor Parks and Seafront
Contact details Address:	Parks Seafront Civic Centre, Duke Street, Chelmsford CM1 1JE
Email:	itaylor@tendringdc.gov.uk
Phone:	01255 686982
Capital funding requested	£65,000
Consultation undertaken	Via the report provided from FACE to Essex County Council. Also previous audit of consultations within both Essex and Tendring
Description of project(s)	The provision of accessible Changing Places facilities and toilets on Clacton seafront. These facilities to be in accordance with the Changing Places specification attached in Schedule 6.
Rationale for site(s) chosen	This builds upon the previous Aiming High projects to provide a strategic range of equipment across Essex. This location has been selected because of accessibility and suitable parking facilities, ability to serve a wide range of users and ability to integrate with existing play equipment and promote inclusive play and short break opportunities. Infrastructure and services are already in place at the location
Additionality – how will accessibility and participation be increased	These are specialist facilities which can be used by any member of the population but especially those with locomotion difficulties.

Timescales – please outline key stages and confirm completion before 31.3.2014	Quotation ASAP. Work to be completed by end March 2014.
Is there continuing funding /resources to ensure the site (s) / equipment is maintained and sustainable	Yes with Tendring District Council.

SCHEDULE 3

Payment

1. SERVICES PAYMENT

- In respect of the project, the Council will pay the total sum of £65,000.00 during the financial year 20013-14. This will be made up instalments on receipt of invoices.

- The Agreement sum is net of VAT. Where appropriate, VAT should be added to relevant invoices at the extant rate.

- Payment of the first instalment of £40,000.00 will be made within 30 days of receipt of two signed copies of this Agreement, together with a valid invoice for that amount.

- The second instalment shall be paid following the Progress Review meeting and approval by the Council in accordance with schedule 1 and upon the Council receiving;
 - a. An invoice for the second instalment, and
 - b. evidence of capital cost incurred, of £40,000.00 of actual and projected spend , and
 - c. evidence that project is progressing to agreed design and outcomes in accordance with Schedule 1

- The nominated District Lead as stated in schedule 1 to provide full and final invoices at the completion of the project costs setting out the full expenditure against Aiming High for Disabled Children Capital for Changing Places - Clacton funding of £65,000.00 No later than 1 month after the formal review carried out in accordance with Schedule 3. The Project Lead will review in December 2014.

SERVICES PAYMENT TERMS

- 2.1 The Council will not be liable to pay for Services unless requisitioned by an Official Order through the marketplace system
- 2.2 The Council will pay any invoice issued under schedule 3 clause 2 within 30 days of receipt of a valid and correct invoice following the delivery of the service. On the thirtieth day the payment will leave the account of Essex County Council. The Council will not be liable for any time after that taken to clear through the banking system

- 2.3 Subject to Clause 12, the Council will make payment direct to the Contractor or his/her lawful attorney or a legal equitable assignee of the Contract but not to any agent of the Contractor, nor to a sub-contractor.
- 2.4 The receipt or payment of any sum by either party shall be without prejudice to the correctness of the sum and either party may require the correction of incorrect payments.
- 2.5 All sums payable under this Contract unless otherwise stated are exclusive of VAT.
- 2.6 Any VAT payable in respect of such sums shall be payable in addition to such sums.

SCHEDULE 4

Change Control Procedure

1. PRINCIPLES

- 1.1 Either Party may at any time request a change to the Services in accordance with the procedure set out in paragraph 2 below.
- 1.2 Neither the Authority nor the Contractor shall unreasonably withhold its agreement to any change.
- 1.3 The obligations of the Parties shall not be effected until a change control note in the form attached to this Schedule 3 (a "**Change Control Note**") has been signed by the authorised signatory of both Parties.
- 1.4 The Authority shall not be responsible for the cost of any work undertaken or goods or materials ordered by the Contractor or its Sub-Contractors which has not been authorised in advance by a Change Control Note.

2. PROCEDURE

- 2.1 The Authority and the Contractor shall discuss changes proposed by either Party to this Services Agreement and such discussion shall result in:
 - 2.1.1 a decision not to proceed further; or
 - 2.1.2 a written request for a change by the Authority; or
 - 2.1.3 a recommendation for a change by the Contractor.
- 2.2 Where a written request for a change is received from the Authority, the Contractor shall submit two signed copies of a Change Control Note to the Authority within seven (7) days of such request.
- 2.3 A recommendation to amend this Services Agreement by the Contractor shall be submitted direct to the Authority in the form of two copies of a Change Control Note signed by the Contractor.
- 2.4 Each Change Control Note shall contain details of the change including, where applicable:
 - 2.4.1 the title of the change;
 - 2.4.2 the originator and the date of the request or recommendation for the change;
 - 2.4.3 the reason for the change;
 - 2.4.4 full details of the change including any specifications;
 - 2.4.5 the price, if any, of the change;
 - 2.4.6 a timetable for implementation together with any proposals for acceptance of the change;
 - 2.4.7 a schedule of payments, if applicable;

- 2.4.8 the impact, if any, of the change on other aspects of the Services Agreement;
 - 2.4.9 the date of expiry of validity of the Change Control Note; and
 - 2.4.10 provision for signature by the Authority if the change is agreed.
- 2.5 For each Change Control Note submitted to the Authority, the Authority shall, within the period of the validity of the Change Control Note, evaluate the Change Control Note and, as appropriate:
- 2.5.1 request further information from the Contractor in which case the Contractor shall provide such information as soon as reasonably practicable and in any event within seven (7) Days. The request for information and the information once provided shall be deemed to be part of the Change Control Note, and the Authority may approve or reject the Change Control Note upon receipt of the new information; or
 - 2.5.2 notify the Contractor of the rejection of the Change Control Note.
- 2.6 A Change Control Note signed by both Parties shall constitute a variation to this Services Agreement in accordance with the terms of clause 14 of the Services Agreement.

3. AUTHORISED SIGNATORIES

- 3.1 Where the change incurs no additional charges for the Authority the authorised representatives for both Parties will act as authorised signatories.
- 3.2 The authorised signatory for the Authority will be the Authority's Authorised Representative and the Head of Procurement and Direct Services for changes up to £70,000 in value and the Authority's Authorised Representative and the Head of Procurement and Direct Services reported to the Service Cabinet Member for changes above £70,000 in value.
- 3.3 The authorised signatory for the Contractor shall be deemed to be the Contractor's Authorised Representative in the absence of any written notification to the contrary from the Contractor to the Authority.

Change Control Note

Ref No:

Date:

Title of Change:

Details of Change:

Reasons for Change:

Impact of Change:

Timetable:

Price:

Contractor:

Signed:

Authority Response: Accept/Reject

Signed:

Note: The format of the Change Control Note may vary from time to time in circumstances where additional information is deemed necessary by the Authority or the Contractor in order to accurately reflect the nature of the change.

SCHEDULE 5

Data Protection Act, Caldicott Principles and Freedom of Information Act

1 DATA PROTECTION ACT 1998

1. In order that the Authority may comply with paragraphs 11 and 12 (relating to the seventh data protection principle) of Part II of Schedule 1 to the Data Protection Act 1998 the Contractor hereby undertakes as follows:
 - 1.1 The Contractor will have in place at all times when processing personal data technical and organisational security measures sufficient to ensure that the Data Protection Act 1998 is complied with.
 - 1.2 The Contractor shall so far as concerns personal data obtained under or for the purposes of this Contract:
 - 1.2.1 comply with the Data Protection Act 1998 and all relevant codes of practice issued under the Act;
 - 1.2.2 maintain the confidentiality of personal data to which he has authorised access under the terms of this Contract;
 - 1.2.3 indemnify the Authority against loss, destruction or processing contrary to the Data Protection Act 1998 of data by himself, his servants or agents; and
 - 1.2.4 in accordance with paragraph 12 of Part II of Schedule 1 to the Data Protection Act 1998 (a) process any personal data supplied to him by the Authority only on instructions from the Authority (but including any set out in this Agreement) and (b) comply with obligations equivalent to those imposed on a data controller by the seventh principle of Part I of the said Schedule.

2. Caldicott Principles

The Contractor must also observe the Caldicott Principles, which are set out below.

The purpose must be justified.

Every proposed use or transfer of personal data within or from the organisation should be clearly defined and scrutinised, with continuing uses regularly reviewed by an appropriate guardian.

Personal data must not be used unless it is absolutely necessary.

Personal data should not be used unless there is no alternative.

The minimum necessary personal data information is to be used.

Where use of personal data is considered essential, each individual item of information should be justified with the aim of reducing identifiability.

Access to personal data should be on a strict need to know basis.

Only those individuals who need access to personal data should have access to it, and they should only have access to the data that they need to see.

Everyone should be aware of their responsibilities.

Those handling personal data - both frontline and support staff - must be aware of their responsibilities and obligations to respect personal confidentiality

All persons handling personal data must understand and comply with the law.

Every use of personal data information must be lawful.

3. Freedom of Information Act 2000

- 3.1 The Contractor shall nominate a contact or contacts who will be responsible for ensuring that the Contractor's obligations as set out in this schedule are met.
- 3.2 It shall be a contractual obligation that, if under Section 5(1)(b) of the Freedom of Information Act 2000 the Lord Chancellor designates the Contractor as a public authority for the purposes of the Act, the Contractor shall comply with the Act.
- 3.3 It shall be a contractual obligation that the Contractor shall provide promptly to the Authority any information required to allow the Authority to respond to requests under Freedom of Information or Data Protection within the statutory deadline. the Authority shall only request such information from the Contractor as is required to meet their statutory duty.
- 3.4 The Authority shall consider any advice from the Contractor regarding information that may be exempt from disclosure but responsibility for disclosure decisions rests with the Authority.

4. Breach, termination and continuance

- 4.1 The Contractor shall permit the Authority to take all reasonable steps to ensure that the provisions of this Schedule (and in particular that the measures referred to in paragraph 1.2) are being complied with.
- 4.2 Failure on the part of the Contractor to comply with the provisions of this Schedule shall entitle the Authority to terminate the contract with immediate effect and to recover the costs incurred in consequence as a civil debt from the Contractor.
- 4.3 On termination of this Contract howsoever arising the Contractor shall, if so requested by the Authority, (a) transfer to the Authority the whole or any part of the personal data and other information received or acquired by the Contractor for the purposes of or in the course of the delivery of the Services and (b) destroy or erase the whole or any part of such personal data and other Information retained by the Contractor.
- 4.4 The provisions of this Schedule shall continue in effect notwithstanding termination of this Contract.

SCHEDULE 6

Specification and Requirements for A Changing Places Facility and Toilet

Specialist equipment needed in a Changing Places toilet	Requirements to meet the Changing Places standard
A height adjustable, adult sized changing bench	The changing bench must be a minimum length of 1.8m The bench must be height-adjustable The bench can be either free-standing or wall mounted.
A tracking hoist system, or mobile hoist	A track hoist system (either wall or ceiling mounted) is preferable, providing access to the toilet, washbasin, changing bench and open space to transfer
Adequate space in the changing area for the disabled person and up to two carers	The changing places facility must be 3m x 4m or the equivalent floor space of 12m ² , with a minimum ceiling height of 2.4m
A centrally placed toilet with space either side for the carers	A peninsular toilet must be provided
A screen or curtain to allow the disabled person and carer some privacy	A dignity screen/curtain should be provided
Wide tear off paper roll to cover the bench	Wide tear off paper roll must be provided
A large waste bin for disposable pads	A large waste bin for disposable pads must be provided
A non-slip floor	A non-slip floor must be provided
Washbasin	A hydraulic/manual or power-operated height-adjustable washbasin should be considered for provision
Shower/floor drain	A shower/floor drain should be installed in specific relevant types of managed buildings such as leisure centres, travel hubs or for specific projects. A shower is not required for all Changing Places toilets.

List of Changes

- 15.1.08 Cl. 3.2 (gratuities) added.
- Cl. 6.4 – addition of “not”.
- Data protection, etc. Cl. 11.2 and Schedule 5 incorporate Procedure 2g.
- Marker re liquidated damages and KPIs in Schedule 3, para. 2.