

# REPORT TO CABINET

**REPORT OF: Healthy Environment Portfolio Holder**

**REPORT NO: AFM0143**

**DATE: 10<sup>th</sup> May 2010**

<b>TITLE:</b>	<b>Leisure Management Agreement</b>	
<b>KEY DECISION OR POLICY FRAMEWORK PROPOSAL:</b>	Key Decision	
<b>PORTFOLIO HOLDER: NAME AND DESIGNATION:</b>	Councillor John Smith Healthy Environment Portfolio Holder	
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<b>INITIAL IMPACT ASSESSMENT:</b>	Carried out and Referred to in paragraph (7) below:	Full impact assessment Required:
<b>Equality and Diversity</b>	n/a	n/a
<b>FREEDOM OF INFORMATION ACT:</b>	This report is publicly available via the local democracy link on the Council's website: <a href="http://www.southkesteven.gov.uk">www.southkesteven.gov.uk</a>	
<b>BACKGROUND PAPERS</b>	LAC 146, LAC 147, LAC 148, LAC 149, LAC 150, AFM040, AFM050, AFM056, CHFR 96,	

## 1. RECOMMENDATIONS

**It is recommended Cabinet consider the proposals detailed in this report and agrees that:**

- 1.1 the District Council enters into a Leisure Management Agreement , associated schedules and related documents for the provision of the management of its' leisure services at Bourne, Deepings, Grantham and Stamford centres with Leisure in the Community (LITC), an industrial provident society (IPS) through a five year contract with the option of a break clause available to either party at the end of year three of the contract term
- 1.2 the District Council grants leases or licences to the IPS for each centre for the term of the Management Agreement

- 1.3 the District Council enters into a collateral warranty between Leisure Connection and the Council by which Leisure Connection will warrant the skill and care of the performance of the services and other obligations in the Management Agreement
- 1.4 the District council agrees the IPS provides the management of the leisure centres through a contract (related to the Management Agreement) between the IPS and Leisure Connection to transfer, for the venues set out below, giving Leisure Connection responsibility for performance of the Services
- 1.5 the Cabinet delegate the negotiations on the terms of the documents required to implement the proposed management provision to the Corporate Head of Resources in agreement with the Portfolio holder for Resources and Assets in consultation with the Portfolio holder Healthy Environment and to the satisfaction of the Council's Statutory Officers.

## **2. PURPOSE OF THE REPORT/DECISION REQUIRED**

- 2.1 The purpose of this report is to obtain the approval of Cabinet to proposed method of provision of the management of leisure services.
- 2.2 On 17<sup>th</sup> April 2008 Council agreed the following:
  - a) To approve the transfer of the Council's Leisure Facilities to a Leisure Trust for a period of 15 years or for the period of the leisure agreement whichever is the shorter.
  - b) To delegate the negotiations on the terms of the transfer, for the venues set out below, to the Service Manager – Asset and Facilities Management in agreement with the Portfolio holder for Finance and Assets in consultation with the Portfolio holder Healthy Environment and to the satisfaction of the Council's Statutory Officers. The following venues will be transferred by lease:
    - Grantham Meres Leisure Complex (incorporating the Grantham Meres Leisure Centre and the South Kesteven Sports Stadium)
    - Stamford Leisure Centre
    - Bourne Leisure Centre; and
    - the Deepings Leisure Centre will be transferred by Licence
- 2.3 Leisure Connection had previously submitted proposals to manage the leisure facilities on the basis of a Non-Profit Distributing Organisation (NPDO) model.
- 2.4 However due to issues regarding registration of the NPDO with the Charities Commission the decision was taken to shelve the establishment of the NPDO model in the short term and present a new management proposal based on the Industrial and Provident Society (IPS) contract structure. Following subsequent detailed discussions/negotiations with Leisure Connection this report highlights the key commercial terms agreed subject to contract, and based upon the principles of their original submission in providing the most economically advantageous tender, which sought to ensure the best financial performance and value for money from the services whilst at the same time

improving the standards of service based upon a weighting of technical 40% and commercial 60%.

### **3. DETAILS OF REPORT**

- 3.1 Leisure Connection will introduce an Industrial & Provident Society (IPS) called Leisure in the Community (LITC). This IPS is registered under the Industrial and Provident Societies Act 1965 and overseen in a regulatory context by the Financial Services Authority, formerly the Registrar of Friendly Societies. The principal objective of the IPS will be to promote the provision of leisure facilities.
- 3.2 Leisure Connection work under this existing structure in eleven operational council contracts with local authorities, including North Kesteven District Council and South Holland District Council.
- 3.3 The IPS will take a lease/licence or an assignment of the lease/licence. This will result in the IPS being liable for all business rates costs relating to the leisure premises..
- 3.4 The IPS will enter into a Leisure Management Contract with the Council and as such, the IPS will have certain regulatory responsibilities such as those of controlling access, collecting income, monitoring usage, management of long term and lifecycle maintenance, checking the forward community programme and providing an annual report to the Council.
- 3.5 The Council will permit the IPS to sub-contract the provision of the bulk of the required leisure management and maintenance obligations to Leisure Connection. Leisure Connection will account for any VAT.
- 3.6 The IPS will be supported by Leisure Connection through the secondment to it of sufficient staff and administrative resources to discharge its operational role under the contract. Staff seconded will be reception and maintenance staff and an element of management time. Leisure Connection will meet the costs associated with this from within its budget.
- 3.7 This structure allows the IPS to apply for mandatory relief for non-domestic rates at the level of 80%.
- 3.8 The Leisure in the Community Trustees are wholly independent of Leisure Connection whose structure was agreed after discussion with the Financial Services Agency (FSA) when they audited the relationship between LC and LITC through several contractual relationships.

#### **Community Benefit**

- 3.9 One of the principal objectives of the IPS is to provide community benefit. This is usually achieved via the savings levered from rate (NNDR) relief being re-invested within the community locally or the facilities themselves.
- 3.10 We are aware that other councils have utilised the mechanism across a wide variety of services. The IPS has been able to use the LITC brand to obtain

additional funding without using the name of either the local authority or Leisure Connection.

- 3.11 As LITC is already an established body, and the legal framework to facilitate its introduction to the contract structure is well developed, it is anticipated that it would take a maximum of eight weeks to establish the Council as a member of the IPS once commercial agreement is reached.

#### **Principal Commercial Terms**

- 3.12 In overview the commercial terms of Leisure Connections proposal are as follows:
- 3.13 The Council to benefit fully from the NNDR savings resulting from the implementation of an IPS contract structure.
- 3.14 Leisure Connection to waiver the initial legal set up costs of £25,000.
- 3.15 The Council to enter into a five year contract with the option of two-way break clause at the end of year three of the contract term.
- 3.16 The IPS would receive a Management Fee payable by the Council of £30,000 per month for the provision of the management of its leisure services at Bourne, Deepings, Grantham Meres Leisure Complex (incorporating the Grantham Meres Leisure Centre and the South Kesteven Sports Stadium) and Stamford.
- 3.17 The management fee is not guaranteed insofar as the Payment Mechanism allows a deduction under a rigorous and robust Performance Monitoring System for failures in performance standards which is all part of the previously tendered continual competitive dialogue process. In addition there will be a gain share mechanism for mutual benefit which will benchmark Leisure Connection's profitability against expectations. This will include any profit after including the management fee which is in excess of 6% of turnover per month being returned to the Council. Any deductions in the management fee are separate to this account and would not affect profitability figures.
- 3.18 The Asset & Facilities team have worked closely with Leisure Connections over recent months to address operational issues at the Meres Leisure Centre. The contractor has delivered an improved service to users of the site during this period. Enhanced performance monitoring provisions will provide an ongoing incentive to keep standards high under the new contract terms.
- 3.19 The contract documentation will also incorporate a utilities benchmarking agreement based upon that previously agreed within the proposed NPDO model which will ensure that the council receives financial benefit of investments on energy saving schemes, for example pool covers.
- 3.20 Under the new agreement Leisure Connection will have no requirement to make capital investment into the centres. However, this will not preclude investment on commercial grounds.
- 3.21 Leisure Connection will accept responsibility for all repair and replacement items under a £500 threshold.

#### **4. OTHER OPTIONS CONSIDERED**

- 4.1 The other option considered was to extend the interim agreement with Leisure Connection for a period of time and proceed to a tender process which would incur significant cost. The proposal from Leisure Connection is more economically advantageous than the previous second lowest bid from the original tender procedure. The proposal is considered to provide value for money and is from the company which was selected from the competitive dialogue as preferred bidder to negotiate contractual terms.

#### **5. RESOURCE IMPLICATIONS**

- 5.1 The budgets for 2010/11 have incorporated the Management Fee payments as detailed within this report and no assumption can be made regarding any reduction in business rates.

#### **6. RISK AND MITIGATION (INCLUDING HEALTH AND SAFETY AND DATA QUALITY)**

- 6.1 The nature of the proposed Leisure Management Agreement mitigates the potentially significant risk of non continuity in the provision of leisure services at our centres.

#### **7. ISSUES ARISING FROM EQUALITY IMPACT ASSESSMENT**

- 7.1 None are specifically identified.

#### **8. CRIME AND DISORDER IMPLICATIONS**

- 8.1 None are specifically identified.

#### **9. COMMENTS OF SECTION 151 OFFICER**

This is a significant discretionary area of expenditure for the District Council and all efforts have been undertaken to ensure the new contract arrangements delivers best value for money for the community. It is important to ensure that the current 'open book' arrangements between the Council and the contract provider continue under the new contract to ensure there is opportunity to ensure both costs and income are scrutinised. The proposed £30,000 monthly fee is a 'capped' amount and will be reduced under the gain share mechanism should the contract provider perform in excess of 6% profit/turnover ratio. The break clause after 3 years will give the opportunity for both parties to terminate the contract should the financial position or performance fail to meet expectations. In addition the Council should ensure robust contract monitoring arrangements are in place and exercise penalty clauses when necessary.

The IPS will be required to apply to the Council in respect of any business rate relief once the premises have been leased. The application must be able to demonstrate the community benefit of the new arrangements and satisfy all aspects of the application criteria in order to obtain any rate relief (mandatory or discretionary). Members are reminded that mandatory rate relief is 80% of business rates payable and the remaining 20% is a discretionary relief 'top up'. This element is funded 75% from the District Council and 25% from the national business rates pool.

## **10. COMMENTS OF MONITORING OFFICER**

The Council went out to tender for the provision of the management of leisure services throughout the district with the purpose of providing a benefit to the community. As a result of that tender exercise, Leisure Connections Limited was selected as the preferred provider of those services. Leisure Connections Limited proposed provision of the service through a leisure trust. The proposed trust did not obtain the required charitable status. Leisure Connections now propose provision of the service through an existing IPS. The Council has previously considered provision of the management of its leisure services through an IPS. It preferred the provision through a local leisure trust with charitable status. As this cannot be delivered, it must once again consider the IPS provision. This provision was anticipated in the report to Cabinet CHFR96. The future of IPS is uncertain as a legal entity. The term of the proposed agreement with the IPS has been limited to 5 years to allow the Council to review its options for the provision of the service in the near future.

The Council may provide the management of its leisure services in the way proposed by virtue of s.2 Local Government Act 2000 provided community benefit can be established.

Any lease/licence of the premises will be excluded from the provisions of the Landlord and Tenant Act 1954 preventing the creation of business tenancies and avoiding security of tenure. This will ensure that the leases will absolutely terminate on the termination of the contract with the IPS with no automatic rights of renewal.

The lease/licences are proposed at a peppercorn rent. This is a disposal at less than best price. This is permitted in accordance with s. 123 of the Local Government Act 1972 and the General Disposal Consent 2003.. The General Disposal Consent requires the identification and delivery of the community benefit of the proposals and evidence that the difference between the market value and the value received does not exceed £2 million.

The other documents required to introduce the proposals involve:

- a collateral warranty. This allows the Council to achieve a direct contractual relationship with Leisure Connections Limited to ensure the service delivery can be enforced by the Council.
- A parent company guarantee. This provides a guarantee to the Council from the parent company of Leisure Connections Limited guaranteeing the provision of the service to a specified value
- a payment mechanism. This will specify the terms of payments between the parties involved in the proposals.

- Licence to occupy the leisure centres from the IPS to Leisure Connections Limited. These will allow Leisure Connections Limited to occupy the centres to carry out the management. This will have to be approved by the Council.

All these documents have been approved in relation to the provision of the service through a leisure trust. The terms of the documents for the proposed IPS provision should reflect those terms already agreed.