

INSTRUCTIONS FOR TENDERING



Invitation to Tender

1. **Horley Town Council** (the "Authority") invites tenders for the removal of the existing skate park and for the design, supply and installation of a new concrete skate park in the Horley Recreation Ground. The new equipment will fit onto the footprint of the existing skate park.
2. The Horley Recreation Ground is owned and managed by the Town Council and is open to the public through the day and night. The safety and security of equipment and machinery will be the responsibility of the Contractor until satisfactory completion of the contract.
3. The service and works required are outlined in the specification. The Contractor must provide details of how each service will be delivered and the level of security that will be provided.
4. Prospective tenderers shall ensure that they are fully familiar with the nature and extent of the obligations to be accepted by them if their tender is accepted.
5. Should any prospective tenderer be in doubt as to the interpretation of any part of the contract documents, the Town Clerk or his nominated officer shall endeavour to answer any enquiries, prior to tenders being submitted.
6. It is the responsibility of prospective tenderers to obtain for themselves at their own expense any additional information necessary for the preparation of their tenders.
7. All the information supplied by the Authority in connection with this invitation to tender shall be treated as confidential by prospective tenderers except that such information may be disclosed so far as is necessary for the purpose of obtaining sureties, guarantees and quotations necessary for the preparation and submission of the tender.
8. Tenderers will be required to demonstrate their ability to provide the Service.
9. The response by the tenderer shall be signed and submitted in the manner and by the date and time stated below together with the following documents unless already provided:

- 9.1 A statement of the names and home addresses of the partners if the

tenderer is a partnership, or a statement of the names and home addresses of the directors and secretary if the tenderer is a company;

- 9.2 A description of the tenderer's corporate and management structure with brief biographical details of the principal managers proposed to be employed in the performance of the Service;
 - 9.3 The names of the tenderer's bankers and of two other trade and credit referees;
 - 9.4 A brief history of the tenderer's company together with the names of organisations to which the tenderer has been contracted during the past five years and any relevant references;
 - 9.5 A statement setting out the tenderer's status as a subsidiary company or otherwise within the meaning of Section 736 of the Companies Act 1985 and, if appropriate, the name and registered address of the ultimate holding company together with a holding company Guarantee in the form incorporated in the tender documents.
10. All documents requiring a signature shall be signed.
11. The Authority is not bound to accept the lowest of any tenders.
12. **DESCRIPTIONS:**
Reference should be made to the specifications for descriptions of the work.
13. **PRICES TO BE INCLUSIVE:**
In the absence of specific direction to the contrary, the prices and rates inserted in the Breakdown of Costs must be fully inclusive, covering all labour, materials, temporary works, plant, overhead charges, and profit, as well as the general liabilities, obligations and risks described or implied in the tender documents. Costs relating to items which are not priced will be deemed to have been included elsewhere.
14. **ALTERATIONS AND QUALIFICATIONS:**
No alterations to the tender documents must not be made without the written consent of the Authorised Officer. Tenders containing such alterations or qualifications may be rejected.

Response Requirements and Tender Submission

Any questions regarding the tender should be submitted via e-mail to the Town Clerk at town.clerk@zen.co.uk

15. The tender and all accompanying documents shall be delivered to:

**Town Clerk, Horley Town Council,
Council Offices, 92 Albert Road, Horley, Surrey RH6 7HZ**

not later than **1700 hours on Friday 3 June 2016**

Tenders received after this time will NOT be considered.

TENDER EVALUATION PROCESS

All tenders will be subject to a tender evaluation process to objectively compare each bid against a scoring matrix consisting of criteria as set out below.

Scoring Matrix

Item No.	Evaluation Criteria	Points	Score
1.	Cost of Service. The highest number of points will be awarded to the bid, which represents the best value for money.	60	
2.	Service Provision. The highest number of points will be given to the bid which best supports the needs of the Council.	40	
	Total	100	

The Council does not bind itself to accept the lowest or any tender.

The Council reserves the right to undertake further discussions with any Contractor in order to clarify the details of the submissions.

Horley Recreation Ground Skatepark, Design & Build

Design Brief

The existing skate park is a Town Council owned facility in the Horley Recreation Ground and is sited adjacent to the Multi Use Games Area. The postal address of the site is Brighton Road, Horley RH6 7HJ.

The existing steel skate park is over 14 years old and is of metal construction and generally considered out-of-date but is still usable. In earlier consultations we received many comments on our Facebook page about the age and design of the skate park. It is argued that a more modern skate park using a concrete base would be preferable to the current steel frame construction.



A concrete skate park would also support a greater age range, provide more challenging equipment and have less maintenance costs. The tender is for a new concrete skate park which will be on the same footprint as the existing one, as depicted below.



The footprint of the new Skateboard/Skate facility is 385 square metres in area 35m x 11m.

The new design must cater for BMX users, skateboard users and inline skates. Ideally the design should also cater for scooter users either integrated into the main skate area or placed within its own designated area (but still within the main footprint). Skate park cement may be coloured (applied as part of the concrete mix) but this would be decided depending on further views of the user group. Skate park design incorporating features constructed below ground will be permitted subject to appropriate drainage.

Service Specification

Overall, we are looking for an innovative design that makes high-quality use of the space and budget available. Elements included will offer multiple uses. Ride-able features will be accessible to beginners, facilitate progression, and offer interest to advanced riders.

The Council does not wish to be prescriptive in the overall design in view of what is a modest area. Quality must be demonstrated in the appearance and richness of experience that the design offers. A variety of complementary materials, colours and textures should be integrated into the design. The skate park should be designed as a destination park for families and spectators to appreciate, as well as riders. Provision must be made to avoid user conflicts within the space, such as including social/seating/viewing spaces, which can be enjoyed by non-riders without obstructing the flow of the skate park.

Potential suppliers should also consider within their design:

- The skate park is to be constructed mainly using the sprayed concrete method;
- All aspects of the design must confirm to the British standard – Facilities For Users Of Roller – Sports Equipment’ – Safety Requirements And Test Methods, ref: BSEN14974:2006 and satisfy the recommendations of RoSPA’s “Prevention of Skateboarding Accidents and Litigation Management”;
- The design will also provide features that are fun and progressive for all levels from beginner to advanced;
- The basis for the tender in respect of all the works will include the submission of a design to maximise the full potential of the allocated site area.

BUDGET

A fixed budget not exceeding £85,000, excluding VAT, is available for this project and it is expected that potential suppliers will demonstrate value for money with any submissions.

STANDARD CONDITIONS OF CONTRACT

1. DEFINITIONS AND INTERPRETATION:

In this Contract, save where the context otherwise requires, the following expressions shall have the meanings hereby assigned to them.

- a. “Commencement Date” means the date agreed with the Council to commence the Services;
- b. “Conditions” means these conditions, any supplementary conditions and any modification thereof;
- c. “Contractor” means the organisation who is employed by the Council to undertake the Services;
- d. “Contract” means any formal contract document entered into under seal between the Contractor and the Council or signed by any duly authorised person and includes the documents incorporated therein and forming part thereof. Unless and until a formal contract is entered into between the Contractor and the Council “Contract” means the signed Tender documents. Any reference therein to an Act of Parliament or any Order Regulation, Statutory Instrument of the like shall include a reference to any amendment or re-enactment of same;
- e. “Contract Period” means the period from the commencement date of the Services until completion of the Services to the satisfaction of the Contract Manager;
- f. “Contract Price” means the price inserted by the Contractor in the Pricing Schedule submitted with the Tender;
- g. “Council” means Horley Town Council or any successor authority;
- h. “Town Clerk” means the Contract Manager for the time being or any person duly authorised by the Town Clerk to act on his behalf;
- i. “Good Industry Practice” means the degree of skill, care prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced Contractor (engaged in the same type of undertaking as that of the Contractor) under the same or similar circumstances;
- j. “Services” means the Services set out in the Specification;

- k. "Specification" means the document setting out the Council's requirements and which forms part of the Tender Documents;
- l. "Contractor" means the person, persons or company whose tender is accepted;
- m. "Tender" means the Tenderers bid for the Services set out in their Tender Documents;
- n. "Tender Documents" means the Specification together with the Tender submitted by the Contractor and any accompanying or supporting documents relating to the provision of the Services;
- o. "Week" means 7 consecutive days starting on Monday and ending the following Sunday;
- p. Words importing one gender include all others and the singular include the plural and vice versa.

2. WARRANTIES:

The Contractor in submitting its form of tender warrants and represents to and undertakes with the Council that:

- 2.1 It has complied in all respects with the conditions of tendering;
- 2.2 All information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Contractor or its employees in connection with the Contractor's form of tender are true, complete and accurate in all respects;
- 2.3 It has not submitted its tender or entered into the Contract in reliance upon any representation of statement (whether made orally, in writing or otherwise) which may have been made by the Council;
- 2.4 It has full power and authority to enter into the contract and carry out the Services;
- 2.5 it is of sound financial standing and has sufficient working capital available to it to carry out the Services in accordance with the Contract for the entire duration of the contract period; and

- 2.6 It will make available to the Council copies of its audited accounts within 30 days of the formal adoption of such accounts;
- 2.7 If awarded the contract shall discharge its obligation with all due skill, care and diligence including but not limited to good industry practice.

3. PROVISION AND MANNER OF CARRYING OUT THE SERVICES:

- 3.1 The Contractor shall commence the Services on the agreed Commencement Date to be confirmed;
- 3.2 The Contractor shall at all times provide the Services in accordance with the Specification and the conditions referred to in the Contract;
- 3.3 The Contractor shall comply with all the relevant Acts of Parliament, statutory regulations and codes of practice relating to the Services including compliance with any obligations which may be imposed by the same upon the Council;
- 3.4 The Contractor shall provide the Services safely and in a manner that is not, or is not likely to be, injurious to health or detrimental to the environment or the fabric of any property;
- 3.5 The Contractor shall undertake the Services (without prejudice to any other provisions contained in the Contract) in an efficient, effective and safe manner in accordance with the Contract;
- 3.6 The Contractor shall provide the Services at all times in such a manner as shall promote and enhance the image and reputation of the Council;
- 3.7 The Contractor shall provide all the Equipment necessary for undertaking the Services;
- 3.8 All Equipment used in relation to undertaking the Services shall be at the Contractors own risk;
- 3.9 The Council shall have the power to inspect and examine performance of the Contractor in relation to the provision of the Services and its performance will be monitored to ensure compliance with the terms of the Contract in accordance with the Monitoring Schedule;
- 3.10 Timely undertaking of the Services shall be of the essence of the contract including commencing the Services within the time agreed or specified by or with the Council;

- 3.11 If the Council considers that any part of the Services have not been undertaken in accordance with or do not meet the requirements of the Contract and is other than as a result of the default or negligence of the Council the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirement of the Contractor within such reasonable time as may be specified by the Council;
- 3.12 All of the Council's affairs are open to scrutiny by a variety of external bodies and people including:
- 3.12.1 An external Auditor appointed by the Audit Commission
 - 3.12.2 The Public via the Council's Complaints procedure
 - 3.12.3 Local electors via the Annual Inspection of Accounts
 - 3.12.4 Her Majesty's Revenue and Customs
 - 3.12.5 Department for Works and Pensions
 - 3.12.6 Freedom of Information Act
- 3.13 The Council through its Internal or External Auditors may request information relating to the Contract pursuant to the provisions of condition 3.12 above; and
- 3.14 The Contractor shall supply the Council's Internal or External Auditors with the information forthwith upon request.

4. STANDARD OF WORKS:

- 4.1 It shall be the duty of the Contractor well and properly to provide the Services to a standard that complies in all respects with the Specification and with any Quality Standards and where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body when executing the Services together with reasonable care and skill and in accordance with good industry practice;
- 4.2 The introduction of new methods or systems which impinge on undertaking the Services shall be subject to the Council's prior written approval in writing;
- 4.3 The Contractor shall deal with any complaints received (whether received orally or in writing and whether from members of the public or others) in a prompt, courteous and efficient manner;

- 4.4 Unresolved complaints received or referred to the Council will be investigated by the Town Clerk who may take such action that he considers appropriate;
- 4.5 The Town Clerk shall have the right at any time to interview any member of the Contractor's staff in connection with the carrying out of all or any of the Services;
- 4.6 The Town Clerk shall also be entitled to request any information relating to the carrying out of the Services and such information shall be supplied by the Contractor forthwith upon request.

5. CONTRACTOR'S APPOINTED SERVICES SUPERVISOR:

- 5.1 The Contractor shall ensure that at all times a Services supervisor is appointed and empowered to act on behalf of the Contractor and is available in person to the Town Clerk at all times whilst undertaking the Services. The Contractor shall appoint a suitably qualified Deputy Services Supervisor for periods of the Services Supervisor's holiday or illness;
- 5.2 Prior to the commencement date the Contractor shall inform the Town Clerk in writing of the name and telephone number of the Services Supervisor;
- 5.3 The Contractor shall inform the Town Clerk of the identity of any person proposed to be authorised to act for any period as deputy for the Services Supervisor before the start of that period. Any person proposed to be authorised to act as deputy for the Services Supervisor must be a qualified existing employee of the Contractor;
- 5.4 The Services Supervisor or his duly authorised deputy shall be the authorised representative of the Contractor for all purposes connected with the Contract. Any notice, information, instruction or other communication;
- 5.5 Given or made to the Services Supervisor or his deputy shall be deemed to have been given or made to the Contractor;
- 5.6 The Services Supervisor or his duly authorised deputy shall consult with the Town Clerk and with such other of the Council's supervisory staff as may from time to time be specified by the Town Clerk as often as may be necessary for the efficient provision of the Services in accordance with the Contract;

- 5.7 The Services Supervisor shall inform the Town Clerk promptly and in writing of any instances of activity or omission on the part of the Council which prevent or hinder or may prevent or hinder the Contractor from meeting his contractual obligations.

6. SUPERVISION OF STAFF:

- 6.1 The Contractor shall provide a sufficient complement of supervisory staff in addition to the Services Supervisor; to ensure that the Contractor's staff engaged in and about the provision of the Services is at all times adequately supervised and properly perform their duties;
- 6.2 The Contractor's staff engaged in and about the provision of the Services shall primarily be under the control and direction of the Contractor's own supervisory staff but shall nevertheless comply with all reasonable instructions and requests given to them by the Council's employees.

7. STAFF:

- 7.1 The Contractor shall employ in and about the provision of the Services only such persons as are careful, skilled and honest and experienced in the work which they are to perform;
- 7.2 The Contractor shall employ sufficient staff to ensure that the Services are provided at all times in accordance with the Specification. Accordingly, it shall be the duty of the Contractor to ensure in particular that a sufficient reserve of staff is available to provide Services during staff holidays or absence through sickness otherwise;
- 7.3 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing Contractor shall not unlawfully discriminate within the meaning and scope of the Human Rights Act 1998, the Equality Act 2010 or other relevant legislation or any statutory modification or re-enactment thereof;
- 7.4 The Contractor shall ensure that every person employed by the contractor in and about the provision of the Services is at all times properly and sufficiently trained and instructed with regard to:
- *the task or tasks that the person has to perform*
 - *any relevant provision of the Contract*
 - *relevant rules, procedures and standards of the Council*

- *all relevant rules, procedures and statutory requirements concerning Health and Safety at work*
- *fire risks and fire precautions and*
- *the necessity to observe the highest standards of courtesy and consideration to the public and promote and enhance the Council's image and reputation.*

7.5 The Contractor shall take all reasonable steps to secure the observance of condition 7.4 above by all servants, employees or agent of the contractor and all Contractors and sub-Contractors employed in undertaking the Services;

7.6 The Contractor will be monitored by the Council to ensure compliance with condition 7.4 and 7.5;

7.7 The Contractor shall be entirely responsible for the employment and conditions of service of its own employees including without limitation the payment of wages;

7.8 The Contractor shall comply with and shall also ensure that its staff shall comply with all relevant rules, codes, policies, procedures and standards of the Council which may be notified to the Contractor by the Council from time to time and with all relevant statutes, statutory orders and regulations;

7.9 The Town Clerk may by reason of misconduct, breach of these conditions or for any other substantial reason instruct the Contractor to take disciplinary action or other action in relation to or remove from the provision of the Services any person employed in or about the provision of the Services by the Contractor (which for the avoidance of doubt shall include the Services Supervisor or his deputy) and the Contractor shall forthwith comply with such instructions. The Council shall not in any circumstances be liable to the Contractor or any of its employees in relation to any such action or removal and the Contractor shall fully and promptly indemnify the Council in respect of any claims brought by any such employee arising there from;

7.10 The Contractor shall ensure that its staff carry out their duties and behave in an orderly manner and in as quiet a manner as may be reasonably practical, having regard to the nature of the duties being performed by them. The Contractor shall further ensure that its staff do not unlawfully remove any article or thing from the site, whether the property of the Council or of its employees, agents or sub-Contractors or of other persons;

- 7.11 Representatives of the contractor shall carry at all times identity cards in a form approved by the Town Clerk and make such cards available for inspection on request by an Officer of the Council who similarly discloses his/her identity;
- 7.12 When requested to do so or when communicating with other persons as a representative of the Contractor all persons employed by the Contractor in the performance of the Services shall disclose their identity and shall not attempt to avoid so doing;

8. HEALTH AND SAFETY:

- 8.1 The Contractor shall at all times comply with:
- 8.1.1 All relevant Health and Safety Acts, Health and Safety Regulations and Codes of Practice that are approved by the Health and Safety Commission;
 - 8.1.2 All relevant and appropriate guidance and good working practices, as published or accepted by the Health and Safety Executive, professional/trade bodies or other similar organisations;
 - 8.1.3 Their own Health and Safety Policy, health and safety system and procedures;
 - 8.1.4 Any conditions stipulated by the Council in relation to Health and Safety:
 - 8.1.4.1 Such conditions will override details contained in the Contractor's internal documentation but will ensure that health and safety standards will be maintained or improved;
 - 8.1.4.2 Any requests for the provision of health and safety documentation will be provided in a timely manner;
- 8.2 The Contractor shall nominate a senior representative, to act as a co-ordinator between both parties for the matters of health and safety arising out of the Services;
- 8.3 The Contractor shall notify, in writing, to the Contract Manager of all incidents, which either could have lead or did lead to injury and/or damage. Where incidents are reportable under the Report of Injuries, Diseases and Danger Occurrences Regulations 195, a complete copy of Form F2508/F2508A/F2508G must be supplied;

- 8.4 The Town Clerk shall be empowered to suspend the provision of the Services in the event of non-compliance by the Contractor with issues concerning health and safety matters. The Contractor shall not resume provision of the Services until the Town Clerk is satisfied that the non-compliance has been rectified.

9. ASSIGNMENT AND SUB-CONTRACTING:

The Contractor shall not:

- 9.1 Assign the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof; or
- 9.2 Sub-contract the provision of the Services or any part thereof to any person without the previous written consent of the Town Clerk which consent (if given) shall not relieve the Contractor from any liability or obligation under the contract and the Contractor shall be responsible for the acts, defaults or neglect of any sub-Contractor or its agents, servants or workmen, notwithstanding that the Council shall require as a condition of giving any consent to sub-contract a direct warranty and undertaking from the sub-Contractor concerning the provision of the Services and compliance with the Contract in all respects.

10. LIABILITY, INDEMNITY AND INSURANCE:

- 10.1 Neither the Council nor the Contractor shall exclude or limit liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982;
- 10.2 The Contractor shall be liable for and shall fully and promptly indemnify and keep indemnified the Council fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Contract including in respect of any death or personal injury, loss of or omission of the Contractor. The minimum level for both Public Liability and Employers Liability held by the contractor will be £5m. This clause shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury or loss or damage was not caused or contributed to by its negligence or default, or negligence or default of its Staff or sub-Contractors or by any circumstances within its or their control;
- 10.3 Subject always to condition 10.2 the liability of either Party for Defaults shall be subject to the financial limits set out in this condition 10.4;

- 10.4 The aggregate liability of either Party for all events resulting in direct loss of cash or damage to premises or property of the other under or in connection with the Contract shall in no event exceed £100,000 (One Hundred Thousand Pounds);
- 10.4.1 Subject always to condition 10.2 in no event shall either Party be liable to the other for:
- loss of profits, business, revenue or goodwill; and/or
 - indirect or consequential loss or damage
- 10.5 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which, may be incurred by the Contractor, arising out of the Contractor's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor;
- 10.6 The Contractor shall hold employers liability insurance in respect of staff in accordance with any legal requirement for the time being in force;
- 10.7 The Contractor shall produce to the Town Clerk, on request, copies of all insurance policies referred to in this condition or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies;
- 10.8 If, for whatever reason, the Contractor fails to give effect to and maintain the insurance policies referred to in this condition or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor;
- 10.9 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Condition 10.2.

11. PROFESSIONAL INDEMNITY:

11.1 The Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all professional Contractors or sub-Contractors involved in the provision of the Services hold and maintain appropriate cover. To comply with its obligations under this condition 11.1 and as a minimum the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent sub-Contractor or contractor involved in the performance of the Services has a limit of indemnity of not less than £5m for any occurrences arising out of each and every event. Such insurance shall be maintained for a minimum of six (6) years following the expiration or earlier termination of the Contract.

12. PRICE PAYABLE:

12.1 The Price payable to the contractor for the Services shall be that stated in Form of Tender;

12.2 The Price payable for the Services to be provided under the Contract shall include without limitation the costs of all labour, equipment, fuel and materials to be supplied by the Contractor, all costs of purchasing, issuing, operating and maintaining vehicles, all travelling expenses involved, and all royalties, licence fees or other similar expenses in respect of the making, use or exercise by the Contractor of any invention or design for the purpose of performance of the Services and any additional items or expenses of whatever nature as may from time to time become necessary for the proper performance of the Services.;

12.3 The Contractor shall not, and shall procure that none of its employees shall, solicit or accept any gratuity or tip or other form of money-taking or reward, collection or charge for any of the Services, save for the sums payable.

13. PAYMENT:

13.1 The Contractor shall submit invoices on completion of the specified works and approval by the Town Clerk and the Council shall pay such amount as may properly be due to the Contractor under the terms of the Contract within Thirty days of the receipt by the Town Clerk of such invoice. The Town Clerk shall notify the contractor in writing within five working days of receipt of the invoice if the Town Clerk considers any invoice submitted by the Contractor to be incorrect in any way stating the grounds for such withholding;

13.2 In addition to the sums payable the Council shall pay the Contractor such value added tax (if any) as may be properly chargeable by the Contractor in connection with the provision of the services under legislation from time to time in force and the Contractor shall issue a tax invoice in respect thereof.

13.3 The Council may reduce payment in respect of any Services which the Contractor has failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Council.

14. TERMINATION:

14.1 The Council may terminate this Contract if the Contractor shall do all or any of the following:

14.1.1 Commit a breach of any of its obligations under the contract (each such obligation being a condition of the contract not a warranty); or

14.1.2 Suspend any payment to or convene to hold a meeting of creditors or commit an act of bankruptcy or (being a company) shall have a receiver appointed pursuant to the Insolvency Act 1986 (as amended) or by the court or any debenture hold or shall have an administrator appointed pursuant to the Insolvency Act 1986 (as amended) or shall go into liquidation (other than for the purpose of amalgamation or reconstruction) with its creditors or any arrangement for the benefit of such creditors or if distress or execution shall be levied or threatened upon any of its property or any judgement against it shall remain unsatisfied for more than 14 days; or

14.1.3 There shall be any change in control of the Contract or (where the Contractor is a subsidiary company) its ultimate holding company; or

14.1.4 Any of the warranties and representations set out in Standard Condition 2 shall prove to be untrue or incorrect then in any such circumstances the Council may without prejudice to any of its remedies under the Contract and without prejudice to any rights of action which shall accrue or shall have already accrued to the Council do all or any of the following:

- Retain any amount due to the Contractor howsoever arising from the Council; and

- Without determining the whole of the Contract, determine the Contract by notice in writing to the contractor having immediate effect in respect of such part of the Services as may be specified in such notice whereupon a corresponding reduction in the sums due shall be made;
- The rights of the Council under Standard Conditions 15.1 are in addition and without prejudice to any other right the Council may have to claim the amount of any loss or damage suffered by the Council on account of the acts or omissions of the contractor whether pursuant to the bond or guarantee and indemnity given in accordance with the bond undertaking or otherwise;
- The Contract may be terminated by either the Council or Contractor by giving 2 calendar months clear notice.

15. CONSEQUENCES OF TERMINATION:

15.1 Upon such termination, in addition to such consequences are set out in the other provisions of the Contract:

15.1.1 The Contractor shall forthwith cease to perform any of the Services;

15.1.2 The Contractor shall fully and promptly indemnify the Council in respect of the cost of causing to be performed such Services as would have been performed by the Contractor during the remainder of the Contract period to the extent that such cost exceeds such sums as would have been lawfully payable to the Contractor for performing such services. The Council shall be at liberty to have such Services performed by any persons (whether or not employees of the Council), as the Council shall in its entire discretion think fit and shall be under no obligation to employ the least expensive method of having such Services performed;

15.2 On termination of this agreement for any reason the Council shall pay the Contractor any such portion of the monies owed to it.

16. BRIBERY AND CORRUPTION:

The Council shall be entitled to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation, if:

- 16.1 The Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as inducement or reward for doing or forbearing to do so or for having done or forborne to do any action in relation to the Contract or any other contract with the Council; or
- 16.2 The like acts shall have been done by any person employed by the Contractor or acting on its behalf (whether with or without the knowledge of the Contractor); or
- 16.3 In relation to any contract with the Council the Contractor or person employed by it or acting on its behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916; or
- 16.4 Have given any fee or reward the receipt of which is an offence under Section 117 (2) of the Local Government Act 1972.

17. WHOLE CONTRACT:

The Contract shall constitute the whole agreement and understanding of the parties as to the subject matter hereof and there are no prior contemporaneous agreements between the parties with respect thereto.

18. AGENCIES:

The Contractor shall not be or be deemed to be an agent of the Council and the Contractor shall not hold itself out as having authority or power to bind the Council in any way.

19. WAIVER:

Failure by the Council at any time to enforce the provision of the Contract or to require performance by the Contractor of any of the provisions of the Contract shall not be construed as a waiver of any such provision and shall not affect the validity of the contract or any part thereof or the right of the Council to enforce any provision in accordance with its terms.

20. SEVERANCE:

If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect.

21. AMENDMENTS:

No amendments to the Contract shall be binding unless in writing and signed by the Town Clerk and a duly authorised representative of the Contractor and expressed to be for the purpose of such amendment.

22. INCONSISTENCY:

In the event of and only to the extent of any conflict between the body of the Contract, Specification, Invitation to Tender, Contractors Tender and other documents referred to or attached to the contract, the conflict shall be resolved in accordance with the following order of precedence:

The body of the Contract shall prevail over:

- a. The Schedules;
- b. The Invitation to Tender;
- c. The Contractors Tender;
- d. Any other document referred to in the Contract.

23. LAW:

The Contract shall be governed by and construed in accordance with the laws of England and the Contractor irrevocably submits to the jurisdiction of the English courts.

24. REPRESENTATION:

While the Council will use its best endeavours to provide accurate and reliable information to assist the Contractor in the preparation of the tender the Council in no way warrants the truth or accuracy or any representation made by or on behalf of the Council when entering into this Contract.

25. ENVIRONMENTAL REQUIREMENTS:

The Contractor shall, when working on the site, perform the Services in accordance with Rochford District Council's environmental policy which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of

greenhouse gases, volatile organic compounds and other substances to health and the environment.

26. BEST VALUE DUTY:

26.1 The Contractor acknowledges that the Council is subject to secure the best value in its work, and the provisions of this condition are intended to assist the Council in discharging this duty in relation to the services.

26.2 The Contractor shall, throughout the Contract Period, but only to the extent of its obligations in the Contract, make arrangements to secure continuous improvements in the way in which the Services are provided, having regard to the combination of economy, efficiency and effectiveness.

27. DISPUTES:

Any disputes between the parties concerning the interpretation of these Conditions or the performance of the Services shall be referred to an Arbitrator to be agreed upon by the parties.

28. MEDIATION IN THE EVENT OF DISPUTE:

Without prejudice to all other rights and remedies available to the parties, if any dispute arises in connection with the contract, the Town Clerk or Director, or Senior Representatives of the Contractor with authority to settle the dispute will within fourteen days of the written request from one party to the other meet in good faith to resolve the dispute. If the dispute is not resolved at that meeting the parties will attempt to settle the dispute by mediation. To initiate the mediation a party must give notice in writing ("ADR Notice") to the other party to the dispute requesting mediation. The mediation will start not later than fourteen days after the date of the ADR Notice. If the dispute is not resolved following mediation within one calendar month of a written request to resolve the dispute by arbitration Condition 34 below shall apply.

29. ARBITRATION:

Subject to any detailed provision otherwise herein contained any disputed matter under the Contract may be referred to arbitration under the Arbitration Act 1996 to a single arbitrator appointed by the parties to the Contract. If they do not agree the appointment then the President of the Royal Institute of Chartered Surveyors or the person for the time being authorised on his behalf may appoint the arbitrator at the request of either party.

30. BRITISH STANDARDS OR EQUIVALENTS RECOGNISED BY ANOTHER MEMBER STATE OF E.E.C:

Where an appropriate British Standards Specification or British Standard Code of Practice issued by the British Standards Institute is current, all goods used or supplied and all workmanship shall be in accordance with that Standard or equivalent recognised by another Member State of the E.U.

31. OBSERVANCE OF STATUTORY REQUIREMENTS:

The Contractor shall comply with all statutory and other provisions to be observed and performed in connection with the Services and shall indemnify the Council accordingly.

32. RIGHTS AND DUTIES RESERVED:

All rights and duties which the Council has as a Local Authority or which the Council's Officers have as Local Authority Officers are expressly reserved.

33. LEGAL FEES:

Each party shall bear its own legal and other fees in relation to the preparation and submission of the Tender documents and any formal Contract documents arising therefrom.

34. SERVICE OF NOTICE ON CONTRACTOR:

Any notice to be given to the Contractor under the terms of the Contract shall be served by post to or by leaving it at the Contractor's principal place of business or in the event of the Contractor being a Company to or at its registered office.

35. SERVICE OF NOTICE OF COUNCIL:

Any notice to be given to the Council under the terms of the Contract shall be served by addressing the same to the Town Clerk and sending it by post or leaving it at 33 Rowan Way, Canewdon, Essex, SS4 3PD.

36. VARIATIONS:

The Council may, without invalidating this Contract, order any additions to or omissions from or may vary the sequence of Services or the timescales for execution of Services and any such instructions shall be valued by the Council on a fair and reasonable basis.

- 36.1 The valuation shall where appropriate include an element of any items of a preliminary nature but shall NOT include any allowance for disruption to the regular process of the Services or for any direct loss and/or expense for which the Contractor may be reimbursed by payment under any other provisions of this Contract;
- 36.2 Where appropriate the rates/prices and percentage adjustments which have been inserted in the Tender documents by the contractor, shall form the basis for payment by the Council to the Contractor. Where the prices inserted are not similar or easily comparable then the Council and Contractor may agree between them a fair and reasonable price for the work prior to the Contractor carrying out the fully completing Services. Such negotiation shall not prejudice the execution of the Services as required under the Contract;
- 36.3 Upon request to do so, or upon receipt of the Council's instruction, the Contractor shall submit a firm price quotation within a period of five (5) working days;
- 36.4 The Council may issue instructions as to the expenditure or treatment of any provisional items/ quantities /sums. Expenditure of any provisional items/quantities/sums shall be valued in accordance with this Clause.

Dated thisday of 201

SIGNED

Town Clerk

Horley Town Council

SIGNED

duly authorised to sign for and on behalf of

FORM OF TENDER AND PRICING SCHEDULE

UNCONDITIONAL AND IRREVOCABLE OFFER TO HORLEY TOWN COUNCIL

Re: Invitation to Tender for Concrete Skate Park at Horley Recreation Ground

To: Horley Town Council
Council Offices
92 Albert Road
Horley
RH6 7HZ

Having read carefully the Invitation to Tender and in view of the Town Council considering this Tender:

1. We offer to carry out the Works specified and to complete the contract in accordance with the Contract Documents and our Tender for the sum of:-

£

(enter amount in words also.....)
2. We confirm that if our Tender is accepted we will, upon demand:
 - Produce evidence that all relevant insurances and compliance certificates with relevant legislation and policy are held and in force.
 - Sign formal contract documentation
3. We agree that this Tender shall constitute an irrecoverable, unconditional offer which may not be withdrawn for a period of **40** days from this date.
4. We are a subsidiary company within the meaning of Section 736 of the Companies Act 1985 and enclose a Parent Company Guarantee undertaking in the form set out in Section 7 duly completed by our ultimate holding company [TENDERER TO DELETE IF NOT APPLICABLE]¹.
5. We understand that the Council is not bound to accept any tender it receives.

¹ Delete if not applicable.

Company*

(1) Signature

.....

Name

.....

(Director)

(2) Signature

.....

Name

.....

*(Director/Company Secretary)**

For and on behalf of:

(print Company's full name and registered number)

Registered Address:

DATE:

SECTION 9

TENDERING CERTIFICATE

To: HORLEY TOWN COUNCIL ("the Council")

I/We certify that this is a bona fide tender, intended to be competitive and that I/We have not (either personally or by anyone acting on my/our behalf):

1. Fixed the amount of the Tender (or the rate and prices quoted) by agreement with any person.
2. Communicated to anyone other than the Council the amount or approximate amount or terms of my/our proposed tender (other than in confidence in order to obtain quotations, professional advice or insurance necessary for the preparation of the tender).
3. Entered into any agreement or arrangement with any other person that he shall refrain from tendering or as to the amount or terms of any tender to be submitted by him.
4. Canvassed or solicited any member, officer or other employee of the Council in connection with the award of this or any other Council contract or tender.
5. Offered, given or agreed to give any inducement or reward in respect of this or any other Council contract or tender.

SIGNED* (1)
Status

SIGNED* (2)
Status

for and on behalf of

Date:

*Note: to be signed by the same signatories as the Form of Tender

6.1	Please describe your experience in the last two years of providing contracted products and/or services, services or works similar to those being sought under this contract. This list does not have to be complete but merely sufficient to give the Council a broad understanding of your contract portfolio			
	Name of client	Brief description of contract	Start / end dates	Annual contract value (£)