Request for quote for:

Refreshment Concessions at Bramshot Farm Country Park and Edenbrook Country Park, Fleet, NE Hampshire

|  |  |
| --- | --- |
| Date opportunity posted | 13 June 2022 |
| Last date for clarifications | 27 June 2022 |
| Quotation return date | **12 noon, 11 July 2022** |
| Estimated Contract Value | Concessions contract |
| Quotation shall be returned to | [procurement@hart.gov.uk](mailto:procurement@hart.gov.uk) |
| With the subject line | Quotation for Refreshment Concessions - 2022 |
| Contact in case of queries | procurement@hart.gov.uk |

# Introduction

* 1. The Council invites quotations for this opportunity in accordance with the terms and requirements of this document and any Schedules attached.
  2. Document contents:

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# Specification

* 1. Key contract dates:

|  |  |
| --- | --- |
| Intended Start Date | September 2022 |
| Duration | 2 spring/summer seasons |
| Intended End Date | September 2024 |
| Extension Details | N/A |

* 1. Aim:
     1. Hart District Council is seeking a suitable concessionaire to operate two refreshment concessions, one at Edenbrook Country Park and one at Bramshot Farm Country Park.

The proposed locations at the Country Parks are shown on the maps in Appendix A.

The concession at Bramshot Farm aims to be a semi-permanent unit such as a converted shipping container and the concession at Edenbrook Country Park will be a concession van or trailer.

Sub-contracting of the service will not be permitted.

Information regarding each site, relevant to this RfQ, can be found in Appendix B.

* 1. Objectives:
     1. The Council’s main objectives are:

1. Provide enhanced facilities at both country parks
2. Provide a commercial opportunity for local business.
3. To generate an income stream for the council.
4. Collaborate with the winning bidder, working closely with them to produce successful concessions and learn from the experience with a view to expand the service in the future.
5. Actively promote environmental sustainability and minimise carbon footprint.

Specification

1. The Council will be providing two concession units (one at Bramshot Farm, one at Edenbrook Country Park) together with picnic tables, bins or sails for shading and a composting toilet at Bramshot Farm. Details of the facilities will be confirmed following consultation with the successful tenderer. Examples of the type of facilities being considered can be found in Appendix D.
2. The Council will be looking for the successful bidders to operate in a responsible and sustainable manner, minimising their carbon footprint to help protect the environment and local sustainability in a variety of ways, for example by using locally sourced and produced foods or ingredients, using eco-friendly and biodegradable packaging, reducing the use of single use plastics, employing local people, and using Fairtrade products where possible.
3. The Council will also be looking for the successful bidder to promote healthy eating options for both adults and children.
4. Successful bids will provide a high quality, regular service for all visitors at the sites.
   1. Timetable:
      1. Bidders are invited to suggest an operational start date, likely to be no earlier than September 2022, which will be subject to completion of the legal documents and the gaining of planning permission.
      2. The tender will be awarded on the week commencing 25th July 2022. Working with Hart District Council and the winning bidder, an independent consultant will be used to gain planning permission. If planning permission is not granted, modifications to the plan will have to be made or the offer of a contract may be withdrawn.
      3. An initial period of two seasons (2 full summer seasons covering May – August) will be offered. After this period a public survey will take place. The results of the survey, combined with the success of the concessions and feedback from site staff, will be used to form a report to cabinet, to decide whether to continue with concessions at these sites. If it is decided to continue, the lease agreement may be extended for a further two years (subject to cabinet approval) or a new tender process may begin for a longer-term contract. There may also be a further option to extend for another 3 years, subject to cabinet approval.
   2. Deliverables:
      1. The successful bidder must:
5. Provide a business case for the consideration of Hart District Council, which includes details of the license fee offer. A guide to the minimum business case requirements which Hart District Council deem desirable and how they will be scored is attached at Appendix C.
6. Provide a detailed account of spending to establish the concessions. A guide to Hart Districts Councils requirements can be seen in Appendix D. Hart District Council has secured £80,000 for this project. Any assets required will be purchased by Hart District Council and remain in their ownership.
7. Be prepared to enter into a full repair and maintenance lease for the units and the immediate surrounds for the duration of the contract.
   1. Monitoring arrangements:
      1. The Council may monitor the performance of the Services by the Supplier.
      2. The Licensee shall meet regularly with relevant council officers to discuss the operation of the concession, forthcoming events, stakeholder feedback and wider Hart District Council management ambitions.
      3. There will be an agreed condition assessment of the assets at the start of the lease period and at the end of the lease period and the supplier may be liable for any damage that occurs outside the usual wear and tear. More detail can be seen in the attached Heads of Terms.

# Information for Bidders

* 1. All quotation response documents must be returned to the email address stated on page 1 by no later than the quotation return date also stated on page 1. Quotations received after this time will only be accepted in exceptional circumstances and at the council’s discretion.
  2. If there appears to be an error or omission in a quotation the Council shall invite the Bidder to confirm the submitted price, including errors/omissions, or amend the submitted price to correct these errors/omissions. All amendments or confirmation of quotation must be confirmed in writing by the Bidder.
  3. If the Council considers a query may have a material effect on quotation responses, all suppliers will be notified without delay via email.
  4. The Council reserves the right to disregard any quotation where:

1. in the opinion of the council, there is sufficient doubt as to the Bidder’s ability to perform the contract for the submitted price; or
2. it contains qualifications that conflict with the Request for Quotation instructions.
   1. Quotations and supporting documents shall be in English and any contract subsequently entered into and its formation, interpretation and performance shall be subject to and in accordance with the laws of England and Wales.
   2. All prices quoted shall, unless otherwise stated, include profit, transport, labour, materials, fuel and plant charges, insurance and all other expenses of every kind which under the conditions of Contract are borne by the Bidder. Prices quoted shall be in UK Sterling and exclusive of Value Added Tax. Value Added Tax shall be applied at the appropriate rate ruling at the date of any invoice.
   3. The winning bidder will be liable to business rates.
   4. Bidders must not take part in any publicity activities with any part of the media about the Contract or this opportunity without getting the Council’s written agreement first. This includes the Council’s agreement on the format and content of any publicity.
   5. This opportunity is made available in good faith. The Council give no warranty as to the accuracy or completeness of the information contained in it. The Council also disclaim any liability for any inaccuracy or incompleteness. The Council reserve the right to cancel the Quotation process at any point.
   6. The Council are not liable for any costs resulting from any cancellation of this Quotation process or for any other costs that Bidders may incur by Tendering for this Contract. Bidders must obtain at their own expense all the information that they need for the preparation of their Quotation.
   7. Bidders will be deemed to fully understand the processes that the Council must follow under relevant legislation, and where the value of the opportunity is deemed to be above relevant thresholds, will adhere to the requirements set out in such legislation.

# Evaluation and award process

* 1. The contract, if awarded, will be awarded, based on the following criteria:

|  |  |
| --- | --- |
| **Criteria** | **Score** |
| **Price** *(calculated as per 4.5):* | **20%** |
| **Quality**  *(Full details to be found in Appendix C)* | **80%** |

* 1. The Price element of the evaluation will only be scored once the Quality criteria have been assessed.
  2. Each section in the Quality criteria will be scored using the following template:

|  |  |
| --- | --- |
| Exceptional demonstration by the supplier of the relevant ability, understanding, skills, facilities and quality measures required to provide the services with evidence to support the response, where appropriate. | 5 |
| Good demonstration by the Supplier of the relevant ability, understanding, skills, facilities and quality measures required to provide the services with evidence to support the response, where appropriate. | 4 |
| Satisfactory demonstration by the Supplier of the relevant ability, understanding, skills, facilities and quality measures required to provide the services with evidence to support the response, where appropriate. | 3 |
| Contains minor shortcomings in the demonstration by the Supplier of the relevant ability, understanding, skills, facilities and quality measures required to provide the services with evidence to support the response, where appropriate and/or is inconsistent or in conflict with other proposals with little or no evidence to support the response. | 2 |
| Satisfies the requirement but with considerable reservations of the supplier’s relevant ability, understanding, skills, facilities and quality measures required to provide the services, with little or no evidence to support the response. | 1 |
| No response or irrelevant response provided. | 0 |

* 1. Any responses scoring less than 2 for any Quality criteria, may be considered to not meet the requirements, and therefore fail the evaluation and the quotation may be rejected. As per 4.2, the Price element will not be assessed in those circumstances.
  2. Regarding the price element, the quotation with the highest monetary value returned to the council over the full term of the contract will be given the maximum score available. Other scores will then be calculated as a proportion of this based on the formula below:

|  |
| --- |
| Value offered to the council of next quote to be considered |
| Highest value offered to the council |

* 1. Bidders will be notified via email as soon as possible of any decision made by the council during the quotation process, including notifying Bidders of the intended award.
  2. As part of the notification of award process, Bidders will be provided with details of the points awarded for their submitted responses in line with the evaluation criteria above.

# Quotation response: Bidder details and declaration

* 1. Please complete the following and sign to confirm that your quotation is fully compliant with the Specification, and all Terms and Conditions as stated within this documentation.

|  |  |
| --- | --- |
| Company Name: |  |
| Address: |  |
|  |
|  |
|  |
|  |
| Telephone: |  |
| E-mail: |  |
|  | |
| Signed: |  |
| Print Name: |  |
| Position in Company: |  |
| Date: |  |

# Terms and Conditions of Contract for Services

1. Interpretation
   1. In these terms and conditions:

|  |  |
| --- | --- |
| “Agreement” | means the contract between (i) the Council and (ii) the Supplier constituted by the Supplier’s countersignature of the Award Letter and includes the Award Letter and Annexes; |
| “Award Letter” | means the letter from the Council to the Supplier printed above these terms and conditions; |
| “Charges” | means the charges for the Services as specified in the Award Letter; |
| “Confidential Information” | means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential; |
| “Council” | means Hart District Council, located at Hart District Council, Civic Offices, Harlington Way, Fleet, Hampshire GU51 4AE; |
| “DPA”  “Data Protection Legislation” | means the Data Protection Act 2018;  means the DPA, the EU Data Protection Directive 95/46/EC, the General Data Protection Regulation (GDPR) (EU) 2016/679 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner; |
| “Expiry Date” | means the date for expiry of the Agreement as set out in the Award Letter; |
| “FOIA”  “Force majeure event” | means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;  means any circumstance not within a party’s reasonable control including, without limitation:   1. acts of God, flood, drought, earthquake or other natural disaster; 2. epidemic or pandemic; 3. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; 4. nuclear, chemical or biological contamination or sonic boom; 5. any law or any action taken by a government or public authority, including limitation imposing an export or import restriction, quota or prohibition; 6. collapse of buildings, fire, explosion or accident; and 7. any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); 8. non-performance by suppliers or sub-contractors (other than by companies in the same group as the party seeking to rely on this clause); and 9. interruption or failure of utility service. |
| “Information” | has the meaning given under section 84 of the FOIA; |
| “Key Personnel” | means any persons specified as such in the Award Letter or otherwise notified as such by the Council to the Supplier in writing; |
| “Party” | means the Supplier or the Council (as appropriate) and “Parties” shall mean both of them; |
| “Personal Data” | means personal data (as defined in the Data Protection Legislation) which is processed by the Supplier or any Staff on behalf of the Council pursuant to or in connection with this Agreement; |
| “Purchase Order Number” | means the Council’s unique number relating to the supply of the Services; |
| “Request for Information” | has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply); |
| “Services” | means the services to be supplied by the Supplier to the Council under the Agreement; |
| “Specification” | means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter; |
| “Staff” | means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement; |
| “Staff Vetting Procedures” | means vetting procedures that accord with good industry practice or, where requested by the Council, the Council’s procedures for the vetting of personnel as provided to the Supplier from time to time; |
| “Supplier” | means the person named as Supplier in the Award Letter; |
| “Term” | means the period from the start date of the Agreement set out in the Award Letter to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement; |
| “VAT” | means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and |
| “Working Day” | means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London. |

* 1. In these terms and conditions, unless the context otherwise requires:
     1. references to numbered clauses are references to the relevant clause in these terms and conditions;
     2. any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
     3. the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
     4. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
     5. the word ‘including’ shall be understood as meaning ‘including without limitation’.

1. Basis of Agreement
   1. The Award Letter constitutes an offer by the Council to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
   2. The offer comprised in the Award Letter shall be deemed to be accepted by the Supplier on receipt by the Council of a copy of the Award Letter countersigned by the Supplier within 7 days of the date of the Award Letter.
2. Supply of Services
   1. In consideration of the Council’s agreement to pay the Charges, the Supplier shall supply the Services to the Council for the Term subject to and in accordance with the terms and conditions of the Agreement.
   2. In supplying the Services, the Supplier shall:
      1. co-operate with the Council in all matters relating to the Services and comply with all the Council’s instructions;
      2. perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier’s industry, profession or trade;
      3. use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier’s obligations are fulfilled in accordance with the Agreement;
      4. ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
      5. comply with all applicable laws; and
      6. provide all equipment, tools and vehicles and other items as are required to provide the Services, beyond what has been agreed with the Council
   3. The Council may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Council and the Supplier.
3. Term
   1. The Agreement shall take effect on the date specified in Award Letter and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
   2. The Council may exercise an option to extend the Agreement for a period of 2 years, plus a further option to extend for another 3 years, subject to the mutual agreement of the parties, by giving not less than 10 Working Days’ notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.
4. Charges, Payment and Recovery of Sums Due
   1. The Charges for the Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Council, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
   2. All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Council shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
   3. The Supplier shall invoice the Council as specified in the Agreement. Each invoice shall include such supporting information required by the Council to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
   4. In consideration of the supply of the Services by the Supplier, the Council shall pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Council may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
   5. If the Council fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 5.4 after a reasonable time has passed.
   6. If there is a dispute between the Parties as to the amount invoiced, the Council shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for the Council’s failure to pay undisputed sums in accordance with clause 17.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 20.
   7. If a payment of an undisputed amount is not made by the Council by the due date, then the Council shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
   8. Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
      1. provisions having the same effects as clauses 5.3 to 5.7 of this Agreement; and
      2. a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 5.3 to 5.8 of this Agreement.
      3. In this clause 5.8, “sub-contract” means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
   9. If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Council in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Council from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Council. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Council in order to justify withholding payment of any such amount in whole or in part.
5. Premises and equipment
   1. The Suppleir shall comply with the provisions Lease (to be based on the attached Heads of Terrms)
   2. If necessary, the Council shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Council’s premises by the Supplier or the Staff shall be at the Supplier’s risk.
   3. If the Supplier supplies all or any of the Services at or from the Council’s premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Council’s premises, remove the Supplier’s plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Council’s premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Council’s premises or any objects contained on the Council’s premises which is caused by the Supplier or any Staff, other than fair wear and tear.
   4. If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Council may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
   5. The Council shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Council’s premises the Supplier shall, and shall procure that all Staff shall, comply with all the Council’s security requirements.
   6. Where all or any of the Services are supplied from the Supplier’s premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Council in writing.
   7. Without prejudice to clause 3.2.6, any equipment provided by the Council for the purposes of the Agreement shall remain the property of the Council and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Council on expiry or termination of the Agreement.
   8. The Supplier shall reimburse the Council for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Council shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Council is notified otherwise in writing within 5 Working Days.
6. Staff and Key Personnel
   1. If the Council reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
      1. refuse admission to the relevant person(s) to the Council’s premises;
      2. direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
      3. require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Council to the person removed is surrendered, and the Supplier shall comply with any such notice.
   2. The Supplier shall:
      1. ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
      2. if requested, provide the Council with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Council’s premises in connection with the Agreement; and
      3. procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Council.
   3. Any Key Personnel shall not be released from supplying the Services without the agreement of the Council, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
   4. Any replacements to the Key Personnel shall be subject to the prior written agreement of the Council (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
7. Assignment and sub-contracting
   1. The Supplier shall not without the written consent of the Council assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Council may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
   2. Where the Council has consented to the placing of sub-contracts, the Supplier shall, at the request of the Council, send copies of each sub-contract, to the Council as soon as is reasonably practicable.
   3. The Council may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier’s obligations under the Agreement.
8. Intellectual Property Rights
   1. All intellectual property rights in any materials provided by the Council to the Supplier for the purposes of this Agreement shall remain the property of the Council but the Council hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.
   2. All intellectual property rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Supplier. If, and to the extent, that any intellectual property rights in such materials vest in the Council by operation of law, the Council hereby assigns to the Supplier by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
   3. The Supplier hereby grants the Council:
      * 1. a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and
      1. a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
      2. any intellectual property rights vested in or licensed to the Supplier on the date of the Agreement; and
      3. any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services, including any modifications to or derivative versions of any such intellectual property rights, which the Council reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.
   4. The Supplier shall indemnify, and keep indemnified, the Council in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Council as a result of or in connection with any claim made against the Council for actual or alleged infringement of a third party’s intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.
9. Governance and Records
   1. The Supplier shall:
      1. attend progress meetings with the Council at the frequency and times specified by the Council and shall ensure that its representatives are suitably qualified to attend such meetings; and
      2. submit progress reports to the Council at the times and in the format specified by the Council.
   2. The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Council. The Supplier shall on request afford the Council or the Council’s representatives such access to those records as may be reasonably requested by the Council in connection with the Agreement.
10. Confidentiality, Transparency and Publicity
    1. Subject to clause 11.2, each Party shall:
       1. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
       2. not use or exploit the disclosing Party’s Confidential Information in any way except for the purposes anticipated under the Agreement.
    2. Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:
       1. where disclosure is required by applicable law or by a court of competent jurisdiction;
       2. to its auditors or for the purposes of regulatory requirements;
       3. on a confidential basis, to its professional advisers;
       4. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
       5. where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier’s obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier’s confidentiality obligations under the Agreement; and
       6. where the receiving Party is the Council:
       7. on a confidential basis to the employees, agents, consultants and contractors of the Council;
       8. on a confidential basis to any company to which the Council transfers or proposes to transfer all or any part of its business;
       9. to the extent that the Council (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
       10. in accordance with clause 12; and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Council under this clause 11.
    3. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Council to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Council may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
    4. The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Council.
11. Freedom of Information
    1. The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
       1. provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
       2. transfer to the Council all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
       3. provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
       4. not respond directly to a Request for Information unless authorised in writing to do so by the Council.
    2. The Supplier acknowledges that the Council may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Council shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier’s attention after any such disclosure.
    3. Notwithstanding any other provision in the Agreement, the Council shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.
12. Protection of Personal Data and Security of Data
    1. The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.
    2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Data Processor.
    3. Notwithstanding the general obligation in clause 13.1, where the Supplier is processing Personal Data for the Council as a data processor (as defined by the DPA) the Supplier shall:
       1. process that Personal Data only on the documented written instructions of the Council unless the Supplier is required by Applicable Law to process Personal Data. Where the Supplier is relying on the laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Council of this before performing the processing required by the Applicable Law unless the Applicable Law prohibits the Supplier from notifying the Council;
       2. ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA;
       3. provide the Council with such information as the Council may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA;
       4. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential.
       5. The Supplier must promptly notify the Council of:
       6. any breach of the security requirements of the Council as referred to in clause 13.3; and
       7. any request for personal data;
       8. ensure that it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council’s obligations under the DPA or Data Protection Legislation;
       9. maintain complete and accurate records and information to demonstrate its compliance with this clause 13 and immediately inform the Council, if in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
    4. When handling Council data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Council as notified to the Supplier from time to time.
    5. If the Supplier appoints a third party processor of Personal Data under the Agreement, the Supplier must confirm that it has entered or will enter with the third party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 13 and in either case which the Supplier confirms that it will continue to reflect the requirements of the Data Protection Legislation. As between the Council and Supplier, the Supplier shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this. As between the Council and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 13.
13. Liability
    1. The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Council if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Agreement.
    2. Subject always to clauses 14.3 and 14.4:
       1. the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortuous or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and
       2. except in the case of claims arising under clauses 9.4 and 19.3, in no event shall the Supplier be liable to the Council for any:
          1. loss of profits;
          2. loss of business;
          3. loss of revenue;
          4. loss of or damage to goodwill;
          5. loss of savings (whether anticipated or otherwise); and/or
          6. any indirect, special or consequential loss or damage.
    3. Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
       1. death or personal injury caused by its negligence or that of its Staff;
       2. fraud or fraudulent misrepresentation by it or that of its Staff; or
       3. any other matter which, by law, may not be excluded or limited.
    4. The Supplier’s liability under the indemnity in clause 9.4 and 19.3 shall be unlimited.
14. Insurance   
      
    Without prejudice to the Suppliers obligations contained in the Agreement, the Supplier shall take out and maintain Public Liability , Professional Liability and Employer’s Liability Insurances for sums not less than £5,000,000 and produce to the Council on demand, documentary proof of such insurances.
15. Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from a Force Majeure event . Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

1. Termination
   1. The Council may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.
   2. Without prejudice to any other right or remedy it might have, the Council may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:
      1. (without prejudice to clause 17.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
      2. repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
      3. is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
      4. undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
      5. breaches any of the provisions of clauses 7.2, 11, 12, 13 and 17;
      6. becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier’s assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 17.2.6) in consequence of debt in any jurisdiction; or
      7. fails to comply with legal obligations in the fields of environmental, social or labour law.
   3. The Supplier shall notify the Council as soon as practicable of any change of control as referred to in clause 17.2.4 or any potential such change of control.
   4. The Supplier may terminate the Agreement by written notice to the Council if the Council has not paid any undisputed amounts within 90 days of them falling due.
   5. Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 14, 17.6, 18.4, 19.3, 20and 21.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
   6. Upon termination or expiry of the Agreement, the Supplier shall:
      1. give all reasonable assistance to the Council and any incoming supplier of the Services; and
      2. return all requested documents, information and data to the Council as soon as reasonably practicable.
2. Compliance
   1. The Supplier shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Council shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Council’s premises and which may affect the Supplier in the performance of its obligations under the Agreement.
   2. The Supplier shall:
      1. comply with all the Council’s health and safety measures while on the Council’s premises; and
      2. notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Council’s premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
   3. The Supplier shall:
      1. perform its obligations under the Agreement in accordance with all applicable equality Law and the Council’s equality and diversity policy as provided to the Supplier from time to time; and
      2. take all reasonable steps to secure the observance of clause 17.3.1 by all Staff.
   4. The Supplier shall supply the Services in accordance with the Council’s environmental policy as provided to the Supplier from time to time.
   5. The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:
      1. section 182 of the Finance Act 1989.
3. Safeguarding
   1. The Recipient shall, to the extent that delivery of the Programme will cause it to come into regular contact with children or vulnerable adults, have safeguarding children and vulnerable adult policies in place that comply with legislative requirements, Government guidance and the terms of the Council’s Policy and Procedure for the Safeguarding of Children and Vulnerable Adults.
   2. The Recipient must ensure that the correct Disclosure and Barring Service checks have been carried out for all relevant staff, agents and sub-contractors and provide them with appropriate safeguarding training.
4. Human Rights Act 1998
   1. The Recipient acknowledges that the Council is, as a public authority, subject to the provisions of the Human Rights Act 1998 and must have regard to the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 which have been incorporated into United Kingdom Legislation as a result of the implementation of the Human Rights Act 1998.
   2. The Recipient shall not do anything, and shall ensure that its staff, agents and sub-contractors do not doing anything, either in the performance of the Programme or otherwise, that will cause the Council to be in breach of its obligations pursuant to clause 12.1.
5. Prevention of Fraud and Corruption
   1. The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
   2. The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
   3. If the Supplier or the Staff engages in conduct prohibited by clause 19.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Council) the Council may:
      1. terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Agreement; or
      2. recover in full from the Supplier any other loss sustained by the Council in consequence of any breach of this clause.
6. Dispute Resolution
   1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
   2. If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 20.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the “Mediator”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
   3. If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.
7. General
   1. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
   2. A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
   3. The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
   4. The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
   5. Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
   6. The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party’s behalf.
   7. Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
   8. If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.
8. Notices
   1. Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 22.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
   2. Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
   3. Notices under clauses 15 (Force Majeure) and 17 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 22.1.
9. Governing Law and Jurisdiction

23.1 The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

APPENDIX A – Map of locations for concessions



Bramshot Farm Country Park – suggest concession unit to be placed near car park



Edenbrook Country Park – Concession to be placed near Site Compound & Pump Track

APPENDIX B – Further information regarding the Country Parks

Bramshot Farm Country Park

This Country Park is situated on Bramshot Lane, just off junction 4a of the M3. The park compromises 91 acres of fields and meadows with hedgerows, copses and veteran trees, and as the name suggests, was once used for farming and grazing. The Country Park is a designated SANG (Site of Alternative Natural Greenspace) to offset against development within the Thames Basin Heaths Special Protection Area.   

Its primary purpose is to provide an alternative open space to lessen visitor pressure on Special Protection Area’s (SPA’s) within the Thames Basin Heaths. It also provides mitigation and outdoor space to compliment increases in residential development.     
    
The park has a formal car park with space for 40 cars including 6 disabled bays, also with a power and water supply available. There is an informal overflow car park which can only be opened in summer months. Subject to approval, an extension to the car park is being proposed.

Local competition is fairly low. There are cafes and restaurants in Fleet High Street, however this is a 10-minute drive away. The closest other concession is a Starbucks café opposite the Country Park; however, a busy A road (with no safe crossing area) would need to be negotiated in order to walk to it. The Starbucks would unlikely pull visitors to the Country Park away from a concession on site, which is safer and easier to reach. In the same location, there is a fuel garage that has Costa Coffee machines. Again, it is felt this is unlikely to pose significant competition to a concession on site.

The majority of visitors to Bramshot Farm Country Park are dog walkers, however the site is also popular with families. From the 1st of December 2020 to the 1st of December 2021 the people counter at the main park entrance counted over 380,000 visitor movements.

Edenbrook Country Park

Edenbrook is a designated SANG, with plenty of surfaced paths and open space up to approximately 80 acres. Situated just off Hitches Lane to the west of Fleet Town Centre, it has two car parks, a main one next to Hart Leisure Centre with spaces for 75 cars and smaller one at Pale Lane. There is a power point in one corner of the main car park.  An extension to the Country Park is currently being built and will be open to the public in 2022, adding a third car park.

It has circular walks of 2.6km. Features include a network of ditches, culverts and ponds designed to take floodwater away from the adjacent houses.

To the north of the site there is an existing ‘Active Area’ which features two mountain bike trails, a BMX pump track and a graffiti wall. In addition, Harts Green Garden is also located in this area, with a community garden run by Hart Voluntary Action, as well as allotment plots and an accessible composting toilet. Subject to approval this area may be developed further to increase visitor attractions, such as an extension to the bike track or a skate park.

Central to the park there is carved play dragon for younger children and a project is underway to add an additional play tree feature for 0–7-year olds. Capital funding has also been secured to create a history trail, associated with the four WWII pillboxes that can be found on site.

There is an ambition to introduce a Park Run at this site and negotiations with Park Run representatives are currently taking place.

Local competition again comes from Fleet High Street, which is also a 10-minute drive away from Edenbrook Country Park. There is a small café at Hart Leisure Centre which serves their customers, which is adjacent to the site. However, a concession at this location will be placed in the Pale Lane car park, which is to the north of the site, away from the Leisure Centre. It’s target audience will be dog walkers, visitors using the BMX pump track and mountain biking track, those using the community garden and the allotment plot holders. In this location it is an approximately 15-minute walk to the Leisure Centre café.

The site is also popular with dog walkers, families, joggers and cyclists. From the 1st of December 2020 to the 1st of December 2021 the people counter at the main park entrance counted over 100,000 visitor movements.

From May 2022 to October 2022, SE Water will be doing water pipleline works in Pale Lane. Subsequently, Pale Lane from Fleet Road will be closed and vehicle access to the site will be from the west. SE Water will also be using the compound, as seen on the map above, for their depot while this work is taking place. This may affect traffic flow and visitor numbers. Please take this into consideration when suggesting a start date for the concessions van at this site.

APPENDIX C – Minimum Business Case Requirements

Applicants should submit a business case before the closing date to include the following as a minimum:

* License fee offer - 20% score
* A method statement - 30% score
  + Please give a detailed account of the proposed spending to establish the concessions, that meet the requirements of the Council.
  + Please evidence how you intend to provide a high quality, regular service for all visiters to the sites, including operational hours.
  + Please detail how you intend to run the concessions, including practicalities such as waste disposal, power and water supply and staffing arrangements.
  + Please include a list of your business policies, for example any Health and Safety policies, food hygiene, equality and diversity policy etc.
* Proposed product range – 10% score
  + Please describe your proposed product range, including how you will promote healthy choices for adults and children.
  + Please evidence how you will balance sustainable, low carbon food choices, whilst providing a financially sound offering.
* Sustainability policy - 15% score
  + Please evidence how you intend to minimise your overall carbon footprint, whilst providing a financially sound offering.
  + Please detail how you will promote sustainability through your business.
  + Please detail your intended packaging and how you intend to reduce or remove the use of single use plastics.
* Previous experience - 15% score
  + Please detail any previous experience of running refreshment concessions and the success of this.
* Added value – 10% score
  + Please detail any unique selling points of your business that you believe would make you a sound choice for the council.
  + Please detail how you intend to promote your business to encourage custom.
  + Please provide details of any other points that may add value to your proposal, that are not covered above.

APPENDIX D – Requirements of the Council regarding concession assets

Up to £80,000 funding has been proposed to aid the winning bidder in establishing the concessions at Edenbrook and Bramshot Farm Country Parks. This will be released subject to a successful business case being approved.

The winning bidder will work with the Council to allocate funds, but as a minimum the following must be provided at each site:

Bramshot Farm CP

* Concession unit and appropriate hard surfacing
* Accessible toilet
* Picnic table/s and a structure to provide shade e.g. sails

Edenbrook CP

* Concession van/trailer
  + The Licensee will not be permitted to run the engine of the Vehicle whilst stationery and must therefore install silent generators to operate machinery whilst the Vehicle is on site. Note that there is no electrical supply to the site.
  + Vehicle movement to and from the Site shall be agreed in advance with Hart District Councils Visitor Services Manager. The Licensee shall abide by the agreed Vehicle Movement Plan at all times. The Vehicle shall be parked in the designated parking place and shall not park in an alternative position without prior approval.

We aim for a collaborative working approach with the winning bidder to purchase the required assets. Any assets purchased are subject to a successful planning application and remain in the ownership of Hart District Council, irrespective of the continuation or not of the project.

Examples of main assets can be seen below.



