

## ANNEXE A

### DRAFT AGREEMENT FOR THE MANAGEMENT OF THE ATP AT THE PINGLE SCHOOL

THIS AGREEMENT is made the        da        y of        2006        BETWEEN:-

- (1) SOUTH DERBYSHIRE DISTRICT COUNCIL of Civic Offices Civic Way, Swadlincote Derbyshire DE11 0AH ("the Council") and its successors in title and
- (2) THE PINGLE SCHOOL of (*Insert full address here*        ) ("the School") acting by (*Insert full name of Governor*) of (*Insert home address of Governor*) and (*Insert full name of Governor*) of (*Insert home address of Governor*) [*Repeat this depending on the number of Governors to this Agreement*] being the Governors for the time being of the School and the School's successors in title

#### 1. DEFINITIONS

**BUSINESS PLAN** – identifies the overall financial basis for the project in capital and revenue terms and is section 5 of the "Provision of Artificial Turf Pitch, The Pingle School, Swadlincote - Football Foundation Bid", November 2004.

**CASUAL USE**        - the ability of any member of the public to book and use the Pitch for a range of sports at short notice or for a one-off booking according to availability.

**COMMENCEMENT DATE** – the date of this Agreement.

**COMMUNITY FOOTBALL INITIATIVE**        - a programme of activities aimed at attracting and sustaining the interest of new participants in sport with the overall objective of establishing new clubs or encouraging new participants to join established clubs.

**COMMUNITY USE** - use of the Pitch by local people and sporting organisations as distinct from School use.

**MAINTENANCE PLAN** – identifies the schedule of maintenance for the Pitch and is included in Annexe 1.

OFF-PEAK USE PERIOD - Between 9.00 am and 5.30 pm on weekdays during School holidays.

PEAK USE PERIOD - Between 5.30 pm and 9.30 pm on weekdays during School term and school holidays.

- Between 9.00 am and 5:00 pm on Saturdays and Sundays.

PITCH - the full size floodlit Artificial Turf Pitch (ATP) situated within the Site which is shown for the purposes of identification only edged in green on the attached plan.

SCHOOL CORE TIME - Between 9.00 am and 5.30 pm on weekdays during School term.

SITE - the plot of land in the freehold ownership of the School which is shown for the purposes of identification only edged in red on the attached plan which includes the Pitch plus changing rooms and car parking area.

SPORTING ORGANISATIONS – any organisation whether publicly or privately funded whose primary function is the provision of sporting activity for its participants or members.

PINGLE FOOTBALL DEVELOPMENT PLAN – identifies the structure of football activities in the locality and the main development plans for those clubs and organisations. This is shown in the attached Annexe 2.

## 2. THE PROJECT

To develop and operate a new floodlit Artificial Turf Pitch ('ATP') within the Site.

## 3. AIMS OF THE PROJECT

The parties hereto declare that the aims of the Project are as follows:

(a) To provide opportunities for local football organisations and individuals to use the Pitch in order to participate in football and to develop their skills.

(b) To increase football opportunities for the pupils of the School.

(c) To establish arrangements for the operational and strategic management and development of the Pitch.

(d) To generate sufficient income from use of the Pitch to cover all short and long term operating and maintenance expenses.

#### 4 OBJECTIVES

The parties hereto agree to adopt the following objectives in order to fulfil the aims set out in clause 3 above:

(a) To maximise use of the Pitch, the School having exclusive use during School Core Time (except at any time during that period which may, from time to time, be agreed by all parties to the Agreement).

(b) To establish, develop and promote, as appropriate, a structured programme of community football initiatives.

(c) To operate a balanced programme of football for:

(i) The School

(ii) Local football clubs

(iii) Football development in the locality

(iii) Casual users

#### 5. TARGETS FOR COMMUNITY USE

The parties hereto agree to seek to achieve, within 12 months of the completion of the Pitch, and thereafter to maintain the following targets:-

- (a) A minimum of 35 hours of use per week (“minimum usage”) of the full playing area of the Pitch for community use, with higher levels of use during school holidays
- (b) Within the minimum usage:
  - (i) At least 7 hours casual use of the Pitch during peak hours per week
  - (ii) At least 10 hours football development use per week.
- (c) Support a programme of community football initiatives.
- (d) A pricing policy that shall, as far as possible, ensure the maximum community use of and accessibility to the Pitch consistent with the financial aim of the Project (clause 3(d)) and with the requirements of the Football Foundation grant offer.

## 6. MARKETING AND PROMOTION

The School shall have prime responsibility for marketing and promoting general use of the Pitch, including the funding of these activities. The Council or Derbyshire Football Association (“Derbyshire FA”) shall have responsibility for marketing and promoting their own specific development activities but with overall control resting with the School.

## 7. MANAGEMENT OF THE PITCH

- (a) The School shall, at its own expense, have full responsibility for the ‘day to day’ management of the Pitch as detailed in clause 8.
- (b) An Operational Management Team shall be established comprising the School Business Manager, South Derbyshire District Council Sports Development Officer, the Derbyshire FA Football Development Officer or appropriate substitutes. Others can be co-opted to the Operational Management Team as the need arises.
- (c) The Operational Management Team shall meet at least bi-monthly and their primary role shall be to oversee the management and development of the Pitch and the delivery of commitments made in the Pingle Football Development Plan. The Operational Management Team shall also report twice

yearly on progress, in delivering objectives and achieving performance targets, to a Strategic Management Group.

- (d) The roles and responsibilities of the Operational Management Team are identified in greater detail in Annexe 3.

- (e) The Strategic Management Group shall comprise a nominated senior representative of the School Governors, a District Councillor, a senior representative from Derbyshire FA and a representative of the Local Football Partnership. Senior officers of the School, the Council and Derbyshire FA, as required, shall support the Group, in an ex-officio capacity. The Chair of the Group shall alternate, on an annual basis, between the representatives of the School, Council and Derbyshire FA.

- (f) The roles and responsibilities of the Strategic Management Group are identified in greater detail in the attached Annexe 4.

## 8. 'DAY TO DAY' MANAGEMENT RESPONSIBILITIES OF THE SCHOOL

- (a) Maintain the Pitch and the associated works in good repair and condition in accordance with the agreed Maintenance Plan.

- (b) Provide booking and customer service arrangements to allow members of the public to make bookings of the facilities during the agreed opening hours and to answer any queries members of the public may have on the availability of the Pitch.

- (c) For bookings, provide preference to clubs that are regular attendees at the Local Football Focus Group.

- (d) Ensure that the Pitch and associated facilities, including changing rooms and car parking are available for use once the Pitch has been booked.

- (e) Market and promote the Pitch as specified in clause 6.

(f) Ensure that proper administration is in place to take fees for both casual and long-term bookings and to recover any bad debt.

(g) Have in place systems that reflect best practice in Child Protection when taking bookings from individuals and clubs that provide them with access to children and young people.

(h) Provide any equipment for use in association with the activities undertaken on the Pitch.

(i) To ensure that the proper contractual arrangements are in place for block bookings and that these are updated when required.

(j) Maintain records of usage for performance management and marketing purposes

(k) Ensure suitably qualified staff are in attendance to ensure the delivery of the above requirements.

(l) Indemnify the Council against all actions, claims and demands which may be brought at any time (whether during or after the currency of this Agreement) by any person and in respect of any matter resulting from any breach non-observance or non-performance of any obligation imposed on the School by this Agreement or as a result of the design or specification of the Pitch or any associated work.

## 9. FINANCE

(a) The School shall retain all income arising from the use of the Pitch.

(b) The gross annual costs of operating and maintaining the Pitch shall be borne solely by the School, in line with the Business Plan as included in the Football Foundation bid.

- (c) The financial structure shall be managed to deliver sufficient surplus into a sinking fund to ensure replacement of the Pitch playing surface at appropriate intervals (10 yearly, approximately)
- (d) The School shall charge for use of the Pitch for Community football initiatives, organised by South Derbyshire District Council's Sports Development Officer at cost (to the School) rate.
- (e) Facility hire charges shall be jointly agreed (by the Council and the School?) at the commencement of the Agreement. These shall be varied at the beginning of a new financial year (1<sup>st</sup> April) in line with the percentage change in the 'All Items' Index of Retail Prices for the United Kingdom, produced by the Office of National Statistics, for the 12 month period between February and February the following year. From time to time, to meet the commitments identified in clause 6(d), it may be necessary to vary prices outside of this mechanism. On these occasions the School shall prepare a case for these amendments for the approval of the Strategic Management Group

#### 10. MONITORING AND EVALUATION

- (a) The School shall produce an annual report with input from others on the Operational Management Team. This report shall include statistics on the use of the Pitch and an evaluation of progress made towards the achievement of the aims, objectives and targets set out in the Management and Football Development Plans. The report shall provide a review of the programme for the use of the Pitch and a summary of the revenue finances for the financial year.
- (b) This report shall be presented in April of each year to the Strategic Management Group and shall be available for the Football Foundation, if required.

#### 11. CONDITIONS OF ACCEPTING FOOTBALL FOUNDATION GRANTS.

- (a) Acceptance of the Football Foundation Grant, will be in accordance with "The Pingle School: Third Generation Artificial Grass Pitch Offer Letter, 14 Sep 2005".

(b) The School shall use its best endeavours to ensure that its obligations under this Agreement become binding upon any successor in title to the freehold interest in the School premises or the Pitch.

(c) The Governors hereby agree that any additional or replacement governor will abide by the terms of this Agreement.

## 12. DURATION OF THE AGREEMENT

This Agreement shall run for a period of 21 years from the Commencement Date. The parties hereto shall give consideration, at the expiry of the 18<sup>th</sup> year of the Agreement, to the use the Pitch after the expiry of this Agreement.

## 13. VARIATIONS

This Agreement shall only be varied with the approval of the Strategic Management Group.

## 14. TERMINATION

Either Party is entitled to terminate this Agreement in the circumstances set out below:-

- (a) If a Party is in breach of any of the terms of this Agreement and the breach is capable of remedy the Party not in breach must write to the Party in breach setting out the breach, the action to be taken to remedy the breach and a reasonable time in which the breach must be remedied. If the breach is not remedied in accordance with the terms set by the Party not in breach then they may terminate the Agreement by writing to the Party in breach.
- (b) If a Party is in breach of any of the terms of this Agreement and the breach is incapable of remedy the Party may terminate the Agreement by writing to the party in breach and giving them 3 months written notice.
- (c) This Agreement is automatically terminated if either Party appoints a receiver, an administrative receiver, liquidator, provisional liquidator or similar officer is appointed over any of the property of that Party or if any floating charges are crystallised or a petition is presented or an order is made for the winding up of the Party or a meeting is convened for the purpose of winding it up.

## 15. CONSEQUENCES OF TERMINATION

(a) The parties shall have no further obligations to each other under the terms of this Agreement other than in respect of rights already accrued as at the date of termination.

(b) Within 28 days of termination, any outstanding debts/credits between the Council and the School shall be paid in full.

## 16. WAIVER

The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

## 17. ASSIGNMENT

Neither party shall assign its rights or obligations under this Agreement without the prior written consent of the other party which may be given with or without conditions.

## 18. NOTICES

(a) Any Notice required to be served under this Agreement or otherwise shall be in writing and shall be served upon the other party by First Class Recorded Delivery or Registered Post to the respective address shown in this Agreement and service shall be deemed effected at the expiration of two working days after despatch of same

(b) Notices delivered by hand shall be deemed to have been received on the day that they are delivered, notices sent by first class post shall be deemed to have been received 48 hours after they have been posted.

## 19. FORCE MAJEURE

Neither party shall be deemed to be in breach of this Agreement if such a breach arises out of circumstances beyond that Party's control. If such a breach occurs the other Party shall be notified of the breach and the time for performance of the relevant provision in the Agreement shall be extended. If the circumstance continues or is expected to continue for more than 4 weeks then the Parties shall be entitled to negotiate fair and reasonable alternative arrangements.

## 20. SEVERANCE

If any provision of this Agreement shall be prohibited by law or adjudged by a court to be unlawful, void or unenforceable such provision shall to the extent required be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

## 21. LAW

This Agreement shall be governed by and construed in accordance with the law of England and Wales and each party agrees to submit to the jurisdiction of the courts of England and Wales.

