

# APPENDIX 2

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2009

711-20-4-DT

**BELFAST CITY COUNCIL**

**and**

**RODEN STREET COMMUNITY DEVELOPMENT GROUP**

# **FACILITY MANAGEMENT AGREEMENT**

Synthetic Pitch at Grosvenor Recreation Centre

Ciaran Quigley  
Director of Legal Services  
City Hall  
Belfast  
BT1 5GS

Revised Draft: 18/06/09

**THIS AGREEMENT** made the                      day of                      2009 Between:-

- (1) **BELFAST CITY COUNCIL** of City Hall, Belfast, BT1 5GS; and
- (2) **RODEN STREET COMMUNITY DEVELOPMENT GROUPS**

.....

**1. Definitions**

In this Agreement, the following expressions have the meaning specified:-

- 1.1 'the Company' means Roden Street Community Development Group
- 1.2 'the Council' means Belfast City Council, party hereto.
- 1.3 'the Maintenance Operations' means those routine maintenance operations to be carried out by the Company as described in the Second Schedule.
- 1.4 'the Facility' means the synthetic pitch.

**2. Recitals**

- 2.1 The Council is the owner of the Facility.
- 2.2 The Council and the Company have agreed that the Company will undertake responsibility for the management of the Facility in accordance with the provisions hereinafter contained and for the duration hereinafter specified.
- 2.3 The Company acknowledge its responsibility for all obligations arising pursuant to this Agreement.

**3. Period of Agreement**

- 3.1 This Agreement will have effect for a period of 5 years from the      day of      2009 ('the Commencement Date') subject to a Management fee of £44,400.00 per annum payable to the Company in two equal instalments payable on 1<sup>st</sup> April and 1<sup>st</sup> October in each year (or the relevant pro rata amount if this Agreement commences prior to or ends after either of those dates) on receipt of an invoice from the Company ('the Management Fee').
- 3.2 The Council shall review with the Company the operation of this Agreement prior to the expiration of the period of 5 years and, subject to the parties being satisfied therewith, and if there is then no subsisting breach of any of the Company's obligations under this present Agreement, this Agreement shall be extended for a further period of 5 years (a memorandum of the terms agreed between the parties in respect of any extension of the terms of the Agreement shall be endorsed on this Agreement).

- 3.3 The Council shall be at liberty to extend this Agreement, up to a maximum of 20 years in total from the Commencement Date, on a five yearly basis in accordance with clause 3.2.

#### **4. Review of Management Fee**

- 4.1 Upon the expiry of the first year and each successive year from the commencement of the period of this Agreement the Management Fee shall be adjusted to reflect any increase in the All Items Retail Price Index published by the Department of Economic Development or any successor Department to the figure shown therein for the month of the commencement of the term.

#### **5. Management of the Playing Facilities**

- 5.1 The Company shall undertake and be responsible for the general management of the Facility on behalf of the Council in accordance with the following provisions of this Agreement, including the acceptance of bookings, the collection of cash, the organising of events and the provision of security.
- 5.2 The Company shall, in particular, carry out the Maintenance Operations detailed in the Second Schedule hereto.
- 5.3 The Company will be responsible for all electricity, telephone, water and other charges (but excluding rates) incurred by it in connection with the use of the Facility, and shall indemnify the Council against the payment of all such charges.
- 5.4 The Company shall carry out all instructions as directed by the Council.
- 5.5 The Company shall be responsible for all inspection of the Facility so as to ensure safe operation and use.
- 5.6 The Council shall be responsible for the future upgrade replacement of the Facility.

#### **6. Insurance and Indemnity**

- 6.1 The Council will be responsible for the general insurance of the Facility and will indemnify the Company in respect of claims, losses, costs or damages which arise solely out of the Company's negligence in the maintenance of the Facility in accordance with this Agreement and as stipulated in the Schedule of Maintenance Operations appended hereto, but not otherwise.
- 6.2 The Council will not be responsible for claims, losses, costs or damages in respect of injury or disease sustained by any employee of the Company.

6.3 The Council will not be responsible for claims, losses, costs or damages in respect of damage or destruction of equipment stored at the Facility.

6.4 The Council will not be responsible for arranging insurance to comply with the Company's statutory duties (if any) under current Employers Liability Compulsory Insurance legislation.

## **7. Use**

7.1 The Company shall use the Facility as a sports and recreation facility as permitted by the Council and for no other use or purpose whatsoever.

7.2 The Company shall not use the Facility as a licensed club for the sale or consumption of intoxicating liquor within the meaning of the Registration of Clubs (Northern Ireland) Order 1987.

7.3 The Company shall not use the Facility or any part thereof for the benefit of any particular religious body or political group.

## **8. No Building**

8.1 The Company shall not erect, build, construct or lay out or permit to be erected, built, constructed or laid out on the Facility any building, erection, construction works, path or paved area except in accordance with plans, elevations and specifications previously submitted to and approved by the Council in writing.

## **9. Access**

10.1 The Company agrees that the Council shall have uninhibited right to:-

- (a) enter and inspect the Facility;
- (b) interview all participating staff and trainees; and
- (c) carry out any works or operations as the Council may require.

## **10. Compliance**

11. The Company agrees that it shall comply with the provisions of all statutes and the requirements of any competent authority relating to the Facility, use thereof and in the exercise of the powers and obligations on the part of the Company contained in this Agreement.

## **11. Section 75 Northern Ireland Act 1998**

11.1 The Council has a duty pursuant to Section 75 of the Northern Ireland Act 1998 in carrying out its functions to have due regard to the need to promote equality of opportunities between different classes of persons, including persons of different religious belief and political opinion.

11.2 The Council is also required by virtue of Section 75 to promote good relations between persons of different religious belief, political opinion or racial group. In order to act in accordance with Section 75, the Council requires the Company as its Facility Manager to undertake not to use the Facility or any part thereof for the benefit of any particular religious body or political grouping or to discriminate against any particular racial group.

## **12. Free Use**

12.1 The Council permits the Company to offer free use of the Facility during term time Monday to Friday between 9.30am and 4.00pm to the following schools:-

- (a) St Joseph's Primary School, 1 Slate Street, Belfast, BT12 4LD
- (b) St Peter's Primary School, Ross Road, Belfast, BT12 4JD
- (c) St Clare's Primary School, 323 Cupar Street, Belfast, BT13 2SE

## **13. Public Use**

13.1 Members of the public, sporting clubs, groups and schools (excluding those schools referred to in Clause 12.1) will continue to be entitled to use the Facility subject to the payment of user charges to be fixed from time to time by the Council and the Company shall use its best endeavours to ensure that public use of the Facility is made available as and when required. Members of the public will continue to be permitted access to the property for passive recreational pursuits.

13.2 In the event that the Company should wish to refuse public use of the Facility as referred to at 12.1 above, it shall only refuse such use where it appears to the Company reasonable to do so and shall as soon as possible after such refusal notify the Council in writing and provide the Council with such information as the Council requires to assist it to make an informed decision as to whether the Company acted reasonably in making the refusal and if the Council believes that the Company has not acted reasonably the Council shall be entitled to reverse the Company's decision on such refusal provided always however that should the refusal relate to future use and should there be sufficient time to do so the Company shall notify the Council in writing of its intention to refuse and provide the Council with such information as the Council

requires to assist it to make an informed decision as to whether a refusal should be made and in these circumstances the decision shall be the joint decision of the Council and the Company.

#### **14. Sports Development Programme**

14.1 The Company shall ensure that a full and varied sports development programme is carried out at the facilities and in this regard shall prepare and implement a sports development programme, such programme to be approved by the Council, to maximise use of the Facility. The said programme shall be revised on an annual basis between the parties hereto.

#### **15. Timetable**

15.1 The Company shall forward the proposed timetable of usage on a monthly basis and at the end of the month in question shall submit the final timetable of usage in respect of the month in question to the Council.

#### **16. Reports**

16.1 The Company shall forward any reports as required by the Council in respect of the Facility relating to usage, teams, bookings, variations, maintenance or any other matter the Council may require a report on.

#### **17. Accounts and Records**

17.1 The Company shall keep and maintain proper legal and financial controls in place to receive and administer all income received and expenditure incurred in relation to the Facility ("the Accounts") and shall retain all Accounts and other records relating to the Facility in a secure place for the duration of this Agreement and shall procure an audit of the Accounts by a firm of chartered accountants and shall disclose the audited Accounts to the Council.

17.2 The Company shall permit the Council through its authorised officers and agents to have uninhibited right to inspect the Accounts and all financial and other relevant documents relating to income received and expenditure incurred in relation to the Facility and the Company shall disclose such information to the Council upon demand.

17.3 The Company shall operate as a non profit making organisation in respect of the Facility and shall apply all income received in relation to the Facility towards the improvement, enhancement and betterment of the Facility.

## **18. Funding**

- 18.1 The Council has applied to the Big Lottery Fund ('the BLF') for Grant Aid for the purpose of constructing a floodlight Multi-use Games Area at the Facilities ('the Grant Scheme'). The Company hereby accepts the status of a user group in terms of the BLF Capital Grant Offer and shall ensure that at all times during the period of this Agreement and any extension period as referred to in clauses 3.1 and 3.2 respectively that it complies with the criteria for eligibility for the BLF Capital Grant Offer ('the eligibility criteria') and at all times observes and performs all the covenants and conditions of the BLF Grant Scheme and Capital Grant Offer.
- 18.2 In the event that the Company shall require funding for development of the Facility from other sources it shall ensure that all funding secured is applied entirely for the purposes of developing and enhancing a well designed multi-use games area at the Facility in accordance with the eligibility criteria and covenants and conditions of the BLF Grant Scheme and Capital Grant Offer and/or any other funders.
- 18.3 Any monies which are put into or invested by the Company in the Facility shall be at the sole risk of the Company and the Council shall retain legal possession of the Facility at all times and no tenancy is intended to be, nor is hereby created nor shall the Company call upon the Council to grant a tenancy.
- 18.4 The Company shall provide the Council with all information that the Council considers relevant in relation to any funding received or applied for by the Company and the Council shall through its authorised officers and agents have the right to discuss all aspects of the Company's activities with its representatives or office-bearers.

## **19. Non Assignment**

This Agreement shall not be assignable or transferable without the prior written consent of the Council.

## **20. No Tenancy**

The Council retains legal possession of the Facility and no tenancy is intended to be, nor is hereby created.

## **21. Notices**

Any notice requiring to be served hereunder shall be sufficiently served in the case of the Company if sent to its address hereinbefore appearing and in the case of the Council if addressed to its Chief Executive and sent by Recorded Delivery to the its address hereinbefore appearing.



## 22. Termination

If the Company shall

- (i) fail to observe and perform any of the obligations, conditions and agreements on its part contained in this Agreement and or in the Schedule of Maintenance Operations appended hereto and if the Company shall fail to remedy any such non-observance or non-performance of any of the obligations, conditions and agreements within one month of receiving notice in writing by the Council, or
- (ii) expose the Council to an unacceptable level of risk in terms of the insurance and indemnity referred to at clause 7 above,

then it shall be lawful for the Council at any time thereafter to re-enter into and upon the Facility or any part thereof in the name of the whole and this Agreement shall determine but without prejudice to the rights and remedies of the Council against the Company in respect of any antecedent claim or breach of condition or agreement. For the avoidance of doubt, what shall be deemed to be an unacceptable level of risk with regard to the insurance and indemnity provided herein by the Council shall be a matter solely for the Council to make a decision upon following consultation and advice received from its Insurer and the Council's Insurance Officer.

## 23. Law

This Agreement shall be construed and applied in accordance with the laws of Northern Ireland and the parties submit to the exclusive jurisdiction of the Courts of Northern Ireland.

**PROVIDED ALWAYS, AND IT IS HEREBY AGREED AND DECLARED** by and between the parties hereto as follows:-

1. That the Memorandum and Articles of Association of the Company and any amendments thereto shall be subject to the prior approval of the Council and that eligibility to enjoy the Facility shall not be restricted on denominational grounds or made conditional on denominational religious observances.
2. That no appointment of a new Director or Directors shall be made without the prior written consent of the Council and copies of all Deeds of Appointment of New Directors shall be delivered up to the Council within 21 days of each appointment.

**IN WITNESS** whereof the Council and the Company have affixed their respective Corporate and Common Seal hereto the day and year first herein **WRITTEN**.

**FIRST SCHEDULE**

(Description of the Facility)

**ALL THAT AND THOSE** the premises showed edged in red on the plan thereof attached hereto.

**SECOND SCHEDULE**

Programme of Maintenance Operations

The Schedule of Maintenance Operations appended hereto.

**PRESENT** when the Corporate Seal of )  
**BELFAST CITY COUNCIL** was )  
affixed hereto:- )

\_\_\_\_\_)  
Lord Mayor )

\_\_\_\_\_)  
Chief Executive )

**PRESENT** when the Seal of )  
**RODEN STREET COMMUNITY** )  
**DEVELOPMENT GROUP** )  
was affixed hereto:- )