

BROMSGROVE DISTRICT COUNCIL

**FUNDING AGREEMENT IN RESPECT OF THE PROVISION OF
RECREATION, SPORT AND OTHER LEISURE FACILITIES
AND ACTIVITIES FOR THE BENEFIT OF THE COMMUNITY**

CONDITIONS OF GRANT FUNDING

Please read these Conditions carefully as they set out the basis on which the Council will award grant funding to Wychavon Leisure Community Association Limited. Please then ensure that the document is signed as required and then return it to the Head of Financial Services at the Council Offices in Bromsgrove. On the basis of your agreement to the Conditions, grant funding as detailed in Condition 9 will be confirmed, and a copy of this document, countersigned by a Council officer, will be returned to you for your records.

CONDITIONS

1. Business Plan

- 1.1 Bromsgrove District Council ("the Council") agrees to make grant funding available to Wychavon Leisure Community Association Limited ("The Trust"), having considered the Business Plan (a copy of which is annexed in Schedule 1) submitted by the Trust for the operation and management of the Dolphin Leisure Centre, School Drive, Bromsgrove B60 1AY ("the Dolphin Centre")
- 1.2 In return for this grant funding the Trust hereby agrees from 1st April 2010 ("the Commencement Date") to:-
- 1.2.1 operate the Dolphin Centre at/between all of the times contained in Schedule 2
 - 1.2.2 operate the Dolphin Centre in accordance with the terms and conditions contained herein and in accordance with the provisions contained in a Lease of even date made between the Council and the Trust
 - 1.2.3 offer a balanced programme of leisure activities which includes all of the activities listed in Schedule 3.

For the avoidance of doubt, the details set out in Schedules 2 and 3 shall be subject to any variation agreed between the parties from time to time, such agreement not to be unreasonably withheld or delayed.

- 1.3 For the purposes of this agreement "Year" shall mean:
- 1.3.1 for the first year, the period from the Commencement Date through to 31st March 2011; and
 - 1.3.2 thereafter a period of twelve (12) consecutive calendar months from 1st April through to the following 31st March.

2. Vision for Bromsgrove

The Council and the Trust will work in partnership to promote through leisure and sport the Council's Vision of "working together to build a district where people are proud to live and work, through community leadership and excellent services", the Values of Leadership, Partnerships, Customer First and Equality, "One Community" and the Council's Objectives of Improvement and Sense of Community & Well Being.

In particular the Trust agrees to develop its Business Plan over the period of this agreement, wherever possible, in working towards the aims, objectives and key deliverables set out in this agreement and the actions set out in the Council's Leisure & Cultural Services Business Plan and the Council's Sports Strategy from time to time (so long as they meet the charitable objectives of the Trust). The Trust also agrees that it will work with the Council to deliver the

Council's health, community and social priorities insofar as they can be delivered through the Dolphin Centre and that it will also support the Council's efficiency agenda.

In addition to the Council's local objectives the Trust also agrees to work with the Council in responding to and delivering an extensive range of national, regional and sub regional initiatives, priorities and requirements e.g. the delivery of the Sport England's Regional Plan for Sport in the West Midlands & the Hereford & Worcestershire Sports Partnership Improvement Plan.

The Trust agrees to become a member of the Bromsgrove Community Sports Network (BECAN) as soon as reasonably practicable after the Commencement Date and will assist Council officers in the preparation of external funding submissions designed to provide an enhanced and diverse programme of activities across the district.

3. Shared Aim

3.1 The Council and the Trust have a shared aim with regard to the provision of leisure services and in contributing to the improved health and social well being of the community within the District. This shared aim is:-

- 3.1.1 providing high quality efficient leisure services with clear and consistent standards.
- 3.1.2 providing open access and increased participation to leisure services regardless of age, sex, sexuality, race, ability or economic status.
- 3.1.3 continually reviewing and improving services to ensure that the greatest possible benefit is gained from the Dolphin Centre.
- 3.1.4 Identifying key groups within the local population (target market groups) and developing support and access packages as and where required to increase participation/updating of services.
- 3.1.5 to work jointly (including the preparation of funding bids) to support the Council's wider community, health and physical activity objectives and the objectives contained in the Local Strategic Partnership and Sustainable Community Strategy.

3.2 The Trust and the Council shall at all times act in good faith.

4. Standards of Service

4.1 The Trust will:-

- 4.1.1 Ensure the provision of a quality service at all times and ensure that any customer queries or complaints are dealt with efficiently, courteously and promptly. This shall mean that customer emails will be responded to within 2 working days, letters within 10 working days and telephone calls will be dealt

with immediately. Working days shall exclude Saturdays, Sundays and Bank Holidays.

- 4.1.2 Provide effective management and high standards of operating procedures and practices.
- 4.1.3 Ensure that the Dolphin Centre is well maintained to the highest standards of cleanliness and safety at all times.
- 4.1.4 Employ good quality, knowledgeable and appropriately trained staff at the Dolphin Centre and ensure at all times that any member of staff required to drive a motor vehicle as part of their duties for the Trust shall hold a valid driving licence for the vehicle they are using and have appropriate insurance cover.
- 4.1.5 Ensure that all relevant members of staff have an appropriate Criminal Records Bureau check and / or an ISA registration.
- 4.2 Provide a varied and balanced service delivery programme that gives opportunities for all regardless of age, sex, sexuality, race, ability or economic status.
- 4.3 Offer a mixed programme of activities as stated in Schedule 3 (as amended from time to time) using organised courses, club hire and pay and play opportunities where appropriate.
- 4.4 Develop a programme of activities aimed at increasing participation in sport, which provides a basis for progression into higher levels of performance for those with the talent and desire to progress.
- 4.5 In partnership with the Council, consult with and seek the views on a regular basis from the community on the Dolphin Centre to include satisfaction levels with the services provided and future aspirations for the services.
- 4.6 Develop a continuous improvement model for service delivery that includes staff development, a facility improvement schedule and enhanced customer satisfaction ratings.
- 4.7 Consult with the Council prior to implementing any significant service change which may impact negatively on any users or user groups.
- 4.8 The Trust agrees and covenants with the Council that in carrying out its obligations under this agreement the Trust shall (and the Trust shall require in contract documentation that the Trust's major suppliers and sub-contractors) comply in all material respects with all relevant legislation including but not limited to legislation relating to health safety and welfare at work and, in this regard:

- 4.8.1 the Trust shall use all reasonable endeavours to enforce the obligations in such contract documentation; and
- 4.8.2 shall provide evidence to the Council, within a reasonable period following request:-
(a) of a policy covering equal opportunities so as to avoid unfair discrimination on the grounds of age, colour, race, creed, nationality or any other unjustifiable basis directly or indirectly in relation to the provision of the services at the Dolphin Centre and
(b) as to how the above policy has been implemented.
- 4.9 The Trust shall work with the Council to support its Equalities and Diversity policies and agenda.

5. Objectives and Performance Targets

All information supplied to the Council as set out below shall be in the form agreed with the Head of Leisure and Cultural Services.

5.1 Providing a high quality efficient leisure service with clear and consistent standards

The Trust agrees to work with the Council and other relevant organisations in improving and developing services and facilities at the Dolphin Centre. The Council wishes to see on going service quality improvements and will need to see these substantiated by an independent external audit process at intervals to be agreed by the parties.

The Council strongly supports the use of QUEST which provides a scored Quality Assurance Mark as an assessment tool.

The Council is furthermore committed to achieving a level 3 score for its Use of Resources Assessment by the end of Year 3 and will require the Trust to utilize a national recognized benchmarking service for example APSE as part of its Value for Money agenda/improvement plan. A recognised benchmarking service will be used to review the Council's performance against other local authorities and be used to guide future service delivery, development and investment. The external cost of the benchmarking service will be met by the Council.

Annual customer and resident surveys will also be used to assess service quality and the Trust will be required to co-operate with the delivery of these assessments periodically.

A customer and complaints system should also be operated by the Trust and the results should be presented to the Council on a six (6) monthly basis.

Desired Outcome	Measures	Target	Current Score
Delivering a high quality customer focused service.	Quest score	To achieve a 4% increase to the Dolphin Centre QUEST score at each of the first two reaccreditation reviews.	71%
	Customer satisfaction survey	A local customer satisfaction score of over 95% within 2 Years of the Commencement Date.	85%
Effective & efficient delivery of the service.	Customer complaints and verbal feedback system	To reduce customer complaints month on month. To increase the number of positive comments received month on month.	
	User Forum	Meetings undertaken at least twice per year and feedback is taken into account in the annual service improvement plan.	

Desired Outcome	Measures	Target	Current Score
A well maintained, safe and healthy environment in which to work or spend leisure time.	Number of accidents recorded staff & public	To reduce the number of accidents by 5% year on year.	74 (2009/10)
	Number of RIDDOR reportable accidents recorded	Recording and reporting promptly any RIDDOR reportable accidents	
	Formulation and provision of a planned maintenance programme	To reduce the number of hours of service delivery lost due to maintenance down time, split into planned and reactionary.	100%
	Health & Safety Management	Full compliance with all maintenance based legislation for example PAT testing. Health & Safety Management score for QUEST to increase at each reassessment undertaken. 100% of Risk Assessment (RA) completed in line with the annual RA schedule.	6/10
Customers receive a professional and appropriate service from all Trust staff.	All new staff receive an induction within 1 week of their start date.	100% of new staff receiving inductions within 1 week of start date.	
	Formulate and review a training plan for all staff.	All staff to have individual PDR's and effective training programmes in place within three (3) months of commencing work.	
	Weekly, monthly and annual training requirements identified and programmed in to staff training sessions/schedule.	90% of staff attending sessions to meet the operational requirements of the Dolphin Centre (trained to do the job).	
In the absence of baseline figures, comparisons will be made on a year on year basis (1st year figures will act as the base line figures)			

5.2 Increased participation and accessibility.

The Council particularly wishes resources to be targeted at under represented groups to widen access to sport and to increase uptake and usage at the Dolphin Centre.

These groups shall be defined as:-

5.2.1 Over 50's.

5.2.2 Ethnic Minorities.

5.2.3 Those in receipt of benefits.

5.2.4 Disabled.

5.2.5 Children & Young People

5.2.6 Females

The Council also wishes to use sport as a tool to tackle social inclusion, health inequalities, community cohesion including anti-social behaviour and improving health and well being generally. As such, the Council and the Trust will work together to develop greater opportunities for residents in these areas.

As part of this objective the Trust shall also establish and operate, at least twice yearly a user panel/forum which will be used to review the operation of the service and future improvements that may be possible at the Dolphin Centre. The Trust will require that the forum has equal representation from all of the above-named groups in order to reflect the needs of the whole community. For the avoidance of doubt, the groups to be reflected on the forum shall be subject to variation by the Council at any time after having consulted with the Trust.

Desired Outcome	Measures	Target
A service that is accessible and used by all.	<p>For each of the priority groups provide a quarterly report detailing the following participation information :-</p> <p>% breakdown of the Dolphin Centre's usage</p> <p>% break down of the programme provided.</p> <p>% uptake of the programme.</p> <p>Provide a demographic profile of users of the Dolphin Centre</p> <p>Ensure that a user forum is set up.</p>	<p>That the % of the users reflect the % breakdown of the community.</p> <p>Quarterly</p> <p>Meets twice per year and includes representatives from the priority groups.</p>
Equitable use of sports facilities.	<p>Number of visits by target groups.</p> <p>% breakdown of visits by targets groups against overall visits.</p>	<p>5% overall annual increase in participation by the end of Year 2.</p> <p>2% year on year increase in usage by the end of Year 2.</p>
Increased participation.	<p>Attendance information overall, wet, dry and key activities for example swimming courses.</p>	<p>5% overall annual increase in participation by the end of Year 2.</p> <p>2% year on year increase in usage thereafter.</p>

5.3 Continuous improvement and service reviews

The Council will carry out an annual review of the Trust both from a performance management perspective and to ensure that the Trust is working within the agreed boundaries of the grant Conditions contained herein.

The Council in addition to carrying out their own surveys will have the right to review the survey and qualitative information collected by the Trust from service users and local residents.

In areas where there is consistent or wide scale user dissatisfaction the Council will have the ability to request the Trust to address such issues within the Operational and Business Plans.

Desired Outcomes	Measures
The provision of a customer orientated service which responds to market forces where appropriate	Carry out regular performance reviews. Qualitative assessment of customer satisfaction surveys Improvements in residents satisfaction as shown by the Place Survey results.

6. Sustainability of use

The Council requires the Trust to operate in a sustainable manner consistent with the Council's environmental objectives which have been disclosed to the Trust.

The Council requires the Trust to prepare an energy conservation plan and to secure annual reductions in energy, water and consumables. The Trust will be expected to reduce its energy consumption as measured against its first 12 monthly usage figures. If the Trust fails to reduce its energy consumption the Council reserves the right to reduce the grant by the cost of the energy used in excess of the previous 12 months consumption, unless there are mitigating reasons for the increased use.

The Council will also encourage the Trust to follow an ethical & sustainable procurement process to integrate environmental and social considerations into the purchasing process with the goal of reducing adverse impacts upon health, social conditions and the environment, thereby saving valuable costs for public sector organisations and the community at large. Sustainable procurement forms a key part of the aim to support sustainable development by the public bodies.

The Trust agree to assist the Council in meeting its obligations in respect of Carbon Reduction Reporting and any similar obligations that may arise during the term of this grant arrangement insofar as they relate to the Dolphin Centre.

When purchasing assets, supplies or services the Trust will be expected to take into account a number of factors including:

- a) The entire life cycle of products.
- b) Environmental aspects: - the effects on the environment that the assets, supplies and/or services have over the whole lifecycle (Green Procurement).
- c) Social aspects: - the effects on issues such as poverty eradication, inequality in the distribution of resources, labour conditions, human rights and fair-trade.
- d) Sustainable or recycled materials/products.
- e) Recycling policies for disposables.

7. Concession Cards and Other Specialised Use

- 7.1 The Trust is required to operate the Council's approved concession card scheme i.e. a 50% concession reduction shall be given to those on income support, job seekers allowance, those over 60, students and disabled users and their carers. The Trust are at liberty to operate any other enhanced discount scheme from time to time it sees fit but agrees to publicise it widely and fairly to all eligible persons.
- 7.2 The Trust shall, having due regard to its obligations under Condition 17, ensure that financial information and records are kept relating to the operation of the leisure card scheme and provide within 2 weeks of the end of each quarter a summary of such information and records in a format to be agreed by the Council.
- 7.3 The Trust shall provide free use of the leisure facilities for a maximum of 25 named county and national standard sports people approved by the Council and notified by the Council to the Trust from time to time in line with the FANS scheme.
- 7.4 The Council requires and the Trust shall protect a number of hours available to the Bromsgrove Swimming Club at the Dolphin Centre. The Bromsgrove Swimming Club currently has use of the swimming pool for 4.5 hrs per week and this must not be reduced without the prior written consent of the Council.
- 7.5 The Trust will continue to operate the County wide exercise referral service in partnership with the Hereford & Worcestershire County Sports Partnership and NHS Worcestershire, as long as this service is externally supported and economically viable.

- 7.6 To provide the existing concession scheme for looked after children within Worcestershire.
- 7.7 The Council agrees to reimburse the Trust the cost of any parking concession offered to users of the Dolphin Centre subject to the Trust complying with the terms of the reimbursement scheme as set out in the Schedule 5.
- 7.8 The Trust agrees to work with the Council's Sports Development team to encourage and develop sporting activities within the Dolphin Centre. The Trust agree to make space available at nil or low cost for sports development activities when there is little or no loss of income to the Trust.

8. Insurance/Indemnities

- 8.1 The Trust shall take out policies of insurance in respect of:
- 8.1.1 all computers, equipment, including the Council's gym equipment, furniture etc for their full replacement value except where, acting reasonably, it can be shown to be uneconomic to do so;
 - 8.1.2 public and employers' liability (£ [REDACTED] minimum for each and every loss), loss or theft of cash, and to maintain a fidelity guarantee policy.
- 8.2 The Trust shall provide evidence upon request that all such insurance policies are in-force and shall not do or permit anything to be done which may render any such policy of insurance to be void or voidable.
- 8.3 The Trust are aware that the Council does not insure against flood damage, glazing or in respect of malicious losses.
- 8.4 The Trust shall:
- 8.4.1 be liable for and shall indemnify the Council in full against any expense, liability, loss, claim or proceeding arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to the Council or otherwise or any claim by any third party arising out of or in the course of or caused or contributed to by the Trust and/or the performance or non-performance or delay in performance by the Trust of its obligations under this agreement except to the extent that the same is due to any negligent act or default of the Council;
 - 8.4.2 be liable for and shall indemnify the Council against any expense, liability, changes, loss, claim, costs or proceeding arising as a result of or in connection with any breach of the terms of this agreement by or otherwise

through the default or negligence of the Trust except to the extent that the same is due to the default or negligence of the Council.

9. Funding

During the term of the Lease the grant sum payable, subject to any adjustments needed for utilities, pension and the surplus share will be as follows:

For the period 01/04/2010 to 31/03/2011 – [REDACTED]

For the period 01/04/2011 to 31/03/2012 – [REDACTED]

For the period 01/04/2012 to 31/03/2013 – [REDACTED]

Should the Council not exercise the break option within the Lease the grant sums, subject to the necessary adjustments for utilities, pension and profit share will be as detailed below:

For the period 01/04/2013 to 31/03/2014 – [REDACTED]

For the period 01/04/2014 to 31/03/2015 – [REDACTED]

The Council shall, during the term of the Lease indemnify the Trust in respect of any liability for the payment of National Non Domestic Rates ("Rates") for the Dolphin Centre. If Rates are payable by the Trust the Council will increase the grant by the same amount in each year that the Trust shall be liable to pay Rates.

10. Use of Grant Funding

- 10.1 The first payment of the grant in the sum of [REDACTED] shall be paid by the Council on the 1st April 2010. This will cover the period of the first 6 months of the agreement. As from that time the grant will be paid quarterly in advance.
- 10.2 In respect of the grant period, the parties acknowledge the volatility of the utility market (gas, water and electricity only) and notwithstanding the fact that amounts will be attributed for the purchase of such items in the grant funding for each of those Years

the Council agrees, subject to the Trust complying at all times with its obligations under Condition 10 and Condition 6, to make an adjustment to the grant funding already awarded for any Year insofar as amounts expended by the Trust for such items, exceed the amount attributed for that Year. Insofar as any adjustment is made hereunder at the end of any Year, a balancing payment will be made to the Trust by the Council within one (1) month of the end of the relevant Year. The Trust and the Council agree that the payment under this clause exclude any increase in utility costs which are at or below the Consumer Price Index rate prevailing for the relevant period. Should the cost of utilities be less than the sum shown in the Business Plan in any year the Council shall be entitled to receive a refund of that sum within one (1) month of the end of that year.

- 10.3 The Trust must use the grant wholly and exclusively for the purposes identified within the Business Plan and as set out in this agreement. This clause shall not apply to any sum accruing to the Trust under the Surplus Share arrangement set out in Schedule 4.
- 10.4 The Trust shall account for expenditure of the grant and performance of the Business Plan by:
 - 10.4.1 attending such meetings as may be reasonably required;
 - 10.4.2 providing any information which the Council reasonably requires.
 - 10.4.3 giving the Council full assistance in its discharge of its statutory obligations and social objectives in relation to the provision of leisure facilities generally
 - 10.4.4 affording the Council reasonable access to the Dolphin Centre, and after notice to the Managing Director, to the Trust's staff and other records, subject to the requirements of Condition 17, to enable the Council to monitor effectively the Trust's compliance with these Conditions relating to the provision of services..
- 10.5 The Council agrees to meet any additional costs incurred in respect of any contract for goods or services which is required to be novated into the name of the Trust but which, through no fault of the Council or the Trust, cannot be novated immediately, in the amount of funding to be provided hereunder to the Trust.
- 10.6 The Trust must make arrangements to secure continuous improvements in the way in which the services are delivered at the Dolphin Centre, having regard to a combination of economy, efficiency, effectiveness and the aims and objectives of the Council set out in this agreement.
- 10.7 The Trust represents and warrants as a separate warranty and representation to the Council that:
 - 10.7.1 it is validly existing and has full power to enter into and perform this agreement;

- 10.7.2 the obligations expressed as being assumed by the Trust under this agreement constitute valid legal and binding obligations of the Trust enforceable against the Trust in accordance with their terms;
- 10.7.3 neither the execution of this agreement by the Trust nor the performance or observation of any of its obligations under it will conflict with or result in any breach of any law or enactment or any deed, agreement or other instrument, obligation or duty to which the Trust is bound;
- 10.7.4 the Trust is not in default under any law or enactment or under any deed agreement or other instrument or obligation by which it is bound so as to affect adversely its ability to perform its obligations under this agreement;
- 10.7.5 all consents, required in connection with the execution, delivery, issue, validity or enforceability of this agreement have been obtained and have not been withdrawn;
- 10.7.6 no litigation or administrative or arbitration proceeding before any court, tribunal, Government authority or arbitrator is presently taking place, pending or (to the knowledge, information and belief of the Trust) threatened against, or against any of the assets of, the Trust which might have a material adverse effect on its ability to perform its obligations under this agreement;
- 10.7.7 all information documents and accounts of the Trust submitted to the Council for its appraisal for the purposes of this agreement are true and accurate and no change has occurred since the date on which such information was supplied which renders the same untrue or misleading in any respect and that there has been no material adverse change in the business, assets, operations or prospects of the Trust since such information documents and accounts were provided;
- 10.7.8 the Trust has disclosed to the Council all information which would or might reasonably be thought to influence the Council in awarding the grant funding to the Trust or the amount thereof;
- 10.7.9 the Trust accepts that nothing in this agreement shall operate to fetter the exercise of the statutory powers of the Council or constrain or prevent compliance with its statutory duties or cause any limitation on any of the powers whatsoever of the Council to be exceeded.

11. Management Accounts

- 11.1 The Trust shall maintain proper usual and up to date financial accounting records and shall provide to the Council such financial and other information about the provision of the services at the Dolphin Centre as the Council may from time to time reasonably require.

- 11.2 The Trust will provide a set of management accounts to the Council on a quarterly basis within 30 days of the quarter end. The accounts will detail actual compared with budget and is to include known commitments for expenditure and income items. The format of such accounts shall be agreed from time to time by the parties.
- 11.3 The Trust shall review quarterly together with the Council the management accounts to identify any respects in which the financial performance varies from the projections in the Business Plan, and shall take such remedial actions as shall prove necessary. The Council may reduce or with hold any or all of the next grant payment until the Trust have carried out any remedial action considered necessary by the Council.

12. Annual Accounts and Statements

- 12.1 The Trust shall comply at all times with its obligations regarding filings and regulation with any regulatory authority or body..
- 12.2 The Trust shall provide the Council with the estimated value of any profit share agreement within 1 calendar month from the end of the relevant Year to which it relates.
- 12.3 The Trust shall ensure that financial statements relating to the provision of the services are submitted to the Council within 6 months of the end of the relevant Year to which they relate.
- 12.4 All financial source documents must be kept by the Trust for at least 6 years from the end of the relevant Year.
- 12.5 At its discretion the Council may require the submission of audited accounts where this is not a statutory requirement.
- 12.6 The Trust shall acknowledge grants in its annual report and audited accounts, indicating the purposes for which the grants were used and the outcome of the activities.

13. Equal Opportunities

The Trust shall use all reasonable endeavours to ensure that they:

- 13.1 do not discriminate on the grounds of gender, age, race, disability, religion or belief or sexual orientation in terms of employment and service delivery. The only exception to this will be where it is lawful (i.e. genuine occupational qualifications as allowed under Section 5 of the Race Relations Act 1976 and Section 7 of the Sex Discrimination Act 1975);
- 13.2 comply with all employment and human rights legislation and have regard to any codes of practice published by the Equal Opportunities Commission, the Commission for

Racial Equality, the Department for Employment and Learning, the Disability Rights Commission or other similar agencies in relation to equal opportunities in employment and service delivery;

- 13.3 demonstrate a commitment to the elimination of unlawful discrimination on the grounds of gender, age, race, colour, nationality, class, disability, religion or belief or sexual orientation as service providers, by providing and ensuring equality of access to services. The Trust may offer services to a specific group where this is part of the Trust's objectives.
- 13.4 In regard to the above Conditions, the Council requires the Trust to have written policies and practices for implementing and developing equal opportunities e.g. recruitment practices, promotion and training etc. To this end, the Trust will be required to complete an annual equal opportunities audit detailing the type of services provided, the profile of clientele, and the profile of the existing workforce. Council officers may from time to time conduct an independent equalities audit of the Trust, and may request from you additional information in relation to the operation of the Trust's equal opportunities procedures

14. Trade Union Membership

- 14.1 In respect of Trade Union Membership and Regulations, the Trust will ensure that, each individual member of its staff should be given an opportunity to be a member of a trade union and for the time being for the purpose of collective bargaining UNISON should be recognised for consultation.
- 14.2 In respect of recruitment for the time being the Trust will include the following form of words in all letters of appointment of employees:

"Wychavon Leisure Community Association Limited supports the principle of union membership and believes in solving industrial relation problems by discussion and agreement. You have the right to join any union of your choice. "

- 14.3 In implementing the preceding Condition, the Council reminds the Trust, as an employer, that it is unlawful to refuse employment to a person because s/he is not a member of a trade union, or refuses to accept any other union membership requirement. The relevant legislation sets out the circumstances in which an employer is regarded as having refused employment to an individual.

15. Council Representation

The Trust must participate fully in setting up a Partnership Board which will meet on at least a quarterly basis to consider matters relevant to the grant funding Conditions and obligations. The Board will consist of the Council's Portfolio Holder, the Head of Leisure and Cultural Services, one Councillor (to be advised), a user representative and the Managing Director of the Trust. For the avoidance of doubt this Board shall not have any powers to direct the Trust as to how it uses any grant funding supplied

hereunder but it shall be able to make suggestions for expenditure or operational changes.

16. Rights of Access and Information

- 16.1 The Trust shall allow access by Council officers and auditors to the Dolphin Centre to inspect financial and other records relating to the provision of the services at the Dolphin Centre except those subject to legal professional privilege, at any reasonable time, and provide additional information as requested, including, without limitation, your personal procedures for recruitment of persons who have unsupervised contact with children and young persons under the age of eighteen or with vulnerable adults. The Trust shall also make available to the Council's officers or Auditors any information in its possession relating to the Dolphin Centre upon request.
- 16.2 The Trust will allow Council auditors (internal or external) to take copies (whether in print or electronic form) of such of its financial and other records which it is required to make available under Condition 16.1 above.
- 16.3 The Trust shall notify Council auditors (whether internal or external) of any circumstances which could give rise to allegations of fraud or misconduct by any person in the application of this grant.

17. Data Protection

The Trust and the Council will comply with their respective obligations under the Data Protection Act 1998 ("the 1998 Act") and the Computer Misuse Act 1990 insofar as performance of this agreement gives rise to obligations under those Acts.

The parties shall ensure that they do nothing knowingly or negligently which places the other in breach of their obligations under the 1998 Act

18. Compliance with Statutory Requirements

The Trust shall note the Council's current and future statutory obligations including but not limited to the Freedom of Information Act 2000, Human Rights Act 1998, Disability Discrimination Act 1995, Race Relations Act 1976, the Rehabilitation of Offenders Act 1974, the Police Act 1997, the Protection of Children Act 1999 and the Criminal Justice and Courts Services Act 2000 (as amended from time to time) and any codes of practice issued by the Government and appropriate enforcement agencies.

The Trust shall assist the Council in its compliance with its obligations under these provisions and comply with any reasonable request from the Council for that purpose.

19. Relationship with the Council

The Trust shall acknowledge Council funding provided pursuant to this agreement in all its publicity material by:

- 19.1 ensuring that all published material, stationery and vehicles displaying the Trust's name and/ or logo states that the Trust is working in partnership with the Council and that the approved Council logo is displayed;
- 19.2 if required by the Council displaying on any site managed or used by the Trust a sign or signs stating that the Trust is supported by funding from the Council and showing the approved Council logo;
- 19.3 ensuring that no material is displayed on any premises which may in the reasonable opinion of the Council materially offend any resident(s) within the district or cause embarrassment to the Council and shall remove any such offensive material forthwith at the request of the Council;
- 19.4 ensuring that all requests for interviews, statements and comments regarding Council policy shall be referred to the Contact Officer;
- 19.5 ensuring that the Trust do not allow the carrying on of car boot sales or entertainment of an adult nature and by limiting its trading activities to those which are ancillary to its charitable objects .

20. Compliance with Grant Conditions

If the Trust do not comply fully with these Conditions of grant, or do not use the grant for the purpose for which it is given, future grant aid may be withdrawn and the Trust may be required to repay part or all of the grant it has received to date.

Grant payments may be suspended while the Council investigates the affairs of the Trust. Such investigation must be carried out promptly and expeditiously so as to keep the time period that grant is suspended to a minimum. The grant is to be spent as agreed and on time.

The Council agrees that in complying with the terms and conditions contained within this agreement the Trust shall not be required to provide or deploy any resources beyond those identified in the Business Plan save where otherwise expressly agreed to do so.

21. Disputes

In the case of any dispute between the parties relating to this agreement the Chief Executive of the Council and the Managing Director of the Trust, or their nominated representatives shall meet together as soon as reasonably practicable after the relevant dispute has arisen,

but in any event within forty eight (48) hours thereof in good faith with the intention of resolving the dispute.

Should the dispute remain unresolved after 14 days of the referral it is agreed that both parties shall agree the appointment of an adjudicator within 28 days whose decision shall be binding on both parties. Should the Council and Trust fail to agree on the appointment of the Adjudicator then either party may take action through the courts as they deem necessary.

22. Insolvency, dissolution and transfer of engagements

The Council may require the Trust to repay all or part of the grant if it is of the opinion acting reasonably that:

- 22.1 the Trust have stopped payment to creditors where there are no genuine commercial reasons for doing so or if it is unable to repay any of its debts;
- 22.2 the Trust's members are likely to dissolve the Trust;
- 22.3 the Trust have a receiver, administrative receiver, liquidator or potential liquidator appointed over all or any part of the Trust's assets;
- 22.4 the Trust have or are about to enter into an arrangement with its creditors;
- 22.5 some action is or is about to be taken to terminate the Trust's business;
- 22.6 an event has or is about to take place which would entitle the appointment of a receiver over the Trust's assets or which would cause any floating charge on your assets to crystallise;
- 22.7 a petition has been presented and not discharged within seven days or an order made or a resolution passed for the Trust's winding up or a meeting has been commenced for the purpose of winding up;
- 22.8 an administration order in respect of the Trust has been made or a petition for such an order presented and not discharged within seven days;
- 22.9 the Trust have ceased or threatened to cease for any reason to carry on business; and
- 22.10 the Trust are about to effect a transfer of your engagements to any other person, without the prior approval of the Council, which shall not be unreasonably withheld.

23. Trust Objectives

It is recognised that the Trust's principal objectives are as set out in its Memorandum and Articles of Association documents. In the event of conflict between the Council's strategic aims and the Trust's charitable objects it is acknowledged by both parties that

nothing in this agreement shall require the Trust to act contrary to its charitable objects. In such circumstances the parties will meet as soon as reasonably practicable to determine an alternative acceptable course of action.

24. Dealing with this Agreement

The Trust agrees and covenants with the Council that this agreement is personal to the Trust who shall not, without the prior written consent of the Council (in its absolute discretion), assign, transfer, charge or deal in any other manner with this agreement or its rights under it or part of it, or purport to do any of the same, or sub-contract any or all of its obligations under this agreement. Any such consent if given, may be made subject to any conditions which the Council considers necessary.

25. Reputation of the Council

The Trust shall not, and shall use all its reasonable endeavours to procure that its suppliers and contractors shall not, knowingly do or omit to do, anything in relation to this agreement, or in the course of their other activities, that may bring the standing of the Council into disrepute or attract adverse publicity for the Council.

26. Confidentiality

26.1 Unless the parties otherwise agree, this agreement and all documents and information provided under or in connection with the performance of this agreement or during its negotiation shall be treated as confidential ("Confidential Information"). The Confidential Information shall not be used by either party except for the purposes for which they were made available and Confidential Information shall not be disclosed by either party to any other person without the prior written consent of the party who disclosed or provided the information. The parties shall use all reasonable endeavours to ensure that their employees, agents and sub-contractors are under a similar obligation of confidentiality in respect of Confidential Information. The above restriction shall not apply to Confidential Information which:

26.1.1 the party wishing to disclose can demonstrate to the satisfaction of the party who disclosed the information that it is already in the public domain other than as a result of a breach of this Condition 26; or

26.1.2 is disclosed to the party wishing to disclose without any obligation of confidence by a third party who has not derived it directly or indirectly from the party who disclosed the information; or

26.1.3 is trivial or cannot reasonably be considered to be confidential.

26.2 The obligations of confidentiality contained in this Condition 26 shall continue after the expiry or termination of this agreement howsoever occasioned.

26.3 Nothing in this agreement shall prevent the parties from disclosing any information which either party in its absolute discretion considers it is required to disclose in order

to comply with the Freedom of Information Act and any other statutory requirements whether or not existing at the date of this agreement, provided always, that the parties shall, where reasonably practicable, seek to collaborate in relation to any Requests for Information with a view to treating such requests in a consistent manner as between the parties.

26.4 If a party (the "Recipient") shall at any time notify the other party (the "Assistor") that it has received a Request for Information in respect of which the Recipient requires the Assistor's assistance then:

26.4.1 the Assistor shall at its own cost provide and procure that its sub-contractors (which expression shall for the purposes of this Condition 26 include the Trust where the Assistor is the Trust) use reasonable endeavours to provide all necessary assistance required by the Recipient in order to allow the Recipient to comply with the Request for Information within the period or periods when it is obliged to respond to the Request for Information;

26.4.2 without limitation to the foregoing the Assistor shall at its own cost within five working days of request supply and procure that its sub-contractors supply to the Recipient such information and documents requested by the Recipient in such form as reasonably prescribed by the Recipient; and

26.4.3 the Assistor shall ensure that all Information produced in the course of the provision of any of the services at the Dolphin Centre and/or this agreement is retained for disclosure and shall permit the Recipient to inspect such records as required from time to time.

26.5 In the event that either party shall at any time receive any Request for Information relating to the services at any of the Dolphin Centre or this agreement or any activities or business of such party then such party shall supply the Request for Information to the other party as soon as reasonably practicable after receipt.

27. Status of Trust

27.1 In carrying out its obligations under this agreement the Trust agrees that it will be acting on its own account as principal and not as the agent or partner of the Council.

27.2 The Trust shall not say or do anything which may pledge the credit of or otherwise bind the Council or that may lead any other person to believe that the Trust is acting as the agent of the Council.

28. Notices

28.1 Any written notice required to be served under this agreement shall in the absence of evidence to the contrary be deemed to be served if sent by pre-paid recorded delivery post:

28.1.1 to the Council at The Council House, Burcott Lane, Bromsgrove, B60 1AA marked for the attention of The Chief Executive ;

28.1.2 to the Trust at Pershore Leisure Centre, King Georges Way, Pershore, marked for the attention of the Managing Director.

29. Value Added Tax

29.1 The parties believe that this agreement does not constitute a supply or an agreement to supply services by the Trust and that the payment of any grant funding by the Council under this agreement is outside the scope of Value Added Tax.

29.2 The Trust will ensure that no supply of services is made by the Trust which may lead to the payment of any grant funding by the Council under this agreement falling within the scope of Value Added Tax.

29.3 All sums or other consideration payable to or provided by the Trust to the Council at any time shall be deemed to be exclusive of all Value Added Tax payable and where any such sums become payable or due or other consideration is provided the Trust shall at the same time or as the case may be on demand by the Council in addition to such sums or other consideration pay to the Council all the Value Added Tax so payable upon the receipt of a valid Value Added Tax invoice.

30. Miscellaneous

30.1 Nothing in this agreement shall constitute a partnership or joint venture between the parties hereto or constitute the Trust as the agent of the Council for any purpose whatsoever. The use of partnership shall be limited to that of cooperative or collaborative working.

30.2 A certificate by the Council as to any sum payable hereunder by the Trust shall be conclusive save in the case of manifest error.

30.3 This agreement may only be varied, save as otherwise provided, by agreement in writing by the parties.

30.4 If at any time any of the provisions of this agreement become illegal, invalid or unenforceable in any respect under any law or regulation of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this agreement shall be in any way affected or impaired as a result.

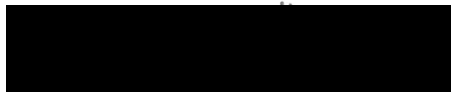
- 30.5 No failure or delay on the part of the Council in exercising any right or power and no course of dealing between the parties hereto shall operate as a waiver nor shall any single or partial exercise of any right or power of the Council prevent any other or further exercise thereof or the exercise of any other right or power of the Council. The rights and remedies of the Council are cumulative and not exclusive of any rights or remedies which the Council would otherwise have.
- 30.6 Nothing contained in or done under this agreement and no consents given by the Council shall prejudice the Council's rights, powers or duties and/or obligations in the exercise of its functions or under any statutes, bye-laws, instruments orders or regulations.
- 30.7 Nothing in this agreement shall confer any rights or obligations on any person who has not executed this agreement nor shall the consent of any person who has not so executed this agreement be needed to make any modification, amendment, variation or release of the terms hereof. The parties to this agreement expressly agree for the purposes of the Contracts (Rights of Third Parties) Act 1999 that they do not intend any person other than a party to this agreement to be able to enforce any term of this agreement.
- 30.8 This agreement and the documents referred to in it, constitute the entire agreement between the parties and supersede and replace any previous agreement, understanding, representation or arrangement of any nature between the parties relating to the subject matter of this agreement.
- 30.9 This agreement may be executed in any number of counterparts and each counterpart shall, when executed be an original of this agreement and all counterparts together shall constitute one instrument.
- 30.10 This agreement shall be governed by and construed in accordance with the Law of England.

ACCEPTANCE OF GRANT CONDITIONS

We accept the grant detailed in this agreement on the terms and conditions set out in this document, which we confirm the Trust will observe.

On behalf of **Wychavon Leisure Community Association Limited**
To be signed by two Management Board Members

Signature



Name (please print)

PETER WILLIAMS

STUART MEGARRY

Position in Organisation

COMPANY SECRETARY

CHAIRMAN

Address

MANOR FARM COTTAGE,

9 PENSAM HILL

34 MAIN ST,

PERSHORE

SUDBURY,

WORCS

NORTHAMPTON

Date

31/3/2010

31/3/2010

We approve payment of the grant on the above Conditions
On behalf of **Bromsgrove District Council**

Signature



Position in Organisation

HEAD OF FINANCIAL
SERVICES

HEAD OF LEGAL EQUALITIES
AND DEMOCRATIC SERVICES

Date

31.3.2010

31.3.2010

Legal power for grant - Section 19(3) Local Government (Miscellaneous Provision) Act 1976

Grant Reference WLCAL / Grant.....
(to be quoted in all correspondence)

Contact Officer for this grant John Godwin

Contact Officer Tel no. 01527 881730

SCHEDULE 1
The Business Plan

estimates (1.12.09)	2010/11	2011/12	2012/13	2013/14	2014/15
<u>EXPENDITURE</u>	Corporate				
	£	£	£	£	£
Employees					
salary costs					
crb checks					
recruitment					
training					
uniforms					
travel & subsistence					
<u>Total Employees</u>					
Premises					
planned maintenance					
repair & maintenance					
nddr					
gas					
electricity					
water					
grounds maintenance					
<u>Total Premises</u>					
Supplies & Services					
equipment hire					
new equipment					
depreciation					
licence fees					
refuse collection					
resaleable goods					
chemicals/cleaning					
phone,fax,modem					
office supplies					
computer costs					
equipment maintenance					
marketing					
<u>Total Supplies &</u>					

Services

support services

insurance

legal/professional

central support

Total Support

Services

TOTAL
EXPENDITURE

INCOME

Treasury Interest

memberships/fitness

swimming pool

sports hall

resaleables

café rent

misc sales, sc85

TOTAL INCOME

Operational

Surplus/Deficit

excludes central support

and depreciation line

Overall

Surplus/Deficit

SCHEDULE 2
OPENING TIMES

The Dolphin Leisure Centre Bromsgrove

The minimum opening hours shall be :

Monday to Thursday	7.15 am to 10.30 pm
Friday	7.15 am to 9.00 pm
Saturday	8.30 am to 8.30 pm
Sunday	8.30 am to 9.00 pm

The above centre will be closed New Years Day, Christmas Day and Boxing Day. All other Bank Holidays will be subject to reduced opening hours (to be agreed with the Council's Head of Leisure and Cultural Services), apart from Good Friday which is subject to normal opening hours.

SCHEDULE 3

CURRENT RANGE OF ACTIVITIES

Dolphin Leisure Centre

Facility provider for sport, gym and swimming
Venue hire
Club use (competitive and non competitive)
Casual bookings
Play and play use
School and college use
Pre school activities
Training/meeting venue
Extensive term and holiday courses and activities for children and adults
Varied programme of activities
Children's parties
Vending operations
Fitness classes
GP referral scheme (in partnership with Primary Care Trust)
Health improvement activity sessions and courses
Seminar venue
Vocational / training courses

SCHEDULE 4

DEALING WITH OPERATING SURPLUSES

For the purposes of this agreement the following terms have the meanings set out below:

"Surplus" shall mean an operating surplus from the operation of the Dolphin Centre after taking into account all expenses and liabilities incurred in providing any services at the Dolphin Centres and the grant funding provided hereunder. Reference shall be made to the Business Plan for the relevant Year

"Agreed Share" shall mean in the ratio 50:50 after the first [REDACTED] of Surplus. The first [REDACTED] of Surplus is acknowledged as belonging to the Trust.

Insofar as there is a Surplus in any Year as evidenced in either a Business Plan, a grant application, or in the annual statement of account to be produced by the Trust to the Council hereunder (in particular such statement as is required pursuant to Condition 12.2) then the value of such Surplus shall be reflected in the grant funding to be granted to the Trust for the Year following the Year in which the Surplus was generated so as to reduce the amount of such grant funding and shall be reduced by an amount equal to the Agreed Share of the relevant Surplus.

For the avoidance of doubt, insofar as in any Year the level of grant funding has already been agreed between the parties without a clear understanding of the relevant level of Surplus for the previous Year then an adjustment shall be made to the grant funding payable over the relevant Year to take account of the Agreed Share of the relevant Surplus.

In respect of the final Year (being either Year 3 or 5) the Trust shall pay to the Council by the 30th June any Surplus payment due the Council. In the case of any dispute or disagreement as to the sum due the Dispute Resolution clause contained within the Transfer Agreement of even date shall apply.

SCHEDULE 5

Reimbursement of Parking Charges

The Council will reimburse the Trust the cost of any parking refunds the Trust makes to users of the Dolphin Centre which are made in accordance with the Parking Refund Policy which the Council shall authorise from time to time.

The Trust will make the refund to the users from its own funds and shall ^{claim from} ~~invoice~~ the Council for the said sum on a monthly basis. The Trust shall keep proper records of all refunds to support its claim to the Council. The Trust will provide to the Council evidence that the parking refund has been validly made by collecting the parking voucher from the customer and by producing evidence that an activity has taken place at the Dolphin Centre.

Upon receipt of a valid claim and the supporting documentation referred to above the Council shall pay to the Trust the sum due within 10 working days.

The Council may vary the amount of the parking refund or may remove the concession entirely after giving no less than one months notice to the Trust. The Council accepts and agrees that the Trust will be entitled to seek additional grant payments if it can demonstrate that the changes to the parking refund policy have had a detrimental impact on its Business Plan.

The Council acknowledges that the Business Plan provided by the Trust was based on the advice of the Council that a parking refund of up to £1.40 per customer visit would be funded by the Council. The refund scheme in operation from the 1/04/2010 has a maximum refund of £0.70 per customer. It is therefore agreed by the Council that the Trust are entitled to seek additional grant support from the Council if the reduction in the parking refund has a material effect on the Business Plan.