

	Scheme name / business unit / summary description of key terms	Funder	Value £'000
<b>A</b>	<b>Transport Regeneration &amp; Climate Change</b>		
	None		
<b>B</b>	<b>Communities Parks &amp; Leisure</b>		
	<p><b>Parson Cross &amp; Burngreave Cruyff 3G Pitch</b></p> <p>The objective of the Foundation is to establish so-called Cruyff Courts to promote the physical and mental well-being of young people by offering game activities, physical exercise and sports on the Cruyff Courts. The Foundation's special aim is to promote integration between the various local, ethnic and other groups through sport and the provision of sports activities at the relevant Cruyff Courts.</p> <p>The Foundation and the Council are going to develop a Cruyff Court (artificial grass surface) in Parson Cross Park and in Burngreave with a £70K contribution from the Foundation for each site under two separate agreements, one for each site, using identical terms.</p> <p><u>Financial Implications</u></p> <ul style="list-style-type: none"> <li>- The Foundation will provide a one-off financial contribution as part of their multi-year partnerships with organisations, such as local authorities, these two specifically to SCC, for the construction of two Cruyff Courts.</li> <li>- SCC is responsible for the construction/maintenance of the Cruyff Court, within one year of signing the agreements.</li> <li>- SCC will act as the contracting party for the conclusion of Agreements with third parties, undertakes to outsource the construction of the Cruyff Court pitch in accordance with its tendering policy. The contractor's offer must be submitted to the Foundation for approval prior to the award of the order by the Council and, after approval, in accordance with Appendix 5 of the Agreement .</li> <li>- The contributions are repayable if SCC is in breach of its obligations. The contributions are being treated as grants and are subject to clawback if the terms and conditions are not complied with.</li> </ul>	Johan Cruyff Foundation	+140

	<ul style="list-style-type: none"> <li>- The Foundation makes available to SCC a contribution of £70,000 (per site, * 2 = £140,000 in total, 75% paid prior to work taking place, remaining 25% paid on completion. Contribution to be invoiced by SCC.</li> <li>- The contribution is only to be used for the Cruyff Court construction.</li> <li>- SCC must comply with monitoring and reporting requirements (see details) and inform the Foundation on a quarterly basis of the work carried out, the time involved, and the amounts involved.</li> <li>- SCC will be obliged to organise sporting activities – see agreements for details.</li> <li>- SCC will provide maintenance of the Cruyff Court during and after expiry.</li> <li>- Term of the agreement is 10 years and will be extended by one year at a time, unless one of the Parties terminates the Agreement in writing no later than 6 months prior to the commencement of the extension.</li> <li>- SCC to inform the Foundation if third party is interested in supporting the Cruyff Courts financially or otherwise.</li> <li>- Liability is insured up to an amount of £75,000,000. SCC will make the insurance policy details available for inspection so that the Foundation can satisfy itself of the Council's compliance with the obligation to insure.</li> <li>- The execution of this Agreement and any Agreements resulting therefrom will be governed exclusively by Dutch Law.</li> </ul> <p><u>Commercial Implications</u></p> <ul style="list-style-type: none"> <li>- All public sector procurement is governed by and must be compliant with the Funding Agreement and UK National Law. In addition, all procurement in SCC must comply with its own Procurement Policy, and internal regulations known as 'Contracts Standing Orders' (CSOs).</li> <li>- Contracts Standing Orders requirements will apply in full to the procurement of services, goods or works utilising grants. All grant monies must be treated in the same way as any other Council monies and any requirement to purchase/acquire services, goods or works must go via a competitive process.</li> <li>- Project Manager will need to develop a viable exit strategy for when the grant funding ends to ensure that there are no unfunded ongoing costs.</li> <li>- The Project Manager will need to read, understand, and comply with all of the grant terms and conditions.</li> </ul>		
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	<p><u>Legal Implications</u>In addition to the financial and commercial implications set out above, the below matters were noted following a review of the draft funding agreement to be entered between Sheffield City Council and Cruyff Foundation for Parson Cross Park and for Burngreave :</p> <ul style="list-style-type: none"> <li>• The agreement is governed by Dutch law. It is important to remember that in Dutch law good faith is implied into the agreement and must be adhered to <u>during the negotiation period</u> as well as during performance and enforcement. A party may have legal consequences if it were to abandon at the later stages of the negotiations and where the circumstances of the abandonment were to detriment the other party in such a way that it would constitute bad faith.</li> <li>• The order of precedence of documents forming part of the agreement should be noted, including the Foundation’s right to amend the documents appearing in Appendices 1 to 7 of the agreement, which exists throughout the duration of the funding agreement (clauses 1.8 - 1.10). This will need to be flowed down to suppliers and contractors.</li> <li>• All information under the agreement is confidential (an undefined term). Information is to be treated confidential if one of the parties designate it as such (clause 12.3). Disclosure to employees is to be limited as far as possible and a duty of confidentiality arising out of the agreement is to be imposed on such employees in advance. When procuring works and services using information received under the agreement, care should be taken to expressly preserve it’s confidentiality to avoid a risk of breaching the agreement.</li> <li>• The Council ‘indemnifies the Foundation against possible claims by third parties of whatever nature, arising from or in connection with the performance of this Agreement, including possible costs of legal assistance’ (clause 11). The indemnification is wide and unlimited (the general liability cap of [£75,000]), under clause 10, does not apply to this indemnification).</li> <li>• Under clause 10.4, the Council provides a guarantee that all construction works ‘meet all statutory and other regulations applicable in the Netherlands including, but not limited to, provisions relating to safety regulations. The same applies for the sport activities to be organised by the Council [at the pitch site(s)]’. To discharge these obligations, the Council would need to ensure it procures all works and services in accordance with these requirements as well as consider obtaining warranties/guarantees for materials, products and works (including where relevant in favour of the Foundation).</li> </ul>		
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	<ul style="list-style-type: none"> <li>• Under clause 2.3, the Council is required to ensure that the Contractor's 'Offer' for the construction works includes an artificial grass surface made of ten cate fibres from Ten Cate Grass (a private limited company who is a partner of the Foundation). To discharge this obligation, the Council would need to use naming provisions (i.e., named sub-contractor) when procuring the main works contract and include any T&amp;C's of Ten Cate Grass (it is not clear whether Ten Cate Grass have bespoke/non-negotiable terms of business - this would need to be queried with the Foundation). This may pose some challenges for the Council when procuring the main works as some contractors may be unwilling to work with unfamiliar suppliers/terms or may object to this during the tender process. Also, a signed copy of all third-party agreements must be supplied to the Foundation within 3 days of the parties signing (clause 2.5).</li> <li>• The Foundation retains a right to comment/amend the final agreements for works/services that the Council enters with third parties (clause 2.4). To avoid delays and difficulties in concluding final contracts, the Council should seek approvals/comments from the Foundation on finalised tender documents before commencing tender exercises.</li> <li>• The Council has an obligation to maintain the pitch sites, to the standards specified and the quality guarantees set out in Appendix 1 of the Agreement. This obligation runs both during and <u>after</u> the expiry of the agreement (clauses 3.1 &amp; 13.8). The Foundation has a right to inspect the sites (using an expert at least once a year) to determine whether the Council is meeting its maintenance obligations (clause 3.2), The cost of this obligation should be factored in the life cycle costs of the project and an end date for this obligation should be agreed with the Foundation.</li> <li>• The Council's breach of the agreement within the first 5 years will result in a full clawback of all payments made by the Foundation plus statutory interest (which appears to be 2% according to the Dutch Civil Code). Thereafter, there is a sliding scale for the repayment on a year-by-year basis (clause 3.3).</li> <li>• Parties have a wide-ranging right to terminate the agreement with immediate effect, without prior notification, and with no obligation to pay the other party compensation for termination (clauses 13.3-13.6). When procuring works/services from third parties, the Council would need to weigh up the pros and cons of a) flowing down these wide risks (likely to be pushed back by suppliers and contractors on the market) b) risk contractors overpricing the bids, if such risks</li> </ul>		
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	are flowed down (potentially make the project commercially unviable) or c) the Council incurring the costs of retaining/managing the risks of early termination.		
<b>C</b>	<b>Waste and Street Scene</b>		
	None		
<b>D</b>	<b>Adult Health &amp; Social Care</b>		
	None		
<b>E</b>	<b>Housing</b>		
	None		
<b>F</b>	<b>Education Children &amp; Families</b>		
	None		
<b>G</b>	<b>Strategy &amp; Resources</b>		
	None		
<b>H</b>	<b>Economic Development &amp; Skills</b>		
	None		

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