

BUSINESS IMPROVEMENT DISTRICT AGREEMENT

Dated

THE DISTRICT COUNCIL OF CHICHESTER

and

CHICHESTER BID LIMITED

Contents

1	Definitions	3
2	Statutory Authorities	5
3	Commencement	5
4	Calculating the BID Levy	5
5	The BID Revenue Account	6
6	Debits from the BID Revenue Account	6
7	Collecting the BID Levy	7
8	Enforcement	8
9	Review of Ongoing Enforcement Performance	8
10	Accounting Procedures and Monitoring	8
11	Termination	9
12	Confidentiality	9
13	Notices	10
14	Employment Status	10
15	Ownership of Equipment	11
16	Exercise of the Council's Powers	11
17	Contracts (Rights Of Third Parties)	11
18	Dispute Resolution	11
19	Miscellaneous	11
	Appendix 1 – Business Improvement District Proposal including Baseline Statements and Map	13

Agreement and Deed

This Agreement and Deed is made on the day of 2017

Between

THE DISTRICT COUNCIL OF CHICHESTER of East Pallant House, East Pallant, Chichester, West Sussex (the **Council**) and

CHICHESTER BID LIMITED registered as a company limited by guarantee in England with number 10689870 whose registered office is at Wannops LLP, South Pallant House, 8 South Pallant, Chichester, West Sussex PO19 1TH (the **BID Company**)

WHEREAS

- A The Council is the billing authority for the purposes of the Local Government Act 2003 and is responsible for collecting the Bid Levy and administering the BID Revenue Account which shall be used towards the operation of the BID within the area of the Council and the funding of the BID Arrangements
- B The BID Company is responsible for the operation of the BID and for using the BID Levy for the purposes of achieving the objectives and aspirations and providing the services set out in the Business Proposal.
- C Both parties wish to set out in general the arrangements by which the BID Levy shall be collected and the relationship to be established between the Council and the BID Company for the duration of the BID in relation to its operation.
- D The purpose of this Agreement is to:
- set out the procedures for accounting for and transfer of the BID Levy monies to the BID Company
 - provide for the monitoring and review of the collection and enforcement of the BID Levy monies, the transfer of those monies to the BID Company and the use of those monies by the BID Company to realise the objectives of the BID
 - confirm the manner in which the Council's expenses incurred in collecting and enforcing the BID Levy shall be paid

It is agreed:

1 Definitions

In this Agreement:

Act means the Local Government Act 2003.

Annual Report means a report to be prepared by the Council which details the following:

- (i) the total amount of BID Levy monies collected during the relevant Financial Year;
- (ii) total amount of BID levies due for the Financial Year covered by the Annual Report;

- (iii) details of the success rate for the collection of the BID Levy;
- (iv) the Council's proposals (if any) to help improve its efficiency in the collection and enforcement of the BID Levy; and
- (v) the Council's proposals for dealing with Bad or Doubtful Debts

Bad or Doubtful Debts shall have the same meaning as further described in Part 2 of Schedule 3 of the Regulations

BID means the business improvement district as defined in section 41 of the Act comprising those areas of Chichester city centre in which the non-domestic ratepayers or some class of them are subject to the BID Levy from time to time (which at the date of this Agreement is the area shown for the purposes of identification only edged blue on the map contained in the Business Proposal) which is to be managed and operated by the BID Company

BID Arrangements means the arrangements made by the Council with respect to the BID pursuant to section 41 of the Act

BID Company's Report means a report for each Financial Year to be prepared by the BID Company which details the following:

- (a) the total income and expenditure of the BID Levy;
- (b) other income and expenditure of the BID Company not being the BID Levy;
- (c) a statement of actual and pending debts; and
- (d) the various initiatives and schemes upon which the BID Levy has been expended by the BID Company

BID Levy means the charge to be levied and collected by the Council from the BID Levy Payers within the BID pursuant to the Regulations

BID Levy Payer(s) means the non-domestic rate payers within the BID responsible for paying the BID Levy

BID Revenue Account means the account referred to in section 47 of the Act to be set up in accordance with Regulation 14 of the Regulations and operated in accordance with Schedule 3 of the Regulations

BID Term means the period of 5 years from and including 1 April 2017 to and including 31 March 2022.

Business Day means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business

Business Proposal means the document entitled "Renewal Business Proposal Term 2 2017-2022" attached hereto as Appendix 1.

Collection Charges means the Council's reasonable charges for the administrative services provided by the Council to the Company relating to the collection and enforcement of the BID Levy

Contributors means the BID Levy Payers or other contributors making voluntary contributions to the BID Company for the purposes of the BID.

Demand Notice shall have the same meaning ascribed to it in paragraph 3 of Schedule 4 of the Regulations

Enforcement Costs means the reasonable costs which are incurred by the Council in enforcing the Bid Levy and includes the costs of obtaining summonses and Liability Orders, the fees and charges levied by bailiffs and enforcement officers, the costs of obtaining and enforcing charging orders, the costs of obtaining and executing warrants of arrest and committal orders.

Financial Year means the financial year for the BID Company which runs from 1st April to 31st March in each year.

Liability Order means an order obtained from the Magistrates Court

Monitoring Group means the group to be set up to monitor the collection and enforcement of the BID Levy.

Regulations means the Business Improvement Districts (England) Regulations 2004 and such amendments made by the Secretary of State pursuant to Section 48 of the Act (from time to time) and a reference to a **Regulation** is a reference to one of the regulations in the Regulations.

2 Statutory Authorities

This Agreement is made pursuant to Part IV of the Act and Section 111 of the Local Government Act 1972 and all other enabling powers

3 Commencement

- 3.1 This Agreement and the BID Arrangements shall commence on 1st April 2017 and shall expire on 31st March 2022 (or upon any earlier termination taking effect under clause 11 below) save that any right or obligation of either party which shall have accrued by the time of expiry shall remain enforceable.
- 3.2 The duration of this Agreement may be extended by agreement in writing between the parties.
- 3.3 It is the intention of the Parties and this clause hereby makes provision that BID arrangements may be altered without an alteration ballot to the extent allowed and as provided for under regulation 16 of the Regulations subject to paragraphs (2) and (4) of those Regulations.

4 Calculating the BID Levy

The Council shall as soon as reasonably practicable following the date of this Agreement and before the commencement of the second and each subsequent Financial Year during the BID Term:

- 4.1 Calculate the BID Levy due from each BID Levy Payer in accordance with the Regulations during the next following Financial Year of the BID Term; and

- 4.2 Confirm in writing to the BID Company the BID Levy amount payable in the forthcoming year.

5 The BID Revenue Account

- 5.1 On the Commencement Date the Council shall set up and thereafter keep the BID Revenue Account in accordance with Regulation 14 and Schedule 3 of the Regulations
- 5.2 The Council shall hold the sums representing the BID Levy on trust for the BID Company subject always to the terms of this Agreement.
- 5.3 The BID Company shall provide the Council with details of its own bank account to which the Council will electronically transfer the BID Levy monies as provided for in clause 7.2.

6 Debits from the BID Revenue Account

- 6.1 The Council shall be entitled to debit directly its Collection Charges from the BID Revenue Account provided the amount debited in any Financial Year does not exceed the estimates agreed with the BID Company pursuant to clause 6.2 or otherwise with the prior written agreement of the BID Company and to that intent the Council shall consult with the BID Company before it incurs or agrees to incur any item of expenditure forming part of the Collection Charges which materially exceeds the estimate for such item.
- 6.2 The Council will provide an estimate of the Collection Charges to the BID Company in accordance with clause 7.2 and endeavour to agree such estimate with the BID Company before the beginning of each Financial Year. The Collection Charges for the first Financial Year of the BID Term are estimated at £14,946.16 exclusive of VAT.
- 6.3 The Council shall use all reasonable endeavours to recover the Enforcement Costs from the liable BID Levy Payers and shall credit any such collections to the BID Revenue Account.

7 Collecting the BID Levy

- 7.1 The Council shall throughout the BID Term take all the steps provided for in Regulation 15 and schedule 4 of the Regulations with regard to the imposition, administration, collection, recovery and application of the BID Levy. In particular, but without prejudice to the generality of the foregoing, the Council shall serve the Demand Notices on each BID Levy payer and thereafter shall continue to calculate the BID Levy and serve the Demand Notices throughout the BID Term. Unless otherwise prohibited by any statutory requirement, the Council shall ensure that the Demand Notices require payment of the BID Levy by every BID Levy Payer on 15th April in each year of the BID Term or instalments over 10 months for levies exceeding the sum of £250.00.
- 7.2 Annually the Council shall calculate and notify to the BID Company by 1st February in each year of the BID Term its estimates in respect of:

1. The BID Levy due from the BID and the amount of any voluntary payments of the BID Levy outside the BID for the forthcoming Financial Year,
 2. An appropriate contingency against 1 above for non-collection. This shall include a provision for Bad or Doubtful Debts, exemptions, voids and any other factor that, in the Council's reasonable opinion, may reduce the amount that can ultimately be collected.
 3. Its estimate of the Collection Charges for the forthcoming Financial Year of the BID Term.
 4. The cost, if any, in respect of the employment of the BID Manager and due from the BID Company.
- 7.3 Based on the above items 1 to 4 in clause 7.2 above the Council shall provide to the BID Company its calculation of the amount payable to the BID Company being the amount of the BID Levy after providing for items 2, 3, and 4 in clause 7.2 (the **Net Amount**) together with a schedule of monthly payments for the next following Financial Year providing for the payment to the BID Company of the Net Amount in twelve monthly instalments unless otherwise agreed by both parties which the Council will pay to the BID Company by electronic transfer as provided for in clause 5.2 on the 15th Business Day in each month.
- In respect of the first Financial Year of the BID Term the Net Amount is £411,981.08 including VAT which the Council will pay to the BID Company as provided for above.
- 7.4 In addition by 1st February in each year of the BID Term the Council will provide updated estimates to the BID Company in respect of each of items 1 to 4 within clause 7.2 above in respect of the then current Financial Year and its projection of the Financial Year-end balance (31st March).
- 7.5 The Council will as soon as practicable after the end of each Financial Year calculate the actual sum due to or from the BID Company pursuant to this clause 7 (the **Balancing Payment**) which, save in the final Financial Year of the BID Term, shall be carried forward and adjusted against the next following Financial Year payment schedule by:
- a) Adding to the payment due to the BID Company in the next Financial Year where there is a credit balance (surplus), or
 - b) Deducting from the payment to the BID Company where there is a debit balance (deficit),
- by adjusting the instalments due to the BID Company in the next succeeding Financial Year proportionately to the amount of each such instalment.
- 7.6 In the final year of the BID Term, the Council will pay over any or recover any Balancing Payment (as the case may be) from the BID Company as soon as reasonably practicable after its calculation.
- 7.7 The BID Company shall invoice the Council for the amount due to it each month plus VAT. In respect of items 3 and 4 within clause 7.2 above the Council shall invoice the BID Company for the amounts due plus VAT, but the Council shall be entitled to recover these costs by offsetting them against the BID Company's invoices in respect of the sums due to it pursuant to clause 7.3.
- 7.8 The Council shall keep separate accounts and records giving correct and adequate details of all receipts and payments of the BID Levy and separate files relating to the

imposition, administration, collection, recovery and application of the BID Levy and of any vouchers, invoices and receipts relevant to this Agreement and shall, subject always to the obligations of the Council under the Data Protection Act 1998, permit the duly appointed representatives of the BID Company at all reasonable times to inspect all such accounts and records and to take copies thereof.

8 Enforcement

- 8.1 Without prejudice to the generality of clause 7.1 above the Council shall take, in accordance with the Regulations, all reasonable steps to pursue the same procedures for enforcement of payment of the BID Levy monies as it takes with regard to non-payment of ordinary non-domestic rates liabilities.
- 8.2 The Council shall report to the BID Company in July and December in each year during the BID Term as to the sums outstanding and the steps being taken to recover them. It shall not be obliged to reveal to the BID Company details of the identity or sums owing by any debtors except where the payment is overdue for a period exceeding 2 months and the individual debtor is on the board of directors of the BID Company and has agreed in writing to the release of this information to the BID Company. The BID Company will advise the Council within 7 days after its annual general meeting the names of the directors and will advise the Council as soon as reasonably practicable of any changes in the directors from time to time.

9 Review of Ongoing Enforcement Performance

- 9.1 Should the BID Company have concerns that the enforcement activities pursued by the Council are not producing an adequate overall collection rate, the matter shall be formally discussed by the Monitoring Group to be established pursuant to clause 10.1.
- 9.2 The Monitoring Group shall review the progress, if any, towards a better collection rate, after three months of any concern being raised pursuant to clause 9.1. If the Monitoring Group cannot unanimously agree a way forward following this review, the board of the BID Company may write to the Council requesting that its Chief Executive investigate the situation and take such steps as are necessary to rectify the position. Upon receipt of such a request, the Chief Executive of the Council shall forthwith procure that all reasonable steps are taken by the Council to rectify the position and will provide a full written report to the BID Company of the action that has been taken and the results thereof.

10 Accounting Procedures and Monitoring

- 10.1 No later than 1 (one) month after 1st April 2017 the Council and BID Company shall form the Monitoring Group
- 10.2 The Monitoring Group will meet in February of each year during the BID Term to discuss the BID Company's financial plans for the next following Financial Year, including consideration of the level of the Collection Charges and of any contingency against non-collection of the BID Levy. It will then meet again in September of each year during the BID Term to discuss progress against the plans discussed at the meeting of the Monitoring Group in the immediately preceding February. On all other occasions further meetings of the Monitoring Group shall be arranged and held following the service of written notice by either party on the other, such notice to be provided no less than 28 (twenty eight) days prior to the date of the proposed meeting (or less if otherwise agreed or in cases of emergency) and provided further

that such meetings can be dispensed with altogether upon the written agreement of both the Council and the BID Company

- 10.3 At each meeting the Monitoring Group shall
- (i) review the effectiveness of the collection and enforcement of the BID Levy;
 - (ii) if required, review and assess information provided by the BID Company to the Council pursuant to Clauses 10.5 and make any recommendations for implementation as may be agreed (and which are permitted by the Regulations and the terms of this Agreement); and
 - (iii) review payments due to the BID Company
- 10.4 Within 3 (three) months of the end of each Financial Year the Council shall provide the Annual Report to the BID Company and the BID Company shall provide the BID Company Report to the Council.
- 10.5 The BID Company shall provide to the Council such information as it may reasonably require in writing as to income received from contributors other than the BID levy; expenditure by the BID company; and other information reasonably required by the Council to ensure compliance with the Regulations and the Act. Such information shall be provided (if practicable) by the BID Company to the Council within 10 Business Days of the requirement in writing.
- 10.6 The BID Company shall ensure that all expenditure made or permitted by it of monies received from the Council in respect of the BID Levy is in accordance with the BID proposals set out in the Business Proposal (as varied from time to time) and it shall not pass such monies on to any person for any other purposes.

11 Termination

- 11.1 The Bid Arrangements and this Agreement may only be terminated:
- 11.1.1 by written agreement between the Council and the BID Company; or
 - 11.1.2 in accordance with Regulation 18.
- 11.2 Upon termination of the BID Arrangements the BID Company shall after settling the debts and liabilities of the BID Company including, without limitation, the costs and expenses of its liquidation, refund to the Council all unexpended monies received from the Council in respect of the BID Levy .
- 11.2 If this Agreement is terminated the Council shall comply with its obligations under the Regulations 14(3), 14(4) and 18(6).
- 11.10 Upon termination of the BID Arrangements the Council shall have no obligation to make any further payments in respect of the BID Levy to the BID Company save to the extent necessary to enable the BID Company to settle its debts and liabilities including, without limitation, the costs and expenses of its liquidation which obligation shall survive any termination or lapse of the BID Arrangements or this Agreement.

12 Confidentiality

- 12.1 Subject to clauses 12.2 and 12.3 both the Council and the BID Company agree to keep confidential and not to divulge to any person without the prior written consent of the other party, the terms and information relating to this Agreement, all confidential information (written or oral) concerning the business affairs of the other and any confidential information which has been exchanged about the Contributors or about third parties which it shall have obtained or received as a result of the operation of the BID. This obligation shall survive the termination or lapse of the BID Arrangements and this Agreement.
- 12.2 Nothing contained in this Agreement shall prevent the Council from disclosing and/or publishing any term or condition or information contained in or relating to the formation of this Agreement required to be disclosed or published under the provisions of the Data Protection Act 1998, Freedom of Information Act 2000, Environmental Information Regulations 2004 and/or any other legislation giving rights of access to information save that the Council shall first consult the BID Company and reasonably consider any views expressed by it where the information was provided by the BID Company in the first instance.
- 12.3 The BID Company shall at the expense of the Council:
- 12.3.1 co-operate with the Council and supply to it all necessary information and documentation required in connection with any request received by the Council under the Data Protection Act 1998, Freedom of Information Act 2000, Environmental Information Regulations 2004; and/or any other legislation giving rights of access to information;
- 12.3.2 supply all such information and documentation,
- in either case (where practicable) within 7 Business Days of receipt of any request.

13 Notices

- 13.1 Any notice or other written communication to be served or given to or upon any party to this Agreement to the other shall be in writing and shall be delivered :
- 13.1.1 to the Council to the address provided for in the list of parties to this Agreement;
- 13.1.2 to the BID Company to its registered office from time to time; or
- 13.1.3 in either case, to such substitute address in England as may from time to time have been notified by the relevant party to the other in accordance with the provisions of this clause 13.
- 13.2 Any notice served shall be deemed to have been validly served or given at the time when in the ordinary course of business it would have been received.

14 Employment Status

- 14.1.1 It is agreed that any staff employed by the BID Company in connection with the BID Arrangements are employees of the Company and not the Council and termination or

expiry of the BID Arrangements shall not operate to transfer those staff to the Council.

15 Ownership of Equipment

It is agreed that the title to and responsibility for any equipment purchased or leased by the BID Company in connection with the Bid Arrangements is exclusively that of the BID Company.

16 Exercise of the Council's powers

Nothing contained in this Agreement or implied in it shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes, bye-laws, statutory instruments, orders and regulations other than under Part 4 of the Act, the Regulations or any other statutes, bye-laws, statutory instruments, orders or regulations insofar as they relate to business improvement districts or the imposition, administration, collection, recovery of the BID Levy, in the exercise of its functions as a local authority

17 Contracts (Rights Of Third Parties)

For the purposes of the Contracts (Rights of Third Parties) Act 1999 (and notwithstanding any other provisions in this Agreement) this Agreement is not intended to, and does not, give any person who is not a part to it any right to enforce any of its provisions.

18 Dispute resolution

If any dispute arises in connection with this agreement, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (**ADR notice**) to the other party to the dispute requesting a mediation. A copy of the request should be sent to CEDR. The mediation will start not later than thirty (30) days after the date of the ADR notice. No party may commence any court proceedings in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

19 Miscellaneous

19.1 For the avoidance of doubt where any part of this Agreement is incompatible with the Regulations or any other regulations which the Secretary of State may issue pursuant to Part IV of the Local Government Act 2003 then such part shall be struck out and the balance of this Agreement shall remain.

19.2 The headings appearing in this Agreement are for ease of reference only and shall not affect the construction of this Agreement.

19.3 For the avoidance of doubt the provisions of this Agreement (other than those contained in this Clause) shall not have any effect until this document has been dated.

- 19.4 Where reference is made to a clause, part, plan, or recital such reference (unless the context requires otherwise) is a reference to a clause, part, plan, or recital attached to this Agreement.
- 19.5 References to the Council include any successors to its functions as local authority.
- 19.6 References to statutes, bye laws, regulations, orders, delegated legislation shall include any such instrument as amended, extended or re-enacted from time to time.
- 19.7 References to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 19.7 This Agreement may only be amended in writing signed by duly authorised representatives of the parties.
- 19.8 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from 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.

IN WITNESS of which the parties have executed this deed and have delivered it upon dating it on the day and year first above written

EXECUTED BY THE DISTRICT COUNCIL OF CHICHESTER
by affixing its common seal

EXECUTED AS A DEED by the above-named
CHICHESTER BID LIMITED
acting by two directors or a director and secretary

Director

Director/Secretary

Appendix 1 – Business Improvement District Proposal including Baseline Statements and Map of BID area.

BID Proposal