

# **OPERATING AGREEMENT**

**Dated**

**Bath and North East Somerset Council**

**Bath Business Improvement District Company**

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# Operating Agreement

## Dated

## Between

- (1) **Bath and North East Somerset Council** (the Council) of The Guildhall, High Street, Bath BA1 5AW and
- (2) **Bath Business Improvement District Company (Bath BID Company)** registered as a company limited by guarantee in England with number 06642936 whose registered office is 3<sup>rd</sup> Floor, 21 Stall Street, Bath BA1 1QF.

## Recitals

- 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 Bath BID Company is the BID body and is responsible for the operation of the BID and for using the BID Levy for the purposes of achieving the objectives and aspirations set out in the BID Arrangements
- C Both parties wish to confirm the arrangements by which the BID Levy shall be collected together with general arrangements as to the relationship to be established between the Council and the Bath BID Company for the duration of the BID
- D The purpose of this Agreement is to:
- establish the procedure for setting the BID Levy
  - confirm the basis upon which the Council will be responsible for collecting the BID Levy
  - set out the enforcement mechanisms available for collection of the BID Levy
  - set out the procedures for accounting and transference of the BID Levy
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- provide for the monitoring and review of the collection of the BID Levy
- confirm the manner in which the Council's expenses incurred in collecting the BID Levy shall be paid

**It is agreed:**

**1 Definitions**

**the Annual Report** means a report for each Financial Year to be prepared by the Council which details the following: -

- (i) the total amount of BID Levy collected during the relevant Financial Year;
- (ii) the amount of interest which has accrued on the BID Revenue Account during the year;
- (iii) details of the success rate for the collection of the BID Levy;
- (iv) details of those BID Levy Payers who have paid the BID Levy and those who have not paid the BID Levy; and
- (v) Details of Bad or Doubtful Debts

**the Appeal Notice** means a notice to be served by Future Bath Plus in accordance with clause 10.2

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

**the Ballot Result Date** means the date upon which a successful ballot result has been declared in favour of putting in place the BID Arrangements

**the Baseline Agreement** means the Agreement annexed at Schedule 2

**the BID** means the Business Improvement District which operates in Bath City Centre, the extent of which is shown on the plan in Schedule 3 and which is managed and operated by the Bath BID Company.

**the BID Area** means the area in Bath City Centre delineated by a thick black line on the plan in Schedule 3 to this Agreement

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**the BID Arrangements** means those arrangements to be put in place pursuant to the Regulations for the operation of the BID

**the BID Board** means the board of the Bath BID Company or the board of representatives as provided by the BID Arrangements and described as "the BID board"

**the BID Levy** means the charge to be levied and collected within the BID area pursuant to the Regulations

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

**the BID Levy Rules** means the rules set out in Schedule 1 which sets out how the BID Levy will be calculated, details of Exempt or Discounted Properties and other requirements related to the BID Levy (as may be amended by a successful alteration ballot)

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

**the BID Term** means the period of 5 years from 1 April 2011 to 31 March 2016

**the Business Rate Bill** means the bill issued by the Council for business rates

**the Collection Report** means the monthly report provided by the Council to the Bath BID Company in accordance with clause 11.2

**Demand Notice** shall have the same meaning ascribed to it as further set out in paragraph 3 of Schedule 4 of the Regulations

**Electronic Communication** means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa):

- (a) by means of a telecommunication system (within the meaning of the Telecommunications Act 1984); or
- (b) by other means but while in electronic form

**the Enforcement Expenses** means the costs which are incurred by the Council in issuing a Reminder Notice, obtaining Liability Orders and associated administrative expenses which may be incurred in recovering unpaid BID Levy

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**the Enforcement Notice** means a notice to be served on the Council as specified in Clause 10

**the Exceptions** means the circumstances in which the Council shall not be required to seek to enforce payment of the BID Levy where a BID Levy Payer has failed to make payment pursuant to a Demand Notice, as such circumstances are set out in or determined in accordance with Schedule 5

**the Exempt or Discounted Properties** means those class or classes of properties as identified in the BID Levy Rules which shall either be exempt from any requirement to pay the BID Levy or be permitted a discount on the BID Levy

**the Financial Year** means the financial year for Future Bath Plus which runs from 1<sup>st</sup> April to 31<sup>st</sup> March

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

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

**Hereditament** shall have the same meaning as defined in the Regulations

**Liability Order** means an order obtained from the Magistrates Court

**the Monitoring Group** means the group to be set up to monitor the collection and enforcement of the BID Levy (as more particularly described in Clause 11)

**the Operational Date** means the date upon which the BID Arrangements come into force, which is 1<sup>st</sup> April 2011

**the Public Meeting** means the meeting to be held of all BID Levy Payers pursuant to the Public Meeting Notice

**the Public Meeting Notice** means a notice to be served pursuant to Clause 12 by the Bath BID Company which provides the following:-

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- (a) confirmation that the Bath BID Company is considering terminating the BID;
- (b) details of the venue where the public meeting will be held;
- (c) confirmation that all BID Levy Payers who attend will be permitted to make representations

**the Regulations** means the Business Improvement Districts (England) Regulations 2004 and such amendments made by the Secretary of State pursuant to Section 48 of the Local Government Act 2003 (from time to time)

**the Reminder Notice** means the notice to be served pursuant to Clause 9.1

**the Service Charges** mean the annual costs of the Council in providing the Services

**the Services** mean (a) generally the support and administration services provided by the Council in respect of the BID, including, without limitation, the collection of the BID Levy and transfer to the Bath BID Company, and (b) the preparation of the monthly Collection Report, Annual Report, and attendance at six-monthly meetings of the Monitoring Group.

## **2 Statutory Authorities**

2.1 This Agreement is made pursuant to Part IV of the Local Government Act 2003 and Section 111 of the Local Government Act 1972 and all other enabling powers

## **3 Commencement**

3.1 This Agreement shall take effect on the date of this Agreement.

3.2 If, at the end of the BID Term, a renewal ballot is held and is successful then the terms of this Agreement shall be reviewed and a new operating agreement will be established for the new BID term.

## **4 Setting the BID Levy**

4.1 Following the Ballot Result Date the Council shall:-

- (i) calculate the BID Levy due from each BID Levy Payer in accordance with the BID Levy Rules; and
- (ii) confirm in writing to Future Bath Plus the BID Levy payable annually by each BID Levy Payer.

## **5 The BID Revenue Account**

5.1 As soon as is reasonably practicable following the Renewal Ballot Result Date and presuming a successful renewal ballot, the Council shall keep a BID Revenue Account in accordance with the Regulations and accounting codes of practice that are in force at the time and provide written confirmation of all relevant details to the Bath BID Company.

5.2 As soon as is reasonably practicable following the Ballot Result Date the Bath BID Company shall provide the Council with details of its own bank account into which the BID Levy shall be transferred electronically from the BID Revenue Account on production of an invoice by the Bath BID Company in accordance with clause 7.10.

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5.3 Any and all interest which accrues on the BID Revenue Account shall be paid to the Bath BID Company . Any interest accrued shall be paid to the Bath BID Company s in accordance with the procedures set out in 7.10 (b).

## **6 Debits from the BID Revenue Account and the Council's Service Charges**

6.1 The Council shall not debit directly from the BID Revenue Account:-

- (i) the Service Charges;
- (ii) the Enforcement Expenses; or
- (iii) any deductions which in the Council's opinion are Bad or Doubtful Debts.

6.2 The Council will fund the cost of levy collection (Service Charges) up to a maximum of £36,000.. This is a voluntary contribution towards the Bath BID Company. An explanation of this cost is included at Schedule 4. If the Council is subject to costs over and above £36,000 which are necessary for the effective collection and administration of the levy, the Council will notify the Bath BID Company. The Bath BID Company will be expected to meet the additional costs. A cost increase might be related to (but not exclusively) any changes to the BID Levy Rules (see Schedule 1) or BID Legislation and Regulations which results in additional administration or staff costs; changes required to the IT system(s) used to administer the BID levy; or increases in printing and postal costs.

6.3 The Council will set out the expected additional cost and give an explanation and justification for that cost to the BID Company within a month of becoming aware itself of any increase. This will be discussed by the Monitoring Group at either its next planned or an ad hoc meeting called by the Bath BID company or the Council. The Council will endeavour to give the Bath BID Company as much notices as is practicable of any additional payment required.

6.4 The Council shall send an invoice for additional collection costs incurred at a time agreed with the Bath BID Company. The payment will be due within 30 days of receipt of invoice.

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- 6.4 The Council shall recover the Enforcement Expenses from the liable BID Levy Payer, in accordance with Clause 9.
- 6.6 The Council shall discuss with the Monitoring group any debts which the Council is intending to classify as Bad or Doubtful Debts. A course of action will be agreed with the Council as to further enforcement of such debts or to provide for the writing off of such debts.

## **7 Collecting the BID Levy**

- 7.1 The BID Levy for each year will be collected from BID Levy Payers in one instalment due on April 1 for each year of the BID Term. These payment terms can only be varied by agreement between the Bath BID Company and the Council.
- 7.2 The Demand Notices shall be a separate bill and shall not be combined with the Business Rate Bill or despatched in the same envelope as the Business Rate Bill.
- 7.3 The Council shall serve the Demand Notices in accordance with the requirements set out in clause 7.2 on each BID Levy Payer on or around 15<sup>th</sup> March in each year and shall continue to calculate the BID Levy and serve the Demand Notices throughout the BID Term.
- 7.4 The Council shall maintain a list which identifies payment and/or non payment of the BID Levy and shall make this available to the Bath BID Company within 10 working days of demand.
- 7.5 The Council shall liaise with the Bath BID Company in carrying out at a minimum bi-monthly reviews of each Hereditament within the BID Area, and in the event of any change in the occupier of each Hereditament or the merger or division of a Hereditament (or provision of an additional Hereditament) shall:
- (a) serve an updated list of BID Levy Payers upon the Bath BID Company together with details of the consequential changes to liability for the BID Levy;
  - (b) serve a Demand Notice (or alter any existing Demand Notice if appropriate) on the relevant BID Levy Payer as soon as practically possible and with comparable payment terms as those applicable to Demand Notices issued at the beginning of the Financial Year.
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- 7.6 The Council shall use all reasonable endeavours to collect the BID Levy throughout the BID Term, which includes collecting the BID Levy on the date specified (pursuant to clause 7.1 above and in any Demand Notice pursuant to clause 7.5) and thereafter on an annual basis and in accordance with the procedure set out in Schedule 4 of the Regulations.
- 7.7 Every month during the BID Term the Council shall inform the Bath BID Company of the amount of BID Levy monies collected, less any refunds to outgoing BID Levy Payers during that month. Any amendments made to the BID Levy monies following any refunds shall be made in accordance with the provisions of Schedule 1 (changes to the Rateable Value) and for the avoidance of doubt shall not be retrospectively applied and shall only affect the Financial Year in which the amendment was made and any subsequent Financial Years during the BID Term.
- 7.8 The Council shall use all reasonable endeavours which are consistent with its usual procedures for the collection of non-domestic rates to collect the BID Levy.
- 7.9 The BID Levy shall be transferred by the Council to the Bath BID Company as follows:

- (a) The Bath BID Company shall be entitled to raise an invoice to the Council:
- (i) twice monthly during April and May of each Financial Year; and
  - (ii) following the period in sub-paragraph (i), no more frequently than on a monthly basis.

Such invoice to be based on the information outlined in clause 7.7, for the total amount of BID Levy monies collected, minus the total of BID Levy monies previously invoiced for and paid to the Bath BID Company in the relevant Financial Year.

- (b) Payment of invoices raised under this clause 7.10 is to be made within 10 working days of receipt of the invoice.

Any interest to which the Bath BID Company is entitled to under clause 5.3 will be transferred to the Bath BID Company once a year as follows:

- a) The Council shall inform the BID Company of the amount of interest which has accrued on the BID Revenue Account during that financial year in the Annual Report.
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b) The Bath BID Company shall raise an invoice to the Council for the amount of interest which has accrued on the BID Revenue Account during that financial year.

7.10 Payment of invoices raised under this clause is to be made within 10 working days of receipt of the invoice. All sums payable under clause 7.10 are exclusive of Value Added Tax and any other applicable taxes, which, if applicable, will be charged in addition at the rate in force at the time payment is required.

7.11 The Council shall use all reasonable endeavours to ensure that 98% of the total BID Levy due in any given Financial Year shall be collected and paid over to the Bath BID Company within that Financial Year.

## **8 Communication with BID Levy Payers regarding levy collection**

8.1 The Bath BID Company and the Council shall agree a template design for all levy collection materials, including enforcement materials, before the first Demand Notices are despatched in March 2011. The materials shall meet the BID Regulations' requirements. The Council shall ensure that all Demand Notices which it issues comply with the BID Regulations from time to time.

8.2 The Bath BID Company shall refer all enquiries from BID Levy Payers regarding Demand and Enforcement Notices, and payment terms to the Council.

8.3 The Council shall refer all enquiries from BID Levy Payers regarding the services provided by the Bath BID Company for the BID Levy payment to the Bath BID Company..

8.4 The Council shall ensure that the information set out in regulation 3(2) of the Regulations, or such other information requirements under the Regulations from time to time, is included with each Demand Notice. This shall include:

- The revenue received by the BID in the previous year
  - The amount spent on BID arrangements in the previous year
  - A description of the matters on which it was spent
  - A description of the matters which it is intended to spend BID levy revenue on in the financial year.
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## **9 Procedures available to the Council for enforcing payment of the BID Levy**

- 9.1 In the event that the BID Levy is not paid within 21 (twenty one) days from the date that it becomes payable then (subject to the Exceptions or except as may otherwise be agreed between the parties) the Council shall serve a Reminder Notice on such relevant BID Levy Payer which shall:-
- (i) identify the sum payable;
  - (ii) provide a further 14 (fourteen) days for payment to be made;
  - (iii) confirm that the Council will make an application to the Magistrates Court for a Liability Order to recover the unpaid sum and costs following the expiry of this period.
- 9.2 If after a further 14 (fourteen) days from the payment date stated in the Reminder Notice the outstanding sum of the BID Levy has not been paid, the Council shall supply the Bath BID Company with a list of all BID Levy Payers for which the BID Levy remains outstanding and identify on the list all BID Levy Payers for whom the Council contemplates further recovery and enforcement action, which will include a summons to Magistrate's Court and associated costs.
- 9.3 The Council will consider any comments made by the Bath BID Company before applying to the Magistrates Court for a Liability Order or taking other enforcement action to recover the outstanding sum of the BID Levy as is permitted by the Regulations and the Non Domestic Rating (Collection & Enforcement) (Local Lists) Regulations 1989 (as amended).

## **10 Enforcement Mechanisms for non-collection of the BID Levy by the Council**

- 10.1 In the event that the Council is not enforcing payment of the BID Levy pursuant to Clause 9 above the Bath BID Company shall be entitled to serve an Enforcement Notice on the Council requesting that:-
- (i) it serve a Reminder Notice; or
  - (ii) it issues a Summons confirming the intention to apply for a Liability Order
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within 14 (fourteen) days of receipt of such Enforcement Notice and the Council shall thereafter provide written confirmation of the action taken to recover the unpaid BID Levy.

10.2 If after being served an Enforcement Notice the Council fails to take the requested action within the specified time frame then the Bath BID Company shall be entitled to serve an Appeal Notice to the Chief Executive of the Council. Such notice shall:-

- (i) detail the sum which remains unpaid;
- (ii) confirm that the Council has failed to use the enforcement mechanisms available to it under this Agreement to recover the sum; and
- (iii) request a meeting take place between the Chief Executive, relevant officers of the Council and the Bath BID Company to achieve a solution and/or agree a strategy to recover the outstanding sum such meeting to take place in any event no later than 28 (twenty eight) days from service of the Appeal Notice

## **11 Accounting Procedures and Monitoring**

11.1 The Monitoring Group shall be formed by the Council and the Bath BID Company 1 (one) month before the Operational Date. The Monitoring Group shall consist of a member of the Customer Services Senior Management Team and the Senior Customer Services Officer who is directly involved in the levy collection from the Council, and the Chief Executive and Finance Director from the Bath BID Company.

11.2 No more frequently than monthly, the Council shall provide the Bath BID Company with a report (the "**Collection Report**") containing a breakdown of:-

- (i) the amount of BID Levy payable by each individual BID Levy Payer;
  - (ii) the BID Levy collected in relation to each BID Levy Payer;
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- (iii) details (together with the outstanding unpaid sum) of those BID Levy Payers who have not paid the BID Levy during that Relevant Month;
- (iv) details of the Reminder Notices issued throughout the Relevant Month;
- (v) details of any Liability Orders obtained or applied for by the Council;
- (vi) details of any changes to the Demand Notices or Hereditaments during the Relevant Month; and
- (vii) details of any refunds.

11.3 The Monitoring Group shall meet twice during each Financial Year. Further meetings of the Monitoring Group shall be arranged by 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 a lesser period 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 Bath BID Company.

11.4 At each meeting the Monitoring Group shall:

- (i) (i) review the effectiveness of the collection and enforcement of the BID Levy;
- (ii) as set out in Clause xx, review, discuss and agree the payment process for any additional collection costs which are likely to be incurred by the Council which will mean that the Council's maximum of £36,000 per annum contribution towards collection cost is being exceeded, these additional costs being payable by the BID Company.
- (iii) if required by either party, review and assess the information provided by the Council pursuant to Clause 11.2 above and any information provided by the Bath BID Company for the purpose of the meeting, and make any recommendations for implementation as may be agreed (and which are permitted by the Regulations and the terms of this Agreement).

11.5 Within six weeks after the date of the end of each Financial Year in the BID Term the Council shall provide the Annual Report to the Bath BID Company..

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- 11.6 Within 1 (one) month from the date of receipt of the Annual Report the Bath BID Company shall provide the Bath BID Company's Report to the Council.
- 11.7 The Monitoring Group shall be responsible for reviewing this Agreement as necessary to monitor the parties' compliance with it and to resolve any issues which arise out of it.
- 11.8 The Council shall provide such information as is required to aid and facilitate the audit of the Bath BID Company's accounts. The Bath BID Company shall be entitled to audit the Council's records in relation to collecting the BID Levy, including the BID Revenue Account, during normal working hours and upon giving prior reasonable notice to the Council provided that such audit shall be no more frequent than once a quarter unless otherwise agreed with the Council or otherwise determined by the Monitoring Group. The Council shall make available to the Bath BID Company (and its appointed representatives) such documents, information and assistance as the Bath BID Company (and its appointed representatives) shall reasonably require in relation to such audit.
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## **12 Termination**

12.1 The Bath BID Company shall be permitted to terminate the BID Arrangements and this Agreement where:

- (a) the works or services under the BID Arrangements are no longer required;  
or
- (b) The Bath BID Company or the Council is unable, due to any cause beyond its control to provide works and services which are necessary for the BID to continue

but only after it has carried out a proper consultation with all relevant representatives of the BID Area and it has served a Public Meeting Notice on the BID Levy Payers and the Public Meeting has taken place.

12.2 Upon termination of the BID Arrangements and this Agreement, The Bath BID Company shall notify the Council of such termination in accordance with Regulation 18(5) and the Council shall notify the BID Levy Payers pursuant to Regulation 18(6) together with confirmation as to whether any part of the BID Levy is to be repaid to BID Levy Payers, in accordance with clause 12.3.

12.3 Upon termination of the BID Arrangements and this Agreement, the Council and the Bath BID Company shall review whether there is a credit in the BID Revenue Account and the BID levy account held by the Bath BID Company and in the event that there are sufficient funds in these accounts amounting to a refund of at least £5 for each BID Levy Payer (having already deducted a reasonable sum for the administration of such refund and either (i) deducted any sum outstanding to the Council in respect of its Service Charges set out in paragraph 6.2 or (ii) credited the BID Revenue Account in respect of a Service Charge Overpayment) the Council shall:

- (a) calculate the amount to be refunded to each BID Levy Payer in accordance with the Regulations;
  - (b) ensure that the amount to be refunded is calculated by reference to the amount payable by each BID Levy Payer for the last chargeable period;  
and
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- (c) make arrangements for the amount calculated to be credited against any outstanding liabilities of each BID Levy Payer or, where there are no such liabilities refunded to the BID Levy Payer.

For the purposes of this Agreement, "Service Charge Overpayment" means an amount equal to the Service Charges paid to the Council in advance for the period which extends beyond the date of termination. Such amount to be calculated on a pro-rata basis.

- 12.4 The parties acknowledge that this Agreement does not require the Council to be responsible for managing or monitoring the financial arrangements of the BID. The Bath BID Company shall ensure proper and appropriate financial management and monitoring arrangements are in place for the BID, including appropriate controls, systems, processes, accounting and auditing, and that the Bath BID Company is meeting Business Improvement District (BID) Industry Standards and accreditations. However, should the Council become aware that the Bath BID Company may be unable to meet its financial commitments, the Council reserves the right to terminate the BID Arrangements and this Agreement, as set out in Regulation 18 of the Regulations.

### **13 Confidentiality**

- 13.1 Except as required by law, both the Council and the Bath BID Company agree to keep confidential and not to divulge to any person without the prior written consent of the other party all information (written or oral) concerning the business affairs of the other nor any information which has been exchanged about the BID Levy Payers or about other third parties which it shall have obtained or received as a result of operating the BID. This obligation shall survive the termination or lapse of the BID Arrangements.
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## **14 Notices**

- 14.1 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 sent to the address provided for above or such substitute address in England as may from time to time have been notified by that party.
- 14.2 A notice may be served by:
- 14.2.1 delivery to the Council officer responsible for this Agreement at the Council's address specified above
- 14.2.2 delivery to the Company Secretary at the Bath BID Company's address specified above
- 14.2.3 registered or recorded delivery post to the above addresses
- 14.2.4 Electronic Communication (provided that it is in legible form and is capable of being used for subsequent reference) to such numbers and addresses as provided for that purpose. A notice sent by electronic mail shall also be copied to the recipient on the same day by one of the methods outlined under clauses 14.2.1 – 14.2.3.
- 14.3 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.

## **15 Miscellaneous**

- 15.1 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 in full force and effect.
- 15.2 The headings appearing in this Agreement are for ease of reference only and shall not affect the construction of this Agreement.
- 15.3 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.
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- 15.4 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.
- 15.5 References to the Council include any successors to its functions as local authority.
- 15.6 References to statutes, bye laws, regulations, orders, delegated legislation shall include any such instrument re-enacting or made pursuant to the same power.
- 15.7 Words and expressions defined or used in the Regulations shall have the same meanings in this Agreement and the relevant Regulations shall apply to such word or expression, unless otherwise defined in this Agreement or the context otherwise requires.

## **16 Exercise of the Council's powers**

- 16.1 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 in the exercise of its functions as a local authority.

## **17 Contracts (Rights Of Third Parties)**

- 17.1 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

## **18 Dispute Resolution**

- 18.1 If a dispute arises between the Council and the Bath BID Company in relation to any matter which cannot be resolved either party may refer such dispute to the dispute resolution procedure set out in Clause 18.2 below.
- 18.2 In the first instance each of the Council and the Bath BID Company shall arrange for a senior representative to meet solely in order to resolve the matter in dispute. Such meeting(s) shall be minuted and shall be chaired by an independent, objective person as agreed by both parties. In the event that the parties, acting reasonably, are not able to agree the identity of such independent, objective person within 10 working days of the notice of the dispute, the parties agree that such meetings shall be jointly chaired by the Chief Executive of the Council and
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the Chairman of the Bath BID Company. Such meeting(s) shall be conducted in such manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question at the discretion of the chairman.

18.3 If the meeting(s) referred to in Clause 18.2 does not resolve the matter in question then the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the parties. In such circumstances the following shall apply:

18.3.1 to initiate a mediation the parties may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organization as agreed by the parties asking them to nominate a mediator;

18.3.2 the mediation shall commence within 28 days of the Mediation Notice being served;

18.3.3 neither party will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one hour. Thereafter paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the parties);

18.3.4 neither party to the mediation will commence legal proceedings against the other until 30 days after such mediation of the dispute in question has failed to resolve the dispute provided that a party shall not be prevented from taking action to protect any limitation periods;

18.3.5 the parties will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs, as he shall determine or in the absence of such determination such costs will be shared equally.

18.4 This Clause 18 is without prejudice to the rights of the parties to apply for injunctive relief or to the rights of the parties in any future proceedings.

## **19 Arbitration**

19.1 Should any dispute remain unresolved following the process set out in Clause 18,

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the parties shall jointly appoint the arbitrator not later than 28 (twenty eight) days after service of a request in writing by either party to do so.

19.2 If the parties are unable to agree within 28 (twenty eight) days as to the appointment of such arbitrator then such arbitrator (hereinafter referred to as "the Tribunal") shall be appointed on the application of either party to the President for the time being of the Law Society.

19.3 In the event of a reference to arbitration the parties agree to:

(a) prosecute any such reference expeditiously; and

(b) do all things or take all steps reasonably necessary in order to enable the Tribunal to deliver any award (interim, final or otherwise) as soon as reasonably practicable.

19.4 The award shall be in writing signed by the arbitrator.

19.5 The award shall be final and binding both on the parties and on any persons claiming through or under them.

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**20 Governing law and jurisdiction**

20.1 This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

This Agreement has been entered into on the date stated at the beginning of it.

**Signed** by the parties or their duly authorised representatives

**Signed** by )  
duly authorised for and )  
on behalf of )  
**BATH AND NORTH EAST SOMERSET** )  
**COUNCIL**  
**(Strategic Director for Resources)**

\_\_\_\_\_

**Signed** by )  
duly authorised for and )  
on behalf of )  
**The Bath BID Company (Board** )  
**Member)**

\_\_\_\_\_

# Schedule 1 – The BID Levy Rules

## **BATH BUSINESS IMPROVEMENT DISTRICT (BID) LEVY RULES.**

The BID process is governed by Government Legislation and Regulations. As such, once a majority vote has been achieved, the BID levy becomes mandatory on all defined ratepayers.

Once a majority vote is achieved, Bath & North East Somerset Council will be responsible for the imposition, administration, collection and recovery of the BID Levy on behalf of the Bath BID Company..

### **The BID Levy**

The BID Levy will be applied to all eligible non-domestic ratepayers whose property falls within the BID Area (see schedule 3). The billing period will run from the 1<sup>st</sup> April each year to the 31<sup>st</sup> March of the following year and will run for five billing years commencing 1<sup>st</sup> April 2016. The BID Levy for the chargeable period must be paid in a single instalment in accordance with the payment amount and date shown on the front of the Demand Notice.

### **BID Levy Calculation**

The BID Levy is calculated by multiplying the BID rateable value by the BID levy. The levy will be fixed at a percentage of rateable value using the relevant entry in the 2010 or 2017 rating list.

### **The BID Rateable Value**

For the purposes of calculating the BID levy, the rateable value will be that shown in the 2010 Valuation List as at 1<sup>st</sup> April 2011 subject to future rateable value changes (see below). Where no entry exists on the 2010 list, then the new 2017 list value shall be used.

### **The BID Levy Percentage**

This is set at 1% of rateable value. The BID Board will consider on an annual basis, prior to 1<sup>st</sup> January, whether the levy will assume a growth rate for inflation of 2%. If agreement is reached by the board this growth rate will be applied to the BID levy on the following 1<sup>st</sup> April.

### **Changes to the Rateable Value**

Adjustments will be made to the BID Levy during any Financial Year for changes in rateable values. **Rateable value changes will only be operative for the purposes of calculating the BID Levy from the effective date of alteration of the Valuation List, or, in the case of alterations affecting more than one financial year, 1<sup>st</sup> April preceding the date of alteration of the Valuation List. Changes to rateable value will affect the current and subsequent Year's BID calculation.**

Properties removed from the Valuation List will be subject to the BID Levy up to the effective date of its removal, calculated on a daily basis.

### **New properties entering the Valuation List**

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New properties rated by the Valuation Office Agency which are located within the defined BID Area and which are £25,000 rateable value and above (excepting those eligible for an exemption below) will similarly be liable from the date of entry onto the Valuation List, calculated on a daily basis.

Where existing property is split or merged the BID Levy will be made on the revised entry or entries shown in the Valuation List.

### **BID Levy Reductions for Empty Properties**

When a Hereditament is empty, the eligible ratepayer will be liable for the BID Levy with no void period, except in the case of empty listed buildings, which will be exempt from the BID Levy.

### **BID Levy Exemptions**

Any Hereditament with a rateable value of £24,999 or less will be exempt from paying the BID Levy.

All Hereditaments with charitable status and in receipt of mandatory charitable relief from business rates will be fully exempt from the BID Levy.

### **BID Levy Discount**

Shopping centre tenants paying a service charge will receive a 25% discount on their BID Levy bill. These properties have been identified by Future Bath Plus who will continue to monitor whether any additional properties should receive a 25% discount.

### **Liability for the BID Levy**

Liability for the BID Levy will fall upon the ratepayer for the property. If the property is empty, liability will fall upon the person or organisation entitled to possession of the property in accordance with National Non Domestic Rate regulations

### **Changes in Liability**

Adjustments to the BID Levy will be made where there is a change of ratepayer. Revised BID Levy bills will be issued, and calculated on a daily basis at the effective date of change, and where overpayments are identified they will be refunded to BID levypayers.

### **Value Added Tax (VAT)**

There will be no VAT charged on the BID Levy to Bid Levy Payers.

### **Glossary**

Hereditament – a rateable business unit, as defined by an entry in the rating list. This could be a shop or office building, equally an advertising hoarding or car park.

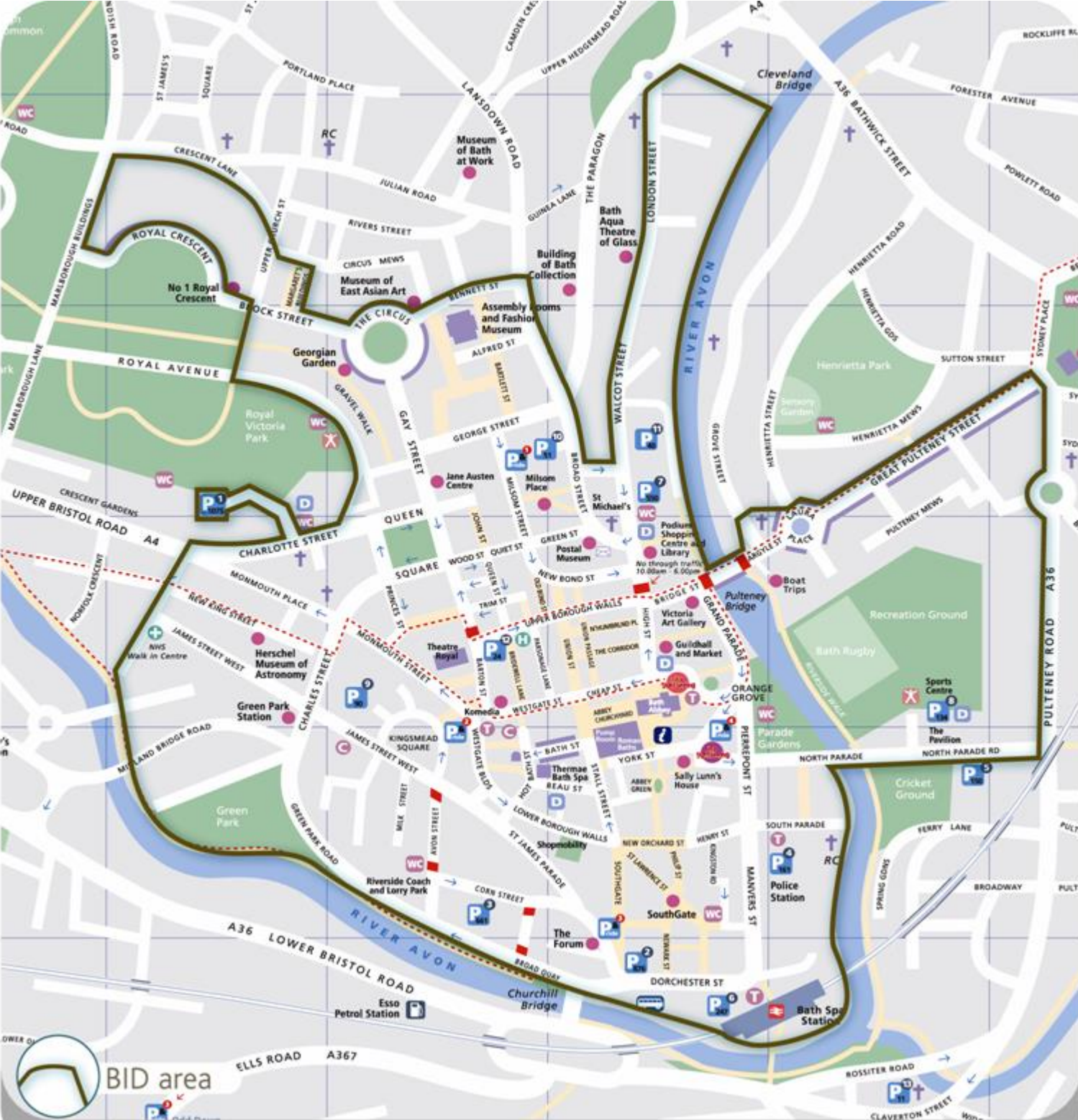
Ratepayer – the person or organisation held liable for business rate purposes under the National Non Domestic Rate regulations.

Valuation List (also Rating List) – The list of business rate hereditaments compiled by the Valuation Office Agency for the area administered by Bath & North East Somerset.

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**Schedule 2 – The Baseline Agreement**

### Schedule 3 – Plan of BID area



# Schedule 4 – Explanation of Council’s Annual BID Levy Collection Cost\*

The annual cost of £36,000 is based on the actual cost of collection from the first BID term (2011-2016) and assumes no significant changes to the BID levy rules (including the number of hereditaments within the BID area) or any unexpected costs such as sudden changes to the IT system outside of the Council’s control, as described in Clause xx\*

The cost includes:

- Operational staff for administration of the BID levy collection
- Annual support and maintenance of the levy collection IT system
- Council IT costs
- Annual billing (printing and mailing)
- Ad hoc printing and post (for example, for enforcement notices)

**Total per annum** **£36,000**

\* A maximum cost of £36,000 will be absorbed by the Council as a voluntary contribution towards the Bath BID Company. As set out in Clauses xx and xx, the Bath BID Company will be liable for any necessary additional costs incurred by the Council.

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## **Schedule 5 – The Exceptions**

To include:-

(a) where the foreseeable cost of an enforcement action is the same or greater than the amount recoverable under the Bid Levy;

(b) Any debt that would require another enforcement mechanism under the NNDR other than a Liability Order in order to recover it;

(c) such Exceptions as determined by the Monitoring Group from time to time.

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