

Dated

2015

KEIGHLEYBID COMPANY LIMITED

(1)

AND

**CITY OF BRADFORD METROPOLITAN DISTRICT
COUNCIL**

(2)

**MEMORANDUM OF UNDERSTANDING
FOR THE PROVISION OF SERVICES WITHIN THE KEIGHLEY BUSINESS
IMPROVEMENT DISTRICT**

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objectives of the BID arrangements on an ad hoc basis to be agreed by the parties.

- (F) On 12th November 2015 the BID Business Plan was approved in a ballot of non-domestic ratepayers in the BID Area.

MEMORANDUM OF UNDERSTANDING

The Parties share the following common beliefs about the BID Area. The Parties believe that;

- A Business Improvement District is a partnership between a local authority and the local business community that will develop projects and services that will benefit the trading environment within the boundary of a clearly defined commercial area.
- The BID will improve town centre vibrancy
- A BID will create a sustainable mechanism of providing and funding key improvements the town centre.

This Agreement sets out the framework within which these shared aspirations will be achieved

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

- 1.1 In this Agreement the following words and expressions shall, except where the context otherwise requires, be given the following meanings:

Agreement means this agreement and any Schedules or Appendices thereto which are to be read and construed and given the same force as if contained in the body of the agreement

Baseline Services means the services currently provided or procured by the Council and detailed in Schedule 1

BID means Business Improvement District

BID Area means the geographical area identified by the BID steering group in the BID Business Plan. As set out in Schedule 2

BID Arrangements means the detailed proposals for the BID as set out in the BID Business Plan prepared by the BID steering group submitted to, and approved by a ballot of non-domestic ratepayers in the BID area

BID Performance Indicators means the performance indicators detailing the performance of the BID Company as agreed in writing between the BID Company and the Council from time to time

BID Business Plan means the detailed proposals for the BID in the BID area as submitted and approved in a ballot of non-domestic ratepayers in the BID area as set out in Schedule 2

BID Regulations means the Business Improvement Districts (England) Regulations 2004 (as may be amended from time to time)

Confidential Information means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading

practices, goods, services, developments, trade secrets, intellectual property rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the DPA

Consent sites means highways, public realm and public open spaces including, but not limited to,

Data Protection Act (DPA) means the Data Protection Act 1998 (as amended)

Environmental Information Regulations (EIR) means Environmental Information Regulations 2004

Exit Strategy means the strategy agreed by the Parties for securing transition from the BID Arrangements to alternative service delivery arrangements

Freedom of Information Act (FOIA) means the Freedom of Information Act 2000 and any subordinate legislation made under the act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation

New Services means any new or additional services not included in this Agreement

Operating Agreement means the Operating Agreement between the City of Bradford Metropolitan District Council and the BID company and effective from the Operational Date as defined in the Operating Agreement and which should be read in conjunction with this Memorandum of Understanding.

Services means, collectively or individually as the case may be, the Baseline Services and Statutory Services

Statutory Services means the services the Council undertakes within the BID area pursuant to its statutory obligations

Request to see a copy of statutory services from Council

Support Services means the services whereby the Council agrees to provide the specified services to the BID Company for the purposes of enabling the BID arrangements to be carried out

Term means the period of five (5) years commencing on the operational date in the Operating Agreement unless terminated sooner

Variation Procedure means the variation procedure set out in Clause 1

2. TERM

2.1 This Agreement shall be deemed to have commenced on the date hereof unless otherwise terminated

2.2 The Parties may at any time throughout the duration of this Agreement agree to extend this Agreement once only for a period not exceeding five years subject only to approval by a valid ballot in accordance with the BID regulations or any other such legislative regulation prevailing at the time

3. SERVICES, ACCOMMODATION AND MANAGEMENT

3.1 Baseline Services

3.1.1 Throughout the Term the Council will use all reasonable endeavours to continue to provide and/or procure the existing baseline services in the BID area so as to facilitate the BID arrangements.

3.2 The Statutory Services

3.2.1 The Council is subject to a variety of statutory obligations and duties imposed by various legislative provisions.

3.2.2 The BID Company recognises that the Council is required to discharge its statutory obligations in respect of the statutory services in accordance with the appropriate legislative provisions and guidance and the law in general and that this may give rise to situations that are not always compatible with the objectives of the Parties under this Agreement.

3.2.3 Without prejudice to its statutory obligations the Council will to the extent permitted by law work proactively with the BID Company and use all reasonable endeavours to enable the achievement of the objectives of the BID arrangements.

3.3 New Services

3.3.1 The Parties may agree in writing at any time that New Services may be provided by the Council to the BID Company for the purpose of achieving the BID arrangements

3.3.2 New Services shall be agreed using the variation procedure and upon commencement shall be subject to all terms of this Agreement

3.4 Accommodation

The Council will cover the cost of the accommodation throughout the duration of the BID (balloted in 2015) of the BID office at 68b North Street Keighley, unless the Council makes a decision to dispose of this asset, in which case alternative provision of a reasonable standard and suitable location will be made including any relocation costs. The Council will also cover the costs associated with the operation of an office in terms of usual office equipment and service.

3.5 Management and staffing arrangements

The Council will:

- 3.5.1 Pay the salary of the BID manager for 4 of the 5 years amounting to £160k along with any inflation and pay rises that might apply during this period if these exceed £160k, as long as the BID makes satisfactory progress as agreed by the BID Board and this is confirmed by the Council representative on the BID Company Board.

(It should be noted that the BID Board agreed that should levy income increase above £214k annually the BID company would consider covering the BID Company manager's salary.) Other staff costs will come from the BID Levy.

- 3.5.2 Provide a duty in the job description of a senior Council officer to act as link with the BID work to Bradford Council's management of Regeneration and provide Human Resources cover. The contact will not direct the activity of staff members, this is the responsibility of the Board.

- 3.5.3 Participate in the BID Company through 1 Board Member, which the Council will nominate, for the life of the BID. This will be a councillor and the choice will be made by the council. This member will represent the Council's interests and be a voting Member. It is expected that the Councillor will be the appropriate Portfolio holder.
- 3.5.4 In the event of long term sickness of BID staff, the Council will look to provide some limited cover, however this is unlikely to be full time and can not be guaranteed.
- 3.5.5 In the event of the BID ending, for any reason, the Council will provide the rights appropriate to staff who are employed by the Council.
- 3.5.6 In the event that the staff are employees of the Council, the Council will cover appropriate payroll and HR functions with no recharge to the Bid company.

4. CONSENT SITES

- 4.1 The use of the Consent Sites for any BID activity must be approved by The Council, such consent not to be unreasonably withheld or delayed.
- 4.2 Keighley BID will be subject to the normal application process for the usage of public realm.
- 4.3 The Council retains the right to utilise the Consent Sites as they see fit for commercial promotions and events.

5. PERSONNEL

- 5.1 Each Party is responsible for its own personnel, employees, agents, servants, and subcontractors when on the other Party's premises.
- 5.2 Each Party shall ensure that its personnel, employees, agents, servants, and subcontractors comply with the provisions of The Health and Safety at Work etc Act 1974 (as amended), and any subsequent legislation and any security procedures whilst on the other Party's premises.

6. FINANCIAL REGULATIONS AND PROCUREMENT

- 6.1 The BID Company undertakes to adopt and apply financial regulations and procurement procedures that are compatible with the Council's Financial Regulations and Contracts Standing Orders (as may be amended from time to time) so as to clearly demonstrate best value and accountability compliance in relation to contracts applicable at any appropriate time, in any relevant dealings in respect of the delivery of the BID arrangements
- 6.2 The Council confirms that in respect of any relevant matters it will apply and comply with its Financial Regulations and Standing Orders Relating to Contracts applicable from time to time.
- 6.3 The Council will where permitted by law inform the BID Company of any proposed changes to its Financial Regulations and Contracts Standing Orders prior to their implementation and may at the Council's absolute discretion have regard to any views expressed by the BID Company in respect of such changes.

7. INSURANCE

- 7.1 Specifically, but without limitation, the BID Company shall take out and maintain for the duration of this Agreement, with generally recognized reputable insurance companies, Employer's Liability insurance to a minimum value of £10,000,000.00 for any one claim, Public Liability cover to a minimum value of £5,000,000 for any one claim and professional Indemnity cover to a minimum value of £1,000,000 for any one claim.

8. ASSIGNMENT AND SUB-CONTRACTING

- 8.1 Neither party shall assign, sub-contract or transfer any of their respective rights duties or obligations under this Agreement without the express prior written consent of the other Party such consent not to be unreasonably withheld or delayed.

9. LIMITATION OF LIABILITY

- 9.1 Nothing in this Agreement shall exclude or restrict a Party's liability for death or personal injury caused by its negligence.
- 9.2 Each Party will indemnify and keep indemnified the other Party from and against any and all loss damage or liability (whether criminal or civil) suffered and legal fees and costs incurred arising out of any act neglect or default of the Party its employees, agents, servants or subcontractors or licensees and including any successful claims by any third party resulting from breach of this Agreement in respect of any matter arising out of the performance of its obligations under the Agreement provided that notwithstanding this indemnity the other Party shall use its reasonable endeavours to mitigate any such loss and damage or liability.

10. VARIATIONS

- 10.1 No variation of this Agreement or of any documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each Party

11. DISAGREEMENTS

- 11.1 Where the Parties are in disagreement as to the terms or provisions of this Agreement, including implementation, or the delivery of services or objectives, they shall use their best efforts to resolve the disagreement informally through amicable discussions within 7 days of being notified of the disagreement (or such later date as may be agreed between the parties).
- 11.2 In the event that, following attempts at resolving the issue by amicable discussion and consultation, either Party believes that a disagreement is not capable of being resolved informally both Parties will submit written details of their grievance and / or position by not later than 21 days of being notified of the disagreement to the Chair of the Board of the BID Company and a Director or Director of the Council nominated by the Council in an attempt to resolve the disagreement at Board / Director level.

12. TERMINATION

- 12.1 The Council may terminate this Agreement upon giving three (3) months notice in writing if the other Party:

- 12.1.1 Commits a material breach of its obligations or if such breach being capable of remedy has not been remedied for a period of 30 days after being notified of such breach

12.2 The Council may terminate this Agreement and recover all its losses by giving notice to the BID Company having immediate effect if

12.2.1 The BID Company goes into liquidation, either compulsorily or voluntarily (apart from a solvent liquidation for the purposes of reconstruction or amalgamation) or if a receiver, administrator or administrative receiver is appointed in respect of the business or all or any part of its creditors generally or shall commit any similar act or suffer any similar event as a consequence of debt

12.2.2 The BID Company does any of the following things:

- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the BID Company does not know what has been done); or
- (b) commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972 or the Bribery Act 2010; or
- (c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council Members, contractors or employees.

Any clause limiting the BID Company's liability shall not apply to this clause

12.3 Without prejudice to the Council's rights in this Agreement, the Council may, upon 12 months written notice to the BID Company suspend any new services that have been agreed. If any new services for which the

BID Company has agreed to make payment to the Council are suspended, the BID Company's obligation to make such payments shall also be suspended.

13. EXIT STRATEGY

13.1 The Parties recognise that in the event of the BID Arrangements coming to an end and not being renewed in accordance with statutory provisions and/or in the event of this Agreement expiring by any means the Parties will need to agree an exit strategy how services within the BID area will continue to be provided.

13.2 Either Party may give notice to the other either, (a) when serving notice under clause 11 (disagreements) or (b) at any time not before the fourth anniversary of the effective date, requiring the other party to attend a meeting or meetings to prepare an agreed exit strategy.

13.3 Failure on the part of either Party to respond to such a request or to agree an exit strategy will entitle the other Party to invoke the disagreements procedure set out in Clause 12.

14. CONFIDENTIAL INFORMATION

14.1 Both Parties shall treat as and keep confidential and not disclose any confidential information. No confidential information shall be subject to the restrictions against disclosure under this Agreement to the extent that it:

14.1.1 Is or becomes public knowledge otherwise than through the default on the part of either Party or their directors, officers, agents or employees;

- 14.1.2 Is compelled by law or by the rules or requirements of any relevant regulatory authority or court of competent jurisdiction and/or required by the professional advisors of either Party
- 14.1.3 Is already lawfully in the possession of either Party prior to its disclosure.
- 14.1.4 Is made with the express prior written consent of the other Party;
or
- 14.1.5 Is made pursuant to a statutory duty or requirement of the Information Commissioner pursuant to the Freedom Of Information Act (FOIA) or the Environmental Information Regulations (EIR).

15. DATA PROTECTION

- 15.1 The BID Company shall (and shall procure that any of its staff involved in the provision of this Agreement) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA, which arise in connection with the Agreement
- 15.2 The BID Company acknowledges that the Council is the Data Controller for the purposes of the DPA
- 15.3 Where the BID Company is processing personal data (as defined by the DPA) as a data processor for the Council (as defined by the DPA) the BID Company shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal

data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

- (1) provide the Council with such information as the Council may reasonably require to satisfy itself that the BID Company is complying with its obligations under the DPA;
- (2) promptly notify the Data Protection Officer of any breach of the security measures required to be put in place pursuant to this clause; and
- (3) ensure that it does not knowingly or negligently do or omit to do anything, which places the Council in breach of the Council's obligations under the DPA.

15.4 The BID Company shall and shall procure that its sub-contractors shall:

- (1) transfer any subject access request to the Council as soon as practicable after receipt and in any event within 2 working days of receiving the request;
- (2) provide the Data Protection Officer with a copy of all information required in respect of the subject access request in its possession or power in the form that the Council requires within 20calendar days (or such other period as the Council may specify) of the Council requesting that information; and
- (3) provide all necessary assistance as reasonably requested by the Data Protection Officer to enable the Council to respond to a subject access request within the timescale stipulated under the DPA.

16. FREEDOM OF INFORMATION

16.1 Freedom of Information arrangements

There are different expectations of the public and private sector, but nonetheless there is an overriding statutory duty on the part of the Council that is subject to the requirements of the FOIA and the EIR. In acknowledgement of this obligation, the following processes are set out in 16.2 to 16.5 are designed to help the council honour its duties

16.2 The Council will work in Partnership with the BID Company. It will employ staff who will work on delivering the activity funded by the levy. However all operational decisions will be the responsibility of the BID Company and the BID board. The company will be responsible for FOI issues that relate solely to operational and BID business matters. The Council will have responsibility for HR matters and any issues attached to the accommodation.

16.3 Any FOI requests that cover interests shared by both the BID Company and the Council will be discussed within time scales set out in FOI legislation. An example would be a question related to the preparations for the BID before the company formally began.

16.4 FOI issues will be discussed between those directors designated as having day to day responsibility and the Council officer designated as the contact for the company from the Regeneration Service. Both organisations must make appropriate efforts to ensure that wherever the FOI request is received, its response should be enabled as soon as possible to protect the reputation of the partnership that is the platform for the delivery of the BID.

16.5 Any failings to meet the timescales where there is a joint responsibility may result in a cost to the company if there is fault on the company's side and vice versa.

17. WHISTLE BLOWING

17.1 The Council has a whistle blowing policy to encourage staff and the public to bring into the open issues concerning dishonesty involving the Council. The BID Company shall ensure that relevant members of staff and all persons involved with this Agreement are made aware of the policy.

Signed by the Council:

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Title:

Signed by the Company:

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Director