

## Appendix A - Oxted BID Operating Agreement

Dated

2021

### BID LEVY OPERATING AGREEMENT **for Oxted, Surrey**

The District Council of Tandridge

**and**

The Oxted BID Limited

**THIS AGREEMENT** is made on \_\_\_\_\_ 2021

**BETWEEN**

- (1) **THE DISTRICT COUNCIL OF TANDRIDGE** also known as Tandridge District Council, of Council Offices, 8 Station Road East, Oxted, Surrey. RH8 0BT (**Council**); and
- (2) **THE OXTED BID LIMITED** a company with company registration number: **09576752**, whose registered office is at Council Offices, 8 Station Road East, Oxted, Surrey RH8 0BT, and whose address for the purposes of this Agreement is c/o Frith & Co Chartered Accountants, Moorgate House, 7 Station Road West, Oxted, Surrey. RH8 9EE (**BID Company**).

**RECITALS**

- A The Council is the local authority for the district of Tandridge. It 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 Oxted 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 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 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 Council will be responsible for collecting the BID Levy;
  - set out the enforcement mechanisms for collection of the BID Levy;
  - set out the procedures for accounting and transfer of the BID Levy; and
  - provide for the monitoring and review of the collection of the BID Levy.

**DEFINITIONS**

- Annual Report** means a report to be prepared by the Council which details the following:
- (i) the total amount of the BID Levy collected during the relevant Financial Year;
  - (ii) details of the success rate for the collection of the BID Levy;
  - (iii) the Council's proposals (if any) to help improve its efficiency in the collection and enforcement of the BID Levy;
  - (iv) details of those BID Payers who have paid the BID Levy and those who have not paid the BID Levy; and
  - (v) the Council's proposal for bad or doubtful debts.

<b>the Appeal Notice</b>	means a notice to be served by the BID Company in accordance with Clause 7 of this Agreement;
<b>Ballot Result Date</b>	means the date upon which a successful re-ballot result has been declared in favour of putting in place the BID Proposal;
<b>BID</b>	means the Business Improvement District which operates within the area shown on the plan at Schedule 1, and which is managed and operated by the BID Company;
<b>BID Area</b>	means the area shown on the Plan at Schedule 1;
<b>BID Company Report</b>	means a report for each Financial Year to be prepared by the BID Company which details the following: <ul style="list-style-type: none"> <li>(i) the total income and expenditure of the BID Levy;</li> <li>(ii) other income and expenditure of the BID Company not being the BID Levy;</li> <li>(iii) a statement of acting and pending deficits; and</li> <li>(iv) the various initiatives and schemes upon which the BID Levy has been expended by the BID Company.</li> </ul>
<b>BID Levy</b>	means the charge to be levied and collected within the BID Area pursuant to the Regulations;
<b>BID Levy Payer</b>	means the non-domestic rate payers responsible for paying the BID Levy;
<b>BID Proposal</b>	means the plan voted for by the BID Levy Payers which sets out the objectives of the BID and identified the various projects which will be undertaken using funds raised via the BID Levy;
<b>BID Revenue Account</b>	means the account to be set up in accordance with Regulation 14 and operated in accordance with Schedule 3 of the Regulations;
<b>BID Term</b>	means the period of 5 years from the date of the Ballot Result Date;
<b>the Contributors</b>	means the BID Levy Payers or other Contributors making voluntary donations to the BID Company;
<b>Demand Notice</b>	shall have the same meaning ascribed to it as further set out in paragraphs 3 of Schedule 4 of the Regulations;
<b>Enforcement Notice</b>	means a notice to be served on the Council as specified in Clause 7 of this Agreement;

<b>The Financial Year</b>	means the financial year for the BID Company which runs from 1 <sup>st</sup> January to 31 <sup>st</sup> December in each year;
<b>Liability Order</b>	means an order obtained from the Magistrates' Court;
<b>the Monitoring Group</b>	means the group to be set up to monitor the collection and enforcement of the BID Levy, such group to consist of representation from the BID Company and from the Legal, Revenues and Benefits, and Finance Departments of the Council;
<b>Reminder Notice</b>	means the notice to be served pursuant to Clause 7 of this Agreement.

## 1. LEGISLATION

This Agreement is made pursuant to Part IV of the Local Government Act 2003, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011, the Business Improvement Districts (England) (Regulations) 2004 (**Regulations**) and all other enabling powers.

## 2. COMMENCEMENT

*This Agreement shall not take effect until the Ballot Result Date and in any event shall determine and cease to be of any further effect in the event that:*

- a. The BID Company fails to secure approval of the BID Proposals, renewal proposals or alteration Proposals in a re-ballot;
- b. The Secretary of State declares void a BID re-ballot;
- c. The Council exercises its veto and there is no successful appeal against the veto;
- d. the BID Term expires save where the BID Company secures approval of renewal proposals in a renewal ballot or alteration proposals in an alteration ballot or proposals in a re-ballot, in which event this Agreement shall continue until the expiry of the BID Term set out in the renewal proposals, alteration proposals or the proposals set out in the re-ballot provided, in relation to renewal proposals and alteration proposals that the Council consents to such continuation; and/or
- e. The Council exercises its discretion to terminate the BID arrangements in exercise of the powers under Regulation 18 of the Regulations

## 3. SETTING THE BID LEVY

As soon as possible upon the Ballot Result Date the Council shall:

- a. Calculate the BID Levy for each BID Levy Payer in accordance with the BID Levy rules; and
- b. Confirm in writing to the BID Company the BID Levy payable by each BID Levy Payer.

#### **4. THE BID REVENUE ACCOUNT**

As soon as is reasonably practicable following the Ballot Result Date the Council shall keep a BID Revenue Account in accordance with regulations and accounting codes of practice in force at the time and provide written confirmation to the BID Company of the same.

As soon as reasonably practicable following the Ballot Result Date, the BID Company shall provide the Council with details of its bank account into which the BID Levy shall be transferred from the BID Revenue Account and any other details which the Council may reasonably require.

The Council will pay to the BID Company on account for services provided in administering the BID arrangements on behalf of the Council a sum equal to the monies collected in the quarter and properly credited to the BID Revenue Account net of cost of collection and refunds, such payment to be made within 10 working days of the quarter end.

On an annual basis, the Council will pay to the BID Company or receive from it the balance of monies, having taken account of the quarterly on account payments and balance on the BID Revenue Account at the year end. The final payment will be made within 30 days following the year end.

All sums will be subject to Value Added Tax (**VAT**) where applicable under VAT legislation and regulations in force at the time.

The BID Company and the Council as appropriate will issue VAT receipts, where applicable under VAT legislation and regulations in force at the time, for monies received within seven working days of receipt of such monies.

#### **5. COLLECTING THE BID LEVY**

As soon as reasonably practicable following the Ballot Result Date, the Council shall confirm in writing to the BID Company the anticipated date of the despatch of Demand Notices for the initial chargeable period and the anticipated single instalment payment date.

The Council shall serve a Demand Notice on each BID Levy Payer and thereafter shall continue to calculate the BID Levy and serve a Demand Notice throughout the BID Term.

The Council shall maintain a list of those BID Levy Payers who have paid the BID Levy and those BID Levy Payers who have not paid the BID Levy and shall make the list available to the BID Company upon its reasonable request.

The Council shall serve a Demand Notice or amended Demand Notice on a BID Levy Payer as soon as reasonably practicable after the Council receives notice of a change that affects liability for the BID Levy.

The Council shall use all reasonable endeavours to collect the BID Levy throughout the BID Term.

**6. PROCEDURES AVAILABLE TO THE COUNCIL FOR ENFORCING PAYMENT OF THE BID LEVY**

Procedures for the enforcement and recovery of the BID Levy will be in line with the enforcement procedure for National Non-Domestic Rates and the Council shall comply with these enforcement procedures (where appropriate) in enforcing payment of the BID Levy against BID Levy Payers.

**7. ENFORCEMENT MECHANISMS IN THE EVENT THAT THE COUNCIL FAILS TO ENFORCE COLLECTION OF THE BID LEVY**

In the event that the Council fails to enforce payment of the BID Levy pursuant to Clause 8, the BID Company shall be entitled to serve an Enforcement Notice on the Council requesting that:

- a. The Council serve a Reminder Notice; or
- b. In the event that the Council has already served a Reminder Notice that the Council applies for a Liability Order and the Council shall thereafter provide written confirmation of the action it shall take to comply with the Enforcement Notice.
- c. If the Council fails to provide written confirmation of the action it is taking in relation to the Enforcement Notice within 21 days of the issue of the Enforcement Notice, the BID Company shall be entitled to serve an Appeal Notice on the Chief Finance and Section 151 Officer of the Council and such notice shall:
  - i. Detail the sum unpaid;
  - ii. Confirm that the Council has failed to use the enforcement mechanisms available to it under this Agreement to recover the sum unpaid; and;
  - iii. Include written notice requesting that a meeting of the Monitoring Group take place in order to achieve a solution and/or agree a strategy to recover the sum unpaid, such meeting to take place no later than 28 days from the date of the Appeal Notice.

**8. ACCOUNTING PROCEDURES AND MONITORING**

Within 21 working days of the end of the quarter and every quarter thereafter (for the duration of BID Term) the Council shall provide the BID Company with:

- a. *The amount of the BID Levy for each BID Levy Payer;*
- b. *The amount of the BID Levy collected for each BID Levy payer;*
- c. *Details of BID Levy Payers who have not paid the BID Levy;*
- d. *Details of Reminder Notices issued;*
- e. *Details of Liability Orders made or applied for;*
- f. *Details of agreement made, if any, between the Council and BID Levy Payers where it has*

*been agreed that payment of a Demand Notice can be made over a period of three quarters or more from the date of such Demand Notice.*

Within one quarter from the Ballot Result Date the parties shall agree the dates when there will be meetings of the Monitoring Group and there will be at least two such meetings in each Financial Year (throughout the duration of the BID Term) and on all other occasions further meetings of the Monitoring Group shall be arranged by the service of written notice by either party.

At each meeting the Monitoring Group shall only:

- a. Review the effectiveness of the collection and enforcement of the BID Levy; and
- b. If required by either party, review and assess information provided by the parties.

Within three months after the end of each Financial Year (for the duration of the BID Term), the Council shall provide an Annual Report to the BID Company.

Within one month from the date of receipt of the Annual Report in each financial year (for the duration of the BID Term), the BID Company shall provide a BID Company Report to the Council.

The BID Revenue Account will be subject to the normal internal and external audit arrangements of the Council. The Council will make available to the BID Company and its appointed auditors such information as is requested by the BID Company and its appointed auditors to which they are entitled under legislation

## **9. CONFIDENTIALITY**

Both the Council and the BID Company shall keep confidential and not 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 Contributors or about other third parties which it shall have obtained or received as a result of operating the BID and this obligation shall survive the termination or lapse of the BID arrangements.

## **10. FREEDOM OF INFORMATION**

- a. In recognition of the Council's legal duties which may require the release of information under the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIR Regulations**), and notwithstanding anything to the contrary contained or implied in this Agreement, if the Council receives a request for information under the FOIA and/or the EIR Regulations the following provisions of this clause shall apply.
- b. The Council shall be entitled to disclose all information and documentation as necessary to respond to that request, including any matters relating to or arising out of or under this Agreement;
- c. In relation to information and documentation which may be classified as Exempt Information (as defined in the FOIA), the Council shall use its reasonable endeavours to consult with the BID Company as soon as reasonably practicable and shall not:
  - i. Confirm/deny that the information in question is held by the Council; or
  - ii. disclose the information requestedto the extent that in the Council's opinion that exemption is or may be applicable in the circumstances.

- d. The BID Company shall assist the Council as necessary to comply with its obligations under the FOIA or the EIR Regulations (including any assistance required in obtaining information the subject of the request) and shall respond to any request for assistance at its own cost promptly and in any event within ten days of receipt of any request.

## **11. ANTI-CORRUPTION**

The Council reserves the right to cancel this Agreement and to recover from the BID Company the amount of any loss resulting in such cancellation if the BID Company shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Agreement or any other contract or agreement with the Council or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement or to any other contract or agreement with the Council or if the like acts shall have been done by any person employed by it or acting on its behalf shall have committed any offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

## **12. NOTICES**

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 upon seven days' written notice.

A notice may be served by:

- a. Delivery to the Chief Finance and Section 151 Officer at the address of the Council specified above; or
- b. Delivery to the BID Chairman at the address of the BID Company specified above;
- c. Registered or recorded delivery post to such addresses;
- d. Electronic communication (provided that it is in legible form and is capable of being used for subsequent reference) to such addresses and provided that the recipient acknowledges written receipt otherwise it will not be deemed to have been properly served.

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.

## **13. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

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

## **14. ASSIGNMENT**

The parties shall not assign or transfer or purport to assign or transfer any of their rights or obligations under this Agreement.

## **15. DISPUTES**



- (a) If any dispute arises out of this Agreement the parties will attempt to settle it by negotiation between the Council's nominated representative and the Chairman of the BID Company or his/her nominated representative.
- (b) In the event that such negotiation fails then the parties will attempt to settle the dispute by mediation in accordance with the Centre for Dispute Resolution's Model Mediation Procedure.
- (c) In the event that the mediation process referred to fails then the parties shall jointly nominate an independent third party to settle the dispute. Should either party fail to jointly nominate such a person within 14 days of being so requested by the other then the party not in default shall be entitled to request such an independent third party to be nominated by the President of the Chartered Institute of Arbitrators (or such other authorised person who may be entitled to act).
- (d) The independent third party so nominated under sub-clause (c) above shall act as an expert and not as an arbitrator and shall adopt such procedures as shall appear to him or her to be fair and reasonable in the circumstances and whose decision (in the absence of manifest error) shall be binding upon the Company and the Council.

## **16. REVIEW OF THIS AGREEMENT**

The terms of this Agreement shall be reviewed by the parties annually on the anniversary of this document, such review to include consideration of the service levels to be provided for the following year.

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

Executed as a deed by affixing the )  
Common Seal of **THE DISTRICT** )  
**COUNCIL OF TANDRIDGE** in the )  
presence of: )

.....  
Authorised Signatory

.....  
Witness

Executed as a deed by **THE OXTED** )  
**BID COMPANY LTD.** acting by a )  
director and a director or its )  
Secretary )

.....  
Director

.....  
Director/Secretary

## SCHEDULE 1

### BID Area

The BID Area is shown within the line edged red in the plan below.



