

Dated

2019

OPERATING AGREEMENT

THE COUNCIL OF THE CITY OF SUNDERLAND

- and -

SUNDERLAND BID LIMITED

THIS DEED is made the

day of

2019

BETWEEN:

(1) The Council of the City of Sunderland of Civic Centre, Burdon Road, Sunderland SR2 7DN ("the **Council**");

and

(2) Sunderland BID Limited, a private company limited by guarantee in England with company number 8802680, whose registered office is at 27/28 Frederick Street, Chester Road, Sunderland, Tyne & Wear, SR1 1LZ ("the **Company**").

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 and the funding of the BID Arrangements.
- B. The 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 maintained between the Council and the Company for the BID Term.
- D. The purpose of this Agreement is to:
- 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 transfer of the BID Levy;
 - 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;
- confirm the arrangements to be maintained for liaison and co-operation between the Council and the Company.

E. As at the Commencement Date, a total of 430 properties or Hereditaments are estimated to be liable for payment of the BID Levy.

IT IS AGREED AS FOLLOWS:

1. Definitions

1.1 The following definitions and rules of interpretation shall apply in this agreement:

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| “Bad Debts” | - means any unpaid Bid Levy in respect of which the Council has sought recovery in accordance with clause 7.3 of this Agreement, but which subsequently remains unpaid. |
| “Baseline Services” | - means the services as set out in Schedule 1 to this Agreement. |
| “BID” | - means Business Improvement District. |
| “BID Area” | - means the area within which the BID operates, as shown edged red on the plan attached at Schedule 2 to this Agreement. |
| “BID Arrangements” | - has the meaning given by S41 of the Local Government Act 2003. |
| “BID Company Report” | - means the financial statements prepared by the Company for each Financial Year which |

details:

- (a) total income and expenditure analysed into main categories arising from the BID Levy;
- (b) other income and expenditure of the Company;
- (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 Company.

"BID Levy" - means the charge levied and collected within the BID pursuant to the Regulations.

"BID Levy Payer" - means the non-domestic ratepayers liable for paying the BID Levy.

"BID Levy Rules" - Means the rules and procedures as set out at clause 5 of this Agreement.

"BID Monitoring Group" means the group formed pursuant to clause 8.1 of this Agreement whose members consist of representatives from the Council and the Company.

"BID Proposals" - means the plan voted for by the BID Levy Payers in a ballot which sets out the objectives of the BID, and identifies the various projects which will be undertaken using funds raised by the BID Levy and/or Contributions to achieve those objectives.

"BID Revenue Account" - means the account kept in accordance with

	regulation 14 of the Regulations.
"BID Term"	- means 1 st April 2019 to 31 st March 2024.
"Commencement Date"	- means 1 st April 2019.
"Contributors"	- means the BID Levy Payers and any other payers of contributions or funds made available to the Company which do not form part of the BID Levy.
"Demand Notice"	- has the meaning given in the Regulations.
"Enforcement Expenses"	- means the costs which are incurred by the Council in obtaining Liability Orders, issuing summons and all associated administrative expenses which may be incurred in recovering any unpaid Bid Levy.
"Financial Year"	- means 1 April to 31 March.
"Hereditament"	- has the meaning given in the Regulations.
"Levy Rate"	- means the relevant % rate used to calculate the amount of BID Levy payable, as detailed in clause 5 of this Agreement.
"Liability Order"	- has the meaning given in the Regulations.
"Regulations"	- means the Business Improvement Districts (England) Regulations 2004 and amendment, extension or re-enactment (including any subordinate legislation) to such regulations from time to time"

"Section 151 Officer" - is the Council's executive director of corporate services, appointed under Section 151 of the Local Government Act 1972.

- 1.2 The headings appearing in this Agreement are for ease of reference only, and shall not affect the construction of this Agreement.
- 1.3 Where reference is made to an appendix, clause, part, plan or schedule such reference (unless the context requires otherwise) is a reference to an appendix, clause, part, plan, or schedule in or attached to this Agreement.
- 1.4 References to the Council include any successors to its functions as local authority.
- 1.5 References to statutes, byelaws regulations orders or delegated legislation shall include any such instrument re-enacting or made pursuant to the same power.

2. Statutory Authorities

This Agreement is made pursuant to section 2 and Part IV of the Local Government Act 2003, Section 111 of the Local Government Act 1972, the Business Improvement Districts (England) Regulations 2004 and all other relevant enabling powers.

3. Commencement

- 3.1. This Agreement shall take effect on the Commencement Date and except where expressly stated, shall determine and cease to be of any further effect on the earlier of:
 - (i) the expiry of the BID Term; or
 - (ii) either party exercising its right to terminate the BID Arrangements pursuant to regulation 18 of the Regulations.

4. Setting the BID Levy

As soon as possible after the Commencement Date, the Council shall calculate the BID Levy in accordance with the Regulations and the BID Levy Rules.

5. BID Levy Rules

5.1 The BID Levy due to be paid in respect of each eligible property or Hereditament is to be calculated on the following basis:

$$\text{BID Levy} = A \times B$$

where: A = the relevant Levy Rate as set out in this clause 5.

B = the relevant rateable value of the relevant property or Hereditament

5.2 Save for those BID Levy Payers located within the Bridges Shopping Centre, the applicable Levy Rate in respect of each property or Hereditament is as follows:

Financial Year	Levy Rate (%)
2019/2020	1.69
2020/2021	1.74
2021/2022	1.79
2022/2023	1.84
2023/2024	1.90

5.3 Subject to clause 5.12:

- (i) the BID Levy shall be calculated by reference to the rateable value of the relevant property or Hereditament on 1 April 2019;
- (ii) only properties or Hereditaments with a rateable value of £15,000 or more on 1 April 2019 will be liable for payment of the BID Levy; and
- (iii) any subsequent changes in the rateable value of property or hereditament arising from a general revaluation of business rates carried out by the Valuation Office Agency during the BID Term (including but not limited to the proposed 2021 revaluation) shall be disregarded for the purpose of determining liability for the BID Levy.

- 5.4 If, during the BID Term, a challenge to the Valuation Office Agency results in the rateable value of an individual property or Hereditament being reduced ,then:
- (i) from the first day of the next Financial Year of the BID Term, the BID Levy payable in respect of the property or Hereditament shall be calculated by reference to its revised rateable value;
 - (ii) in the event that the rateable value of the individual property or Hereditament is reduced to below £15,000, then the property or Hereditament in question will be exempt from the BID Levy, with the exemption to apply from the first day of the next Financial Year of the BID Term; and
 - (iii) the owners/occupiers of the property or Hereditament in question shall not be entitled to any refund or reduction of the BID Levy which they have either paid (or owe) in respect of the current Financial Year, or any earlier part of the BID Term.
- 5.5 For the avoidance of doubt, any listed buildings, whether occupied or unoccupied, will not be exempted from the BID Levy solely by virtue of their listed status.
- 5.6 The Bid Levy will be charged in full, in advance, at the start of each Financial Year during the BID Term.
- 5.7 The Council shall not be required to issue any refund of the BID Levy, save where the amount of BID Levy collected in relation to an individual property or Hereditament has been demonstrably incorrectly calculated, charged or paid.
- 5.8 The owners of any untenanted properties or Hereditaments will be liable for payment of the BID Levy.
- 5.9 The persons entitled to possession of any vacant or unoccupied properties or Hereditaments will be liable for payment of the BID Levy.
- 5.10 BID Levy Payers located within the Bridges Shopping Centre (who are already subject to an additional service charge for management, marketing, security

and cleaning services) will pay a reduced BID Levy, to be calculated using the following Levy Rates:

Financial Year	Levy Rate (%)
2019/2020	1.41
2020/2021	1.45
2021/2022	1.49
2022/2023	1.53
2023/2024	1.58

5.11 The owners of the Bridges Shopping Centre shall be required to pay an additional funding contribution towards the BID (“the **Bridges Funding Contribution**”), with such contribution to be calculated using the following rates:

Financial Year	Rate (%)
2019/2020	0.28
2020/2021	0.29
2021/2022	0.30
2022/2023	0.31
2023/2024	0.32

and subject to clause 5.14, the additional funding contribution shall be calculated by multiplying the applicable % rate set out above with the aggregate rateable value, as at 1 April 2019, of all relevant properties or Hereditaments of the BID Levy Payers located at the Bridges Shopping Centre.

5.12 If, during the BID Term, the rateable value of a property or Hereditament is increased as a result of:

- (i) any change of use of a property or Hereditament;
- (ii) any newly developed or constructed property or Hereditament; or
- (iii) any other physical change to a property or Hereditament, including but not limited to construction, merger, subdivision, extension and refurbishment of a property or Hereditament,

then the relevant owner/occupier shall be liable to pay the BID Levy based on the revised rateable value of the property or Hereditament in question, with effect from the first day of the next Financial Year of the BID Term.

5.13 The maximum amount of BID Levy payable in each Financial Year in respect of each eligible property or Hereditament shall be as follows:

Financial Year	Maximum BID Levy
2019/2020	£18,000.00
2020/2021	£18,540.00
2021/2022	£19,096.20
2022/2023	£19,669.09
2023/2024	£20,259.16

6. The BID Revenue Account

6.1 During the BID Term, in accordance with the Regulations, the Council shall make the following payments to the Company:

- (i) 1st April - 40% of invoiced debt less any collection and Enforcement Expenses incurred by the Council;
- (ii) 1st July - 20% of invoiced debt less any sums adjusted or written off and any collection and Enforcement Expenses incurred by the Council;
- (iii) 1st October - 20% of invoiced debt less any sums adjusted or written off and any collection and Enforcement Expenses incurred by the Council;
- (iv) 1st January - any further balance of BID Levy or the Bridges Funding Contribution collected and not yet paid or accounted for, less any sums adjusted or written off and any collection and Enforcement Expenses incurred by the Council.

- (v) 31st March - Any further balance of BID Levy or the Bridges Funding Contribution collected and not yet paid less any sums adjusted or written off and any collection, recovery and Enforcement Expenses incurred by the Council.

6.2 In the event that:

- (i) a BID Levy Payer is entitled to a repayment of a BID Levy pursuant to paragraph 8(4) of schedule 4 of the Regulations; and
- (iii) the Council has paid the relevant BID Levy to the Company including all of the contingency relating to that BID Levy

then the Council shall be entitled to repayment from the Company of an amount equivalent of that sum refundable to the BID Levy Payer, and the Company shall pay such sum to the Council by way of a set-off or reduction in the quarterly payments due from the Council pursuant to clause 6.1 of this Agreement.

6.3 In circumstances where any repayment of monies to the Council pursuant to clause 6.2 of this Agreement falls due after payment by the Council of the last quarterly payment within the BID Term, the Company shall reimburse the Council on demand in respect of any amounts still due to the Council.

6.4 The Company shall issue to the Council a VAT invoice for the payment of the BID Levy and the Bridges Funding Contribution income upon advice from the Council of the amount due.

6.5 The Company may only spend the BID Levy in accordance with the BID Proposals and the powers set out in its articles of association, except that if the BID is varied, then from the date the variation takes effect the Company may spend the BID Levy in accordance with the varied BID Proposals.

7. Collecting the BID Levy

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

7.2 The Council shall serve Demand Notices on the BID Levy Payers throughout the BID Term.

- 7.3 The Council shall seek to recover any unpaid BID Levy by sending a Demand Notice and up to two reminder letters to the relevant BID Levy Payer.
- 7.4 Thereafter, the Council shall notify the Company of any Bad Debts and the Company may within thirty-one days of such notification, request that the Council undertake further recovery action, and in such circumstances the Enforcement Expenses of the Council shall be payable by the Company.
- 7.5 In the event that the Company does not request the Council to undertake any further recovery action in accordance with clause 7.4 of this Agreement, the Company shall write off the debt and notify the Council accordingly.

8. Accounting Procedures and Monitoring

- 8.1 Within one calendar month of the Commencement Date the parties shall set up the BID Monitoring Group. This group shall include representatives from the Council's Business Investment Team, and the Head of Business Operations of the Company.
- 8.2 Within one calendar month of the Commencement Date the parties shall agree the dates for monthly meetings of the BID Monitoring Group throughout the duration of the BID Term. The meetings shall be known as "BID Monitoring Meetings.
- 8.3 At each BID Monitoring Meeting, the BID Monitoring Group shall:
- (i) review the effectiveness of the collection and enforcement of the BID Levy; and note any amounts to be written off;
 - (ii) If required by either party, review and assess information provided by the parties pursuant to clauses 8.4, 8.5 and 8.6 below and make recommendations (consistent with the Regulations) as to the terms of this Agreement and the BID Proposals.
- 8.4 During the BID Term, the Council shall provide the Company with a statement detailing the amount of BID Levy collected, the collection percentage, a list of unpaid accounts and any written off amounts, with such statements to be provided to the Company within 10 working days of the end of each quarter

(30th June, 30th September, 31st December and 31st March) of each Financial Year of the BID Term.

- 8.5 Upon the expiry of the 6th month of the BID Term, and every 6 months thereafter for the duration of the BID Term, the Company shall provide the Council (in respect of those 6-month periods) with:
- (i) the amount received by the Company from Contributors and BID Levy Payers for the 6-month period and to date;
 - (ii) the total expenditure of the Company for the 6-month period and to date;
 - (iii) an analysis of income and expenditure for the 6-month period;
 - (iv) an overall summary and progress report of the main schemes and their achievements compared to the objectives of the Company for the 6-month period and to date.
- 8.6 Each year for the duration of the BID Term, the Company shall provide the BID Company Report to the Council with such report to be provided within 1 month of the Company having filed its annual accounts with Companies House.
- 8.7 The BID Head of Business Operations will meet with a senior representative of the Council's Business Investment Team on a monthly basis for the duration of the BID Term, in order to maintain an operational relationship between the two organisations.
- 8.8 The Company will share all of its board papers and minutes with a senior representative of the Council's Business Investment Team, or such other officer as the Council may nominate, who will also be entitled to act as observer at meetings of the BID Board. Any such board papers and minutes shall be provided to the Council's nominated officer at the same time they are provided to the Company's board members.
- 8.9 The Company shall send suitable senior representatives to attend a meeting of the Council's Overview and Scrutiny Committee on an annual basis, in order to discuss the work of the Company and the progress of delivering the BID Proposals.
- 8.10 The Council may from time to time throughout the duration of this agreement undertake an audit of the Company's financial and governance arrangements,

and the Company shall comply with all reasonable requests for information and assist the Council in respect of any such audit. The Company shall procure that where required, its accountant assists and co-operates with any audit carried out by the Council.

9. Confidentiality

Subject to clause 10 of this Agreement, both the Council and the Company shall keep confidential and shall not (without the prior written consent of the other party) divulge to any person any information (whether written or oral) concerning each other's business affairs, nor any information which has been exchanged about the BID Levy Payers, the Contributors or any other third parties obtained or received as a result of operating the BID. This obligation shall survive the termination of this Agreement.

10. Freedom of Information

- 10.1 The Company acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and shall assist and co-operate with the Council (at the Company's expense) to the extent required to enable the Council to comply with its disclosure requirements.
- 10.2 The Council shall notify the Company of any requests for information received pursuant to the FOIA, and the Company shall be entitled to make representations to the Council regarding disclosure of such information within 10 days of being notified of the request.
- 10.3 The Council may determine in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of FOIA, and for the avoidance of doubt where the Council has received a request under the FOIA and it has notified the Company of the request, in no event shall the Company respond directly to a request for information, unless expressly authorised to do so by the Council.
- 10.4 The Company acknowledges that the Council may ultimately be obliged under the FOIA to disclose information that the Company considers to be confidential. Where the Company has made representations to the effect that information should remain confidential, and the Council determines that such information

should nevertheless be disclosed, the Council will give 5 clear days' notice to the Company of its intention to disclose the information.

10.5 The obligations set out in this clause 10 shall survive the termination of this Agreement.

11. Notices

11.1 Any notice or other written communication in relation to this Agreement to be served or given to any party to this Agreement 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 in advance by that party.

11.2 A notice may be served by;

- (i) Hand delivery to the Section 151 Officer at the address of the Council specified above;
- (ii) Hand delivery to the Company directors at the address of the Company specified above;
- (iii) Registered or recorded delivery post to such addresses; or
- (iv) Electronic communication (provided that both parties have expressly agreed and notified each other of e-mail address to which notice may be served, and that any notice is in legible form and is capable of being used for subsequent reference. Any party wishing to rely on proof of having served a notice in accordance with this clause 11.2(iv) shall be required to provide a confirmed read receipt.

11.3 Any notice served shall be deemed to have been validly served or given at the time of its delivery or transmission, save in respect of delivery in accordance with clause 11.2 (iii), which shall be deemed to have been validly served or given on the second working day after posting.

12. Indemnity

The Company shall indemnify the Council in full, and keep it indemnified against:

- (i) all demands and claims made against the Council;

- (ii) all losses, costs, expenses or liabilities incurred by the Council, in respect of personal injury, or the death of any person; and
- (iii) any loss of or damage to any tangible property (including property belonging to the Council),

in all circumstances caused by or arising from any negligence or breach of this Agreement by the Company, or their employees, agents or sub-contractors.

13. Consents

The Company shall ensure that they obtain all necessary legal consents as required to deliver the BID Proposals.

14. Miscellaneous

- 14.1. For the avoidance of doubt, where any part of this Agreement is incompatible with the Regulations, the law, or any other regulations which the Secretary of State may issue pursuant to Part IV of the Local Government Act 2003, then such part of the Agreement shall be struck out, and the rest of this Agreement shall remain in force.
- 14.2. For the avoidance of doubt the provisions of this Agreement shall not have any effect until this document has been dated and signed by the parties.

15. 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 byelaws statutory instruments orders and regulations in the exercise of its functions as a local authority.

16. Contracts (Rights of Third Parties)

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

17. Dispute Resolution

- 17.1. The Parties shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with this Agreement within 14 days of either party notifying the other of the dispute. Such efforts shall

involve the escalation of the dispute to the Chief Executive (or equivalent) of each party.

- 17.2. If the dispute cannot be resolved by the parties pursuant to 17.1, the dispute shall be referred to mediation pursuant to the procedure set out in clause 17.4 below, unless the Council considers that the dispute is not suitable for resolution by mediation or the Company does not agree to mediation.
- 17.3. The performance of any services shall not be suspended, ceased or be delayed by the occurrence of a dispute, and the Company and their employees, agents, suppliers and sub-contractors shall comply fully with the requirements of this Agreement at all times.
- 17.4. The procedure for mediation (and consequential provisions relating to mediation) is as follows:
- (i) A neutral adviser or mediator ("the **Mediator**") shall be chosen by agreement between the parties, or if they are unable to agree upon a Mediator within 14 days after a request by one party to the other (or if the Mediator agreed upon is unable or unwilling to act), then either party shall within 14 days apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator.
 - (ii) The parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for mediation. If considered appropriate, the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
 - (iii) Unless otherwise agreed, and subject to clause 10 of this Agreement, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence, and without prejudice to the rights of the parties in any future proceedings.
 - (iv) If the parties reach agreement on the resolution of the dispute, that agreement shall be set out in writing, and shall be binding on the parties once it has been signed by their duly authorised representatives.
 - (v) Failing agreement, either of the parties may invite the Mediator to provide a non-binding opinion in writing. Such an opinion shall be provided on a without prejudice basis, and shall not be used in evidence in any

proceedings relating to this Agreement without the prior written consent of both parties.

- 17.5. If the parties fail to reach agreement within 60 days of the Mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.
- 17.6. Nothing in this dispute resolution procedure shall prevent the parties from seeking an interim order from any court of competent jurisdiction, restraining the other party from doing any act, or compelling the other party to do any act.

18. Governing law and jurisdiction

- 18.1. 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 the law of England and Wales.
- 18.2. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement, its subject matter, or formation (including non-contractual disputes or claims).

The seal of **THE COUNCIL OF**

THE CITY OF SUNDERLAND

was affixed in the presence of:-

Authorised Signatory

Executed as Deed on behalf of **SUNDERLAND BID LIMITED**

by:

Director

Director

SCHEDULE 1



Sunderland Business Improvement District (BID)

Summary of Baseline Services to BID Area 2017/18

In accordance with regulation 4 and schedule 1 of the Regulations, the Baseline Services as provided by the Council in the Financial Year 2017/18 are as set out in the following document.

There is no obligation for the Council to maintain this level of Baseline Services for the duration of the BID Term, and in order to improve the City while maintaining services within resources, the Council may from time to time make changes to these services, or arrange for the same or similar services to be provided by the Council or other service providers.

The Council is committed to making decisions based on an appreciation of the views of the City's business community and will consult the BID on significant proposals for changes in Baseline Services, however all such changes must remain at the Council's sole discretion.

SCHEDULE 2

BID AREA