

**Dated**

**2018**

**YORK BID COMPANY LIMITED (1)**

**AND**

**THE COUNCIL OF THE CITY OF YORK (2)**

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

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**THIS AGREEMENT** is made the day of 23<sup>rd</sup> March 2018

**BETWEEN:**

- (1) **THE YORK BID COMPANY LIMITED** (No.09937609) whose registered office is situated at The Red House, 1, Duncombe Place, York, YO1 7DT ("the BID Company") and,
- (2) **THE COUNCIL OF THE CITY OF YORK** of West Offices, Station Rise York ("the Council")

**BACKGROUND**

- (A) The BID Company has been established as a joint undertaking of the business sector and Council representatives to act together as a company limited by guarantee to deliver the objectives of the BID Proposals (Schedule 2) and to improve the economic, social and environmental well-being of the BID Area (as set out in Schedule 3).
- (B) The Council currently provides or procures Baseline Services (as set out in Schedule 1), and Statutory Services within the BID Area
- (C) It is the intention of the Parties that, the Council will use all reasonable endeavours to continue to provide these Services, subject to the provisions relating to the terms of this Agreement.
- (D) The Council currently funds the provision of these Services from within its normal budget and will use all reasonable endeavours to continue doing so for the whole of the Term. The Council may consider contributing further additional funds to the BID Company for the purpose of achieving the objectives of the BID Arrangements on an ad hoc basis to be agreed by the parties.
- (E) On 30 November 2015, the BID Proposals were approved in a ballot of non-domestic ratepayers in the BID Area.
- (F) The parties to this Agreement have been operating and conducting themselves in accordance with this Agreement from the Effective Date

## 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 the Council 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 as outlined in the BID prospectus.

This Agreement sets out the framework within which these shared beliefs 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 Champions Group in the BID prospectus and Business Plan.

**BID Arrangements** means the detailed proposals for the BID as set out in the BID Proposals prepared by the BID Champions Group submitted to, and approved by a ballot of non-domestic ratepayers in the BID Area

**BID Company** Means the Company Limited by guarantee that will be formed after a successful BID ballot in order to facilitate the BID arrangements.

**BID Levy** means the levy paid by non-domestic ratepayers under the BID Arrangements

**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 Proposals** 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 in the BID area.

**Council** means The Council of the City of Council

**Data Protection Officer** means the officer of the Council holding the post of Data Protection Officer, or such other person as the Council may elect

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

**Effective Date** means 1<sup>st</sup> April 2016 or the agreed “live” date whichever is the later of the two but no later than the Operating Date in the Operating Agreement

**Environmental Information Regulations (EIR)** means the Environmental Information Regulations 2004 and any related provisions

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

**Information** has the meaning given under section 84 of the FOIA

**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

**Funding** means the provision of funding by the Council to the BID Company under the Funding Document or such other financial contributions as shall be made at the Council’s absolute discretion, with no obligation to provide any such additional funding

**Parties** means the Council and the BID Company and “Party” shall mean either the Council or the BID Company depending on the context

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

**Operating Agreement** means the Operating Agreement contained in Schedule 4

**Request for Information** means any request for information as defined and required by the EIR and / or FOIA

**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

**Subject Access Request** means a request made under section 7 DPA

**Support Services** means the services set out in Schedule 4 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 or extended in accordance with the provisions of this Agreement

**Variation Procedure** means the variation procedure set out in Clause 10

**Working Day** means any day on which the Council’s principal offices at West Offices are open to the public for business.

## **2. AGREEMENT**

2.1 This Agreement sets out the framework by which the Parties propose to deliver the BID Arrangements

## **3. TERM**

3.1 This Agreement shall be deemed to have commenced on the Effective Date and unless otherwise terminated or extended in accordance with the provisions of this Agreement shall continue for the Term

- 3.2 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

#### **4. SERVICES**

##### **4.1 Baseline Services**

4.1.1 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.

4.1.2 The Baseline Services shall be reviewed annually by the Council as part of its budget process. In the event of any change to the services provided the Council will give the BID Company 3 months prior written notice.

##### **4.2 The Statutory Services**

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

4.2.2 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.

4.2.3 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.

##### **4.3 New Services**

4.3.1 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

4.3.2 New Services shall be agreed using the Variation Procedure and upon commencement shall be subject to all terms of this Agreement



## **5. START UP LOAN REPAYMENT**

- 5.1 The York BID Board successfully applied for a loan administered by British BIDS on behalf of DCLG. The group received £30,000 to set up the York BID.
- 5.2 City of York Council have received the loan on behalf of the BID Champion Group and will draw down the funds as and when requested by the BID Champion Group.
- 5.3 Following a successful yes vote, this loan is required to be paid back to British BIDs.
- 5.4 British BIDs have calculated that the amount to be paid on the event of a 'yes' vote is the full £30,000 plus £495 in interest which is a total repayment of £30,495. The full amount is due to British BIDs in instalments on 1<sup>st</sup> June 2016 and 1<sup>st</sup> June 2017.
- 5.5 It is the responsibility of the York BID Company to repay the money due to British BIDs.
- 5.6 On the event that the York BID Company fail to pay the money owed to British BIDs, Council shall deduct the amount owed from the BID collection levy. This amount shall then be transferred by the Council to British BIDs. The Council shall be entitled to charge an administration fee for this process.

## **6. ADVANCE PAYMENT**

- 6.1 The Council will advance the sum of £50,000 to the BID Company on or before 28th February 2016, which will be repaid by the BID Company by 1<sup>st</sup> July 2016.
- 6.2 In the event that the said sum, or any part thereof, is not repaid by the said due date, the Council shall be entitled to deduct the amount owing from the Levy monies it receives.

## **7. CONSENT SITES**

- 7.1 The use of the Consent Sites for any BID activity must be approved by City of York Council.
- 7.2 The York BID will be subject to the normal application process for the usage of public realm.

7.3 City of York Council retains the right to utilise the Consent Sites as they see fit for commercial promotions and events.

## **8. PERSONNEL**

8.1 Each Party is responsible for its own personnel, employees, agents, servants, and subcontractors when on the other Party's premises.

8.2 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.

## **9. FINANCIAL REGULATIONS AND PROCUREMENT**

9.1 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

9.2 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.

9.3 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.

## **10. INSURANCE**

10.1 Each Party shall be responsible for taking out and maintaining for the duration of this Agreement all insurances reasonably required as a consequence of their activities under this Agreement or otherwise as directed and required by the Council's insurance manager.

10.2 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. In

addition, adequate office cover for contents such as computers etc will also be required.

- 10.3 Both Parties shall provide proof of adequate insurance cover to the other Party upon request.

## **11. ASSIGNMENT AND SUB-CONTRACTING**

- 11.1 Except as permitted by Clause 9.2, 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.
- 11.2 The Council may assign this Agreement to any of its strategic partners working for the time being on behalf of the Council

## **12. LIMITATION OF LIABILITY**

- 12.1 Nothing in this Agreement shall exclude or restrict a Party's liability for death or personal injury caused by its negligence.
- 12.2 Neither Party shall be liable to the other Party by reason of termination or expiry of this Agreement however caused for the payment of any compensation, reimbursement or damages of any nature including, without limitation any expenditures, investments, leases or other commitments relating to the business or goodwill of either Party.
- 12.3 The BID Company will indemnify and keep indemnified the Council from and against any and all loss damage or liability (whether criminal or civil) suffered and legal fees and costs incurred by the Council arising out of any act neglect or default of the BID Company 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 Council shall use its reasonable endeavours to mitigate any such loss and damage or liability.

## **13. VARIATIONS**

- 13.1 Either Party wishing to make a change to the Services, the Funding or any term of this Agreement, must send a written "change request" to the other party.

The change request shall include the following minimum information

- (a) a description of the change
  - (b) the reason for the change
  - (c) as far as can be identified, any anticipated impact of the change, for example on Service improvements or cost
  - (d) as far as can be identified, any saving on current costs, additional or redundant resources which will arise as a consequence of the change, and how it is proposed to deal with them
  - (e) the timescale within which the change is intended to be implemented
- 13.2 Neither Party shall without good reason unreasonably withhold consent or delay approval of the proposed change except that the Council shall be entitled, at its absolute discretion, to refuse any suggested increase in the level of the Funding it makes to the BID Company
- 13.3 Within 30 days of receiving a written request for change (or such later date as may be agreed between the parties), the Party who receives the request shall respond in writing to the other setting out whether the request is approved or not, and in particular will state:
- (a) the reason(s) why the request is approved or rejected
  - (b) any proposals and reasons for amending the description of the change
  - (c) any comments on the proposed impact of the change
  - (d) any comments on the change as it may result in additional or redundant resources arising as a consequence
  - (e) any comments upon the proposed timetable for implementation of the change
- 13.4 The Parties will record in writing any agreed change to the Services and/or the Funding, any terms of this Agreement or any New Services including the commencement, duration, cost and funding of such change and for any New Service, the terms of payment, if appropriate. The Parties will exchange such a written record within 10 Working Days of agreeing to the change. The change shall not be implemented until this written record is exchanged by the Parties. The written record will then be held with, and be incorporated and subject to all terms of this Agreement.
- 13.5 Where the Parties are unable to agree any proposed change, whether in total or as to any element of it, the disagreement may be submitted to the disagreement procedure set out in Clause 14.

## **14. DISAGREEMENTS**

- 14.1 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).
- 14.2 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 Chairman of the Board of the BID Company and a Group Director or Director of the Council nominated by the Council in an attempt to resolve the disagreement at Board / Director level.
- 14.3 In the event that Board members of the BID Company and Director of the Council are unable to resolve any such disagreement either Party may request that the dispute be referred to Arbitration in accordance with Clause 15.

## **15. ARBITRATION**

- 15.1 In the event that any dispute has not been resolved at an informal or Board / Director level either Party may notify the other that they wish it to be referred to arbitration under the terms of and subject to the Arbitration Act 1996 by a single arbitrator to be agreed by the Parties or alternatively one nominated by the Chartered Institute of Arbitrators.
- 15.2 Both Parties agree that the decision of any arbitrator shall not be final or legally binding as to either the substance of the dispute or the costs of the arbitration process and for the avoidance of doubt any reference or appeal to a court of law are hereby expressly permitted

## **16. TERMINATION**

- 16.1 Either Party may terminate this Agreement upon giving three (3) months notice in writing if the other Party:
- 16.1.1 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

16.1.2 In the case that the Council has persistently failed to meet the service level targets set out in the baseline agreement and operating agreement (and for the purposes of this Clause “persistently” means failing to meet or exceed the service level targets in not less than any 3 out of 5 consecutive service level reviews.)

16.1.3 In the case that the BID Company persistently fails to meet the BID Performance Indicators (and for the purposes of this Clause “persistently” means failing to achieve the BID Performance Indicators in not less than 3 out of 5 consecutive areas.)

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

16.2.1 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

16.2.2 The BID Company by its employees or anyone acting on their behalf 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

16.3 Without prejudice to the Council’s rights in this Agreement, if the BID Company suffers any of the events in Clauses 16.1.1, 16.1.3 or 16.2.1 the Council may, upon 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.

- 16.4 Termination of this Agreement shall not affect any existing rights and liabilities of the Parties, which have accrued as at the date of termination.

## **17. WAIVER**

- 17.1 The failure of any Party to require the performance of any of the terms of this Agreement or the waiver by any Party of any default under this Agreement shall not prevent a subsequent enforcement of such term nor be deemed a waiver of any subsequent breach.

## **18. EXIT STRATEGY**

- 18.1 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.
- 18.2 Either Party may give notice to the other either, (a) when serving notice under Clause 13 (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.
- 18.3 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 14.

## **19. ENTIRE AGREEMENT**

- 19.1 This Agreement including all schedules constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all proposals, negotiations, understandings, conversations, discussions or agreements between or amongst the Parties relating to the subject matter of this Agreement (except in the case of any fraudulent misrepresentations).
- 19.2 For the avoidance of doubt in the event of conflict between the provisions of this Agreement and the provisions of the Operating Agreement in Schedule 4, the provisions of the Operating Agreement will prevail.

## **20. SEVERABILITY**

- 20.1 Each of the provisions contained in this Agreement shall be construed as independent of every other such provision, so that if any provision of this Agreement shall be determined by any court or competent authority to be illegal, invalid and/or unenforceable then such determination shall not affect any other provision of this Agreement, all of which other provisions shall remain in full force and effect.
- 20.2 If any provision of this Agreement shall be determined to be illegal, invalid and/or unenforceable, but would be legal, valid and enforceable if amended, the Parties shall consult together in good faith and agree the scope and extent of any modification or amendment necessary to render provision legal, valid and enforceable and so as to give effect as far as possible to the intention of the Parties as recorded in this Agreement. If this cannot be achieved, either through failure to reach agreement or because (in the reasonable opinion of either Party) the effect of such a declaration is to defeat the original intention of the Parties in a material respect, then either Party may terminate this Agreement by giving 30 days notice of termination to the other Party.

## **21. THIRD PARTY RIGHTS**

- 21.1 Nothing in this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a Party to this Agreement and the provisions and effect of the Contracts (Rights of Third Parties) Act 1999 is hereby excluded from this Agreement.

## **22. CONFIDENTIAL INFORMATION**

- 22.1 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:
- 22.1.1 Is or becomes public knowledge otherwise than through the default on the part of either Party or their directors, officers, agents or employees;
- 22.1.2 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



- 22.1.3 Is already lawfully in the possession of either Party prior to its disclosure.
  - 22.1.4 Is made with the express prior written consent of the other Party; or
  - 22.1.5 Is made pursuant to a statutory duty or requirement of the Information Commissioner pursuant to the FOIA or the EIR.
- 22.2 Each Party agrees that this Clause 22 shall survive the termination of this Agreement, however arising.

## **23. DATA PROTECTION**

- 23.1 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
- 23.2 The BID Company acknowledges that the Council is the Data Controller for the purposes of the DPA
- 23.3 Notwithstanding the general obligation in clause 23.1, 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.
- 23.4 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.
- 23.5 Where a third party request for personal information is received from governmental or public bodies including but not limited to the Police or HM Revenue and Customs, the BID Company shall:
- (1) transfer the request to the Data Protection Officer who will register the request and undertake the necessary checks to ensure the authenticity of the requester
  - (2) transfer the information requested to the Data Protection Officer within 3 Working Days of receiving the request
- 23.6 The provisions of this clause shall apply during the continuance of this Agreement and shall continue after its expiry or termination

## **24. FREEDOM OF INFORMATION**

- 24.1 The BID Company acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Council (at the BID Company's expense) to enable the Council to comply with these Information disclosure requirements
- 24.2 The BID Company shall and shall procure that its sub-contractors shall:
- (1) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
  - (2) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five (5) Working 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 Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 24.3 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information or any other Information:

- (1) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;
- (2) is to be disclosed in response to a Request for Information, and
- (3) in no event shall the BID Company respond directly to a Request for Information unless expressly authorised to do so by the Council.

24.4 The BID Company acknowledges that the Council may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA, be obliged under the FOIA, or the EIR to disclose Information:

- (1) without consulting with the Contractor, or
- (2) following consultation with the Contractor and having taken its views into account.

24.5 The BID Company shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

## **25. WHISTLE BLOWING**

25.1 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.

## **26. COUNTERPARTS**

26.1 This Agreement may be entered into in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any Party may enter into this Agreement by signing any such counterpart.

## **27. AUTHORITY TO SIGN**

27.1 Each Party warrants that it has the full authority to perform its obligations under this Agreement and that the person executing this Agreement has the authority to bind it.

## **28. NOTICES**

28.1 All notices to be given by either Party to the other under this Agreement will be in writing and will be sent to the addresses below:

**The Council:**

Title: The Chief Executive  
Address: City of York Council  
West Offices  
Station Rise  
York

**The Company:**

Title: Andrew Lowson  
  
Address: The Red House  
1 Duncombe Place  
York  
YO1 7ED

28.2 Notices may be delivered personally or by pre-paid letter. Notices will be deemed to have been received:

- by hand delivery - at the time of delivery
- by post - 2 Working Days after the date of mailing

**29. GOVERNING LAW**

29.1 This Agreement shall be governed by and construed in accordance with English Law.

## SCHEDULE 1

### Baseline Agreements 2016-2021\*

- Due to Local Government cost pressures, costs are reviewed on an annual basis as per national BID guidance.
- The baselines here are for 2016/17, and were updated from the original 15/16 baseline agreement in October 2016 on the appointment of Future Cleaning Services as the BID street cleansing contractor.
- The baseline will be subject to annual review and agreement by the BID and CYC following approval of the Council's budget

The purpose of this baseline agreement is to set out, for the avoidance of doubt, the **STANDARD SERVICES** provided by the Council within the BID area and to set the benchmark criteria against which the provisions of additional services will be assessed.

Any services provided by the BID levy are complementary to these baseline services.

<b>Service</b>	Street Cleansing
<b>Head of Service</b>	Russell Stone, Head of Operations
<b>Telephone</b>	(01904) 553108
<b>Email</b>	<a href="mailto:russell.stone@york.gov.uk">russell.stone@york.gov.uk</a>

<b>Baseline activity</b>	Street cleansing of the City Centre
<b>Service specification</b>	<p>Tasks undertaken include manual and mechanical cleansing, emptying of litter bins, litter picking and collection, cleaning of the Market areas. City Centre cleansing begins at 05.00, targeting hotspots then covering other areas. This continues throughout the day, focussing on high traffic vicinities, such as entertainments areas.</p> <p>Maps of the areas to be cleaned are appended here. As these have been taken directly from the City of York Council Open Data Platform, these are set out by Ward area, rather than following the exact geography of the BID area. The wards covered are Guildhall, Fishergate and Micklegate, and the two sets of maps cover mechanical and manual cleaning.</p> <p>It should be noted that as of 1<sup>st</sup> August 2016, the Council amended the cleansing schedules. For purposes of clarity, the pre- and post-change maps are both included.</p>
<b>Statutory or discretionary?</b>	Statutory
<b>Timing of activity</b>	City Centre street cleansing is carried out within the foot streets, seven days a week throughout the year.

	<p><b>April to September</b>  <i>Monday to Friday – 05.00 to 20.00:</i>  The number of operatives on duty fluctuates throughout the day with a minimum number of three operatives and a maximum number of eight.  <i>Saturday and Sunday – 05.00 to 19.00:</i>  The number of operatives on duty fluctuates throughout the day with a minimum number of four operatives and a maximum number of five.  <b>October to March</b>  These will change slightly between October and March due to weather and daylight hours.  The mechanical sweeper/scrubber does not operate during this period.  Additional duties include co-ordinating/ overseeing the Spring Clean initiatives across the City</p>			
<b>Staffing and equipment</b>	1X Mechanical sweeper 1 X Mechanical sweeper/scrubber 1 x Pedestrian controlled sweeper Various hand held manual equipment 1 x Supervisor 12 x City Centre Cleansing Operatives			
<b>Key performance measures</b>	<b>Measure</b>	<b>2014/15</b>	<b>2015/16</b>	<b>2016/17 (at Q2)</b>
	• CSPEC5 - Calls to Service – Cleansing	1729	1834	963
	• CSPEC6 - CYC Calls to Service – Graffiti	158	271	195
	• SLA01 - 2 Hour Cleansing cases completed within SLA	78%	77%	74%
	• SLA02 - 2 Hour Cleansing cases completed within SLA - (YTD)			73%
	• SLA03 - Standard Cleansing cases completed within SLA	90%	88%	88%
	• SLA04 - Standard Cleansing cases completed within SLA - (YTD)			88%
<b>Non-compliance procedure</b>	We are not a contractor			
<b>Existing value of contract/ service</b>	No contract, but cost of service provision is approximately £250,000			
<b>Boundary area</b>	As per agreed BID boundary			
<b>Proposed additional BID activity</b>	Not yet known			
<b>Cost of additional BID activity</b>	Not yet known			

<b>Service</b>	Highways Maintenance
<b>Head of Service</b>	Bill Manby/ Steve Wragg/Mike Durkin (Interim arrangement)
<b>Telephone</b>	(01904) 553233
<b>Email</b>	<a href="mailto:bill.manby@york.gov.uk">bill.manby@york.gov.uk</a>

<b>Baseline activity</b>	Maintenance and repair of the highways network whilst minimising disruption on the transport network and protecting infrastructure			
<b>Service specification</b>	<p>The Highways Act 1980 places a duty on the Highway Authority to maintain the public highway network in a condition that is safe for users.</p> <p>The public highway network includes all roads, footpaths and verges which the highways authority has responsibility for.</p> <p>We regularly inspect our network in accordance with the current Code of Practice for Highway Maintenance. The frequency of inspections depends upon the importance of the road and footpath in question. A busy main road and footpath may be inspected monthly while a minor estate road or rural lane may only be inspected annually.</p> <p>The New Roads and Streetworks Act 1991 also places a duty on us to coordinate and regulate work carried out in the public highway by any organisation. An organisation includes contractors working for gas, waste, electricity and telecom companies as well as private works on behalf of individuals.</p>			
<b>Statutory or discretionary?</b>	Statutory			
<b>Timing of activity</b>	This is an 07:30 - 17:30 activity with an out of normal working hours emergency response service			
<b>Staffing and equipment</b>	<ul style="list-style-type: none"> <li>• 19 FTE</li> <li>• 2 Supervisors</li> <li>• (7) 18 ton hook lift vehicles</li> <li>• (1) 32 ton hook lift vehicle</li> <li>• (1) 7.5 ton hook lift vehicle</li> <li>• (1) 7.5 TM Vehicle</li> </ul>			
<b>Key performance measures</b>	<b>Measure</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>
	• CES03 - % of road and pathway network that are grade 3 (poor condition) – roadways	15%	16%	Not collected
	• CES04 - % of road and pathway network that are grade 3 (poor condition) –	5%	4%	Not collected

	pathways			
	<ul style="list-style-type: none"> <li>CES05 - % of Principal roads where maintenance should be considered (NI 168)</li> </ul>	2%	2%	2%
	<ul style="list-style-type: none"> <li>CES06 - % of Non-principal classified roads where maintenance should be considered (NI 169)</li> </ul>	5%	4%	7%
	<ul style="list-style-type: none"> <li>CES07 - % of Unclassified roads where maintenance should be considered (old BV224b)</li> </ul>	11%	10%	10%
	Survey not carried out during 2014/15. Annual data collection, so information ready after the end of the 2015/16 financial year. Taken from the City of York Council 'Get York Moving' scorecard – June 2015			
<b>Non-compliance procedure</b>	Basic maintenance is supported with two 180 excavators with planer attachments			
<b>Existing value of contract/ service</b>	£100,000			
<b>Boundary area</b>	As per agreed BID boundary			
<b>Proposed additional BID activity</b>	Not yet known			
<b>Cost of additional BID activity</b>	Not yet known			



<b>Service</b>	Streetlighting
<b>Head of Service</b>	Derek Grant, Street Lighting Delivery Manager
<b>Telephone</b>	(01904) 553090
<b>Email</b>	<a href="mailto:derek.grant@york.gov.uk">derek.grant@york.gov.uk</a>

<b>Baseline activity</b>	Provision/ maintenance of street lighting within the City of York council boundary, including all street lights, illuminated signs, bollards, and floodlighting
<b>Service specification</b>	<p>The street lighting service is unique within York, as both installation &amp; maintenance of all street lighting assets are undertaken by City of York council's internal street lighting team.</p> <ul style="list-style-type: none"> <li>• Citywide maintenance of street lighting and illuminated signs, floodlighting and bollards.</li> <li>• Cyclical maintenance on routine lamp changes/maintenance.</li> <li>• Any alterations to existing installations are undertaken including column relocations and conversion of lights to newer more energy efficient technologies.</li> <li>• New lighting installations for Council highway schemes.</li> <li>• A design and install service for developers is offered by city of York councils street lighting team as regards any new developments/works including section 38/278 schemes.</li> <li>• A Street lighting design service is available through City of York council if developers require design only.</li> <li>• All electrical testing is undertaken by the internal street lighting team.</li> <li>• Structural testing on steel/concrete lighting columns is undertaken on a rolling annual program by a CYC preferred specialist contractor.</li> <li>• Emergency call out facility is in place to cover any out of hours dangerous situations arising.</li> </ul>
<b>Statutory or discretionary?</b>	Under Section 97 of the Highways Act 1980, it is not mandatory for authorities to install street lighting, but once installed on adopted highways there is a responsibility for maintenance.
<b>Timing of activity</b>	The maintenance service operates 7 days a week, 24 hours a day, and includes a Freephone emergency telephone number for fault reporting and an email reporting capability linked to the City of York Council website
<b>Staffing and equipment</b>	<p><b>Staff</b> 6 X FTE 1 X PT: including Delivery Manager, Technical Officer, Street Lighting Technician (PT), 2 x Electricians, 2 x Street Lighting Operatives.</p> <p><b>Equipment:</b> 2 x 14.5 metre MEWPS (cherry pickers) 1 x SL rig 18 Tonne.</p>

<b>Key performance measures</b>	<ul style="list-style-type: none"> <li>• CES02 - Reduction in CO2 through investing in more efficient street lighting. Annual outturn from 2012/13 - -13.64% (This is happening through an ongoing capital programme)</li> </ul>
<b>Non-compliance procedure</b>	<p>COYC strive to adhere to their SLA requirements as regards fault repairs 4 days and emergency call outs 2 hours.</p> <p>Electrical testing is undertaken to BS7671 and completed on all street lights within a minimum six year period as per requirements.</p> <p>Structural testing on concrete/steel lighting columns is undertaken by a COYC preferred specialist contractor on an ongoing annual program.</p>
<b>Existing value of contract/ service</b>	Budget annually circa £800k.
<b>Boundary area</b>	As per agreed BID boundary
<b>Proposed additional BID activity</b>	Not yet known
<b>Cost of additional BID activity</b>	Not yet known

<b>Service</b>	Make it York
<b>Head of Service</b>	Steve Brown
<b>Telephone</b>	(01904) 55 4464
<b>Email</b>	steve.brown@makeityork.com

<b>Baseline activity</b>	Delivery of business support, events programming of the City Centre, market management and marketing of the City.	
<b>Service specification</b>	<p>Make it York has been commissioned by City of York Council to develop a sustainable model for delivery of its services; therefore service specification and standards are subject to change dependant on commercial viability.</p> <p>Nevertheless, as part of the agreement, City of York Council, through Make it York will:</p> <ul style="list-style-type: none"> <li>• Ensure there is a single front door for businesses to access support and advise</li> <li>• Seek to attract new businesses to the city, providing a clear and effective process for responding to inward investment enquiries in the city</li> <li>• Work with the visitor economy sector and city centre businesses to ensure a quality 'product' is offered to visitors and residents</li> <li>• Ensure there are clear and effective ways for visitors and residents to find out about the city</li> <li>• To manage the Shambles Market to create a vibrant hub and programme that is an attraction in its own right, and promote this to key customer groups</li> <li>• To support and develop high quality city centre festivals, activities and events</li> <li>• To support and develop new events and initiatives, that deliver ambitious, high quality artistic or cultural programmes, attracting significant audiences [as commercially viable]</li> <li>• To facilitate and promote a coherent image / brand for York nationally and internationally.</li> </ul>	
<b>Statutory or discretionary?</b>	Discretionary	
<b>Timing of activity</b>	Year round service	
<b>Staffing and equipment</b>	<p><b>Staff:</b> Variable, dependant on funding</p> <p><b>Equipment:</b> No specialist equipment. Office based.</p>	
<b>Key baseline performance measures</b>	<b>Measure</b>	<b>2014/15</b>
	GVA per employee in visitor economy sector	£17,571 (this is projected to rise in line with national economy)

<b>(relevant to bid)</b>	GVA per employee in retail sector	£25,507 (this is projected to rise in line with national economy)
	GVA per employee in arts and recreation sector	£15,310 (this is projected to rise in line with national economy)
	Visitor satisfaction	4.6 / 5 or greater overall visitor satisfaction score, with 77% or more visitors likely to return and 99% or more likely to recommend
	Visitors accessing promotion material about York	Visit York had 1.5m unique visitor to its website in 2014, and 490k visitors through VIC footfall.
<b>Non-compliance procedure</b>	City of York council may terminate the contract if performance measures are not being met.	
<b>Existing value of contract/ service</b>	City of York Council's contribution in year 1 of the service level agreement is a net £544k; however this is due to be reviewed each year through the Council's budget process, with the aim of moving towards sustainability of Make it York with reduced Council contribution.	
<b>Boundary area</b>	York Local Authority area but also working with businesses in the wider hinterland which benefit York residents	
<b>Proposed additional BID activity</b>	Not yet known	
<b>Cost of additional BID activity</b>	Not yet known	

N.B.

This baseline agreement is based on the Service Level Agreement between City of York Council and Make it York. This will be reviewed in line with any future changes to this Service Level Agreement

<b>Service</b>	<b>Parking Services</b>
<b>Head of Service</b>	Graham Titchener
<b>Telephone</b>	(01904) 551495
<b>Email</b>	<a href="mailto:graham.titchener@york.gov.uk">graham.titchener@york.gov.uk</a>

<b>Baseline activity</b>	Parking Services for York
<b>Service specification</b>	<p>Parking enforcement</p> <p>Maintenance of all Council car parks</p> <p>Parking permits (N.B. Parking Services is the lead department and supervises the administration of this, which is based within Customer Services and Business Support)</p> <p>Penalty Charge Notice (PCN) appeals and representations</p> <p>Abandoned vehicles</p>
<b>Statutory or discretionary?</b>	Statutory
<b>Timing of activity</b>	<p>All non-enforcement work is within standard office hours</p> <p>All enforcement work is done year round with two shift patterns per day within the main hours of 06:30 and 21:30, seven days per week</p> <p>In addition to this we have one technician who works within normal office hours, but who is on also on call outside normal office hours.</p>
<b>Staffing and equipment</b>	<p>X 19 Civil Enforcement Officers and Assistant Supervisors</p> <p>X 1 Parking Enforcement Supervisor</p> <p>X 1 Representation Officer</p> <p>X 5 Parking Business Support staff supervised by Representation Officer but based within Business support</p> <p>X 1 Technician</p> <p>X 2 vans</p> <p>X 2 motorbikes</p> <p>All supported by various hardware systems, mainly for the enforcement service</p>
<b>Non-compliance procedure</b>	Council Policy, and under the Traffic Management Act 2004, led by the Department for Transport.
<b>Existing value of contract/ service</b>	No contract, but cost of service provision is approximately £550,000 (having to manage a £43K cut)
<b>Boundary area</b>	As per agreed BID boundary but also covers the whole of the York boundary.
<b>Proposed additional</b>	Not yet known

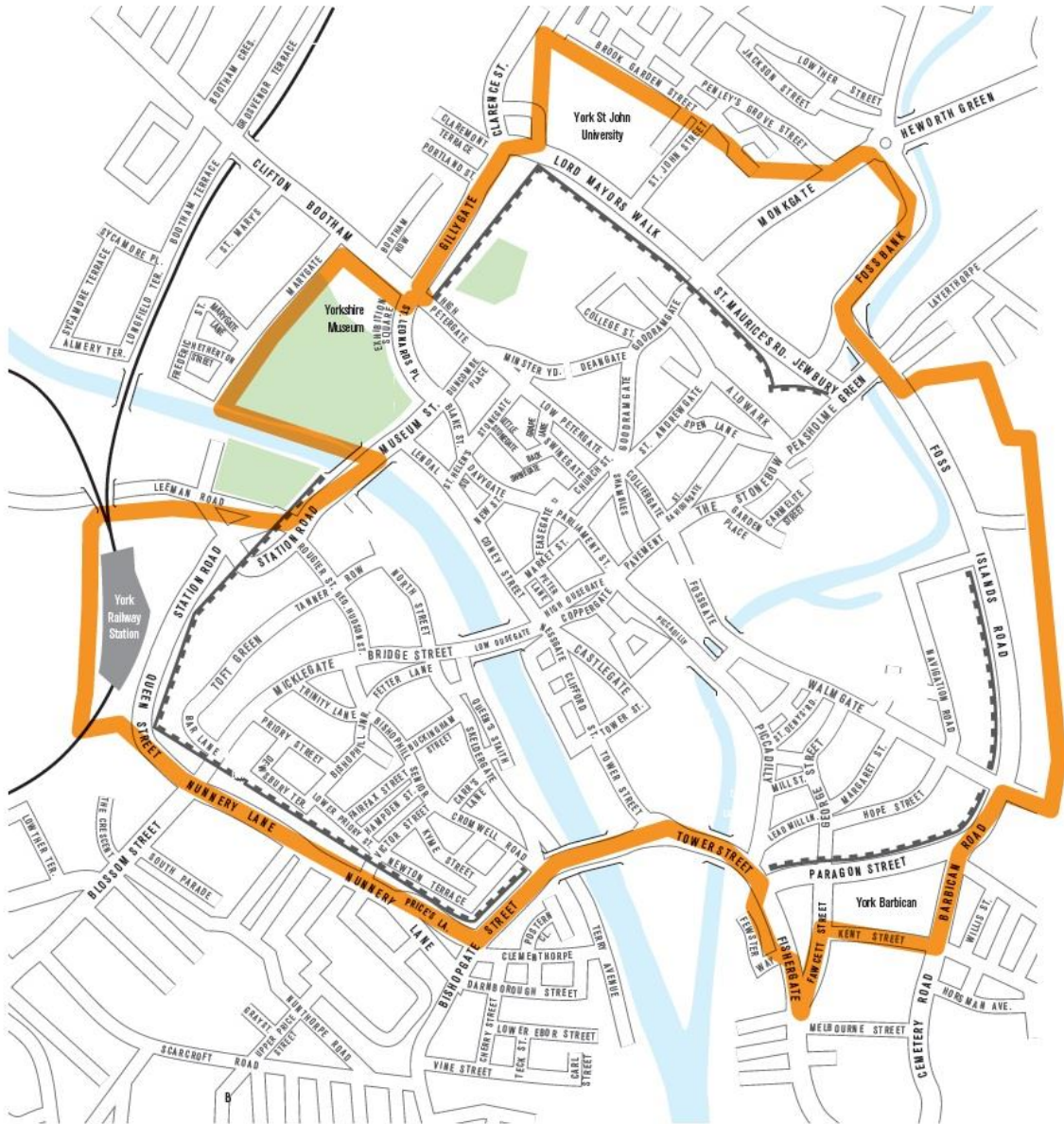
<b>BID activity</b>	
<b>Cost of additional BID activity</b>	Not yet known

**SCHEDULE 2**  
**BID PROPOSALS**

See BID Prospectus @ [www.theyorkbid.com](http://www.theyorkbid.com)

# SCHEDULE 3

## BID AREA





Aldwark	Foss Bank	Merchantgate	Smales Street
Back Swinegate	Foss Islands Road	Micklegate	South Esplanade
Barbican Road	Fossgate	Mill Street	Spurriergate
Barleycorn Yard	Franklins Yard	Minster Gates	St Denys Road
Bishopgate Street	Garden Place	Minster Yard	St Helens Square
Bishophill Senior	George Hudson Street	Monk Bar	St Johns Street
Blake Street	George Street	Monkgate	St Leonards Place
Blossom Street (part)	Gillygate	Monkgate Cloisters	St Martins Lane
Bootham (part)	Goodramgate	Museum Street	St Mary's Square
Bridge Street	Granary Court	Navigation Road	St Maurices Road
Buckingham Street	Grape Lane	Nessgate	St Sampsons Square
Castlegate	Hampden Street	New Street	St Saviourgate
Chapter House Street	High Ousegate	Newgate	St Saviours Place
Church Lane	High Petergate	North Street	Station Avenue
Church Street	Hope Street	Nunnery Lane	Station Rise
Clifford Street	Hudson House	Ogleforth	Station Road
Cloisters Walk	Hungate	Palmer Lane	Stonegate
Coffee Yard	Hunt Court	Paragon Street	Stonegate Court
College Street	Jewbury	Parliament Street	Stonegate Walk
Colliergate	Jubbergate	Patrick Pool	Swinegate
Coney Street	Kent Street	Pavement	Swinegate Court East
Coppergate	King Street	Paver Lane	Swinegate Court West
Coppergate Walk	Kings Court	Peasholme Green	Tanner Row
Cromwell Road	Kings Square	Peckitt Street	Tanners Moat
Cumberland Street	Kings Staith	Percys Lane	Terry Avenue
Davygate	Lady Pecketts Yard	Peter Lane	The Stonebow
Deangate	Lendal	Piccadilly	Toft Green
Duncombe Place	Lendal Bridge	Precentors Court	Tower Street
Dundas Street	Little Shambles	Priory Street	Trinity Lane
Exhibition Square	Little Stonegate	Prospect Terrace	Victor Street
Falkland Street	Lord Mayors Walk	Queen Street	Walmgate
Fawcett Street	Low Ousegate	Railway Station	Wellington Row
Feasegate	Low Petergate	Rougier Street	Whip-Ma-Whop-Ma
Fetter Lane	Lower Friargate	Shambles	Gate
Fewster Way	Mansfield Street	Silver Street	
Finkle Street	Margaret Street	Skeldergate	
Fishergate	Market Street	Skeldergate Bridge	

**SCHEDULE 4**  
**OPERATING AGREEMENT**

*Operating Agreement*

**Dated 2018**

**Between**

- (1) **THE COUNCIL OF THE CITY OF YORK** (the Council) of West Offices, Station Rise, York, YO1 6GA; and
- (2) **THE YORK BID COMPANY LIMITED** (No.09937609) whose registered office is situated at The Red House, 1 Duncombe Place, York, YO1 7ED (the BID 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 within the BID Area and the funding of the BID Arrangements
- B The BID Company is responsible for the operation of the BID and for using the BID Levy for the purposes of achieving the objectives and aspirations set out in the BID prospectus
- 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 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
- 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:**

Definitions

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

the total amount of BID Levy collected during the relevant Financial Year;

the total amount of interest earned on any part of the BID Levy whilst held in the BID Revenue Account;

details of the success rate for the collection of the BID Levy;

the Council's proposals (if any) to help improve its efficiency in the collection and enforcement of the BID Levy; and

details of those BID Levy Payers who have paid the BID Levy and those who have not paid the BID Levy.

the Council's proposals for bad or doubtful debts

**the Appeal Notice** means a notice to be served by the BID Company in accordance with clause 8.2

**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 BID** means the Business Improvement District which operates within the area set out in *Schedule 3*) and which is managed and operated by the BID Company

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

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

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

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

**the BID Company's Termination Notice** means a notice to be served by the BID Company on the Council pursuant to clause 10

**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 the Schedule 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 [interest] bearing 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 5years from 1<sup>st</sup> April 2016 to 1st April 2021

**the Council's Termination Notice** means the notice to be served by the Council on the BID Company pursuant to Clause 10

**the Contributors** means the BID Levy Payers or other Contributors making voluntary contributions to the BID company.

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

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

**the Enforcement Notice** means a notice to be served on the Council as specified in Clause 8

**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, such circumstances to be determined at the discretion of the BID Company following notice by the Council to the BID Company that the BID Levy is outstanding

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

**the Financial Year** means the financial year for the BID Company which runs from April to March

**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 referred to in Clause 9) such group to consist of both Council officers (Head of Customer & Exchequer Services, Business Rates Manager, Income services and Corporate Income Manager) and representatives from the BID Company (Exec Director and representative from BID Finance sub-committee)

**the Operational Date** means the date upon which the BID Arrangements come into force

**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 10 by either the Council or the BID Company which provides the following:-

- (a) confirmation that either party 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 7.1

1. Statutory Authorities

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

2. Commencement

This Agreement is conditional upon and shall not take effect until the Ballot Result Date.

In the event that the BID Arrangements are not voted in by the BID Levy Payers on the Ballot Result Date then this Agreement shall determine and cease to be of any further effect between the parties

If, at the end of the BID Term a renewal ballot is held and is successful then the terms of this Agreement shall continue to be of effect and the BID Term shall thereafter be construed as the new term

3. Setting the BID Levy

Immediately upon the Ballot Result Date the Council shall:-

calculate the BID Levy due from each BID Levy Payer in accordance with the BID Levy Rules; and

confirm in writing to the BID Company the BID Levy payable annually by each BID Levy Payer

4. The BID Revenue Account

The Council shall set up the BID Revenue Account by February 29 2016 and provide written confirmation to the BID Company once this has been carried out together with details of the account number sort code and any other details which the BID Company may specify



By 29 February 2016 the 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 BID Company in accordance with clause 7.8.

4.1 Interest earned on money in the BID Revenue Account shall form part of the BID Levy and be payable to the BID Company

5. Debits from the BID Revenue Account

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

the collection charges

the Enforcement Expenses; or

any deductions which in the Council's opinion are Bad or Doubtful Debts

5.2 The Council's charge for the provision of the Services will be an annual set fee capped at £25,000 (excluding VAT) representing its reasonable and actual administrative costs in providing Services and having effect on the [1 April] of each year for which a BID is in place (provided that the last such payment shall be due on 1 April 2020 in respect of the 2020-21 levy period). Following receipt by the BID Company of a valid VAT invoice showing a breakdown of the costs incurred, the first payment will be due together with VAT thereon on the 1 April 2016, or later by agreement.

5.3 A breakdown of the Council's Annual charge as outlined in Clause 5.2 is annexed at Schedule 2.

5.4 The Council shall recover the Enforcement Expenses from the liable BID levy payer, in accordance with Clause 8.

5.5 The Council shall not be entitled to recover Enforcement Expenses from the BID Company.

## 6 Collecting the BID Levy

- 6.1 Within 14 (fourteen) days of the Ballot Result Date the Council shall confirm in writing to the BID Company the date when the BID Levy shall first be collected.
- 6.2 The Demand notices shall be a separate bill and shall not be combined with the Business Rate bill.
- 6.3 Pursuant to clause 7.1 the Council shall serve the Demand Notices on each BID Levy payer and thereafter shall continue to calculate the BID Levy and serve the Demand Notices throughout the BID Term
- 6.4 The Council shall maintain a list which identifies payment and/or non-payment of the BID Levy and shall make this available to the BID Company upon its reasonable request.
- 6.5 The Council shall liaise with the BID Company in carrying out monthly reviews of each Hereditament within the BID Area and in the event of any change in the occupier or Rateable value of each Hereditament or the merger or division of a Hereditament (or provision of an additional Hereditament) shall:  
  
serve an updated list of BID Levy payers upon the BID Company;
- 6.6 The Council shall collect the BID Levy on the date specified (pursuant to clause 6.1 above) and thereafter on an annual basis and in accordance with the procedure set out in Schedule 4 of the Regulations
- 6.7 The Council shall collect the BID Levy in a manner which is consistent with its usual procedures for the collection of non-domestic rates (save that the BID Levy collection shall be on an annual rather than monthly basis)
- 6.8 Every 28 days thereafter the Council shall inform the BID company of the amount of BID levy monies collected
- 6.9 The BID Company shall raise an invoice, including VAT to the Council every month or less frequently should the BID Company so decide. This invoice to be based on the information outlined in clause 9.2, for the total amount of BID levy monies collected, minus the total of BID levy monies previously invoiced for in the relevant financial year.

## 7 Procedures available to the Council for enforcing payment of the BID Levy

7.1 In the event that the BID Levy is not paid within 28 (twenty eight) working days from the date that it becomes payable then (subject to the Exceptions or as may otherwise be indicated at the BID Company's discretion) the Council shall serve a Reminder Notice on such relevant BID Levy Payer which shall:-

identify the sum payable;

provide a further 14 (fourteen) working days for payment to be made;

confirm that the Council may make an application to the Magistrates Court for a Liability Order to recover the unpaid sum (together with costs).

7.2 If after a further 14 (fourteen) working days from the payment date stated in the Reminder Notice the outstanding sum of the BID Levy has not been paid the Council shall, after receiving the BID Company's written confirmation, make an application to the Magistrates Court for a Liability Order 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)

7.3 Following the issue of a Liability Order the Council and the BID Company shall agree on the method of enforcement

## 8. Enforcement Mechanisms for non-collection of the BID Levy by the Council

8.1 In the event that the Council is not enforcing payment of the BID Levy pursuant to Clause 7 above the BID Company shall serve the Enforcement Notice on the Council requesting that:-

it serve a Reminder Notice; or

it obtains a Liability Order pursuant to Clause 7.2 above

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

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

detail the sum which remains unpaid;

confirm that the Council has failed to use the enforcement mechanisms available to it under this Agreement to recover the sum; and

request a meeting take place between the Chief Executive, relevant officers of the Council and 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

## **9. Accounting Procedures and Monitoring**

9.1 Within 1 (one) month from the Operational Date (or as soon as reasonably practicable thereafter) the Council and BID Company shall form the Monitoring Group

9.2 On a quarterly basis (for the duration of BID Term) the Council shall provide the BID Company with a breakdown of:-

the amount of BID Levy for each individual BID Levy Payer;

the BID Levy collected in relation to each BID Levy Payer;

details (together with the outstanding unpaid sum) of those BID Levy Payers who have not paid the BID Levy during that month;

details of the Reminder Notices issued throughout that period; and

details of any Liability Orders obtained or applied for by the Council;

9.3 Every six months (for the BID Term) the BID Company shall provide the Council with the following details:

the total amount of income received from the Contributors (excluding the BID Levy)

the total expenditure during that 6 month period

9.4 The Monitoring Group shall meet at least once a year and on all other occasions 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 lesser if otherwise agreed or in cases of emergency) and provided further that such meetings can be dispensed with altogether upon the written agreement of both the Council and the BID Company

9.5 At each meeting the Monitoring Group shall

review the effectiveness of the collection and enforcement of the BID Levy; and

if required, review and assess the information provided by the Council and the BID Company pursuant to Clauses 9.2 and 9.3 above and make any recommendations for implementation as may be agreed (and which are permitted by the Regulations and the terms of this Agreement)

9.6 Within 1 (one) month after the date of the end of the Financial Year the Council shall provide the Annual Report to the BID Company

9.7 Within 1 (one) month from the date of receipt of the Annual Report the BID Company shall provide the BID Company Report to the Council

## 10. Termination

10.1 The Council shall not be permitted to terminate the BID Arrangements because:

- (i) there are insufficient finances available to the BID Company to meet its liabilities for the chargeable period for the purposes of the BID Arrangements; or
- (ii) the Council is unable, due to any cause beyond its control to provide the works or services which are secured as part of the BID Arrangements

unless and until it first serves the Public Meeting Notice on the BID Levy Payers and the Council's Termination Notice on the BID Company and within 14 (fourteen) days from the date of service of such notice both parties shall arrange to meet where the purpose of such meeting shall be to agree all or any of the following set out in Clause 10.1 (i) or 10. 1 (ii) (whichever is applicable)

10. 2 Where the BID Termination Notice relates to Clause 10.1(i) both parties shall agree the following:

- (a) the Council is concerned that the BID Company has insufficient finances to meet its liabilities for that period and details of such concerns should be made available to the BID Company;
- (b) alternative means by which the insufficiency of the funds can be remedied; and
- (c) an appropriate time frame to resolve this issue;

10.3 Where the BID Termination Notice relates to clause 10.1(ii) both parties shall agree the following:

the services or works which it is no longer able to provide together with confirmation and details as to why such works or services cannot be provided;

a review by both parties as to whether such works or services are of material importance to the BID so that termination of the BID Arrangements is the only option;

alternative means of procuring the said services or works by third parties or increased financial funding from the BID Company;

alternative replacement services or works which will be acceptable to the BID Company;  
an appropriate time frame to resolve this issue

10.4 Notwithstanding clauses 10.1, 10.2 and 10.3 above, the Council shall cause a Public Meeting to be held prior to the termination of the BID arrangements

10.5 In the event that the parties cannot reach agreement in relation to the above and subject to consideration of representations made by any BID Levy Payer at the Public Meeting the Council shall be permitted to terminate the BID Arrangements provided that notice by the Council to terminate the BID shall be provided to the BID Company no less than 28 days prior to termination taking place

10.6 Upon termination of the BID Arrangements the Council shall review whether there is a credit in the BID Revenue Account and in the event that there are sufficient funds in the BID Revenue Account 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) to:

calculate the amount to be refunded to each BID Levy payer;

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

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.

10.7 Upon termination of the BID the Council shall notify the BID Levy Payers of such termination in accordance with regulation 18(6) of the Regulations together with confirmation as to whether any part of the BID Levy is to be repaid to BID Levy payers in accordance with clause 11.6

10.8 The BID Company shall not be permitted to terminate the BID Arrangements where:

the works or services under the BID Arrangements are no longer required; or

the BID Company is unable, due to any cause beyond its control to provide works and services which are necessary for the BID to continue

unless and until it has served the BID Company's Termination Notice on the Council and thereafter carried out a proper consultation with all relevant representatives of the BID Area as considered appropriate by the Council.

10.9 Upon termination of the BID Arrangements the 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 11.6

### 11. Confidentiality

Both the Council and the BID Company agree to keep confidential and not to divulge to any person without the prior written consent of the other party 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. This obligation shall survive the termination or lapse of the BID Arrangements



## 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

A Notice may be served by

delivery to the Deputy Chief Executive at the Council's address specified above; or

delivery to the Company Secretary at the BID Company's address specified above

registered or recorded delivery post

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. Miscellaneous

13.1 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

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

13.3 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

13.4 Where reference is made to a Clause, Part, or Recital such reference (unless the context requires otherwise) is a reference to a clause, part, plan, or recital attached to this Agreement

13.5 References to the Council include any successors to its functions as local authority

13.6 References to statutes, bye laws, regulations, orders, delegated legislation shall include any such instrument re-enacting or made pursuant to the same power

### 14. 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 County Council and Council under all statutes bye-laws statutory instruments orders and regulations in the exercise of its functions as a local authority

### 15. Contracts (Rights Of Third Parties)

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

Signed by )  
duly authorised for and )  
on behalf of )  
**THE COUNCIL OF THE CITY OF YORK** )



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Signed by )  
duly authorised for and )  
on behalf of )  
**NAME OF BID COMPANY** )



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## **Schedule 1 – The BID Levy Rules**

This will set out the manner in which the BID Levy will be calculated – i.e. what was approved as the BID Arrangements

### **Part 1 – The BID Levy Rules**

Part 4 of the Local Government Act 2003 and the Regulations state that the payment of the BID Levy is mandatory by all BID Levy Payers in accordance with these BID Levy Rules once the BID proposal put forward by BID4York Ltd was accepted by a ballot of those BID Levy Payers.

City of York Council is the billing authority under the legislation, and is the body with the power to impose, administer, collect, enforce and recover the BID Levy. The BID Levy collected is the property of the Council.

### **The BID Levy**

The BID Levy will be applied to all relevant non-domestic ratepayers whose property has a rateable value of over £12,500 and which falls within the BID Area. The billing period will run from 1<sup>st</sup> April each year to 31<sup>st</sup> March of the following year and will run for five billing periods from 1<sup>st</sup> April 2016. The BID Levy for each billing period must be paid in a single instalment shown on the front of the BID Levy Notice.

### **BID Levy Calculation**

The BID Levy for each BID Levy Payer is calculated by multiplying the BID Rateable Value of each relevant hereditament by the BID Levy Rate of 1% (0.01).

### **The BID Rateable Value**

For the purposes of calculating the BID Levy, the BID Rateable Value will be the rateable value shown in the 2010 rating list, used as the basis to calculate the BID levy from the period 1st April 2016 to 31<sup>st</sup> March 2021.

The Council shall not give or agree to give any refunds to any Levy payer either fully, or in part, for any billing period whether current or past, in respect of Levy amounts paid should there be a retrospective change in Valuation Office valuation of any hereditament or if the Council are informed by a Levy payer of any possible change. Any retrospective change will be recorded and applied for the next relevant billing cycle 1st April to 31st March.

All new hereditaments entering the Rating List after 1st April 2016 will be levied at 1% of the most recent revaluation list from the Valuations Office. This may supersede the Rating List 2010.

### **The BID Levy Rate**

The BID Levy Rate is set at 1% of the BID Rateable Value from 1st April 2016 and will remain at this level until 31<sup>st</sup> March 2021.

If a change in the levy amount is required during the life of the current BID period, this will be put to a ballot of all businesses in the BID area, in accordance with *The Business Improvement Districts (England) Regulations 2004*.

In the event of a second BID term being sought, any revision to the Levy Percentage Rate will be reviewed by the Board and the new percentage rate set out clearly prior to a ballot of BID area businesses taking place.

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

Liability for the BID Levy will fall upon the Non-Domestic Ratepayer for the property for the full and complete financial year i.e. from 1<sup>st</sup> April of that year to 31<sup>st</sup> March of the following year.

If the property is empty at the Demand Date (1<sup>st</sup> April), liability for the BID Levy will fall upon the person or organisation entitled to possession of the property in accordance with Non-Domestic Rating regulations.

There shall be no exemption period from the BID Levy for an empty hereditament.

### **Change of Non-Domestic Ratepayer**

There is a single billing date for the BID Levy in all circumstances.

No refunds will be made either fully, or in part, in respect of Levy amounts paid should there be a change in Non-Domestic Ratepayer. Similarly, there will be no apportionment or daily calculation of amounts due or owed made by the Council as the collection authority.

Adjustments will not be made for the occupier where there is a change of Non-Domestic Ratepayer during the financial year. As above, the liability for payment will fall to the Non-Domestic Ratepayer or, if the property is empty, the person or organisation entitled to possession of the property on 1<sup>st</sup> April of the billing year, for the whole year.

Neither the BID Company nor the Council will enter into negotiations between outgoing and incoming Levy Payers, and all said negotiations to recoup part-year payments must be resolved independently by the individual or company concerned.

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

There will be no VAT charged to the BID Levy Payer and the cost of collection and enforcement of the BID Levy is outside the scope of the VAT.

### **Schedule 2 – Breakdown of Council’s Annual BID Levy collection and administration charge**

Annual fee capped at £25,000