

## **OPERATING AGREEMENT**

Dated 2018

**Warwick District Council**

(the Council)

**BID Leamington Limited**

(the BID Company)

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## Operating Agreement

**Dated** **2018**

### **Between**

- (1) **Warwick District Council** (the Council) of Riverside House, Milverton Hill, Royal Leamington Spa, Warwickshire, CV32 5QH; and
- (2) **BID Leamington Limited** (the BID Company) registered as a company limited by guarantee in England with number 06618926 whose registered office is at 35c Park Court, Park Street, Royal Leamington Spa, Warwickshire, CV32 4QN.

### **Recitals**

- A The Council is the billing authority for the purposes of the Local Government Act 2003 and is responsible for collecting the BID Levy and administering the BID Revenue Account which shall be used towards the operation of the BID within the area of the Council and the funding of the BID Proposal
- 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 Proposal
- 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:**

## **1 Definitions**

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

- (i) the total amount of BID Levy collected during the relevant Financial Year;
- (ii) the total amount of interest earned on any part of the BID Levy whilst held in the BID Revenue Account;
- (iii) details of the success rate for the collection of the BID Levy;
- (iv) the Council's proposals (if any) to help improve its efficiency in the collection and enforcement of the BID Levy; and
- (v) details of those BID Levy Payers who have paid the BID Levy and those who have not paid the BID Levy.
- (vi) the Council's proposals for bad or doubtful debts

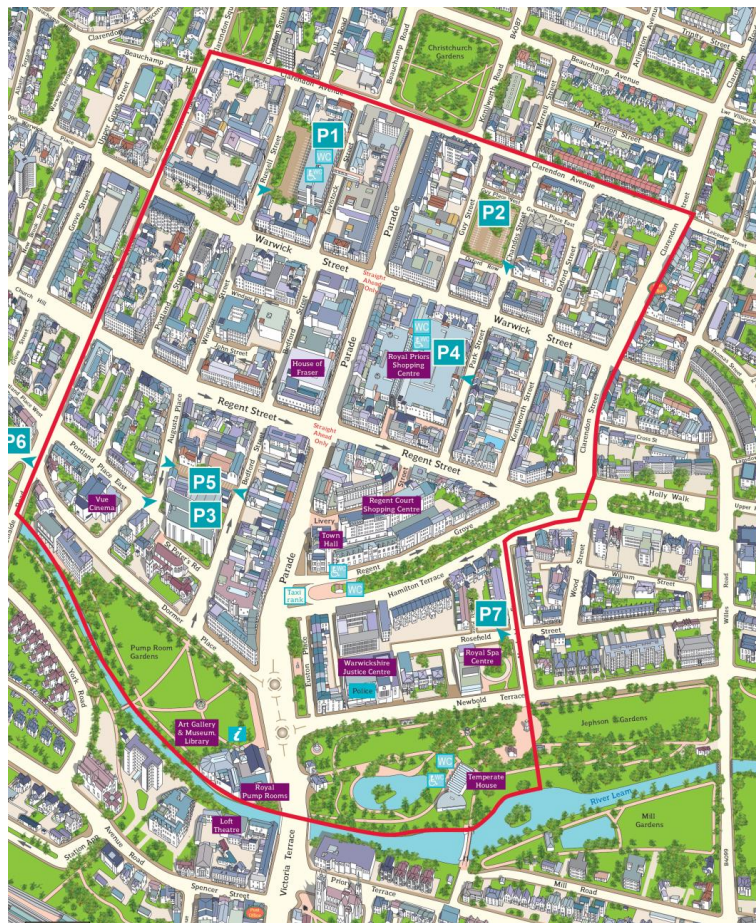
**the Appeal Notice** means a notice to be served by the BID Company in accordance with clause 10.2

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

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

**the BID** means the Business Improvement District which operates within Leamington Spa Town Centre and which is managed and operated by the BID Company. This includes the following streets, either in whole or in part:

Alveston Place	Oxford Row
Augusta Place	Oxford Street
Bedford Street	Parade
Chandos Street	Park Street
Clarendon Avenue	Portland Place East
Clarendon Street	Portland Street
Dormer Place	Regent Court Shopping Centre
Euston Place	Regent Grove
Gem Place	Regent Street
Guy Place East	Rosefield Street
Guy Place West	Royal Priors Shopping Centre
Guy Street	Russell Street
Hamilton Terrace	Satchwell Court
John Street	St Peters Road
Kenilworth Street	Tavistock Street
Livery Street	Warwick Street
Newbold Place	Whiteheads Court
Newbold Street	Windsor Place
Newbold Terrace	Windsor Street



**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
- (d) 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 12.8

**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 Proposal** means the plan voted for by the BID Levy Payers which sets out the objectives of the BID and identifies the various projects which will be undertaken using funds raised via the BID Levy

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

**the BID Term** means the period of 5 years from 1 July 2018 to 30 June 2023

**Complementary Service(s)** means those services, complementary to the Standard Services, to be delivered within the BID Area in support of the BID and secured or procured by the BID Company from the Council or other third party provider in addition to the Standard Services

**Complementary Services Agreement(s)** means an agreement entered into between the Council and the BID Company or such further agreements as may be entered into by the BID Company for the provision of Complementary Services. A draft agreement is annexed at Schedule 3

**Complementary Service Provider** means the provider of a Complementary Service

**the Council's Termination Notice** means the notice to be served by the Council on the BID Company pursuant to Clause 12.1

**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 10

**the Exceptions** means the circumstances in which the Council shall not be required to seek to enforce payment of the BID Levy where a BID Levy payer has failed to make payment pursuant to a Demand Notice. The exceptions are as further set out in Schedule 4

**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 1 July to 30 June inclusive

**the First Priority Expenses** means the first 6 monthly administrative expenses incurred by the Council in respect of all reasonable costs arising out of compliance with its obligations under this Agreement and the Regulations [provided that such costs shall not exceed 2.8% of the total value of the BID Levy collected in any one Financial Year]

**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 11) such group to consist of 2 Council officers and 1 representative from the BID Company and up to 2 Contributors as needed officers

**the Operational Date** means the date upon which the BID Proposal comes 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 12.1 or 12.8 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 9.1

## 2 Statutory Authorities

- 2.1 This Agreement is made pursuant to Part IV of the Local Government Act 2003 and Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.

## 3 Commencement

- 3.1 This Agreement is conditional upon and shall not take effect until the Operational Date



3.2 If the BID Proposal is not approved 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

3.3 This Agreement shall terminate on the expiry of the BID Term

## **4 Setting the BID Levy**

4.1 Immediately upon the Ballot Result Date the Council shall:-

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

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

(iii) enter into the Baseline Agreement with the BID Company

## **5 The BID Revenue Account**

5.1 Within 14 days from the Ballot Result Date the Council shall set up the BID Revenue Account 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

5.2 Within 14 days from the Ballot Result Date the BID Company shall provide the Council with details of its own bank account into which the BID Levy shall be transferred from the BID Revenue Account

## **6 Debits from the BID Revenue Account**

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

(i) the First Priority Expenses; or

(ii) the Enforcement Expenses; or

(iii) except in accordance with this Clause 6.

6.2 Upon the expiry of the second month within the Financial Year (throughout the BID Term) the Council shall provide an invoice to the BID Company for payment of the First Priority Expenses

- 6.3 Upon the expiry of 6 months in the Financial Year (throughout the BID Term) the Council shall provide one further invoice(s) for its reasonable administrative expenses incurred in carrying out its obligations under this Agreement and the Regulations
- 6.4 The BID Company shall pay the said invoices within 28 (twenty eight days) from the date of receipt
- 6.5 In the event that the BID Company fails to pay the said invoices within the prescribed time period then notwithstanding Clause 6.1 the Council shall be permitted to recover the invoiced costs directly from the BID Revenue Account
- 6.6 The Council shall be entitled to recover the Enforcement Expenses from the BID Company as and when they are incurred and shall provide an invoice to the BID Company which provides a detailed breakdown of the costs incurred
- 6.7 The BID Company shall arrange for any invoiced Enforcement Expenses to be paid within 28 days from the date of such invoice. In the event the BID Company fails to pay the said invoices within the prescribed time period then notwithstanding clause 6.1 the Council shall be permitted to recover the invoiced Enforcement Expenses directly from the BID Revenue Account.

## **7 Collecting the BID Levy**

- 7.1 Within 14 (fourteen) days of the Financial Year start date the Council shall commence annual billing.
- 7.2 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.
- 7.3 The Demand Notices shall be a separate bill that clearly identifies it as a BID Levy, including details pursuant to Clause 8 and shall not be combined with the Business Rate Bill or despatched in the same envelope as the Business Rate Bill.
- 7.4 The Council shall maintain a list which identifies payment and/or non payment of the BID Levy and shall make this available to the BID Company upon its reasonable request
- 7.5 The Council shall liaise with the BID Company in carrying out 6 monthly reviews of each Hereditament within the BID Area and in the event of any

change in the occupier of each Hereditament or the merger or division of a Hereditament (or provision of an additional Hereditament) shall:

- (a) serve an updated list of BID Levy payers upon the BID Company;
- (b) serve a Demand Notice (or alter any existing Demand Notice if appropriate) on the relevant BID Levy Payer

7.6 Every month during the BID Term the Council shall inform the BID Company of the amount of BID Levy monies collected, less any funds which have been written off in accordance with Schedule 4 and including any amendments made to the BID Levy monies in accordance with the provisions of Schedule 1 (changes to the Rateable Value) and for the avoidance of doubt shall not be retrospectively applied and shall only affect the Financial Year in which the amendment was made and any subsequent Financial Years during the BID Term.

7.7 The Council shall use all reasonable endeavours to collect the BID Levy pursuant to clause 7.1 above and thereafter on an annual basis and in accordance with the procedure set out in Schedule 4 of the Regulations

7.8 The Council shall use all reasonable endeavours to take all reasonable steps for collecting the BID Levy which are consistent with its usual procedures for the collection of non-domestic rates

7.9 The frequency that the BID Levy shall be paid by the Council to the BID Company is as follows:

- (i) once monthly during August, September and October of each Financial Year; and
- (ii) following the period in clause 7.9(i), no more frequently than on a monthly basis.
- (iii) payment of invoices raised under this clause 7.9 is to be made within 10 working days of receipt of the invoice.

Such invoice to be based on the information outlined in clause 7.6, for the total amount of BID Levy monies collected, minus the total of BID Levy monies previously invoiced for and paid to the BID Company in the relevant Financial Year.

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

- 8.1 The BID Company and the Council shall agree a template design for all levy collection materials, provision of information outlined in clause 8.4, and enforcement materials, before the first Demand Notices are despatched each July. The materials shall meet the BID Regulations' requirements
- 8.2 The BID Company shall refer all enquiries from BID Levy Payers regarding Demand and Enforcement Notices, and payment terms to the Council
- 8.3 The Council shall refer all enquiries from BID Levy Payers regarding the services provided by the BID Company for the BID Levy payment to the BID Company
- 8.4 The Council shall ensure that the information set out in Schedule 4, paragraph 3(2) of the Regulations, or such other information requirements under the Regulations from time to time, is included with each Demand Notice. This shall be presented within a separate BID Company Report and shall include:
  - a) The revenue received by the BID in the previous year
  - b) The amount spent on BID arrangements in the previous year
  - c) A description of the matters on which it was spent
  - d) A description of the matters which it is intended to spend BID levy revenue on in the next financial year.

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

- 9.1 In the event that the BID Levy is not paid within 26 (twenty six) days from the date that it becomes payable then (subject to the Exceptions in Schedule 4 or as may otherwise be agreed between the parties), the Council shall serve a Reminder Notice on such relevant BID Levy Payer which shall:-
  - (i) identify the sum payable
  - (ii) provide a further 14 (fourteen) days for payment to be made;
  - (iii) confirm that the Council will make an application to the Magistrates Court for a Liability Order to recover the unpaid sum (together with interest and costs)

- 9.2 If after a further 7 (seven) days from the payment date stated in the Reminder Notice the outstanding sum of the BID Levy has not been paid, the Council shall supply the BID Company with a list of all BID Levy Payers for which the BID Levy remains outstanding and identify on the list all BID Levy Payers for whom the Council contemplates further recovery and enforcement action, which will include a summons to Magistrates Court and associated costs.
- 9.3 The Council will consider any comments made by the BID Company before then applying to the Magistrates Court for a Liability Order or taking other enforcement action to recover the outstanding sum of the BID Levy as is permitted by the Regulations and the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (as amended).

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

- 10.1 In the event that the Council is not enforcing payment of the BID Levy pursuant to Clause 9 (above) the BID Company shall serve the Enforcement Notice on the Council requesting that:-
- (i) it serve a Reminder Notice; or
  - (ii) it obtains a Liability Order pursuant to Clause 9.2 above
- within 14 (fourteen) days of receipt of such Enforcement Notice and the Council shall thereafter provide written confirmation of the action taken to the recover the unpaid BID Levy
- 10.2 If after being served an Enforcement Notice the Council fails to take the requested action within the specified time frame then the BID Company shall serve an Appeal Notice to the Chief Executive of the Council. Such notice shall:-
- (i) detail the sum which remains unpaid;
  - (ii) confirm that the Council has failed to use the enforcement mechanisms available to it under this Agreement to recover the sum; and
  - (iii) request a meeting take place between the Chief Executive, relevant officers of the Council and 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 that 28 (twenty eight) days from service of the Appeal Notice

- 10.3 The Council shall use all reasonable endeavours consistent with the BID Regulations and the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (as amended) to ensure that a minimum of 95% of the total BID Levy due in any given financial year shall be collected and paid to the BID.

## **11 Accounting Procedures and Monitoring**

- 11.1 Within 1 (one) month from the Operational Date the Council and BID Company shall form the Monitoring Group
- 11.2 Every 6 (six) months (for the duration of BID Term) the Council shall provide the BID Company with a breakdown of:-
- (i) the amount of BID Levy for each individual BID Levy Payer;
  - (ii) the BID Levy collected in relation to each BID Levy Payer;
  - (iii) details (together with the outstanding unpaid sum) of those BID Levy Payers who have not paid the BID Levy during those 6 months;
  - (iv) details of the Reminder Notices issued throughout that period; and
  - (v) details of any Liability Orders obtained or applied for by the Council;
- 11.3 Every 6 (six) months (for the BID Term) the BID Company shall provide the Council with the following details:
- (a) the total amount of BID Levy received
  - (b) the total amount of income received from the Contributors (excluding the BID Levy)
  - (c) the total expenditure during that 6 month period.
- 11.4 The Monitoring Group, combined with Standard Services Review Panel (as defined in the Baseline Agreement), shall meet no less than twice in any one Financial 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

- 11.5 At each meeting the Monitoring Group shall
- (i) review the effectiveness of the collection and enforcement of the BID Levy; and
  - (ii) if required, review and assess the information provided by the Council and the BID Company pursuant to Clauses 11.2 and 11.3 above and make any recommendations for implementation as may be agreed (and which are permitted by the Regulations and the terms of this Agreement)
- 11.6 Within 1 (one) month before the date of the end of the BID Company Financial Year (June 30) the Council shall provide the Annual Report to the BID Company
- 11.7 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 to be distributed pursuant to clause 7.3 and clause 8
- 11.8 The Council shall provide such information as is required to aid and facilitate the audit of the BID Company's accounts. The BID Company shall be entitled to audit the Council's records in relation to collecting the BID Levy, including the BID Revenue Account, during normal working hours and upon giving prior reasonable notice to the Council provided that such audit shall be no more frequent than once a quarter unless otherwise agreed with the Council or otherwise determined by the Monitoring Group. The Council shall make available to the BID Company (and its appointed representatives) such documents, information and assistance as the BID Company (and its appointed representatives) shall reasonably require in relation to such audit.

## **12 Termination**

- 12.1 The Council shall not be permitted to terminate the BID Proposal because:
- (i) in its opinion there are insufficient finances available to the BID Company to meet its liabilities for the chargeable period for the purposes of the BID Proposal; 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 Proposal

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 discuss and/or agree all or any of the following set out in Clause 12.2 or 12.3 (whichever is applicable)

- 12.2 Where the BID Termination Notice relates to Clause 12.1(i) both parties shall agree and/or discuss or review 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) insufficient funds;
  - (c) alternative means by which the insufficiency of the funds can be remedied; and
  - (d) an appropriate time frame to resolve this issue;
- 12.3 Where the BID Termination Notice relates to clause 12.1(ii) both parties shall agree and/or discuss or review the following:
- (a) the services or works which the Council is no longer able to provide together with confirmation and details as to why such works or services cannot be provided;
  - (b) 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 Proposal is the only option;
  - (c) alternative means of procuring the said services or works by third parties or increased financial funding from the BID Company;
  - (d) alternative replacement services or works which will be acceptable to the BID Company;
  - (e) an appropriate time frame to resolve this issue
- 12.4 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 Proposal 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
- 12.5 Upon termination of the BID Proposal 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:



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

12.6 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 12.5

12.7 The BID Company shall not be permitted to terminate the BID Proposal where:

- (a) the works or services under the BID Proposal are no longer required; or
- (b) 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

12.8 Upon termination of the BID Proposal 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 12.6

12.9 21 days prior to the expiry of the BID Term (notwithstanding any rebalot and new BID term commencing) the Council shall provide the BID Company with a reconciliation of the BID Revenue Account (for its written Agreement) identifying (if any) all outstanding costs payable to the Council as a consequence of collecting the BID Levy, any outstanding Enforcement Expenses and any BID Levy monies not passed to the BID Company's account (pursuant to clause 7.9 above)

12.10 Subject to the costs (pursuant to clause 12.9 above) being agreed and prior to the start of a new BID Term the Council shall deduct the Final Costs from any BID Levy and transfer any remaining BID Levy to the BID Company pursuant to clause 7.9.

## **13 Confidentiality**

- 13.1 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 Proposal.

## **14 Notices**

- 14.1 Any notice or other written communication to be served or given to or upon any party to this Agreement to the other shall be in writing and shall be sent to the address provided for above or such substitute address in England as may from time to time have been notified by that party
- 14.2 A Notice may be served by
- 14.2.1 delivery to the Chief Executive at the Council's address specified above; or
  - 14.2.2 delivery to the Company Secretary at the BID Company's address specified above
  - 14.2.3 registered or recorded delivery post
  - 14.2.4 Electronic Communication (provided that it is in legible form and is capable of being used for subsequent reference)
- 14.3 Any notice served shall be deemed to have been validly served or given at the time when in the ordinary course of business it would have been received.

## **15 Miscellaneous**

- 15.1 For the avoidance of doubt where any part of this Agreement is incompatible with the Regulations or any other regulations which the Secretary of State may issue pursuant to Part IV of the Local Government Act 2003 then such part shall be struck out and the balance of this Agreement shall remain
- 15.2 The headings appearing in this Agreement are for ease of reference only and shall not affect the construction of this Agreement

- 15.3 For the avoidance of doubt the provisions of this Agreement (other than those contained in this Clause) shall not have any effect until this document has been dated
- 15.4 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
- 15.5 References to the Council include any successors to its functions as local authority
- 15.6 References to statutes, bye laws, regulations, orders, delegated legislation shall include any such instrument re-enacting or made pursuant to the same power

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

- 16.1 Nothing contained in this Agreement or implied in it shall prejudice or affect the rights discretions powers duties and obligations of the County Council and Council under all statutes bye-laws statutory instruments orders and regulations in the exercise of its functions as a local authority

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

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

## **18 Dispute resolution**

- 18.1 Should any complaint or dispute (which does not relate to the Council's right to terminate this Agreement) arise between the parties to this Agreement in relation to this Agreement and remain unresolved for 28 days of either party bringing it to the attention of the other then either party may refer the matter to both the Chief Executive of the Council and the Executive Director of the BID Company with an instruction to attempt to resolve the dispute by agreement within 28 days, or such other period as may be mutually agreed by the Council and the BID Company.
- 18.2 In the absence of agreement under clause 18.1, the parties may seek to resolve the matter through mediation under the Centre for Effective Dispute Resolution Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both parties). Unless otherwise

agreed, the parties shall bear the costs and expenses of the mediation equally.

## **19 Governing law**

- 19.1 This Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts. Nothing in this Agreement shall prevent either party at any time from being able to bring any claim under or in relation to this Agreement in an English court.

Signed by  
duly authorised for and on behalf of  
Warwick District Council

Signed by  
duly authorised for and on behalf of  
BID Leamington

## Schedule 1 – The BID Levy Rules

### **LEAMINGTON BUSINESS IMPROVEMENT DISTRICT (BID LEAMINGTON) LEVY RULES**

The BID process is governed by the 'Local Government Act 2003' and 'The Business Improvement District Regulations 2004'. Accordingly, once a majority vote has been achieved, the BID levy becomes mandatory on all defined ratepayers.

- 1) The Renewal BID term will be five years and run from the 1<sup>st</sup> July 2018 - 30th June 2023.
- 2) The BID levy will be applied to all non-domestic properties or hereditaments with a rateable value of £15,000 or more. This represents no change to the threshold. The number of properties or hereditaments liable for the levy has changed from 375 to 355 (at the time of signing) as a result of changes to rateable values and property mergers / splits.
- 3) Properties that do not have or support a retail or leisure proposition, as defined by the valuation office 'category' will be exempt from the levy. This includes the use and premises categorised as office and premises, law courts, factories, police stations, schools, nursery schools, surgeries, workshops, vehicle repair, communication stations and premises.
- 4) From 1st July 2018, the NNDR rating list 2017 will apply. The levy rate to be paid will be fixed at 1.6% of the rateable value as at the selected 'chargeable day' (1st July annually). This represents a change of 0.1% reflecting the significant drop in combined rateable value across the town as a result of the 2017 national business rate revaluation, and gives a total BID Levy income which is slightly less than the first and second term of the BID.
- 5) The levy will be charged annually in advance for each chargeable period to be 1st July to 30<sup>th</sup> June each year, starting in July 2018. No discounts or refunds will be made.
- 6) The liability of the levy will fall on the eligible ratepayer listed on the 1st July in the year of collection. The owners of untenanted properties or hereditaments will be liable for payment of the levy.
- 7) There will be no VAT charged on the BID levy.
- 8) Charitable organisations that are subject to Warwick District Council mandatory relief on their business rates liability are exempt from the levy except those that have a retail function or operation.

- 9) The rating revaluation proposed for 2020, or any other date within the five year BID term, will be ignored for the purposes of calculating the levy.
- 10) The exception to this will be variations to the rating list after 1st July 2018 due to any change of use or a physical change to a property or hereditament including inter alia; new construction, merger, subdivision, extension and refurbishment which result in the issue of a new entry (entries) in the Ratings List at that time.
- 11) If, during the term, the rateable value assigned to a property or hereditament falls below £15,000 for whatever reason (either through physical change, change of use, or revaluation arising from the adoption of the 2017 Rating List), the hereditament will be exempt from the levy from the next chargeable period.
- 12) If, during the term, a property or hereditament with a rateable value which had previously been below the £15,000 threshold is assigned a rateable value which is above £15,000, the hereditament will be liable for the levy.
- 13) Warwick District Council will be responsible for collection of the levy. Collection and enforcement arrangements will be similar to those for the collection and enforcement of non-domestic business rates with the BID company Board responsible for any debt write-off.

### **LEAMINGTON BUSINESS IMPROVEMENT DISTRICT (BID LEAMINGTON) LEVY THRESHOLD**

Businesses of all sizes are important to us. We recognise that many small businesses in the town contribute to the independent offer that makes Royal Leamington Spa so unique, while facing increasing economic burdens.

For this reason, the property value threshold for which the BID levy becomes mandatory will remain at £15,000. Business with a property value below £15,000 can choose to contribute as a 'voluntary member' and benefit from defined BID services, if they wish.

## **Schedule 2 – The Baseline Agreement**



## **BASELINE AGREEMENT**

Dated: 12 February, 2018

**Warwick District Council**

(the Council)

**BID Leamington Limited**

(the BID Company)

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## Baseline Agreement for Provision of Standard Services

**Dated: 12 February, 2018**

### Between

- (1) Warwick District Council (the Council) of Riverside House, Milverton Hill, Royal Leamington Spa, Warwickshire, CV32 5QH; and
- (2) BID Leamington Limited (the BID Company) registered as a company limited by guarantee in England with company number 06618926 whose registered office is at 35c Park Court, Park Street, Royal Leamington Spa, Warwickshire, CV32 4QN.

### Recitals

- A The Council is the local authority for the purposes of the Local Government Act 2003 and is responsible for providing the Standard Services within the BID Area
- B The BID Company is responsible for the management and operation of the BID and for achieving the objectives and aspirations set out in the BID Proposal
- C The purpose of this Agreement is to set out for the avoidance of doubt the Standard Services provided by the Council within the BID Area and to set out the procedure for reviewing the provision of the Standard Services.

It is agreed:

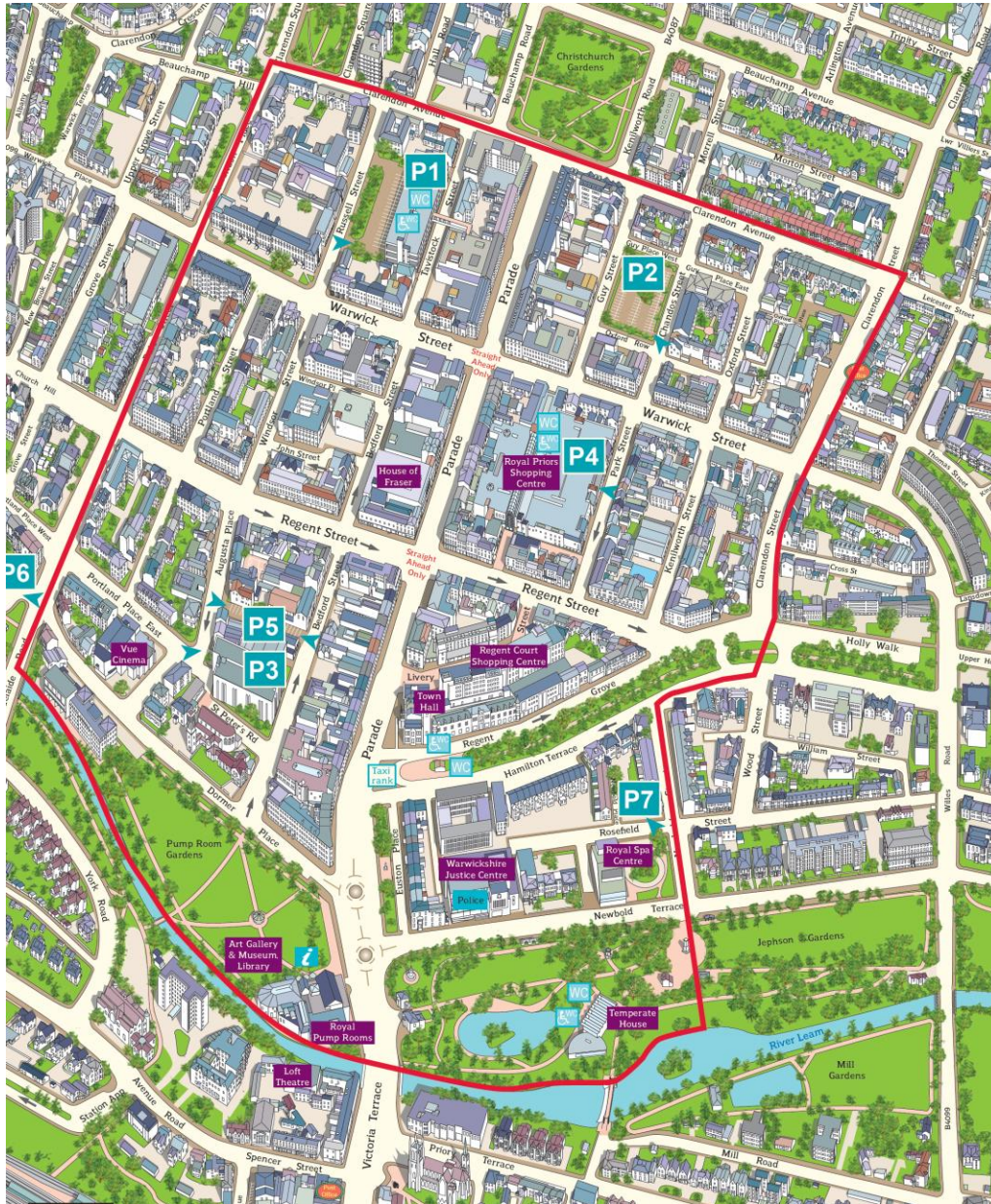
### 1 Definitions

**BID Area** means that area within which the BID operates. This includes the following streets, either in whole or in part:

Alveston Place	Oxford Row
Augusta Place	Oxford Street
Bedford Street	Parade
Chandos Street	Park Street
Clarendon Avenue	Portland Place East
Clarendon Street	Portland Street
Dormer Place	Regent Court Shopping Centre
Euston Place	Regent Grove
Gem Place	Regent Street
Guy Place East	Rosefield Street
Guy Place West	Royal Priors Shopping Centre
Guy Street	Russell Street
Hamilton Terrace	Satchwell Court

John Street  
Kenilworth Street  
Livery Street  
Newbold Place  
Newbold Street  
Newbold Terrace

St Peters Road  
Tavistock Street  
Warwick Street  
Whiteheads Court  
Windsor Place  
Windsor Street



**BID** means the Business Improvement District which is managed and operated by the BID Company

**BID Proposal** means the plan voted for by the BID Levy Payers which sets out the objectives of the BID

**Operating Agreement** means the agreement entered into on [INSERT DATE] between the Council and the BID Company which sets out various procedures for the collection monitoring and enforcement of the BID Levy

**Performance Notice** means a notice served by the BID Company which:

- (a) sets out the Standard Service which the notice relates to;
- (b) sets out the nature of the deficiency identified by the BID Company in the provision of the Standard Service;
- (c) requests the Council to liaise directly with the provider or contractor for the purposes of improving the provision of the Standard Service

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

**Standard Services** means those services which are provided by the Council within the BID Area as set out in Schedule 1 and as amended on an annual basis in accordance with clause 6.1.3 which identifies those services which it is required to undertake as part of its statutory function as local authority and Part 2 of Schedule 1 which identifies those services undertaken which are additional services to those usually provided as part of its statutory function

**Standard Services Review Panel** means the panel to be set up consisting of 2 appropriate senior representatives from the Council and 2 representatives from the BID Company

## 2 Statutory Authorities

- 2.1 This Agreement is made pursuant to Part IV of the Local Government Act 2003, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers

## 3 Commencement

- 3.1 The terms of this Agreement shall take effect upon the date of this Agreement



## 4 The Council's Obligations

4.1 The Council agrees to the following:

4.1.1 to provide the Standard Services within the BID Area at its own cost

4.1.2 in the event that the Council is unable to continue to provide all or any part of the Standard Services within the BID Area on account of its being statutorily barred from doing so in respect of any of those Standard Services set out in Part 1 of Schedule 1 or its having insufficient funds to secure the provision of any of those Standard Services set out in Part 2 of Schedule 1 it shall carry out the following for the BID Company:

- (a) identify which part or parts of the Standard Services it is unable to provide;
- (b) provide a detailed explanation of why such identified Standard Service is to be withdrawn; and
- (c) state the date upon which the Council will cease to operate the identified Standard Service.

4.1.3 where reasonably practicable, to implement such recommendations in the carrying out or provision of the Standard Services as may be made by the Standard Services Review Panel

4.1.4 upon receipt of a Performance Notice from the BID Company to carry out a review of the performance of the contractor or provider of the Standard Service and to use reasonable endeavours to secure the improvement of the Standard Service from the contractor or provider and in the event of a continued failure by such provider or contractor to remedy the deficiency in the delivery of the Standard Service to consult with the BID Company with regard to the appointment of an alternative contractor or provider for the relevant Standard Service

4.1.5 where it is reasonably practicable to give written notice in advance, not to remove or change any contractor(s) responsible for providing the Standard Services (as specified within Schedule 1 – Part 2) without first serving written notice on the BID Company stating:

- (a) the removal or alteration of such contractor;
- (b) the Standard Service which such contractor is responsible for providing; and
- (c) the details of the new contractor appointed to provide the Standard Services(s)

## **5 Monitoring and Review**

- 5.1 The Council and the BID Company shall set up the Standard Services Review Panel within 28 days from the date of this Agreement the purpose of which shall be to:
- 5.1.1 monitor the carrying out of the Standard Services
  - 5.1.2 make any recommendations required pursuant to paragraph 5.1.1 (above) to the Council and the BID Company.
  - 5.1.3 review any Performance Notices served by the BID Company and steps which should be taken to secure the proper carrying out of the Standard Services;
  - 5.1.4 identify the need for any improvement or alteration to the Standard Services

## **6 Joint Obligations**

- 6.1 Both the Council and the BID Company agree:
- 6.1.1 For the purposes only of monitoring the standard services to review and take account of any representations or recommendations made to them by the Standard Services Review Panel and take such action as may be appropriate
  - 6.1.2 To carry out an annual review of the Standard Services prior to the Council's and BID's annual budget setting) to be provided having regard to any recommendations by the Standard Services Review Panel, provided that none of the recommendations would 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, and having regard to whether, in the Council's opinion, it would be otherwise reasonable to adopt the recommendations.
  - 6.1.3 To amend the Standard Services at Schedule 1 as may be appropriate following the annual review at clause 6.1.2.

## **7 Licence**

- 7.1 Upon the BID Company's reasonable request, the Council shall grant a licence to the BID Company or its agents to enter onto into or upon any land within the Council's ownership or the highway for the purposes of the

BID Company or its agents carrying out any function or service required or secured (or any ancillary function) for the operation of the BID, where it is reasonably practicable for the Council to grant such a licence, having regard to the Council's functions and operations and to the interests of other land users and the public.

## **8 Termination**

8.1 This Agreement shall be terminated upon any of the following occurring:

(a) the expiry of the BID Term provided that in the event the BID is renewed after the BID Term this Agreement shall, subject to the consent of both parties and any variations they may agree, continue to remain in force and of full effect;

(b) the early Termination of the BID and the giving of relevant notices as required by the Regulations and the Operating Agreement; or

(c) the agreement of both parties

## **9 Confidentiality**

9.1 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 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 provision of the BID

## **10 Notices**

10.1 Any notice or other written communication to be served or given to or upon any party to this Deed 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.

10.2 A Notice may be served by

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



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

10.2.3 registered or recorded delivery post.

10.3 Any notice served shall be deemed to have been validly served or given at the time when in the ordinary course of business it would have been received.

## **11 Miscellaneous**

11.1 For the avoidance of doubt where any part of this Agreement is incompatible with the Regulations or any other regulations which the First 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

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

11.3 For the avoidance of doubt the provisions of this Deed (other than those contained in this Clause) shall not have any effect until this document has been dated

11.4 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 Deed

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

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

## **12 Exercise of the Council's Powers**

12.1 Nothing contained in this Agreement or implied in it shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statute byelaws statutory instruments orders and regulations in the exercise of its functions as a local authority

### **13 Contracts (Rights of Third Parties)**

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

### **14 Governing law**

- 14.1 This Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts. Nothing in this Agreement shall prevent either party at any time from being able to bring any claim under or in relation to this Agreement in an English court.

### **15 Dispute resolution**

- 15.1 Should any complaint or dispute (which does not relate to the Council's right to terminate this Agreement) arise between the parties to this Agreement in relation to this Agreement and remain unresolved for 28 days of either party bringing it to the attention of the other then either party may refer the matter to both the Chief Executive of the Council and the Executive Director of the BID Company with an instruction to attempt to resolve the dispute by agreement within 28 days, or such other period as may be mutually agreed by the Council and the BID Company.
- 15.2 In the absence of agreement under clause 15.1, the parties may seek to resolve the matter through mediation under the Centre for Effective Dispute Resolution Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both parties). Unless otherwise agreed, the parties shall bear the costs and expenses of the mediation equally.

Signed by the parties [or their duly authorised representatives]

The Common Seal of the Warwick District Council  
was hereunto affixed in the presence of:

Authorised Signatory

The Common Seal of BID Leamington Limited  
was hereunto affixed in the presence of:

Authorised Signatory

## SCHEDULE 1– The Standard Services Part 1

This baseline agreement sets out the services that will be provided by the Council to the local community and which will be excluded from the BID Business Plan and Levy. This statement will be reviewed on an annual basis with the BID.

SCHEDULE 1– The Standard Services Part 1 identifies those services which it is required to undertake as part of its statutory function as local authority.

To be referenced in Schedule 2 of the Operating Agreement.

<b>Service area</b>	<b>Service</b>
Neighbourhood Services	<ul style="list-style-type: none"> <li>• Cleansing of streets, highways, housing and amenity land, open spaces, paths, roads, public areas, car parks, cycle tracks, play areas, bridleways and alleyways.</li> <li>• Emptying and cleansing of litter bins.</li> <li>• Installation, maintenance and fitting of litter bins.</li> <li>• Removal of rubbish following fly-tipping.</li> <li>• Removal of graffiti and fly-posting where practicable.</li> <li>• Removal of leaf and blossom fall.</li> <li>• Weed control through weed spraying and/or other methods for removal of weeds and other unwanted vegetation.</li> <li>• Removal of shopping trolleys.</li> <li>• Emergency cleansing of roads following spillages or an accident.</li> <li>• Removal of chewing gum where practicable.</li> <li>• Provision of grass mowing; meadow management; shrub bed maintenance; flower bed maintenance.</li> <li>• Provision of litter/waste enforcement – commercial and residential.</li> <li>• Management and maintenance of parks/horticultural features within public areas.</li> <li>• Provision of Animal welfare, including dog wardens.</li> <li>• Delivery of the Ranger Service.</li> </ul>
Cultural Services	<ul style="list-style-type: none"> <li>• Operation of Museum, Art Gallery and Visitor Information Centre.</li> <li>• Commitment to Green Flag.</li> <li>• Management of the leisure centre contracts.</li> </ul>
Asset Management	<ul style="list-style-type: none"> <li>• Asset management and maintenance of Council owned properties/sites.</li> </ul>

<p>Health, Community Protection &amp; Community Safety</p>	<ul style="list-style-type: none"> <li>• Licensing and regulation of licensed premises - public houses/restaurants etc where the sale of alcohol or regulated entertainment takes place.</li> <li>• Licensing of late night (after 11pm) food providers.</li> <li>• Provision of street trading consents</li> <li>• Licensing of taxis.</li> <li>• Monitoring of pollution matters which include noise (industrial and commercial noise/licensed premises), air and land pollution.</li> <li>• Ensuring of health and safety at work</li> <li>• Provision of the food safety scheme: carrying out inspections in terms of food safety compliance.</li> <li>• Management of council owned taxi ranks.</li> <li>• Commitment to Purple Flag.</li> </ul>
<p>Finance</p>	<ul style="list-style-type: none"> <li>• Collection of Business Rates, BID levies, administration of reliefs and exemptions.</li> </ul>
<p>Development Services</p>	<ul style="list-style-type: none"> <li>• Provision of building control and conservation</li> <li>• Administering and determining of planning applications</li> <li>• Provision of pre-applications service.</li> <li>• Enforcement of planning non-compliances.</li> <li>• Determining of planning policy</li> <li>• Promotion of the town for business investment, including partnership work with Invest in Warwickshire.</li> <li>• Delivery of strategic business engagement.</li> <li>• Working with businesses to identify skills gaps and providing employment support services, including organised Jobs Fairs, work placements, job coaches and customised pre-employment training courses.</li> <li>• Operation of Event Day Licence procedure to enable events.</li> </ul>
<p>Housing Services</p>	<ul style="list-style-type: none"> <li>• Licensing of Houses in Multiple Occupation in the private rented sector.</li> <li>• Ensuring private rented sector accommodation meets minimum housing standards.</li> </ul>

## SCHEDULE 1– The Standard Services Part 2

SCHEDULE 1– The Standard Services Part 2 which identifies those services undertaken which are additional services to those usually provided as part of its statutory function. The point here being that the BID Company should nonetheless consider this part of the standard service provided by the Council in that BID Levy funds should not be used to fund initiatives which the Council has already committed itself to provide.

To be referenced in Schedule 2 of the Operating Agreement.

### Development Services

- **Management of Leamington market permissions, inclusive of the Autumn, Christmas and Farmers markets.**
  - Seasonal Sunday markets contract
    - WDC responsible for contract management and, where appropriate, re-tendering for provision
    - Seasonal Markets will be well kept and maintained, providing a positive addition to the town, attracting visitors and residents alike
  - Farmers Markets contract
    - The Farmers Markets form part of the General Markets contract that also covers Warwick and Kenilworth’s weekly markets
    - WDC responsible for contract management and, where appropriate, re-tendering for the provision
    - Emphasis will be made on ensure the viability of the market, ensuring it remains an attractive addition to the leisure activities available in the town centre.
  - Irregular Markets
    - WDC is the Markets Authority and all applications for occasional or irregular markets must seek permission
    - Permission will only be granted where the applicant can demonstrate that their proposal;
      - a) does not undermine the viability of any existing markets; and
      - b) positively contributes to the economic viability and vitality of the town centre
- **Delivery of the Christmas lights switch-on event in Leamington Spa.**
  - Organised annually by the WDC Events Team in November.
  - It will be held on the first Sunday after Remembrance Sunday.
  - It will comprise family-friendly entertainment and events.

- **Maintenance, installation, storage and power of Christmas lights.**
  - Agreeing and administering property owner permissions to fix crossing to properties and street lights and inspect, test and maintain the fixings on an annual basis.
  - WDC will let a contract for the installation, maintenance and storage of the town's Christmas Lights, set to the volume of lights installed in the 2017 schedule. The costs of this contract will be covered by WDC, who will actively seek contribution from stakeholders (such as Leamington Town Council) and commercial opportunities (such as the Seasonal markets operator).
  - WDC will be responsible for the contract management of this and, where appropriate, re-tendering.
  - Any additional lights purchased by third parties, where the net volume of installed lights is increased as a result, will not fall within the contract cost. A provision will be made in the contract for such additional installations to occur, the financial cost of which will not be borne by the Council.
  - Although not yet in place, it is expected that the contract will have performance indicators relating to installation efficacy, call out response times and quality of work.

## **Health, Community Protection & Community Safety**

- **Monitoring and maintenance of CCTV and related communication systems in public areas.**
  - The service provides proactive 24 hour monitoring of 190 cameras, 365 days a year from a Leamington based location. Also, operated are 4 radio systems and 12 Help points. Specific elements of the service include:
    - Manning the Emergency Duty phone as a Category 1 responder as part of WDC's statutory duties under the Civil Contingencies Act (2004).
    - Coordinating an operational base for multi-agency responses for high profile events where there may be public safety concerns including where the risk of terrorism is increased
    - Monitoring regular events in the District
    - Monitoring extreme weather conditions out of office hours
    - 24-7 monitoring of a WRCI Retail Radio
    - 24-7 monitoring of a Pubwatch Retail Radio
    - 24-7 monitoring of a Police Radio
    - 24-7 monitoring of a Car Park / Park Ranger Radio
    - Monitoring Events Radio
    - Monitoring the Duty phone along with 2 phones lines, of which one is a dedicated Police 24-7
    - Responding to requests for assistance from 12 help points

- Monitoring Regent Court cameras
- The CCTV Service achieved British Standard 7958 Closed Circuit Television (CCTV) Management and Operation in 2005. This standard has been maintained ever since then.
  - In addition, the service is regularly audited to maintain compliance with the Councils Code of Practice, the law and British Standard (BS7958).
- Performance is measured annually in terms of the numbers of incidents recorded and numbers of arrests resulting from CCTV intervention.

## **Neighbourhood Services**

- **Testing of brackets, installation and watering of hanging baskets.**
  - WDC will be responsible for:
    - Consulting the BID Company and relevant partners such as Leamington Spa Town Council (Leamington in Bloom Committee) on the annual colour scheme and to get feedback on previous years.
    - Annually communicating the size of the baskets; the plants the baskets will be filled with; when the hanging baskets will be installed; the period the hanging baskets will be maintained
    - Pull-testing brackets (before installing the hanging baskets)
    - Installing the hanging basket
    - Regular watering of the hanging baskets through the maintenance period
    - Taking down of hanging baskets at the end of the maintenance period
    - Agreeing the safe installation of brackets with property owners



## **Schedule 3 – The Complementary Services Agreement Template**

## **COMPLEMENTARY SERVICES AGREEMENT (TEMPLATE)**

Dated:

Warwick District Council

(the Provider)

**BID Leamington Limited**

(the BID Company)

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## **Complementary Services Agreement For Provision of Services**

Dated

Between

(1) Name of Provider of Complementary Services (the Provider) [of \*\* ] [; and]

(2) Name of BID Company (the BID Company) [of \*\* ]

### **Recitals**

1. The Provider is the provider of Complementary Services within the BID Area
2. The BID Company is responsible for the management and operation of the BID and for achieving the objectives and aspirations set out in the BID Proposal
3. The BID Company has entered into the Baseline Agreement with \*\* (name of Council) in order to secure and set out the Standard Services for the BID Area
4. The Provider and the BID Company are desirous of securing the Complementary Services for the benefit of the BID Area
5. Such Complementary Services shall be funded by the BID Levy and/or other Voluntary Contributions at the Agreed Cost and shall be consistent with the BID Proposal
6. The parties are desirous of securing and providing the Complementary Services in accordance with the terms set out in this Agreement.
7. The purpose of this Agreement is to set out for the avoidance of doubt the Complementary Services to be provided by the Provider and the Benchmark Standards against which the provision of the Complementary Services will be assessed.

It is agreed:

## 1 Definitions

**Agreed Cost**<sup>1</sup> this means the cost for the provision of the Complementary Services by the Provider. Such services to be provided at [£\*\* per month] [£\*\* per year] [in accordance with the attached fee schedule]

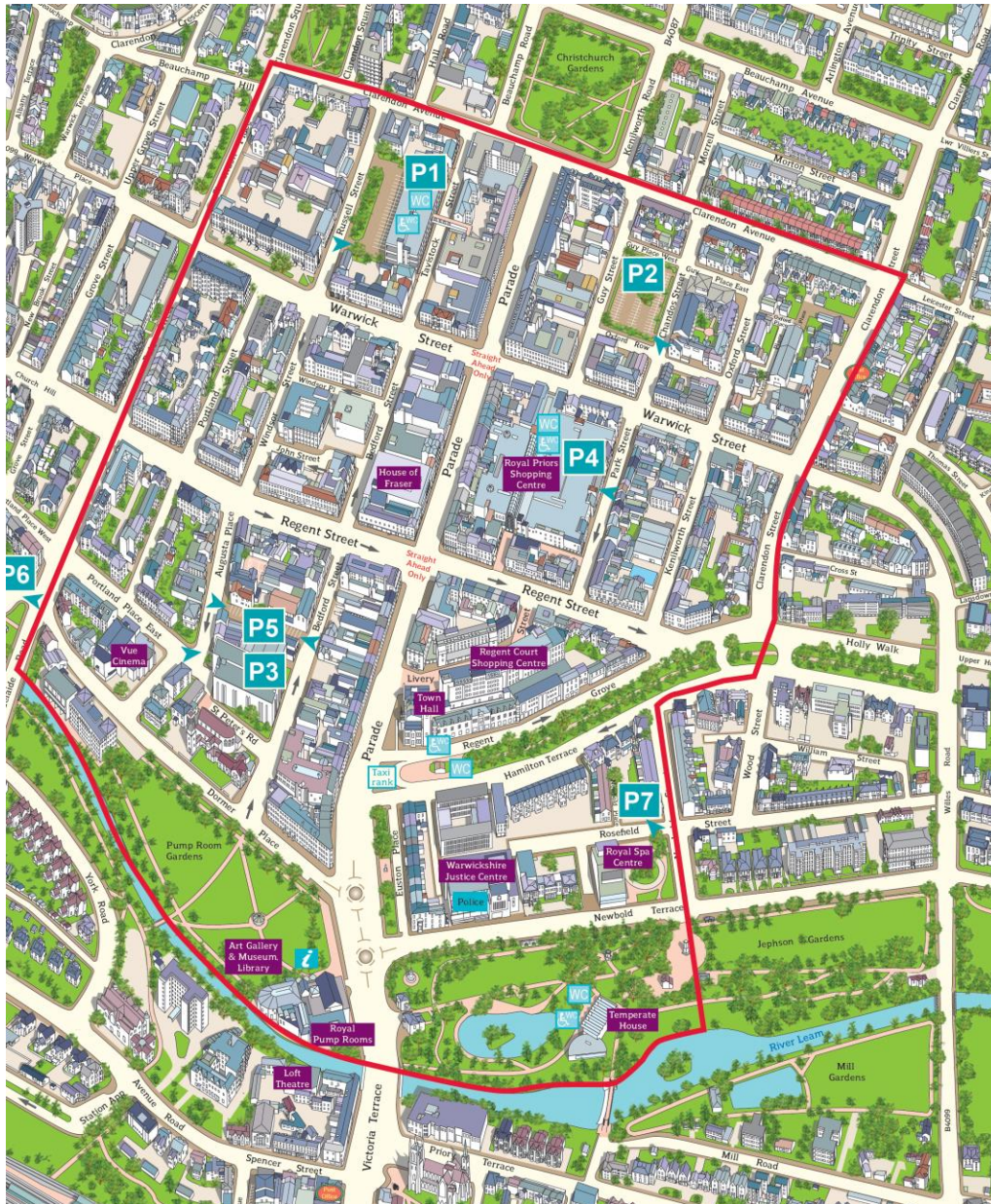
**Baseline Agreement** means the agreement entered into on between the Council and the BID Company for the purpose of setting out the Standard Services provided by the Council within the BID Area

**Benchmark Standards** means the minimum standards which the Complementary Services must comply with including all relevant industry standards the principles of which are further set out in Schedule 2

**BID Area** means that area within which the BID operates. This includes the following streets, either in whole or in part:

Alveston Place	Oxford Row
Augusta Place	Oxford Street
Bedford Street	Parade
Chandos Street	Park Street
Clarendon Avenue	Portland Place East
Clarendon Street	Portland Street
Dormer Place	Regent Court Shopping Centre
Euston Place	Regent Grove
Gem Place	Regent Street
Guy Place East	Rosefield Street
Guy Place West	Royal Priors Shopping Centre
Guy Street	Russell Street
Hamilton Terrace	Satchwell Court
John Street	St Peters Road
Kenilworth Street	Tavistock Street
Livery Street	Warwick Street
Newbold Place	Whiteheads Court
Newbold Street	Windsor Place
Newbold Terrace	Windsor Street

<sup>1</sup> It may be that a "fixed" cost is not agreed for the provision of services but rather worked out on the frequency of the level of service to be provided if the intention is to build in some flexibility regarding the provision of the service. In such an instance consider attaching a schedule to the Agreement which at least fixes the manner in which the costs will be calculated.



**BID** means the Business Improvement District which is managed and operated by the BID Company

**BID Levy** means the charge to be levied and collected within the BID Area

**BID Levy Payers** means the payers of the BID Levy

**BID Proposal** means the plan voted for by the BID Levy Payers which sets out the objectives of the BID and identifies the various projects which will be undertaken using funds raised via the BID Levy and/or Voluntary Contributions to achieve these objectives

**BID Term** means the "lifetime" for the operation of the BID as determined by the BID Proposal [namely [5 (five)] years from the 1<sup>st</sup> July 2018.

**Complementary Service(s)** means those services, complementary to the Standard Services, to be delivered within the BID Area in support of the BID and secured or procured by the BID Company from the Council or other third party provider in addition to the Standard Services

**Complementary Services Agreement(s)** means an agreement entered into between the Council and the BID Company or such further agreements as may be entered into by the BID Company for the provision of Complementary Services

**Complementary Service Provider** means the provider of a Complementary Service

**Complementary Services Review Panel** means the panel to be set up consisting of representatives from the Council [2 services heads and Chief Executive or department representative] and 2 representatives from the BID Company

**Compliance Notice** means a notice served by the BID Company which contains the following:-

- a) the details of the deficiencies in the carrying out of the Complementary Service identifying the Benchmark Standards which are not being complied with;
- b) the details of the timescale during which such deficiencies have been on-going<sup>2</sup>; and
- c) the time frame by which such deficiencies in the Complementary Service are to be rectified

**Council means \*\***

**New Service Costs** means the administrative costs incurred by the BID Company in securing an alternative provider of the Complementary Services

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<sup>2</sup> This is relevant to calculating the Penalty Charge.



**Penalty Charge** means the sum payable by the Provider if requested to do so by the BID Company such charge to consist of [X]% of the Agreed Costs for the period to which the Compliance Notice relates

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

**Start Date** means\*\* (insert date from which the services are to be provided)

**Standard Services** means those services set out in Schedule 1 in the Baseline Agreement

**Voluntary Contributions** means any contributions or funds paid or made available to the BID Company which do not form part of the BID Levy

## 2 Statutory Authorities<sup>3</sup>

2.1 This Agreement is made pursuant to Part IV of the Local Government Act 2003,

## 3 Commencement [and Duration]

3.1 The terms of this Agreement shall take effect upon the date of this Agreement

3.2 [Subject to clause 8 this Agreement shall endure for the duration of the BID Term (or what remains of it as at the date of this Agreement)]

## 4 The Provider's Obligations

4.1 The Provider agrees to the following:

4.1.1 subject to clause 8 to provide facilitate or procure the Complementary Services from the Start Date for the duration of the BID Term in accordance with the Benchmark Standards and the Agreed Cost

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<sup>3</sup> Where the complementary service is being provided by the Council



4.1.2 the Provider shall provide an invoice detailing the Agreed Cost for providing the Complementary Services to the BID Company every [3 (three) months] (such period to commence from the Start Date)

4.1.3 in the event that the Provider is served with a Compliance Notice from the BID Company to use all reasonable endeavours to comply with the terms of such notice as soon as is reasonably practicable or in accordance with such date as may be specified in the notice

4.1.4 [The Provider shall use all reasonable endeavours to:

- a) liaise with (and where practicable) put in place appropriate partnering arrangements with the Council for the provision of the Complementary Services where such services are complementary to or are of a similar nature to those already provided for by the Council as are further set out in the Baseline Agreement;
- b) share information with the Council relating to the carrying out and performance of the Complementary Services;
- c) assist and support the Council in preparing for and conducting its Best Value Review (as is appropriate)
- d) implementing such recommendations as may be made by Complementary Services Review Panel in carrying out and/or providing the Complementary Services]

4.1.5 Not to assign or transfer any of its obligations in this Agreement to a Third Party without the prior written approval of the BID Company

4.1.6 [In the event that the Provider fails to comply with the Compliance Notice within the specified time then the BID Company shall be able to secure such substantially similar Complementary Services from a third party provider and the Provider shall be liable to<sup>4</sup>

- a) pay the Penalty Charge to the BID Company within 28 days from receipt of notice from the BID Company requesting payment of the Penalty Charge; and
- b) pay the New Service Costs to the BID Company within 28 days from receipt of notice from the BID Company requesting payment of the New Service Costs.]

4.1.7 To obtain all necessary consents licences and approvals from the Council or other third parties as might be necessary to carry out or facilitate the carrying out of the Complementary Services.

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<sup>4</sup> Consider whether a "compensatory" mechanism should also be built in. i.e. it is not necessarily sufficient that the BID company can simply recoup its costs it should be entitled to some form of compensation for the inconvenience etc suffered as a result of services being carried out inappropriately.

## **5 BID Company Obligations**

5.1 The BID Company shall pay the invoice received pursuant to clause 4.1.2 (above) for the provision of the Complementary Services within 28 (twenty eight) days from the date of receipt of the invoice

5.2 In the event that the BID Company is of the reasonable view that the Provider is failing to properly carry out the Complementary Service then it shall serve a Compliance Notice on the Provider.

5.3 To use all reasonable endeavours to assist the Provider in procuring such licences approvals or other consents as might be necessary to enable the Provider to carry out its obligations under this Agreement.

## **6 Monitoring and Review**

6.1 The Provider and the BID Company [and the Council] shall set up the Complementary Services Review Panel within 28 days from the date of this Agreement the purpose of which shall be to:

6.1.1 monitor the carrying out of the Complementary Services in accordance with the Benchmark Standards;

6.1.2 [(where partnering arrangements are in place between the Council and Provider) to review the provision of the Complementary Services against such Best Value Indicators which the

Council may publish from time to time and to make such recommendations for the improvements and/or alteration of the Complementary Services as is appropriate to comply with or meet Best Value Indicators]

6.1.3 to liaise with and provide such necessary information to the Council regarding the carrying out and performance of the Complementary Services as will assist the Council in carrying out its Best Value Review

6.1.4 monitor payments received from the BID Company;

6.1.5 review any necessary contracts and agreements which are entered into for the provision of the Complementary Services;

6.1.6 identify the need for any improvement of or alteration to the Complementary Services;

6.1.7 review any Compliance Notices served by the BID Company; and

6.1.8 make recommendations pursuant to paragraphs 6.1.1 to 6.1.7 (above) to the Provider and the BID Company;

6.1.9 In the event that the Provider is also the Council the Standard Services Review Panel shall carry out all the duties and requirements set out in paragraphs 6.1.1 to 6.1.8 hereof and the parties agree not to set up the Complementary Services Review Panel.

## **7 Joint Obligations**

7.1 Both the Provider and the BID Company agree:

7.1.1 To review and take account of any representations or recommendations made to them by the Complementary Services Review Panel [or the Standard Services Review Panel where the Standard Services Review Panel is exercising all the powers in paragraphs 6.1.1 to 6.1.8 hereof] and to take such action as may be appropriate

## **8 Termination**

8.1 The BID company shall be permitted to terminate this contract upon any of the following:

8.1.1 the BID Company has served 3 Compliance Notices and the Provider has failed to take such steps as are required to secure compliance with the Compliance Notices; or

8.1.2 the BID Company serves no less than [1] month's notice on the Provider that the BID is being terminated prior to the expiry of the BID Term

8.1.3 [The Provider is unable to provide the Complementary Services and serves no less than [3] month's written notice on the BID Company setting out in detail the reasons as to why it can no longer provide the Complementary Services]

## **9 Confidentiality**

9.1 Both the Provider 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 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 provision of the BID

## **10 Notices**

10.1 Any notice or other written communication to be served or given to or upon any party to this Deed 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.

10.2 Notice may be served by

10.2.1 delivery to the \*\* at the Provider's address or specified above;

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

10.2.3 registered or recorded delivery post.

10.2.4 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.

## **11 Miscellaneous**

11.1 For the avoidance of doubt where any part of this Agreement is incompatible with the Regulations or any other regulations which the First 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

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

11.3 For the avoidance of doubt the provisions of this Deed (other than those contained in this Clause) shall not have any effect until this document has been dated

11.4 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 Deed

11.5 References to the Provider include any successors to its functions<sup>5</sup>

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

## **12 Exercise of the Provider's Powers**

12.1 Nothing contained in this Agreement or implied in it shall prejudice or affect the rights discretions powers duties and obligations of the Provider under all statutes bye-laws statutory instruments orders and regulations in the exercise of its functions as a [local authority]<sup>6</sup>

13 Contracts (Rights of Third Parties)

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

## **13 Arbitration**

The following provisions shall apply in the event of a dispute:

14.1 Should any complaint or dispute arise between the parties to this Agreement in relation to this Agreement and remain unresolved for 28 days of either party bringing it to the attention of the other then either party may refer the matter to [the Chief Executive of the Council if the Council is the Provider/the Executive Director of the Provider] and the Executive Director of the BID Company with an instruction to attempt to resolve the dispute by agreement within 28 days, or such other period as may be mutually agreed by the Provider and the BID Company.

14.2 In the absence of agreement under clause 14.1, the parties may seek to resolve the matter through mediation under the Centre for Effective Dispute Resolution Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both parties). Unless otherwise agreed, the parties shall bear the costs and expenses of the mediation equally.

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<sup>5</sup> Leave in if Provider is local authority

<sup>6</sup> This clause probably should only be inserted if the Provider is the local authority

## **Schedule 1 - The Complementary Services**

This Schedule should set out those services which the Provider is to provide specifically within and for the benefit of the BID Area. The BID Levy is to be used to fund these services.

Consider also including how issues such as branding will be dealt with.

## **Schedule 2 – the Benchmark Standards**

Set out in this schedule the minimum standards which the Complementary Services must comply with having regards to:

(a) minimum requirements of the BID Company in the standard of services to be provided; and

(b) Relevant industry standards; and

Signed by the parties [or their duly authorised representatives]

The Common Seal of Warwick District Council  
was hereunto affixed in the presence of:

Authorised Signatory

The Common Seal of BID Leamington Limited  
was hereunto affixed in the presence of:

Authorised Signatory



## Schedule 4 – the Exceptions

Further to Clause 9, the Council shall:

- (i) supply the BID with a list of the relevant non-BID Levy Payers
- (ii) allow 14 days for the BID to review the list
- (iii) seek feedback from the BID to inform future enforcement action

This shall form the basis of the mechanism for how enforcement may otherwise be agreed to be ceased between the parties.

The Exceptions to enforcement shall be:

- (i) in the event that a business is in administration the Council shall seek to recover costs from the administrator and if this is not possible seek for it to be written off by submitting the details of the account, with associated explanation to the BID Board of Directors;
- (ii) in the event that the owner of a business is deceased or suffers catastrophic failure and the business is to be sold or voluntarily liquidated;
- (iii) such Exceptions as determined on a case by case basis by the Monitoring Group for example, if collection would result in disproportionate financial burden or may require another enforcement mechanism under the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (as amended) other than a Liability Order in order to recover it.

In all cases, the Council will look to recover the remainder of the BID levy when a property is purchased or re-let.