

DRAFT OPERATING AGREEMENT

Name of the Council: Lancaster City Council

Name of the BID Company: Lancaster BID

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Operating Agreement for Provision of Standard Services between

Name of the Council:

Lancaster City Council, Town Hall, Lancaster;; and

Name of the BID Company / Accountable Body

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 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 Arrangements
- c) Both parties wish to confirm the arrangements by which the BID Levy shall be collected together with general arrangements as to the relationship to be established between the Council and the BID Company for the duration of the BID
- d) The purpose of this Agreement is to:
- establish the procedure for setting the BID Levy
 - confirm the basis upon which 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

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) details of the success rate for the collection of the BID Levy;
- (iii) the Council's proposals (if any) to help improve its efficiency in the collection and enforcement of the BID Levy; and
- (iv) details of those BID Levy Payers who have paid the BID Levy and those who have not paid the BID Levy;
- (v) 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 9.2

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 Baseline Agreement means the Baseline Agreement annexed to this document

the BID means the Business Improvement District which operates within Lancaster city centre 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 (as defined in the BID Delivery and Financial Plan);
- (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 11.8

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 BID Delivery and Financial Plan 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 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 three years from 1st April 2013 to 31st March 2017

the Council's Termination Notice means the notice to be served by the Council on the BID Company pursuant to Clause 11.1

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 9

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 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 which runs from 1st April to 31st March.

Liability Order means an order obtained from the Magistrates Court

the Steering Group means the group to be set up to monitor the collection and enforcement of the BID Levy (as referred to in Clause 10) such group to consist of one Council officer, one representative from the BID Company and up to 12 Contributors

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 11.1 or 11.8 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 8.1

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 and all other enabling powers

3. Commencement

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

3.2 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

3.3 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

4. Setting the BID Levy

4.1 As soon as reasonably practical after the Ballot Result Date the Council shall:-

- a) calculate the BID Levy due from each BID Levy Payer in accordance with the BID Levy Rules; and
- b) confirm in writing to the BID Company the BID Levy payable annually by each BID Levy Payer
- c) enter into the Baseline Agreement with the BID Company

5. The BID Revenue Account

5.1 As soon as reasonably practical following the Ballot Result Date the Council shall set up a BID Revenue Account within the Council's General Fund and provide written confirmation to the BID Company of the same.

5.2 As soon as reasonably practical following 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 electronically from the BID Revenue Account on production of an invoice by the BID Company in accordance with clause 7.8.

6. Debits from the BID Revenue Account

- 6.1 In accordance with the Regulations (Schedule 3), the Council shall debit from the BID Revenue Account:--
- a) payments of the BID levy to the BID company
 - b) any deductions which in the Council's opinion are bad or doubtful debts
- 6.2 The Council will invoice the BID company for agreed costs in relation to billing and collection.
- 6.3 The Council shall recover the Enforcement Expenses from the liable BID levy payer, in accordance with Clause 8.
- 6.4 The Council shall not be entitled to recover Enforcement Expenses from the BID Company.

7. Collecting the BID Levy

- 7.1 Within 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.
- 7.2 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
- 7.3 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.
- 7.4 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 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
- 7.5 The Council shall use all reasonable endeavours to collect the BID Levy on the date specified (pursuant to clause 7.1 above) and thereafter on a quarterly basis and in accordance with the procedure set out in Schedule 4 of the Regulations
- 7.6 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
- 7.7 The Council shall inform the BID company, upon expiry of the first month and every month thereafter, of the amount of BID levy monies collected.

7.8 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 7.8, for the total amount of BID levy monies collected, minus the total of BID levy monies previously invoiced for in the relevant financial year.

8. Procedures available to the Council for enforcing payment of the BID Levy

8.1 In the event that the BID Levy is not paid within 28 days from the date that it becomes payable then (subject to the Exceptions or as may otherwise be agreed between the parties) the Council shall serve a Reminder Notice on such relevant BID Levy Payer which shall:-

- a) identify the sum payable;
- b) provide a further 14 days for payment to be made;
- c) confirm that the Council will make an application to the Magistrates Court for a Liability Order to recover the unpaid sum and costs.

8.2 If after a further 14 (fourteen) days from the payment date stated in the Reminder Notice the outstanding sum of the BID Levy has not been paid the Council shall 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)

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

9.1 In the event that the Council is not enforcing payment of the BID Levy pursuant to Clause 8 above the BID Company shall serve the Enforcement Notice on the Council requesting that:-

- a) it serve a Reminder Notice; or
- b) it obtains a Liability Order pursuant to Clause 8.2 above

within 14 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

9.2 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:-

- a) detail the sum which remains unpaid;
- b) confirm that the Council has failed to use the enforcement mechanisms available to it under this Agreement to recover the sum; and
- c) 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

- d) In the event that the Council fails to take any of the steps requested by the BID Company pursuant to clauses 9.1 and 9.2 (above) the Council shall (within 28 days of receipt of written notice from the BID Company which specifies the amount of BID Levy outstanding) pay the specified sum into the BID Revenue Account and provide written confirmation to the BID Company that this has been done

10. Accounting Procedures and Monitoring

- 10.1 Within one month from the Operational Date the Council and BID Company shall form the Steering Group
- 10.2 Every month for the duration of BID Term the Council shall provide the BID Company with a breakdown of:-
 - a) the amount of BID Levy for each individual BID Levy Payer;
 - b) details (together with the outstanding unpaid sum) of those BID Levy Payers who have not paid the BID Levy during that month;
 - c) details of the Reminder Notices issued throughout that period; and
 - d) details of any Liability Orders obtained or applied for by the Council;
- 10.3 Every six months for the duration of the BID Term the BID Company shall provide the Council with the following details:
 - a) the total amount of income received from the Contributors (excluding the BID Levy)
 - b) the total expenditure during that 6 month period.
- 10.4 The Steering Group shall meet on a bi-monthly basis.
- 10.5 At each meeting the Steering Group shall
 - a) review the effectiveness of the collection and enforcement of the BID Levy; and
 - b) if required, review and assess the information provided by the Council and the BID Company pursuant to Clauses 10.2 and 10.3 above and make any recommendations for implementation as may be agreed (and which are permitted by the Regulations and the terms of this Agreement)
- 10.6 Within fourteen days after the date of the end of the Financial Year the Council shall provide the Annual Report to the BID Company
- 10.7 Within fourteen days from the date of receipt of the Annual Report the BID Company shall provide the BID Company Report to the Council

11. Termination

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

- a) 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 Arrangements; or
- b) 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 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 11.2 or 11.3 (whichever is applicable)

11.2 Where the BID Termination Notice relates to Clause 11.1(a) 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;

11.3 Where the BID Termination Notice relates to clause 11.1(b) both parties shall agree and/or discuss or review the following:

- a) 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;
- 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 Arrangements 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

11.4 Notwithstanding clauses 11.1, 11.2 and 11.3 above, the Council shall cause a Public Meeting to be held prior to the termination of the BID arrangements

- 11.5 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 12 months prior to termination taking place
- 11.6 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:
- 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.
- 11.7 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
- 11.8 The BID Company shall not be permitted to terminate the BID Arrangements where:
- a) the works or services under the BID Arrangements 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.

- 11.9 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

12. Confidentiality

- 12.1 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 Arrangements subject to the obligation of both parties to disclose

under the Data Protection Act 1998, the Freedom of Information Act 2000 and the Human Rights Act 1998 and any codes of practice and best guidance notes issued by the Government and appropriate enforcement agencies

13. Notices

- 13.1 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
- 13.2 A Notice may be served by
- 13.2.1 delivery to Lancaster City Council at the Council's address specified above; or
- 13.2.2 delivery to the Company Secretary at the BID Company's address specified above
- 13.2.3 registered or recorded delivery post
- 13.2.4 Electronic Communication (provided that it is in legible form and is capable of being used for subsequent reference)
- 13.3 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.

14. Miscellaneous

- 14.1 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
- 14.2 The headings appearing in this Agreement are for ease of reference only and shall not affect the construction of this Agreement
- 14.3 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
- 14.4 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
- 14.5 References to the Council include any successors to its functions as local authority
- 14.6 References to statutes, bye laws, regulations, orders, delegated legislation shall include any such instrument re-enacting or made pursuant to the same power

15. Exercise of the Council's powers

- 15.1 Nothing contained in this Agreement or implied in it shall prejudice or affect the rights discretions powers duties and obligations of Lancashire County Council and Lancaster City

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

16. Contracts (Rights Of Third Parties)

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

17. Disputes

17.1 All disputes or differences which shall at any time arise between the parties whether during the Term or afterwards touching or concerning this Agreement or its construction or effect or the rights, duties or liabilities of the parties under or by virtue of it or otherwise or any other matter in any way connected with or arising out of the subject matter of this agreement shall be referred to an independent person to be agreed upon by the parties or in default of agreement to be nominated by someone from the Valuation Board.

IN WITNESS whereof Lancaster City Council and Lancaster BID have caused this agreement to be signed the day and year first before written

***The COMMON SEAL of
Lancaster City Council was
Affixed in the presence of***

Authorised signatory

***The COMMON SEAL of
Lancaster BID was
Affixed in the presence of***

Authorised signatory

Date

Schedule 1 – Minimum Value Rules

The BID billing and recovery process will follow the same rules as for the general Non Domestic Rates processes when considering minimum values for issuing documentation

The minimum annual bill generated for 2013 / 2014 with a rateable value of £10,000 will be £100 for the whole year. This could be apportioned if there is a vacation/ change of occupation dates and a small value bill could result.

Accordingly, it seems reasonable to set minimum values below which demands and recovery documents will not be issued

Demand/Bill

Minimum £5.00

Reminder/Final Notice

Minimum £10.00

Summons

Minimum £50.00 plus costs

But each case will be considered on an individual basis and lower values may be issued summons if the liability is ongoing

Bailiff Referral

Minimum £100.00 plus costs

But again each case will be considered on an individual basis and lower values may be issued summons if the liability is ongoing

Schedule 2 – Charity Occupation

The BID Delivery Plan states that ALL ratepayers, of occupied and empty premises, will be liable to the BID charge.

NO relief is to be given in respect of premises occupied or owned by Charities.

The normal billing and recovery process will be followed in all cases. However summonses for non payment of the BID bill by Charities, or other accounts in receipt of National Non Domestic Rates Relief, will be referred to the BID Steering Group for consideration, using the pro forma attached.

The circumstances of the individual cases should be considered by the steering group at the first available opportunity. A minimum of three members of the Steering Group must consider each case.

The Steering Group must then notify the Billing Authority within 14 days by returning the pro forma detailing their decision and authorisation for the next action

If the Steering Group decides not to proceed with recovery through the Magistrates Court then the Billing Authority will have to write off the outstanding sum as irrecoverable.

If the Steering Group decides to proceed then a summons will be issued for the next available hearing date at the Magistrates Court

