

DATED 1 June 201~~6~~

BASELINE AGREEMENT FOR THE
PROVISION OF SERVICES WITHIN THE NEWBURY BID AREA

WEST BERKSHIRE COUNCIL

AND

NEWBURY BUSINESS IMPROVEMENT DISTRICT COMMUNITY INTEREST
COMPANY

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Baseline Agreement for the Provision of Standard Services

THIS DEED IS MADE THE 1 DAY OF June 2016 

BETWEEN

(1) West Berkshire Council of Market Street, Newbury, Berkshire, RG14 5LD
("the Council");

and

(2) Newbury Business Improvement Community Interest Company registered as a community interest company in England and Wales with number 06977701 whose registered office is at Broadway House, 4-8 The Broadway, Newbury, RG14 1BA ("the BID Company").

Recitals

- (A) The Council is a local authority for the purposes of the Local Government Act 2003 and is 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 Proposals.
- (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.

It is agreed as follows:-

1. Definitions

“BID”	has the meaning given in the Regulations.
“BID Area”	means the area within which the BID operates as edged red on the plan attached to this Agreement in Schedule 1.
“BID Arrangements”	has the meaning given in Section 41 of the Local Government Act 2003.
“BID Levy”	means the charge levied and collected within the Bid pursuant of the Regulations.
“BID Levy Payers”	means the non-domestic ratepayers liable for paying the BID Levy.
“BID Term”	means five years
“Complementary Services”	means those services secured or procured by the BID Company from the Council or other third party provider in addition to the Standard Services.
“Complementary Service Provider”	means the provider of the Complementary Services.
“Financial Year”	means the financial year for the BID Company which runs from 1 st June 2017 to 31 st May 2022
“Operating Agreement”	means the agreement entered into on

1 June 2017 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:

- (i) identifies the Standard Service to which the notice relates;
- (ii) states how the Standard Service is not being provided in accordance with this Agreement; and
- (iii) requests that the Council liaise directly with the provider or contractor responsible for carrying out the Standard Service for the purposes of securing compliance with this Agreement.

“Proposals”

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

Proposals' has the same meaning save that 'ballot' shall be replaced with 'renewal ballot' and 'Alteration Proposals' has the same meaning save that 'ballot' shall be replaced with 'alteration ballot'.

“Protocols”

means the informal procedures to be agreed by the Council and the BID Company the purpose of which is to assist in the provision of the Standard Services.

“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).

“Services Review Panel”

means the panel whose members consist of representatives from the BID Company and the Council.

“Standard Services”

means the services provided by the Council within the BID Area as set out in Schedule 2.

“Voluntary Contribution(s)” 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

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 shall take effect from the date of this Agreement and in any event shall determine and cease to be of any further effect in the event that:

- (i) the BID Term expires save where the BID Company secures the approval of Renewal Proposals in a renewal ballot or Alteration Proposals in an alteration ballot or Proposals in a re-ballot in which event this Agreement shall continue until the expiry of the BID Term set out in the Renewal proposals, Alteration Proposals or the Proposals set out in the re-ballot provided, in relation to Renewal Proposals and Alteration Proposals, the Council consents to such continuation;
- (ii) the Council exercises its reasonable discretion to terminate the BID Arrangements in exercise of its powers under Regulation 18 of the Regulations;
- (iii) The Council terminates this Agreement pursuant to paragraph 8 of this Agreement.

4. The BID Company's Obligations

4.1 The BID Company agrees that it will provide the Council with any information the Council may reasonably require in relation to the carrying out of the Complementary Services.

4.2 In the event that the BID Company intends to change the Complementary Services the BID Company shall serve reasonable notice on the Council for the purposes of arranging a meeting of the Services Review Panel and at such a meeting the BID Company shall consult with the Council in respect of the intended change to the Complementary Services.

5. The Council's Obligations

5.1 The Council:

(a) will provide the Standard Services within the BID Area at its own cost for the duration of the BID term, subject to appropriate resources and levels of funding.

(b) will not use the BID Levy at any time to either fund or procure the Standard Services;

(c) may provide different Standard Services, delayed Standard Services or no Standard Services in the event that it is not reasonably practicable to provide the Standard Services by reason of the following:

(i) adverse weather conditions in the BID Area;

(ii) an excessive number of pedestrians in the BID Area which would impede or inhibit the carrying out of the Standard Services;

- (iii) restrictions by the Police as to the persons and/or number of persons permitted access in the BID Area;
- (iv) a major traffic accident or major spillage in the BID Area;
- (v) marches, parades, film and theatre premieres, festivals and visits by VIPs in or affecting the BID Area where such activities directly impede or inhibit the Standard Services from being provided;

provided always that the Council shall first, if possible, provide the BID Company with reasonable notice in the event that the Council intends to provide different Standard Services, delayed Standard Services or no Standard Services as a result of any of the reasons mentioned in this clause and the Council shall use best endeavours to recommence the Standard Service as soon as reasonably practicable to the same standard as it was immediately before the change.

5.2 In the event that the Council intends to change the Standard Services significantly and permanently the Council shall consult with the BID Company not less than six (6) weeks prior to that change, if possible, and such notice shall include:

- (a) a description of the part or parts of the Standard Services the Council intends to change;
- (b) a detailed explanation of why the Council intends to change such Standard Services;
- (c) the date on which the Council intends to change the Standard Services.

5.3 Upon receipt of a Performance Notice from the BID Company, the Council shall carry out a review of the performance and the carrying out of the Standard Services by the contractor or provider of the Standard Services and use its best endeavours to secure the improvement of the Standard Services from such contractor or provider and to consult with the BID Company on the action plan arising from such review, to secure such improvements and keep the BID Company informed of the Council's actions and progress in carrying out the action plan.

6. Licence

6.1 The Council hereby grants a licence to the BID Company, its agents or Complementary Service Provider to enter onto, into or upon any land within the Council's ownership or the highway in the BID Area for the purposes of the BID Company, its agents or Complementary Service Provider carrying out any function or service required or secured (or any ancillary function) reasonably necessary for the operation of the BID provided that the Council shall be permitted to withdraw such licence in the event that in its reasonable opinion the BID Company, its agents or Complementary Service Provider consistently act in such a manner which either materially contravenes usual health and safety requirements, commits a serious contravention of health and safety requirements, seriously damages Council property, severely prejudices the manner in which the Council can carry out its usual public services or where, in the Council's reasonable opinion, it is necessary to withdraw such licence in order to safeguard the health and safety of persons in or around the BID Area or part of the BID Area.

7. Monitoring and Review

7.1 The parties shall set up the Services Review Panel within 28 days from the date of this agreement the purpose of which shall be to:

- (i) review and monitor the carrying out of the Standard Services;
- (ii) where appropriate, review and monitor the carrying out of the Complementary Services and make such recommendations to the BID Company as are appropriate;
- (iii) 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 and to make recommendations to the Council including recommendations for an improvement in performance in the carrying out of the Standard Services and recommendations for the carrying out of the Standard Services in a manner that facilitates the carrying out of Complementary Services, and to identify the need for any alteration to the Standard Services;

7.2 Within one month from the date of this Agreement the parties shall agree the dates when there will be meetings of the Services Review Panel and there shall be at least two such meetings in each Financial Year (throughout the duration of the BID Term) and on all other occasions further meetings of the Services Review Panel 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 less if otherwise agreed or in cases of emergency)

and provided further that such meetings can be dispensed with altogether upon the written agreement of the parties.

8. Termination

8.1 The Council may terminate this Agreement:

8.1.1. in the same circumstances in which it may terminate the BID Arrangements under Regulation 18 of the Regulations,

8.2. Either party may terminate this Agreement:

8.2.1. in the event that the other commits a serious and material irremediable breach of this Agreement;

8.2.2. in the event that the Council terminates the Operating Agreement.

9. Joint Obligations

9.1 The Parties agree:

9.1.1. for the purposes only of monitoring the Standard Services and the Complementary Services to review and take account of any representations or recommendations made to them by the Services Review Panel and take such action as may be appropriate;

9.1.2. to agree appropriate Protocols as may be required in order to assist the carrying out or provision of the Standard Services (and thereafter to review them annually);

9.1.3. to operate the Standard Services in accordance with such agreed Protocols.

10. Confidentiality

10.1 The parties agree to keep confidential and not to divulge to any person except for auditors and relevant advisers 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 and this obligation shall survive the termination or lapse of the provision of the BID.

11. Notices

11.1 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 upon 7 days' notice in writing.

11.2 A Notice may be served by:

- (i) delivery to the Council's Head of Finance at the Council's address as specified above;
- (ii) delivery to the Company Secretary at the address of the BID Company specified above;
 - i. registered or recorded delivery post to such addresses
 - ii. electronic communication (provided that it is in legible form and is capable of being used for subsequent reference) to such addresses;

11.3 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.

12. Miscellaneous

12.1 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.

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

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

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

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

13. Exercise of the Council's Powers

13.1 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 statutes, byelaws, statutory instruments, orders and regulations in the exercise of its functions as a local authority

14. Contracts (Rights of Third Parties)

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

15. Arbitration

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

15.1.1 any dispute or difference of any kind whatsoever arising between the parties hereto out of or in connection with this Agreement shall be referred to arbitration before a single arbitrator;

15.1.2 the parties shall jointly appoint the arbitrator not later than 15 (fifteen) working days after service of a request in writing by either party to do so;

15.1.3 if the parties are unable to agree within 14(fourteen) working days as to the appointment of such arbitrator then such arbitrator (hereinafter referred to as "The Tribunal") shall be appointed on the application of either party to the President for the time being of the Law Society;

15.2 In the event of a reference to arbitration the parties agree:

15.2.1 to prosecute any such reference expeditiously; and

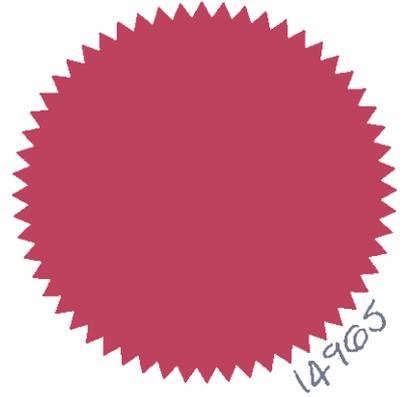
15.2.2 to do all things or take all steps reasonably necessary in order to enable the Tribunal to deliver any award (interim, final or otherwise) as soon as reasonably practicable;

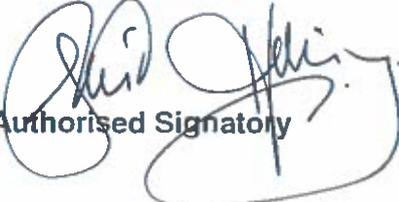
15.2.3 the award shall be in writing signed by the Tribunal;

15.2.4 the award shall be final and binding both on the parties and on any persons claiming through or under them

**EXECUTED AS A DEED BY AFFIXING
THE COMMON SEAL OF WEST BERKSHIRE
DISTRICT COUNCIL**
and authenticated by:

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Authorised Signatory

Director of

EXECUTED AS A DEED
by the BID Company acting by one Director
in the presence of:

)
)
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Schedule 1 – The BID Area Map

Schedule 2 – The Standard Services

