

THIS SERVICE LEVEL AGREEMENT is made the 8th day of April
BETWEEN

- (1) Somerset West and Taunton Council. The new Authority replacing West Somerset Council and Taunton Deane Council will be legally bound to continue with this Service Level Agreement for its full term.
- (2) **Minehead BID Company Ltd** registered as a company limited by guarantee in England with company number 11532338 whose registered office is 22 The Parks, Minehead, Somerset, TA24 8BT.

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 Local Authority 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 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 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 & other expenses incurred in collecting the BID Levy shall be paid

1. DEFINITIONS

‘Annual Report’ means a report to be prepared in conjunction with the BID Company 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; should be included with the transfer or payments to the BID company.
- (iii) Details of the Official Collection % and remaining balance
- (iv) the Council's proposals (if any) to help improve its efficiency in the collection and enforcement of the BID Levy; refined details should be formally agreed with the BID Company, example but not restricted to; small balances, vulnerability, write offs(bad/doubtful debts), enforcement agents, committal, bankruptcy, using a court of suitable jurisdiction to recover debts.
- (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 – bad debt provision in year 1 needs to be agreed with the BID company. Yr2 will be better paced when using the activity of yr1. Year 1 7% to be reviewed each year depending on the collection profile as it builds.

‘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
‘Ballot Result Date’	means the date upon which a successful ballot result has been declared in favour of putting in place the BID arrangements
‘Baseline Agreement’	means the draft Agreement see Appendix 2 – needs to be written and agreed
‘BID’	means the Business Improvement District managed by Minehead BID Company Ltd
‘BID Arrangements’	means those arrangements to be put in place pursuant to the Regulations for the operation of the BID
‘BID Company’s Report’	means a report for each Financial Year to be prepared by the BID Company which details the following: -

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

‘BID Levy’ means the charge to be levied and collected within the BID area pursuant to the Delegations

‘BID Levy Payer(s)’ means the non-domestic rate payers responsible for paying the BID Levy

‘BID Levy Rules’ means the rules set out in the BID MINEHEAD Business Plan a copy of 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)

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

‘BID Term’ means the period of five years 01 July 2018 to 30 June 2023

‘Contributor’s’ means the BID Levy Payers or other Contributors making voluntary contributions to the BID Company

‘Demands Notice’ shall have the same meaning set out in paragraphs 3 of Schedule 4 of 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):

- (i) by means of a telecommunication system (within the meaning of the Telecommunications Act 1984); or
- (ii) by other means but while in electronic form

‘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, Cost raised in pursuance of a debtor to be retained by SOMERSET WEST AND TAUNTON COUNCIL (from 1 April 2019) and not the BID company

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

‘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

‘Financial Year’ means each financial year for the BID Company during the BID Term which runs from July 1st to June 30st each year

‘Liability Order’ means an order obtained from the Magistrates Court

‘Steering Group’ means the group to be set up to monitor the collection and enforcement of the BID Levy (as referred to in Clause 9.2) such group to consist of at least 1 Council officer and at least 3 representatives from the BID Company.

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

‘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)

‘Reminder Notice’ means the notice to be served pursuant to Clause 8.1

It is agreed:

2. STATUTORY AUTHORITIES

This Agreement is made pursuant to Part IV of the Local Government Act 2003 and Section III of the Local Government Act 1972 and all other enabling powers.

3. COMMENCEMENT

This Agreement shall not take effect until the company is registered and, in any event, shall determine and cease to be of any further effect in the event that:

- 3.1 the BID Company fails to secure approval of the Proposals, Renewal Proposals or Alteration Proposals referred to in the MINEHEAD BID Business Plan in a ballot, renewal ballot, alteration ballot or re-ballot;
- 3.2 the Secretary of State declares void a BID ballot, renewal ballot, alteration ballot or re-ballot;

At the end of the BID Term if 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 subject to the consent of both parties and any variations they may agree, continue to remain in force and of full effect

4. SETTING THE BID LEVY

As soon as possible upon the Ballot Result Date the BID Company shall:

- 4.1 calculate the BID Levy for each BID Levy Payer in accordance with the BID Levy Rules; and
- 4.2 confirm in writing to the Council the BID Levy payable by each BID Levy Payer

5. THE BID REVENUE ACCOUNT

- 5.1 As soon as is reasonably practicable following the Ballot Result Date the Council shall set up a BID Revenue Account in accordance with regulations and accounting codes of practice in force at the time and provide written confirmation to the BID Company of the same.
- 5.2 As soon as reasonably practicable following the Ballot Result Date the BID Company shall provide the Council with details of its bank account into which the BID Levy shall be transferred from the BID Revenue Account and any other details which the Council may reasonably require.
- 5.3 The Council will pay to the BID Company in consideration for administering the BID arrangements on behalf of the Council each calendar month a sum equal to the monies collected in the preceding calendar month and properly credited to the BID Revenue Account net of cost of collection, BID loan (see 5.7) and refunds. The payment to be made within 10 working days after the last day of each calendar month. The BID Manager can waive these monthly payments if it is considered the amount to be paid across is too small.
- 5.4 After 30 June in each year the Council will pay to the BID Company the balance of monies having taken account of the monthly payments held in the BID Revenue Account at 30 June or the BID Company will refund to the Council any overpayment of monies paid on account. Such payments to be made by 31 July. This payment can be waived if the BID Company wish to keep a surplus in the BID account.

- 5.5 All sums will be subject to Value Added Tax (VAT) where applicable under VAT legislation and regulations in force at the time. This includes invoices raised by the BID Company to the Council prior to any transfer of funds being made. The Council will have to reclaim this VAT.
- 5.6 The BID Company and the Council as appropriate will issue VAT receipts, where applicable under VAT legislation and regulations in force at the time, for monies received within 7 working days of receipt of the monies.
- 5.7 BID Loan repayment (see item 10 on table) Instalments will be debited from the BID Revenues Account to repay the MHCLG loan fund in October 2018 £5,555, October 2019 £5,370 and October 2020 £5,195 prior to the BID levy being transferred to MINEHEAD BID COMPANY

6. COLLECTING THE BID LEVY

- 6.1 As soon as reasonably practicable following the Ballot Result Date the Council shall confirm in writing to the BID Company the anticipated date of the despatch of Demand Notices for the initial chargeable period and the single instalment due date.
- 6.2 The Council shall serve a Demand Notice on each BID Levy Payer and thereafter shall continue to calculate the BID Levy and serve a Demand Notice throughout the BID Term. Where a business rate payer was in beneficial occupation from the date of the BID.
- 6.3 The Council shall maintain a list of those BID Levy Payers who have paid the BID Levy and those BID Levy Payers who have not paid the BID.
- 6.4 The Council shall serve Demand Notice or amended Demand Notice on a BID Levy Payer as soon as reasonably practicable after the Council receives notice of a change that affects liability for the BID Levy.
- 6.5 The Council shall use all reasonable endeavours to collect the BID Levy throughout the BID Term. Adhering to legislation
- 6.6 The charge for collection will be £3,500 (Three Thousand Five Hundred Pounds) per annum, to include VAT and be collected quarterly in 4 equal amounts in advance, via invoice to the MINEHEAD BID COMPANY

7. PROCEDURES AVAILABLE TO THE COUNCIL FOR ENFORCING PAYMENT OF THE BID LEVY

Procedures for the enforcement and recovery of the BID Levy will be in line with the legislation for BIDS and Non-Domestic Rates enforcement procedures against BID Levy Payers.

8. ENFORCEMENT MECHANISMS IN THE EVENT THAT THE COUNCIL FAILS TO ENFORCE COLLECTION OF THE BID LEVY

8.1 In the event that the Council fails to enforce payment of the BID Levy pursuant to Clause 7 the BID Company shall be entitled to serve an Enforcement Notice on the Council requesting that:

8.1.1 the council serve a Reminder & Final Notice; or

8.1.2 in the event that the Council has already served a Reminder Notice that the Council applies for a Liability Order and the Council shall thereafter provide written confirmation of the action it shall take to comply with the Enforcement Notice.

8.2 If the Council fails to provide written confirmation of the action it is taking in relation to the Enforcement Notice within 21 days of the issue of the Enforcement Notice the BID Company shall be entitled to serve an Appeal Notice on the (a nominated officer) of the Council and such notice shall:

8.2.1 detail the amount unpaid by the BID Levy Payer ('Sum Unpaid');

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

8.2.3 include written notice requesting that a meeting of the Steering Group take place in order to achieve a solution and/or agree a strategy to recover the Sum Unpaid such meeting to take place no later than 28 days from the date of the Appeal Notice.

9. ACCOUNTING PROCEDURE AND MONITORING – refer to Civica guidance Part 2 – Ongoing Maintenance of BID Accounts

9.1 Within 10 working days of the end of the month and every month thereafter (for the duration of the BID Term) the Council shall provide the BID Company with a statement of accounts. The duration of these statement of accounts can be varied by the BID Manager.

9.1.1 the amount of BID Levy Invoiced

9.1.2 the amount of the BID Levy collected for each BID Levy Payer; Quarterly accounting and collection rate

9.1.3 details of BID Levy Payers who have not paid the BID Levy

9.1.4 details of enforcement notices issued

9.1.5 details of Liability Orders made or applied for;

- 9.1.6 details of agreement made, if any, between the Council and BID Levy Payers where it has been agreed that payment of a Demand Notice can be made over a period of 3 months or more from the date of such Demand Notice.
- 9.2 Within two months from the Ballot Result Date the parties shall agree the dates when there will be meetings of the Steering Group and there will 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 Steering Group shall be arranged by the service of written notice by either party.
- 9.3 At each meeting the Steering Group shall only:
- 9.3.1 review the effectiveness of the collection and enforcement of the BID Levy; and
- 9.3.2 if required by either party review and assess information provided by the parties.
- 9.4 Within 3 months after the end of each Financial Year (for the duration of the BID Term) the Council shall provide an Annual Report to the BID Company Finance to agree
- 9.5 Within 1 month from the date of receipt of the Annual Report in each financial year (for the duration of the BID Term) the BID Company shall provide a BID Company Report to the Council.
- 9.6 The BID Revenue Account will be subject to the normal internal and external audit arrangements of the Council. The Council will make available to the BID Company and its appointed auditors such information as requested by the BID Company and its appointed auditors and that it is able to do so under legislation and regulation.

10. CONFIDENTIALITY

Both the Council and the BID Company shall keep confidential and not 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 and this obligation shall survive the termination or lapse of the BID Arrangements.

11. NOTICES

Any notice or other written communication to be served or given to or upon any party to this Agreement to the other shall be in writing and shall be sent to the address provided for above or such substitute address in England as may from time to time have been notified by that party upon 7 days written notice.

A notice may be served by registered or recorded delivery post on: -

- a) delivery to the Director of Finance at the address to the Council specified above; or
- b) delivery to the Company Secretary at the address of the BID Company specified above;

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. ARBITRATION

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

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

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

12.2.2 the parties shall jointly appoint the arbitrator not later than 28 days after service of a request in writing by either party to do so and each party shall bear its own costs

12.2.3 if the parties are unable to agree within 28 days 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;

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

12.3.1 to prosecute any such reference expeditiously; and

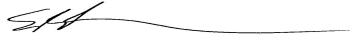
12.3.2 to do all things or take all steps reasonably necessary in order to enable the Tribunal to deliver any award (interim, final or otherwise) as soon as reasonably practicable;

12.3.3 that the award shall be in writing signed by the Tribunal and shall be finalised within 21 days from the date of such award;

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

Signed by

Steve Perkins
Senior Debt & Recovery Officer



Date – 8 April 2019

Andrew Hopkins
Minehead BID Manager



Signed by the parties (or their duly authorised representatives)