

DATED

2020

THE LONDON BOROUGH OF BROMLEY

AND

BROMLEY BID LIMITED

OPERATING AGREEMENT FOR A BUSINESS IMPROVEMENT DISTRICT IN BROMLEY TOWN CENTRE

Contents

1	Definitions
2	Statutory Authorities
3	Commencement
4	Setting the BID Levy
5	BID Revenue Account
6	Payment of the Council's Administrative Expenses
7	Collecting the BID Levy
8	Procedures available to the Council for the enforcing payment of the BID Levy
9	Enforcement mechanisms for the non-collection of the BID Levy by the Council
10	Payment of the BID Levy to the BID Company
11	Accounting Procedures and Monitoring
12	Termination
13	Confidentiality
14	Notices
15	Miscellaneous
16	Exercise of the Council's powers
17	Contracts (Rights of Third Parties)
18	Law and Dispute Resolution
19	Freedom of Information

SCHEDULE 1: BID AREA MAP

SCHEDULE 2: BASELINE STATEMENT

SCHEDULE 3: BID LEVY RULES

THIS DEED is made the

day of

2020

BETWEEN

(1) The Mayor and Burgesses of the LONDON BOROUGH OF BROMLEY of Civic Centre, Stockwell Close, Bromley BR1 3UH (the "Council"); and

(2) BROMLEY BID LIMITED [NAME TBC] (the "BID Company") registered as company limited by guarantee in England with number [NUMBER] whose registered office is at [ADDRESS]

RECITALS

A. The Council is the billing authority for the purposes of the Local Government Act 2003 and is responsible for the imposition, collection, recovery and application of the BID Levy and administering the BID Revenue Account which shall be used towards the operation of the BID within the area in 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 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 or its agents 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 the transfer 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 HEREBY AGREED:

1. Definitions

Administrative Expenses means costs incurred by the Council and/or its agents in the imposition, administration, collection and recovery of the BID Levy and all reasonable costs incurred by the Council arising out of compliance with its obligations under this agreement and the Regulations during each year of the duration of this agreement.

the Annual Report means a report to be prepared by the Council or its agent which details the following:

- i. the total amount of the BID Levy collected during the relevant Financial Year;
- ii. details of the success rates 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;
- iv. details of those BID Levy Payers who have paid the BID Levy and those who have not paid the BID Levy; and
- v. the Council's proposals for bad or doubtful debts

Bad or Doubtful Debts for the purposes of this agreement means any unpaid Bid Levy in respect of which the Council has sought recovery in accordance with clause 8.3 of this agreement and that Bid Levy remains unpaid.

the BID has the meaning given in the Regulations that is the Business Improvement District and is that area within which the BID operates as edged red on the plan attached to this Agreement in Schedule 1.

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

BID Business Plan means the BID Company Business Plan 2021 - 2026

the BID Company's Report means a report for each Financial Year to be prepared by the BID Company which detail 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 scheme 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 Regulations

the BID Company's Termination Notice means a notice to be served by the BID Company on the Council pursuant to clause 12.7

BID Levy Payer(s) means the non-domestic rate payers who are liable for paying the BID Levy

BID Levy Rules means the rules set out in the BID Proposals, which defines how the BID Levy will be calculated, details of Exempt or Discounted Properties and other requirements related to the BID Levy. For the sake of clarity these have been set out in Schedule 3 of this Agreement

BID Proposals has the same meaning as in the Regulations

BID Revenue Account means the account to be set up in accordance with Regulation 14 of the Regulations

BID Term means 1st April 2021 to 31st March 2026

BID Financial Year means the period from 1 April to 31 March

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

Chargeable Day means any one of the following days

1 April 2021 (or the first working day after this date)

1 April 2022 (or the first working day after this date)

1 April 2023 (or the first working day after this date)

1 April 2024 (or the first working day after this date)

1 April 2025 (or the first working day after this date)

Commencement Date is the date of signing of this Agreement.

Contributors means the BID Levy Payers or other Contributors making voluntary contributions or funds available to the BID Company.

Data Processor shall have the same meaning as set out in the Data Protection Act 1998 and GDPR 2016.

Data Processor Legislation the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practise issued by the Information Commissioner.

Demand Notice shall have the same meaning given in paragraph 3 of Schedule 4 of the Regulations

District Auditors Costs means the sum charged by an auditor appointed by the Audit Commission or any successor in carrying out an audit of the BID Revenue Account

Enforcement Expenses means the costs which are incurred by the Council in obtaining Liability Orders and Summons and all associated administrative expenses which may be incurred in recovering unpaid BID, including Bailiff charges.

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 visa 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.

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 shall be as agreed by the parties from time to time

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

Hereditament shall have the same meaning as defined in the Regulations

Hereditament Start Date means the date when the amendment to the Valuation List takes effect

Liability Order has the meaning given in the Regulations

Maximum Amount For any particular Financial Year means the amount of BID Levy for which Demand Notices are issued (excluding replacement or amended Demand Notices)

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); the group is to consist of representatives of the Council and the BID Company

NNDR means National Non-Domestic Rates under the Local Government Finance Act 1988

NNDR Payer means the person or organisation who has a liability to pay the non-domestic rate

Personal Data: shall have the same meaning as set out in the Data Protection Act 1998, and GDPR regulations 2016.

Proposal 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 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"

the Levy Payers Meeting means the meeting to be held of all BID Levy Payers pursuant to a Notice issued under clause 12

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).

Revaluation The revaluation of the rateable values of all business and non-domestic property in England and Wales which takes place from time to time.

Single Instalment Due Date means the date by which the BID Levy as set out in the Demand Notice must be paid

Staff means all (if any) persons employed by the BID to perform its obligations under this agreement together with the BID's servants, agents, suppliers and sub-contractors used in the performance of its obligations under the agreement.

Sum(s) Unpaid means the amount of the BID Levy which is unpaid after the Single Instalment Due Date.

Summons means the process issued in the Magistrates' Court upon Complaint by the Council or by the County Court upon application by the Council regarding unpaid BID Levy

Valuation List means a list of all NNDR properties in the local authority area

Valuation Officer means the person appointed by the Commissioners of the Inland Revenue to compile and maintain the Valuation List

Winding Up means an order pursuant to s125 of the Insolvency Act 1986

Write Off means a decision by the Council that an unpaid BID Levy will not be recovered.

Working Day means any day of the week other than a Saturday, a Sunday or a Bank Holiday

2. Statutory Authorities

2.1. This Agreement is made pursuant to Section 2 and 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 be effective from the Commencement Date and in any event shall determine and cease to be of any further effect in the event that:

- 3.1.1. The BID fails at ballot.
- 3.1.2. The BID Term expires.
- 3.1.3. Either party exercises its discretion to terminate the BID Arrangements in exercise of powers under Clause 12.

4. Setting the BID Levy

4.1. As soon as possible after the Commencement of this agreement the Council shall:

- i. Calculate the BID Levy in accordance with the Regulations and the BID Levy Rules.
- ii. Confirm in writing to the BID Company the BID Levy payable annually by each BID Levy Payer.

5. The BID Revenue Account

5.1. Pursuant to Clause 47 of the Local Government Act 2003, the Council shall establish a BID Revenue Account by the start of the BID Term.

6. Payments of the Council's Administrative Expenses

6.1. The Council shall invoice the BID Company in advance for the administrative charges as set out below. This will be done on an annual basis at the start of each BID Year. The invoice shall provide the BID Company with a breakdown of the costs incurred including VAT.

6.2. The expected annual administrative charges will include the following:

- i. Cost of collection of BID levy based upon circa **[NUMBER]** bills raised will be **[AMOUNT]**. Not exceeding £35 per hereditament or 3% of total levy.
- ii. Annual software licence fee £1,000
- iii. Annual accountancy and management fee of up to £1800

6.3. These charges will be adjusted on an annual basis at a rate equal to RPIX.

7. Collecting the BID Levy

7.1. The Council shall use all reasonable endeavours to collect the BID Levy on the Chargeable Day and thereafter on an annual basis throughout the BID Term in a manner consistent with its usual procedures for the collection of non-domestic rates and in accordance with the procedure set out in Schedule 4 of the Regulations.

7.2. Pursuant to clause 7.1 the Council shall serve a Demand Notice or Amended Demand Notice 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. It is the responsibility of the Council to ensure that the BID Levy Rules are applied accurately.

7.4. The Council shall maintain a list which identifies payment and/or non-payment of the BID Levy which shall be made available to the BID Company at intervals of not less than once a quarter.

7.5. The Council shall liaise with the BID Company in carrying out an annual review 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 serve an updated list of BID Levy Payers upon the BID Company. Such changes will be reflected in the next annual calculation of the BID Levy and subsequent Demand Notices.

7.6. The BID Company shall be responsible for reviewing any appeals received against the payment of the BID Levy and the application of the BID Levy Rules.

7.7 Notwithstanding clauses 7.4. and 7.5 information provided to the BID Company pursuant to clauses 7.4 and 7.5 shall not include the provision of any personal Data other than that which the Council map provide pursuant to the Regulations.

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 in full within fourteen days from the Chargeable Day, then (subject to the Exceptions or as may otherwise be agreed by the parties) the Council shall, at no cost to the BID Company, serve up to two reminder notices ('Reminder Notices') on the defaulting BID Levy Payer, each of which shall:

- i. identify the sum payable;
- ii. provide a further 14 (fourteen) days for payment to be made; and
- iii. confirm the Council may thereafter make an application to the Magistrates Court for a Liability Order to recover the unpaid sum (together with costs).

8.2. In the event that the BID Levy is not paid in full within 14 (fourteen) days of the service of the 2nd Reminder Notice in accordance with clause 8.1, then the Council shall immediately inform the BID Company of such further failure to pay (subject to the Exceptions). The Council will consider any comments made by the BID Company before deciding whether to make an application to the Magistrates Court for a Liability Order. The Council will normally then 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 by the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, as amended. The Council will bear the cost of any application for summons and will recover these costs from the revenue generated through any such action.

8.3. In the event that the BID Company requests that the Council does not undertake the full range of recovery action against a defaulting BID Levy Payer (as outlined in

8.1 and 8.2) the Council may write off the outstanding Bad or Doubtful Debt. Should any outstanding Enforcement Expenses remain unrecovered due to a request for the cancellation of recovery action by the BID Company, the Council will recover these costs from the BID Company.

8.4. In the event that, after all recovery action has taken place, any portion of the BID Levy is still unrecovered, the remaining Bad or Doubtful Debt may be written off. Any related Enforcement Expenses which remain unrecovered will be chargeable to the BID Company.

8.5. Where payments become due to the Council pursuant to clause 8.3 and 8.4, the Council must provide an account of the proposed charges to the BID Company. The Council will provide a VAT invoice to the BID Company to request payment of these charges.

9. Refunds on the BID Levy

9.1 Refunds will be payable by the Council on the BID Levy in the event of the over payment of the Levy by a BID Levy payer. Examples of reasons for over payment include:

- i. payment of same Levy bill more than once in error
- ii. where, subsequent to payment, the Valuation Office Agency (VOA) reviews a hereditament and reduces the Rateable Value (RV) and backdates this change to before the Chargeable Day. This may result in a reduced BID levy liability or (where new RV is below the BID levy threshold) a removal of the affected hereditament from the BID Levy billing altogether.
- iii. Where hereditaments within the BID are split or merged prior to chargeable day and one or more of the properties are removed from the ratings list, but the levy bill related to these removed properties has already been paid.

9.2. In the event that refunds become due to a Levy Payer on the basis of the reason set out in 9.1 these shall be payable only upon receipt of a written request from the Levy Payer, or their agents.

9.3. The amounts paid out during financial years 1 to 4 will be deducted from the BID Levy Account - and the payments made to the BID Company will be net of these refunds.

9.4. In final year of the BID Term, the Council will retain up to 5% of the billed levy from the BID Revenue Account to be held against the possible need to pay levy refunds after the end of the BID term. This will be paid to the BID Company upon completion of a successful 'renewal' ballot.

10. Payment of the BID Levy to the BID Company

10.1. The following apply to payment arrangements in relation to amounts invoiced to (and collected from) BID Levy payers by the Council

- i. For each of the first three quarters in each BID year (starting 1 April, 1 July and 1 Oct) the Council shall pay to the BID Company in accordance with the Regulations 25% of the amounts which the Council has then invoiced the BID Levy payers less any repayments to BID Levy payers under clause 9 of this agreement. Payments will be made by the 15th of the month where a quarterly payment is due.
- ii. **If between 1st October and the next 31st December inclusive the Council receives any amounts in respect of invoices it has issued to BID Levy payments in excess of the amounts it has already paid the Bid Company under paragraph i above for the relevant year: by the 15th January**, the Council shall pay such amounts to the BID Company in accordance with the Regulations, less any repayments to BID Levy payers under clause 9 of this agreement.
- iii. The following apply to the extent relevant
 - (i) **If between 1st January and the next 31st March inclusive the Council receives any amounts in respect of invoices it has issued to BID Levy payments in excess of the amounts it has already paid the BID Company under paragraph i or paragraph ii above for the relevant year:** the Council shall pay such amounts to the BID Company in accordance with the Regulations, less any repayments to BID Levy payers under clause 9 of this agreement. Such payment shall be due in the next year 15th April.
 - (ii) **If by 31st March, the total amounts which the Council has paid to the BID Company for the relevant year under paragraph i and paragraph ii and paragraph iii(i) above exceeds the amount which the Council has received from BID levy payers to whom the Council has issued invoices for the relevant year:** the BID Company shall be liable to refund to the Council the excess which the Council has paid to the BID Company. That excess shall be due 30 days after the Council issues the BID Company with a written demand for payment. The Council may issue that demand any time after the relevant 31st March.
 - (iii) **If neither paragraph (i) or (ii) applies at 31st March:** the Council is not liable to make any further payments to the BID Company in relation to the relevant year. The BID Company is not liable to make any refunds to the Council of the kind described in paragraph (ii) above.
- iv. Any further balance less any repayments to BID Levy Payers under clause 9 of this agreement.
- v. After the end of the 2nd year of the BID term, the Council will make known to the BID Company the number of accounts and amount of Levy still in arrears from the 1st year of the BID Term, and will request agreement of the BID Company for write off of all of these aged debts (except where ongoing discretionary payment arrangements are in place). Where the BID Company requests further reconciliation for any of the debts incurred during this year, the Council reserves the right to levy an administration charge to cover staffing which may be required

to administer these aged debts during the 3rd and subsequent years. The same procedure will be in place after the end of the 3rd year (in respect of the 2nd year accounts), after the end of the 4th year (in respect of the 3rd year accounts) and so on until the final year of the BID Term. In each case, where the BID requests continued chasing and administration of aged debts, the Council will estimate the likely additional staff time requires and levy a separate administration charge on the BID Company (the amount to be agreed between the parties).

The following worked example seeks to clarify this clause:

- Assuming the start date of the BID terms is 1st April 2021, at the end of the financial year 2022/23 (year 2) the Council will reconcile all the BID monies from bills related to the financial years 2021/22 and 2022/23 (net of funds). However, unless requested to by the BID Company, arrears outstanding on bills raised for the 2021/22 financial year will no longer be pursued or reconciled during 2023/2024 (year 3) or subsequent years.

10.2. The BID Company shall issue to the Council a VAT invoice for the payment of the BID Levy income upon advice from the Council of the amount due.

10.3. The BID Company shall provide the Council with details of its own bank account into which the BID Levy shall be transferred electronically

10.4. In the event that a BID Levy Payer is entitled to a repayment of a BID Levy pursuant to paragraph 8(4) of Schedule 4 of the Regulations and in the event that the Council has paid such BID Levy to the BID Company including all of the contingency relating to that BID Levy the Council shall request such repayment sum from the BID Company and the BID Company shall pay the repayment sum to the Council by way of reduction in the quarterly payments, as scheduled in 10.1, and the Council shall thereafter repay the repayment sum to the BID Levy Payer.

10.5. The BID Company may only spend the BID Levy in accordance with the BID Proposals; except that if the BID is varied then from the date of the variation takes effect the BID Company may only spend the BID Levy in accordance with the varied BID Proposals.

10.6. In the event of an overpayment by the Council to the BID Company, the Council will subtract the owed amount from the next scheduled payment of the BID Levy. In the event that the overpayment is after the Council has paid the last quarterly payment within the BID Term, the BID Company shall reimburse the Council forthwith unless the amount is less than £1000.

11. Accounting Procedures and Monitoring

11.1. In addition to the information outlined in clause 7.5, every quarter during the BID Term, the Council shall provide the BID Company with a breakdown of:

- i. the amount of the 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 the course of that month.

PROVIDED THAT this clause shall not apply to the provision of any Personal Data other than that which the Council may provide pursuant to the Regulations.

11.2. The BID Company shall request information from the Council which it considers relevant to their business and the Council shall consider disclosure and shall not unreasonably withhold such information.

11.3. Upon the expiry of the sixth month of the BID Term and every 6 (six) months thereafter (for the duration of the BID Term) the BID Company shall provide the Council in respect of those 6 (six) month periods with:

- i. the amount received by the BID Company from Contributors and BID Levy Payers;
- ii. the total expenditure of the BID Company.

11.4. Within 1 (one) month from the start of the BID Term, the parties shall set up the Monitoring Group.

11.5. The Monitoring Group shall meet no less than quarterly in any one BID Year.

11.6. At each meeting, the Monitoring Group shall:

- i. Review the effectiveness of the collection and enforcement of the BID Levy; and
- ii. review and assess the information provided by the parties regarding the progress being made in achieving the aims set out in the BID Business Plan.

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

11.8. The BID Company shall provide the BID Company Report to the Council two weeks prior to the Annual General Meeting of the BID Directors and Members.

11.9. The Council will provide at least one, and no more than two, representatives to the Board of the Bromley BID Company. The Council representatives will be non-voting advisory members of the Board.

11.10. Within 60 days of a successful ballot to establish the Bromley BID, the BID Company and the Council will enter into a Service Level Agreement which will define in more detail matters related to collection and enforcement of the levy and any other details related to the operation of the BID including staffing and accommodation arrangements, as required.

12. Termination

12.1. In the event that either Party is of the opinion:

- i. they are unable to due to a cause beyond their control to provide the works or services secured as part of the BID arrangements: or
- ii. they believe that there are insufficient finances available to the BID Company to meet its liabilities for the purposes of any BID Arrangements; or

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

then they shall serve a Levy Payers Meeting Notice on the other Party and the BID Levy Payers and the meeting shall take place no later than 14 days after service of that Notice.

12.2. The Levy Payers Meeting Notice shall contain the agenda for the meeting which shall be limited to the following items:

- i. a review by all present of the inadequacy of works or services that can be done, why they cannot be done and whether those works and services are so fundamental that the BID cannot continue; and
- ii. whether other works or services will be an acceptable alternative to the BID Company; and
- iii. the financial position and whether there are sufficient funds to continue as well as whether additional funds can be raised; and
- iv. a time scale (if appropriate) within which these issues can be resolved.

12.3. In the event that those present at the meeting cannot resolve the issue, then the Party calling the meeting shall table a motion that the BID be wound up no sooner than 28 days after such a resolution is passed by a simple majority of those present and entitled to vote.

12.4 In the event of termination of the BID Arrangements the Council shall forthwith review whether there is any credit standing to the account of the BID Revenue Account. If there is sufficient credit to pay to each of the BID Levy Payers not less than £5 (after deduction of any outstanding administrative costs to include the costs of winding up), the Council shall:

- i. calculate the amount to be refunded to each BID Levy Payer, and
- ii. ensure that the amount to be refunded is calculated by reference to the contribution of that Levy Payer for the last full chargeable period, and
- iii. arrange for the amount to be set against outstanding liabilities of that BID Levy Payer (if any), and
- iv. refund the net amount to the BID Levy Payer.

12.5 Upon termination of the BID Arrangements for any reason, the BID Company shall forthwith notify the Council of such termination in accordance with Regulation 18(5) and the Council will notify the BID Levy Payers in accordance with Regulation 18(6). The Council will simultaneously advise the BID Levy Payers as to the repayment of any part of the BID Levy in accordance with clause 12.4

13. Confidentiality

13.1 Subject to Clause 19 below the parties shall agree to keep confidential and not to divulge to any person with out 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 any 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.

14. Notices

14.1 Any Notice or other written communication to be served or given to or upon any party to this Agreement or 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

- i. delivery to the Director of Environment & Community Services,
- ii. London Borough of Bromley at the address specified above
- iii. delivery to the Directors at the BID Company's address specified above
- iv. first class post
- v. Electronic Communication (provided that it is in legible form and is capable of being used for subsequent reference) to such addresses which shall require a confirmed read receipt, save that no court proceedings arising from this contract may be served electronically.

14.3 Any notice served shall be deemed to have been validly served or given at the time any ordinary business would have received such post.

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 heading 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 signed and delivered.

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 a 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 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. Law and Dispute Resolution

18.1. The Agreement is made under and shall be construed by reference to English Law.

18.2. Should any dispute arise between the Parties, it shall first be referred to the Chief Executive of each Party and they shall use their best endeavours to resolve the issue by negotiation.

18.3. If they are unable to resolve the dispute within 28 days of the referral, then the Parties shall appoint a Mediator. If the Parties cannot agree on the identity of as Mediator, then they shall apply to the Centre for Effective Dispute Resolution ("CEDR") to make such an appointment.

18.4. Within 14 days of the appointment of a Mediator, the Parties representatives shall meet together with the Mediator to agree a programme for the conduct of the mediation, including (but not limited to) a timetable, exchange of documents and the structure for meetings as well as the costs of the mediation.

18.5. All proceedings of the mediation shall be held in strict confidence and shall be Without Prejudice to any future proceedings that may become necessary.

18.6. Nothing in this mediation procedure shall prevent either Party from seeking from a Court of competent jurisdiction an interim order to the other Party either preventing or compelling the commission of some act.

18.7. If the Parties reach an agreed resolution of the dispute in the mediation, that agreement shall be reduced to writing, signed by representatives of both Parties and shall be binding on both Parties.

18.8. If the mediation fails to achieve an agreed resolution, then the Parties hereby irrevocably agree that the dispute shall be referred to the English Courts.

18.9. The performance of all services shall continue during the mediation process

19. Freedom of Information

19.1 The BID Company acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and shall assist and cooperate with the Council (at the BID Company's expense) to enable the Council to comply with its disclosure requirements and the Council shall notify the BID Company of any such requests.

19.2 The Council may determine in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of FOIA or is to be disclosed in response to a request for information, and for the avoidance of doubt where the Council has received a request under the FOIA and it has notified the BID Company of the request, in no event shall the BID Company respond directly to a request for information connected with such a request to the Council unless expressly authorised to do so by the Council.

19.3 The BID Company acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA, be obliged under FOIA to disclose information following consultation with the BID Company and having taken its views into account.

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

19.5 The BID Company acknowledges that any lists of confidential information provided by it are of indicative value only and that the Council may nevertheless be obliged to disclose confidential information in accordance with this clause.

19.6 The obligations set out in clause 19 of this Agreement shall survive the termination or lapse of the BID Arrangements

20. Data Protection

20.1 The BID shall (and shall procure that any of its staff involved in the provision of the agreement) comply with any notification requirements under the Data protection Legislation, which arise in connection with this Agreement.

20.2 Notwithstanding the general obligation in clause 20.1, where the BID is processing Personal Data as a Data processor for the Council, the BID shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data protection Principle in Schedule 1 to the Data Protection Act 1998 and obligations under GDPR regulations; and

- i. Provide the council with such information as the Council may reasonably require to satisfy itself that the BID is complying with its obligations under the Data Protection Legislation and GDPR regulations;
- ii. Promptly notify the Council of any breach of the security measures required to be put in place pursuant to clause 20.2; and

- iii. Ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the Data protection Legislation and GDPR regulations.

20.3 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination

21. BID Baseline Agreement

21.1 The Council agrees to carry out the services contained in the BID Baseline Agreement, set out in Schedule 2.

In witness whereof this Agreement has been executed by the parties hereto as a Deed and delivered on the day and year first before written.

Executed as a Deed by affixing the Common Seal of The Mayor and Burgesses of the London Borough of Bromley in the presence of:

Mayor/Councillor

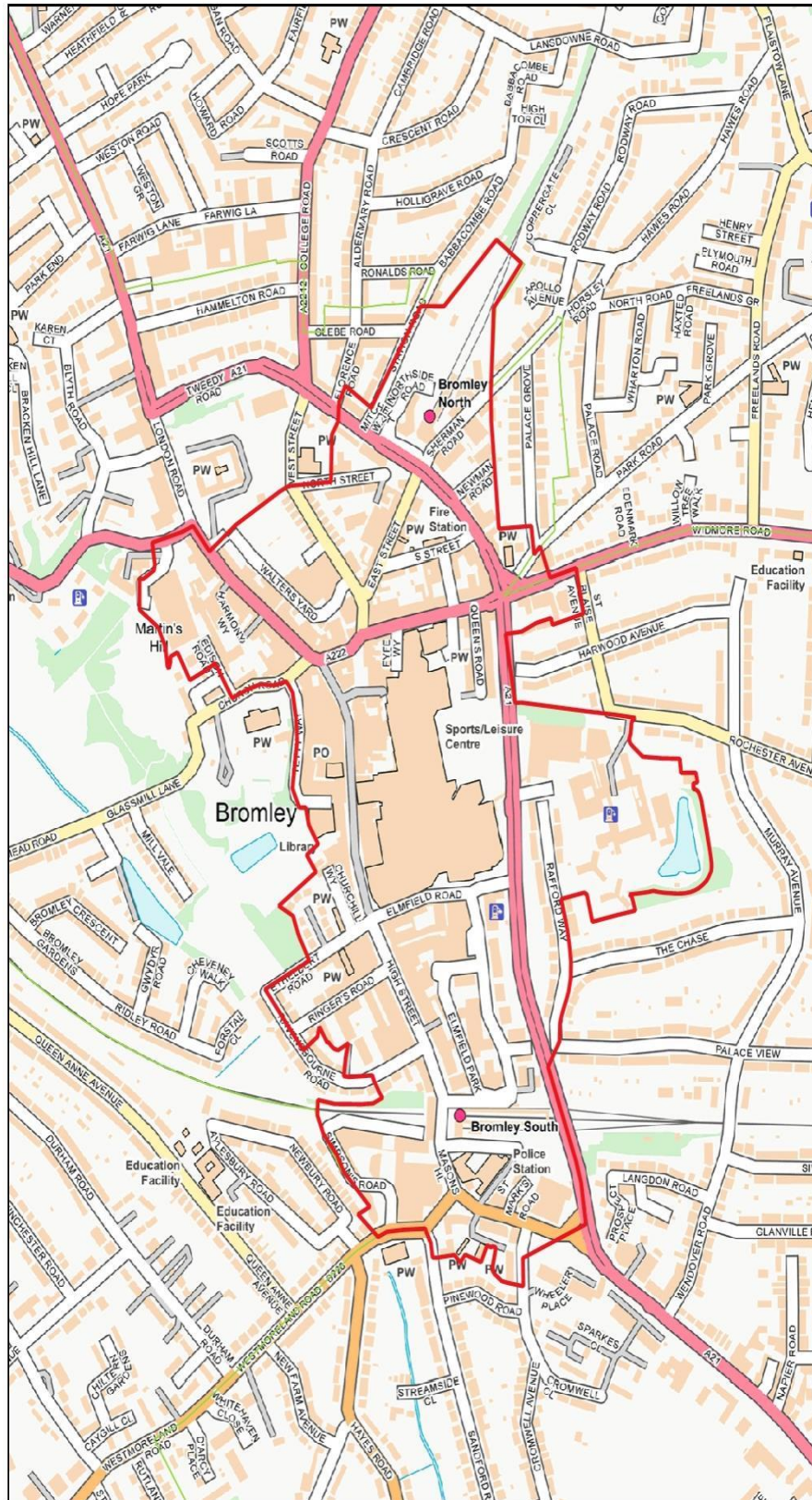
Director of Corporate Services/Senior Solicitor

Executed as a Deed by Bromley BID Limited
In the presence of

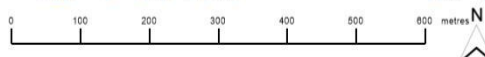
Director

Chair/Director

SCHEDULE 1: MAP OF BID AREA



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SCHEDULE 2: BASELINE STATEMENT

The London Borough of Bromley delivers the following services within the BID area where the BID intends to provide additional services.

The London Borough of Bromley will endeavour to continue to deliver the following services within the BID area. Where any of the listed services are planned to be reduced or discontinued, the Council agrees not to reduce provision of its services disproportionately, compared to any changes made elsewhere within the Borough for the duration of the BID term.

Baseline activity: Highways Management (High Street Area)

Responsible authority: London Borough of Bromley

Head of Service: Garry Warner

<p>Current level of service provided including aim of service, and frequency of service provision</p>	<ul style="list-style-type: none"> • Maintain public highway areas to remain fit for purpose. This includes statutory highway safety inspections, condition surveys, recording of defects and complete repairs to maintain public safety, including emergency repairs within and outside normal working hours. • Street lighting maintenance. • Highways and street lighting term contracts are available as required both for reactive and planned maintenance. • Technical surveys of all lamp columns to assess structural integrity and electrical function. Night surveys to assess defective lighting. • Routine maintenance of signs, lines and highway drainage assets. • Winter maintenance operations include treatment to prevent ice from forming and clearance of snow from pre-defined priority routes
<p>Specification</p>	<ul style="list-style-type: none"> • Defect repairs undertaken within investigatory levels of the Highways Code of Practice. • Frequency of highway safety inspections align with Highways Code of Practice. • Management of Public Utility Street Works within the framework of the Traffic Management Act 2004 and the New Roads and Street Works Act.
<p>Performance Measure</p>	<p>Service measured by:</p> <ul style="list-style-type: none"> • Regular inspections, compliance with completion times of works, quality of repairs • Response to customer enquiries • Contractors' key performance indicators.
<p>Non-compliance procedure</p>	<ul style="list-style-type: none"> • Contractor may be required to re-do work. • Corrective actions/training with contractors/staff. • Financial penalties issued to the contractor. • Managed through Contract Meetings.
<p>Future level of service provision</p>	<ul style="list-style-type: none"> • Maintenance of the highways structure and fabric as well as street furniture to existing standards.

Other relevant information	There are no plans to reduce or increase current level of service.

Baseline Activity: Street Cleansing (High Street Area)

Responsible Authority: London Borough of Bromley

Responsible Officer: Peter McCready

Current level of service provided including aim of service, and frequency of service provision	<ul style="list-style-type: none"> • Routine schedules of daily-street cleaning provided between normal working hours 06:00 and 22:00 hours, utilising both mechanical and manual cleaning operations. • Litterbin emptying once or more per day, and washed (internal and external) three times per year. • Graffiti removal service including proactive and reactive removal from street furniture and private buildings that are on, or are within 50metres of, a street boundary regardless of whether it is on property that is in public or private ownership. • Provision of an urgent or emergency response service for cleaning related matters, during the normally permitted working hours as stated. • Tasks which constitute provision of additional plant and labour, during the normally permitted working hours, in support of voluntary groups and other organisations engaged in “one-off clean-ups” for environmental or charitable purposes.
Specification	<ul style="list-style-type: none"> • The minimum quality standard of cleanliness which the Contractor shall deliver through each routine scheduled activity shall be commensurate with Grade A as defined in the Code of Practice on Litter & Refuse 2006 (EPA 1990). Any fly-tipping, fly-posting and materials on the highway shall be removed as part of the scheduled activity for cleansing of the street. The contractor shall maintain the standard of cleanliness from immediately after completion of the first scheduled daily cleanse until 22:00 hours, on each day of the week including Public Holidays (excl. Christmas Day). Completion of the first scheduled cleanse shall be 8:00 hours. • The standard of cleanliness shall not be allowed to fall to Grade B (as defined in the CoP on Litter & Refuse) for more than two hours thereafter before restoring to Grade A. If the cleanliness falls to Grade C or below, at any time during normal working hours, the area shall be restored to Grade A within one hour. • Removal of unwanted vegetation. • Standard of graffiti removal set as 95% completion of all reactive works within two working days. Racist or offensive graffiti shall be removed within two hours or any period instructed between two hours and 24 hours. • Removing debris following road accidents including the provision of sand and or oil dispersants as required to ensure the cleanliness and safety of the affected area; • Removing all fly-posting including commercial advertising signs and fixing materials from any street furniture.
Performance Measures	Service measured by:

	<ul style="list-style-type: none"> • Regular inspections, compliance with completion times of works, quality of cleaning. • Response to customer enquiries • Contractors' key performance indicators.
Non-Compliance procedures	<ul style="list-style-type: none"> • Contractor may be required to re-do work. • Corrective actions/training with contractors/staff. • Financial penalties issued to the contractor. • Managed through Contract Meetings.
Future level of service provision	<ul style="list-style-type: none"> • Cleansing standards of the highways as well as street furniture to existing standards. • Street washing would be an enhanced additional service requirement. • Current service provision provided through a contract valid until March 2027 (subject to a further 8 year extension).
Other relevant information	There are no plans to reduce or increase current level of service.

Baseline Activity: Regulatory Services

Responsible Authority: London Borough of Bromley

Responsible Officer: Robert Vale

Service provided, number of staff & equipment	<p><u>Regulatory Services</u></p> <p>The Council's Public Protection Division offer a statutory minimum service focusing on enforcement and significant complaint investigation with limited provision of support and advice to the local business community. These services are offered across the borough and include the following:</p> <ul style="list-style-type: none"> • Licensing • Food Safety , Food Standards & Infectious disease • Health & Safety • Trading Standards • Environmental Protection • Emergency Planning and Business Continuity <p>Officers undertake work in accordance with risk based inspection programmes as well as using complaint and other information to prioritise service delivery in an increasingly intelligence-led approach, which targets resources to the highest risk activities. Advice services for consumers in respect of Trading Standards matters is provided via a national call centre operated by the Citizens Advice Bureau.</p>
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	<p>Officers work extensively with partners including the Police, Community Safety Teams and other internal and external partners to collectively tackle issues affecting crime and disorder, anti-social behaviour and other matters relating to the overall aims of the Council</p> <p>The Council has published policies relating to the licensing of alcohol/regulated entertainment and late night refreshment (Licensing Act 2003) and Gambling premises (Gambling Act 2005). Bromley Town Centre is currently covered by a Cumulative Impact Policy in respect of premises licenced under the Licensing Act 2003 and an Alcohol Exclusion Zone in which the consumption of alcohol in a public place can be stopped by Police.</p> <p>Regulatory services have been tasked to enforce new regulations implemented by the government since March 2020 that seek to control the spread of Coronavirus. The enforcement strategy adopted by Public Protection will continue to be based on the four E's and also in accordance with the National Enforcement Concordat being risk based and intelligence led</p>
Specification	<ul style="list-style-type: none"> • Statutory and other nationally agreed frameworks for risk based inspection programmes • Regulatory Services service delivery in accordance with statutory framework • Relevant involvement in Local / Regional / National intelligence led project work • Investigations undertaken in accordance with the published Enforcement Policy
Future level of service provision	<ul style="list-style-type: none"> • Service provision will continue to be undertaken within the statutory framework and other nationally agreed frameworks • Local and national regulatory priorities will dictate priority service delivery
Performance Measures	<ul style="list-style-type: none"> • Compliance with risk based inspection programmes • Response to customer complaints / requests for service • Complaint investigations compliance with Enforcement Policy
Non Compliance procedures	<ul style="list-style-type: none"> • Regular performance monitoring • Flexible approach to targeting resources to priority work areas
Boundary area	<ul style="list-style-type: none"> • London Borough of Bromley

Baseline Activity: CCTV

Responsible Authority: London Borough of Bromley

Responsible Officer: Robert Vale

Service provided,	
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number of staff & equipment	<ul style="list-style-type: none"> • 28 fully functioning digital CCTV cameras covering Bromley Town Centre BID area, operational 24 hours a day 7 days a week. The Council may add, remove or reposition cameras within the BID area at its own discretion. • 2 full time staff monitoring all the CCTV cameras in the borough 24 hours a day, seven days a week. Plus one CCTV Supervisor, who is also a trained operator, working 8am – 5pm 5 days a week. • CCTV staff also monitor the Town Centre Shop Safe Radios and the Police Radio.
Specification	<ul style="list-style-type: none"> • The cameras are used for monitoring and recording incidents of crime and disorder as well as for moving traffic and parking offences. • Governed and protected by the Data Protection Act 1998 and the Operating Guidelines issued by the Information Commissioner. Recorded images can only be released to those legally entitled to them. All recordings are kept for a period of 31 days. Documentation detailing CCTV recorded incidents is archived for a period of 3 years.
Future level of service provision	<ul style="list-style-type: none"> • Current service provision provided through a contract valid until 31 March 2023.
Performance Measures	<p>Service measured by:</p> <ul style="list-style-type: none"> • Contractors' key performance indicators.
Non Compliance procedures	<ul style="list-style-type: none"> • Regular performance monitoring • Managed through Contract meetings
Boundary area	<ul style="list-style-type: none"> • London Borough of Bromley

Baseline Activity: Grounds Maintenance

Responsible Authority: London Borough of Bromley

Responsible Officer: James Hilsden

Current level of service provided including aim of service, and frequency of service provision	<ul style="list-style-type: none"> • Grounds Maintenance Routine schedules of grass cutting and floral display maintenance working hours 07:00 and 4pm. • <u>Hanging baskets</u> Summer provision: <ul style="list-style-type: none"> Bromley Civic Centre 12 High Street 19 Queens Gardens 6 Westmoreland Place 4 Winter Provision: <ul style="list-style-type: none"> High Street 19 Queens Gardens 6
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Specification	<ul style="list-style-type: none"> • Hanging basket to be watered to ensure that the plants are in good conditions • Maintain parks & greenspace areas within the contract specification including grass cutting, floral bedding areas, shrub areas, bin emptying, litter picking and collection and path cleaning
Performance Measures	<p>Service measured by:</p> <ul style="list-style-type: none"> • Regular inspections to monitor quality. • Response to customer enquiries • Contractors' key performance indicators.
Non-Compliance procedures	<ul style="list-style-type: none"> • Contractor may be required to re-do work. • Corrective actions/training with contractors/staff. • Financial penalties issued to the contractor. • Managed through Contract Meetings.
Future level of service provision	<ul style="list-style-type: none"> • Current service provision provided through a contract valid until 31 March 2027.

Schedule 3: Bromley BID Rules

In developing the rules that will apply to the renewed BID, consideration has been given to 'The National BIDs Criteria (2020)' published by British BIDs.

The Ballot

1. The Electoral Reform Society (ERS), on behalf of The London Borough of Bromley, will send those responsible for properties or hereditaments to be subject to the BID a ballot paper prior to Friday 29th January 2021.
2. Each property or hereditament subject to the BID will be entitled to one vote in respect of this BID proposal in a 28 day postal ballot which will commence on Friday 29th January 2021, and close at 5pm on Thursday 25th February 2021. Ballot papers received after 5pm on Thursday 25th February 2021 will not be counted. The result of the ballot is due to be announced on the following day.
3. In order for the proposal to be successful at ballot the result will need to meet, as a minimum, two independent criteria which are: (a) of those ballots returned by the close, those voting in favour of the proposal must exceed those voting against it, and (b) of those ballot papers returned by the close, the total rateable value of those properties or hereditaments which vote in favour, must exceed the total of those voting against.
4. If successful at ballot, the BID will commence delivery of services in April 2021 and will continue for a period of 5 years to March 2026.

The Levy

1. The levy rate to be paid by each property or hereditament is to be calculated as 1.25% of its rateable value as at the 'chargeable day' (notionally 1st April each year). This is a reduction from the current prevailing rate of 1.41%.
2. Only properties or hereditaments with a rateable value of £20,000 or more will be eligible for payment of the levy.
3. The number of properties or hereditaments liable for the levy is approximately 603.
4. Each year the levy rate will be increased by the fixed rate of inflation of 3% per annum.
5. The levy will be charged annually in advance for each chargeable period to be April to March each year, starting in 2021. No refunds will be made.
6. The maximum amount payable in any one BID year either (1) by any one levy payer and/or (2) for any hereditament each year will be capped at £12,000 (subject to the same inflation).
7. The owners of untenanted properties or hereditaments will be liable for payment of the levy. This includes listed buildings.
8. Occupiers within covered shopping or leisure centres (in this case The Glades and The Mall) that are subject to a service charge will pay 75% of the levy that would otherwise apply.
9. Charitable organisations that are subject to relief on their business rates liability (and who are not subject to 9 above) will pay 75% of the levy that would otherwise apply.
10. London Borough of Bromley will be responsible for collection of the levy. The collection charge will be £17,800 this equates to £29 per hereditament.

Accountability and Transparency

1. The BID Body is to remain as Bromley BID Ltd, a not-for-profit Company.
2. The Board has formed a BID Advisory Group to meet periodically and to assist in the effective delivery of all proposed services. The Board reports activities and decisions to the Advisory Group.

3. The Board shall continue to appoint a Chair annually and the Chair will also act as Chair of the Advisory Group.
4. Provided that the BID is meeting its overall objectives, the Board shall have the ability to vary service delivery and expenditure allocation according to the changing demands of levy payers. The BID Regulations (England) 2004 set out those circumstances in which an alteration ballot may be required.
5. The BID Body produces annual accounts compiled by independent accountants. An annual report on activities, including finances, is published, together with a billing statement. Annual meetings for levy payers are held. Finances
6. An Operating Agreement, which includes the Council's baseline service commitments, has been agreed with Bromley Borough Council. A copy can be found at <http://www.bromleybid.com>.
7. Notification of the intention to hold a ballot was sent to the Secretary of State on 29th July 2020.

Finances

1. A cautious approach has been adopted to budgeting for the BID term.
2. A levy collection rate of 80% in year 1 and 90% in years 2-5 has been assumed and additional contingencies included.
3. The average annual levy available to be spent by the BID for the term is £528,393.
4. The contingency provisions on expenditure, together with reserves, provides for an anticipated surplus of £130,436 by the end of the term. This equates to 4.8% of expenditure.
5. In the previous term, the BID has succeeded in generating £181,658 in additional income, being 2.58% of total levy.
6. Agreement has been reached with the owners of The Glades that they will voluntarily contribute an additional amount, being £40,000 over the term. The additional income provision within the budget totals 1.5% of the estimated levy to be collected.
7. Operating costs of the BID are estimated as 22% of total expenditure, having been 15% in the previous term.