

Dated: 09/08/2017

OPERATING AGREEMENT

Forest Heath District Council

- and --

Newmarket BID

Agreement

THIS DEED is made the day of Wednesday 9th August 2017

BETWEEN

- (1) Forest Heath District Council (the **Council**)

- (2) Newmarket BID (registered company number **10158066**) whose registered office is at Newmarket BID Office, Moulton Road, Newmarket, Suffolk, CB8 8DY (the **BID Company**)

Recitals

A. The Council is the Relevant Billing Authority for the purposes of the Local Government Act 2003 and is responsible for collecting the BID Levy and administering the BID Revenue Account which shall be used towards the operation of the BID within the area of the Council and the funding of the BID Arrangements.

B. The BID Company is responsible for the operation of the BID and for using the BID Levy for the purposes of achieving the 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:

1. establish the procedure for setting the BID Levy;
2. confirm the basis upon which the Council will be responsible for collecting the BID Levy;
3. set out the enforcement mechanisms for collection of the BID Levy;
4. set out the procedures for accounting and transference of the BID Levy;
5. provide for the monitoring and review of the collection of the BID Levy; and
6. confirm the manner in which the Council expenses incurred in collecting the BID Levy shall be paid.

E. Capitalised words used in this Agreement shall have the meaning as defined in Schedule 1 of this Agreement.

1 Statutory Authorities

1.1 This Agreement is made pursuant to Part IV of the Local Government Act 2003 and Section 111 of the Local Government Act 1972 and all other enabling powers.

2 Commencement

2.1 This Agreement shall not take effect until the Renewal Ballot result date and in any event shall determine and cease to be of any further effect in the event that:

2.1.1 The BID Company fails to secure approval of the Renewal Proposals in a Renewal Ballot;

2.1.2 The Secretary of State declares void the Renewal Ballot;

2.1.3 The Council exercises its Veto and there is no successful appeal against the Veto;

2.1.4 The BID Term expires save where the BID Company secures approval of further Renewal Proposals in a further 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 those Renewal Proposals, Alteration Proposals or the proposals set out in the Re-ballot provided, in relation to those Renewal Proposals and Alteration Proposals that the Council and the BID Company both consent to such continuation; or

2.1.5 The Council exercises its discretion to terminate the BID Arrangements in exercise of powers under regulation 18 of the Regulations.

3 Setting the BID Levy

3.1 As soon as possible upon the Renewal Ballot result date the Council shall:

(i) calculate the BID Levy for each BID Levy Payer in accordance with the terms of this Agreement, the BID Arrangements and the Regulations; and

(ii) confirm in writing to the BID Company the BID Levy payable by each BID Levy Payer. The BID Levy will be set at the level outlined in the RV bandings contained in the BID proposal (shown in schedule 3)

4 The BID Revenue Account

4.1 As soon as is reasonably practicable following the Renewal Ballot result date the Council shall keep 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.

As soon as reasonably practicable following the Renewal 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.

4.3 The Council will pay to the BID Company on account for services provided in administering the BID arrangements on behalf of the Council, each month a sum equal to the monies collected in the month and properly credited to the BID Revenue Account net of the Council's cost of collection and refunds calculated in accordance with the table at Schedule 3. The payment is to be made within 10 working days of the month end.

4.4 Annually the Council will pay to the BID Company or receive from it the balance of monies having taken account of the monthly on account payments and balance on the BID Revenue Account at the year end. The final payment is to be made by 30th April following the Financial Year end.

4.5 All sums will be subject to Value Added Tax (VAT) where applicable under VAT legislation and regulations in force at the time.

4.6 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 Collecting the BID Levy

5.1 As soon as reasonably practicable following the Renewal Ballot result date the Council shall confirm in writing to the BID Company the anticipated date of the dispatch of Demand Notices for the initial Chargeable Period and the anticipated due date for the payment of the BID Levy.

5.2 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.

5.3 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 Levy and shall make the list available to the BID Company on a monthly basis.

5.4 The Council shall serve a 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.

5.5. The Council shall use all reasonable endeavors to collect the BID Levy throughout the BID Term.

5.6 The following exemptions apply to the BID Levy: Non-retail charities with no paid staff, trading income, arm of facilities or entirely not-for-profit, subscription and voluntary based organisations.

5.7 An expectation will exist that on receipt of the Demand Notice all businesses occupying an hereditament and subject of a BID Levy will pay in full, in advance to the Council. The Council shall allow those businesses eligible to National Non Domestic Rates ('NNDR') small business rate relief to pay the BID Levy by 12 equal monthly installments should the businesses so require.

5.8 In accordance with the BID Arrangements, it is agreed that where a hereditament has a rateable value of less than £5000 ~~40,000~~ the hereditament will be exempt from paying a BID Levy.

5.9 The BID Levy will apply for a 12-month period commencing on 1st April each year. Charging for the BID Levy will be proportionate based upon each full day the business is liable for the BID Levy.

6 Procedures available to the Council for enforcing payment of the BID Levy

6.1 Procedures for the enforcement and recovery of the BID Levy will be in line with the enforcement procedure for NNDR as provided in the Non Domestic (Collection and Enforcement) Local Lists Regulations 1989 as amended and the Council shall comply with these enforcement procedures (where appropriate) in enforcing payment of the BID Levy against BID Levy Payers.

6.2 The Council shall advise the BID Company in advance of all notices to be sent to businesses regarding non-payment of the BID levy. The BID Company has then the option to discuss with the business directly or instructing the Council to postpone / determine alternative payment conditions.

7 Enforcement Mechanisms In The Event That The Council Fails to Enforce Collection of the BID Levy

7.1 In the event that the Council fails to enforce payment of the BID Levy pursuant to Clauses 5 and 6 the BID Company shall be entitled to serve an Enforcement Notice on the Council requesting that:

(i) the Council serves a Reminder Notice on BID Levy Payers who have failed to pay the BID Levy; or

(ii) in the event the Council has already served a Reminder Notice in accordance with Clause 7.1(i) 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.

7.2 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 Council's Chief Finance Officer and such notice shall:

(i) detail the unpaid BID Levy;

(ii) confirm that Council has failed to use the enforcement mechanisms available to it under this Agreement to recover the unpaid BID Levy; and

(iii) include written notice requesting that a meeting of the Monitoring Group take place in order to achieve a solution and/or agree a strategy to recover the unpaid BID Levy such meeting to take place no later than 28 (twenty eight) days from the date of the Appeal Notice.

8. Accounting Procedures and Monitoring

8.1 Within 21 working days of the end of the month and every month thereafter (for the duration of BID Term) the Council shall provide the BID Company with:

(i) the amount of the BID Levy for each BID Levy Payer;

(ii) the amount of the BID Levy collected for each BID Levy Payer;

(iii) details of BID Levy Payers who have not paid the BID Levy;

(iv) details of Reminder Notices issued;

(v) details of Liability Orders made or applied for;

(vi) 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 (three) months or more from the date of such Demand Notice.

8.2 The Parties agree that there will be no fewer than two meetings of the Monitoring Group in each Financial Year (throughout the duration of the BID Term), which shall be arranged at a mutually convenient time for the Monitoring Group or by the service of written notice by either Party upon reasonable notice.

8.3 At each meeting the Monitoring Group shall only:

(i) review the effectiveness of the collection and enforcement of the BID Levy; and

(iii) if required by either Party, review and assess information provided by the Parties.

8.4 Within 3 (three) 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

8.5 Within 1 (one) 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.

8.6 The BID Revenue Account will be subject to the normal internal & 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

9 Confidentiality

9.1 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.

10 Notices

10.1 Any notice or other written communication to be served or given to or upon any Party 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

10.2 A notice may be served by delivery to:

- (i) the Chief Finance Officer of the Council at the address specified in this Agreement; or
 - (ii) the Chief Executive of the BID Company at the address specified in this Agreement
- by either registered or recorded delivery post or by electronic communication to an address provided by the recipient Party.

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

11 Contracts (Rights of Third Parties)

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

12 Arbitration

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

- (i) any dispute or difference of any kind whatsoever arising between the Parties out of or in connection with this Agreement shall be referred to arbitration before a single arbitrator;
- (ii) the Parties shall jointly appoint the arbitrator not later than 28 (twenty eight) days after service of a request in writing by either Party to do so and each Party shall bear its own costs;
- (iii) If the Parties are unable to agree within 28 (twenty eight) 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;

12.2 In the event of a reference to arbitration the Parties agree:

- (i) to prosecute any such reference expeditiously; and
- (ii) 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;
- (iii) that the award shall be in writing signed by the Tribunal and shall be finalised within 21 (twenty one) days from the date of such award;
- (iv) the award shall be final and binding both on the Parties and on any persons claiming through or under them.

Schedule 1: Interpretation

Alteration Ballot	As defined in regulation 17 of the Regulations
Alteration Proposals	Means proposals in relation to the BID Arrangements in accordance with regulation 17 of the Regulations
Annual Report	Means a report to be prepared by the Council which details the following: (i) the total amount of BID Levy collected during the relevant Financial Year; (ii) details of the percentage collection rate for the BID Levy; (iii) the Council's proposals (if any) to help improve any efficiency measures 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 as defined in Part 2 Schedule 3 of the Regulations
Appeal Notice	Means a notice served in accordance with Clause 7.2 of this Agreement
BID	Means the Business Improvement District which operates within the BID Area
BID Area	Means the area edged red on the plan at Schedule 2
BID Arrangements	Means those arrangements to be put in place pursuant to the Regulations for the operation of the BID
BID Company Report	Means a report for each Financial Year of the BID Term to be prepared by the BID Company which details the following: (i) the total income and expenditure of the BID Levy; (ii) other 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 Regulations
BID Levy Payer(s)	Means the non-domestic rate payers responsible for paying the BID Levy
BID Revenue Account	Means the account to be set up and kept in accordance with Regulation 14 and operated in accordance with Schedule 3 of the Regulations
BID Term	Means the period of 5 years commencing on the Operational Date 1 July 2016
Chargeable Period	Means the Financial Year

Contributors	Means the BID Levy Payers or other contributors making voluntary contributions to the BID Company
Demand Notice(s)	Shall have the same meaning as defined in the Regulations
Enforcement Notice	A notice to be served by the BID Company on the Council in accordance with Clause 7 in the event that the Council fails to enforce payment of the BID Levy
Financial Year	Means the period from 01 April to 31 March in each year of the BID Term commencing on the Operational 1 July 2016
Hereditament Liability Order	Shall have the same meaning as defined in the Regulations Has the meaning given to it in Regulation 10 of the Non-Domestic Rating (Collection and Enforcement) Local Lists Regulations 1989
Monitoring Group	Means a group made up of the collection officers of the Council and the Chief Executive Officer of the BID Company (or the nominees thereof)
Operational Date	Means 1 July 2016 being the date upon which the BID Arrangements come into force
Party/ies	Means a party or parties to this Agreement
Re-ballot	Shall have the same meaning as defined in the Regulations
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)
Relevant Billing Authority	Shall have the same meaning as defined in the Regulations
Reminder Notice	A notice to be served by the Council on BID Levy Payers in accordance with Clause 7 in the event that the Council fails to enforce payment of the BID Levy
Renewal Ballot	Shall have the same meaning as defined in the Regulations and shall apply to the ballot proposed to be held during 2014 for commencement of the BID Arrangements in the BID Area on the Operational Date
Renewal Proposals Veto	Shall have the same meaning as defined in the Regulations Shall have the same meaning as defined in the Regulations

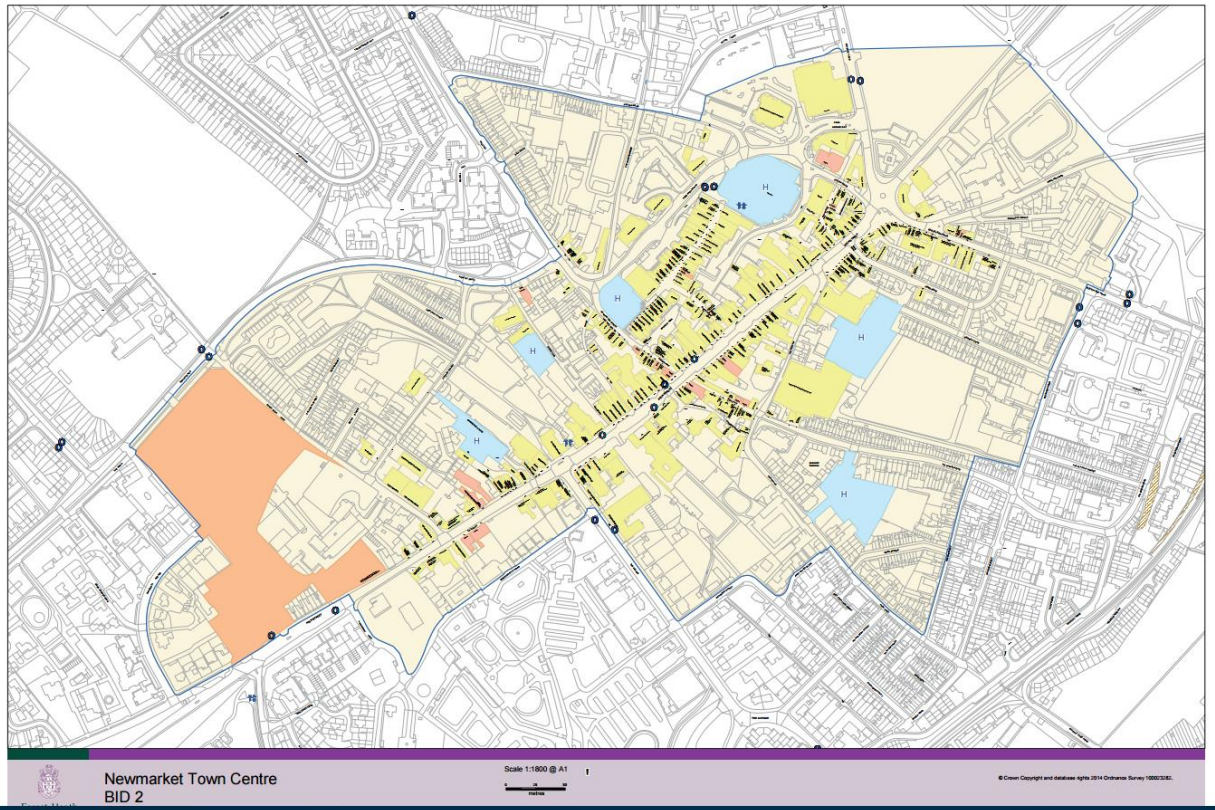
Schedule 1

Council Total charges including stationery and postage

	no of hrs^	201617	201718	201819	201920	202021
Assessment	260	4426.22	4492.62	4560.01	4628.41	4697.83
Team manager	50	1221.90	1240.23	1258.84	1277.72	1296.88
Revenues Operations Manager	32	870.04	883.09	896.34	909.78	923.43
System Admin	36	794.78	806.70	818.81	831.09	843.55
Cashiering	6	102.14	103.68	105.23	106.81	108.41
Reconciliation (Fin officer)	15	297.70	302.17	306.70	311.30	315.97
Admin assistant	78	923.66	937.52	951.58	965.86	980.34
Stationery & postage		441.00	507.15	583.22	670.71	771.31
		9077.46	9273.16	9480.72	9701.66	9937.73

Schedule 2

Newmarket BID Area



Schedule 3

Banding levy amount per Business	
£400,001+	£10,000
£200,001 - £400,000	£6,500
£100,001 - £200,000	£3,500
£70,001 - £100,000	£2,500
£60,001 - £70,000	£2,000
£50,001 - £60,000	£1,500
£40,001 - £50,000	£1,000
£30,001 - £40,000	£750
£20,001 - £30,000	£500
£10,001 - £20,000	£365
£7,501 - £10,000	£200
£5,000 - £7,500	£100

IN WITNESS of which this Agreement has been duly executed by the Parties.
Signed by

.....
By a duly authorised representative of **Forest Heath District Council**

Date:

.....
By a duly authorised representative of **Newmarket BID**

Date: