DATE 1st April 2024

BID LEVY OPERATING AGREEMENT

Shropshire Council

And

Shrewsbury Business Improvement District Limited

Agreement

THIS AGREEMENT is made the day of 1st April 2014

BETWEEN

1) *Shropshire Council of* Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND **("the Authority")** and

2) *Shrewsbury Business Improvement District Limited a company registered in England and Wales with company number 08834790 and whose registered office is at* Windsor House, Windsor Place, Shrewsbury, SY1 2BY **("the BID Company")**

Recitals

A. The *Authority* 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 *Authority* 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 *Authority* 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 *Authority* expenses incurred in collecting the BID Levy shall be paid.

IT IS AGREED as follows:

1 **Definitions and interpretations**

1.1 The definitions used are as follows:

Alteration Proposals means a proposal to alter the BID Arrangements pursuant to 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 success rate for the collection of the BID Levy;

iii) the Council's proposals (if any) to help improve its efficiency in the collection and enforcement of the BID Levy; and

iv) details of those BID Levy Payers who have paid the BID Levy and those who have not paid the BID Levy;

v) the Council's proposals for bad or doubtful debts

Appeal Notice means a notice served by the BID Company in accordance with clause 8.

BID means the Business Improvement District which operates within Shrewsbury Town Centre and which is managed by the BID Company

BID Arrangements means those arrangements to be put in place pursuant to section 41 of the Local Government Act 2003 and the Regulations for the operation of the BID.

BID Company 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 (as defined in the BID Business Plan)

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 Business Plan means the plan prepared by the BID Company detailing its plans for its BID Term and distributed in 2023.

BID Levy means the charge to be levied and collected within the BID area pursuant to the Regulations and which at the Commencement of this Agreement is the amount equating to 1.58% of the rateable value of all eligible Hereditaments within the BID area with a rateable value of £12,000 or more.

BID Levy Payer means the non-domestic rate payers responsible for paying the BID Levy.

BID Levy Rules means the Rules set out in the BID Delivery and Financial Plan which sets out how the BID Levy will be calculated, details of Exempt or Discounted Properties and other requirements related to the BID Levy (as may be amended by a successful alteration ballot)

BID Result Date means the 7th July 2023

BID Revenue Account means the account containing the collected BID Levy payments to be set up in accordance with Regulation 14 and operated in accordance with Schedule 3 of the Regulations..

BID Term means the period from 1st April 2024 to 31st March 2029

Chargeable Period means the period from 1st April to 31st March in any year

Demand Notice shall have the same meaning ascribed to it in as set out in paragraph 3 of Schedule 4 to the Regulations

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

Enforcement Policy means the policy to be agreed between the parties setting out the approach to enforcement of payment of the BID Levy where a BID Levy Payer has not made payment further to the issue of a Demand Notice and the circumstances in which the Authority shall not be required to seek to enforce such payment of the BID Levy

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 the period from the 1st April to 31st March in any given year

Hereditament shall have the same meaning as defined in the Regulations

Liability Order means an order obtained from the Magistrates' Court requiring payment of the sums due

Monitoring Group means the group to be set up to monitor the collection and enforcement of the BID Levy (as referred to in Clause 10) such group to consist of two representatives each from the Authority and the BID Company, including, the Authority's Revenues Manager, a BID Company director and the BID Company Executive Director.

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

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 issued pursuant to Clause 7

Renewal Proposals means proposals in relation to the renewal of the Bid Arrangements pursuant to Section 54(2) of the Local Government Act 2003

Single Instalment Due Date means the date, at least 14 days after the issue of a Demand Notice, upon which the Bid Levy becomes due for payment

1.2 In this Agreement unless the context otherwise requires:

1.2.1 references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement;

1.2.2 reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;

1.2.3 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;

1.2.4 references to the Authority shall include any successors to its functions as a local authority;

1.2.5 the headings in this Agreement are for ease of reference only and shall not affect the constructions of this Agreement.

1.3 For the avoidance of doubt where any part of this Agreement is incompatible with the Regulation or any other regulations which the Secretary of State may issue pursuant to Part IV of the Local Governments Act 2003 then such part shall be struck out and the balance of this Agreement shall remain.

2 Statutory Authorities

2.1 This Agreement is made pursuant to Part 4 of the Local Government Act 2003, the Business Improvement Districts (England) Regulations 2004, section 111 of the Local Government Act 1972 and all other enabling powers.

3 Commencement

3.1. This Agreement shall commence on the Ballot Result Date and in any event shall determine and cease to be of any further effect in the event that:

3.1.1. the BID Company fails to secure approval of the Renewal Proposals or Alteration Proposals in a ballot, renewal ballot, alteration ballot or reballot;

3.1.2. the Secretary of State declares void a BID ballot, renewal ballot, alteration ballot or re-ballot;

3.1.3. the Authority exercises its veto and there is no successful appeal against the veto;

3.1.4. the BID Term expires save where the BID Company secures approval of Renewal Proposals in a renewal ballot or Alteration Proposals in an alteration ballot or Proposals in a reballot in which event this Agreement shall continue until the expiry of the BID Term set out in the Renewal Proposals, Alteration Proposals or the Proposals set out in the reballot provided, in relation to Renewal Proposals and Alteration Proposals the Authority consents to such continuation;

3.1.5. the Authority exercises its discretion to terminate or the BID Company terminates the BID Arrangements in exercise of, and in accordance with, the provisions of Regulation 18 of the Regulations.

3.2. If at the end of the BID Term this Agreement does not expire pursuant to clause 3.1.4 above the BID Term shall thereafter be construed as the new term of the BID Arrangements as approved in the relevant ballot.

4 **Setting the BID Levy**

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

4.1.1 calculate the BID Levy for each BID Levy Payer in accordance with the BID Levy Rules; and

4.1.2 confirm in writing to the BID Company 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 *Authority* shall set up and maintain a BID Revenue Account in accordance with Regulation 14 and Schedule 3 of the Regulations 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 *Authority* with details of its bank account into which the BID Levy sums due to the BID Company shall be transferred from the BID Revenue Account and any other details which the *Authority* may reasonably require.

5.3 The Council shall not debit directly from the BID Revenue Account:-

(i) the collection charges
(ii) the Enforcement Expenses; or
(iii) any deductions which in the Council's opinion are Bad or Doubtful Debts

5.4 The Council's charge for the provision of the Services will be £10,000 (excluding VAT) representing its reasonable administrative costs in providing Services and having effect on the 1st April of each year for which a BID is in place. Following receipt by the BID Company of a valid VAT invoice, the first payment will be due together with VAT thereon within 28 days of the invoice date, or later by agreement.

5.5 A breakdown of the Council's Annual charge as outlined in Clause 6.2 is annexed at Schedule 2

5.6 The Council shall recover the Enforcement Expenses from the liable BID levy payer.

5.7 The Council shall not be entitled to recover Enforcement Expenses from the BID Company.

6 **Collecting the BID Levy**

6.1 As soon as reasonably practicable following the Ballot Result Date and within four weeks of the anticipated despatch date the *Authority* shall confirm in writing to the *BID Company* the anticipated date of the despatch of Demand Notices for the initial Chargeable Period and the anticipated Single Instalment Due Date.

6.2 Pursuant to clause 6.1 the *Authority* 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.

6.3 The *Authority* 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 for each year of the BID term and shall make this information available to the *BID Company* on a monthly basis.

6.4 The *Authority* shall liaise with the BID Company in carrying out regular reviews of each Hereditament within the BID Area and in the event of any change in the occupier of each Hereditament or the merger or division of a Hereditament (or provisions of an additional Hereditament) shall, as soon as reasonably practicable after the Authority receives notice of a change that affects liability for the BID Levy:

6.4.1 serve an updated list of BID Levy Payers on the BID Company on a monthly basis; and

6.4.2 serve a Demand Notice or amended Demand Notice as applicable on a BID Levy Payer.

6.5 The *Authority* shall use all reasonable endeavours to collect the BID Levy throughout the BID Term in accordance with clause 7, the Enforcement Policy and the procedure set out in Schedule 4 of the Regulations.

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

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

7.1.1 identify the sum payable;

7.1.2 provide a further 14 days for payment to be made;

7.1.3 confirm that the Council will make an application to the Magistrates Court for a Liability Order to recover the unpaid sum and costs.

7.2 If after a further 14 (fourteen) days from the payment date stated in the Reminder Notice the outstanding sum of the BID Levy has not been paid the Council shall make an application to the Magistrates Court for a Liability Order to recover the outstanding sum of the BID Levy as is permitted by the Regulations and the Non Domestic Rating (Collection & Enforcement) (Local Lists) Regulations 1989 (as amended).

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

8.1 Subject to clause 8.2, in the event that the *Authority 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 *Authority* requesting that:

8.1.1 the *Authority* serve a Reminder Notice or

8.1.2 In the event that the *Authority* has already served a Reminder Notice that the *Authority* 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 Unless otherwise agreed with the Authority the BID Company shall not be entitled to include in an Enforcement Notice such action that would be contrary to the current Enforcement Policy.

8.3 If the *Authority* 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 Director of Finance of the *Authority* such notice shall:

8.3.1 detail the BID Levy sum that remains unpaid;

8.3.2 confirm that the *Authority* has failed to use the enforcement mechanisms available to it under this Agreement in accordance with the Enforcement Policy to recover the sum; and

8.3.3 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 sum outstanding such meeting to take place no later than 28 (twenty eight) days from the date of the Appeal Notice.

9 Accounting Procedures and Monitoring

9.1 Within 21 working days of a request by the BID Company (such requests not to exceed one request per calendar month for the duration of BID Term) the *Authority* shall provide the BID Company with the following information in respect of the relevant period:

i) the amount of the BID Levy for each BID Levy Payer; (Northgate will be a net figure of arrears outstanding)

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 *Authority* 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.

9.2 As soon as reasonably practical following the Ballot Result Date the parties shall form the Monitoring Group and agree the dates when there will be meetings of the Monitoring Group (to 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 Monitoring Group shall be arranged by the service of written notice by either party.

9.3 The Monitoring Group meetings shall, as a minimum, be attended by one representative from each Party and the Monitoring Group shall at all times act in accordance with any agreed terms of reference of the Monitoring Group.

9.4 At each meeting the Monitoring Group shall:

9.4.1 review the effectiveness of the collection and enforcement of the BID Levy; and

9.4.2 if required by either party review and assess information provided by the parties in accordance with this Agreement.

9.5 Within 3 (three) months after the end of each Financial Year (for the duration of the Bid Term) the *Authority* shall provide an Annual Report to the *BID Company.*

9.6 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 *Authority.*

9.7 The BID Revenue Account will be subject to the normal internal and external audit arrangements of the *Authority*. The *Authority* will make available to the *BID Company* and its

appointed auditors such information as is reasonably requested by the *BID Company* and its appointed auditors subject to any legislative or regulatory restrictions applicable to the Authority which would restrict the provision of such information.

10 Confidentiality

10.1 Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party nor information about the BID Levy Payers or about other third parties which it shall have obtained or received as a result of operating the BID which shall be treated as confidential information, except as permitted by clause 10.2.

10.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement. Each party shall procure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 10; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; and

(c) as may be required under the Data Protection Act 1998 or to comply with a Party's obligations under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 and any codes of practice or guidance notes issued by the Government and appropriate Government agencies.

10.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this agreement.

11 Termination Consequences

11.1 Upon termination of the BID Arrangements the Authority shall review whether there is a credit in the BID Revenue Account and in the event that there are sufficient funds in the BID Revenue Account amounting to a refund of at least £5 for each BID Levy Payer (after deducting a reasonable sum for the administration of such refund) the Authority shall:

11.1.1 calculate the amount to be refunded to each BID Levy Payer (having made the deductions referred to above)

11.1.2 ensure that the amount to be refunded is calculated by reference to the amount payable by each BID Levy Payer for the last chargeable period; and

11.1.3 make arrangements for the amount calculated to be credited against any outstanding liabilities of each BID Levy Payer for non domestic rates or, where there are no such liabilities refunded to the BID Levy Payer.

11.2 Where, following the calculation in clause 11.1 there are insufficient funds to credit each BID Levy Payer with at least £5 the Authority shall carry the credit balance in the BID Revenue Account to the credit of a similar and appropriate not for profit town centre organisation.

12 Notices

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

12.2 A notice may be served by;

12.2.1 delivery to the Director of Finance at the address of the *Authority* specified above; or

12.2.2 delivery to the Company Secretary at the address of the *BID Company* specified above;

12.2.3 registered or recorded delivery post to such addresses;

12.2.4 electronic communication (provided that it is in legible form and is capable of being used for subsequent reference) to such addresses.

12.3 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.

13 Contracts (Rights Of Third Parties)

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

14 Dispute Resolution

14.1 If there is any dispute between the Parties arising out of or in connection with this Agreement (the "Dispute") the Representatives of each party shall work together in good faith to resolve the Dispute to the mutual satisfaction of the Parties.

14.2 If the Representatives cannot resolve the Dispute within ten (10) working days of it being referred to the Representatives the Dispute shall be referred to the Monitoring Group. The Monitoring Group shall attempt in good faith to resolve the Dispute to the mutual satisfaction of the Parties.

14.3 If the Monitoring Group cannot resolve the Dispute within ten (10) working days of it being referred to them the Dispute shall be referred to the Chief Officers of each Party. The Chief Officers shall attempt in good faith to resolve the Dispute to the mutual satisfaction of the Parties.

14.4 The provisions of this clause 13 shall survive termination or expiry of this Agreement.

15 Dispute Resolution

15.1 Nothing in contained in this Agreement or implied in it shall prejudice or affect the rights discretions powers duties and obligations of the Authority under all statutes, bye-laws, statutory instruments, orders and regulations in the exercise of its functions as a local authority.

Schedule 1 – The BID Levy Rules

Part 4 of the Local Government Act 2003 and the Regulations state that the payment of the BID Levy is mandatory by all BID Levy Payers in accordance with these BID Levy Rules once the BID proposal put forward by the BID Company was accepted by a ballot of those BID Levy Payers.

Shropshire Council is the billing authority under the legislation, and is the body with the power to impose, administer, collect, enforce and recover the BID Levy.

1. The levy rate will be fixed at 1.58% of rateable value as at 1st April 2024 based on the 2017 Rating List.
2. All new hereditaments entering the Rating List after 1st April 2024 will be levied at 1.58% of the prevailing list at the start of each chargeable year.
3. The levy will be charged annually in advance for each chargeable period from April to March, starting on 1st April 2024 utilising the prevailing values on the 2023 Rating List.
4. New businesses will be charged from the point of occupation based upon the rateable value at the time they enter the rating list.
5. If a business ratepayer occupies the premises for less than one year, the levy paid will be on a daily basis and any appropriate refund will be made.
6. A threshold of £12,000 rateable value will be applied, exempting any business hereditament within the defined BID area falling below this rateable value.
7. The BID levy may increase by an annual inflationary factor of up to 5% (ie. up from 1.58% multiplier to 1.63% in year 2 and so on). The board will be required to decide on whether to apply the inflation factor each year.
8. In the case of an empty or untenanted premises, the property owner (the subsequent eligible ratepayer) will be liable for the BID levy with no void period, and will be entitled to vote in the BID ballot.
9. Non-retail charities with no trading income, arm or facilities, not-for-profit subscription and volunteer-based organisations will be exempt from paying the BID levy. No other exemptions will apply.
10. VAT will not be charged on the BID levy.
11. The term of the BID will be five years from 1st April 2024 to 31st March 2029.

Schedule 2 – Breakdown of Council's Annual BID Levy collection and administration charge

The Authority shall charge The BID Company the amounts equal to

Software costs (per annum)	**£700**
Administration (including set up costs, printing, postage, exchequer and accountancy)	**£11,000**
Total Charge per annum	**£11,700**

a) The Authorities charges outlined above are for the administration of the BID levy, including annual software costs, which will be approximately £11,700 per year, for year 1 and subject to cost increases against RPI. The BID Company will reimburse SC with the amount of the total charges when invoiced.

b) Any additional expenditure of The Authority in respect of the BID Arrangements, including sums payable to third parties to undertake works and services, in respect of the BID Arrangements, which shall for the avoidance of doubt include the cost of acquiring appropriate IT hardware and software necessary for the BID arrangements, including setting up the new BID period.

The BID Company will reimburse SC with the amount of the total charges when invoiced.