**DRAFT OPERATING AGREEMENT**

**in relation to Peterborough Business Improvement District**

**SCHEDULE**

|  |  |
| --- | --- |
| **The Billing Authority** | Peterborough City Council |
| **The BID Body** | Peterborough Positive, Grant House, 101 Bourges Boulevard, Peterborough, PE1 1NG |
| **Commencement Date** | 1st April 2022 |
| **Term** | 60 |
| **Payment Dates** |  |

1. The Billing 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 to be used towards the operation of the BID and the funding of the BID Arrangements.
2. The BID Body is responsible for the operation of the BID and for using the BID Levy for the purposes of achieving the BID Arrangements.
3. Both parties have agreed to perform their duties in relation to the responsibilities set out above in accordance with the attached terms and conditions.

**Dated**……………………………………………………………………………………………………………

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| **SIGNED** by <***NAME***>, a duly authorised signatory for and on behalf of Peterborough City Council | ………………………………………………………………………… |
|  |  |
| **SIGNED** by <***NAME***>, a duly authorised signatory for and on behalf of Peterborough Positive | …………………………………………………………………………. |

**TERMS AND CONDITIONS**

# DEFINITIONS AND INTERPRETATION

## The expressions “Billing Authority”, “BID Body”, “Commencement Date” “Payment Dates” shall have meaning given to them in the Schedule.

## Any expression defined in the Regulations shall have the same meaning in these Terms and Conditions unless another meaning is required in the context.

## In this Agreement the following expressions have the following meanings, unless another meaning is required in the context:

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| “BID Arrangements” | has the meaning given by s.43 Local Government Act 2003 |
| “BID Levy” | the charge levied and collected under the BID pursuant to the Regulations |
| “BID Levy Payers” | the non-domestic ratepayers liable for paying the BID Levy |
| “BID Levy Rules” | the rules set out in Appendix 1 to these Terms and Conditions and in the BID Proposal |
| “BID Revenue Account” | the account to be kept by the Billing Authority in accordance with paragraph 14 and Schedule 3 of the Regulations |
| “BID Term” | the period of 5 years commencing on the Commencement Date |
| “Contributors” | any person or entity other than a BID Levy Payer making a voluntary contribution towards the funding of the BID |
| “the Regulations” | the Business Improvement District (England) Regulations 2004 as amended by the Business Improvement District (England) (Amendment) Regulations 2013 and the Business Improvement District (England) (Amendment) Regulations 2014 |

## References to clauses, the Schedule and to appendices are to the clauses of and the Schedule and appendices to these Terms and Conditions.

## Clause headings are included for convenience only and shall not affect the interpretation of these Terms and Conditions.

## Use of the singular includes the plural and vice versa.

## Use of any gender includes the other genders.

## A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision, provided that, no such amendment or modification or subordinate legislation made after the date of this Agreement shall apply to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.

## Any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## A reference to **writing** or **written** includes e-mail, but not fax.

# statutory authorities

## This Agreement is made pursuant to s.2 and Part IV Local Government Act 2003 and s.111 Local Government Act 1972.

# pre-condition & duration

## This Agreement is conditional on:

### the BID being approved by ballot in accordance with the Regulations;

### the ballot not having been declared void by the Secretary of State under paragraph 9 of the Regulations; and

### (if the BID Proposals are vetoed by the Billing Authority under paragraph 12 of the Regulations):

### (a) no person lodging an appeal against the Billing Authority’s veto within 28 days after the veto notice is given; or

### (b) if an appeal is lodged under paragraph 13 of the Regulations, the Secretary of State having upheld the appeal.

## If any of the above conditions is not satisfied, this Agreement shall be null and void and neither of the parties shall have any obligations under it.

## Subject to clauses 3.1 and 3.2, this Agreement shall commence on the Commencement Date and shall remain in force until either:

### the BID Term expires; or

### the Billing Authority exercises its right to terminate the BID Arrangements under paragraph 18 of the Regulations.

# setting the BID LEVY

## As soon as possible after the Commencement Date the Billing Authority shall calculate the BID Levy in accordance with the BID Levy Rules.

# the bid revenue account

**EITHER**

## The Billing Authority shall pay the amount of the BID Levy invoiced to BID Levy Payers to the BID Body in equal instalments on the Payment Dates, less, in each case, any repayments made to BID Levy Payers under clause 5.2.

## If a BID Levy Payer is entitled to a repayment of a BID Levy pursuant to paragraph 8(4) of the Regulations, and if the Billing Authority has paid such BID Levy to the BID Body, the Billing Authority shall notify the BID Body in writing of the repayment and shall be entitled to deduct the amount of that repayment from the following instalment of the BID Levy. If the repayment is made after the last instalment of the BID Levy has been paid to the BID Body, the BID Body shall immediately repay the amount of the repayment to the Billing Authority.

# collecting the bid levy

## The Billing Authority shall use all reasonable endeavours to collect the BID Levy throughout the BID Term.

## The Billing Authority shall serve a Demand Notice or amended Demand Notice on a BID Levy Payer as soon as reasonably practicable after the Billing Authority receives notice of a change that affects liability for the BID Levy.

## The Billing Authority shall, at its own cost, seek to recover any unpaid BID Levy by sending two reminder letters and a summons to the BID Levy Payer.

## The Billing Authority shall notify the BID Body promptly in writing if any BID Levy Payer fails to make payment after the Billing Authority has taken the action required under clause 6.3. In that event, the BID Body may, at its discretion, require the Billing Authority to issue a Liability Order and instruct bailiffs to collect the sums due under that order.

## The costs of taking enforcement action under clause 6.4 shall be calculated in accordance with Appendix 2 to these Terms and Conditions and shall be borne by the BID Body, such costs to be paid by way of set off against the next payment of the BID Levy by the Billing Authority to the BID Body.

## If the BID Body does not require the Billing Authority to take further enforcement action under clause 6.4, the amount of the unpaid BID Levy shall be written off and the Billing Authority shall be under no liability to pay that sum to the BID Body.

# accounting procedures and monitoring

## Not more than 7 days after the start of each month, the Billing Authority shall send the BID Body a report in a format requested by the BID Body showing the BID Levy invoiced and collected during the BID Period and what action is being taken in respect of any overdue BID Levy.

## Within 3 months after the end of each year of the BID Term, the BID Body shall provide the Billing Authority with a report showing:

### the BID Body’s total income and expenditure analysed into the main categories arising from the BID Levy;

### all other income and expenditure of the BID Body;

### a statement of any actual or anticipated deficits in the BID Body’s funding;

## The BID Body shall provide the Billing Authority with a copy of its full annual accounts at the time accounts are filed by it with Companies House. For the avoidance of doubt, the Billing Authority acknowledges that the accounts and information derived from those accounts constitutes commercially sensitive information in relation to the BID Body and, as such, is exempt from disclosure under Freedom of Information Act 2000.

## Within one month after the Commencement Date, each of the parties will nominate representatives of appropriate standing within their respective organisations to form a monitoring group.

## The monitoring group will meet at regular intervals to consider:

### the effectiveness of the collection and enforcement of the BID Levy;

### the information provided by the parties under clauses 7.1and 7.2;

### all aspects of the BID’s Body’s activities and expenditure.

## The monitoring group may make recommendations for improvement which will be considered by the Billing Authority and at the BID Body’s next board meeting.

# Confidentiality

## For the purposes of this Agreement, “Confidential Information” means all confidential information (however recorded or preserved) disclosed by one party (the “**Disclosing Party**”)or its employees, officers, representatives or advisers (together its “Representatives”) to the other party (the “**Recipient**”)and the Recipient’s Representatives whether before or after the date of this agreement concerning:

### the business affairs, financial affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party; or

### information exchanged between the parties concerning the BID Levy Payers or Contributors;

### information regarding third parties which has been obtained as a result of operating the BID;

### or any other information which a reasonably prudent business person would regard as being confidential by its nature.

## The provisions of this clause shall not apply to any information that:

### is or becomes generally available to the public (other than as a result of its disclosure by the Recipient or its Representatives in breach of this clause);

### was available to the Recipient on a non-confidential basis before disclosure by the Disclosing Party;

### was, is or becomes available to the Recipient on a non-confidential basis from a person who is not, to the Recipient’s knowledge, bound by any obligation of confidentiality to Disclosing Party;

### is developed by or for the Recipient independently of the information disclosed by the Disclosing Party.

## The Recipient shall keep the Disclosing Party's Confidential Information confidential and shall not:

### use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement (the “Permitted Purpose”); or

### disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.

## The Recipient may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

### it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and

### it accepts responsibility for such Representatives' compliance with the confidentiality obligations set out in this clause.

## The Recipient may disclose the Disclosing Party’s Confidential Information to the extent such Confidential Information is required to be disclosed by law (including disclosure under the FOIA), by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, the Recipient gives the Disclosing Party as much notice of such disclosure as possible and takes into account the reasonable requests of the Disclosing Party in relation to the content of such disclosure.

## The provisions of this clause 8 shall survive termination of this Agreement.

# FOIA

## For the purposes of this clause:

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| --- | --- |
| “EIR” | means the Environmental Information Regulations 2004 together with any guidance notes and/or codes of practice issued by the Information Commissioner or a relevant government department in relation to such regulations |
| “FOIA” | means the Freedom of Information Act 2000 and any subordinate legislation made under that act from time to time, together with any guidance or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation |
| Information | has the meaning given by s.34 FOIA |
| Request for Information | means a request for information under the FOIA or the EIR |

## The BID Body acknowledges that the Billing Authority is subject to the requirements of the FOIA and the EIR. The BID Body shall:

### at its own expense, provide all necessary assistance and cooperation reasonably requested by the Billing Authority to enable the Billing Authority to comply with its obligations under the FOIA and the EIR;

### transfer to the Billing Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 7 days after receipt;

### provide the Billing Authority with a copy of all Information belonging to the Billing Authority requested in a Request for Information which is in its possession or under its control with 7 days of the Billing Authority’s request for such Information; and

### not respond directly to a Request for Information unless authorised in writing to do so by the Billing Authority.

## The BID Body acknowledges that the Billing Authority may be required under the FOIA or the EIR to disclose Information (including the BID Body’s commercially sensitive information) without consulting or obtaining the consent of the BID Body. The Billing Authority undertakes to use its best endeavours to notify the BID Body of a Request for Information which may affect the BID Body in accordance with the Cabinet Office’s Freedom of Information Code of Practice issued under s.45 FOIA to the extent that it is permissible and practicable for it to do so, and will take any representation made by the BID Body into account in its response to such Request for Information, but shall remain responsible for determining in its absolute discretion whether any commercially sensitive information and/or any other information is exempt from disclosure in accordance with the FOIA or the EIR.

# Force majeure

## Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes which were unpredictable, unavoidable and beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for three months, the party not affected may terminate this agreement by giving written notice to the affected party.

# Assignment and other dealings

## This agreement is personal to the parties and neither party shall assign or subcontract with any of its rights and obligations under this agreement.

# Variation

## No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

# Waiver

## No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

# Severance

## If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

# Notices

## Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

### delivered by hand or by pre-paid first-class post to the address shown in the Schedule to this Agreement (or such other address as the addressee shall have notified in accordance with this clause); or

### sent by email to the address usually used for communication between the parties.

## Any notice shall be deemed to have been received:

### if delivered by hand, at the time the notice is left at the proper address;

### if sent by pre-paid first-class post, at 9.00 am on the second Business Day after posting;

### if sent by email, at the time of transmission.

## For the purpose of clause 15.2 and calculating deemed receipt, if receipt would be deemed to occur on a Saturday or Sunday or on a bank or public holiday or outside the hours of 9am to 5pm on any other day, receipt shall be deemed to take place at 9.00 am on the next working day.

# Counterparts

## This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

# Third party rights

## A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

# dispute resolution

## If any dispute arises in connection with this agreement, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (‘**ADR Notice’**) to the other party, referring the dispute to mediation. A copy of the referral should be sent to CEDR.

## If there is any point on the logistical arrangement of the mediation, other than the nomination of the mediator, upon which the parties cannot agree within 14 days from the date of the ADR Notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the parties having consulted with them.

## Unless otherwise agreed, the mediation will start not later than 28 days after the date of the ADR Notice. No party may commence any court proceedings/arbitration in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

# Governing law

## This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**APPENDIX 1**

**BID Levy Rules**

In developing the rules that will apply to the BID, consideration has been given to ‘The Industry Criteria for BIDs’ published on behalf of levy payers by British BIDs.

The Ballot

1. The Billing Authority will send those responsible for properties or hereditaments to be subject to the BID a ballot paper on or around 20th September 2021.
2. Each property or hereditament subject to the BID will be entitled to one vote in respect of the BID Proposal in a 28-day postal ballot, which will commence on 24th September 2021 and close at 5pm on 21st October 2021. Ballot papers received after 5pm on 21 October 2021 will not be counted. The declaration of the ballot result 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 renewal 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 on 1st April 2022 and will continue for a period of 5 years to 1st April 2027.

The Levy

1. The levy rate to be paid by each property or hereditament is to be calculated as 1.5% of its rateable value as at the ‘chargeable day’ (1st April each year).
2. Only properties or hereditaments with a rateable value of £15000 or more as at chargeable day (not effected by any revaluation) will pay a levy.
3. The number of properties or hereditaments liable for the levy is approximately 427.
4. Each year (with the exception of the first year) the levy rate will be inflated by the RPI as at 1st April. For the purposes of budgeting, a rate of 2% per annum has been assumed throughout the term.
5. The levy will be charged annually in advance, each chargeable period to be 1st April to 30th March each year, starting in 2022. No refunds will be made.
6. The maximum amount payable for any one hereditament is to be capped at £12000 (rising by the same annual rate of inflation, if any, as above).
7. The ratepayer for any untenanted properties or hereditaments will be liable for payment of the levy, meaning the landlord (or their representative) in most instances.
8. Occupiers within Queensgate and Rivergate, subject to a service charge will pay a levy of 1% vs the levy that would otherwise apply.
9. The following types of hereditaments are exempt from liability for any BID levy - <??>
10. The Billing Authority will be responsible for collection of the levy. The collection charge will be £18,000; this equates to approximately £42 per hereditament and 5% of annual levy income.

Accountability and Transparency

1. The BID Proposer is Peterborough Positive. The BID will be operated by a new Company established for the specific purpose and called Peterborough Positive Limited (Company Number 12445278 an organisation, limited by guarantee (the “**BID Body**”).
2. The Directors of the BID Body (the “**Board**”), nominated in the first year, shall be primarily made up of representatives of levy-paying businesses and, where necessary, will include non-levy-paying representatives where additional expertise is required. The Board will have responsibility for governance matters such as financial arrangements, contractual obligations, human resources, standards, performance and compliance.
3. The Billing Authority shall be entitled to 2 representatives on the BID Board, as agreed.
4. The Board shall meet no less then quarterly and shall appoint a Chair annually from its private sector members.
5. The Board shall form such sub-groups that from time to time become necessary.
6. 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 BID Levy Payers. However, any change to the BID boundary or to the BID Levy proposals, such that they impact negatively upon any BID Levy Payer, would require a formal Alteration Ballot.
7. The Company shall meet with the Billing Authority, every 3 months to monitor service delivery, levy collection and financial management issues.
8. The BID will file annual accounts with Companies House.
9. An Annual Meeting for Members and BID Levy Payers will be held.
10. An Operating Agreement, which includes baseline Services (if any) has been agreed with the Billing Authority. Please see Appendix 2 below.
11. Notification of the intention to hold a ballot was sent to the Secretary of State on 16th April 2021.

Finances (see figure 1)

1. A cautious approach has been adopted to budgeting for the BID term.
2. A BID Levy collection rate of 98% has been assumed.
3. The average annual levy available to be spent by the BID for the term is approximately £350k pa.
4. Included within the budget is any additional income;Operating costs of the BID are estimated as 10% of total expenditure.
5. The costs relating to the development of the BID were loaned by the Billing Authority and are to be repaid over the term (total repayment £125K), paid in instalments of £25K per annum), plus levy collection software costs, such costs are shown separately.

Figure 1.

**APPENDIX 2**

**BASELINE SERVICE AGREEMENT**

**Peterborough City Council delivers the following services within the BID area where the BID intends to provide additional services.**

**Peterborough City Council 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**

**Responsible authority: Peterborough City Council**

**Responsible Officer: Charlotte Palmer**

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| --- | --- |
| Current level of service provided including aim of service, and frequency of service provision | TBC |
| Specification | TBC  |
| Performance Measure | TBC |
| Non-compliance procedure | TBC |
| Future level of service provision | TBC |
| Other relevant information |   |

**Baseline activity: Street Cleansing**

**Responsible authority: Peterborough City Council**

**Responsible officer: James Collingwood**

|  |  |
| --- | --- |
| Current level of service provided including aim of service, and frequency of service provision | TBC  |
| Specification |  TBC  |
| Performance Measure | TBC  |
| Non-compliance procedure | TBC  |
| Future level of service provision | TBC  |
| Other relevant information |   |

**Baseline activity: Regulatory Services**

**Responsible authority: Peterborough City Council**

**Responsible Officer: Darren Dolby**

|  |  |
| --- | --- |
| Service provided, number of staff and equipment | TBC  |
| Specification | TBC |
| Future level of service provision | TBC |
| Performance measures | TBC |
| Non compliance procedures | TBC |
| Boundary area |   |

**APPENDIX 3**

**BID Area Map**

