

DATED

2018

DRAFT OPERATING AGREEMENT

between

WAVENEY DISTRICT COUNCIL

and

LOWESTOFT VISION

THIS AGREEMENT is dated

2018

PARTIES

- (1) **WAVENEY DISTRICT COUNCIL** of 4 Canning Rd, Lowestoft, NR33 0EQ.
- (2) **LOWESTOFT VISION** incorporated and registered in England and Wales with company number 8197411 whose registered office is at Felaw Maltings, 42 Felaw Street, Ipswich IP2 8SQ (**BID Company**).

BACKGROUND

- (A) The Council is the billing authority for the purposes of the Local Government Act 2003 and is responsible for collecting the BID Levy and administering the BID Revenue Account that shall be used towards the operation of the BID and 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 Business Plan.
- (C) Both parties wish to confirm the arrangements by which the BID Levy shall be collected together with general arrangements as to the relationship to be established between the Council and the BID Company for the duration of the BID.
- (D) The purpose of this Agreement is to:
 - establish the procedure for setting the BID Levy;
 - confirm the basis upon which the Council will be responsible for collecting the BID Levy;
 - set out the enforcement mechanisms available 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; and
 - confirm the manner in which the Council's expenses, incurred in collecting the BID Levy, shall be paid.
- (E) It is acknowledged and agreed that the BID Arrangements shall be operated in accordance with the BID Levy Rules as set out in Schedule 1.

AGREED TERMS

1. INTERPRETATION

The following definitions apply in this Agreement:

Assured Payment means the sum collected from each BID Levy Payer in accordance with the BID Levy Rules over the course of the relevant financial year multiplied by 96%.

Annual Report means a report to be prepared by the Council that details the following:

- the total amount of the BID Levy collected during the relevant Financial Year;
- details of the percentage collection rate for the BID Levy;
- the Council's proposals (if any) to help improve any efficiency measures in the collection and enforcement of the BID Levy;
- details of those BID Levy Payers who have not paid the BID Levy; and
- the Council's proposals for Bad or Doubtful Debts.

Bad or Doubtful Debts shall have the same meaning as further described in Part 2 of Schedule 3 of the Regulations.

Balancing Payment means the difference between the Assured Payment and the actual total sum of the BID Levy collected by the Council over the course of the relevant Financial Year.

BID means the Business Improvement District that operates within the BID Area.

BID Area means the area of Lowestoft shown on the map in Schedule 2

BID Arrangements means those arrangements to be put in place pursuant to the Regulations for the operation of the BID term (2018 to 2023).

BID Business Plan means the business plan approved at ballot for the purpose of the BID Arrangements.

BID Company Report means a report for each financial year to be prepared by the BID Company which details the following:

- the total income and expenditure of the BID Levy;
- other income and expenditure of the BID Company not being the BID Levy;
- a statement of actual and pending deficits; and
- 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 ratepayers responsible for paying the BID Levy.

BID Proposal means the document provided to the Council including a copy of the BID Business Plan and a letter requesting the Council to hold a ballot..

BID Levy Rules means the rules that set out how the BID Levy will be calculated, details of Exempt Properties and other requirements related to the BID Levy (as may be amended by a successful alteration ballot).

BID Revenue Account means the ring-fenced part of the Council's account to be set up in accordance with Regulation 14 of the Regulations and operated in accordance with Schedule 3 of the Regulations and this Agreement.

BID Term means the period of upto five years commencing on the Operational Date of the renewed BID.

Business Days means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Confidential Information means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, developments, trade secrets, intellectual property rights, know-how, personnel, customers and suppliers of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998.

Contracting Authority means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Council.

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

Data Protection Officer means the officer of the Council holding the post of data protection officer, or such other person as the Council may elect.

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

DPA means the Data Protection Act 1998 (as amended).

Hereditament shall have the same meaning as defined in the Regulations.

EIR means the Environmental Information Regulations 2004.

Exempt Properties means those properties identified in the BID Levy Rules which shall be exempt from any requirement to pay the BID Levy.

Financial Year means the period of 1 August to 31 March for the first financial period of the BID term and then 1st April to 31st March thereafter.

FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under the act from time to time together with any guidance or codes of practice issued by the Information Commissioner in relation to such legislation.

Information has the meaning given under section 84 of the FOIA.

Requests for Information shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the EIR

Liability Order means an order obtained from the Magistrates' Court in accordance with the Regulations.

Operational Date means 1 August 2018 being the date upon which the renewed BID Arrangements come into force.

Public Meeting means the meeting to be held of all BID Levy Payers pursuant to Regulation 18(1)(a)(ii) of 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).

Reminder Notice means the notice to be served upon a BID Levy Payer pursuant to Regulations and which:

- identifies the sum payable;
- asks for immediate payment; and
- confirms that the Council will undertake court action to recover the unpaid sum (together with costs).

Subject Access Request means a request made under section 7 of the DPA.

2. **STATUTORY AUTHORITIES AND INTERPRETATION**

- 2.1. 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.
- 2.2. This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:
 - (a) Words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity; and
 - (b) References to any statutes and statutory instruments are to be construed as references to those statutes and statutory instruments as from time to time amended or to any statutes and statutory instruments from time to time replacing, extending, consolidating or amending the same.

3. **COMMENCEMENT**

- 3.1. This Agreement shall commence on the Operational Date and shall continue in force during the BID Term.

4. **SETTING THE BID LEVY**

- 4.1. As soon as reasonably practicable, the Council shall:
 - (a) calculate the BID Levy due from each BID Levy Payer in accordance with the BID Levy Rules; and
 - (b) confirm in writing to the BID Company the BID Levy payable annually by each BID Levy Payer.
- 4.2. On or before 1 August in the first financial period and then 1st March each Financial Year thereafter within the agreed BID Term (after the period set out in clause 4.1), the Council shall:
 - (a) calculate the BID Levy due from each BID Levy Payer in accordance with the BID Levy Rules; and

- (b) confirm in writing to the BID Company the BID Levy payable annually by each BID Levy Payer.

5. THE BID REVENUE ACCOUNT

- 5.1. As soon as reasonably practicable, and in any event within 28 days of the date of this Agreement, the Council shall set up the BID Revenue Account and provide written confirmation to the BID Company once this has been carried out together with details of the account number sort code and any other details which the BID Company may reasonably require.
- 5.2. On or before the Operational Date the BID Company shall provide the Council with details of its own bank account into which payments shall be made under clause 9 and/or the BID Levy shall be transferred into from the BID Revenue Account.

6. DEBITS FROM THE BID REVENUE ACCOUNT

- 6.1. The Council will meet the requirements of collecting, administering and enforcing the BID Levy and agrees that it shall only debit:
 - (a) an annual figure of £20 per demand issued, to cover the costs of the debtors staff involved in invoicing and collection and a contribution towards the costs of the changes to the Revenues system;
 - (b) sums equal to the Assured Payment; and
 - (c) sums equal to the Balancing Payment.

7. COLLECTING THE BID LEVY

- 7.1. As soon as reasonably practicable, and in any event within 28 days of the date of this Agreement, the Council shall confirm in writing to the BID Company:
 - (a) the means by which the BID Levy Payer shall be billed for the BID Levy; and
 - (b) the date when the BID Levy shall first be collected (such date to be on or after the Operational Date).
- 7.2. Pursuant to clause 7.1(b) the Council shall serve the Demand Notices 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. So that the Council is able to serve valid Demand Notices the BID Company must provide the Council with information on:
 - (a) the amount spent on the BID Arrangements in the previous Financial Year and the next year throughout the Term;
 - (b) a description of the matters on which the revenue was spent; and

- (c) a description of the matters on which it is intended that the BID Levy will be spent during the next Financial Year.
- 7.4. The Council shall maintain a list that identifies non payment of the BID Levy and shall make this list available to the BID Company upon its reasonable request.
- 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:
 - (a) serve an updated list of BID Levy Payers upon the BID Company annually for the period of the BID Term; and
 - (b) serve a Demand Notice on the relevant BID Levy Payer annually for the period of the BID Term.
- 7.6. The Council shall use all reasonable endeavours to take all reasonable steps for collecting the BID Levy that are consistent with its usual procedures for the collection of Non-Domestic rates.
- 7.7. Set-up costs for the new BID Term will be a one of cost charged at one consultancy day, this charge will be charged by the Council to the BID Company. There are no software update costs that the BID Company will be liable for.
- 7.8. Total collection charges of levy bills, and charged to the BID Company are as follows (this will change according to number of hereditaments liable to pay the BID levy);
 - (a) 2018/19 - £5,995
 - (b) 2019/20 - £6,084
 - (c) 202/2021 - £6,175
 - (d) 2021/2022 - £6,270
 - (e) 2022/2023 - £6,362

8. ENFORCING PAYMENT OF THE BID LEVY

- 8.1. In the event that the BID Levy is not paid within 28 days from the date that it becomes payable then (subject to the exceptions or as may otherwise be agreed between the parties) the Council shall serve a Reminder Notice on such relevant BID Levy Payers.
- 8.2. If after a further 96 days from the payment date stated in Reminder Notice the outstanding sum of the BID Levy has not been paid the Council shall seek a Liability Order to recover the outstanding sum of the BID Levy as is permitted by the Regulations in agreement with the BID Company.

- 8.3. The cost of administering the collection of the BID Levy to Lowestoft Vision will be £20.00 per demand issued. However, where a summons is issued court costs and additional staffing costs will be incurred during the enforcement process. A Summons charge of £90.00 will be added to the debt which is collected from the liable person. The cost income from this enforcement action will be a 30/70 split between the BID Company and the Council. In addition to these costs incurred by the charge payer, if the case is issued to the bailiff then the bailiff costs will also be added to the debt and collected from the liable person. In the unlikely event that we have to issue proceedings in the County Court, then these will need to be charged to the BID Company where the Council have been unable to collect from the debtor. Action in the County Court is a last resort and would only be carried out upon written agreement from the BID Company.

9. PAYMENT TO THE BID COMPANY AND RECONCILIATION

- 9.1. As soon as reasonably practicable, and in any event within 28 days of the date of this Agreement, the Council shall pay the BID Company the sum of:
- (a) the Council's own BID Levy liabilities.
- 9.2. The Council shall pay the BID Company the Assured Payment by the last working day in each month for the preceding month and in any event by the 35th Day following the Levy being collected
- 9.3. On or before 31 July 2018 for the first financial period and then 31st March 2019 and each subsequent year through out the Term, the Council shall pay the BID Company the Balancing Amount less the appropriate amount payable in accordance with clause 6.1(a).

10. ACCOUNTING PROCEDURES AND MONITORING

- 10.1. Every 12 months (for the duration of the BID Term) or as reasonably required by the BID Company, the Council shall provide the BID Company with a breakdown of:
- (a) the total amount collected in respect of the BID Levy;
 - (b) details (together with the outstanding unpaid sum) of those BID Levy Payers who have not paid the BID Levy during those 12 months;
 - (c) Details of any Liability Orders obtained or applied for by the Council; and
 - (d) details of the amounts recommended for write off as a Bad Debt.
- 10.2. Every 12 months (for the duration of the BID Term) the BID Company shall provide the Council with the following details:
- (a) the total amount of income received from the Contributors (excluding the BID Levy); and
 - (b) the total expenditure during that 12 month period.

- 10.3. The parties shall annually review the operation of this Agreement and shall meet from time to time (no less than once a quarter) to:
- (a) review the effectiveness of the collection and enforcement of the BID Levy; and
 - (b) if required, review and assess the information provided by the Council and the BID Company pursuant to clauses 10.1 and 10.2 above and make any recommendations for implementation as may be agreed (and which are permitted by the Regulations and the terms of this Agreement).
- 10.4. Within three months after the date of the end of the Financial Year the Council shall provide the Annual Report to the BID Company
- 10.5. Within three months from the date of receipt of the Annual Report the BID Company shall provide the BID Company Report to the Council

11. TERMINATION

- 11.1. Where the Council is contemplating terminating the BID Arrangements under Regulation 18(1)(a) of the Regulations it shall serve written notice on the BID Company and, in addition to its obligation to hold a Public Meeting, shall meet with the BID Company as soon as is reasonably practicable to discuss and review the following:
- (a) the basis of the Council's concerns that the BID Company has insufficient finances to meet its liabilities for that period;
 - (b) the level of insufficient funds;
 - (c) alternative means by which the insufficiency of the funds can be remedied in accordance with regulation 18(1)(a)(ii) of the Regulations; and
 - (d) an appropriate time frame to resolve the issue.
- 11.2. Where the Council is contemplating terminating the BID Arrangements under regulation 18(1)(b) of the Regulations it shall serve written notice on the BID Company and shall meet with the BID Company as soon as is reasonably practicable to discuss and review the following:
- (a) the services or works which it is no longer able to provide together with confirmation and details as to why such works or services cannot be provided;
 - (b) a review by both parties as to whether such works or services are of material importance to the BID so that termination of the BID Arrangements is the only option;
 - (c) alternative means of procuring the said services or works by third parties or increased financial funding from the BID Company;

- (d) alternative replacement services or works which will be acceptable to the BID Company; and
 - (e) an appropriate time frame to resolve this issue.
- 11.3. In the event that the parties cannot reach agreement in relation to the above and subject to consideration of representations made by any BID Levy Payer at the Public Meeting the Council shall be permitted to terminate the BID Arrangements provided that notice by the Council to terminate the BID shall be provided to the BID Company no less than 28 days prior to termination taking place.
- 11.4. Upon termination of the BID Arrangements the Council 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 (having already deducted a reasonable sum for the administration of such refund) to:
 - (a) calculate the amount to be refunded to each BID Levy Payer;
 - (b) 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
 - (c) make arrangements for the amount calculated to be credited against any outstanding liabilities of each BID Levy Payer or, where there are no such liabilities refunded to the BID Levy Payer.
- 11.5. Upon termination of the BID Arrangements the Council shall notify the BID Levy Payers of such termination in accordance with regulation 18(6) of the Regulations together with confirmation as to whether any part of the BID Levy is to be repaid to BID Levy Payers in accordance with clause 11.4.
- 11.6. The BID Company shall not be permitted to terminate the BID Arrangements where:
 - (a) the works or services under the BID Arrangements are no longer required; or
 - (b) the BID Company is unable, due to any cause beyond its control to provide works and services which are necessary for the BID to continue,unless and until it has served a written notice on the Council and thereafter carried out a proper consultation with all relevant representatives of the BID Area as considered appropriate by the Council.
- 11.7. Upon termination of the BID Arrangements the BID Company shall notify the Council of such termination in accordance with Regulation 18(5) of the Regulations and the Council shall notify the BID Levy Payers pursuant to regulation 18(6) of the Regulations together with confirmation as to whether any part of the BID Levy is to be repaid to BID Levy Payers in accordance with clause 11.4.

12. CONFIDENTIALITY

- 12.1. Both the Council and the BID Company agree to keep confidential and not to divulge to any person without the prior written consent of the other party any 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. This obligation shall survive the termination or lapse of the BID Arrangements.
- 12.2. The BID Company shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Contract:
- (a) is given only to such of the staff and professional advisors or consultants engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the BID Arrangements and only to the extent necessary for the performance of the Contract; and
 - (b) is treated as confidential and not disclosed (without prior approval) or used by any staff or such professional advisors or consultants otherwise than for the purposes of the Agreement.
- 12.3. The BID Company shall not use any Confidential Information it receives from the Council otherwise than for the purposes of the Agreement.
- 12.4. The provisions of Clauses 12.1 to 12.3 of this Agreement inclusive shall not apply to any Confidential Information received by one Party from the other:
- (a) which is or becomes public knowledge (otherwise than by breach of this clause);
 - (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
 - (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - (d) is independently developed without access to the Confidential Information; or
 - (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, or the Environmental Information Regulations pursuant to clause 14.
- 12.5. Nothing in this clause shall prevent the Council:
- (a) disclosing any Confidential Information for the purpose of:
 - (i) the examination and certification of the Council's accounts; or
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources; or

- (b) disclosing any Confidential Information obtained from the BID Company:
 - (i) to any government department or any other Contracting Authority; or
 - (ii) to any person engaged in providing any services to the Council for any purpose relating to or ancillary to the Agreement;

provided that in disclosing information under sub-clause (b) the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- 12.6. In the event that the BID Company fails to comply with this clause, the Council reserves the right to terminate the Agreement by notice in writing with immediate effect.

13. DATA PROTECTION

- 13.1. The BID Company shall (and shall procure that any of its staff involved in the provision of this Agreement) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA, which arise in connection with the Agreement.

- 13.2. The BID Company acknowledges that the Council is the Data Controller for the purposes of the DPA.

- 13.3. Notwithstanding the general obligation in clause 13.1, where the BID Company is processing personal data (as defined by the DPA) as a data processor for the Council (as defined by the DPA) the BID Company shall:

- (a) ensure that it has in place appropriate technical and organisational 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 DPA;
- (b) provide the Council with such information as the Council may reasonably require to satisfy itself that the BID Company is complying with its obligations under the DPA;
- (c) promptly notify the Data Protection Officer of any breach of the security measures required to be put in place pursuant this clause; and
- (d) ensure that 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 DPA.

- 13.4. The provisions of this clause shall apply during the continuance of this Agreement and shall continue after its expiry or termination.

- 13.5. The BID Company shall and shall procure that its sub-contractors shall:
- (a) transfer any Subject Access Request to the Council as soon as practicable after receipt and in any event within two Business Days of receiving the request;
 - (b) provide the Data Protection Officer with a copy of all information required in respect of the Subject Access Request in its possession or power in the form that the Council requires within 27 calendar days (or such other period as the Council may specify) of the Council requesting that information; and
 - (c) provide all necessary assistance as reasonably requested by the Data Protection Officer to enable the Council to respond to a Subject Access Request within the timescale stipulated under the DPA.
- 13.6. Where a third party request for personal information is received from governmental or public bodies including but not limited to the Police or HM Revenue and Customs, the BID Company shall:
- (a) transfer the request to the Data Protection Officer who will register the request and undertake the necessary checks to ensure the authenticity of the requester; and
 - (b) transfer the information requested to the Data Protection Officer within three Business Days of receiving the request.

14. FREEDOM OF INFORMATION

- 14.1. The BID Company acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Council (at the BID Company's expense) to enable the Council to comply with these Information disclosure requirements.
- 14.2. The BID Company shall and shall procure that its sub-contractors shall:
- (a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two Business Days of receiving a Request for Information;
 - (b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Business Days (or such other period as the Council may specify) of the Council requesting that Information; and
 - (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 14.3. The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information or any other Information:

- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;
 - (b) is to be disclosed in response to a Request for Information, and
 - (c) in no event shall the BID Company respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 14.4. The BID Company acknowledges that the Council may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA, be obliged under the FOIA, or the Environmental Information Regulations to disclose Information:
- (a) without consulting with the Contractor; or
 - (b) following consultation with the Contractor and having taken its views into account.
- 14.5. The BID Company shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

15. NOTICES

- 15.1. 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.
- 15.2. Any notice must be served on the Council or the BID Company by addressing it to the Chief Executive Officer or the Directors respectively:
- (a) sending by post; or
 - (b) delivery by hand.
- 15.3. 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.

16. MISCELLANEOUS

- 16.1. 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.
- 16.2. The headings appearing in this Agreement are for ease of reference only and shall not affect the construction of this Agreement.

- 16.3. 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 dated.
- 16.4. Where reference is made to a clause, Part or such reference (unless the context requires otherwise) is a reference to a clause, part, plan attached to this Agreement.
- 16.5. References to the Council include any successors to its functions as billing authority.
- 16.6. References to statutes, bye laws, regulations, orders, delegated legislation shall include any such instrument re-enacting or made pursuant to the same power.

17. EXERCISE OF THE COUNCIL'S POWERS

- 17.1. 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.

18. CONTRACTS (RIGHTS OF THIRD PARTIES)

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

19. DISPUTE RESOLUTION

- 19.1. Resolution by Senior Officers – any dispute or difference of any kind whatsoever arising between the parties out of or in connection with this Agreement shall first be discussed by the Chairman of the BID Company and the Chief Executive Officer of the Council (or their respected nominated representatives).
- 19.2. Mediation – if the parties are unable to resolve the dispute under clause 19.1 they may decide to refer the dispute to mediation on the terms of the latest model mediation procedure produced by the Centre for Effective Dispute Resolution, subject to the proviso that any such mediation shall be completed within 4 weeks of referral (or such longer period as the parties may agree).
- 19.3. Arbitration – save where the parties have agreed in writing that a decision under clause 19.1 or an agreement reached at or during mediation under clause 19.2 is to be final and binding either party may refer the dispute to arbitration before a single arbitrator:
- (a) the parties shall jointly appoint the arbitrator not later than 28 days after service of a request in writing by either party to do so;
 - (b) if the parties are unable to agree within 28 days as to the appointment of 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;

- (c) in the event of a reference to arbitration the parties agree to:
 - (i) pursue any such reference expeditiously; and
 - (ii) do all things or take all steps reasonably necessary in order to enable the Tribunal to deliver any award as soon as reasonably practicable;
- (d) the award shall be in writing signed by the arbitrator; and
- (e) the award shall be final and binding both on the parties and on any persons claiming through or under them.

This Agreement has been entered into on the date stated at the beginning of it.

Signed for and on behalf of
WAVENEY DISTRICT COUNCIL

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Signed by a director for and on
behalf of **LOWESTOFT VISION**

.....

Director

Schedule 1 – Levy Rules

BID RULES

In developing the rules that will apply, consideration has been given to “The Industry Criteria and Guidance Notes for BIDs” (2017) published jointly by the British Retail Consortium, the British Property Federation, National BIDs Advisory Service, Retail Property Community, ACS, Association of town and city management and Intu.

THE BALLOT

1. Waveney District Council will send those responsible for properties or hereditaments to be subject to the new BID a ballot paper before 27 April 2018.
2. Each property or hereditament subject to the BID will be entitled to one vote in respect of the proposal in a 28-day postal ballot which will commence on 27 April 2018, and close at 5pm on 24 May 2018. Ballot papers received after 5pm on 24 May 2018 will not be counted.
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 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. The result of the ballot will be announced on Friday 25th May 2018.
5. If successful at ballot, the new BID will commence delivery of services on 1 August 2018 and will continue for a period of four years and eight months to 31 March 2023.

FINANCES

1. A cautious approach has been adopted to budgeting for the second BID term.
2. Historic performance suggests that 97% of the billed levy will be collected each year, and this rate has been applied throughout.
3. The average annual levy available to be spent by the BID for the term is circa £150,237.
4. A contingency provision on expenditure provides for an anticipated surplus of £14,435 by the end of the term.
5. During the first term, the BID had success in generating additional revenue. In the first term this equated to £170,451 (equivalent to 22.7% of total levy). The BID will continue to look at encouraging additional income throughout the second BID term.

6. Operating costs of the BID are estimated as 20% of total expenditure.
7. There are no costs relating to the development of the new BID that will need to be repaid during the term.
8. The Company's quality management systems, including its financial controls, are accredited with ISO 9001:2008.

THE LEVY

1. From August 2018, the levy rate to be paid by each property or hereditament will remain as 1.5% of its rateable value. This represents no change to the current levy being paid in 2017/18.
2. All non domestic properties or hereditaments with a rateable value of £8,000 or more will be required to pay the levy.
3. The number of properties or hereditaments liable for the levy has decreased from approximately 320 (2017/18) to approximately 235 as a result of changes to the proposed BID area and revaluation in 2017.
4. The levy will be subject to an annual adjustment in line with the (All Items) Retail Price Index, to account for inflation, up to a maximum of 2.5% on the previous year's levy. This will be based on the annual inflationary factor for Local Non-Domestic Rate bills as calculated by H.M Government and published in October of each year.
5. The levy will be subject to daily charge and Waveney District Council will be in charge of any refunds subject to BID levy rules.
6. The owners of untenanted properties or hereditaments will be liable for payment of the levy.
7. Those hereditaments within The Britten Centre shopping centre (where there is already an additional service charge for marketing, security and cleaning services) will pay 50% of the levy that would otherwise apply (excluding those eligible for discount as per clause 8).
8. Charitable organisations that are subject to relief on their business rates (either, or, whichever is lower as per clause 7) liability will pay 50% of the levy that would otherwise apply.
9. If, during the term, the rateable value assigned to a property or hereditament falls below £8,000, the property or hereditament will be exempt from the levy from the next chargeable day.

10. If, during the term, a property or hereditament with a rateable value, which had previously been below the £8,000 threshold, is assigned a rateable value that is above £8,000 or above, the property or hereditament will be liable for the levy.
11. If during the term, a new property is built within the BID area and is given a rateable value of £8,000 and above, this hereditament will be liable to pay the levy.
12. Waveney District Council will be responsible for collection of the levy and will do so in accordance with the Operating Agreement and levy charges agreed within.

GOVERNANCE

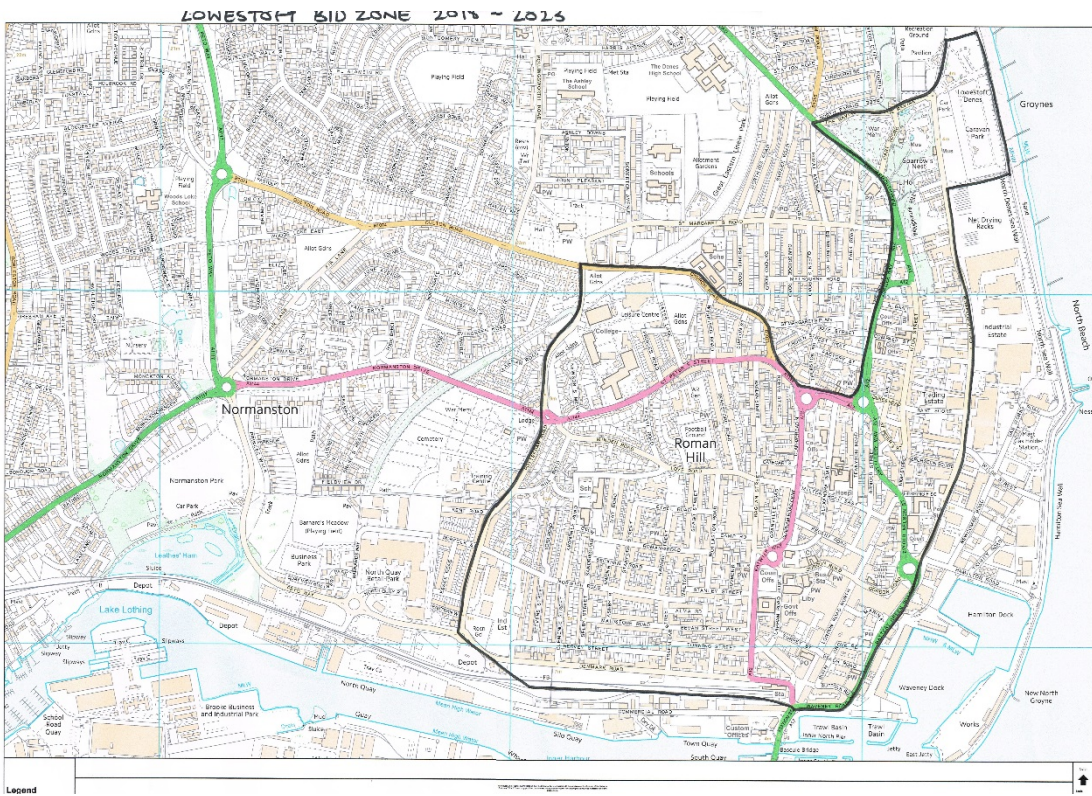
1. The new BID will again be managed by Lowestoft Vision (the 'Company'), a not for profit organisation and subsidiary of Suffolk Chamber of Commerce, limited by guarantee. Existing governance arrangements will apply.
2. The Management Committee will continue to advise on operational and service delivery issues, oversee performance measurement, and more generally act as the primary consultative body on BID services.
3. The Management Committee will be made up of representatives of levy paying businesses and property owners who will be elected appropriately (starting 2018/19), with the process advertised to all levy payers. Additional members may be co-opted, as required. Nominated representatives from Waveney District Council, Waveney Norse, Suffolk County Council and Suffolk Constabulary will not be subject to the annual election process.
4. Lowestoft Vision and Suffolk Chamber of Commerce will continue to have responsibility for financial arrangements, contractual obligations, human resources, standards and compliance, and strategic direction. The Board will be made up primarily of appointed representatives of levy payers with additional expertise as required by Suffolk Chamber of Commerce.
5. During the first year of the term appropriate policies for all Directors, including the Chair, will be approved by the Board. When the period of office of the current Chair expires, the position will be advertised.
6. Provided that the BID is meeting its overall objectives, the Board, subject to full consultation with the Management Committee, Waveney District Council and Suffolk Chamber of Commerce, shall have the ability to vary service delivery and expenditure allocation according to the changing demands of levy payers. However, any change to the BID boundary or to the levy rate proposals would require an alteration ballot.
7. An Operating Agreement, which includes the Council's baseline service statements, has been agreed and will be in place from the commencement of the new BID term.

8. Notice of the intention to hold a ballot was provided to the Secretary of State on 30th November 2017.
9. Proposed date for Notification of ballot 11th April 2018
10. The Company will provide copies of statutory accounts and financial statements to the Local Billing Authority annually and to levy payers on request (allowing sufficient time to produce these). A financial summary and Chair's statement will be available via a website link.
11. The Company will meet with the Billing Authority on a quarterly basis to discuss service delivery, levy collection and financial management issues.
12. An annual presentation to levy payers and stakeholders will be held which, will help determine priorities for the following year.

DEFINITIONS

1. For the purposes of definition, the term 'Renewal' means replacement of the existing BID at the end of its current term (July 2018) with a new arrangement covering an amended area and subject to the rules and arrangements herein.

Schedule 2 – BID Area



Baseline Agreements

PARTNER AND SERVICES AGREEMENT

It is our understanding that a Lowestoft Business Improvement District (Lowestoft Vision) will deliver added value to the commercial core, its property owners, businesses, residents and employees and make the area more attractive to visitors.

The purpose of the Lowestoft BID is to provide services in the town centre that are above and beyond the service levels currently provided by Waveney District Council. Waveney District Council intends to maintain its current service levels as set out in the baseline service agreements and work co-operatively with Lowestoft Vision.

The Lowestoft BID will feature programmes to promote the attractiveness of the town centre. Furthermore, the Lowestoft BID is intended to provide competitive advantage and to support development and retention.

Lowestoft Vision and Waveney District Council share several common objectives for Lowestoft town centre including:

1. Maintaining a healthy climate for business
2. Providing predictability and consistency in the level of service provided
3. Efficient administration of operations
4. Co-ordination of issues of mutual interest to the local authorities and the private sector

Additional objectives of the Lowestoft BID include:

1. Provision of enhanced safety and promotional services to Lowestoft BID Levy payers, achieved through economies of scale
2. Centralised and co-ordinated management of the Lowestoft BID area programmes

Additional objectives of Waveney District Council include:

1. Maintaining the flexibility to respond to changing fiscal conditions and to emergencies
2. Providing services equitable across the Borough whilst recognising different needs

Waveney District Council recognises that the Lowestoft BID will be most effective if it supplements rather than substitutes those services provided by Waveney District Council. Therefore, Waveney District Council intends to maintain the level of services in the Lowestoft BID area. This service provision will be subject to an annual review exercise with Lowestoft Vision representatives being consulted.

In the area of public safety, it is the commitment of the Suffolk Police to maintain the level of support it has set out in the Service Level Agreement for the lifetime of Lowestoft BID. Specifically, Suffolk Police will not reduce or otherwise negatively adjust its resource levels as a result of the services provided by the Lowestoft BID.

Lowestoft BID supplements these services by:

1. Providing highly visible representatives to provide assistance to visitors and act as additional 'eyes and ears' for public safety
2. Co-ordinating enforcement of byelaws and anti-nuisance activities with Suffolk Constabulary.
3. Identifying public safety issues
4. Advocating crime prevention measures

Agreed By:

Waveney District Council

Suffolk Constabulary

Lowestoft Vision

Suffolk Highways

Waveney House

APPENDIX 2 – BASELINE AGREEMENTS/SERVICE LEVEL AGREEMENTS

- a. Public Highways – Suffolk Highways

- b. Street Lighting – Suffolk Highways
- c. Police – Suffolk Constabulary (SLA)
- d. Closed Circuit Television – Waveney Norse
- e. Street Cleansing – Waveney Norse
- f. Licensing and Enforcement of street trading – Waveney District Council

Highways – Suffolk County Council

S e r v i c e
M a n a g e r

S e r v i c e
P r o v i d e d ,
N u m b e r o f S t a f f
& E q u i p m e n t

<p>Specification</p>	<p><i>Maintenance of public highways:</i></p> <p>All emergency highway will be responded to in accordance with Suffolk Highways' Highway Maintenance Operational Plan (HMOP)</p> <p>https://www.suffolk.gov.uk/roads-and-transport/highway-maintenance/highway-asset-management/highway-maintenance-operational-plan/</p> <p>Investment principles, details of assets and details of highway funding are in Suffolk Highways' Highway Infrastructure Asset Management (HIAMP)</p> <p>https://www.suffolk.gov.uk/roads-and-transport/highway-maintenance/highway-asset-management/</p> <p>Temporary repairs to the highway may include tarmac as an interim repair to make the site safe. When ordering permanent repairs every effort should be made to match surrounding materials. However, due to the cost of high specification materials this may not always be possible.</p> <p>Weed spraying: twice per annum (April/May; Sept/Oct). All footways and roadside channels (where kerbed) are treated with a non residual contact herbicide.</p> <p>Highway Inspections: Suffolk County Councils has a duty to maintain the highway for the safe use of the public.</p> <p>Each street is formally inspected on a regular basis department on its category and in accordance with HMOP, in general for the main pedestrian areas this is a walked inspection undertaken monthly.</p> <p>Main carriageways, such as the A12, are inspected monthly. Other carriageways are inspected at 3 and 6 monthly intervals.</p> <p>As a result of those inspections urgent repairs may be ordered to include urgent repairs to surface potholes/defects and other highway related infrastructure such as fences/barriers, signs, lighting, gullies, kerbing and road markings. Some items of street furniture such as bollards and benches are maintained by the District Authority.</p> <p>Maintenance: for non urgent defects and repairs of a more minor nature, Suffolk Highways may respond with the works taking place within a schedule of programmed works. Priorities based</p>
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Performance Measure	Performance requirements in the Suffolk Highways Kier contract are based upon response times given in the HMOP and a commitment, in the contract, to support professional development of staff.
Non-compliance procedure	Escalation to peer review within Highway Service Delivery Centres, Service Manager or through Suffolk County Council Complaints Procedure ; https://www.suffolk.gov.uk/about/give-feedback-or-make-a-complaint/
Existing Value of Contract/Service	Approx £47M (2017-18)
Boundary Area	BID Area
Street Lighting – Suffolk County Council	
S e r v i c e M a n a g e r	
S e r v i c e P r o v i d e d , N u m b e r o f S t a f f & E q u i p m e n t	Street Lighting

<p>Specification</p>	<p>Maintenance is completed in accordance with the agreed level of service within the 2013 SCC Highways Service Contract</p> <p>Planned maintenance, lamp replacement, and emergency attendance to make safe and non-performance rebates in accordance with the specification and agreed Key Performance Indicators.</p> <p>The contract includes: emergency attendance to road traffic accidents and vandalism within 1 hr.</p> <p>All faults are repaired within a target period of 10 working days from notification. Vandalised lanterns are replaced in 28 working days. Deteriorated columns and lanterns are replaced 2 months from repair of order.</p> <p>Lantern cleaning and lamp replacements are carried out to maintain 98.5% of units in lighting with inspections and painting when necessary. Monthly inspections for lighting faults.</p> <p>Street Lighting on private land is not attended. Service to customers for repair of street lights on private land can be provided by the term contractor.</p>
<p>Performance Measure</p>	<p>The performance to all reported defects, target 98.5% of units in lighting. Any routine maintenance completed within 10 working days following the end of each month.</p> <p>A night times inspection is carried out as required</p>
<p>Non-compliance procedure</p>	<p>Escalation to Service Manager</p>
<p>Existing Value of Contract/Service</p>	<p>Under the wider Suffolk Highways Contract</p>
<p>Boundary Area</p>	<p>BID Area</p>

Waveney Norse – Closed Circuit Television (CCTV)

Waveney Norse – Closed Circuit Television (CCTV)	
Operations Manager	Sue Keeble
Service Provided, Number of Staff & Equipment	63 cameras – part of the town’s overall CCTV systems Operators (one manager and 7 staff, designed to cover 24/7) In addition, a town Radio Link Network provided for local retailers
Specification	The 63 digital cameras record high quality/definition images In addition, two car parking inspectors cover Lowestoft Town Centre area.
Performance Measure	24/7 coverage via 63 cameras, 365 days pa
Non-compliance procedure	Escalation to Operations Manager
Existing Value of Contract/Service	Total system expenditure approx. £290,000 pa
Boundary Area	Lowestoft

Waveney Norse – Street Cleansing	
Operations Manager	
Service Provided, Number of Staff & Equipment	<p>Street Cleansing – Lowestoft Town Centre contracted by Waveney District Council</p> <p>Mon-Sat 1x Compact Sweeper (1x operative) 1x Tipper Van (2x operatives) 2x Barrows (2x operatives)</p> <p>Sun 2x Barrows (2x operatives)</p>
Specification	<p>Street Cleansing:</p> <p>General Cleansing: Ensuring Town Centre is swept, litter picked and bins emptied every day of the year.</p> <p>Litter bin maintenance: provide a service to maintain and replace missing and damaged litterbins within the Town Centre.</p> <p>Leaf clearing: whilst leaf fall is generally treated as litter, additional resources will be provided on a seasonal basis to effectively remove the fall of leaves from town.</p> <p>Street furniture is repaired and maintained as required, subject to sufficient budget.</p> <p>Gully emptying: This is undertaken 3 times in two-year period.</p> <p>Jet washing: Pedestrian Precinct, twice per year.</p> <p>Additional Works:</p> <p>Provide a 24-hour emergency service for works, with a target of a one hour response time.</p> <p>Provide additional resources to cover events.</p> <p>Provide on request a responsive service for cleansing issues in the Town Centre, including fly tipped rubbish on the public highway, Council owned and privately-owned property.</p> <p>Assist in Lowestoft's entry for Anglia in Bloom.</p> <p>Pigeon Excrement, Graffiti, Fly posting and Chewing Gum: Provide a service to respond to requests for removing pigeon excrement, graffiti, fly posting and chewing gum.</p>

Non-compliance procedure	Escalation to Operations Manager
Existing Value of Contract/Service	In the region £150,000 - £200,00
Boundary Area	Town Centre

Suffolk Constabulary – North Lowestoft Safer Neighbourhood Team (SNT) – Establishment

It is our understanding that a Lowestoft Business Improvement District (Lowestoft Vision) will deliver added value to the commercial core, its property owners, businesses, residents and employees and make the area more attractive to visitors.

The purpose of the Lowestoft BID is to provide services in the town centre that are above and beyond the service levels currently provided by Suffolk Police Constabulary. Suffolk Police Constabulary intends to maintain its current service levels as set out in the baseline service agreements and work co-operatively with Lowestoft Vision.

The Lowestoft BID will feature programmes to promote the attractiveness of the town centre. Furthermore, the Lowestoft BID is intended to provide competitive advantage and to support development and retention.

Service Manager	Inspector Andy Howlett
Service Provided, Number of Staff & Equipment	<ul style="list-style-type: none"> • 1x Inspector (Insp Andy Howlett) • 2x Sergeant • 3x SNT Police Officers (Officers within the Team allocated to the Town Centre, Harbour Ward & Normanston Ward) • 4x Police Community Support Officers (Allocated to the Town Centre, Harbour Ward & Normanston Ward)

Specification	Reactive demand that is generated within the Town Centre will continue to be met by either the SNT or the Neighbourhood Response Team (NRT) staff. The SNT's are not expected to fulfil all functions and good examples of additional support are shoplifting, anti-social behaviour reports and policing of the night-time economy.
Performance Measure	<p>Christmas Shop Lifting / Purse Theft Campaign</p> <p>Begging the town centre: Officers remains firm in their actions towards begging in the town and persistent beggars are arrested and put before the Courts.</p>
Existing Value of Contract/ Service	The annual staff cost for the established Lowestoft North SNT that work within the BID area is approximately £350,000.
Boundary Area	Lowestoft North SNT covers the whole of Lowestoft – North of the River and also includes Oulton Broad and all of the rural parishes.

Waveney DC – Licensing and Enforcement of Street Trading	
Service Manager	Ingrid Askew
Service Provided, Number of Staff & Equipment	<p>Licensing of legitimate street trading stalls in Lowestoft (and all other areas of the District) with regards the selling of flowers, hot food, ice cream etc and enforcing against illegal street trading.</p> <p>1 full time equivalent staff – for the whole District – dealing with various licensing and enforcement issues. The main area of work for these staff involves licensing and enforcement activities in connection with the sale of alcohol, provision of entertainment and the late night sale of hot food.</p>
Specification	Set by Local Government (Miscellaneous Provisions) Act 1982
Performance Measure	Dealing with complaints and dealing with illegal traders as necessary.
Non-compliance procedure	Escalation to Service Manager
Existing Value of Contract/Service	<p>1 FTE staff dealing with:</p> <p>Licensing Act 2003 Gambling Act 2005 Pavement cafes (only if premises license held) Sex shops Street trading Street collections Taxi Licensing and Enforcement 0.5 FTE</p>
Boundary Area	Waveney District Council Area

