

OPERATING AGREEMENT
IN CONNECTION WITH BID LEVY COLLECTION ARRANGEMENTS
FOR THE BROADMEAD BUSINESS IMPROVEMENT DISTRICT

DATED _____ 2023

BRISTOL CITY COUNCIL (the Council)

**Destination Bristol T/A Visit West PRIVATE LIMITED COMPANY BY GUARANTEE
Company Number 03715280 (the BID Company)**

Contents

1. Definitions	5
2. Statutory authorities and interpretation	7
3. Commencement	7
4. Estimating the BID Levy	7
5. The BID Revenue Account	8
6. Collecting the BID Levy	9
7. Accounting Procedures and Monitoring	9
8. Termination	11
9. Confidentiality	12
10. Notices	12
11. Miscellaneous	13
12. Exercise of the Council's powers	14
13. Contracts (Right of Third Parties)	14
14. Dispute Resolution	14

SCHEDULE 1 – BID Levy Rules

SCHEDULE 2 – Plan of Broadmead BID Area and List of Streets

It is agreed

1. DEFINITIONS

The words and expressions below shall mean as follows:-

“Act” shall mean the Local Government Act 2003.

“Annual Sum” shall mean the amount deducted from the BID Revenue Account for the costs of collecting, administering and enforcing the BID Levy.

“Ballot Result Date” shall mean the date upon which a successful ballot result has been declared in favour of putting in place the BID Arrangements.

“BID” shall mean the Business Improvement District, within the meaning given in the BID legislation, which is managed and operated by the BID Company, and which operates within the BID Area.

“BID Area” shall mean the area of Bristol delineated on the plan at Schedule 2.

“BID Arrangements” shall mean the arrangements made by the Council pursuant to the BID legislation for the operation of the BID.

“BID Company” shall mean Destination Bristol T/A Visit West, being the Company responsible for the implementation of the arrangements.

“BID Company’s Report” shall mean a report for each Financial Year to be prepared by the BID Company.

“BID Legislation” shall mean the Local Government Act 2003 and the BID (England) Regulations 2004 and other relevant legislation.

“BID Levy” shall mean the charge to be levied and collected from business rate payers within the BID Area pursuant to the Regulations.

“BID Levy Payer(s)” shall mean the non-domestic rate payer(s) who are liable for paying the BID Levy.

“BID Levy Rules” shall mean the rules set out in Schedule 1 which sets out how the BID Levy will be calculated and other requirements related to the BID Levy (as may be amended by a successful alteration ballot).

“BID Revenue Account” shall mean the account kept in accordance with s47 of the Act and operated in accordance with Regulation 14 and Schedule 3 of the Regulations.

“BID Term” shall mean the period of 5 years commencing on the Operational Date.

“Contingency Sum” means the sum that will be retained by the Council during each year which is equivalent to 5% of the levy collected.

“Contributors” means other voluntary payment contributions to the BID.

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

“Financial Year” shall mean the period of 1 November to 31 October.

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

“Liability Order” shall mean the meaning given in Regulation 10 of the Non-Domestic Rating (Collection and Enforcement)(Local Lists) Regulations 1989.

“Operational Date” shall mean 1 November 2023, being the date upon which the BID Arrangements come into force.

“Public Meeting” shall mean the meeting to be held of all BID Levy Payers pursuant to regulation 18(1) (a) (ii) of the Regulations.

“Regulations” shall mean the Business Improvement Districts (England) Regulations 2004 (S.I. 2004/2443) and such amendments made by the Secretary of State pursuant to Section 48 of the Act (from time to time).

“Termination” shall be pursuant to Clause 8.

“Working Day” shall have the same meaning pursuant to the Regulations.

2. Statutory Authorities and Interpretation

2.1. This Agreement is made pursuant to Part 4 of the Act 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:

- (i) Words importing persons shall where the context so requires or admits include individuals firms partnerships trusts corporations governments governmental bodies authorities agencies unincorporated bodies or persons or associations and any organisations having legal capacity.
- (ii) Reference 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

This agreement is conditional upon the declaration of a successful ballot result on the Ballot Result Date and this Agreement will be executed on or before 1st November 2023.

4. Estimating the BID Levy

4.1. Prior to the Operational Date the Council shall:

- (i) calculate the BID Levy due from each BID Levy Payer in accordance with the BID Levy Rules; and

- (ii) confirm in writing to the BID Company the total anticipated BID Levy due in respect of the first year of the BID term.

5. The BID Revenue Account

Prior to the Operational Date the Council shall set up the BID Revenue Account and shall then debit from the account the following:

5.1. The Council's costs of collecting, administering and enforcing the BID levy (the "Annual Sum"). This will be deducted from the first payment to the BID Company, in each year. The Annual Sum will be reviewed each year, taking due account of certain fixed costs that will be divided equally between all active BIDs in the Council's area, and variable costs that will be apportioned with reference to the number of hereditaments in each BID. The Annual Sum may increase or decrease throughout the term of the BID. In the first year of the BID the Annual Sum shall be £XXX (TBC). The Council will notify the BID Company of any change to this amount by 1 October each year.

5.2. The Council's costs of obtaining liability orders at the Magistrate's Court

5.3. The expenditure of the Council for the year in respect of the BID arrangements:

(a) As soon as practicable after the last working day of December, March, June and October in each financial year, the Council shall provide a statement to the BID Company as to the total value of credits to the BID Revenue Account excluding any credits included in a previous statement, any refunds due to levy payers and the contingency sum for that financial year

(b) The statement for December in each financial year shall include the contingency sum held over from the previous financial year

(c) The BID Company shall within 14 Working Days of a statement provided under clause (a) and (b) send to the Council an invoice in an amount equal to the value of credits, and contingency sum where applicable, in the statement, adding where applicable VAT at the prevailing rate and showing such VAT on a separate line, except where the aggregate sum to be paid to the BID Company is less than £500.00, when the payment will be held over to the next statement

(d) Valid, undisputed invoices should be paid 30 days from receipt of the invoice

The BID Company will repay any overpaid monies in respect of the BID Levy to the Council within 30 days of being notified of such overpayment.

6. Collecting the BID Levy

6.1. Annually after billing, the Council shall confirm in writing to the BID Company:

- (i) the date the demand notices were issued and the total BID levy
- (ii) the date when the BID Levy shall be due and payable by the BID levy payers.

6.2. Pursuant to clause 6.1(ii) 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 as required and in accordance with the BID Levy Rules throughout the BID Term.

6.3. The Council shall use all reasonable endeavours to collect the BID Levy on the date specified (pursuant to clause 6.1(ii) above) and thereafter on an annual basis and in accordance with the procedure set out in Schedule 4 of the Regulations, relevant BID legislation and its procedures for the collection of business rates.

7. Accounting Procedures and Monitoring

7.1. After the last working day of December, March, June and October for the duration of BID Term the Council shall provide the BID Company with:

- (i) Changes to the annual billable BID Levy
- (ii) The total amount of BID Levy collected
- (iii) Total value of write offs
- (iv) Details of the percentage collection rate for the BID Levy
- (v) The total amount of voluntary contributions received

7.2. Every 2 months for the duration of the BID Term the Council shall provide the BID company with a report across all years detailing:

- (i) The number of accounts and liability raised per year
- (ii) The arrears per year split between unsummonsed and summonsed
- (iii) Percentage of liability to be collected
- (iv) This same information further broken down by business sector by year

7.3. Every 2 months for the duration of the BID Term the Council shall provide the BID company with a report across all years detailing:

- (i) The number of accounts in arrears with amount
- (ii) The accounts in arrears per year split between unsummonsed and summonsed
- (iii) Percentage of arrears by account and as a percentage of debt
- (iv) This same information further broken down by business sector by year

7.4. Every 12 months (for the duration of the BID Term) the BID company shall provide the Council with the BID Company's Report which details the following:

- (i) The total income from and expenditure of the BID levy
- (ii) Other income and expenditure of the BID Company not being the BID levy
- (iii) A statement of actual and pending deficits; and
- (iv) The various initiatives and schemes upon which the BID levy has been expended by the BID Company

7.5. Every 12 months (for the duration of the BID Term) in time for annual billing the BID Company shall provide the Council with a quantity of leaflets which shall be included in the Demand Notice, detailing:

- (i) the revenue from the BID Levy the billing authority was due to receive in the previous year in line with 6.1 (i)
- (ii) the amount spent on the BID arrangements in the previous year
- (iii) a description of the matters on which it was spent and
- (iv) a description of the matters on which it is intended to spend the revenue from the BID levy in the financial year

7.6. The parties shall periodically review the operation of this Agreement and shall meet from time to time to:

- (i) review the effectiveness of the collection of the BID Levy; and
- (ii) if required, review and assess the information provided by the Council and the BID Company pursuant to this agreement and make any recommendations for implementation as may be agreed in writing (and which are permitted by the Regulations and the terms of this Agreement)

8. Termination

- 8.1. Where the Council is contemplating terminating the BID Agreements 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:
- (i) the basis of the Council's concerns that the BID Company has insufficient finances to meet its liabilities for that period;
 - (ii) the level of insufficient funds;
 - (iii) alternative means by which the insufficiency of the funds can be remedied in accordance with Regulation 18(1)(a)(i); and
 - (iv) an appropriate time frame to resolve the issue
- 8.2 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:
- (i) the service 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
 - (ii) whether such works or services are of material importance to the BID so that termination of the BID Arrangements is the only option
 - (iii) alternative means of procuring the said services or works by third parties or increased financial funding from the BID Company
 - (iv) alternative replacement services or works which will be acceptable to the BID Company
 - (v) an appropriate time frame to resolve this issue
- 8.3 If 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 terminate the BID Arrangements giving 28 days' notice to the BID company.
- 8.4 The BID Company shall not be permitted to terminate the BID Arrangements where:
- (i) the works or services under the BID Arrangements are no longer required; or
 - (ii) 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.

8.5 Upon termination of the BID Arrangements, or at the end of the BID term (unless renewed), the BID Company shall repay to the Council any amount that has been paid to the BID Company which has not been expended on the BID during the BID term. The Council shall calculate any credit in the BID Revenue Account and take action in accordance with BID legislation to credit or refund each previous Levy Payer.

8.6 Upon termination of the BID Arrangements the BID Company shall notify the Council of such termination in accordance with Regulation 18(5) and the Council shall notify the BID Levy Payers pursuant to Regulation 18(6).

8.7 For the avoidance of doubt in the event of the BID Arrangements terminating for whatever reason no new liabilities will accrue to either party thereafter.

9 Confidentiality

9.1 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 all information (written or oral) concerning the business affairs of the other nor any information which has been exchanged about the BID Levy Payers or 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.

10 Notices

10.1 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.

- 10.2 A Notice may be served by:
- (i) delivery to the Service Director - Legal Services of the Council at its address specified above; or
 - (ii) delivery to the Company Secretary of the BID Company at its address specified above and by;
 - (iii) registered or recorded delivery post.
- 10.3 Any notice served shall be deemed to have been validly served or given at the time when in the ordinary course of business it would have been received.

11 Miscellaneous

- 11.1 For the avoidance of doubt where any part of this Agreement is incompatible with the legislation or any other regulations which the Secretary of State may issue pursuant to Part IV of the Act then such part shall be struck out and the balance of this Agreement shall remain.
- 11.2 The headings appearing in this Agreement are for ease of reference only and shall not affect the construction of this Agreement.
- 11.3 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.
- 11.4 Where reference is made to a Clause Part Plan or Recital such reference (unless the context requires otherwise) is a reference to a clause part plan or recital attached to this Agreement.
- 11.5 Reference to the Council includes any successors to its functions as local authority.
- 11.6 Reference to statutes bye laws regulations orders delegated legislation shall include any such instrument re-enacting or made pursuant to the same power.

12 Exercise of the Council's powers

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.

13 Contracts (Rights of Third Parties)

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

14 Dispute Resolution

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

Resolution by Senior Officers

- (i) 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 Service Director of Legal Services of the Council (or their respective nominated representatives)

Mediation

- (ii) If the parties are unable to resolve the dispute under Clause 14.1 (i) 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)

Arbitration

- (iii) Save where the parties have agreed in writing that a decision under Clause 14.1 (i) or an agreement reached at or during mediation under Clause 14.1 (ii) 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 (twenty eight) days after service or 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 then such arbitrator (hereinafter referred to as “the Tribunal”) shall be appointed on the application of either party to the President for the time being of the Law Society

- (c) In the event of a reference to arbitration the parties agree to:
 - a. pursue any such reference expeditiously; and
 - b. do all things or take all steps reasonably necessary in order to enable the Tribunal to deliver any award (interim final or otherwise) as soon as reasonably practicable

- (iv) The award shall be in writing signed by the arbitrator

- (v) The award shall be final and binding both on the parties and on any persons claiming through or under them

SCHEDULE 1

THE BID LEVY RULES

1. BID term

The term of the BID will be for a period of five years from the 1st of November 2023, ending 31st October 2028.

2. The BID Rateable Value

Throughout the term of the BID, the levy will be charged on the rateable value shown for the hereditament on the 1st of September 2023 iteration of the 2023 valuation list.

If no rateable value is shown for a hereditament on the 1st of September 2023 iteration of the 2023 valuation list the rateable value as listed on the subsequent list will be used and billed at the next billing period.

3. The BID Levy

BID levy will be applied to all business ratepayers with a rateable value of £13,000 or more. The BID levy payable for each hereditament is 3% of the rateable value.

The BID levy is based on a 'chargeable day' basis and is paid in full in advance by the BID levy payer on 1st November of each year.

4. BID Exemptions

Any hereditament with a rateable value of £12,999 or less will be exempt from paying the levy.

Hereditaments listed on the non-domestic rates valuation list as 'garage and premises', 'warehouse and premises', 'workshop and premises', 'day nursery and premises' and 'telecommunications masts' are exempt from paying the levy.

5. BID Levy Discounts

Hereditaments in receipt of mandatory charitable relief on business rates will receive 100% discount on their levy payable except for:

- Hereditaments in receipt of mandatory charitable relief on business rates and rated as 'educational establishments for young people under the age of 18' will receive 50% discount on their levy payable.

Hereditaments within The Galleries will be discounted 50% of the levy to account for the services that are provided to them as part of the management charge.

Hereditaments within The Arcade will be discounted 50% of the levy to account for the services that are provided to them as part of the management charge.

6. BID Levy Adjustments

There will be no adjustments to the BID levy during the BID term for changes in rateable value except in the following circumstances:

- Properties removed from the valuation list, or having their rateable value reduced to zero, will be subject to the BID levy up to the next billing period.
- New properties, or those where the rateable value is increased from zero, will be liable from the next billing period.
- Where changes to properties cause the rateable values to be split or merged, then the BID levy will be re-calculated on the revised value(s) with effect from the next billing period.

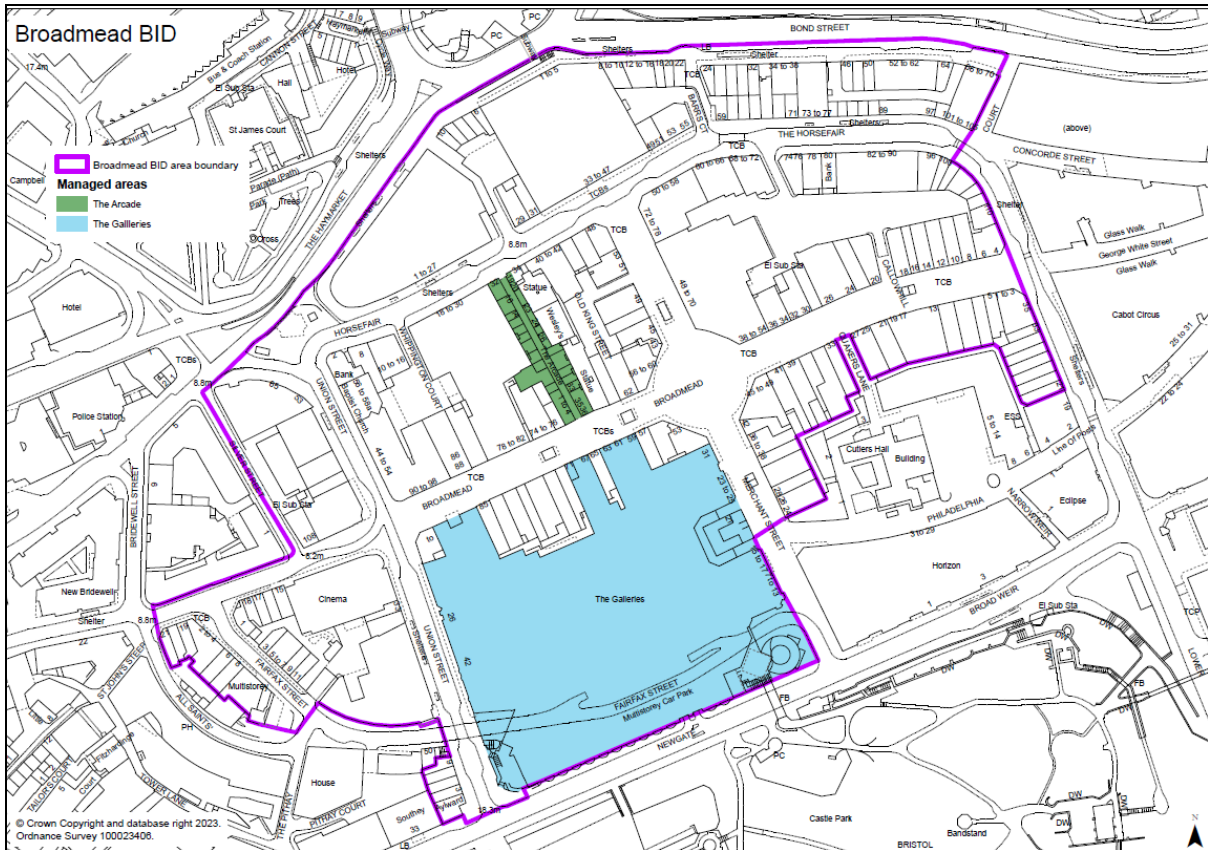
7. Liability for the BID levy

The person liable to pay the BID levy is the Liable Party for the non-domestic rates for the hereditament.

There will be no changes to the BID liability in the billing period i.e. the person liable for business rates at the start of each billing period will be the BID levy payer for the entire BID billing period. When a hereditament is untenanted or empty, the eligible ratepayer will be liable for the BID levy with no void period.

SCHEDULE 2

Plan of Broadmead BID Area



Broadmead BID: List of Streets

All Saints Street (Part)	Old King Street Court
Barrs Court	Penn Street
Bond Street (Part)	St James Barton (Part)
Broadmead	The Arcade
Callowhill Court	The Galleries
Fairfax Street (Part)	The Haymarket (Part)
Hanover Court	The Horsefair
Merchant Street	Union Street
Nelson Street (Part)	Whippington Court
Odeon Buildings	

IN WITNESS of which this Agreement has been executed by the parties as a Deed and is intended to be and is delivered on the date appearing at the beginning of this Agreement

EXECUTED AS A DEED (but not delivered)
until the date hereof) by the affixing of)
the Common Seal of **THE CITY COUNCIL**)
OF BRISTOL in the presence of:)

.....
Authorised Officer

EXECUTED AS A DEED (but not delivered)
until the date hereof) by **Destination Bristol T/A Visit West** by:)

.....
Director, Visit West

.....
Head of Broadmead BID