

Appendix 3

Dated

BID LEVY OPERATING AGREEMENT

BLAENAU GWENT COUNTY BOROUGH COUNCIL

- and -

**RASSAU AND TAFARNAUBACH INDUSTRIAL ESTATES BUSINESS
IMPROVEMENT DISTRICT LTD**

Agreement

THIS DEED is made the **day of** **2019**
BETWEEN

- (1) BLAENAU GWENT COUNTY BOROUGH COUNCIL of Municipal Offices Civic Centre Ebbw Vale NP23 6XB (**‘the Local Authority’**).
- (2) RASSAU AND TAFARNAUBACH INDUSTRIAL ESTATES BID Company Limited incorporated and registered in England and Wales under company number XXXXXXXX whose registered office is at (TO BE COMPLETED) (**‘the BID Company’**).

Recitals

- A Part 4 of the Local Government Act 2003 and the Business Improvement Districts (Wales) Regulations 2005 (‘**BID Statutory Provisions**’) provide a legislative framework for the establishment and operation of a business improvement district (‘**BID**’).
- B Between (1st date) and (2nd date) 2019 a ballot was held on the BID proposals the result being that BID proposals received a secure approval on the (date) 2019 the ballot result date.
- C The Local Authority is the Billing Authority for the purposes of the Local Government Act 2003 and is responsible for collecting the BID Levy and administering the BID Revenue Account which shall be used towards the operation of the BID within the area of the Local Authority and the funding of the BID Arrangements.
- D The BID Company is responsible for the operation of the BID and for using the BID Levy for the purposes of achieving the BID Arrangements.
- E 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 Local Authority and the BID Company for the duration of the BID.

F The purpose of this Agreement is to:

- establish the procedure for setting the BID Levy;
- confirm the basis upon which the Local Authority will be responsible for collecting the BID Levy;
- set out the enforcement mechanisms for collection of the BID Levy;
- set out the procedures for accounting and transference of the BID Levy;
- provide for the monitoring and review of the collection of the BID Levy;
- confirm the manner in which the expenses incurred in collecting the BID Levy shall be paid.

Agreed terms

1. Definitions and Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Alteration Proposals: has the meaning given in section 1 of the Regulations

Annual Report: The report to be provided by the Local Authority to the BID Company within 3 months of the end of the financial year.

Ballot Result Date: (date) 2019

Billing Authority: has the meaning given in section 59 of the Act

BID: means Business Improvement District

BID Arrangements: has the meaning given in section 41 of the Act

BID Company Report: The report to be provided by the BID Company to the Local Authority within one month of the date of receipt of the Annual Report

BID Finance Group: The sub-group with responsibility for the BID's finance

BID Levy: has the meaning given in section 41 of the Act

BID Levy Payer: has the meaning given in section 46(2) of the Act

BID Revenue Account: has the meaning given in section 47 of the Act

BID Term: 5 years from the (start date included here)

Commencement Date: (date)

Chargeable Period: has the meaning given in section 45 of the Act

Demand Notice: has the meaning given in section 1 of the Regulations

Financial Year: 1 April to the 31 March on any given year

Liability Order: has the meaning given in section 1 of the Regulations

NNDR: National Non-Domestic Rates

Proposals: means BID Proposals as described in section 49 of the Act

Regulations: Business Improvement District (Wales) Regulations 2005 (2005 No 1312(W.94))

Renewal Proposals: has the meaning given in section 1 of the Regulations

Single Instalment Due Date: this is self-explanatory in the Agreement

Sum Unpaid: the sum as set out on the appeal notice

The Act: Local Government Act 2003

2. Statutory Authorities

This Agreement is made pursuant to Part 4 of the Local Government Act 2003 and Section 111 of the Local Government Act 1972 and all other enabling powers.

3. Term

This agreement shall take effect on the Commencement Date and shall continue for the BID Term.

4. Commencement

This Agreement shall take effect on the Commencement Date and shall determine and cease to be of any further effect in the event that:

- the BID Term expires; or,
- The Local Authority exercises its discretion to terminate the BID Arrangements in exercise of powers under regulation 18 of the Regulations.

5. Setting the BID Levy

As soon as possible upon the Ballot Result Date the Local Authority shall:

- calculate the BID Levy for each BID Levy Payer in accordance with the BID Arrangements; and
- confirm in writing to the BID Company the BID Levy payable by each BID Levy Payer

6. The BID Revenue Account

6.1 As soon as is reasonably practicable following the Ballot Result Date, the Local Authority shall keep a BID Revenue Account in accordance with regulations and accounting codes of practice in force at the time and provide written confirmation to the BID Company of the same.

6.2 As soon as reasonably practicable following the Ballot Result Date the BID Company shall provide the Local Authority with details of its bank account into which the BID Levy shall be transferred from the BID Revenue Account and any other details which the Local Authority may reasonably require.

6.3 The Local Authority will pay to the BID Company on account for services provided in administering the BID Arrangements on behalf of the Local Authority, each month a sum equal to the monies collected in the month and properly credited to the BID Revenue Account net of cost of collection and refunds. The payment to be made within 10 working days of the month end.

6.4 Annually the Local Authority will pay to the BID Company or receive from it the balance of monies having taken account of the monthly on account payments and balance on the BID Revenue Account at the year end. The final payment to be made by 30 June following the year end.

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

6.7 The BID Company and the Local Authority as appropriate will issue VAT receipts, where applicable under VAT legislation and regulations in force at the time, for monies received within 7 working days of receipt of the monies.

7. Collecting the BID Levy

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

7.2 The Local Authority shall serve a Demand Notice on each BID Levy Payer and thereafter shall continue to calculate the BID Levy and serve a Demand Notice throughout the BID Term.

7.3 The Local Authority shall maintain a list of those BID Levy Payers who have paid the BID Levy and those BID Levy Payers who have not paid the BID Levy and shall make the list available to the BID Company upon its reasonable request.

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

7.5 The Local Authority shall use all reasonable endeavours to collect the BID Levy throughout the BID Term.

7.6 The parties may negotiate at any time to vary the relevant BID Levy.

8. Procedures available to the Local Authority for enforcing payment of the BID Levy

Procedures for the enforcement and recovery of the BID Levy will be in line with the enforcement procedure for NNDR and the Local Authority shall comply with these enforcement procedures (where appropriate) in enforcing payment of the BID Levy against BID Levy Payers.

9. Enforcement Mechanisms in The Event That the Local Authority Fails to Enforce Collection of the BID Levy

In the event that the Local Authority fails to enforce payment of the BID Levy pursuant to Clause 8 the BID Company shall be entitled to serve an enforcement notice on the Local Authority requesting that:

- the Local Authority serve a Reminder Notice or
- In the event that the Local Authority has already served a reminder notice that the Local Authority applies for a Liability Order and the Local Authority shall thereafter provide written confirmation of the action it shall take to comply with the enforcement notice.
- If the Local Authority fails to provide written confirmation of the action it is taking in relation to the enforcement notice within 21 days of the issue of the enforcement notice the BID Company shall be entitled to serve an appeal notice on the Director of Finance of the Local Authority and such notice shall:
 - detail the Sum Unpaid;
 - confirm that the Local Authority has failed to use the enforcement mechanisms available to it under this Agreement to recover the Sum Unpaid; and
 - include written notice requesting that a meeting of the BID Finance Group take place in order to achieve a solution and/or agree a strategy to recover the Sum Unpaid such meeting to take place no later than 28 (twenty eight) days from the date of the appeal notice.

10. Accounting Procedures and Monitoring

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

- (i) the amount of the BID Levy for each BID Levy Payer;
- (ii) the amount of the BID Levy collected for each BID Levy Payer;
- (iii) details of BID Levy Payers who have not paid the BID Levy;
- (iv) details of reminder notices issued;
- (v) details of Liability Orders made or applied for;
- (vi) details of agreement made, if any, between the Local Authority and BID Levy Payers where it has been agreed that payment of a Demand Notice can be made over a period of 3 (three) months or more from the date of such Demand Notice.

10.2 Within one month from the Ballot Result Date the parties shall agree the dates when there will be meetings of the BID Finance Group and there will be at least two such meetings in each Financial Year (throughout the duration of the BID Term) and on all other occasions further meetings of the BID Finance Group shall be arranged by the service of written notice by either party.

10.3 At each meeting the BID Finance Group shall only:

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

- if required by either party review and assess information provided by the parties.

10.4 Within 3 (three) months after the end of each Financial Year (for the duration of the BID Term) the Local Authority shall provide an Annual Report to the BID Company
Within 1 (one) month from the date of receipt of the Annual Report in each Financial Year (for the duration of the Bid Term) the BID Company shall provide a BID Company Report to the Local Authority

10.5 The BID Revenue Account will be subject to the normal internal & external audit arrangements of the Local Authority. The Local Authority will make available to the BID Company and its appointed auditors such information as requested by the BID Company and its appointed auditors and that it is able to do so under legislation and regulation.

11. Costs

11.1 The BID Company shall pay the costs as set out in the Schedule to this Agreement ("Costs Schedule")

12. Confidentiality

Both the Local Authority and the BID Company shall keep confidential and not divulge to any person without the prior written consent of the other party all information (written or oral) concerning the business affairs of the other nor any information which has been exchanged about the BID Levy Payers or Contributors or about other third parties which it shall have obtained or received as a result of operating the BID and this obligation shall survive the termination or lapse of the BID Arrangements.

13. Freedom of Information

13.1 The BID Company acknowledges that the Local Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority (at the BID Company's expense) to enable the Local Authority to comply with these information disclosure requirements.

13.2 The BID Company shall and shall procure that its Sub-Contractors shall:

13.2.1 transfer the Request for Information to the Local Authority as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;

13.2.2 provide the Local Authority with a copy of all Information in its possession or power in the form that the Local Authority requires within five Working Days (or such other period as the Local Authority may specify) of the Local Authority requesting that Information; and

13.2.3 provide all necessary assistance as reasonably requested by the Local Authority to enable the Local Authority 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 Environmental Information Regulations.

- 13.3 The Local Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- 13.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or
 - 13.3.2 is to be disclosed in response to a Request for Information.
- 13.4 In no event shall the BID Company respond directly to a Request for Information unless expressly authorised to do so by the Local Authority.
- 13.5 The BID Company acknowledges that the Local Authority may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice ("Code") on the discharge of public authorities' functions under Part 1 of the FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
- 13.5.1 without consulting with the BID Company; or
 - 13.5.2 following consultation with the BID Company and having taken its views into account,

provided always that where clause 13.5.2 applies the Local Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the BID Company advanced notice, or failing that, to draw the disclosure to the BID Company's attention after any such disclosure.
- 13.6 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 Local Authority to inspect such records as requested from time to time.
- 13.7 The BID Company acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Local Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 13.5.

14. Data protection

14.1 The BID Company shall ensure that it has in place appropriate technical and contractual 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 Data Protection Act 1998; and

- 14.1.1 promptly notify the Authority of any breach of the security measures required to be put in place pursuant to this clause 14.1; and

14.1.2 ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the Data Protection Legislation.

14.2 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

15. Indemnities

Subject to clause 16, the BID Company shall indemnify and keep indemnified the Local Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever arising from its own actions save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Local Authority.

16. Limitation of liability

Neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.

17. Notices

17.1 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 Wales as may from time to time have been notified by that party upon 7 days written notice

17.2 A notice may be served by;

- delivery to the Director of Finance at the address of the Local Authority specified above; or
- delivery to the Company Secretary at the address of the BID Company specified above;
- registered or recorded delivery post to such addresses;
- electronic Communication (provided that it is in legible form and is capable of being used for subsequent reference) to such addresses.

17.3 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.

18. Contracts (Rights Of Third Parties)

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

19. Disputes

19.1 The following provisions shall apply in the event of a dispute or difference of any kind whatsoever arising between the parties hereto out of or in connection with this Deed:

19.2 Either party may call an extraordinary meeting of the parties by service of not less than five (5) days' written notice and each party agrees to procure that its Authorised Representative requested to attend by the Authority (if any) shall attend all extraordinary meetings called in accordance with this clause.

19.3 The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this agreement. If any dispute referred to a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to senior officers of the two parties who shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of service of such notice. If the senior officers fail to resolve the dispute in the allotted time, then the parties shall, within that period, on the written request of either party enter into an alternative Dispute Resolution Procedure

- the parties shall jointly appoint the Mediator not later than 28 (twenty eight) days after service of a request in writing by either party to do so and each party shall bear its own costs;
- If the parties are unable to agree within 28 (twenty eight) days the appointment of such Mediator then such Mediator shall be appointed on the application of either party to the President for the time being of the Law Society;

19.4 In the event of a reference to mediation the parties agree:

- to prosecute any such reference expeditiously; and
- to do all things or take all steps reasonably necessary in order to enable the Mediator to deliver any award (interim, final or otherwise) as soon as reasonably practicable;
- that the award shall be in writing signed by the Mediator and shall be finalised within 21 (twenty one) days from the date of such award;
- save in the case of manifest error or fraud the award shall be final and binding both on the parties and on any persons claiming through or under them.

20. Variation

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

21. Severability

If any of the provisions of this agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

22. Governing law and jurisdiction

22.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

22.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.

In witness whereof the Local Authority and the BID Company have duly executed this Deed the day and year first before written

Signed as a DEED by affixing
The COMMON SEAL of
**BLAENAU GWENT COUNTY
BOROUGH COUNCIL**

Signed as a DEED on behalf of (BID company)
By:-

A Director

In the presence of:-

Witness Signature

Name

Address

Occupation

COSTS SCHEDULE

Costs	Date payable
Levy Collection fees:-	
Annual Support and Maintenance for BID Software:- £ (plus annual inflation factor)	
Collection Software One Off Cost:- £	