

Dated 7.2.2020

2020

THE EAST RIDING OF YORKSHIRE COUNCIL (1)

- and -

YORKSHIRE COAST BID LTD (2)

**BUSINESS IMPROVEMENT DISTRICT
LEVY OPERATING AGREEMENT**

THIS DEED is made the 7th day of February 2020
BETWEEN

(1) The East Riding of Yorkshire Council of County Hall Cross Street Beverley HU17 9GX ("the Council").

(2) Yorkshire Coast BID Ltd (Co. No: 11820859) of 317, Woodend Creative, The Crescent, Scarborough YO11 2PW ("the BID Company")

Recitals

- 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 which shall be used towards the operation of the BID within the area of the Local Authority and the funding of the BID Arrangements.
- B The BID Company is responsible for the operation of the BID and for using the BID Levy for the purposes of achieving the BID Arrangements.
- C Both parties wish to confirm the arrangements by which the BID Levy shall be collected together with general arrangements as to the relationship to be established between the Council and the *Yorkshire Coast BID Ltd* 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 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 Council expenses incurred in collecting the BID Levy shall be paid.

DEFINITIONS

The Annual Report means a report for each Financial Year to be prepared by the Council – Clause 8

The Ballot Result Date means the date upon which a successful ballot result has been declared in favour of putting in place the BID Arrangements

The BID means the Business Improvement District which operates throughout the Yorkshire Coast, and which is managed and operated by Yorkshire Coast BID Limited

The BID Arrangements means those arrangements to be put in place pursuant to the Regulations for the operation of the BID

The BID Board means the board of the Yorkshire Coast BID Limited or the board of representatives as provided by the BID Arrangements and described as “the BID Board”

The 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 rate payers responsible for paying the BID Levy

The BID Revenue Account means the account to be set up in accordance with Regulation 14 and operated in accordance with Schedule 3 of the Regulations

The BID Term means the period of 5 years from 1st August 2019 to 31st July 2024

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

The Financial Year means the financial year for the Yorkshire Coast BID Company which runs from 1st August to 31st July

The Monitoring Group means the group to be set up to monitor the collection and enforcement of the BID Levy (as more particularly described in Clause 8)

The 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)

The Council's BID Company Director, is the appointed representative from East Riding of Yorkshire Council, who has formally joined Yorkshire Coast BID Ltd and listed on Companies House.

1 Statutory Authorities

1.1 This Agreement is made pursuant to Part IV Local Government Act 2003 and section 111 Local Government Act 1972 and all other enabling powers.

2 Commencement

2.1 This Agreement shall not take effect until the Ballot Result Date and in any event shall determine and cease to be of any further effect in the event that:

- the *Yorkshire Coast BID Ltd* fails to secure approval of the Proposals, Renewal proposals or Alteration Proposals in a ballot, renewal ballot, alteration ballot or rebalot;
- the Secretary of State declares void a BID ballot renewal ballot alteration ballot or re-ballot;
- The Council exercises its veto and there is no successful appeal against the veto;
- the BID Term expires save where the *Yorkshire Coast BID Ltd* secures approval of Renewal Proposals in a renewal ballot or Alteration Proposals in an alteration ballot or Proposals in a rebalot in which event this Agreement shall continue until the expiry of the BID Term set out in the Renewal Proposals, Alteration Proposals or the Proposals set out in the rebalot provided, in relation to Renewal Proposals and Alteration Proposals the Council consents to such continuation;
- The Council exercises its discretion to terminate the BID Arrangements in exercise of powers under regulation 18 of the Regulations.

3 Setting the BID Levy

3.1 As soon as possible upon the Ballot Result Date the Council shall:

- calculate the BID Levy for each BID Levy Payer in accordance with the BID Levy Rules; and
- confirm in writing to the *Yorkshire Coast BID Ltd* the BID Levy payable by each BID Levy payer

4 The BID Revenue Account

4.1 As soon as is reasonably practicable following the Ballot Result Date *the Council* 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 *Yorkshire Coast BID Ltd* of the same.

4.2 As soon as reasonably practicable following the Ballot Result Date the *Yorkshire Coast BID Ltd* shall provide the Council 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 Council may reasonably require.

4.3 The Council will pay to the BID Company on account for services provided in

administering the BID arrangements on behalf of the the Council, 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.

- 4.4 Annually the Council 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 31 August following the year end.
- 4.5 All sums will be subject to Value Added Tax (VAT) where applicable under VAT legislation and regulations in force at the time.
- 4.6 The Yorkshire Coast BID Ltd and The Council 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.

Debits from the BID Revenue Account

- 4.7 The Council shall be entitled to debit directly from the BID Revenue Account:
 - the collection charges;
 - the enforcement expenses;
 - any deductions which in the Council's opinion are Bad and Doubtful debts

5 Collecting the BID Levy

- 5.1 As soon as reasonably practicable following the Ballot Result Date the Council shall confirm in writing to the Yorkshire Coast BID Ltd the anticipated date of the despatch of Demand Notices for the initial Chargeable Period and the anticipated Single Installment Due Date.
- 5.2 The Council 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.
- 5.3 The Council 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 Yorkshire Coast BID Ltd upon its reasonable request.
- 5.4 The Council shall serve a Demand Notice or amended Demand Notice on a BID Levy Payer as soon as reasonably practicable after the Council receives notice of a change that affects liability for the BID Levy.
- 5.5 The Council shall use all reasonable endeavors to collect the BID Levy throughout the BID Term.
- 5.6 The Council shall collect the BID Levy in a manner which is consistent with its

usual procedures for the collection of non-domestic rates (save that the BID Levy collection shall be on an annual rather than monthly basis.

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

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

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

7.1 In the event that the Council fails to enforce payment of the BID Levy pursuant to Clause 8 the Yorkshire Coast BID Ltd shall be entitled to serve an Enforcement Notice on the Council requesting that:

- The Council serve a Reminder Notice or
- In the event that the Council has already served a Reminder Notice that the Council applies for a Liability Order and the Council shall thereafter provide written confirmation of the action it shall take to comply with the Enforcement Notice.

7.2 If *The Council* 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 Yorkshire Coast BID Ltd shall be entitled to serve an Appeal Notice on the Director of Corporate Resources of the Council and such notice shall:

- detail the Sum Unpaid;
- confirm that the Council 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 Monitoring 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.

8 Accounting Procedures and Monitoring

8.1 Within 21 working days of the end of the month and every month thereafter (for the duration of BID Term) the Council 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 Council 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.

- 8.2 The monitoring group to be set up to monitor the collection and enforcement of the BID Levy to consist of both the Council Business Operations Manager (Revenues) and senior representative from the BID Company.
- 8.3 Within one month from the Ballot Result Date the parties shall agree the dates when there will be meetings of the Monitoring 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 Monitoring Group shall be arranged by the service of written notice by either party.
- 8.4 At each meeting the Monitoring 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.
- 8.5 Within 3 (three) months after the end of each Financial Year (for the duration of the Bid Term) the Council shall provide an Annual Report to the Yorkshire Coast BID Ltd
- 8.6 Within 1 (one) month from the date of receipt of the Annual Report in each financial year (for the duration of the Bid Term) the Yorkshire Coast BID Ltd shall provide a BID Company Report to the Council
- 8.7 The BID Revenue Account will be subject to the normal internal & external audit arrangements of the Council. The Council will make available to the Yorkshire Coast BID Ltd and its appointed auditors such information as requested by the Yorkshire Coast BID Ltd and its appointed auditors and that it is able to do so under legislation and regulation

9 Confidentiality

- 9.1 Both the Council and the Yorkshire Coast BID Ltd 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.

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 upon 7 days written notice.

10.2 A notice may be served by;

- delivery to the Director of Corporate Resources at the address of the the Council specified above; or
- delivery to the Company Secretary at the address of the Yorkshire Coast BID Ltd 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.

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 Contracts (Rights Of Third Parties)

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

12 Arbitration

12.1 In the event of any dispute arising between the Parties the Authorised Representatives, the Council's appointed BID Company Director and the BID Company's Chief Executive Officer shall attempt in good faith to resolve that dispute;

12.2 If the Authorised Representatives are for any reason unable to resolve the dispute within 30 days, the dispute will be referred to the Council's Chief Executive and the BID Company's Independent Chair who shall attempt in good faith to resolve it;

12.3 If the dispute still remains unresolved after a further period of 30 days then the dispute shall be referred to arbitration

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

- any dispute or difference of any kind whatsoever arising between the parties hereto out of or in connection with this Deed shall be referred to arbitration before a single arbitrator;
- the parties shall jointly appoint the arbitrator 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 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;

12.5 In the event of a reference to arbitration 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 Tribunal to deliver any award (interim, final or otherwise) as soon as reasonably practicable;
- that the award shall be in writing signed by the Tribunal and shall be finalised within 21 (twenty one) days from the date of such award;
 - the award shall be final and binding both on the parties and on any persons claiming through or under them.

Signed and executed as a Deed by and on behalf of

THE COMMON SEAL OF THE
EAST RIDING OF YORKSHIRE COUNCIL



Authorised Signatory

.....

Property and Commercial
Law Manager

Signed by and on behalf of the
YORKSHIRE COAST BID LIMITED

In the presence

Director

.....

Director/Company Secretary

.....

Appendix A Yorkshire Coast BID Operating Agreement East Riding of Yorkshire Council

Appendix A: Yorkshire Coast BID Levy Rules

The BID legislation approved by the Government in 2004, sets out a legal framework within which BIDs have to operate, including the way in which the levy is charged and collected, and how the ballot is conducted.

The Levy

1. The levy will be a fixed rate of 1.5% of the rateable value as at 1 August each year using the most current Non-Domestic Ratings list. It will be updated for any changes in ratepayer appeals, additions or removals
2. Only properties or hereditaments with a rateable value of £12,000 or more will be liable for payment of a levy
3. The BID levy will be paid by any new ratepayer occupying any existing hereditaments (a business rate property) within the BID area
4. New hereditaments will be charged from the point of occupation based on the rateable value at the time it enters the rating list, even though they did not vote on the initial proposal.
5. If a business ratepayer occupies premises for less than one year, the amount of BID levy payable will be calculated on a daily basis
6. Empty properties, those undergoing refurbishment or being demolished will be liable for the BID levy via the property owner/registered business ratepayer with no void period
7. The levy is fixed and will not be subject to variation by the annual rate of inflation
8. VAT will not be charged on the BID levy
9. The levy will not be charged on the BID levy
10. The levy will be charged as one amount annually at the start of August, with the chargeable period being August to July each year. No refunds will be available on the levy charged
11. The owners of untenanted properties or hereditaments will be liable for payment of the levy
12. Eligible ratepayers within a managed estate such as a shopping centre, arcade or paying a service charge are eligible for a discount of up to a maximum of .25% annually. This will be dependent on the management providing a service charge schedule annually for the BID to assess the actual level of discount. If no satisfactory service level schedule is provided no satisfactory service level schedule is provided then the full levy rate will apply in those Managed Estates.
13. Museums and Galleries will be eligible to apply for a maximum 75% discount from their levy through submission of accounts and company profile to the BID Board to assess against set criteria on an annual basis, and voluntary members supporting the ongoing running of these organisations

14. The BID levy will not be affected by the small business rate relief scheme, service charges paid to landlords, exemptions, relief or discounts prescribed in the Non-Domestic Rating(Collection and Enforcement)(Local Lists) Regulations 1989 made under the Local Government Finance Act 1988
15. Under the BID regulations 2004, Scarborough Borough Council and East Riding of Yorkshire Council are the only organisations that can collect the levy on behalf of the BID Company
16. The levy income will be kept in a separate ring-fenced account and transferred to the BID on a monthly basis. Collection and enforcement arrangements will be similar to those for the collection and enforcement of non-domestic business rates with the BID Company responsible for any debt write off
17. The levy rate or boundary area cannot be increased without a full alteration ballot. However, if the BID Company wishes to decrease the levy rate during the period, it will do so through a consultation which will, as a minimum, require it to write to all existing BID levy payers. If more than 25% object in writing then this course of action will not proceed.
18. None of the costs associated with the development of the BID, or the ballot will be recovered through the levy
19. The term of this BID will be for a period of five years

Appendix B – Yorkshire Coast BID Operating Agreement East Riding of Yorkshire Council

Yorkshire Coast BID Schedule of Billing & Enforcement

Annual Billing Schedule

Bills issued	Day 1	Bills to go out w/c 22 July 2019
Reminder 1	1 month from day 1	15 September 2019
Reminder 2	2 months from day 1	15 October 2019
Determine non payers *	3 months from day 1	List to BID company to action
Final Notice	4 months from day 1	15 November 2019
Summons issued	5 months from day 1	15 December 2019
Liability & enforcement	6 months from day 1	Possible court date January 2020 (to be confirmed)

Appendix C Yorkshire Coast BID Operating Agreement East Riding of Yorkshire Council

Appendix C – Fee Breakdown

Cost Per Collection: East Riding of Yorkshire Council charge £77 per summons issued (*As agreed with Mo Aswat of the Mosaic Partnership – billing authority to retain any income from summons payments)

The BID Company will cover the below fees in relation to the collection of the levy as outlined below:

Northgate Public Services: Software Licence: £9,375 + Value Added Tax

Northgate Public Services: Support and Maintenance: £2,344 + Value Added Tax (*to be paid for each of the 5 billing years)

Northgate Public Services: Consultancy Services: £6,175 + Value Added Tax

Capita costs (payment engine) to import payments received from referrals to enforcement agents: £315

Costs of postage and fulfilment – to be confirmed

Collection Fee: 3% of the total annual debit for properties billed within the Yorkshire Coast BID area

372 properties with a combined bid levy of £310,141 = £9,304.23