

DATED

1
1st April

2019

TUNBRIDGE WELLS BOROUGH COUNCIL

AND

Royal Tunbridge Wells Together

BID BASELINE AGREEMENT

Mid Kent Legal Services
Tunbridge Wells Borough Council,
Town Hall,
Civic Way,
Royal Tunbridge Wells, Kent TN1 1RS
Ref:T012702

This Deed is dated the

1st day of April 2019

PARTIES

1) **TUNBRIDGE WELLS BOROUGH COUNCIL** of Town Hall, Royal Tunbridge Wells, Kent TN1 1RS] ("**the Council**")

(2) **ROYAL TUNBRIDGE WELLS TOGETHER CIC** incorporated and registered in England and Wales with company number 09976055 whose registered office is at 300 MANAGEMENT SUITE, ROYAL VICTORIA PLACE, ROYAL TUNBRIDGE WELLS TN1 2SS ("**BID Company**").

(3) **RECITALS**

- A. The Council is the local authority for the purposes of the Local Government Act 2003 and is responsible for providing services within the BID Area;
- B. The BID Company is responsible for the management and operation of the BID and for achieving the objectives and aspirations set out in the BID Proposal;
- C. The Parties entered into a BID Operating Agreement dated 01 April 2019 as contained in Schedule 3 of this Deed pursuant to which the Parties entered into BID arrangements relating to Tunbridge Wells.
- D. The purpose of this Deed is to:
 - i. set out the services provided by the Council in the BID Area as set out in Schedule 1 of this Deed ("Schedule 1 services");
 - ii. set out the services and/or complementary services provided by the BID Company pursuant to the BID Operating Agreement and as set out in Schedule 2 ("Schedule 2 services");
 - iii. Monitoring and review;

AGREED TERMS

1. TERMS DEFINED IN THE OPERATING AGREEMENT

In this Deed, unless the context otherwise requires expressions defined in the Operating Agreement and used in this Deed have the meaning set out in the Operating Agreement. The rules of interpretation set out in the Operating Agreement apply to this Deed.

Statutory Authorities

2.1 This Deed is made pursuant to Section 1 of the Localism Act 2011, Part IV of the Local Government Act 2003 and Section 111 of the Local Government Act 1972 and all other enabling powers as particularly set out in The Business Improvement Districts (England) Regulations 2004.

Commencement and Term

3.1 The terms of this Deed shall take effect upon the Commencement Date.

3.2 This Deed shall operate for the BID Term subject to it ceasing to be of any further effect in the event that:

3.2.1. The BID Term expires; or.

3.2.2. Either party exercises its discretion to terminate the BID Arrangements in exercise of powers under Clause 12 of the Operating Agreement prior to expiry of the Bid Term.

BID Company's obligations

4.1 The BID Company intends to provide additional [and/or Complementary] Schedule 2 services but reserves the right to alter these services as per the alteration policy set out in the business plan.

The Council's obligations

5.1 The Council delivers the Schedule 1 services within the BID Area and the BID Company intends to provide additional [and/or complementary] Schedule 2 services but reserves the right to alter these services as per the alteration policy set out in the business plan.

5.2 The Council will endeavour to continue to deliver the Schedule 1 services within the BID Area. Where any of the Schedule 1 services are planned to be reduced or

discontinued, the Council agrees not to reduce provision of its services disproportionately, compared to any changes made elsewhere within the Borough for the duration of the BID Term.

Monitoring and Review

- 6.1 The parties agree to meet twice a year to monitor and review the BID operation. At each meeting, the Monitoring Group shall:
- (i) Review the effectiveness of the collection and enforcement of the BID Levy; and
 - (ii) review and assess the information provided by the parties regarding the progress being made in achieving the aims set out in the BID Business Plan.
- 6.4 The BID Company shall provide the BID Company Report to the Council within 6 months of the end of each financial year.
- 6.5 The Council will provide 2 representatives to the Board of the BID Company (one elected Member acting as a Director, and one Officer acting as an Observer).

Termination

7.1 Termination of the BID Arrangements, for any reason, shall be in accordance with Regulation 18(5) and the Council will notify the BID Levy Payers in accordance with Regulation 18(6). The Council will advise the BID Levy Payers as to the repayment of any part of the BID Levy as set out in the Operating Agreement

Exercise of the Council's Powers

8.1 Nothing contained in this Deed or implied in it shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes, byelaws, statutory instruments, orders and regulations in the exercise of its functions as a local authority.

Governing law and Jurisdiction

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

9.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with

this Deed or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS whereof this Deed has been duly executed and delivered as a deed on the date set out above.

The Common Seal of

TUNBRIDGE WELLS BOROUGH COUNCIL)

was hereunto affixed)

in the presence of:)


Authorised Signatory



Executed as a deed by **ROYAL TUNBRIDGE WELLS TOGETHER CIC** acting by

NAME OF FIRST DIRECTOR, **NICKY BLANCHARD**

NAME OF SECOND DIRECTOR/SECRETARY **ALEX.....GREEN**

SIGNATURE OF FIRST DIRECTOR

Director
..... **NICKY**

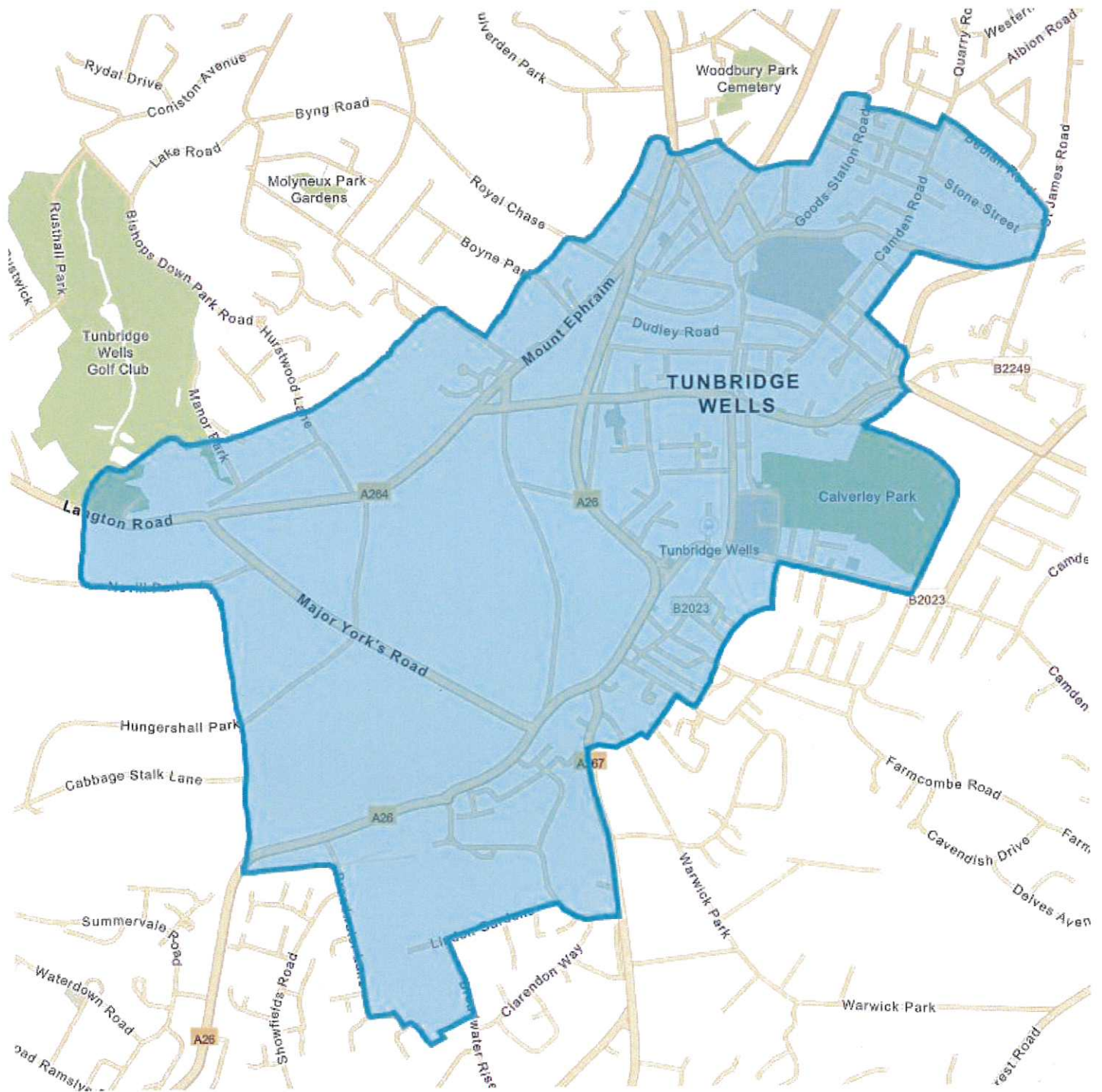
SIGNATURE OF SECOND DIRECTOR OR SECRETARY

Director OR Secretary 

SCHEDULE 1
BID Area Map

Attached

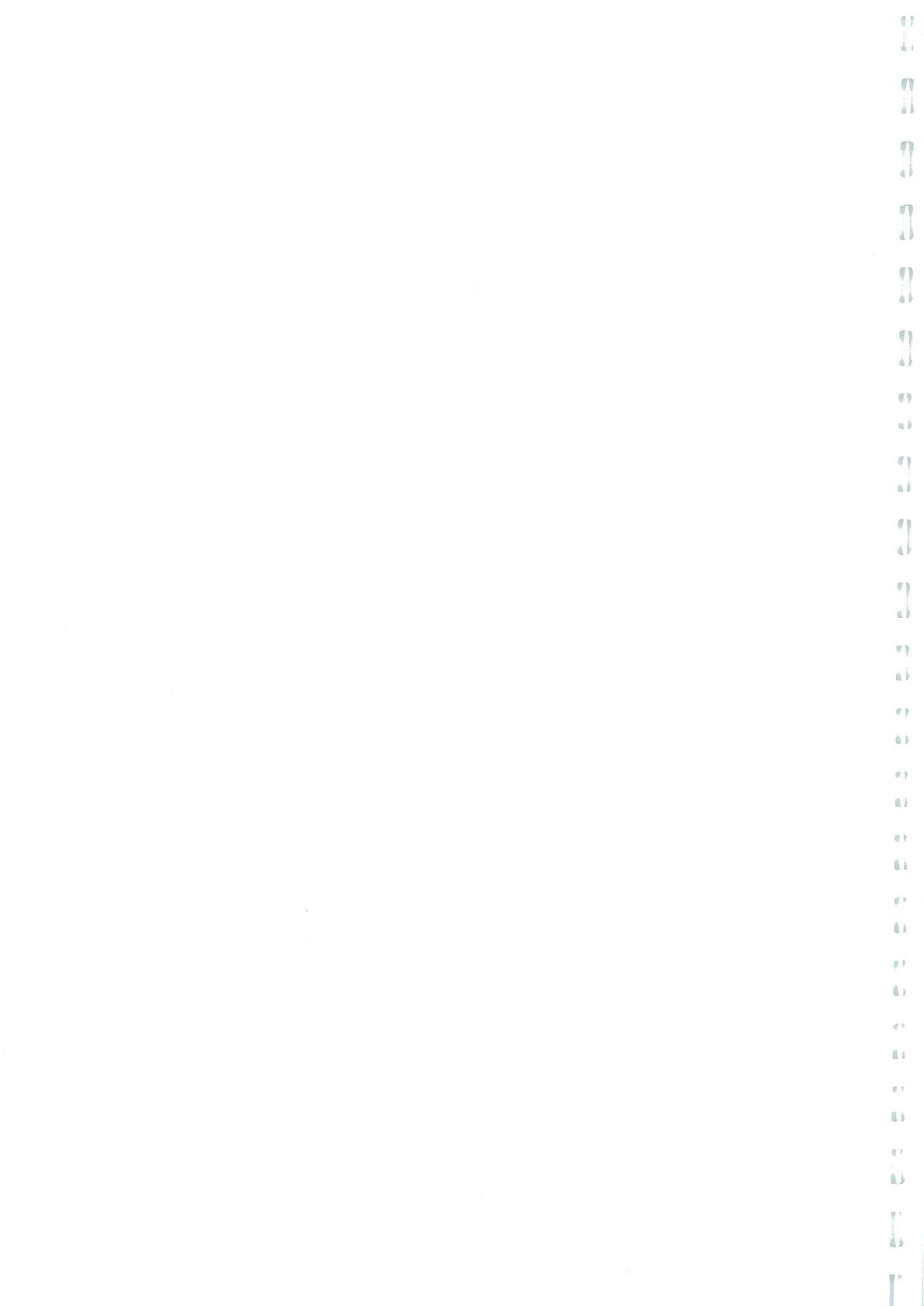
Royal Tunbridge Wells Business Improvement District Boundary



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SCHEDULE 2

**SERVICES PROVIDED BY TUNBRIDGE WELLS BOROUGH COUNCIL IN THE BID
AREA**



Tunbridge Wells Borough Council Statutory Services Baseline Statement

Baseline Activity	Licensing Administration, Compliance and Enforcement
Notes of Service	<p>Processing applications and issue of licences</p> <p>Alcohol premises and venues providing regulated entertainment</p> <p>Mediation of parties /liaison with local residents</p> <p>Liaison with responsible authorities and other internal & external agencies</p> <p>Conducting Hearings</p> <p>Sex Entertainment Venues</p> <p>Gambling</p> <p>Taxis and Private Hire vehicles and drivers</p> <p>Street trading consents</p> <p>Street collection permits</p> <p>House to house collection permits</p> <p>Small Lotteries</p> <p>Compliance and enforcement of licences and permits</p> <p>Licensing inspection visits</p>
Statutory or Discretionary	Statutory
Timing of activity	6 days per week. Enforcement activities as part of officers daily duties
Boundary Area	Tunbridge Wells borough

Baseline Activity	Car Parking - Enforcement
Notes of Service	<p>Enforcement in car parks to ensure compliance including;</p> <p>Car Parking Enforcement</p> <p>Liaising with various partners/Property services to provide improvements to car parks, facilities, the local environment and personal safety.</p> <p>Resident On-street parking</p> <p>Administration of parking permits, cards and mobile phone options</p> <p>Management of Off-street parking, Multi-storey and various surface car parks</p> <p>Provision of direct customer service at the Gateway, website and online application and payment portal.</p> <p>Preparation of On and Off street orders (including tariffs), publicity and consultations</p> <p>Cash collection (outsourced), financial reconciliation and banking</p>
Statutory or Discretionary	Statutory
Timing of activity	<p>Daily patrols (including hot spot) 7 days a weeks, (including Bank Holidays) core hours 7:30am – 7:00pm</p> <p>Car Park charges currently apply Monday to Sunday, operating hours are published on site (free outside these hours)</p> <p>Customer service desk during gateway operating times 9am to 5pm Monday to Friday.</p> <p>Regular site inspections linked to maintenance programme and improvements</p> <p>Preparation of official Parking Orders</p>
Boundary Area	Tunbridge Wells borough

Tunbridge Wells Borough Council Statutory Services Baseline Statement

Baseline Activity	Fly Tipping
Notes of Service	TWBC Client Officers are responsible for the initial investigation, whilst the Waste Contractor Hit Squad deal with its removal and grounds maintenance operators clear the town's parks. Hazardous waste or excessive waste is removed by a specialist company. On the highway waste is cleared by the County Council.
Statutory or Discretionary	Statutory
Timing of activity	5 days a week based on rounds schedule
Boundary Area	Tunbridge Wells borough

Baseline Activity	Dog Fouling
Notes of Service	TWBC Enforcement Officers are responsible for investigating dog fouling incidents, whilst the Waste Contractor street scene operatives deal with its removal. The grounds maintenance operatives' clear dog fouling in the towns parks. New Public Spaces Protection Orders (PSPO) to be introduced in September 2018
Statutory or Discretionary	Statutory
Timing of activity	7 days a week
Boundary Area	Tunbridge Wells borough

Baseline Activity	Pavement Litter
Notes of Service	Waste Contractor street scene operatives deal with its removal, based on a borough wide streets schedule. A contract is also in place with Kingdom for litter enforcement.
Statutory or Discretionary	Statutory
Timing of activity	7 days a week as per specification schedules
Boundary Area	Tunbridge Wells town centre and selected streets within the borough.

Baseline Activity	Street Scene Enforcement
Notes of Service	<ul style="list-style-type: none"> • Deals with enforcement and monitoring of Council services provided by external contractors to ensure that the statutory services of refuse and recycling collections, street scene services are delivered to the required standard. • Gateway customer service office is the first contact point for the public on many street scene activities who then raise jobs for the Enforcement / Client officers and commissioned services to ensure compliance include: <ul style="list-style-type: none"> - Street cleansing - Trade waste – duty of care on waste disposal (right days & time) - Domestic waste – duty of care on waste disposal (right days &

Tunbridge Wells Borough Council Statutory Services Baseline Statement

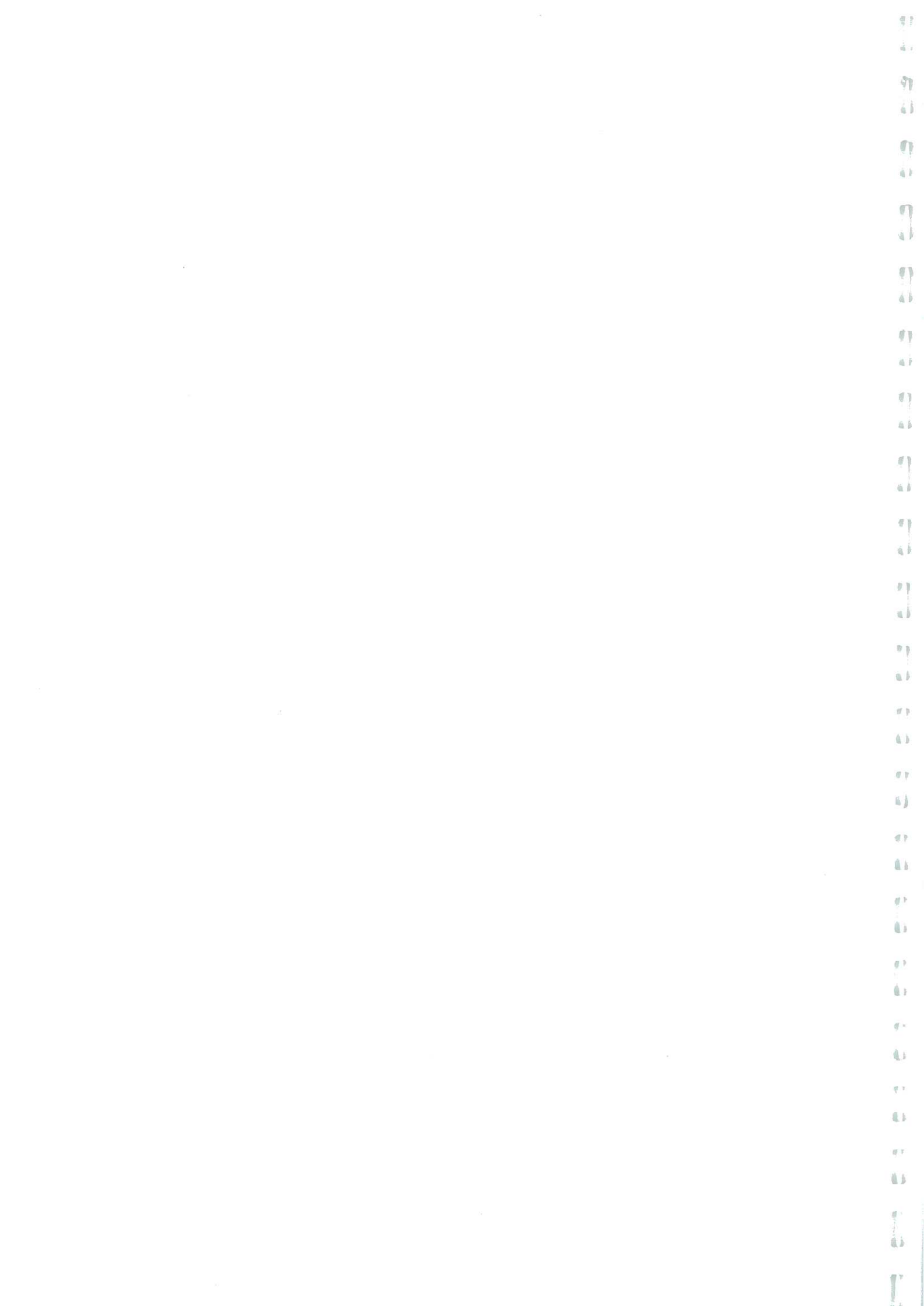
	<p>time)</p> <ul style="list-style-type: none"> - Dog Control orders – ensure dog are on leads and not causing nuisance - Un taxed Cars – report to DVLA - Abandoned Vehicles - Abandoned bikes - Fly posting – facilitate removal by Contractor (large/on high speed road). Otherwise remove as part of daily activities. - Fly tipping inspections - Graffiti inspections - Nuisance vehicles
Statutory or Discretionary	Policy statutory, enforcement discretionary
Timing of activity	7 Days
Boundary Area	Tunbridge Wells borough

Baseline Activity	Abandoned Cars
Notes of Service	Enforcement Officers monitor and enforce, whilst external contractors remove vehicles to ensure that the statutory services are delivered to the required standard.
Statutory or Discretionary	Statutory
Timing of activity	7 Days
Boundary Area	Tunbridge Wells borough

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SCHEDULE 3

**SERVICES/COMPLEMENTARY SERVICES PROVIDED BY THE BID COMPANY IN
THE BID AREA**



BID Summary

In summary the Royal Tunbridge Wells BID focuses on 4 key priorities that have been identified as important to local businesses:

- Providing more business support activities for the town
- Growing and developing the town's events programme
- Promoting and marketing the town to a wider audience
- Improving parking and access to the town

These priorities are not an exhaustive list. The BID will be flexible and responsive enough to explore other opportunities as they arise.

A copy of the BID Business Plan is available on the Royal Tunbridge Wells Together website at:

<http://www.tunbridgewellstogether.co.uk/>

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SCHEDULE 4
THE BID OPERATING AGREEMENT

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DATED

2019

TUNBRIDGE WELLS BOROUGH COUNCIL

AND

ROYAL TUNBRIDGE WELLS TOGETHER

**OPERATING AGREEMENT FOR A BUSINESS IMPROVEMENT DISTRICT IN
ROYAL TUNBRIDGE WELLS TOWN CENTRE**

Mid Kent Legal Services
Tunbridge Wells Borough Authority
Ref: T012702

Contents

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SCHEDULE 1: BID Area Map

SCHEDULE 2: BASELINE AGREEMENT

THIS Deed is made the day of 2019

BETWEEN

- (1) **TUNBRIDGE WELLS BOROUGH COUNCIL** of TOWN HALL, CIVIC WAY, ROYAL TUNBRIDGE WELLS TN1 1RS (**the "Council"**); and
- (2) **ROYAL TUNBRIDGE WELLS TOGETHER CIC (the "BID Company")** registered as company limited by guarantee in England, whose registered office is at 300 MANAGEMENT SUITE, ROYAL VICTORIA PLACE, ROYAL TUNBRIDGE WELLS TN1 2SS.

RECITALS

- A. The Council is the billing authority for the purposes of the Local Government Act 2003 and is responsible for the imposition, collection, recovery and application of the BID Levy and administering the BID Revenue Account which shall be used towards the operation of the BID within the area in 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 objectives and aspirations set out in 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 BID Company for the duration of the BID.
- D. The purpose of this agreement is to:
- Confirm the basis upon which the Council or its agents 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 the transfer of the BID Levy
 - Provide for the monitoring and review of the collection of the BID Levy
 - Confirm the manner in which the Council's expenses incurred in collecting the BID Levy shall be paid.

IT IS HEREBY AGREED:

1. Definitions

Administrative Expenses means costs incurred by the Council and/or its agents in the imposition, administration, collection and recovery of the BID Levy and all reasonable costs incurred by the Council arising out of compliance with its obligations under this agreement and the Regulations during each year of the duration of this agreement.

the Annual Report means a report to be prepared by the Council or its agent which details the following:

- (i) the total amount of the BID Levy collected during the relevant Financial Year;

- (ii) details of the success rates for the collection of the BID Levy;
- (iii) the Council's proposals (if any) to help improve its efficiency in the collection and enforcement of the BID Levy;
- (iv) details of those BID Levy Payers who have paid the BID Levy and those who have not paid the BID Levy; and
- (v) the Council's suggestions for bad or doubtful debts

Bad or Doubtful Debts for the purposes of this agreement means any unpaid BID Levy in respect of which the Council has sought recovery in accordance with clause 8.3 of this agreement and that BID Levy remains unpaid.

BID has the meaning given in the Regulations that is the Business Improvement District and is that area within which the BID operates as edged red on the plan attached to this Agreement in Schedule 1.

BID Area means the area within which the BID operates as edged red on the plan attached to this Agreement in Schedule 1

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

BID Business Plan means the ROYAL TUNBRIDGE WELLS TOGETHER BID Business Plan 2019 – 2024

BID Company's Report means a report for each Financial Year to be prepared by the BID Company which detail the following:

- (i) The total income 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 scheme 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

the BID Company's Termination Notice means a notice to be served by the BID Company on the Council pursuant to clause 12.7

BID Levy Payer(s) means the non-domestic rate payers who are liable for paying the BID Levy

BID Levy Rules means the rules set out in the BID Regulations.

BID Proposals has the same meaning as in the Regulations

BID Revenue Account means the account to be set up in accordance with Regulation 14 of the Regulations

BID Term means 1 April 2019 to 31 March 2024.

BID Financial Year means the period from 1st April 2019, to 31st March of each consecutive year up until March 2024.

Council's Termination Notice means the notice to be served by the Council on the BID Company pursuant to Clause 12.1

Chargeable Day means any one of the following days

- 1 April 2019
- 1 April 2020
- 1 April 2021
- 1 April 2022
- 1 April 2023

Issue date means the date the annual demand notice shall take effect, with the first issue date being within 14 days of the due date.

Commencement Date is the date of signing of this Agreement.

Contributors mean the BID Levy Payers or other Contributors making voluntary contributions or funds available to the BID Company.

Data Controller shall have the meaning given to the term "controller" as set out in Article 4 of the GDPR

Data Processor shall have the meaning given to the term "processor" as set out in Article 4 of the GDPR.

Data Protection Legislation the Data Protection Act 2018, and Electronic Communications (EC Directive) Regulations 2003 and any other data protection laws and regulations (including amended, supplemental or replacement laws and regulations) applicable in the United Kingdom and any codes of practice, guidelines and recommendations issued by the Information Commissioner or any replacement body, all of which are current at the time of any Processing of Personal Data.

Data Subject shall have the same meaning as set out in the DPA

DPA means the Data Protection Acts 1998 and 2018

Demand Notice shall have the same meaning given in paragraph 3 of Schedule 4 of the Regulations

District Auditors Costs means the sum charged by an auditor appointed by the Audit Commission or any successor in carrying out an audit of the BID Revenue Account

Enforcement Expenses means the costs which are incurred by the Council in obtaining Liability Orders and Summons and all associated administrative expenses which may be incurred in recovering unpaid BID levy, including Bailiff charges.

Electronic Communication means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or visa versa):

- (i) by means of a telecommunication system (within the meaning of the Telecommunications Act 1984); or
- (ii) by other means but while in electronic form.

Exceptions means the circumstances in which the Council shall not be required to seek to enforce payment of the BID Levy where a BID Levy Payer has failed to

make payment pursuant to a Demand Notice. The exceptions shall be as agreed by the parties from time to time.

Exempt or Discounted Properties means that class, or classes of, property as identified in the BID Levy Rules which shall be either exempt from any requirement to pay the BID Levy or are permitted a discount on the BID Levy.

GDPR means the EU General Data Protection Regulation or any successor replacement legislation

Hereditament shall have the same meaning as defined in the Regulations

Hereditament Start Date means the date when the amendment to the Valuation List takes effect

Levy Payers Meeting means the meeting to be held of all BID Levy Payers pursuant to a Notice issued under clause 12

Liability Order has the meaning given in the Regulations

Maximum Amount For any particular Financial Year means the amount of BID Levy for which Demand Notices are issued (excluding replacement or amended Demand Notices)

Monitoring Group means the group to be set up to monitor the collection and enforcement of the BID Levy (as referred to in Clause 11); the group is to consist of representatives of the Council and the BID Company

NNDR means National Non-Domestic Rates under the Local Government Finance Act 1988

NNDR Payer means the person or organisation who has a liability to pay the non-domestic rate

Personal Data: shall have the same meaning as set out in the Data Protection Act 2018.

Proposal means the plan voted for by the BID Levy Payers in a ballot which sets out the objectives of the BID and identifies the various projects which will be undertaken using funds raised by the BID Levy and/or Contributions to achieve those objectives and 'Renewal Proposals' has the same meaning save that 'ballot' shall be replaced with 'renewal ballot' and "Alteration Proposals" has the same meaning save that 'ballot' shall be replaced with 'alteration ballot'

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).

Revaluation The revaluation of the rateable values of all business and non-domestic property in England and Wales which takes place from time to time.

Single Instalment Due Date means the date by which the BID Levy as set out in the Demand Notice must be paid. This will be 1 April each year of the BID term.

Sum(s) Unpaid means the amount of the BID Levy which is unpaid after the Single Instalment Due Date.

Summons means the process issued in the Magistrates' Court upon Complaint by the Council or by the County Court upon application by the Council regarding unpaid BID Levy

Valuation List means a list of all NNDR properties in the local authority area

Valuation Officer means the person appointed by the Commissioners of the Inland Revenue to compile and maintain the Valuation List

Winding Up means an order pursuant to s125 of the Insolvency Act 1986

Write Off means a decision by the BID Company that an unpaid BID Levy will not be recovered.

Working Day means any day of the week other than a Saturday, a Sunday or a Bank Holiday

Staff means all (if any) persons employed by the BID to perform its obligations under the agreement together with the BID's servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the agreement.

2. Statutory Authorities

2.1. This Agreement is made pursuant to Section 2 and Part IV of the Local Government Act 2003 and Section 111 of the Local Government Act 1972 and all other enabling powers.

3. Commencement

3.1. This Agreement shall be effective from the Commencement Date and in any event shall determine and cease to be of any further effect in the event that:

3.1.1. The BID Term expires.

3.1.2. Either party exercises its discretion to terminate the BID Arrangements in exercise of powers under Clause 12.

4. Setting the BID Levy

4.1 The Bid levy will be calculated in accordance with the BID Regulation's as set out in the BID Business Plan.

4.2 The BID levy will be due on the 1st of April 2019, and subsequently on the 1st April of each year of the BID term.

5. The BID Revenue Account

5.1. Pursuant to Clause 47 of the Local Government Act 2003, the Council shall establish a BID Revenue Account by the start of the BID Term.

6. Payments of the Council's Administrative Expenses

6.1. The Council shall invoice the BID Company in advance for the administrative charges as set out below. This will be done on an annual

basis in Quarter 4. The invoice shall provide the BID Company with a breakdown of the costs incurred including VAT.

- 6.2. The expected annual administrative charges will include the following:
- (i) Cost of collection of BID levy based upon circa 700 bills raised will be £35 per hereditament.
 - (ii) The BID company will pay an additional cost of software at £ 10,000 and staff resource at a maximum of £2,300 in Year 1 only, totalling a maximum of £12,300.

7. Collecting the BID Levy

- 7.1. The Council shall use all reasonable endeavours to collect the BID Levy on the Chargeable Day and thereafter on an annual basis throughout the BID Term in a manner consistent with its usual procedures for the collection of non-domestic rates and in accordance with the procedure set out in Schedule 4 of the Regulations.
- 7.2. Pursuant to clause 7.1 the Council shall serve a Demand Notice or Amended Demand Notice 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. It is the responsibility of the Council and the BID Company to ensure that the BID Levy is applied accurately.
- 7.4. The Council shall maintain a list that identifies payment and/or non-payment of the BID Levy that shall be made available to the BID Company at intervals of not less than once a quarter.
- 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 serve an updated list of BID Levy Payers upon the BID Company. Such changes will be reflected in the next annual calculation of the BID Levy and subsequent Demand Notices.
- 7.6. The BID Company in consultation with the Council shall be responsible for reviewing any appeals received against the payment of the BID Levy and the application of the BID Levy Rules.
- 7.7. Notwithstanding clauses 7.4 and 7.5 information provided to the BID Company pursuant to clauses 7.4 and 7.5 shall not include the provision of any Personal Data other than that which the Council may provide pursuant to the Regulations.

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

- 8.1. In the event that the BID Levy is not paid in full within fourteen days from the Levy issue date then (subject to the Exceptions or as may otherwise be agreed by the parties) the Council shall, at no cost to the BID Company, serve up to two reminder notices ('Reminder Notices') on the defaulting BID Levy Payer, each of which shall:
- (i) identify the sum payable;

- (ii) provide a further 14 (fourteen) days for payment to be made; and
- (iii) confirm the Council may thereafter make an application to the Magistrates Court for a Liability Order to recover the unpaid sum (together with costs).

8.2. In the event that the BID Levy is not paid in full within 14 (fourteen) days of the service of the 2nd Reminder Notice in accordance with clause 8.1, then the Council shall immediately inform the BID Company of such further failure to pay (subject to the Exceptions). The Council will consider any comments made by the BID Company before proceeding to make an application to the Magistrates Court for a Liability Order. The Council will normally then make an application to the Magistrates Court for a Liability Order to recover the outstanding sum of the BID Levy as is permitted by the Regulations and by the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, as amended. The Council will bear the cost of any application for summons and will recover these costs from the revenue generated through any such action.

8.3. In the event that the BID Company requests that the Council does not undertake the full range of recovery action against a defaulting BID Levy Payer (as outlined in 8.1 and 8.2) the Council may write off the outstanding Bad or Doubtful Debt. Should any outstanding Enforcement Expenses remain unrecovered due to a request for the cancellation of recovery action by the BID Company, the Council will recover these costs from the BID Company.

8.4. In the event that, after all recovery action has taken place, any portion of the BID Levy is still unrecovered, the remaining Bad or Doubtful Debt may be written off. Any related Enforcement Expenses which remain unrecovered will be chargeable to the BID Company.

8.5. Where payments become due to the Council pursuant to clause 8.3 and 8.4, the Council must provide an account of the proposed charges to the BID Company. The Council will provide a VAT invoice to the BID Company to request payment of these charges.

9. Refunds on the BID Levy

9.1 Refunds may be payable by the Council on the BID Levy in the event of the over payment of the Levy by a BID Levy payer. Examples of reasons for over payment include:

- (a) Payment of same Levy bill more than once in error
- (b) Where hereditaments within the BID are split or merged prior to the chargeable day, and one or more of the properties are removed from the ratings list, but the Levy bill related to these removed properties has already been paid.

9.2. In the event that refunds become due to a Levy Payer on the basis of the reason set out in 9.1 these shall be payable only upon receipt of a written request from the Levy Payer, or their agents.

9.3. The amounts paid out during financial years 1 to 4 will be deducted from the BID Levy Account – and the payments made to the BID Company will be net of these refunds.

9.4. Within 3 months of the beginning of the final BID year, the Council will retain on account an amount which shall not exceed £5,000. This amount shall be retained to off set any levy refunds due after the end of the BID term. This will be released to the BID Company upon completion of a successful renewal ballot.

10. Payment of the BID Levy to the BID Company

10.1 It is agreed that prior to the commencement of the BID Term and the activities of the BID Company, the Council will make an upfront one-off payment of the sum of £30,000 on the 1st April 2019 to the BID Company.

- i. From then on, for the full term of the BID, it is agreed that the BID levy funds will be transferred by the Council to the BID Company at the end of each month.
- ii. By the end of the 2nd year of the BID Term, the Council will make known to the BID Company the number of accounts and amount of Levy still in arrears from the 1st year of the BID Term and will request agreement of the BID Company to write off of all of these aged debts (except where ongoing discretionary payment arrangements are in place). The same procedure will be in place at the end of the 3rd year (in respect of the 2nd year accounts), at the end of the 4th year (in respect of the 3rd year accounts) and so on until the final year of the BID term.

10.2 The BID Company shall provide the Council with details of its own bank account into which the BID Levy shall be transferred electronically.

10.3 In the event that a BID Levy Payer is entitled to a repayment of a BID Levy pursuant to paragraph 8(4) of Schedule 4 of the Regulations and in the event that the Council has paid such BID Levy to the BID Company including all of the contingency relating to that BID Levy the Council shall request such repayment sum from the BID Company and the BID Company shall pay the repayment sum to the Council by way of reduction in the monthly payments, as scheduled in 10.1, and the Council shall thereafter repay the repayment sum to the BID Levy Payer.

10.4 The BID Company may only spend the BID Levy in accordance with the BID Proposals; except that if the BID is varied, from the date of the variation taking effect, the BID Company may only spend the BID Levy in accordance with the varied BID Proposals.

10.5 In the event of an overpayment by the Council to the BID Company, the Council reserves the right to subtract the owed amount from the next scheduled payment of the BID Levy if it has not been refunded prior to that date. In the event that the overpayment falls due after the Council has paid the last quarterly payment within the BID Term, the BID Company shall reimburse the Council forthwith.

11. Accounting Procedures and Monitoring

11.1. In addition to the information outlined in clauses 7.4 and 7.5, every quarter during the BID Term, the Council shall provide the BID Company with a breakdown of:

- (i) the amount of the BID Levy for each individual BID Levy Payer
- (ii) the BID Levy collected in relation to each BID Levy Payer

- (iii) details, together with the outstanding unpaid sum) of those BID Levy Payers who have not paid the BID Levy during the course of that quarter,

PROVIDED THAT this clause shall not apply to the provision of any Personal Data other than that which the Council may provide pursuant to the Regulations

- 11.2. The BID Company shall request information from the Council that it considers relevant to their business and the Council shall consider disclosure and shall not unreasonably withhold such information.
- 11.3. Within 1 (one) month from the start of the BID Term, the parties shall set up the Monitoring Group.
- 11.4. The Monitoring Group will meet twice a year.
- 11.5. At each meeting, the Monitoring Group shall:
 - (i) Review the effectiveness of the collection and enforcement of the BID Levy; and
 - (ii) review and assess the information provided by the parties regarding the progress being made in achieving the aims set out in the BID Business Plan.
- 11.6. Within 1 (one) month after the date of the end of the Financial Year, the Council shall provide the Annual Report to the BID Company
- 11.7. The BID Company shall provide the BID Company Report to the Council within 6 months of the end of each financial year.
- 11.8. The Council will provide 2 representatives, one voting Board Director (Councillor) and an Observer (Officer) to the Board of the BID Company.

12. Termination

12.1 Termination of the BID Arrangements, for any reason, shall be in accordance with Regulation 18(5) and the Council will notify the BID Levy Payers in accordance with Regulation 18(6). The Council will advise the BID Levy Payers as to the repayment of any part of the BID Levy in accordance with clause 12.4.

13. Confidentiality

13.1 Subject to Clause 19 below the parties shall 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 Contributors or about any 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.

14. Notices

14.1 Any Notice or other written communication to be served or given to or upon any party to this Agreement or 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

- 14.2 A Notice may be served by
- (i) delivery to the Chief Executive of Tunbridge Wells Borough Council at the address specified above
 - (ii) delivery to the Directors at the BID Company's address specified above
 - (iii) first class post
 - (iv) Electronic Communication (provided that it is in legible form and is capable of being used for subsequent reference) to such addresses, save that no court proceedings arising from this contract may be served electronically.

14.3 Any notice served shall be deemed to have been validly served or given at the time any ordinary business would have received such post.

15. Miscellaneous

15.1 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.

15.2 The heading appearing in this Agreement are for ease of reference only and shall not affect the construction of this Agreement

15.3 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 signed and delivered.

15.4 Where reference is made to a clause, part, or recital, such reference (unless the context requires otherwise) is a reference to a clause, part, plan or recital attached to this Agreement

15.5 References to the Council include any successors to its functions as a local authority

15.6 References to statutes, bye-laws, regulations, orders, delegated legislation shall include any such instrument re-enacting or made pursuant to the same power.

16. Exercise of the Council's Powers

16.1 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.

17. Contracts (Rights of Third Parties)

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

18. Law and Dispute Resolution

18.1 The Agreement is made under and shall be construed by reference to - English Law.

18.2 Should any dispute arise between the Parties, it shall first be referred to a Director of the Council and to the Directors of the BID and they shall use their best endeavours to resolve the issue by negotiation.

18.3 If they are unable to resolve the dispute within 28 days of the referral, then the Parties shall appoint a Mediator. If the Parties cannot agree on the identity of as Mediator, then they shall apply to the Centre for Effective Dispute Resolution ("CEDR") to make such an appointment.

18.4 Within 14 days of the appointment of a Mediator, the Parties representatives shall meet together with the Mediator to agree a programme for the conduct of the mediation, including (but not limited to) a timetable, exchange of documents and the structure for meetings as well as the costs of the mediation.

18.5 All proceedings of the mediation shall be held in strict confidence and shall be Without Prejudice to any future proceedings that may become necessary.

18.6 Nothing in this mediation procedure shall prevent either Party from seeking from a Court of competent jurisdiction an interim order to the other Party either preventing or compelling the commission of some act.

18.7 If the Parties reach an agreed resolution of the dispute in the mediation, that agreement shall be reduced to writing, signed by representatives of both Parties and shall be binding on both Parties.

18.8 If the mediation fails to achieve an agreed resolution, then the Parties hereby irrevocably agree that the dispute shall be referred to the English Courts.

18.9 The performance of all services shall continue during the mediation process

19. Freedom of Information

19.1 The BID Company acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and shall assist and cooperate with the Council (at the BID Company's expense) to enable the Council to comply with its disclosure requirements and the Council shall notify the BID Company of any such requests.

21 BID Baseline Agreement

21.1 The Council agrees, as far as budgets allow, to carry out the services contained in the BID Baseline Agreement, set out in Schedule 2.

IN WITNESS whereof this Agreement has been executed by the Parties as a deed:

The Common Seal of
TUNBRIDGE WELLS BOROUGH COUNCIL)
was hereunto affixed)

in the presence of:)

Authorised Signatory

Executed as a Deed by **ROYAL TUNBRIDGE WELLS TOGETHER CIC** acting by

Name of First Director

Name of Second Director/Secretary

Signature of First Director

Director

Signature of Second Director/Secretary

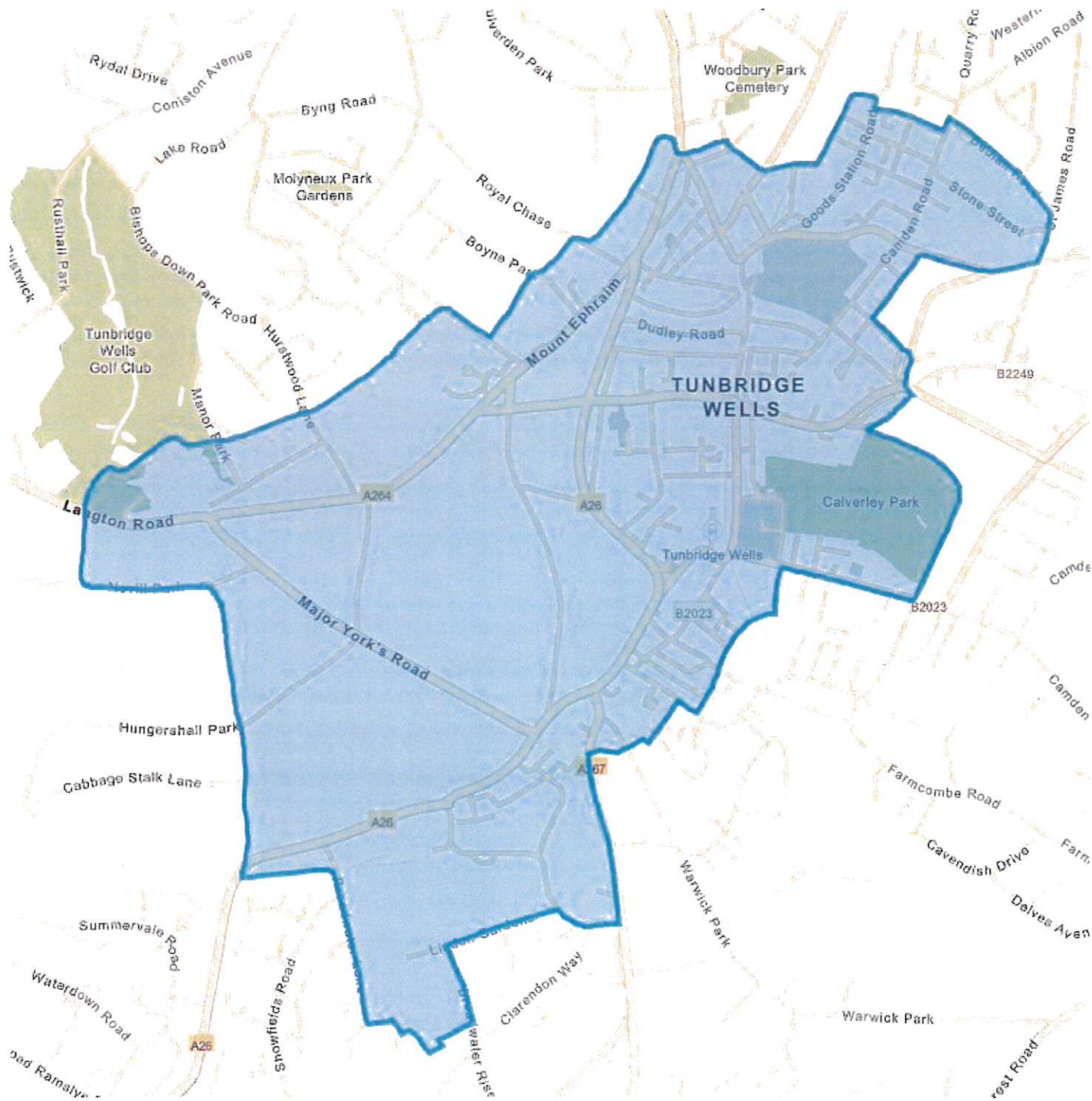
Director OR Secretary

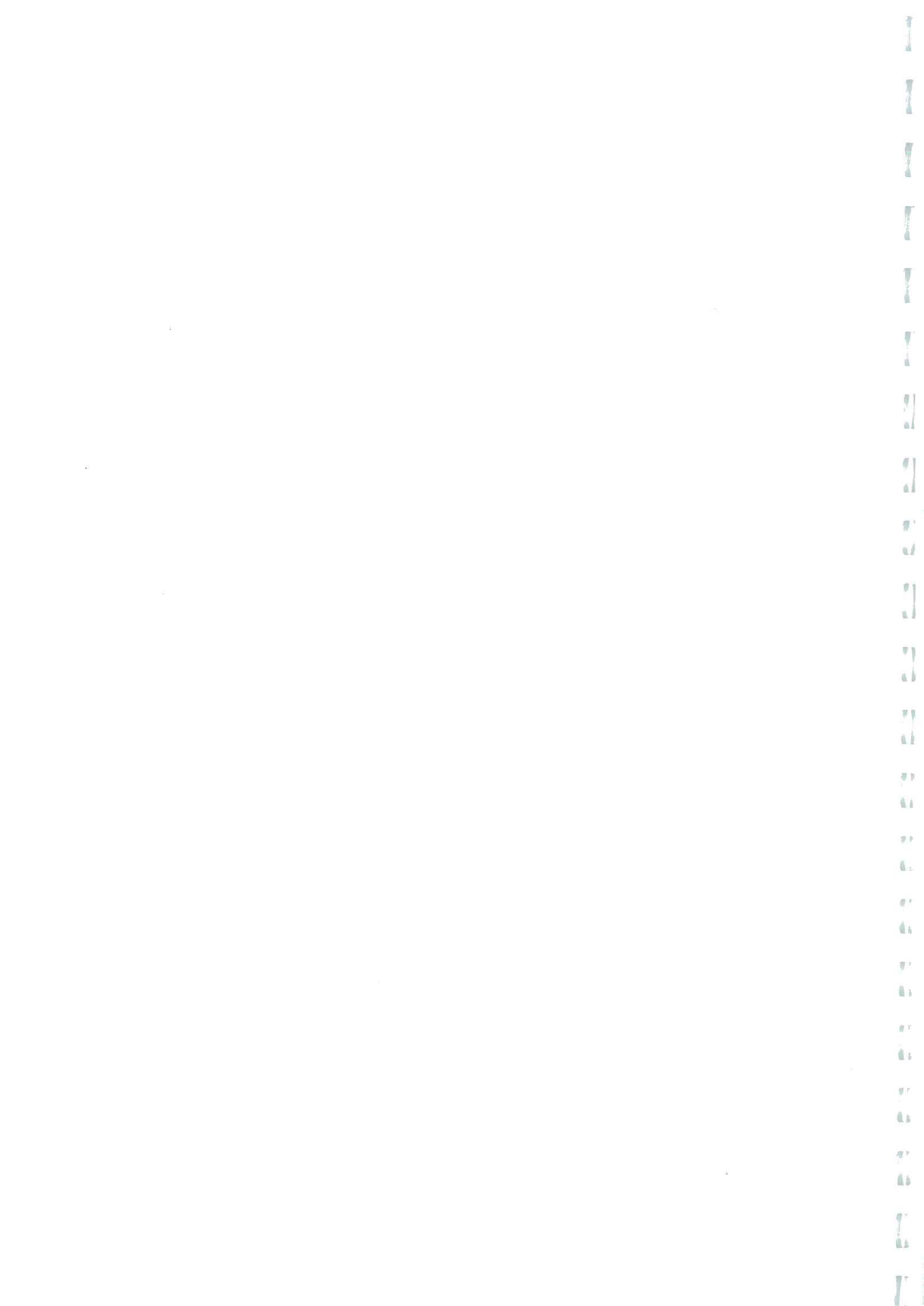
SCHEDULE 1

BID Area Map - Attached

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Royal Tunbridge Wells Business Improvement District Boundary





SCHEDULE 2: BASELINE AGREEMENT

The Council delivers the following services within the BID area and the BID intends to provide additional services to these.

The Council will endeavour to continue to deliver the following services within the BID area. Where any of the listed services are planned to be reduced or discontinued, the Council agrees not to reduce provision of its services disproportionately, compared to any changes made elsewhere within the Borough for the duration of the BID term.

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DATED

2019

TUNBRIDGE WELLS BOROUGH COUNCIL

AND

Royal Tunbridge Wells Together

BID BASELINE AGREEMENT

Mid Kent Legal Services
Tunbridge Wells Borough Council,
Town Hall,
Civic Way,
Royal Tunbridge Wells, Kent TN1 1RS
Ref:T012702

This Deed is dated the _____ day of _____ 2019

PARTIES

1) **TUNBRIDGE WELLS BOROUGH COUNCIL** of Town Hall, Royal Tunbridge Wells, Kent TN1 1RS]("**the Council**")

(2) **ROYAL TUNBRIDGE WELLS TOGETHER CIC** incorporated and registered in England and Wales with company number 09976055 whose registered office is at 300 MANAGEMENT SUITE, ROYAL VICTORIA PLACE, ROYAL TUNBRIDGE WELLS TN1 2SS ("**BID Company**").

(3) **RECITALS**

- A. The Council is the local authority for the purposes of the Local Government Act 2003 and is responsible for providing services within the BID Area;
- B. The BID Company is responsible for the management and operation of the BID and for achieving the objectives and aspirations set out in the BID Proposal;
- C. The Parties entered into a BID Operating Agreement dated 01 April 2019 as contained in Schedule 3 of this Deed pursuant to which the Parties entered into BID arrangements relating to Tunbridge Wells.
- D. The purpose of this Deed is to:
 - i. set out the services provided by the Council in the BID Area as set out in Schedule 1 of this Deed ("Schedule 1 services");
 - ii. set out the services and/or complementary services provided by the BID Company pursuant to the BID Operating Agreement and as set out in Schedule 2 ("Schedule 2 services");
 - iii. Monitoring and review;

AGREED TERMS

1. TERMS DEFINED IN THE OPERATING AGREEMENT

In this Deed, unless the context otherwise requires expressions defined in the Operating Agreement and used in this Deed have the meaning set out in the Operating Agreement. The rules of interpretation set out in the Operating Agreement apply to this Deed.

Statutory Authorities

2.1 This Deed is made pursuant to Section 1 of the Localism Act 2011, Part IV of the Local Government Act 2003 and Section 111 of the Local Government Act 1972 and all other enabling powers as particularly set out in The Business Improvement Districts (England) Regulations 2004.

Commencement and Term

3.1 The terms of this Deed shall take effect upon the Commencement Date.

3.2 This Deed shall operate for the BID Term subject to it ceasing to be of any further effect in the event that:

3.2.1. The BID Term expires; or.

3.2.2. Either party exercises its discretion to terminate the BID Arrangements in exercise of powers under Clause 12 of the Operating Agreement prior to expiry of the Bid Term.

BID Company's obligations

4.1 The BID Company intends to provide additional [and/or Complementary] Schedule 2 services but reserves the right to alter these services as per the alteration policy set out in the business plan.

The Council's obligations

5.1 The Council delivers the Schedule 1 services within the BID Area and the BID Company intends to provide additional [and/or complementary] Schedule 2 services but reserves the right to alter these services as per the alteration policy set out in the business plan.

5.2 The Council will endeavour to continue to deliver the Schedule 1 services within the BID Area. Where any of the Schedule 1 services are planned to be reduced or

discontinued, the Council agrees not to reduce provision of its services disproportionately, compared to any changes made elsewhere within the Borough for the duration of the BID Term.

Monitoring and Review

- 6.1 The parties agree to meet twice a year to monitor and review the BID operation. At each meeting, the Monitoring Group shall:
- (i) Review the effectiveness of the collection and enforcement of the BID Levy; and
 - (ii) review and assess the information provided by the parties regarding the progress being made in achieving the aims set out in the BID Business Plan.
- 6.4 The BID Company shall provide the BID Company Report to the Council within 6 months of the end of each financial year.
- 6.5 The Council will provide 2 representatives to the Board of the BID Company (one elected Member acting as a Director, and one Officer acting as an Observer).

Termination

7.1 Termination of the BID Arrangements, for any reason, shall be in accordance with Regulation 18(5) and the Council will notify the BID Levy Payers in accordance with Regulation 18(6). The Council will advise the BID Levy Payers as to the repayment of any part of the BID Levy as set out in the Operating Agreement

Exercise of the Council's Powers

8.1 Nothing contained in this Deed or implied in it shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes, byelaws, statutory instruments, orders and regulations in the exercise of its functions as a local authority.

Governing law and Jurisdiction

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

9.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with

this Deed or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS whereof this Deed has been duly executed and delivered as a deed on the date set out above.

The Common Seal of

TUNBRIDGE WELLS BOROUGH COUNCIL)

was hereunto affixed)

in the presence of:)

Authorised Signatory

Executed as a deed by **ROYAL TUNBRIDGE WELLS TOGETHER CIC** acting by

NAME OF FIRST DIRECTOR,

NAME OF SECOND DIRECTOR/SECRETARY

SIGNATURE OF FIRST DIRECTOR

Director

.....

SIGNATURE OF SECOND DIRECTOR OR SECRETARY

Director OR Secretary

SCHEDULE 1
BID Area Map

Attached

SCHEDULE 2

**SERVICES PROVIDED BY TUNBRIDGE WELLS BOROUGH COUNCIL IN THE BID
AREA**

SCHEDULE 3
SERVICES/COMPLEMENTARY SERVICES PROVIDED BY THE BID COMPANY IN
THE BID AREA

SCHEDULE 4
THE BID OPERATING AGREEMENT

RECEIVED