

Dated

BID BASELINE AGREEMENT

The Metropolitan Borough of Solihull

and

Shirley BID Company Limited

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Baseline Agreement for Provision of Standard Services

Dated

Between

- (1) **THE METROPOLITAN BOROUGH OF SOLIHULL** (the Council) of The Council House Manor Square, Solihull B91 3QB
- (2) **SHIRLEY BID COMPANY LIMITED** (the BID Company) registered as a company limited by guarantee in England with company number [] whose registered office is at []

Recitals

- A The Council is the local authority for the purposes of the Local Government Act 2003 and is responsible for providing the Standard 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 purpose of this Agreement is to set out for the avoidance of doubt the Standard Services provided by the Council within the BID Area

It is agreed:

Definitions

BID Area means that area within which the BID operates shown on the plan attached hereto

BID means the Business Improvement District which is managed and operated by the BID Company

BID Proposal means the plan voted for by the BID Levy Payers which sets out the objectives of the BID

BID Term means from [31st July 2018 to 30th July 2023]

Complementary Services(s) means services within the BID Area provided by or on behalf of the BID Company which are complementary to the Standard Services.

Operating Agreement means the agreement entered into on [] between the Council and the BID Company which sets out various procedures for the collection monitoring and enforcement of the BID Levy

Regulations means The Business Improvement Districts (England) Regulations 2004 and such amendments to those regulations which may be made by the Secretary of State pursuant to Section 48 of the Local Government Act 2003 (from time to time)

Standard Services means those services which the Council intends to provide within the BID Area as set out in Schedule 1.

Services Review Group means the group to be set and to meet at least once a year consisting of 2 representatives from the Council [officers] and 2 representatives from the BID Company

1. Statutory Authorities

This Agreement 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 Improvements Districts(England) Regulations 2004

2. Commencement

2.1 The terms of this Agreement shall take effect upon the date of this Agreement

3. The Council's Obligations

3.1 The Council agrees to the following:

3.1.1 to provide the Standard Services within the BID Area at its own cost

3.1.2 in the event that the Council is to alter or cease to provide the Standard Services within the BID area set out in Schedule 1, it shall notify the BID Company of the proposed change or changes as soon as reasonably practicable to do so ahead of any such changes being made

3.1.3 The Council may provide different Standard Services, delayed Standard Services or no Standard Services in the event that it is not reasonably practicable, in the Council's opinion, to provide the Standard Services by reason of:

3.1.3.1 adverse weather conditions in the BID Area;

3.1.3.2 an excessive number of pedestrians in the BID Area which would impede or inhibit the carrying out of the Standard Services;

3.1.3.3 restrictions by the police as to the persons and/or number of persons permitted access to the BID Area;

3.1.3.4 marches, parades, festivals or other public events in or affecting the BID Area where such activities or events directly impede or inhibit the Standard Services from being provided; or

3.1.3.5 any other reason in the BID Area or affecting the BID Area beyond the control of the Council

PROVIDED ALWAYS that the Council shall, if it is reasonably practicable to do so before exercising its rights under this clause 4.1..3, provide the BID Company with reasonable notice in the event that the Council intends to provide different Standard Services or delayed Standard Services or no Standard Services as a result of any of the reasons mentioned in this clause 4.1.3 and the Council shall use its reasonable endeavours to recommence the Standard Service as soon as reasonably practicable to the same standard as it was immediately before the change.

3.1.4 The Council shall use reasonable endeavours to liaise with the BID Company where the Complementary Services are complementary to or are of a similar nature to the Standard Services

3.1.5 The Council shall when undertaking reviews of parts of the Standard Services consult with the BID Company on the provision and delivery of those Services and on how they may be provided more efficiently or effectively

4 Monitoring and Review

4.1 The Council and the BID Company shall set up a Services Review Group within [3 months] from the date of this Agreement the purpose of which shall be to:

4.1.1 review the carrying out of the Standard Services and the Complementary Services

4.1.2 make any recommendations required pursuant to paragraph 5.1.1 (above) to the Council and the BID Company

4.1.3 Recommend any improvement or alteration to the Standard Services.

5 Joint Obligations

5.1 Both the Council and the BID Company agree:

- 5.1.1 for the purposes only of monitoring the Standard Services to review and take account of any recommendations made to them by the Services Review Group and take such action as may be appropriate
- 5.1.2 to carry out an annual review of the Standard Services to be provided
- 5.1.3 Both parties will work collaboratively at all times to address any issues relating to the services provided. If the Services Review Group is unable to find a positive resolution the Council representative will be required to prepare a formal report for consideration at an appropriate Council forum (Cabinet Meeting).

6 Licence

- 6.1 The Council shall grant a licence to the BID Company or its agents to enter into or upon any land within the Council's ownership or the highway for the purposes of carrying out Complementary Services, provided that the BID Company has obtained the prior agreement of the Council to the nature of and method by which the Complementary Services will be undertaken PROVIDED ALWAYS THAT the Council shall be entitled to withdraw such a licence in the event that in the Council's reasonable opinion the BID Company, its agents or any provider of the Complementary Services act in such manner which either contravenes health and safety requirements .or seriously damages Council property ,severely prejudices the manner in which the Council can carry out its usual public services or where in the Council's reasonable opinion, it is necessary to withdraw such licence in order to safeguard the health and safety of persons in or around the BID Area or part thereof .
- 6.2 When undertaking reviews of the Complementary Services which are undertaken on, in or upon any land within the Council's ownership or the highway, the BID Company shall, through the Standard Services Review Panel, consult with the Council on the method of delivery of those Complementary Services.
- 6.3 The BID Company shall be responsible for making good all and any damage caused to land in the Council's ownership or the highway by the undertaking of the Complementary Services at its own expense and to the reasonable satisfaction of the Council.
- 6.4 The BID Company shall ensure that it can meet insurance and liability

requirements for the undertaking of the Complementary Services which are undertaken on, in or upon any land within the Council's ownership or the highway and shall produce to the Council on request copies of all insurance policies, cover notes, receipts and other documents necessary to establish compliance with this Agreement.

7 Termination

- 7.1 This Agreement shall be terminated upon any of the following occurring:
- 7.1.1 the expiry of the BID Term provided that in the event the BID is renewed after the BID Term this Agreement shall, subject to the consent of both parties and any variations they may agree, continue to remain in force and of full effect;
 - 7.1.2 the early Termination of the BID and the giving of relevant notices as required by the Regulations and the Operating Agreement; or
 - 7.1.3 the agreement of both parties.

8 Confidentiality

- 8.1 Subject to the statutory obligations on the Council in particular the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 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 provision of the BID

9 Notices

- 9.1 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.
- 9.2 A Notice may be served by
- 9.2.1 delivery to the Director of Resources at the Council's address as specified above;
 - 9.2.2 delivery to the Company Secretary at the BID Company's address specified above

9.2.3 registered or recorded delivery post.

9.3 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.

10 Miscellaneous

10.1 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 or is found by any court of competent jurisdiction to be unlawful, invalid or unenforceable then such part shall be struck out and the balance of this Agreement shall remain and the parties shall enter into good faith negotiations to remedy the deficiency in drafting to achieve the intention behind the original drafting in a lawfully compliant manner

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

10.3 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

10.4 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

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

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

11 Exercise of the Council's Powers

11.1 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 statute byelaws statutory instruments orders and regulations in the exercise of its functions as a local authority

12 Contracts (Rights of Third Parties)

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

13 Dispute Resolution

- 13.1 If a dispute arises between the Council and the BID Company in relation to any matter which cannot be resolved either party may refer such dispute to the dispute resolution procedure set out in Clause 14.2 below.
- 13.2 In the first instance each of the Council and the BID Company shall arrange for a senior representative to meet solely in order to resolve the matter in dispute. Such meeting(s) shall be minuted and conducted in such manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question.
- 13.3 If the meeting(s) referred to in Clause 14.2 does not resolve the matter in question then the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure or any other model mediation procedure as agreed by the parties. In such circumstances the following shall apply:
- 13.3.1 to initiate a mediation the parties may give notice in writing (a “Mediation Notice”) to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organization as agreed by the parties asking them to nominate a mediator;
- 13.3.2 the mediation shall commence within 28 days of the Mediation Notice being served;
- 13.3.3 neither party will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one hour. Thereafter paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the parties);
- 13.3.4 neither party to the mediation will commence legal proceedings against the other until 30 days after such mediation of the dispute in question has failed to resolve the dispute;
- 13.3.5 the parties will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs, as he shall determine or in the absence of such determination such costs will be shared equally.

14 Variation

- 14.1 No variation of this Agreement shall be effective unless it is in writing and signed by the Council and the BID Company

15 Assignment and Novation

- 15.1 This Agreement is personal to the parties and may not be assigned at law or equity by either party without the written consent of the other PROVIDED ALWAYS that this clause 16 shall not apply in the event of a novation of this Agreement by the Council to a wholly owned company

16 Proper law and Jurisdiction

- 16.1 This agreement shall be governed by and construed in accordance with the law of England and Wales and each party agrees to the exclusive jurisdiction of the courts of England and Wales

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Executed/Signed by the parties:

Signed on behalf of The Metropolitan Borough
of Solihull by the Authorised Signatory (Insert
title)

Signed on behalf of The Shirley BID Company
by the

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SCHEDULE 1 – The Standard Services

SCHEDULE 1a Baseline Activity : Streetcare - Cleansing

Head of Service: Alan Brown

Date:

Cleansing - Daily excluding National & Bank Holidays

Number of Staff & Equipment	<p>0600—14:00 3 operatives/van</p> <p>0600----08:00 compact sweeper and driver</p> <p>Twice a year wash of bins</p> <p>2/6 weekly mechanical sweep of perimeter roads</p>
Specification	<p>Stratford Road will be cleaned and maintained to grade A standard in accordance with the Environmental Protection Act 1990</p> <p>Between the hours of 0600 to 1400,</p> <p>This includes all hard services, landscaping, grassed areas , planters, tree grilles,</p>
Performance Measure	<p>Graded from A to D as detailed by the Environmental Protection Act 1990</p> <p>Structured inspections carried out as part of the Councils National Indicator 195, which is a 900 site cleansing assessment of the whole of Solihull.</p> <p>Inspections will also take place by the Authority monitoring and reporting service standards.</p>
Non - Compliance Procedure	<p>Non conformity reported to contact management</p> <p>More serious failure reported to weekly contract meeting and if not resolved, issues are reported further to Project Team Meeting and if not resolved then will be discussed at the Strategic Environment Contract (SEC) Board, which includes elected members..</p>
Existing Value of Contract	<p>The Stratford Road forms part of the overall £4.5m per annum contract for street cleansing/grounds maintenance through the Strategic Environment Contract.</p>
Boundary Area	<p>Along Stratford Road from Greenhill Way down to Blackford Road</p>
Proposed BIDs Additional Activity	<p>No extra proposed BID activity requested by SMBC.</p>
Cost of BIDs Additional Activity	

SCHEDULE 1b Baseline Activity: Bedding

Head of Service: Chris Barr

Date:

<p>Number of Staff & Equipment</p>	<p>SPRING AND SUMMER BEDDING Planting : Twice a Year (3 days) 3 Staff 1 Vans Maintenance Monthly (Watering just in summer daily) 2 Staff 1 Van HIGHWAY SHRUB MAINTENANCE (Annual) 3 Staff 1 Van</p>
<p>Specification</p>	<p>Current supply on Stratford Road Tubs – 60</p> <p>SPRING AND SUMMER BEDDING 1: To produce high standard floral planters in key locations. 2: To maintain floral displays to a high standard. 3: To achieve weed free displays. 4: To recycle all arisings produced.</p> <p>HIGHWAY SHRUB MAINTENANCE 1:To ensure that 100% of the Highway and Amenity shrub beds are visited on an annual basis as part of the winter works programme and receive full containment pruning operations. Operations to include weed and litter removal 2: To ensure that shrubs beds are maintained to an acceptable size and structure so to effectively eliminate the possibility of obstruction through overgrown foliage. 3:To maintain and control shrub beds during the growing season and ensure all overgrown vegetation that may cause obstruction, damage or nuisance to persons or property or may present health and safety implications is dealt with accordingly when reported. 4: To effectively manage weed growth in and around the shrub beds with suitable mechanical or chemical operations, to ensure all shrub beds are weed free. 5: To recycle all arisings produced.</p>
<p>Performance Measure</p>	<p>SPRING AND SUMMER BEDDING Customer complaint levels High quality floral displays a colourful effect Sustainability of the Operation</p> <p>HIGHWAY SHRUB MAINTENANCE Customer complaint levels Compliance with Key Performance Indicators High quality shrub bed displays with maximum colour throughout the year The sustainability of the operation</p>

Non - Compliance Procedure	Non conformity reported to contact management More serious failure reported to weekly contract meeting and if not resolved, issues are reported further to Project Team Meeting and if not resolved then will be discussed at the Strategic Environmental Contract (SEC) Board, which includes elected members
Existing Value of Contract	Bedding :£ per annum
Boundary Area	Along Stratford Road from Greenhill Way down to Blackford Road
Proposed BIDs Additional Activity	No additional funding available to support any extra activity.
Cost of BIDs Additional Activity	

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SCHEDULE 1c -Baseline Activity: Highways work
Head of Service – Ashley Prior Highway Services
Date Dec 2017

Number of Staff & Equipment	Work activities listed below are carried out under the Highway Maintenance Contract (HMC) with Balfour Beatty
Specification	<p>Specification is included in the HMC. The extent of Work required is detailed in each Works Order.</p> <p>Monthly walked safety inspections undertaken to identify defects and arrange repairs.</p> <p>Winter service is delivered as part of the Borough winter call out system. Main roads and bus routes are gritted and town centres are classed as high priority pedestrian sites during snow conditions</p>
Performance Measure	<p>10% Audit checks</p> <p>Complaints received</p>
Non - Compliance Procedure	Under the contract the contractor is required to carry out remedial work.
Existing Value of Contract	Varies according to need as identified by inspections. Winter service is defined by policy and forms part of the main contract value
Boundary Area	<u>Public highway</u>
Proposed BIDs Additional Activity	There is no BID funding available to support the proposed additional activity by SMBC.
Cost of BIDs Additional Activity	

SCHEDULE 1d - Baseline Activity: Street Lighting Maintenance

Head of Service - Ashley Prior Highway Services

Date Dec 2017

Number of Staff & Equipment	Monday to Friday	Saturday and Sunday
Specification	Street Lighting repairs carried out as required. Repair to street lights within 10 working days of report. <u>Service Standards</u> Attend emergency RTA ect within 1 hour 7.30 – 15.30 Attend emergency RTA ect within 2 hours 15.30 – 7.30 This includes Saturdays and Sundays	
Performance Measure	Reported Corporately and to Strategic Highways Board <u>“Management of the Council’s Street Lighting Assets”</u> 1) % of Street Lamps restored to working order within 10 working days. 2) % of lamps not working as planned	
Non-Compliance Procedure	Reported to Council failure to deliver service within target	
Existing Value of Contract	Varies	
Boundary Area	Public Highway	
Proposed BIDs Additional Activity	BID to fund the installation, removal, storage & maintenance of all Christmas illuminations within the BID area, subject to the below clauses: 1. The above is to include the installation of additional enhancements, with the suitability therein agreed with the Street Lighting Team, together with any necessary additional infrastructure costs. 2. BID agree to pay this cost annually up to and including Christmas 2019 subject to SMBC providing free of charge a suitable area within the limits of the highway to allow the BID to provide its own annual Christmas activities and market.	
Cost of BIDs Additional Activity	TBA	

SCHEDULE 1e Baseline Activity - Tanker Service Maintenance
Head of Service – Ashley Prior Highway Services
Date Dec 2017

Number of Staff & Equipment	Monday to Friday <u>As requested by Street Lighting</u>	Saturday and Sunday
Specification	<u>Service Standards</u> Gullies emptied annually – Carriageway and footway. Flooding incidents attended within 24 hours	
Performance Measure	Reported Corporately and to Strategic Highways Board Gully Cleansing Database <u>Flood Management within the Borough</u> Flooding incidents attended within 24 hours	
Non-Compliance Procedure	Reported to Council failure to deliver service within target	
Existing Value of Contract	Varies	
Boundary Area	Public highway	
Proposed BIDs Additional Activity	No additional proposed BID activity requested by SMBC.	
Cost of BIDs Additional Activity		