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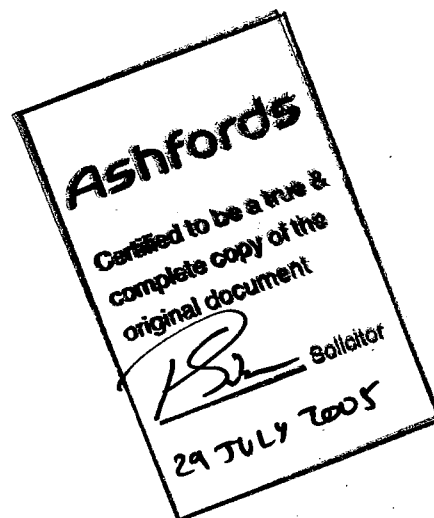
18th July

2005

(1) PLYMOUTH CITY CENTRE COMPANY LIMITED

(2) PLYMOUTH CITY COUNCIL

**CONCORDAT AND CONTRACT FOR THE PROVISION OF SERVICES
WITHIN THE PLYMOUTH BUSINESS IMPROVEMENT DISTRICT**



THIS AGREEMENT is made the ^{18th} day of ^{July}.....2005.

BETWEEN:-

(1) **PLYMOUTH CITY CENTRE COMPANY LIMITED** (No. 5124506) of Ballard House, West Hoe Road, Plymouth, PL1 3AE (the BID Company) and,

(2) **PLYMOUTH CITY COUNCIL** of the Civic Centre, Plymouth, PL1 2EW (the Council)

BACKGROUND

(A) The BID Company has been established as a joint undertaking of the business sector and Council representatives to act together as a company limited by guarantee to deliver the objectives of the BID Proposals and so as to improve the economic, social and environmental well being of the BID Area.

(B) The Council currently provides the Baseline Services, Estate Management Services and Statutory Services within the BID Area, and the Support Services.

(C) The Council currently meets the cost of the Services from within its normal budgets and intends to continue to do so for the whole of the Term. In addition, the Council will contribute other funds to the BID Company for the purpose of achieving the objectives of the BID Arrangements.

(D) It is the intention of the BID Company and the Council that, in order to achieve the objectives of the BID Arrangements, the Council will continue to provide the Services, subject to the provisions relating to the terms of this Agreement

(E) It is also the intention of the Council that it will continue to fund the cost of the Services, and will make available other funds to enable the BID Company to achieve the objectives of the BID Arrangements on the terms set out in this Agreement.

(F) On 2 March 2005 the BID Proposals were approved in a ballot of non-domestic ratepayers in the BID Area.

CONCORDAT:

The BID Company and the Council share a common belief about the City Centre retail and business quarter of Plymouth.

The Parties believe;

- ...That Plymouth City Centre has potential to further establish itself as the principal regional centre for retail activity.
- ...That Plymouth City Centre will play a major part in the regeneration of Plymouth as a City, contributing to the Mackay Vision for the City.
- ...That all sectors of the community in the City Centre and the wider community of Plymouth, will benefit substantially from the success and well being of the City Centre.
- ...That the success of the City Centre area, and the general achievement of these benefits, is certain when the Parties act together.

This Agreement sets out the framework by which that shared belief will be delivered.

1. DEFINITIONS

In this Agreement the following words and expressions shall, except where the context otherwise requires, be given the following respective meanings:

Agreement means this Agreement and the Schedules.

Baseline Services, means the services currently provided by the Council and detailed in Schedule 3.

BID, means Business Improvement District.

BID Area, means the area identified by the BID Company in the BID Arrangements as the BID Area.

BID Arrangements, means the detailed proposals for the BID as set out in the BID Proposals prepared by the BID Company, submitted to and approved by a ballot of non domestic ratepayers in the BID Area, as set out in Schedule 2.

BID Arrangement Performance Review, shall mean the review of performance of the BID Company as against the BID Performance Indicators.

BID Levy, means the levy paid by non-domestic ratepayers under the BID Arrangements.

BID Performance Indicators, means the performance indicators detailing the performance of the BID Company as agreed between the BID Company and the Council from time to time.

BID Proposals, means the detailed proposals for the BID in Plymouth City Centre as submitted and approved in a ballot of non-domestic ratepayers in the BID Area as set out in Schedule 2.

Effective Date, means 1 April 2005.

Estate Management Services, means those services carried out by the Council on their own behalf as estate owners within the BID Area.

Exit Strategy means a strategy arrived at by the Parties for securing transition from the BID Arrangements to alternative service delivery arrangements

Funding Agreement, means the document set out in Schedule 6 pursuant to which the Council agrees to make financial contributions to the BID Company for the purpose of enabling the BID Arrangements to be carried out

Funding, means the provision of funding by the Council to the BID Company under the Funding Agreement.

Parties, means the Council and the BID Company and "Party" shall mean either the Council or the BID Company depending on the context.

New Services, means any new or additional services which are not comprised in the Services as at the date of this Agreement.

Service Improvement Arrangements, means the systems and arrangements detailed in this Agreement whereby the Parties intend to deliver continuous improvement in the services provided to the BID more specifically set out in Schedule 5.

Services, means, collectively, Baseline Services, Estate Management Services, Statutory Services and Support Services.

Service Specification Process, means the process of identifying the specification for the Services (as appropriate) provided in the BID Area, including performance measurement criteria, set out in Schedule 5.

Statutory Services, means the services the Council undertakes within the BID Area pursuant to their statutory roles as planning and licensing authority

Support Services, means the services set out in Schedule 4 whereby the Council agrees to provide the specified services to the BID Company for the purposes of enabling the BID Arrangements to be carried out.

Term, means the period of this Agreement as detailed in Clause 8.

Variations Procedure, means the variation procedure set out in Clause 9.

2. AGREEMENT

2.1. This Agreement sets out the framework under which the Parties propose to enable the delivery of the BID Arrangements, and in particular the provision of the Services and the Funding and the manner of bringing about of their continuous improvement.

2.2. In working under this framework, the Parties acknowledge that, subject to any overriding matters of general public interest, their primary responsibility is to the success of the BID Arrangements as opposed to their respective individual interests.

3. THE BASELINE SERVICES.

3.1. Throughout the Term the Council will provide the Baseline Services in the BID Area so as to enable the carrying out of the BID Arrangements.

3.2. Insofar as the Baseline Services have been subjected to the Service Specification Process the Council undertakes to provide the Baseline Services to the performance criteria outlined for the particular Baseline Service (including any amendments introduced through the Variations Procedure).

3.3. Insofar as the Baseline Services have not been submitted to the Service Specification Process the Council undertakes to submit the service to the process within six months of the Effective Date.

3.4. The Parties will regularly, and at intervals of not more than once per year, submit the whole of or individually identified Baseline Services to the Service Improvement Arrangements.

4. ESTATE MANAGEMENT SERVICES

- 4.1. Throughout the Term the Council will carry out the Estate Management Services within the BID Area ensuring so far as possible the achievement of the BID Arrangements.
- 4.2. Insofar as the Estate Management Services have been subjected to the Service Specification Process the Council undertakes to provide the Estate Management Services to the performance criteria specified (including any amendments introduced through the Variations Procedure).
- 4.3. Insofar as the Estate Management Services have not been submitted to a Service Specification Process the Council undertakes to submit the service to the process within six months of the Effective Date.
- 4.4. The Parties may submit the Estate Management Services to the Service Improvement Arrangements, (and will do so at least once during the Term).

5. THE STATUTORY SERVICES

- 5.1. The Council is the Planning Authority for the purposes of the Planning Act 1990 and the Licensing Authority for various purposes including the Town Police Clauses Act 1847 the Local Government (Miscellaneous Provisions) Acts 1976 and 1982 and the Plymouth City Council Act 1987. In addition the Council will undertake additional licensing responsibilities under the Licensing Act 2003.
- 5.2. The BID Company recognises that the Council is required to discharge its statutory roles in respect of the Statutory Services in accordance with the appropriate legislative provisions and guidance and the law in general and that this may involve outcomes which are not always compatible with the objectives of the Parties under this Agreement.
- 5.3. The Council recognises that notwithstanding the limits on its capacity always to discharge its statutory powers in a way which is compatible with the objectives of this Agreement, it will, within six months of the Effective Date, enter into protocols with the BID Company, permitting the BID Company to participate (so far as the law permits) in the processes the Council operates in relation to the discharge of the Statutory Services. The protocols shall deal particularly, but not exclusively with the manner in which the Council will consult with the BID Company in respect of relevant issues.

6. SUPPORT SERVICES

- 6.1. Throughout the Term the Council will provide the Support Services to the BID Company so as to enable the carrying out of the BID Arrangements.
- 6.2. Insofar as the Support Services have been subjected to the Service Specification Process the Council undertakes to provide the Support Services to the performance criteria outlined for the particular Support

Service (including any amendments introduced through the Variation Procedure).

6.3. Insofar as the Support Services have not been submitted to a Service Specification Review the Council undertakes to submit the service to a review within six months of the Effective Date of this Agreement.

6.4. The Parties will regularly, and at intervals of not more than once per year, submit the individual Support Services to the Service Improvement Arrangements.

7. NEW SERVICES

7.1. The Parties may agree at any time that New Services may be provided by the Council to the BID Company for the purpose of enabling the BID Arrangements to be achieved.

7.2. New Services shall be agreed using the Variation Procedure and upon commencement shall be subject to all the terms of this Agreement including, but not exclusively, the Service Specification Process and Service Improvement Arrangements.

8. TERM

8.1. This Agreement shall be deemed to have commenced on the Effective Date and unless otherwise terminated in accordance with the provisions of Clause 9 shall continue for a period of five years from the Effective Date.

9. VARIATIONS

9.1. Where either Party wishes to make a change to the Services and/or the Funding, including the provision of New Services the Party seeking the change will initially send a written change request to the other. The change request shall include at least the following information:

- (a) a description of the change,
- (b) the reason(s) for the change,
- (c) as far as can be identified, any anticipated impact of the change, for example on service improvements or costs,
- (d) as far as can be identified, any savings on current costs, additional or redundant resources which will arise as a consequence of the change, and how it is proposed to deal with them
- (e) the timescale within which the change is intended to be implemented.

9.2. Insofar as the proposed change is likely to result in achieving the BID Arrangements by more efficient, effective or economic means, or is likely to result in an improvement in services as a part of the general intention to bring about a constant improvement in services provided within the BID Area, neither Party will unreasonably withhold or delay approval of the proposed change.

- 9.3. Within 30 days of receiving a written request for change, the Party who receives the request shall respond in writing to the other setting out whether the request is approved or not, and in particular will state:
- (a) the reason(s) why the request is approved or disapproved
 - (b) any proposals and reasons for amending the description of the change
 - (c) any comments on the proposed impact of the change
 - (d) any comments on the change as it may result in additional or redundant resources arising as a consequence
 - (e) any comments upon the proposed timetable for implementation of the change.
- 9.4. The Parties will record in writing any agreed change to the Services and/or the Funding or any New Services including the commencement, duration, cost and funding of such change and for any New Services the terms of payment if appropriate. The change shall not be implemented until this written record is exchanged by the Parties. The written record will then be held with, and be incorporated and subject to all the terms of this Agreement.
- 9.5. Where the Parties are unable to agree upon any proposed change, whether in total or as to any element of it, the disagreement may be submitted to the disagreement procedure set out in Clause 10.

10. DISAGREEMENTS

- 10.1. Where the Parties are in disagreement as to the terms or provisions of this Agreement, including implementation, or the delivery of services or objectives, they shall use their best efforts to resolve the disagreement through amicable discussions and consultation.
- 10.2. In the event that, following attempts at resolving the issue by amicable discussion and consultation, either Party believes that a disagreement is not capable of being resolved, that Party may serve written notice on the other requesting that the matter be submitted to formal mediation in accordance with Clause 11.

11. MEDIATION

- 11.1. An independent mediator will be appointed by agreement between the Parties or failing such agreement within 1 week of one of the Parties first proposing a particular mediator then either Party may apply to the Centre for Dispute Resolution, International Dispute Resolution Centre, 70 Fleet Street, London EC4Y 1EU for the appointment of such independent mediator.

12. TERMINATION

- 12.1. Either Party may terminate this Agreement upon giving six months notice in writing, to expire at any time, if the other Party:
- 12.1.1. commits a material breach of its obligations which, following the implementation of the disagreements procedure set out in Clause 10, is neither resolved or capable of remedy and the

Party in breach remains in breach for a period of 30 days after the completion of the mediation process.

- 12.1.2. (in the case of the BID Company) goes into liquidation, either compulsorily or voluntarily (apart from a solvent liquidation for the purposes of reconstruction or amalgamation) or if a receiver, administrator or administrative receiver is appointed in respect of the business or all or any part of its creditors generally or shall commit any similar act or suffer any similar event as a consequence of debt.
 - 12.1.3. (in the case of the Council) has persistently failed to meet the service level targets and performance criteria set in the course of the Service Improvement Arrangements (and for the purposes of this Clause "persistently" means failing to meet or exceed the service level targets in not less than any 3 out of 5 consecutive service level reviews).
 - 12.1.4. (in the case of the BID Company) persistently fails to meet the BID Performance Indicators (and for the purposes of this Clause "persistently" means failing to achieve the BID Performance Indicators on 2 or more consecutive occasions, as identified in the Service Improvement Arrangements).
- 12.2. Without prejudice to the Council's rights in this Agreement, if the BID Company suffers any of the events in Clauses 12.1.1, 12.1.2 or 12.1.4 the Council may, upon written notice to the BID Company suspend the Baseline Services, Support Services and any New Services. If any New Services for which the BID Company has agreed to make payment to the Council are suspended, the BID Company's obligation to make such payments shall also be suspended.
- 12.3. Termination of this Agreement shall not affect any existing rights and liabilities of the Parties which have accrued as at the date of termination.

13. PERSONNEL

- 13.1. Each Party is responsible for its personnel (whether employees or not) when on the other Party's premises.
- 13.2. Each Party shall procure that its personnel (whether employees or not) comply with the Health and Safety at Work etc Act 1974 (as amended), any amending and replacement legislation and any local equivalent legislation and security procedures whilst on the other Party's premises.
- 13.3. If the BID Company reasonably considers that any of the Council's personnel (whether or not employed by the Council) who are involved in the provision of the Services is performing unsatisfactorily and is adversely impacting the operation of the BID Company it shall notify the Council of its view. The Council shall, subject to its employment law obligations to its personnel, remove the relevant personnel from the provision of the Services to the BID Company as soon as reasonably practicable (or immediately if requested by the BID

Company in a case of proven gross misconduct) and replace him/her/them as soon as reasonably practicable with personnel of appropriate skill, experience and competence.

14. FINANCIAL REGULATIONS AND PROCUREMENT

- 14.1. The BID Company undertakes to adopt and apply financial regulations and procurement procedures broadly based on the Council's financial regulations and procurement arrangements (including standing orders) relating to contracts applicable at any appropriate time, in any relevant dealings in respect of the delivery of the BID Arrangements.
- 14.2. The Council confirms that in respect of any relevant matters it will apply and comply with its financial regulations and procurement arrangements applicable from time to time.
- 14.3. The Council will inform the BID Company of any proposed changes to its financial regulations and procurement arrangements prior to their implementation and have regard to any views expressed by the BID Company in respect of such changes.

15. INSURANCE

- 15.1. Each Party shall be responsible for taking out and maintaining the insurances reasonably required as a consequence of their activities under this Agreement or otherwise.

16. LIMITATION OF LIABILITY

- 16.1. Nothing in this Agreement shall exclude or restrict a Party's liability for death or personal injury caused by its negligence.
- 16.2. The Parties agree that the terms and conditions of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.
- 16.3. Neither Party shall be liable to the other Party by reason of termination or expiry of this Agreement for any reason in respect of any compensation, reimbursement or damages of any nature including without limitation any expenditures, investments, leases or other commitments relating to the business or goodwill of either Party.
- 16.4. Except where specifically provided, neither Party shall be liable to the other for any consequential special, punitive or indirect damages, including without limitation damages for loss of profits, opportunity, data or use, incurred by either Party or any third party, even if it has been advised of the possibility of such damages.
- 16.5. The Parties agree that the total maximum aggregate liability of the Council to the BID Company for all and/or any events relating to and/or connected with this Agreement shall not exceed the sum of all payments made by the BID Company to the Council under this Agreement.

16.6. The Parties agree that the exclusions and limitations contained in this Agreement are reasonable, that they have been negotiated between the Parties and their respective advisors, that this is not a standard form document and that this Agreement (including the limitations and exclusions in this Clause 16) have been entered into by the Parties in their own respective commercial interests.

17. CONFIDENTIAL INFORMATION

17.1. Each Party ("the **Restricted Party**") shall keep confidential and shall not use for any purposes other than for the purposes of performing any of its rights and/or obligations under this Agreement, nor disclose any information of a confidential nature about the other Party (and/or any members of that Party's group companies) or their respective businesses (which includes without limitation BID Company) information, trade secrets and information of commercial value and/or any matters relating to and/or connected with this Agreement. No information shall be subject to the restrictions against disclosure under this Agreement to the extent that it:

17.1.1. is or becomes public knowledge otherwise than through the default on the part of the Restricted Party or any of its directors, officers, agents or employees;

17.1.2. is compelled by law, by the rules or requirements of the London Stock Exchange, by any other relevant regulatory authority, by any court of competent jurisdiction and/or required by the professional advisors of either Party hereto. If the Restricted Party determines that it is or may be required to make any disclosure by reason of the matters described in this clause 17.1.2, the Restricted Party shall co-operate with the other Party hereto in taking such steps as the other party hereto may reasonably require for the purposes of preventing or restricting such disclosure or maintaining the confidentiality of the information so disclosed;

17.1.3. is already lawfully in the possession of the Restricted Party prior to its disclosure by the other party to the Restricted Party (provided that the source of such information was not subject to any agreement or other duties relating to confidentiality in respect thereof) and is or becomes free from any restriction on its subsequent disclosure or use by the Restricted Party; or

17.1.4. is disclosed to the Restricted Party's employees, agents or professional advisers where it is reasonably necessary or desirable to enable the Restricted Party to comply with this Agreement and before the disclosure takes place the Restricted Party makes such employees, agents or professional advisers aware of its obligations of confidentiality under this Agreement and at all times procures compliance by such employees, agents and professional advisers therewith;

17.1.5. is made with the express prior written consent of the other Party;

- 17.1.6. is made pursuant to a statutory duty or requirement of the Information Commissioner pursuant to the Freedom of Information Act 2000; or
 - 17.1.7. if disclosed by the BID Company to any of its members when reporting to such members about the activities and operation of the BID Company.
- 17.2. Each Party agrees that this Clause 17 shall survive the termination of this Agreement, however arising.
- 17.3. Information shall not be exempted under Clause 17.1 under this Agreement by reason that:
- 17.3.1. some or all of its features (but not the combination and principle thereof) are or become public knowledge or are in the possession of or become available to the Restricted Party as described in Clause 17.1; or
 - 17.3.2. such information could be derived or obtained from information which is or becomes public knowledge or is in the possession of or becomes available to the Restricted Party as described in Clause 17.1 if to obtain or derive it would require substantial skill, labour or expense.

18. EXIT STRATEGY

- 18.1. The Parties recognise that in the event of the BID Arrangements coming to an end and not being renewed in accordance with statutory provisions and/or in the event of this Agreement expiring, whether by termination or effluxion of time, the Parties will have to consider how services within the BID Area will continue to be provided.
- 18.2. The Parties agree that either of them may give notice to the other either, (a) when serving notice under Clause 10 (Disagreements), or (b) on or after the fourth anniversary of the Effective Date, requiring the other party to attend a meeting or meetings to prepare an agreed Exit Strategy.
- 18.3. Failure on the part of either Party to respond with reasonable effect to a notice served under this Clause, or to agree an Exit Strategy entitles either Party to invoke the disagreements procedure set out in Clause 10.

19. WAIVER

- 19.1. The failure of any Party to require the performance of any of the terms of this Agreement or the waiver by any Party of any default under this Agreement shall not prevent a subsequent enforcement of such term, nor be deemed a waiver of any subsequent breach.

20. MODIFICATION OF AGREEMENT

20.1. This Agreement may not be modified, supplemented, or amended or default hereunder waived except upon the execution and delivery of a written agreement signed by the authorised representative of each Party.

21. AUTHORITY TO SIGN

21.1. Each Party warrants that it has the full authority to perform its obligations under this Agreement and that the person executing this Agreement has the authority to bind it.

22. RELATIONSHIP OF THE PARTIES

22.1. Notwithstanding any provision hereof, for all purposes of this Agreement each Party shall be and act as an independent contractor and not as partner, joint venturer or agent of the other Party and shall not bind nor attempt to bind the other Party to any contract, agreement or arrangement.

23. ENTIRE AGREEMENT

23.1. This Agreement, including all Schedules, constitute the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all proposals, negotiations, understandings, conversations, discussions or agreements between or amongst the Parties relating to the subject matter of this Agreement (except in the case of any fraudulent misrepresentations). No terms, provisions or conditions of any purchase order, acknowledgement or other business form (other than terms agreed in accordance with the Variation Procedure) that the BID Company may use in connection with the provision of Services will have any effect on the rights, duties, or obligations of the Parties hereunder, or otherwise modify this Agreement.

23.2. In the event of conflict between the provisions of this Agreement and the Funding Agreement, the provisions of the Funding Agreement will prevail.

24. SEVERABILITY

24.1. Each of the provisions contained in this Agreement shall be construed as independent of every other such provision, so that if any provision of this Agreement shall be determined by any court or competent authority to be illegal, invalid and/or unenforceable then such determination shall not affect any other provision of this Agreement, all of which other provisions shall remain in full force and effect.

24.2. If any provision of this Agreement shall be determined to be illegal, invalid and/or unenforceable, but would be legal, valid and enforceable if amended, the Parties shall consult together in good faith and agree the scope and extent of any modification or amendment necessary to render the provision legal, valid and enforceable and so as to give effect as far as possible to the intention of the Parties as recorded in

this Agreement. If this cannot be achieved, either through failure to reach agreement or because (in the reasonable opinion of either Party) the effect of such a declaration is to defeat the original intention of the Parties in a material respect, then either Party may terminate this Agreement by giving 30 days' notice of termination to the other Party.

25. ASSIGNMENT AND SUB CONTRACTING

25.1. Neither of the Parties shall assign, sub-contract or transfer any of their respective rights or obligations under this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed)

26. THIRD PARTY RIGHTS

26.1. Only the Parties may enforce the terms of this Agreement subject to and in accordance with this Agreement.

26.2. No term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a Party to this Agreement and the provisions and effect of the Contracts (Rights of Third Parties) Act 1999 is hereby excluded from this Agreement.

26.3. It is expressly agreed that the Parties to this Agreement may by agreement rescind or vary this Agreement or any term of this Agreement without the consent of any person who has a right to enforce this Agreement or the term in question, notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.

27. COUNTERPARTS


27.1. This Agreement may be entered into in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any Party may enter into this Agreement by signing any such counterpart.

28. LAW

28.1. This Agreement shall be governed by and construed in accordance with English Law and the Parties hereby irrevocably agree to submit to the exclusive jurisdiction of the English courts for all matters relating to, connected with and/or arising out of this Agreement.

28.2. Neither Party will make (or attempt to make) any claim or take any action which conflicts with or is inconsistent with any of the provisions of this Clause 28.

AS WITNESS the hands of the duly authorised representatives of the Parties the day and year first before written.

SIGNED BY  [print name] **DUNCAN CURRAH**
Duly authorised on behalf of the BID Company


SIGNED BY [print name] **TUDOR EVANS**
Duly authorised on behalf of the Council