

The Funding Agreement

THIS AGREEMENT is made the 18th day of July 2005, and made between;

- (1) Plymouth City Centre Company Limited (No. 5124506) of, Ballard House, West Hoe Road, Plymouth, Devon, PL1 3AE ("the BID Company") and
- (2) Plymouth City Council of the Civic Centre, Plymouth PL1 2EW ("the Council")

(1) The BID Company and the Council have today entered into a concordat and contract for the provision of services with the Plymouth Business Improvement District ("the BID Contract")

(2) The Council, acting in accordance with its powers and duties under the Local Government Act 2003 (the 2003 Act) will retain and administer the BID Levy in accordance with the 2003 Act and the arrangements recorded in this Agreement.

(3) In addition, the Council, acting pursuant to its powers of well being under Part I Local Government Act 2000, will make available to the BID Company the Additional Funds for the purpose of the implementation of the BID Arrangements.

1. DEFINITIONS

Unless the context otherwise requires, words and expressions defined in the BID Contract shall have the same meaning in this Agreement.

- 1.1 "**Additional Funds**" means the funds or money payable by the Council to the BID Company in addition to the BID Levy, and which are particularised in paragraph 4 of this Agreement.
- 1.2 "**BID Company Cash Flow Forecast**" means an annual calculation and account, prepared by the BID Company in consultation with the Council, which shows the BID Company's proposed expenditure for each financial year, how the BID Company proposes to use funds made available to it throughout that year, and when those funds are required by the BID Company to permit it to pursue its objectives and implement the BID Arrangements.
- 1.3 "**BID Revenue Account**" means the account set up by the Council to receive payment of the BID Levy.
- 1.4 "**Commencement Date**" means 1 April 2005
- 1.5 "**Commercial Use Income**" means the net income to the Council (after deduction of associated costs or taxes if any) from the commercial letting of promotion spaces or the letting of fair ride spaces within the BID Area
- 1.6 "**Duration of the BID Arrangements**" shall be given the meaning provided for in Section 54 of the 2003 Act
- 1.7 "**First BID Company Cash Flow Forecast**" means the BID Company Cash Flow Forecast for the financial year 1 April 2005 to 31 March 2006

1.8 **"Street Trading Account"** means the account operated by the Council in relation to its functions regarding street trading under the Local Government (Miscellaneous Provisions) Act 1982.

1.9 **"Subscription Fee"** means the sum of £65,000 plus VAT per annum payable by the Council in respect of its subscription as a member of the BID Company.

2. ARRANGEMENTS FOR FUNDING OF THE BUSINESS IMPROVEMENT DISTRICT

2.1 It is agreed that from the Commencement Date the Council will provide funds to the BID Company in the nature of the BID Levy and the Additional Funds in accordance with the terms of this Agreement.

2.2 The obligation on the Council set out in paragraph 2.1 above will last for the Duration of the BID Arrangements, **PROVIDED** that unless otherwise agreed the obligation to provide the Additional Funds shall not extend beyond 31 March 2010.

2.3 For the avoidance of doubt the Council's funding obligations in this Agreement replace and override any funding obligations the Council might have in relation to subscriptions under the BID Company's Articles of Association.

2.4 In relation to the First BID Company Cash Flow Forecast, so as to arrange for the BID Company to be in funds and able to start implementing the BID Arrangements without delay the Council and the BID Company will arrange for the preparation of the First BID Company Cash Flow Forecast as soon as possible on or shortly after the Commencement Date. The Council will arrange that payments in accordance with the First BID Company Cash Flow Forecast insofar as they relate to the Additional Funds will be made to the BID Company from those Additional Funds identified within the Council's accounts as they stand at 31 March 2004, and that payments will be made as soon as possible upon closure of the Council's accounts or sooner by arrangement between the Council and the BID Company.

3. THE BID REVENUE ACCOUNT

The arrangements for the operation of the BID Revenue Account and the receipt of payments by the BID Company in respect of the BID Levy are as follows;

3.1 The Council will operate and maintain the BID Revenue Account in accordance with the statutory provisions of Section 47 of the 2003 Act.

3.2 The BID Company and the Council will co-operate in the annual preparation of the BID Company Cash Flow Forecast and will ensure that the BID Company Cash Flow Forecast for each financial year after the Commencement Date will be agreed between them no later than 3 months before the commencement of such financial year.

3.3 The Council will make payments of the BID Levy received and credited to the BID Revenue Account in accordance with the BID Company Cash Flow Forecast.

- 3.4 Where, as a consequence of a failure to pay or delay in the receipt of the BID Levy from those obliged to pay it the Council finds that it has insufficient funds in the BID Revenue Account to make payments to the BID Company as envisaged under clause 3.3 above, the Council shall not be obliged to make payments to the BID Company from the BID Revenue Account as envisaged by the BID Company Cash Flow Forecast unless or until such funds are available. The Council will consider advancing payments to the BID Company in line with the BID Company Cash Flow Forecast provided that it is satisfied that there is sufficient evidence to indicate that BID Levy payments are being made by non-domestic ratepayers within the BID Area.
- 3.5 The Council will enforce the payment of the BID Levy in accordance with the usual procedures adopted by the Council in relation to the payment of non domestic rates and in line with any guidance provided by HM Government for BID Levy payments including the recovery of costs and charging of interest.

4. ADDITIONAL FUNDS

- 4.1 For the purpose of enabling the BID Company to implement the BID Arrangements and subject to the arrangements set out in the First BID Company Cash Flow Forecast the Council agrees to make payment of the funds detailed below, in accordance with the terms and conditions set out in relation to each.

- 4.2 Payment of the Additional Funds shall be made at such times and in such sum as is detailed in the BID Company Cash Flow Forecast

4.3 Street Trading Account

- 4.3.1 The Council is the local authority for administering street trading within the City of Plymouth pursuant to the Local Government (Miscellaneous Provisions) Act 1982.

- 4.3.2 The Council agrees that it will make payments in respect of its street trading income in the BID Area to the BID Company.

- 4.3.3 The payments will be made by the Council to the BID Company in two instalments, on or before 31 May and 1 November in each year. Such payments will be equivalent to the net amounts actually received by the Council for street trading in the BID Area in the 6 month periods ending on 31 March and 30 September before each payment date.

- 4.3.4 The Council, by law, is required to use any surplus on its street trading account for the purpose of furthering or benefiting street trading activity within the City. The Council and the BID Company recognise these limits on the ability to use such funds and the Council will not be required to comply with this Agreement where to do so would amount to a breach of this requirement.

4.4 The Subscription Fee

- 4.4.1 The Council will pay the Subscription Fee either in accordance with the BID Company Cash Flow Forecast or on as soon as possible

after 1 April in any year if a date is not stipulated in the BID Company Cash Flow Forecast.

4.5 **Commercial Use Income**

4.5.1 The Council currently receives the Commercial Use Income and agrees that it will pay such amount to the BID Company.

4.5.2 The payments will be made by the Council to the BID Company in 2 instalments on or before 31 May ("the May Payment") and 1 November ("the November Payment") in each year. The May Payment will be an amount based on the anticipated Commercial Use Income for the period from 1 April to 30 September in each financial year and as provided in the BID Company Cash Flow Forecast. The November Payment will be calculated and agreed by the Parties by reviewing the actual Commercial Use Income for the period from 1 April to 30 September in each year and forecasting the expected Commercial Use Income for the period from 1 October to 31 March for the remainder of each financial year.

5. **Confidential Information**

5.1. 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:

5.1.1. 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;

5.1.2. 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 5.1.2, 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;

5.1.3. 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

- 5.1.4. 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;
 - 5.1.5. is made with the express prior written consent of the other Party;
 - 5.1.6. is made pursuant to a statutory duty or requirement of the Information Commissioner pursuant to the Freedom of Information Act 2000; or
 - 5.1.7. is disclosed by the BID Company to any of its members when reporting to such members about the activities and operation of the BID Company.
- 5.2. Each Party agrees that this Clause 5 shall survive the termination of this Agreement, however arising.
- 5.3. Information shall not be exempted under Clause 5.1 under this Agreement by reason that:
- 5.3.1. 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 5.1; or
 - 5.3.2. 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 5.1 if to obtain or derive it would require substantial skill, labour or expense.

6. Termination

- 6.1. The Council may terminate this Agreement upon giving six months notice in writing, to expire at any time, if 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.
- 6.2. Termination of the BID Contract shall entitle the Council to cease to make payments for street trading and/or Commercial Use Income but all other obligations of the Council under this Agreement shall remain in force until this Agreement is terminated in accordance with its terms.

7. Disagreements

- 7.1. Where the Parties are in disagreement as to the terms or provisions of this Agreement they shall use their best efforts to resolve the disagreement through amicable discussions and consultation.

- 7.2. 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 8.

8. Mediation

- 8.1. 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.

9. Modification of Agreement

- 9.1. 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.

10. Entire Agreement

- 10.1. This Agreement, constitutes 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 will have any effect on the rights, duties, or obligations of the Parties hereunder, or otherwise modify this Agreement.

11. Severability

- 11.1. 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.

- 11.2. 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.

12. Assignment and Sub Contracting

- 12.1. 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)

13. Third Party Rights

- 13.1. Only the Parties may enforce the terms of this Agreement subject to and in accordance with this Agreement.
- 13.2. 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.
- 13.3. 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.

14. Law

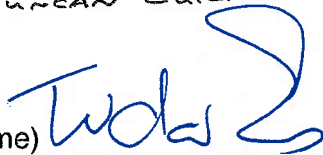
- 14.1. This Agreement shall be governed by and construed in accordance with English Law and the Parties hereby irrevocably agree to submit to the exclusive jurisdiction of the English courts for all matters relating to, connected with and/or arising out of this Agreement.
- 14.2. Neither Party will 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 14.

SIGNED by (print name)
on behalf of the BID Company


DUNCAN CURRAN

Dated

SIGNED by (print name)
On behalf the Council


TUDOR EVANS

Dated