

## SOUTHERN DERBYSHIRE LOCAL IMPROVEMENT FINANCE TRUST

### Summary of Strategic Partnering Agreement

1. This is an agreement entered into between LiftCo and the participating Health and Local Authority's within the area. The Agreement links with the Shareholders Agreement of LiftCo and the Lease Plus Agreements relating to the specific projects developed by LiftCo.
2. It establishes a long-term governance framework for the parties to collaborate in a non-adversarial partnership to achieve the objectives of the Southern Derbyshire Local Improvement Finance Trust ('LIFT'). The parties are required to be open about their strategic goals and aspirations; to jointly agree how to work together to provide integrated services; and to work towards continuous improvements in qualitative and quantitative targets. The Strategic Partnering Board (SPB) reviews these activities and is responsible for performance management of LiftCo.
3. The Initial Agreement lasts for 20 years but may be extended for 5 years by one or more participants. Certain provisions in relation to the associated Lease Plus Agreements continue until the end of the last Lease plus Agreement.

#### **The Strategic Partnering Board**

4. The SPB comprises
  - an independent non voting Chair
  - one representative from each of the five Primary Care Trust's,
  - one representative from Derby City Council
  - one representatives from the/each of the remaining local authorities in Southern Derbyshire
  - one representative from Derbyshire County Council
  - one representative from East Midlands Ambulance Service
  - one representative from Derbyshire Mental Health Trust
  - one representative from Partnerships for Health
  - one representative from LiftCoand non voting representatives from other invited local stakeholders.
5. LiftCo and the Strategic Partnering Board will meet quarterly. The SPB agrees the Strategic Service Development Plan ('SSDP'), approves new projects and formally reviews the operation of the Strategic Partnering Agreement. Decisions are only binding on affected participants if their representative supported the decision. The SPB also reviews financial performance and operating performance under the Strategic Partnering Agreement and Lease Plus Agreements.
6. The initial Properties are transferred to LiftCo on the basis of the SSDP. Future properties are transferred on the approval of new projects, subject to separate sale agreements with each vendor.

### **Property Transfer**

7. The property transfer terms include:
  - consideration may be in cash or equity stake or a combination of both;
  - the possibility of negative transfer value;
  - lease back provisions where appropriate;
  - overage payment provision where appropriate.
8. LiftCo pays overage to the vendor if planning permission is granted within 10 years of the transfer, for part or all of the property, at the rate of 50% of the enhanced value resulting from the planning approval.

### **Approval Of New Projects**

9. New projects are identified and approved by the following process:
  - LiftCo works with the Strategic Partnering Board to develop the SSDP and identify and prioritise new projects.
  - LiftCo assists the participants to produce an outline proposal
  - the affected parties agree the proposals
  - the SPB approves the proposal subject to meeting the participants requirements and consistency with the SSDP
  - LiftCo develops at it's own cost, a detailed submission including;
    - a draft Lease Plus Agreement;
    - detailed plans and drawings;
    - site acquisition,
    - planning approvals,
    - financial model and Lease Plus payments,
    - evidence that the new project is affordable, provides value for money and continues to meet the participants requirements

If the SPB approves the submission, LiftCo develops the new project, Lease Plus Agreements and obtains and complies with all consents.

### **Rejected submissions**

If the SPB reject the submission for failure to meet the approval criteria, LiftCo and the affected participants will try to produce a new submission. If rejected again by the SPB for failure to meet the approval criteria, neither party has any obligation to develop the project further and the participants can procure the project without the involvement of LiftCo.

If the SPB reject the submission for any other reason, the participants pay LiftCo for the associated partnering services and the participants may not proceed with the facilities.

10. LiftCo is responsible for the procurement, design and construction of new projects and for delivery of lease plus services through a Lease Plus Agreement.

### **Partnering Services**

11. The Partnering Services provided by LiftCo to the participants include membership of the Strategic Partnering Board, assistance with service planning, estate and facilities management, estate planning services, property acquisition and disposal, property development, supply chain management,

benchmarking and market testing services and collaborative working.

12. LiftCo recovers its Partnering Services costs as part of its general business overheads through the Lease Plus payments. Non-payment is an act of default and Interest is due on late payments. VAT is payable as appropriate.
13. The costs of providing Partnering Services are recorded on the basis of a schedule of rates that form part of the private sector partner's bid. These rates remain fixed for the period of the Strategic Partnering Agreement subject to inflation at the rate of the Retail Price Index.
14. Each participant appoints a representative to liaise with LiftCo which is entitled to treat any act of a representative as an act of the participant.

### **Value for Money**

15. Value for money on new projects is demonstrated in one of two ways:
  - by market testing LiftCo supply chain on each new project, or
  - by market testing the supply chain for the first new project, after a specified interval and periodically thereafter.
16. Where the second approach is used for new construction projects, LiftCo will demonstrate Value for Money with reference to the original competitive tender rates, the last market test schedule of rates, and local and national cost trends (including other Lift schemes). Where possible for new refurbishment projects LiftCo will demonstrate by comparison with similar local or national projects. LiftCo records and benchmarks capital, maintenance and repair costs and demonstrates lower cost or greater value for money over time. Market testing is at LiftCo's cost.
17. The parties to the Strategic Partnering Agreement agree market testing tender information and evaluation criteria. LiftCo manages the tender process and selects Tenderers on the basis of financial standing, ability and experience as well as price subject to the participants' agreement. LiftCo then selects the preferred Tenderer on the basis of value for money for the participants. A LiftCo supply chain member can tender subject to approval of all of the shareholders of LiftCo.

### **Insurance**

18. LiftCo is responsible for insurance. If LiftCo notifies the SPB of property damage that has become an uninsurable risk, the SPB and LiftCo attempt to reach an agreed position. If this is not possible, LiftCo has right under the lease plus agreement to terminate it, subject to the tenants;' rights to assume responsibility for consequences of the uninsurable risk.

### **Acts of Default By the Participants**

19. If any Participant:
  - materially breaches LiftCo's exclusivity
  - prevents or materially delays an approved new project
  - fails to make payments above a defined amount or if

- or if LiftCo's assets are expropriated, sequestered, nationalised or requisitioned by a Participant

LiftCo is entitled to suspend the relevant agreements until the Participant demonstrate they are capable of performing their obligations, or terminate the agreement and obtain compensation where the Participant has been given notice and has failed to remedy the situation. If LiftCo opts to continue it is entitled to monthly payment for the Partnering Services

### **By LIFT Co**

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If :

- LiftCo terminates a lease plus agreement for abandonment
- LiftCo terminates a lease plus agreement for failure to complete the works by the long stop date
- Fails to meet agreed performance targets across all of the lease plus agreements for successive periods or
- Fails to meet agreed performance targets across a single Lease Plus for successive periods or
- LiftCo Materially breaches the strategic Partnering Agreement

The participants may require LiftCo to replace the relevant supply chain member or remedy the default or put forward a programme to remedy the default, or if the programme is unacceptable, require LiftCo to replace the supply chain member. If LiftCo fails to replace the supply chain member the participants can end Liftco's exclusivity

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If LiftCo:

- LiftCo fails to provide all or a substantial part of the partnering services;
- LiftCo is investigated, prosecuted or convicted under Health and Safety Legislation,
- LiftCo fails to comply with the SPA in relation to assignment, subcontracting, and changes in control;
- Fails to meet agreed performance targets across all of the lease plus agreements for successive periods or
- Fails to meet agreed performance targets across a single Lease Plus for successive periods or
- LiftCo becomes insolvent.

The participants may end LiftCo's exclusivity.

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If the participants are entitled to end LiftCo's exclusivity more than once in any consecutive 3 year period, they can serve notice of a Strategic Partnering Agreement material default which triggers a forced share sale under the shareholder's agreement of LiftCo.

### **Disputes**

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Disputes and differences are dealt with by amicable negotiation, failing that, the parties consider mediation with binding adjudication as a final remedy.