

DATED 30 April

2012

THE LONDON BOROUGH OF BROMLEY

AND

ORPINGTON FIRST LIMITED

**BASELINE AGREEMENT FOR PROVISION
OF STANDARD SERVICES**

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BASELINE AGREEMENT FOR PROVISION OF STANDARD SERVICES

THIS AGREEMENT is made the 1st day of April 2013

BETWEEN

(1) **THE MAYOR AND BURGESS OF THE LONDON BOROUGH OF BROMLEY**
("the Council") of Civic Centre, Stockwell Close, Bromley, Kent, BR1 3UH;

and

(2) **ORPINGTON FIRST LIMITED** ("the BID Company") registered as a company limited by guarantee having no share capital in England with Company Registration Number 8139594 whose registered office is at The Management Suite, The Walnuts, Orpington, Kent, BR6 0TW

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 HEREBY AGREED:

1. Definitions

- 1.1 In this Agreement, except where the context otherwise requires the following expressions shall have the meanings hereby ascribed to them:

Additional Service(s) means those service(s) that the Council currently provides as standard in the BID area but are not statutorily required as set out in Part 2 of Schedule 1;

Ballot Result Date means the 22nd February 2013, being the date upon which a successful ballot result has been declared in favour of putting in place the BID Arrangements;

Best Value Duty means the duty imposed on the Council by Section 3 of the Local Government Act 1999;

Best Value Indicators means the best value data compiled by the Council as a result of carrying out its Best Value Duty;

Best Value Review means the Best Value Review or equivalent to be carried out by the Audit Commission to assess the performance of the Council;

BID Area means that area within which the BID operates as edged red in the plan attached to this Agreement as Schedule 2;

BID Arrangements has the same meaning as provided in Section 41 of the Local Government Act 2003;

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

BID Levy means the charge levied and collected within the BID pursuant to the Regulations;

BID Levy Payers means the hereditaments liable for paying the BID Levy;

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

BID Term means the period from 1st April 2013 until 31st March 2018;

Failure Notice means a notice served by the BID Company which:

- (a) sets out the Standard Service to which the notice relates to;
- (b) states the manner in which the Standard Service is not being provided;
and
- (c) requests the Council to liaise directly with the provider or contractor for the purposes of securing performance of the Standard Service;

Operating Agreement means the agreement dated 1 April 2013 between the Council and the BID Company which sets out various procedures for the collection, monitoring and enforcement of the BID Levy;

Markets Agreement means the agreement to be entered into on 1 April 2013 between the Council and the BID Company which sets out various procedures for the renting of promotional and trading areas in the BID area.

Proposals 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 Voluntary 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';

Protocols means the informal procedures to be agreed by the Council and the BID Company the purpose of which is to assist in the provision of the Standard Services;

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 are provided by the Council within the BID Area as set out in Part 1 of Schedule 1 which identifies those services which it is required to undertake as part of its statutory function as a Local Authority and Part 2 of Schedule 1 which identifies those services undertaken which are additional services to those it is required to provide as part of its statutory function;

Standard Services Review Panel means the panel to be set up consisting of 3 officers of the Council, each of whom must have authority to make decisions on behalf of the Council and 4 representatives from the BID Company or such other numbers as the parties may agree;

Voluntary Contributions means any contributions or funds paid or made available to the BID Company which do not form part of the BID Levy.

- 1.2 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.
- 1.3 References to the Council shall include any successors to its functions as a local authority.
- 1.4 References to Acts of Parliament or to any Order, Regulation, Statutory Instrument or the like shall be deemed to include a reference to any amendment or re-enactment of the same.
- 1.5 This Agreement, and issues or disputes arising out of or in connection with it (whether such disputes are contractual or non-contractual in nature, such as, but not limited to, claims in tort, for breach of statute or regulation) shall be governed by and construed in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English Courts.

2. Statutory Authorities

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

3. Commencement and Continuation Requirements

- 3.1 This Agreement shall take effect as from 1st April 2013 and in any event shall determine and cease to be of any further effect in the event that:-
- 3.1.1 the BID Company fails to secure approval of the Proposals, Renewal Proposals or Alteration Proposals in a ballot, renewal ballot, alteration ballot or rebalot;
 - 3.1.2 the Secretary of State declares void a BID ballot, renewal ballot, alteration ballot or rebalot;
 - 3.1.3 the Council exercises its veto and there is no successful appeal against the veto;
 - 3.1.4 the BID Term expires save where the BID Company secures approval of Renewal Proposals in a renewal ballot or Alteration Proposals in an alteration ballot or Proposals in a rebalot in which event this Agreement shall continue until the expiry of the BID Term set out in the Renewal Proposals, Alteration Proposals or the Proposals set out in the rebalot provided, in relation to Renewal Proposals and Alteration Proposals, the Council and the BID Company both consent to such continuation;
 - 3.1.5 the Council exercises its discretion to terminate the BID Arrangements in exercise of its powers under Regulation 18 of the Regulations;
 - 3.1.6 the parties terminate this Agreement pursuant to Clause 9 of this Agreement.

4. Not used

5. The Council's Obligations

5.1 The Council agrees to the following:

5.1.1 to provide the Standard Services within the BID Area at its own cost for the duration of the BID Term;

5.1.2 to not use the BID Levy at any time to either fund or procure the Standard Services;

5.1.3 to provide different Standard Services, delayed Standard Services or no Standard Services in the event that it is not reasonably practicable to provide the Standard Services by reason of the following:

5.1.3.1 insufficient funds being available for the specified service identified in Schedule 1 Part 2;

5.1.3.2 adverse weather conditions in or affecting the BID Area;

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

5.1.3.4 restrictions by the Police as to the persons and/or number of persons permitted access in the BID Area;

5.1.3.5 a traffic accident or major spillage in the BID Area;

5.1.3.6 marches, parades, festivals and visits by VIPS in or affecting the BID Area where such activities directly impede or inhibit the Standard Services from being provided;

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

PROVIDED ALWAYS that the Council shall first and, if possible, provide the BID Company and the Standard Services Review Panel with reasonable notice, including, if any, details of how the BID Company can assist in rectifying the problem, in the event that the Council intends, or has been forced, to provide different Standard Services, delayed Standard Services or no Standard Services as a result of any of the reasons mentioned in this Clause 5.1.3 and the Council shall, if possible, endeavour to recommence the Standard Service as soon as reasonably practicable to the same standard as being provided before the change;

5.1.4 in the event that the Council is unable to continue to provide all or any part of the Standard Services within the BID Area on account of its being statutorily barred from doing so in respect of any of those Standard Services set out in Part 1 of Schedule 1 or its having insufficient funds to secure the provision of any of those Standard Services set out in Part 2 of Schedule 1 it shall carry out the following for the BID Company and the Standard Services Review Panel:

5.1.4.1 identify which part or parts of the Standard Services it is unable to provide;

5.1.4.2 provide a detailed explanation of why such identified Standard Service is to be withdrawn; and

5.1.4.3 state the date upon which the Council will cease to operate the identified Standard Service;

5.1.5 to implement such recommendations in the carrying out or provision of the Standard Services as may be made by the Standard Services Review Panel;

5.1.6 within one month prior to a Best Value Review to notify the BID Company informing it of the timescales for carrying out the Best Value Review;

