

Dated

OPERATING PROCEDURES

**BUSINESS IMPROVEMENT DISTRICT FOR THE FITZROVIA
PARTNERSHIP LIMITED**

NAME OF COUNCIL:

The London Borough of Camden

NAME OF BID COMPANY:

The Fitzrovia Partnership Limited

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Schedules attached to e-mail

- SCHEDULE A Council's Procedure Documents setting out how it will administer, bill and collect the BID Levy charges.
- SCHEDULE B BID Arrangements issued to Stakeholders
- SCHEDULE C Map of geographical area highlighting the areas covered by BID
- SCHEDULE D List of Hereditaments within BID area at the beginning of the Term liable to BID levy

Operating Procedures

Dated

Between

- (1) **The London Borough of Camden** (the “Council”) of Camden Town Hall, Judd Street, London WC1H 9JE; and
- (2) **The Fitzrovia Partnership Limited** (the “BID Company”) registered as a company limited by guarantee in England with number 06792669 whose registered office is at Derwent London, 25 Saville Row, London. W1S 2ER.

Recitals

- A The Council is a billing authority for the purposes of the Local Government Act 2003 which has made BID Arrangements in accordance with section 41 of that Act and is responsible for the administration, billing and collection of the BID Levy.
- B The BID Company is the “BID Body” for the purposes of the Regulations as defined therein and is therefore responsible for the operation of the BID and for using the BID Levy for the purposes of achieving the objectives and aspirations set out in the BID Arrangements.
- C Both parties wish to agree the arrangements by which the BID Levy shall be collected together with general arrangements as to the relationship to be established between the Council and the BID Company for the duration of the BID
- D The purpose of this Agreement is:
- Confirm the basis upon which the Council will be responsible for collecting the BID Levy
 - Agree enforcement mechanisms for the collection of the BID Levy
 - Set out procedures for accounting and transference of the BID Levy
 - Set out procedures for monitoring and review of the collection of the BID Levy
 - Identify and agree the baseline services that are currently provided by the Council in the BID

It is agreed:

1 Definitions

Agreement means these contractual terms and conditions and schedules attached hereto.

Annual Report means a report to be prepared by the Council in accordance with clause 8.6 below which shall include, for the relevant Financial Year the following information:-

- (i) the Financial Accounts;
- (ii) the total amount of BID Levy Raised;
- (iii) the total amount of BID Levy collected;
- (iv) the total amount of the Deductions;
- (v) the total amount of uncollected debit c/fwd at the end of the Financial Year
- (vi) any proposals from the Council to help improve its efficiency in the collection and enforcement BID Levy
- (vii) a report including a schedule of all non-paying Stakeholders existing at the end of the relevant Financial Year and the enforcement action taken or to be taken by the Council in respect of such Stakeholders

Bad or Doubtful Debts means those sums which are recorded as bad or doubtful debts by the Council as a result of non-payment of the BID Levy by Stakeholders in accordance with the Council's usual accounting practices

BID means the Business Improvement District which operates within the area highlighted on the map in Schedule C and which is managed and operated by the BID Company

BID Arrangements means the arrangements attached hereto at Schedule B as amended from time to time in accordance with the conditions stipulated therein and the Regulations

BID Levy means the charge to be Raised and collected from the Stakeholders within the area of the BID in accordance with the terms set out in the BID Arrangements and

the Regulations and to be used, subject to the terms of this Agreement, by the Council solely to procure from the BID Company the services and proposals set out within the BID

BID Revenue Account means the account to be set up in accordance with Regulation 14 and operated in accordance with Schedule 3 of the Regulations

Business Rates Manager means the Council officer responsible for the implementation of the Council's obligations under (and the management of) this Agreement

Chief Finance Officer means the officer designated with responsibility for the financial administration of the Council under section 151 of the Local Government Act 1972

Contract Standard means in relation to the performance of any of the Services, carrying out such Service(s) in accordance with all relevant provisions of this Agreement and in compliance with all relevant Acts of Parliament, Statutory Regulations, Orders and Codes of Practice in operation from time to time

Deductions means the agreed administrative fee, relief, write offs, losses, refunds, hardship relief awarded, enforcement income collected in accordance with Schedule A and Bad or Doubtful Debts together with all other sums agreed with the BID Company as the Council may deduct from the BID Levy in accordance with paragraph 2 of Schedule 3 of the Regulations

Enforcement Notice means a notice to be served on the Council by the BID Company for failure to enforce payment of the BID Levy as specified in Clause 7

Force Majeure means any cause materially affecting the performance by a party of its obligations under this agreement arising from any act, events, omissions, happenings or non-happenings beyond its reasonable control including, without limitation, acts of God, strikes, lock-outs or other industrial disputes, war, riot, fire, flood or any disaster affecting either one of the parties hereto or a third party for which a substitute third party is not reasonably available;

Financial Accounts means a statement of all debits and credits made to the BID Revenue Account by the Council for the relevant Financial Year in accordance with Schedule 3 of the Regulations including the total Payable BID Levy for that Financial Year;

Financial Year means the financial year for the Council which runs from 1st April to 31st March

First Demand Notice means the notice to be served on the relevant non-paying Stakeholder by the Council pursuant to Clause 7.1

Monitoring Group means the group to be set up to monitor the collection and enforcement of the BID Levy such group to consist of relevant Council officers and representatives from the BID Company as set out in the BID Arrangements

20 July 2012 means the date upon which the successful ballot result has been declared in favour of putting in place the BID Arrangements or the date of this Agreement, whichever is the later.

Payable BID Levy means the balance (in cleared funds) of the BID Revenue Account plus all credits and less all debits and Deductions made or to be made by the Council in accordance with Schedule 3 of the Regulations and this Agreement

Quarter means a period of three months from the start of each Financial Year and every period of three months thereafter

Raised means sums calculated and to be demanded by the Council as being due and payable by Stakeholders in accordance with Schedule 4 of the Regulations and "Raise" shall be construed accordingly

Regulations means the Business Improvement Districts (England) Regulations 2004 as amended from time to time

Second Demand Notice means the notice to be served on the relevant non-paying Stakeholder by the Council pursuant to Clause 7.1

Services means the services to be provided by the Council in accordance with this Agreement and described in Schedule A.

Stakeholders means the non-domestic rate payers liable to pay the BID Levy as identified in the BID Arrangements

Term means 5 years, the term of the BID Arrangements as stipulated within that document and attached to this Agreement at Schedule B

VAT means United Kingdom value added tax or similar tax which may be imposed in place from time to time

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 Term

3.1 This Agreement is conditional on and shall not take effect until the Operational Date.

3.2 Following the Operational Date this Agreement shall continue in full force and effect for the duration of the Term

4 Good faith Obligations

4.1 Both parties will act in good faith towards each other in relation to all matters arising under this Agreement and in particular (without failure to comply with the same amounting to a breach of contract) each party shall inform the other fully and as soon as reasonably possible of any circumstances of which it becomes aware which might lead to a necessity for a change to this Agreement, a potential dispute or any other circumstance of which both parties should be aware.

4.2 Any approval, act, omission, decision, requirement, agreement or any other step of any kind taken by or on behalf of either party shall be so taken reasonably and in good faith and any reference (express or implied) to period, time, occasion, amount, price or any other matter shall be subject to the qualification of reasonableness, unless the context otherwise requires.

5 Payment for the Services

5.1 The Council's charge for the provision of the Services will be £7200.00 in the first year of the Term (excluding VAT), that sum to be increased or decreased in subsequent years by the proportionate increase or decrease in RPI during the previous year.

- 5.2 Following receipt by the BID Company of a valid VAT invoice, payment of that invoice will be due together with VAT thereon on the date of this Agreement and on the anniversary thereof in each year of the Term.

VAT in respect of BID Levy

- 5.3 All payments of Payable BID Levy made from the Council to the BID Company under the terms of this Agreement shall be exclusive of VAT chargeable in respect of the implementation of the BID Arrangements for which the payment of Payable BID Levy is consideration and such VAT shall be added to the amount thereof and paid in addition thereto upon production of a proper VAT invoice by the BID Company.

6 Enforcement Procedures by the Council for payment of the BID Levy

- 6.1 In the event that the BID Levy is not paid by a Stakeholder by the date specified within a demand notice, the Council shall instigate enforcement action against such non paying Stakeholder in accordance with Schedule A.

- 6.2 Where the Council instigates Court action as required in accordance with Schedule A, it shall do so at its own expense and for the avoidance of doubt such costs and expenses shall not be a Deduction for the purposes of this Agreement unless and until such time as the Council successfully recovers such costs and expenses from the relevant Stakeholder on behalf of the BID Company at which time the relevant Deduction shall be the sum recovered in respect of the Council's costs in bringing the Court action.

7 BID Company Recourse in event of non-collection of BID Levy by the Council

- 7.1 In the event that the Council fails to enforce payment of the BID Levy in accordance with clause 6.1 above and Schedule A the BID Company shall serve an Enforcement Notice on the Council (such notice to be copied to the Monitoring Group) requesting that:-

- (i) it serve a First Demand Notice;
- (ii) it serve a Second Demand Notice; or
- (iii) it commence court proceedings pursuant to clause 6 above and Schedule A.

Within 14 days of receipt of such Enforcement Notice the Council shall provide written confirmation of the action taken or to be taken (including timescales for the implementation of such action) to recover the unpaid BID Levy to the BID Company and the Monitoring Group

7.2 If after serving an Enforcement Notice the Council fails to take the requested action within the specified time frame the BID Company shall inform the Monitoring Group of the Council's failure to act and request that the Monitoring Group arrange a meeting between the Monitoring Group and the BID Company and relevant Officers of the Council in order to achieve a solution and/or agree a strategy to recover the outstanding sum. Such strategy shall include a time frame within which action will be taken by the Council to recover the unpaid sum or sums.

7.3 If after serving an Enforcement Notice and attending the meeting arranged by the Monitoring Group pursuant to clause 7.2 the Council fails to take the requested action within the time frame agreed during the said meeting then the BID Company shall serve an Appeal Notice to the Chief Finance Officer and Chief Executive of the Council, such notice shall:-

- (i) Detail the sum/s which remain unpaid;
- (ii) Confirm that the Council has failed to use the enforcement mechanisms available to it under this Agreement to recover the sum; and
- (iii) Request that a meeting take place between the relevant officers of the Council and BID Company to achieve a solution and/or agree a strategy to recover the outstanding sum such meeting to take place in any event no later than 28 days from service of the Appeal Notice

7.4 Where the Council fails to attend the meeting specified at clause 7.3 (iii) above; or fails to implement any action plan agreed at that meeting within a period of 14 days from the date of the meeting the Council shall use its best endeavours and take all necessary steps required of it by the BID Company to enable the BID Company to enforce collection of the BID Levy which may include the appointment of the BID Company as its agent and/or the grant to the BID Company of the conduct of any litigation and enforcement on behalf of the Council.

7.5 In the event that:

- (i) the BID Company is unable to take steps to enforce the BID Levy itself by any method; and
- (ii) the Council has failed to use its best endeavours or take all necessary steps to assist the BID Company in enforcing the BID Levy itself; and
- (iii) the total outstanding sum remaining unpaid as a consequence of the failure of the Council to take the appropriate action exceeds 5% of the total BID Levy for that Financial Year; then

the Council will pay to the BID Company from its own resources and on written demand from the BID Company the outstanding sums for which the Council has failed to enforce payment in accordance with this Agreement up to a maximum sum of £30,000 provided that nothing within this clause 7.5 shall prevent or limit any other claim or remedy the BID Company may have against the Council in tort for breach of statutory duty.

8 Accounting Procedures and Monitoring

8.1 Within 1 month from the Operational Date the Council and BID Company shall form the Monitoring Group which shall include the following representatives:

- (i) from the BID Company, the BID Company's Representative and Programme Co-ordinator (Finance); and
- (ii) from the Council, the relevant representatives from the Regeneration, Business Development Manager and Finance Sections as appropriate and the Business Rates Manager

8.2 Each week thereafter the Council shall provide the BID Company with a report which shall include:-

- (i) the BID Levy due and payable by each Stakeholder together with details of any refunds or credits owed by the Council to any Stakeholder
- (ii) the amount of BID Levy collected from each Stakeholder;
- (iii) details (together with the outstanding unpaid sum) of those Stakeholders who have not paid the BID Levy together with the

Council's enforcement action or intended enforcement action in respect of such Stakeholders;

- (iv) summary details of any unpaid sums due to the Council from the BID Company;
- (v) information on any changes in the occupation of hereditaments liable to BID Levy and on any new Stakeholders.
- (vi) The balance then standing to the credit of the BID Revenue Account
- (vii) The sum being retained in the Bid Revenue Account for the time being in respect of Bad or Doubtful Debts

8.3 Within 14 days following the end of each Quarter both parties shall arrange for the Monitoring Group to meet for the purposes of:-

- (i) reviewing the effectiveness of the collection and enforcement of the BID Levy from the information made available pursuant to clause 8.2 above; and
- (ii) reviewing the progress in achieving the objectives set out in the BID Arrangements

8.4 The persons attending the quarterly meetings shall be the members of the Monitoring Group together other appropriate officers depending upon the matters to be discussed.

8.5 Both parties will also attend regular liaison meetings. Review of performance will be a standing item on the agenda. These meetings will be minuted and progress will be reported to the Business Rates Manager and the BID Company member in charge of the implementation of this Agreement.

8.6 Within 1 month from the end of the Financial Year the Council shall provide the Annual Report to the BID Company.

9 BID Company's Representative

9.1 The BID Company's Representative shall be such person nominated in writing by the BID Company from time to time to act in the name of the BID Company for the purposes of the Agreement.

9.2 From time to time the BID Company's Representative may appoint one or more representatives to act for the BID Company's Representative generally or for specified purposes or periods. Immediately any such appointment is made, the BID Company's Representative shall give written notice thereof to the Council.

10 The Council's Obligations

10.1 The Council shall, subject to this Agreement, carry out the Services in compliance with the Agreement. The Council shall proceed with all due expedition and diligence when demanding and collecting BID Levy from Stakeholders.

10.2 The Council shall administer the BID Revenue Account in accordance with good accounting practice and the Regulations and on receipt from the BID Company of a properly vouched invoice shall, subject to the Regulations, make payment to it within 28 days thereafter by BACS from the balance in the BID Revenue Account after due allowance has been made for Bad or Doubtful Debts.

10.3 At all times the Council shall provide the Services described in the Agreement with: reasonable skill, care and diligence; the utmost good faith; and to the Contract Standard set out herein and, subject as aforesaid, to the reasonable satisfaction of the BID Company's Representative.

10.4 The Council shall inform the BID Company's Representative promptly and confirm in writing if the Council is unable or fails to provide the Services or any part thereof, or if the Council is aware of anything of whatsoever nature which may hinder the Council from complying with the Agreement giving details of the circumstances, reasons and likely duration. The provision of information under this Clause 10.4 shall not in any way release or excuse the Council from any of its obligations under the Agreement.

11 Audit

11.1 For the purpose of conducting any audit investigation of the Agreement, each party shall throughout the Term provide all facilities and allow full access to the other or its auditors to:

11.1.1 all offices and premises for the purpose of inspecting records and documents in its possession, custody or control in connection with the Services;

11.1.2 all technology, resources, systems and procedures used or proposed to be used in connection with the provision of Services; and

11.1.3 interview its staff and officers.

12 Assistance in legal proceedings

12.1 If requested to do so by the Business Rates Manager or the BID Company's Representative, each party shall provide the other with any relevant information in connection with any legal inquiry, arbitration or court proceedings in which the Council or the BID Company may become involved or any relevant disciplinary hearing internal to the Council or the BID Company and shall give evidence in such inquiries or proceedings or hearings, arising out of the provision of the Services. The reasonable costs and expenses of and occasioned by provision of such assistance shall be paid by the requesting party unless the inquiry, proceedings or hearings arose from the acts, defaults, omissions or breaches of the party providing assistance.

13 Confidentiality

13.1 To the extent permissible under the Freedom of Information Act 2000, 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 Stakeholders 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.

14 Notices

14.1 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.

14.2 A Notice may be served by

14.2.1 delivery to the Business Rates Manager at the Council's address;

14.2.2 delivery to the Company Secretary at the BID Company's address specified above

14.2.3 registered or recorded delivery post.

14.3 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.

15 Intellectual Property Rights

15.1 Copyright in all documents provided by either party to the other in connection with this Agreement shall remain vested in the party who provided them.

15.2 Where under Clause 15.1 copyright remains vested in the Council, the BID Company shall have unrestricted licence to use such document for all purposes envisaged by or arising under this Agreement.

16 Health and Safety

16.1 The parties shall at all times comply with the requirements of the Health and Safety at Work, etc. Act, 1974, the Management of Health and Safety at Work Regulations 1992 and all Orders or rules of law pertaining to health and safety.

17 Equal Opportunities

17.1 The parties shall comply with their statutory obligations under the provisions of the Equality Act 2010 together with any applicable anti-discrimination legislation and with the Council's policies as may be amended from time to time, copies of which the Council will provide to the Provider upon written request.

18 Data Protection

18.1 The parties shall comply with the provisions of the Data Protection Act 1998 so far as applicable to this Agreement and the Service and shall indemnify each other against all actions, costs, expenses, claims, proceedings and demands which may be brought against the other party for breach of statutory duty under this Act which arises from the use disclosure or transfer of personal data by the other party or its servants or agents.

19 Force Majeure

- 19.1 Either party shall notify the other in writing of any Force Majeure event as soon as it shall be aware of it.
- 19.2 Neither party shall be in breach of the Agreement by reason of any Force Majeure event. Each party shall bear their own cost arising as a consequence of the Force Majeure event.
- 19.3 Both parties shall use all reasonable endeavours to secure the resumption of the Services at the earliest possible opportunity following a Force Majeure event.

20 Whole Agreement

- 20.1 The Agreement constitutes the whole agreement and understanding of the parties as to the subject matter hereof and there are no prior or contemporaneous agreement between the parties with respect thereto.

21 Miscellaneous

- 21.1 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 then such part shall be struck out and the balance of this Agreement shall remain
- 21.2 The headings appearing in this Agreement are for ease of reference only and shall not affect the construction of this Agreement
- 21.3 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
- 21.4 References to the Council includes any successors to its functions as local authority
- 21.5 References to statutes, bye laws, regulations, orders, delegated legislation shall include any such instrument re-enacting or made pursuant to the same power

22 Exercise of the Council's Powers

- 22.1 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 statutes bye-laws

statutory instruments orders and regulations in the exercise of its functions as a local authority.

23 Contracts (Rights of Third Parties)

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

24 Arbitration

24.1 The following provisions shall apply in the event of a dispute.

24.2 Where a complaint is made against either party or a dispute arises in relation to any part of this Agreement which appropriate representatives of the parties fail to resolve within a reasonable period of time (complaints or disputes should be resolved at the lowest level, wherever possible), the matter shall be referred in writing to the Council's Chief Finance Officer (or if the Council deems appropriate the Chief Executive) and the Chairman of the BID Company. These parties shall then meet and use all endeavours to resolve the issue or dispute.

24.3 Where any dispute is not resolved in accordance with clause 24.2 above within 28 days of referral to the same, it shall be referred to arbitration before a single arbitrator.

24.4 The parties shall jointly appoint the arbitrator not later than 28 days after service of a request in writing by either party to do so.

24.5 If the parties are unable to agree within 28 days as to the appointment of such arbitrator then such arbitrator (hereinafter referred to as "the tribunal") shall be appointed on the application of either party to the President for the time being of the Law Society.

24.6 In the event of a reference to arbitration the parties agree to:

- (i) prosecute any such reference expeditiously and
- (ii) do all things or take all steps reasonably necessary in order to enable the tribunal to deliver any award (interim, final or otherwise) as soon as reasonably practicable

24.7 The award shall be in writing signed by the tribunal and shall be finalised within 21 days

24.8 The award shall be final and binding both on the parties and on any persons claiming through or under them

25 Amendments

25.1 Other than in respect of amendments to the BID, the BID Arrangements and/or the BID Levy in accordance with the Regulations (the definitions of which within this Agreement shall be amended to refer to the revised BID, BID Arrangements and/or the BID Levy) no amendment to this Agreement or Schedules shall be binding unless it is in writing and signed by the duly authorised representatives of the Council and of the BID Company and expressed to be for the purpose of such amendment.

26 Reciprocal Indemnities

26.1 The BID Company shall be liable for and shall fully and promptly indemnify and keep indemnified the Council, its employees and agents, against all liabilities, demands, proceedings, damages, costs, losses, claims, charges and expenses whatsoever in any way arising out of or in connection with:

26.1.1 the management of the BID by the BID Company; and

26.1.2 the injury to, or death of, any person howsoever arising whether in contract, tort or otherwise except and to the extent that it may arise out of the act, default or negligence of the Council.

26.2 The Council shall be liable for and shall fully and promptly indemnify and keep indemnified the BID Company, its employees and agents, against all liabilities, demands, proceedings, damages, costs, losses, claims, charges and expenses whatsoever in any way arising out of or in connection with:

26.2.1 a failure of the Council in the provision of the Services (other than a failure by the Council to take the steps and actions referred to in clauses 6.1 and 7 to enforce the BID Levy for which liability shall be limited in accordance with clause 7 above); and

26.2.2 the injury to, or death of, any person howsoever arising whether in contract, tort or otherwise except and to the extent that it may arise out of the act, default or negligence of the BID Company.

26.3 Both parties shall ensure that they have appropriate insurances in place to cover their potential liabilities under this Contract and in particular the BID Company shall maintain, continue to maintain throughout the Term, and provide reasonable evidence thereof to the Council, Public Liability Insurance up to a minimum level of cover of £5 million in respect of any one incident.

27 Applicable Law

27.1 This Contract is governed by and interpreted in accordance with English Law, and shall be subject to the exclusive jurisdiction of the English Courts.

IN WITNESS hereof:
EXECUTED as a Deed by the parties on the date which first appears on this instrument

THE COMMON SEAL of LONDON)
BOROUGH OF CAMDEN was hereunto)
affixed in the presence of:)

..... Authorised Signatory

EXECUTED and DELIVERED as a DEED)
By **FITZROVIA PARTNERSHIP LIMITED**)
in the presence of:)

..... Director/Secretary

..... Director