

2019

BID LEVY OPERATING AGREEMENT

Between

The London Borough of Richmond Upon Thames

- and -

Try Twickenham BID Ltd

Agreement

This Agreement is made the day of March 2019 BETWEEN

- (1) The London Borough of Richmond Upon Thames (LB Richmond)
Civic Centre, 44 York St, Twickenham, TW1 3BZ

- (2) Try Twickenham BID Ltd (the BID Company)
30 Heath Rd, Twickenham, TW11 4DD

Recitals

- A** The LB Richmond is the billing authority for the purposes of the Local Government Act 2003 and is responsible for collecting the BID Levy and administering the BID Revenue Account which shall be used towards the operation of the BID within the area of the Local Authority and the funding of the BID Arrangements.
- B** The BID Company is responsible for the operation of the BID and for using the BID Levy for the purposes of achieving the BID Arrangements.
- C** Both parties wish to confirm the arrangements by which the BID Levy shall be collected together with general arrangements as to the relationship to be established between the LB Richmond and the BID Company Ltd for the duration of the BID.
- D** The purpose of this Agreement is to:
 - establish the procedure for setting the BID Levy;
 - confirm the basis upon which the LB Richmond will be responsible for collecting the BID Levy;
 - set out the enforcement mechanisms for collection of the BID Levy;
 - set out the procedures for accounting and transference of the BID Levy;
 - provide for the monitoring and review of the collection of the BID Levy;
 - confirm the manner in which the LB Richmond expenses incurred in collecting the BID Levy shall be paid by the BID Company.

1 Statutory Authorities

This Agreement is made pursuant to Section 2 and Part IV of the Local Government Act 2003 and Section 111 of the Local Government Act 1972 and all other enabling powers.

The London Borough of Richmond upon Thames (LB Richmond) of Civic Centre, 44 York St., Twickenham, TW1 3BZ

2 Commencement

This Agreement shall take effect on the Commencement Date and in any event shall determine and cease to be of any further effect in the event that:

- the BID Term expires save where the Try Twickenham BID Ltd secures approval of BID Proposal in a renewal ballot or Alteration Proposal in an alteration ballot or Proposal in a re-ballot in which event this Agreement shall be reviewed/amended for the next BID Term set out in the BID Proposal, Alteration Proposal or the Proposal set out in the re-ballot provided, in relation

to Renewal Proposal and Alteration Proposal the Council consents to such continuation;

- LB Richmond exercises its discretion to terminate the BID Arrangements in exercise of powers under regulation 18 of the Regulations.

3 Legislative Requirements

The billing, collection, enforcement and general administration of the Business Improvement District shall be in accordance with The Business Improvement Districts (England) Regulations 2004 (as amended). (The regulations).

4 The BID Revenue Account

LB Richmond shall keep a BID Revenue Account in accordance with regulations and accounting codes of practice in force at the time and provide written confirmation to the Try Twickenham BID Ltd of the same as required.

Try Twickenham BID Ltd shall provide LB Richmond with details of its bank account into which the BID Levy shall be transferred from the BID Revenue Account and any other details which the LB Richmond may reasonably require.

On the last Working Day of each quarter, during the BID Term, the Council shall inform the BID Company of the total amount of BID Levy monies collected by the Council during the previous quarter and clearly name the BID Levy Payers from which such BID Levy monies have been received.

The Council will pay the BID Levy in 5 instalments equal to:

- i. Start of month 1 – 25% of debt invoiced / to be invoiced
- ii. Start of month 4 – 25% of invoiced debt
- iii. Start of month 7 – 25% of invoiced debt or a lesser amount taking into account all of the collected levies
- iv. Start of month 10 – Any further balance collected
- v. Month 12 – Any further balance collected less any repayments to BID Levy Payers

Upon presentation of the BID Company's invoice the Council will pay the invoiced amount into the BID Company's bank account by electronic bank transfer (BACS) within twenty-eight (28) days.

At least twenty-eight (28) days in advance of the month 1 payment, the Council will supply a Purchase Order number to the BID Company to use on all invoices submitted by the BID Company to the Council.

The invoice referred to above shall clearly set out the BID Levy monies and any VAT at the relevant rate.

The BID Company shall inform the Council immediately if its VAT status changes and shall ensure that VAT is correctly treated on subsequent invoices.

If necessary, LB Richmond will pay to the BID Company or receive from it the balance of monies having taken account of the quarterly on account payments and the balance on the BID Revenue Account at the year end.

If, at the end of the 5-year BID term, Try Twickenham BID Ltd is not renewed, then the final payment is to be made by the final day of its term. Thereafter, any monies collected should be retained in the BID Revenue Account.

LB Richmond will charge Try Twickenham BID Ltd £11,000 in respect of an annual administration charge. In addition, any relevant summons/court costs not recovered for the year will be charged separately. These amounts shall be payable on receipt of an invoice from LB Richmond which will be issued in month 7.

All sums will be subject to Value Added Tax (VAT) where applicable under VAT legislation and regulations in force at the time.

5 Collecting the BID Levy

Try Twickenham BID Ltd will agree with the Council any collection and recovery procedures that it wishes LB Richmond to use, in advance of any levy year. This could include the criteria for payment arrangements or specific enforcement measures to be taken at varying levels of debt. This agreement will then stand for the duration of the levy year.

LB Richmond shall serve a Demand Notice on each BID Levy Payer and thereafter shall continue to calculate the BID Levy and serve a Demand Notice throughout the BID Term as required by the Regulations. A Demand Notice or amended Demand Notice shall be served on a BID Levy Payer as soon as reasonably practicable after the LB Richmond receives notice of a change that affects liability for the BID Levy.

LB Richmond shall use all reasonable endeavours to collect the BID Levy throughout the BID Term.

Please note: A review of office computer systems used to facilitate the billing and collection of the BID levies will take place during the financial year 2019/20 in line with the term of current contracts. If a new system is chosen, this will result in a need to migrate across data and may also impact costs for both parties.

The BID Company will produce an information leaflet which explains the BID Levy and its activities for the year and such information leaflet will be served on the BID Levy Payer at the same time as the Demand Notice. The BID Company shall deliver leaflets equal to the number of hereditaments the BID area covers, plus 10% to cover spoils and new properties to the Business Rates Team at LB Richmond, Civic Centre, and 44 York St, Twickenham, TW1 3BZ no later than fourteen (14) days before the despatch of annual levy invoices Single Instalment Due Date in each year of the BID term (date to be advised each year to the BID Company by the Council).

6 Enforcement Mechanisms In The Event That The Council Fails to Enforce Collection of the BID Levy

In the event that LB Richmond fails to enforce payment of the BID Levy against a BID Levy payer, the Try Twickenham BID Ltd shall be entitled to serve an Enforcement

Notice on the LB Richmond requesting that:

- LB Richmond takes appropriate enforcement action.
- If LB Richmond fails to provide written confirmation of the action it is taking in relation to the Enforcement Notice within 21 days of the issue of that Notice the Try Twickenham BID Ltd shall be entitled to serve an Appeal Notice on the Director of Finance of the LB Richmond and such notice shall:
 - detail the Sum Unpaid;
 - confirm that LB Richmond has failed to use the enforcement mechanisms available to it under this Agreement to recover the sum unpaid; and
 - include written notice requesting that a meeting with the Try Twickenham BID Ltd takes place in order to achieve a solution and/or agree a strategy to recover the sum unpaid.

7 Accounting Procedures and Monitoring

LB Richmond shall maintain a list of those BID Levy Payers who have paid the BID Levy and those BID Levy Payers who have not paid and shall make the list available to the Try Twickenham BID Ltd.

LB Richmond shall provide the BID Company with such information as may be agreed between them and this can include:

- the amount of the BID Levy for each BID Levy Payer;
- the amount of the BID Levy collected for each BID Levy Payer;
- details of BID Levy Payers who have not paid the BID Levy;
- details of Reminder Notices issued;
- details of Liability Orders made or applied for;
- details of payment agreement made, if any, between the LB Richmond and BID Levy Payers.
- ❖ on a monthly basis during the first three months of a Financial Year and thereafter on a quarterly basis throughout the remaining duration of a Financial Year for the duration of the BID term.

Meetings will take place between LB Richmond and the Try Twickenham BID Ltd, as reasonably required by either party, but no less frequently than every 6 months, to update on all matters pertaining to the collection and spend of the levy.

Within 3 (three) months after the end of each Financial Year (for the duration of the BID Term) LB Richmond shall provide an Annual Report to the Try Twickenham BID Ltd.

An Annual Report means a report to be prepared by the Council which details the following:

- (i) the Financial Accounts;
- (ii) the total amount of BID Levy collected during the relevant Financial Year;
- (iii) details of the success rate for the collection of the BID Levy;
- (iv) the total amount of the Deductions;
- (v) the Council's proposals (if any) to help improve its efficiency in the collection and enforcement of the BID Levy;
- (vi) details of those BID Levy Payers who have paid the BID Levy and those who have not paid the BID Levy and;
- (vii) the Council's proposals for Bad or Doubtful Debts;

Within 1 (one) month from the date of receipt of the Annual Report in each financial year (for the duration of the BID Term) the Try Twickenham BID Ltd shall provide a BID Company Report to LB Richmond.

The BID Company's Annual Report means a report for each Financial Year to be prepared by the BID Company which details the following:

- (i) the total income and expenditure arising from the BID Levy;
- (ii) other income and expenditure of the BID Company not being part of the BID Levy;
- (iii) a statement of actual and pending surpluses and deficits; and
- (iv) the various initiatives and schemes upon which the BID Levy has been expended by the BID Company;

The BID Revenue Account will be subject to the normal internal & external audit arrangements of LB Richmond. LB Richmond will make available to the Try Twickenham BID Ltd any information reasonably requested by the Try Twickenham BID Ltd that it is able to do under any relevant legislation.

8 FREEDOM OF INFORMATION ACT

The BID Company acknowledges that the Council is subject to the requirements of the Freedom of Information Act 1988 (FOIA) and shall assist and cooperate with the Council (at the BID Company's expense) to enable the Council to comply with its disclosure requirements and the Council shall notify the BID Company of any such requests. In turn, the Council acknowledges that the BID Company is not subject to the requirements of the Freedom of Information Act 1988 (FOIA).

The Council may determine in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of FOIA or is to be disclosed in response to a request for information, and for the avoidance of doubt where the Council has received a request under the FOIA and it has notified the BID Company of the request, in no event shall the BID Company respond directly to a request of information connected with such request to the Council unless expressly authorised to do so by the Council.

9 Confidentiality

Both LB Richmond and the Try Twickenham BID Ltd shall comply with the requirements of the Data Protection Act 1998 (as amended), particularly in relations to clauses 6 and 7, and shall keep confidential and not divulge to any person

9.1 any information which has been exchanged about the BID Levy Payers or Contributors or about other third parties which has been obtained or received as a result of operating the BID

9.2 without the prior written consent of the other party any information (written or oral) concerning the business affairs of the other.

this obligation shall survive the termination or lapse of the BID Arrangements.

10 Notices

Any notice or other written communication to be served or given to or upon any party to this Agreement 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 upon 7 days written notice.

A notice may be served by;

- delivery to the Director of Finance at the address of LB Richmond specified above; or
- delivery to the Company Directors at the address of the Try Twickenham BID Ltd specified above;
- registered or recorded delivery post to such addresses;
- electronic Communication (provided that it is in legible form and is capable of being used for subsequent reference) to such addresses.

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.

11 Contracts (Rights Of Third Parties)

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

12 Arbitration

The following provisions shall apply in the event of a dispute:

- any dispute or difference of any kind whatsoever arising between the parties hereto out of or in connection with this Deed shall be referred to arbitration before a single arbitrator;

- the parties shall jointly appoint the arbitrator not later than 28 (twenty-eight) days after service of a request in writing by either party to do so and each party shall bear its own costs;
- If the parties are unable to agree within 28 (twenty-eight) days, 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;

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

- to prosecute any such reference expeditiously; and
- to 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;
- that the award shall be in writing signed by the Tribunal and shall be finalised within 21 (twenty-one) days from the date of such award;
- the award shall be final and binding both on the parties and on any persons claiming through or under them.

13 Miscellaneous

- For 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.
- The headings in this Agreement are for ease of reference only and shall not affect the construction of this Agreement.
- References to the Council include any successors to its functions as local authority.

Signed on behalf of London Borough of Richmond Upon Thames

Authorised Signatory and Official Title

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Signature

Date: 1 March 2019

Signed on behalf of Try Twickenham BID Ltd

Authorised Signatory and Official Title

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Signature

Date: 1 March 2019

