

DATED

17th October

2018

THE MAYOR AND BURGESSES OF
THE
LONDON BOROUGH OF BEXLEY

AND

SIDCUP PARTNERS LIMITED

DEED OF VARIATION TO
BUSINESS IMPROVEMENT
DISTRICT
OPERATING AGREEMENT

Legal Services
London Borough of Bexley
Civic Offices
2 Watling Street
Bexleyheath
Kent
DA6 7AT

Ref: BPW/ S126/2/31

THIS DEED OF VARIATION is made on the 17th day of October 2018

BETWEEN:

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BEXLEY** of Civic Offices 2 Watling Street Bexleyheath DA6 7AT (the "Council"); and
- (2) **SIDCUP PARTNERS LTD** registered as a Company Limited by Guarantee having no share capital in England with Registered Company Number (10334272) and whose Registered Office is situate at 1 Elm Parade Main Road Sidcup Kent DA14 6NF (the "BID Company")

hereinafter referred to as "the Parties".

WHEREAS:

- (A) The Council 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 Council 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) The Parties entered into an operating agreement dated 14 February 2018 ("the Principal Agreement") confirming 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 Parties wish to vary the Principal Agreement as hereinafter provided.

NOW IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATIONS

- 1.1. All words and expressions used in this Deed of Variation shall have the same meanings which apply to them in the Principal Agreement unless the context requires otherwise.

2. AMENDMENTS TO THE PRINCIPAL AGREEMENT

- 2.1 The Partners agree that with effect from 1 April 2018 that the Principal Agreement shall be amended as follows:-

- 2.1.1 Clause 5.2 shall be deleted and replaced with the following clause:-

5.2 The Council shall pay BID Levy funds to the BID Company, upon presentation of valid invoices from the BID Company, according to the following schedule:

5.2.1 on 15th April in each BID Year (or the soonest working day thereafter) a maximum of 70% of the BID Levy payable for that BID year

5.2.2 on 15th October in each BID Year (or the soonest working day thereafter) a maximum of 25% of the BID Levy payable for that BID year

5.2.3 a final payment as soon as possible after the end of the BID Year which is to consist of the remaining 5% of billed BID Levy – net of debt unrecovered as at end of the BID Year and any refunds payable by the Council under clause 5.3.

- 2.1.2 Clause 5.3 shall be deleted and replaced with the following clause:-

5.3 In the event that a BID Levy Payer is entitled to a repayment of a BID Levy pursuant to paragraph 8(4) of Schedule 4 of the Regulations, the Council shall repay the BID Levy Payer from the BID Revenue Account. The Council will retain a maximum of 5% of the BID Levy payable for that BID year for the purposes of paying these refunds. In the event that there are insufficient funds available from the retained BID Levy monies to pay the BID Levy Payer the Council shall request such repayment sum from the BID Company and the BID Company shall pay the repayment sum to the Council forthwith and the Council shall

thereafter repay the repayment sum to the BID Levy Payer. If the BID Company does not pay the repayment sum to the Council the Council shall be under no obligation to repay the BID Levy Payer and all such obligations shall fall on the BID Company.

2.1.3 There shall be added after Clause 5.3 the following clause:-

5.4 The payments of the BID Levy funds by the Council to the BID Company (as defined in 5.2) shall be subject to Value Added Tax (VAT) at the appropriate rate in force at the time of invoicing.

2.1.4 Clause 6.2 shall be deleted and replaced with the following clause

6.2 The Council shall be entitled to recover the costs it incurs in billing and collecting the BID levy from the BID company, plus Value Added Tax (VAT) at the appropriate rate in force at the time of invoicing. The costs, excluding any set up costs, are £14,895 per annum in year 1, on the basis that the Council or its agent will retain the first 2% of any costs awarded by the Courts in the event of non-payment of the BID levy. An inflationary increase will be applied on each anniversary of the service in line with the average increase of RPIX (Retail Price Index) during the previous 12 months. The Council shall also be entitled to recover from the BID Company its additional costs arising from any request from the BID Company to commence bankruptcy or winding-up action against a BID Levy Payer. All Magistrates' Court fees will be paid by the Council and reclaimed from the BID company.

2.1.5 Clause 6.3 shall be deleted and replaced with the following clause:-

6.3 The annual charge as set out in 6.2 will be payable by the BID Company to the Council in advance, in one instalment on 15th April in each BID Year. The Council shall provide one invoice per annum for this charge to be payable by the BID Company.

2.1.6 In Clause 6.6 and 6.7 the word "invoices" shall be replaced by the word "invoice".

2.1.7 There shall be added after Clause 7.6 the following clause:-

7.7 The BID Levy, as set out in the issued Demand Notices or amended Demand Notices, shall not be subject to Value Added Tax (VAT).

2.1.8 Schedule 2 shall be deleted and replaced by the document at Schedule 1 to this Deed of Variation

IN WITNESS WHEREOF this Deed of Variation has been executed as a Deed on the day and year first before written.

The Common Seal of the **MAYOR
AND BURGESSES OF THE
LONDON BOROUGH OF BEXLEY**
was hereunto affixed as a deed in the
presence of:-



Deputy Director

[Signature]
Major Projects, Infrastructure
+ Delivery

Deputy Director

[Signature]
Adult Social Care
+ Health

Executed as a deed by **SIDCUP
PARTNERS LIMITED** acting by
SUSAN PETTY a director/ Chairman
and **ANDREW SCANLAN**
a director

[Signature]
Director/ Chairman

[Signature]
Director

SCHEDULE 1

(replacement Schedule 2 to the Principal Agreement)

SCHEDULE 2 – BID LEVY RULES

The BID process is governed by Government Legislation and Regulations (Part 4 of the Local Government Act 2003 and Statutory Instrument 2004 No. 2443). As such, once a majority vote has been achieved, the BID Levy becomes mandatory and enforceable on all defined ratepayers within the BID area.

The rules for the BID levy are as follows:-

- A. The BID levy is fixed at 1.5% of rateable value.
- B. The BID levy can only be increased on April 1st each year, to account for inflation. This allowance will be decided upon by the BID Board, but must not exceed 2%, or RPI plus 1% per annum
- C. The BID term will be five years from April 1st 2017
- D. The BID levy is applicable to all ratepayers
- E. All new hereditaments* entering the rating list after April 1st 2017 will have the BID levy applied
- F. There will be no void period for owners of empty properties, which will be liable for the BID levy
- G. No VAT will be charged on the BID levy bills
- H. The BID board can alter the BID arrangements without the need for an alteration ballot, provided those alterations do not concern the geographical area of the BID, the BID levy payable, or conflict with the Local Government Act (2003) or Business Improvement District Regulations (2004)

*Hereditament means a rateable business unit