

## **DRAFT HEADS OF TERMS**

### **EAST MARSH AND TRAVELLERS SITES**

The purpose of this revised draft Heads of Terms is to propose a basis for the leasing of East Marsh by the London Borough of Hackney ("LBH") to the London Development Agency ("LDA") for the purpose of facilitating the Olympic and Paralympic Games in London in 2012 ("the Games"), and follows from recent negotiations between the parties and the Olympic Delivery Authority ("ODA") and the meeting held at LDA's offices on 21 August 2009.

This draft Heads of Terms also includes details of the arrangements to be entered into in connection with the Travellers sites.

This revised Heads of Terms remains restricted to structural matters at this stage and may be further supplemented by detailed provisions for each area of land mentioned below when the principles of the structure are agreed.

#### **1. Area of Land**

- 1.1 The overall area to be covered by the arrangements will be the whole area of East Marsh, which is shown indicatively shaded green, blue, orange and peach on the attached plan SBH-ATK-ZZ-RWL-DR-T-5-H323-0001 Rev P6 ("Plan 1").
- 1.2 As a number of different works and activities will or may be undertaken or carried out within the overall area, it is intended that different provisions and lease periods (as referred to below) will apply to these different areas.

#### **2. Agreement**

The existing Agreement dated 2 August 2006 between (1) LBH and (2) LDA ("the Agreement") will be varied as follows: -

- 2.1 the leases to be granted by LBH to LDA will reflect the terms referred to below and will be granted in substitution for the form of lease attached to the Agreement;
- 2.2 to grant LDA an option to call for the grant on 31 May 2011 of a longer lease of the area for the permanent ramp ("the Ramp") shown indicatively edged red on the attached plan SBH-ATK-ZZ-RWL-DR-T-5-H323-002 Rev P5 ("Plan 2") and at the same time to surrender the leases of the land shown indicatively shaded blue and peach on Plan 1 (so that they may be included in the longer lease of the Ramp);
- 2.3 to grant LBH an option, conditional upon the exercise by LDA of the option referred to in 2.2, to call for an underlease of the Ramp for the same term less one day;
- 2.4 to grant LBH the right during the transformation works stage following the Games to call for a surrender of the part of the lease of the land shown indicatively shaded green on Plan 1 as is required by LBH for bridge works, subject to ODA's right to defeat LBH's request if in ODA's reasonable opinion it is unreasonable to surrender such land because of the works it needs to do.

- 2.5 to include an obligation on LBH to grant to LDA a lease of the temporary LVU Electricity Substation Site together with associated easement/rights as shown indicatively on the attached plan UNN-ATK-ZZ-ECW-DR-U-3-D163-0736 Rev P5 ("Plan 3") and at the same time to surrender those parts of the leases referred to at 2.1 above (if granted) as may be required for such lease. The lease to be granted pursuant to this 2.5 will permit LDA to grant an underlease of the whole of the area let to its nominated provider.

**[NB: EXTENT OF RIGHTS TO BE DETERMINED. MAY NEED TO EXTEND BEYOND EAST MARSH].**

- 2.6 to grant LDA an option subject to the satisfaction of pre-conditions being the ascertainment of the demise and the obtaining of planning permission to call for the grant to LDA of a lease of the wind turbine generator site and at the same time to surrender the part of the land shown indicatively shaded green on Plan 1 (so that it may be included in such lease). The lease to be granted pursuant to this 2.6 will permit LDA to grant an underlease of the whole of the area let to its nominated provider and will also include provision for LBH to be obliged to take an overriding underlease from LDA so as to be able to take the rental income from the wind turbine operator.

### 3. Leases

#### 3.1 Demises and commencement of terms

The lease for the following areas within the overall site will provide that the relevant lease term will commence on the following dates: -

- 3.1.1 the area shown for stock piling shown indicatively shaded blue on Plan 1 - 1 October 2009;

**[NB: THIS LEASE HAS NOW BEEN GRANTED. THE DEMISE PLAN DIFFERS FROM THE EXTENT SHOWN IN PLAN 1].**

- 3.1.2 the area shown for construction of the land bridge shaded peach on Plan 1 - 31 May 2010;

- 3.1.3 the area shown for replacement public parking shaded orange on Plan 1 - 31 May 2010; and

- 3.1.4 the residue of the East Marsh shown shaded green on Plan 1 - 31 May 2011. If LDA exercises the option referred to at 2.2 above the lease of the residue of East Marsh will include the balance of the land shown indicatively shaded blue and peach on Plan 1 as it is not included in the longer term lease of the Ramp.

#### 3.2 Terms

- 3.2.1 Except where indicated below, the leases of all areas will terminate on [31 August 2023] but will include Landlord and Tenant options to determine on 31 August 2013.

- 3.2.2 If called for the lease term for the area for the permanent ramp shown indicatively edged red on Plan 2 shall be a long lease as it represents permanent development and will be for a term of 125 years.

- 3.2.3 LBH to consider whether it wishes to grant a long lease for a term of 125 years of the area to be provided as a car park (shown indicatively edged orange on Plan 2) as this would again represent permanent development and whether it wishes to call for an underlease to be granted back to it for the same term less one day.

**[NB: ALTERNATIVELY ARE THE OPTIONS REFERRED TO AT 2.2 AND 2.3 ABOVE TO BE MIRRORED TO REFLECT ARRANGEMENTS FOR THIS LAND?]**

- 3.2.4 If called for the lease term for the area to be occupied by a wind turbine generator (to include safety and maintenance zones and oversailing area) will be a long lease for a term which will end on the decommissioning of the wind turbine generator.

As referred to at 2.6 above the lease will include provisions for subletting the whole to the nominated wind turbine operator and to enable LDA to grant an overriding underlease to LBH if required by LDA.

**[NB: DO WE HAVE ELECTRICITY'S REQUIREMENTS FOR THIS?].**

- 3.2.5 If granted to LDA the lease of the Electricity Substation Site and easement routes/rights will be for a term of 99 years (subject to earlier termination as referred to below).

### 3.3 Termination

- 3.3.1 If granted the lease of the areas required for the wind turbine generator will be surrendered by LDA on decommissioning of the wind turbine generator.
- 3.3.2 The lease of the Electricity Substation Site and easements may be terminated by LDA after 6 or after 20 years if the requirement for the Substation ends at either of those dates.

### 3.4 Alienation

- 3.4.1 LDA may underlet or licence any or all of the areas demised to ODA or authorise ODA to act on behalf of LDA under the leases.
- 3.4.2 In addition LDA is to be permitted to underlet: -
- 3.4.2.1 to LBH the area for permanent ramp shown indicatively edged red on Plan 2;
  - 3.4.2.2 to LBH the area for replacement public parking shown indicatively edged orange on Plan 2;
  - 3.4.2.3 the area to be occupied by the wind turbine generator to the operator and to grant an overriding underlease to LBH (which LBH will be obliged to accept) to ensure (inter alia) that rent passes directly from the operator to LBH; and

3.4.2.4 the temporary Electricity Substation Site and easements shown on Plan 3 to LVU.

### 3.5 Other terms

- 3.5.1 The leases will be based upon the form of lease attached to the Agreement with such amendments as are required to reflect the particular circumstances set out above or as the parties or their solicitors may agree.
- 3.5.2 LDA is to have no residual obligations or liabilities under the leases for maintenance etc, but is to pass such obligations on to ODA or the relevant undertenant.
- 3.5.3 Rent - a peppercorn per annum (if demanded).
- 3.5.4 Rent review - none.
- 3.5.5 Premium - nil.
- 3.5.6 Yielding up - at the end of each term the area demised will be yielded up in a condition consistent with LDA having no residual obligations and liabilities for maintenance etc, having passed those obligations on to ODA or the relevant undertenant.

## 4. **Option to acquire freehold**

Should a legal challenge be mounted to the use of any part of the East Marsh area, on the basis that the LDA have acquired a leasehold rather than freehold interest, the leases will include provision for an option for LDA to acquire the freehold on [the date 10 working days before the first date of any court hearing (unless the parties agree otherwise)] in order to ensure that there is no threat to the activities required for the Games. Save in respect of the matters proposed to be covered by long leasehold interests, such as the ramp, public parking, wind turbine generator locations and the Electricity Substation Site and easements, the freehold of all of these elements must be transferred back to the London Borough of Hackney by the date for termination mentioned in clause 3.2.1 (31 August 2013). The elements subject to the long leases shall be transferred back at the date on which the long leases would have expired.

## 5. **Travellers sites**

- 5.1 LDA will take responsibility for the full costs of the asbestos removal at the Millfields site based on the 'excavate and remove' proposals previously agreed with LBH. This is currently estimated at £3,684,883.
- 5.2 In return, LBH will agree to forego any land value that they would be entitled to under the heads of terms previously agreed in respect of the Wallis, Homerton, Millfields and Waterden Road site transfers.
- 5.3 LBH and LDA will use reasonable endeavours to pursue National Grid for the reimbursement of these costs under the 'polluter pays' principle, for as long as there remains a reasonable prospect of success. LDA will manage these proceedings and, insofar as LBH are required to be a party to these proceedings, LDA will indemnify them for the reasonable costs properly incurred by them in pursuing this claim.

- 5.4 In the event that the claim is successful, the monies received (either by LDA or LBH) are to be apportioned between the parties on the basis of the contribution being made by each party. LBH is prepared to accept the LDA's offer of £1,224,144 for the land which will represent LBH's contribution to the cost of asbestos removal. Therefore if the cost of asbestos removal is the current estimated cost of £3,684,883 and that full amount is successfully reclaimed then LBH will receive £1,224,144 (33%) and LDA £2,460,739 (67%). If the cost of removal remains £3,684,883 but the successful claim is for a lower amount LBH will receive 33% of the amount successfully claimed and LDA 67%. If the cost of removal is (say) £3,000,000 LBH will receive back its full contribution of £1,224,144 if the full amount is recovered and 41% of any lower amount. If the cost of removal is (say) £4,200,000, LBH will receive back its full contribution of £1,224,144 if the full £4,200,000 is recovered and 29% of any lower amount.
- 5.5 The above proposal is on the basis that LBH agrees not to make any further design changes and that no further additional items will be requested of LDA. LDA will proceed on the designs as currently proposed and the modifications set out in the spreadsheet previously sent. Similarly, LDA will not be responsible for any increases in respect of LBH costs that it is currently being asked to reimburse. This includes the weekly costs of the shunter; the weekly costs of security on Dock Road, Chapman Road and Drum Road; the weekly rate of the extra staff costs as advised by John Wheatley; the costs of IT cabling (permanent and temporary - currently at £68,000 and £18,000 respectively) and LBH legal costs (currently at £1,500).
- 5.6 In addition: -
- 5.6.1 LBH will take a 99 year lease of the Wallis Road Traveller Site at the point that the variation is entered into.
  - 5.6.2 LDA will use reasonable endeavours to complete the registration of title in respect of the Wallis Road Traveller Site.
  - 5.6.3 at the point that LDA obtains registered title for the entire Wallis Road Traveller Site, LDA will transfer the site to the LBH and LBH will be obliged to accept the transfer.