

DATED _____ **2009**

(1) CAPITAL & COUNTIES LIMITED

(2) TRANSPORT FOR LONDON

(3) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAMMERSMITH & FULHAM

COLLABORATION AGREEMENT



Pinsent Masons

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BETWEEN:-

- (1) **CAPITAL & COUNTIES LIMITED** (Company Number 280739) whose registered office is 40 Broadway, London SW1H 0BU ("Capco");
- (2) **TRANSPORT FOR LONDON** of 42-50 Victoria Street, Windsor House, London SW1H 0TL ("TFL"); and
- (3) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAMMERSMITH & FULHAM** of Town Hall, King Street, Hammersmith, London W6 9JU ("LBHF")

(together "the Participants")

RECITALS

- (A) The Participants are currently in negotiations and discussions to work together to develop a suitable structure to bring forward the Comprehensive Scheme (as defined below) for the development of land in their respective ownership in the Earls Court Regeneration Area (as defined below).
- (B) As part of these negotiations and discussions, the Participants have agreed to enter into this Agreement in order to create a collaborative environment in which they can work together to meet the Milestones (as defined below) which it is intended to be met as part of the wider Objectives of the Participants (as defined below) (the "Collaboration").

IT IS AGREED as follows:-

1. INTERPRETATION

- 1.1 In this Agreement, the following words shall have the following meanings (unless the context otherwise requires):-

"Approvals"	has the meaning given in Clause 3.2
"Business Day"	means a day (other than a Saturday or Sunday or a day that is a public holiday in the United Kingdom) on which clearing banks in the City of London are open for the transaction of normal sterling banking business
"Chairman"	has the meaning given in Clause 5.12
"Collaboration"	has the meaning given in Recital B
"Commencement Date"	means the date of this Agreement
"Comprehensive Scheme"	means the development of land in the Earls Court Regeneration Area
"Conditional Joint Venture Agreement(s)"	means an agreement or agreements (as appropriate) which the Participants would enter into as a result of the Collaboration discussions leading to Heads of Terms, such agreement(s) to be entered into in order to implement the joint venture between the Participants and the Comprehensive Scheme, which the Participants expect will set out the

conditions precedent which would need to be satisfied before the development under the Comprehensive Scheme can commence, including, *inter alia*, conditions relating to obtaining planning permission in a form satisfactory to all Participants

"Earls Court Regeneration Area"

means the land which is predominantly in the combined ownership of the Participants more particularly identified in the plan attached at Appendix 1

"Event of Force Majeure"

has the meaning given in Clause 13.1

"Heads of Terms"

has the meaning given in Clause 3.1.1

"Heads of Terms Longstop Date"

means 31 January 2010 or such other date as may be agreed in writing between the Participants

"Initial Term"

means the period commencing on the Commencement Date and ending on the Longstop Date

"Intellectual Property Rights"

means any and all:-

- (a) patents, trade marks, service marks, domain names, registered designs, utility models, applications for and the right to make applications for any of such rights, inventions, know-how, confidential information, unregistered trade marks and service marks, trade and business names, including rights in any get-up or trade dress, copyrights, (including rights in computer software and in websites) unregistered design rights and other rights in designs and rights in databases;
- (b) rights or obligations under licences, consents, orders, statutes or otherwise in respect of any rights of the nature specified in paragraph (a) above; and
- (c) rights or obligations of the same or similar effect or nature as or to those in paragraphs (a) and (b) above;

in each case in any jurisdiction

"Longstop Date"

means 15 July 2010

"Milestones"

means the Milestones set out at Clause 3

"Objectives"

means the agreement, fulfilment and delivery of the Comprehensive Scheme and in particular, those Objectives set out at Schedule 1

"Programme"

means the programme to be produced by Capco for the implementation of the deliverables in Schedule 2 up to (and including) entry into the Conditional Joint Venture Agreement

"Project Board"	means the governance board for the Collaboration to be constituted and run in accordance with Clause 5
"Project Board Representative(s)"	means those employees or officers of each of the Participants appointed to the Project Board in accordance with Clause 5
"Project Executive Team"	means any person nominated by the Participant
"Reliance Notice"	has the meaning given in Clause 9.7
"Secretary"	has the meaning given in Clause 5.8

1.2 In this Agreement, references to:

- 1.2.1 the singular shall include the plural and vice versa;
- 1.2.2 "writing" includes a reference to electronic communications, facsimile transmissions or comparable means of communication;
- 1.2.3 clauses, schedules and appendices are to clauses, schedules and the appendices of this Agreement (unless otherwise stated);
- 1.2.4 a person shall include individuals, bodies corporate, unincorporated associations, partnerships, trustees, joint ventures, trusts and government departments or agencies and references to any of the same shall include the others;
- 1.2.5 a "month" shall mean a calendar month;
- 1.2.6 a statute is a reference to such statute as amended, modified or re-enacted from time to time; and
- 1.2.7 the headings in this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement.

2. **CONSIDERATION**

2.1 In consideration of the mutual agreements and undertakings set out in this Agreement, the Participants have granted the rights and obligations set out in this Agreement.

3. **MILESTONES**

3.1 The Participants have agreed to enter into this Agreement in order to create the collaborative environment in which they can work together towards meeting the following Milestones in accordance with the Objectives:

3.1.1 agreement between the Participants of heads of terms for a Conditional Joint Venture Agreement ("Heads of Terms"). The Heads of Terms will reflect the structure that the Participants agree for the implementation of the Comprehensive Scheme and will set out the Participants' agreed timetable for further milestones including the Milestone set out in clause 3.1.2 of this Agreement; and

3.1.2 agreement between the Participants of the Conditional Joint Venture Agreement.

3.2 It is recognised that each Participant will need to have in place all necessary approvals and authority (the "Approvals") to enter into Heads of Terms and the Conditional Joint Venture Agreement before doing so and while negotiations to

achieve each Milestone will be conducted in anticipation of all Approvals being obtained, the relevant Milestone will not be treated as having been reached until all relevant Approvals for that Milestone are in place.

- 3.3 The Participants hope to finalise the Heads of Terms by 31 January 2010 and the terms of the Conditional Joint Venture Agreement by 15 July 2010, and will use reasonable endeavours to do so.

4. **COLLABORATION**

- 4.1 Each of the Participants shall work together in good faith in order to undertake the Collaboration and in particular each of the Participants shall:

- 4.1.1 provide such personnel, resources and facilities as is appropriate to meet its obligations under this Agreement;
- 4.1.2 carry out the tasks allotted to it pursuant to the provisions of this Agreement and in particular the Programme and deliverables in Schedule 2 (as may reasonably be appropriate in a timely manner);
- 4.1.3 cooperate with each other and do such acts, matters and things as may be reasonably necessary or desirable and as is appropriate to meet its obligations under this Agreement; and
- 4.1.4 develop and comply with a data management protocol which the Participants agree shall establish how each or all of the Participants:
- (a) will use confidential information and/or data; and
 - (b) communicate or disclose to third parties information and/or data (confidential or otherwise).

- 4.2 Nothing in this Agreement shall require any action to be taken which fetters the statutory discretion of TFL and/or LBHF. For the avoidance of doubt, the safety and operation of its transport infrastructure is of paramount importance to TFL.

5. **PROJECT BOARD GOVERNANCE**

- 5.1 The Participants agree that meetings of the Project Board shall be convened in order to provide a collaborative environment for the Participants to represent each of their respective interests and in particular to work together to seek to meet the Milestones and monitor progress to achieve the deliverables in Schedule 2. The Participants acknowledge that the Project Board Representatives shall participate in the business of the Project Board and subject to Clause 5.15, vote on matters which arise in relation to the Collaboration to the extent that such participation and/or voting would be within the parameters of their authority to do so from the Participant who appointed them.
- 5.2 Management of the Collaboration will vest with the Project Board.
- 5.3 Unless otherwise agreed in writing, the Project Board shall consist of up to 3 Project Board Representatives appointed by each of the Participants, appointed by notice in writing to the other Participants. The Participants shall procure that the Project Board Representatives shall conduct the business and governance of the Collaboration in a manner consistent with the terms of this Agreement.
- 5.4 The first Project Board Representatives to be appointed to the Project Board by the Participants shall be those individuals as identified in Schedule 3.

- 5.5 Any Project Board Representative may resign and each Participant may appoint a Project Board Representative to replace any of its Project Board Representatives from time to time, provided that it gives the other Participants 5 Business Days' written notice of such intended replacement and so far as is practicable at all times has at least 1 Project Board Representative.
- 5.6 Any Project Board Representative may appoint an alternate by giving notice in writing to the other Project Board Representatives and may by notice in writing remove an alternate so appointed by him. An alternate shall be entitled to receive notice of all meetings of the Project Board and to attend and vote at any such meeting at which the Project Board Representative appointing him is not personally present and generally in the absence of his appointer to do all things which his appointer is authorised or empowered to do.
- 5.7 No fees or expenses shall be payable to any of the Project Board Representatives pursuant to this Agreement.

Project Board Meetings

- 5.8 The Project Board shall meet at a mutually agreed and convenient location, every four weeks or such other time period as may be agreed by the Project Board from time to time. Minutes of each meeting shall be taken by a person engaged by Capco who shall act as secretary to the Project Board (the "Secretary") and circulated to all Project Board Representatives within 5 Business Days of completion of each meeting.
- 5.9 The Secretary shall circulate to each Project Board Representative 2 Business Days prior to any meeting:
- 5.9.1 in consultation with the Chairman (as defined below), an agenda for each meeting of the Project Board; and
 - 5.9.2 a package of relevant documents relating to the Comprehensive Scheme (if any) for consideration by the Project Board and a report on progress against the deliverables in Schedule 2.
- 5.10 Any Project Board Representative may participate in any meeting by conference telephone or similar communications equipment by means of which all persons participating in such meeting can hear each other. Participation in a meeting by such means shall constitute presence in person at such meeting.
- 5.11 If any of the Participants wishes to convene a Project Board meeting outside of the regular meeting timetable it shall provide the other Participants with written notice at least 5 Business Days prior to such meeting (unless the circumstances giving rise to the meeting require urgent attention and delay in holding the meeting would potentially be detrimental to the Collaboration) and the Participants shall use their reasonable endeavours to attend such meeting or to agree an alternative date which is as near as possible to the original requested date.
- 5.12 The Project Board shall have a chairman ("Chairman") which shall be occupied by one of the Project Board Representatives, the first Chairman shall be Anthony Bickmore.

Project Board Governance

- 5.13 If a Participant considers that the Project Executive Team has taken a decision, carried out an act, omitted to do or is considering doing the same (a "Disputed Action") which, acting reasonably, such Participant disagrees with, it may, by giving reasonable notice to the Secretary and the Chairman, require that a discussion of the Disputed Action is included on the agenda for discussion at the next meeting of the Project Board.

Project Board Quorum and Voting

- 5.14 The quorum necessary for the transaction of any business at any Project Board meeting shall be 3 provided that at least one Project Board Representative from each Participant is present at such meeting.
- 5.15 The Project Board Representatives present at a meeting of the Project Board shall be able to cast, in aggregate, one vote on behalf of the Participant who appointed them. Any resolution proposed at a meeting of the Project Board shall be carried only if the votes of all the Participants are cast in favour of such resolution.

General

- 5.16 LBHF shall ensure that any Project Board Representative it appoints to the Project Board shall not be a representative from its Planning Department.
- 5.17 Each Participant undertakes to the other Participants that it will not and will procure that the Project Board Representatives appointed by it, will not wilfully absent themselves from meetings called pursuant to Clause 5, so as to prevent the transaction of the business of the Collaboration thereat.
- 5.18 The Project Board Representatives shall agree the roles and responsibilities of the Project Board and the Project Board Executive Team at the first Project Board meeting following signing of this Agreement.

Project Executive Team

- 5.19 Meetings of the Project Executive Team are scheduled to take place between each Project Board and may be attended by any person who the Participant wishes to nominate. The Project Executive Team shall aim to advance the Comprehensive Scheme in accordance with efficient project management principles.

6. ROLES AND RESPONSIBILITIES OF THE PARTICIPANTS

- 6.1 During the Collaboration the Participants shall agree their respective roles and responsibilities for the purposes of working together to achieve the Objectives.
- 6.2 The Participants agree that their current roles and responsibilities for the purposes of the Collaboration are as follows:
 - 6.2.1 Capco's current role and responsibilities are identified in Part A of Schedule 2;
 - 6.2.2 TFL's current role and responsibilities are identified in Part B of Schedule 2 and
 - 6.2.3 LBHF's current role and responsibilities are identified in Part C of Schedule 2,

and the Participants acknowledge that they may amend such roles and responsibilities by unanimous agreement.

7. TERM AND TERMINATION

- 7.1 Subject to earlier termination in accordance with Clause 7.3, this Agreement shall commence on the Commencement Date and continue for the Initial Term.

