

By: Kevin Harlock, Director of Commercial Services
To: Trading Panel Sub Group – 1 December 2009
Subject: Loan Agreement Kent Top Temps Ltd
Classification: Exempt under Para 3 of the Local Government Act 1972

Summary: This report is a response to the Audit Commission's recommendation in their report 'Review of Commercial Operations' dated August 2009 that a correction should be made in the text of the Loan Agreement between KCC and Kent Top Temps Ltd in that the parties are KCC and Kent Top Temps Ltd, not Commercial Services and Kent Top Temps Ltd

Recommendations

Members are invited to note the revision to the Loan Agreement between KCC and Kent Top Temps Ltd. The Loan Agreement is attached as Appendix 1.

<p>Background Documents: Audit Commission Report on the Review of Commercial Operations dated August 2009</p>
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APPENDIX 1

Loan Agreement

This agreement is made on the 7th day of November Two Thousand and Eight

BETWEEN:

- (1) **THE KENT COUNTY COUNCIL** of County Hall Maidstone Kent ME14 1XQ (“the Council”);
and
- (2) **KENT TOP TEMPS LTD** of Gibson Drive Kings Hill West Malling ME19 4QG
 (“The Company”)

WHEREAS:

The Council is pleased to offer the Company a loan facility (“the Loan”) on the following terms and conditions:

1. **Loan amount**

The loan amount is a maximum of £1,200,000 (one million two hundred thousand pounds only) (“the Loan”). The Company shall request in writing any amounts up to maximum and the Council shall pay them to the Company subject to the Company not being in breach of the Terms and Conditions of this Agreement.

2. **Purpose**

The Loan shall be used to facilitate cash flow for the Company.

3. **Term**

The loan shall be for a period of five years from the date above (“the Contract Period”). The Contract Period shall be capable of being extended at the annual review of the Loan Agreement to be held each January.

4. **Interest**

4.1 Interest shall be paid on the actual amount borrowed

4.2 The actual amount borrowed will be subject to a daily rate of interest of $\frac{1}{365}$ th of 5% above the Bank of England base rate

4.3 In the event of default the Company will be liable to pay interest on the total amount outstanding at the time of default at the rate of 6% per annum above Bank of England base rate.

5. **Repayment**

- 5.1 The Loan or the actual amount borrowed (whichever is outstanding) shall be repaid by one repayment on demand by the Council or on expiry of the Contract Period, whichever is the sooner.
- 5.2 The Company may prepay the Loan or the actual amount borrowed at any time

6. **Security**

The repayment of all monies at any time owing in respect of the Loan or the actual amount borrowed (whether by way of principal, interest, fees or otherwise) will be secured by the security of an all monies legal charge (the "Legal Charge") on the Property. The company hereby covenants on demand to pay or discharge the actual amount borrowed to the Council. As security for the payment the Company hereby charges to the Council, with full title guarantee:

- 6.1.1 by way of legal mortgage, all freehold and leasehold property now vested in the company, together with all buildings, fixtures (including trade fixtures) and fixed plant and machinery from time to time on that property;
- 6.1.2 by way of fixed charge, all estates or interests in any freehold and leasehold property of the company (not being Property charged by clause 6.1.1) now and in the future vested in the Company, together with all buildings, fixtures (including trade fixtures) and fixed plant and machinery from time to time on that property;
- 6.1.3 by way of fixed charge, all the goodwill and uncalled capital for the time being of the company;
- 6.1.4 by the way of fixed charge, all book debts and other debts now and in the future due or owing the company;
- 6.1.5 by the way of fixed charge, all intellectual property rights;
- 6.1.6 by the way of floating charge, all the company's present and future undertaking and assets, whatever and wherever, including (without limitation) all other property and assets not subject to a fixed charge under this Agreement.

7. **Receiver**

- 7.1 At any time after the Council's demand for payment from the Company of any Indebtedness (or if so requested by the Company), the Council may

appoint by writing any person or persons to be an administrative receiver or a receiver and manager of receivers and manager (“the Receiver”), which expression shall include any substituted receiver(s) and manager(s) of all or any part of the Assets or may appoint an administrator (“the Administrator”) of the Company in accordance with paragraph 14 of Schedule B1 to the Insolvency Act 1986. Without limiting the Council’s rights under this clause 4.1 or at law, the council may, whether or not any demand has been made to payment of the Indebtedness, appoint a Receiver or an Administrator if the Council becomes aware of any of the matters referred to in clause 3.2.7 or if the security created by this Debenture shall be in jeopardy

7.2 The Council may from time to time determine the remuneration of the Receiver and may remove the Receiver and appoint another in their place.

7.3 The Receiver shall, subject to the terms of the Acts, be the Company’s agent and shall have all the powers conferred by the Acts. The Company alone shall be responsible for his acts and omissions and for his remuneration. In particular, but without limiting any general powers or the Council’s power of sale, the Receiver shall have power:

7.3.1 to take possession of collect and get in all or any part of the Assets and for that purpose to take any proceedings in the Company’s name or otherwise as he shall think fit;

7.3.2 to carry on or concur in carrying on the Company’s business and raise money from the Council or others on the security of all or any part of the Assets;

7.3.3 to sell, let and / or terminate or to accept surrenders of leases or tenancies of any part of the Company’s property, in such manner and of such terms as he thinks fit;

7.3.4 to take, continue or defend any proceedings and make any arrangement or compromise which the Receiver or Company shall think fit;

7.3.5 to make and effect all repairs, improvements and insurances;

7.3.6 to appoint managers, officers and agents for any of the above purposes, at such salaries as the Receiver may determine;

7.3.7 to call up any of the Company’s uncalled capital;

7.3.8 to promote the formation of a subsidiary company or companies of the Company, so that such subsidiary may purchase, lease, license or otherwise acquire interests in all or any part of the Assets; and

7.3.9 to do all other acts and things that they may consider to be incidental or conducive to any of the above powers.

7.4 By notice in writing to the Company, the Council may at any time convert the floating charge created by this Agreement into a specific charge over any assets specified in the notice which the Council considers to be in danger of being seized or sold under any form of distress, attachment or other legal process or to be otherwise in jeopardy. The Company at its expense shall at any time on the Council's request promptly execute and deliver to the Council any other or further mortgage, charge or other instrument conferring a fixed charge on any of its assets or such other charge as the Council may in its discretion think fit for securing the indebtedness.

8. **Severance**

If at any time any provision in this Agreement is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be impaired.

9. **Payments**

9.1 All payments to be made by the Company under this Agreement shall be made in full without any set off or counterclaim whatsoever and (save as required by law) free and clear of and without deduction for any taxes, levies, imposts, duties, charges, fees, deductions, withholdings, restrictions or conditions of any description

9.2 If any payment would otherwise be due on a day that is not a day on which banks are generally open for business in London ("a business day"), the following business day shall be substituted and interest shall be adjusted accordingly.

10 **Expenses**

10.1 The Company shall pay to the Council on demand all expenses (including legal and out-of-pocket expenses and together with Value Added Tax if any thereon) on a full indemnity basis \ reasonably and properly incurred by the Council in connection with any amendment or extension of and the granting of any waiver or consent under and the discharge of the Agreement and / or the Legal Charge and / or in contemplation of or otherwise in connection with the enforcement of or preservation or any rights under this Agreement and / or the Legal Charge or otherwise in respect of any monies owing under or in respect of the Facility

10.2 The Company shall pay a £40.00 Land Registry fee for the registration of the Legal Charge at the Land Registry, which will be added to the Loan upon return of the signed Legal Charge to the Council

11 **Assignment**

The Company may not assign or transfer all or any of its rights or obligations under this Agreement. The council may at any time(s) assign or transfer all or any of its rights and obligations under this Agreement

12 **Law**

This Agreement shall be governed by and construed in accordance with English Law

IN WITNESS of which this Agreement has been duly executed as a deed and delivered on the date first before written

THE COMMON SEAL of)
THE KENT COUNTY COUNCIL)
Was hereunto affixed in the presence of:)

Authorised Signatory

THE COMMON SEAL of)
KENT TOP TEMPS LTD)
Was hereunto affixed in the presence of:)

Director