

Dated

2023

COLCHESTER CITY COUNCIL

- and -

OUR COLCHESTER LIMITED

BID OPERATING AGREEMENT

relating to Colchester City Centre

THIS DEED is made the

day of

2023

BETWEEN

- (1) **Colchester Borough Council** of Rowan House, 33 Sheepen Road, Colchester, CO3 3WG, ("the Council"); and
- (2) **Our Colchester Limited** ("the BID Company") registered as a not for profit company limited by guarantee in England with number 11250584 whose registered office is at 1 Woodbridge Road, Ipswich, Suffolk, IP4 2EA

Recitals

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.

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.

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 Council and the BID Company for the duration of the BID.

The purpose of this Agreement is to:

- establish the procedure for setting the BID levy
- confirm the basis upon which the Council will be responsible for collecting the BID Levy;
- set out the enforcement mechanisms available 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 Council's expenses incurred in collecting the BID Levy shall be paid.

1. It is agreed as follows:

Definitions

- "Act"** - Means the Local Government Act 2003
- "Audit"** - for the purposes of this agreement means an assessment of the internal control in respect of the BID Company
- "Bad or Doubtful"** - for the purposes of this agreement means any unpaid BID

Debts	Levy in respect of which the Council has sought recovery in accordance with clause 6.3 of this Agreement and that BID Levy remains unpaid.
“Baseline Services”	- Services provided by the Council before the introduction of the BID and detailed at Schedule 3 of this Agreement.
“BID”	has the meaning given in the Regulations that is the Business Improvement District and is that area within which - the BID operates as edged black on the plan attached to this Agreement in Schedule 1.
“BID Area”	- means the area within which the BID operates as edged with a black border on the plan attached to this Agreement in Schedule 1
“BID Arrangements”	- has the meaning given by section 41 of the Local Government Act 2003.
“BID Company Report”	- means the financial statements prepared by the BID Company for each Financial Year which details: (a) total income and expenditure analysed into main categories arising from the BID Levy (b) other income and expenditure of the BID Company; (c) a statement of actual and pending deficits; and (d) the various initiatives and schemes upon which the BID Levy has been expended by the BID Company.
“BID Levy”	- means the charge levied and collected within the BID pursuant to the Regulations.
“BID Levy Payer(s)”	- means the non-domestic ratepayers liable for paying the BID Levy.
“BID Levy Rules”	- means the rules set out in the BID Proposals and set out in Schedule 2.
“BID Proposals”	- has the same meaning as in the Regulations
“BID Revenue Account”	- means the account kept in accordance with Regulation 14 of the Regulations.
“BID Term”	- means 1 October 2023 to 30 September 2028
“BID Year”	- means the period 1 October to 30 September
“Business Plan”	- means the BID company Business Plan 2023-2028

- “Chargeable Period(s)”** - means any one of the following days:
- 1 October 2023
 - 1 October 2024
 - 1 October 2025
 - 1 October 2026
 - 1 October 2027
- “Contributors”** - means the BID Levy Payers and payers of a contribution or funds paid or made available to the BID Company which do not form part of the BID Levy.
- “Demand Notice”** - has the meaning given in the Regulations.
- “Enforcement Expenses”** - means the costs which are incurred by the Council in obtaining Liability Orders and Summons and all associated administrative expenses which may be incurred in recovering unpaid BID Levy as provided for in the Appendix.
- “Enforcement Notice”** means a notice served on the Council in accordance with Clause 9.1.
- “Financial Year”** - means the financial year for the BID Company which runs from 1st October to 30th September.
- “Hereditament Start Date”** - means the date when the amendment to the Valuation List takes effect.
- “Hereditament”** - has the meaning given in the Regulations
- “Liability Order”** - has the meaning given in the Regulations.
- “Maximum Amount”** - For any particular Financial Year means the amount of BID Levy for which Demand Notices are issued (excluding replacement or amended Demand Notices)
- “Monitoring Group”** - means the group whose members consists of representatives from the Council and the BID Company– to be determined during BID establishment.
- “NNDR”** - means National Non-Domestic Rates under the Local Government Finance Act 1988.
- “NNDR Payer”** - means the person or organisation who has a liability to pay the non-domestic rate
- “Proposal”** - means the plan voted for by the BID Levy Payers in a ballot which sets out the objectives of the BID and identifies the various projects which will be undertaken using funds raised by the BID Levy and/or Contributions to achieve those objectives and ‘Renewal Proposals’ has the same meaning save that ‘ballot’ shall be replaced with ‘renewal ballot’ and

- “Alteration Proposals” has the same meaning save that “ballot” shall be replaced with “alteration ballot”
- “Revaluation”** - The revaluation of the rateable values of all business and non-domestic property in England and Wales is scheduled to take place in 2026
- “Regulations”** - means the Business Improvement Districts (England) Regulations 2004 and such amendments to those regulations which may be made by the Secretary of State pursuant to Section 48 of the Local Government Act 2003 (from time to time).
- “Reminder Notice”** - Means a notice to a BID Levy Payer which shall identify the outstanding sums and provide a further 7 days for payment to be made or a summons for non-payment
- “Service Level Agreement”** - means the agreement entered into between the Council and the BID Company
- “Strategic Governance Manager”** - is the Council’s Chief Finance Officer appointed under section 151 of the Local Government Act 1972.
- “Sum(s) Unpaid”** - means the amount of the BID Levy which is unpaid after the Single Instalment Due Date.
- “Summons”** - means the document issued by the Magistrates’ Court upon Complaint by the Council or by the County Court upon application by the Council regarding unpaid BID Levy.
- “Valuation List”** - means a list of all NNDR properties in the local authority area.
- “Valuation Officer”** - means the person appointed by the Commissioners of the Inland Revenue to compile and maintain the Valuation List
- “Winding-Up”** - means an order pursuant to s125 of the Insolvency Act 1986
- “Write Off”** means a decision by the Council that an unpaid BID Levy will not be recovered.

2 Statutory Authorities

- 2.1 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.

3 Commencement

- 3.1 This Agreement shall take effect on the 1st October 2023 and in any event shall determine and cease to be of any further effect in the event that:

- 3.1.1 The BID Term expires;

3.1.2 The Council exercises its discretion to terminate the BID Arrangements in exercise of powers under regulation 18 of the Regulations

4. Setting the BID Levy

4.1 As soon as possible after the commencement of this Agreement the Council shall calculate the BID Levy in accordance with the Regulations.

4.2 Confirm in writing to the BID Company the BID Levy payable annually by each BID Levy Payer

5. The BID Revenue Account

5.1 The Council shall pay to the BID Company in accordance with the Regulations:

- (i) 1st October - 25% of invoiced debt less any recovery costs incurred by the Council and any repayments to BID Levy Payers under clause 5.2 of this Agreement.
- (ii) 1st January – 25% of invoiced debt less any recovery costs incurred by the Council and any repayments to BID Levy Payers under clause 5.2 of this Agreement.
- (iii) 1st April – 25% of invoiced debt less any recovery costs incurred by the Council and any repayments to BID Levy Payers under clause 5.2 of this Agreement.
- (iv) 1st July – Any further balance collected less any recovery costs incurred by the Council and any repayments to BID Levy Payers under clause 5.2 of this Agreement.
- (v) 1st September – Any further balance collected less any recovery cost incurred and any repayments to BID Levy Payers under clause 5.4 of this Agreement.

5.2 Within ninety days from the Ballot Result Date the BID Company shall provide the Council with details of its own bank account into which the BID Levy shall be transferred electronically from the BID Revenue Account on production of an invoice by the BID Company in accordance with clause 5.1.

5.3 Interest earned on money in the BID Revenue Account shall form part of the BID Levy and be payable to the BID Company.

5.4 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 and in the event that the Council has paid such BID Levy to the BID Company including all of the contingency relating to that BID Levy the Council shall request such repayment sum from the BID Company and the BID Company shall pay the repayment sum to the Council by way of reduction in the quarterly payments, as scheduled in 5.1, and the Council shall thereafter repay the repayment sum to the BID Levy Payer. For the avoidance of doubt the BID Company shall reimburse the Council forthwith for any repayment of BID levy in circumstances where the repayment falls due after payment by the Council of the last quarterly payment within the BID term referred to in 5.1.

5.5 The BID Company shall issue to the Council a VAT invoice for the payment of the BID Levy income upon advice from the Council of the amount due.

5.6 The BID Company may only spend the BID Levy in accordance with the BID Proposals; except that if the BID is varied then from the date of the variation takes effect the BID Company may only spend the BID Levy in accordance with the varied BID Proposals.

6. Collecting the BID Levy

- 6.1 The Council shall use reasonable endeavours to collect the BID Levy throughout the BID Term.
- 6.2 The Council shall seek to recover unpaid BID Levy by sending a reminder letter, final reminder letter and a summons to the BID Levy Payer.
- 6.3 Where the BID Levy Payer does not respond to the final reminder letter the Council will issue a summons. The summons is charged for by the Magistrates' Court and the Council will seek to recover this with the unpaid levy from the Levy Payer. Where the fee is unrecoverable this will be charged to the BID as part of its recovery expenses.
- 6.4 Thereafter, the Council shall notify the BID Company of any bad debts and the BID Company may choose within thirty-one days of such notification to request the Council to undertake further recovery action in accordance with the Councils Corporate Debt Policy. The Enforcement Expenses of the Council shall be payable by the BID Company and deducted by the Council from the BID Company Quarterly Account.
- 6.5 In the event that the BID Company does not choose to request the Council to undertake any further recovery action in accordance with clause 6.4 the Council shall write off the debts.

7. Accounting Procedures and Monitoring

- 7.1 Within 1 (one) calendar month from the start of the BID Term the parties shall set up the Monitoring Group.
- 7.2 Upon the expiry of the first calendar month of the BID Term and thereafter at the expiry of every calendar month, the Council shall provide the BID Company with a monthly statement detailing the amount of BID levy collected, collection percentage, list of unpaid accounts and amount written off, plus recommendations for enforcement and write off for the BID Board to authorise or advise on required action.
- 7.3 Upon the expiry of the sixth month of the BID Term and every 6 (six) months thereafter (for the duration of the BID Term) the BID Company shall provide the Council in respect of those 6 (six) month periods with:
 - 7.3.1 the amount received by the BID Company from Contributors and BID Levy Payers;
 - 7.3.2 the total expenditure of the BID Company.
- 7.4 Within one calendar month from the Commencement Date the parties shall agree the dates for quarterly monitoring meetings (throughout the duration of the BID Term).
- 7.5 At each quarterly meeting the Monitoring Group shall:
 - 7.5.1 review the effectiveness of the collection and enforcement of the BID Levy; and
 - 7.5.2 review and assess information provided by the parties regarding the progress being made in achieving the aims set out in the Business Plan and the BID Company's aspirations.

7.6 The BID Company shall provide the BID Company accounts which will be filed at Companies House.

7.7 The Council may, from time to time throughout the duration of this Agreement undertake an Audit of the BID Company's financial and Governance arrangements and the BID Company shall comply with reasonable requests for information and assist the Council in respect of any Audit and for this purpose the BID Company shall provide the Council within 14 days of the completion of this Agreement with the name and address of its Accountant.

8. Confidentiality

8.1 Subject to clause 9 below both the Council and the BID Company shall keep confidential and not divulge to any person without the prior written consent of the other party all information (written or oral) concerning the business affairs of the other nor any information which has been exchanged about the BID Levy Payers or Contributors or about other third parties which it shall have obtained or received as a result of operating the BID and this obligation shall survive the termination or lapse of the BID Arrangements.

9. Freedom of Information

9.1 The BID Company acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (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.

9.2 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 for information connected with such a request to the Council unless expressly authorised to do so by the Council.

9.3 The BID Company acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA, be obliged under FOIA to disclose information following consultation with the BID Company and having taken its views into account.

9.4 The BID Company shall ensure that all information produced in the course of or relating to this Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

9.5 The BID Company acknowledges that any lists of confidential information provided by it are of indicative value only and that the Council may nevertheless be obliged to disclose confidential information in accordance with this clause.

9.6 The obligations set out in clause 11 of this Agreement shall survive the termination or lapse of the BID Arrangements.

9.7 The BID will manage the data it holds from time to time in accordance with the General Data Protection Regulation (2016/679).

10. Notices

10.1 Any notice or other written communication in relation to this Agreement shall be in writing and shall be sent to the address provided for either party or such substitute address in England as may from time to time have been notified by that party upon 7 days written notice.

- 10.2 A notice may be served by;
- 10.2.1 Delivery to the Strategic Finance Manager at the address of the Council specified above; or
- 10.2.2 Delivery to the Company Directors at the address of the BID Company specified above;
- 10.2.3 Registered or recorded delivery post to such addresses;
- 10.2.4 Electronic Communication (provided that it is in legible form and is capable of being used for subsequent reference) to such addresses which shall require a confirmed read receipt.
- 10.2.5 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. Indemnity

- 11.1 The BID Company shall indemnify the Council in full and keep it indemnified against all demands and claims made against the Council and all losses, costs, expenses or liabilities incurred by the Council in respect of personal injury to or the death of any person or loss of or damage to any tangible property (including property belonging to the Council) caused by or arising from any negligence in connection with this agreement or breach of this agreement by the BID Company, its employee, agent or sub-contractor.

12. Advertising and Branding

- 12.1 The BID Company and the Council shall seek to reach agreement on when the logo of each party shall be shown on advertising and branding material in respect of the joint projects of the parties and for this purpose the Council and the BID Company shall provide details regarding the size of their logo and guidelines for its use. For the avoidance of doubt the Council shall not be permitted to use the logo of the BID Company on any material published by it without the prior written consent of the BID Company and the BID Company shall not be permitted to use the logo of the Council on any material published by it without the prior written consent of the Council.

13. Miscellaneous

- 13.1 For the 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.
- 13.1 The headings appearing in this Agreement are for ease of reference only and shall not affect the construction of this Agreement.
- 13.2 For the avoidance of doubt the provisions of this Agreement (other than those contained in this Clause) shall not have any effect until this document has been dated.
- 13.3 Where reference is made to a Clause, Part, Plan or Recital such reference (unless the context requires otherwise) is a reference to a clause, part, plan, or recital in or attached to this Agreement.

- 13.4 References to the Council include any successors to its functions as local authority.
- 13.5 References to statutes, byelaws regulations orders or delegated legislation shall include any such instrument re-enacting or made pursuant to the same power.

14. Exercise of the Council's powers

- 14.1 Nothing contained in this Agreement or implied in it shall prejudice or affect the rights, discretions, powers, duties and obligations of the Council under all statutes byelaws statutory instruments orders and regulations in the exercise of its functions as a local authority.

15. Contracts (Rights of Third Parties)

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

16 Dispute Resolution

- 16.1 The Parties shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with this Agreement within 14 days of either party notifying the other of the dispute. Such efforts shall involve the escalation of the dispute to the chief executive (or equivalent) of each party.
- 16.2 Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.
- 16.3 If the dispute cannot be resolved by the parties pursuant to sub clause 1 above the dispute shall be referred to mediation pursuant to the procedure set out in sub clause 5 below unless the Council considers that the dispute is not suitable for resolution by mediation or the BID Company does not agree to mediation.
- 16.4 The performance of any services shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the BID Company and its employees, agents, suppliers and sub-contractors shall comply fully with the requirements of this Agreement at all times.
- 16.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 16.5.1 A neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within 14 days after a request by one party to the other or if the Mediator agreed upon is unable or unwilling to act, either party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator.
- 16.5.2 The parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
- 16.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.

- 16.5.4 If the parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the parties once it has been signed by their duly authorised representatives.
- 16.5.5 Failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Agreement without the prior written consent of both parties.
- 16.6 If the parties fail to reach agreement within 60 days of the Mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.
- 16.7 Subject to sub clause 2 above, the parties shall not institute court proceedings until the procedures for mediation have been completed.

IN WITNESS whereof this agreement has been executed by the parties hereto as a Deed and delivered on the day and year hereinbefore written

The Common Seal of the

Colchester City Council

was hereunto affixed in the

presence of:

Authorised Signatory

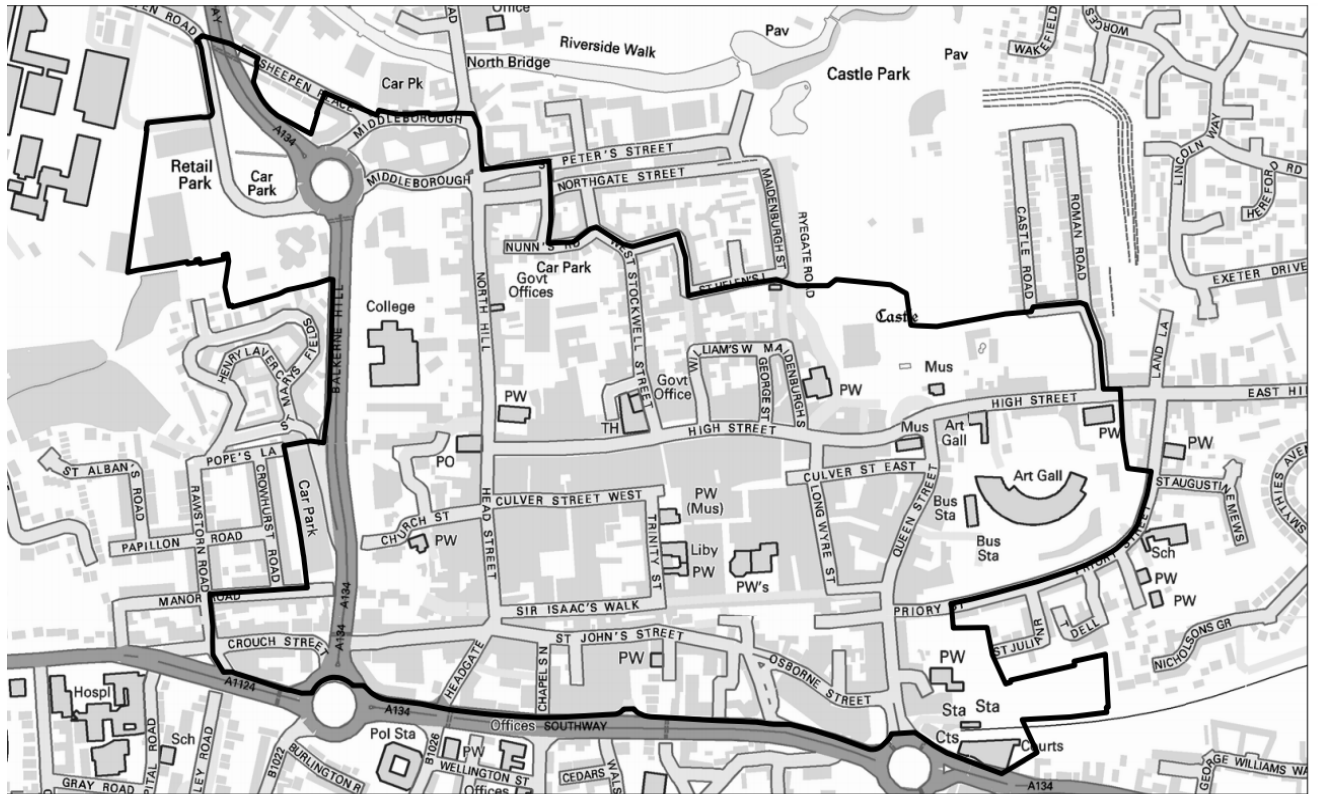
Signed on behalf of **Our Colchester Limited**

by

Director

Director

Schedule 1- BID area



ORDNANCE SURVEY PSMA COPYRIGHT TEXT:
Ordnance Survey copyright and database rights 2018 Ordnance Survey 100023706.

No active Legend.

Schedule 2 Levy Rules

Colchester BID Levy Rules

BID Rules

In developing the rules that will apply to the BID, consideration has been given to 'The National Criteria for BIDs' (2018)

Ballot

1. Colchester City Council will send those responsible for eligible hereditaments to be subject to the BID, a ballot paper prior to 23rd June 2023
2. Each property or hereditament subject to the BID will be entitled to one vote in the ballot (a 28-day postal ballot) which will commence on 23rd June and close at 5pm on 20th July 2023. Ballot papers received after 5pm on that day will not be counted
3. The result of the ballot will be announced as soon as practically possible after the close of ballot
4. In order for the proposal to be successful at ballot, the result will need to meet, as a minimum, two independent criteria which are: (a) of those ballot returned by the close, those voting in favour of the proposal must exceed those voting against it, and (b) of those ballot papers returned by the close, the total rateable value of those properties or hereditaments which vote in favour, must exceed the total of those voting against.
5. If successful at ballot, the new BID will commence delivery of services on 1st October 2023 and will continue for a period of 5 years to end 30th September 2028

Levy

1. The levy will apply to all persons or organisations liable to pay the non-domestic rates for eligible hereditaments located within the BID area
2. The levy rate to be paid by each property or hereditament is to be calculated as 1.75% of its rateable value as at the 'chargeable day' (notionally 1st October each year)
3. All properties of hereditaments with a rateable value of £14,999 or more will be eligible for a payment of the levy.
4. The number of properties or hereditaments liable for the levy is circa 450.
5. From 2024 onwards, the levy rate will be increased by the fixed rate of 2% per annum.
6. The levy will be charged annually in advance for each chargeable period (October to September each year), starting in October 2023. No refunds will be made.
7. The owners of untenanted properties or hereditaments will be liable for the levy.
8. Occupiers within Shopping Centres that are subject to a service charge will pay 1.5% of their rateable value.
9. Charitable organisations that are subject to relief of their business rates liability will pay a levy of 1.5% of their rateable value.
10. The BID levy must be paid by any new ratepayer occupying an existing eligible non-domestic rateable property within the BID area up until the end of the five-year term, even if they did not vote in the ballot.
11. Both Colchester Sixth Form College and Colchester Institute are exempt from paying the levy
12. The licensing authority currently does not have a policy to introduce a Late-Night Levy during the term of the BID.
13. Colchester Borough Council will be responsible for collection of the levy. The collection charge will be £13,300 in year one, followed by £13,300 per annum for the remaining four years of the BID. This equates to a collection charge of £29.55 per hereditament in year one based on 450 hereditaments and is approximately 2% of the anticipated billed levy.

Finances

1. A cautious approach has been adopted to providing the indicative budget for the BID term.
2. A levy collection rate of 97% has been assumed and this reflects national average.
3. The average annual levy available to be spent by the BID for the term is approx. £470,000
4. Annual surpluses act as a contingency provision on expenditure, and together with the availability of reserves, provide for an anticipated surplus of 5% of average annual expenditure by the end of the first term.
5. Operating costs of the BID Company are estimated as 20% of total expenditure.

Accountability and Transparency

1. The BID recognises the importance of accountability and transparency within its governance arrangements. It has recently received full accreditation from British BIDs, an award in respect of internal quality management systems within its first term.
2. The number of Directors for the BID Company (the Board – maximum 12) will include representation from all business sectors to ensure inclusion. This may include some non-levy payers, although always in a minority.
3. The Board's current Chair will continue into the new BID term. Any changes to the BID Chair will be voted on by the BID Board Directors.
4. The Proposer of the new BID and the BID Body is Our Colchester Limited, a not-for-profit organisation, limited by guarantee.
5. The Billing Authority will be Colchester City Council who will be responsible for the issue of bills and collection & enforcement of BID levy payments..
6. The BID will file annual accounts compiled by independent accountants with Companies House. The accounts will be available to all levy payers. An annual report on activities, including finances, will be published. An Annual Meeting for levy payers will be held. The BID will issue a statement every year to levy payers.
7. An Operating Agreement has been agreed with Colchester City Council. A copy can be found at www.ourcolchester.co.uk
8. Notification of the intention to hold a ballot was sent to the Secretary of State on 6th March 2023
9. The BID terms will commence on 1st October 2023 and run for a 5-year period until September 2028.
10. The Board shall have the ability to vary service delivery and expenditure allocation according to the changing demands of levy payers. However, any change to the BID boundary or to the levy rate proposals would require an alteration ballot.

Schedule 3 – Breakdown of Council's Annual BID Levy collection and administration charge

Colchester Borough Council BID costs

	One off	Recurring	Total
External Costs			

System costs (incl. design and training)	n/a	n/a	
Post and print		£800	£800
Collection of levy			
Collection		£9,600	£9,600
Management		£2,400	£2,400
Admin of revenue account		£500	£500
Total		£13,300	£13,300

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