

Dated 1 August 2016

**PROPOSED OPERATING AGREEMENT GOVERNING THE
COLLECTION AND PAYMENT OF THE BID LEVY**

THE CITY AND COUNTY OF SWANSEA

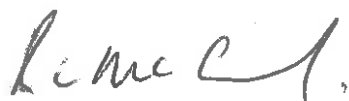
(The "Council")

- and -

SWANSEA BUSINESS IMPROVEMENTS LTD

(The "BID Company")

Signed on Behalf of the Council



Name: ROSE MCCREESH

Designation: REVENUE AND BENEFIT MANAGER

Date: 3. 11. 2016.

Signed on Behalf of the BID Company



Name: R Greenlade

Designation: Chief Executive.

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Operating Agreement

**THIS DEED is made the 1st day of August 2016
BETWEEN**

(1) The City and County of Swansea (the "Council"); and

(2) Swansea Business Improvements Ltd registered as a company limited by guarantee in England with number **5893941** whose registered office is at **1 Picton Lane Swansea SA1 4AF**

Recitals

- 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. 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.
- D. The purpose of this Agreement is to:
- E. 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.

It is agreed as follows:

Definitions

“Administrative Expenses”

- Means costs incurred by the Council in the administration, collection and recovery of the BID Levy.

“Annual Report”

means a report prepared by the Council which details

- (i) the amount of the BID Levy collected during the relevant Financial Year;
- (ii) details of the success rate for the collection of the BID Levy;
- (iii) the Council's proposals (if any) to help improve its efficiency in the collection and enforcement of the BID Levy;
- (iv) Details of those BID Levy Payers who have paid the BID Levy and those who have not paid the BID Levy if required.

“Appeal Notice”

- Means a notice served by the BID Company in accordance with Clause 9.2.

“Bad or Doubtful Debts”

- Has the meaning given as described in Part 2 Item 3 the Regulations.

“Ballot Result Date”

- Means the date upon which a successful ballot result has been declared in favour of putting in place the BID arrangements

“BID”	- Has the meaning given in the Regulations that is the Business Improvement District and is that area as defined in Schedule 1
“BID Arrangements”	- Has the meaning given by s41 of the Local Government Act 2003.
“BID Company’s Termination Notice”	- Means a notice to be served by the BID Company on the Council pursuant to clause 11
“BID Levy”	- Means the charge levied and collected within the BID pursuant to the Regulations.
“BID Levy Payer(s)”	- Means the non-domestic rate payers liable for paying the BID Levy.
“BID Levy Rules”	- Means the rules set out in Schedule 2.
“BID Revenue Account”	- Means the account kept in accordance with Regulation 14 of the Regulations.
“BID Term”	- Means our period of BID operation. Dates from 01/08/2016 / to 31/07/2021
“Chargeable Period(s)”	- means any one of the following periods: 01/08/16 – 31/03/17 01/04/17 – 31/03/18 01/04/18 – 31/03/19 01/04/19 – 31/03/20 01/04/20 – 31/03/21 01/04/21 – 31/07/21
“Contributors”	- Means the BID Levy Payers, and other payers of a contribution or funds made available to the BID Company which do not form part of the BID Levy.
“Council’s Termination Notice”	- Means a notice to be served by the Council on the BID Company pursuant to clause 11
“Demand Notice”	- Has the meaning given in Schedule 4 of the Regulations.
“Enforcement Notice”	- means a notice served on the Council by the BID company in accordance with Clause 9.1

“Electronic Communication”	<ul style="list-style-type: none"> - means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa): <ul style="list-style-type: none"> (a) by means of a telecommunication system (within the meaning of the Telecommunications Act 1984);or (b) by other means but while in electronic form
Exempt or Discounted Properties	<ul style="list-style-type: none"> - means those class or classes of properties as identified in the BID Levy Rules which shall be exempt either from any requirement to pay the BID Levy or are permitted a discount on the BID Levy
“Financial Year”	<ul style="list-style-type: none"> - Means the financial year for the BID Company which runs from 1st August to 31st March in the first year, then 1st April to 31st March for future years.
“Hereditament”	<ul style="list-style-type: none"> - Has the meaning given in the Regulations.
“Liability Order”	<ul style="list-style-type: none"> - Has the meaning given in the Regulations.
“Monitoring Group”	<ul style="list-style-type: none"> - Means the group to be set up to monitor the collection and enforcement of the BID. Members should consist of representatives from the Council and the BID Company.
“NNDR”	<ul style="list-style-type: none"> - Means National Non-Domestic Rates under the Local Government Finance Act 1988.
“NNDR Discretionary Relief”	<ul style="list-style-type: none"> - means relief which a local authority has a discretion to grant under s47 of the Local Government Finance Act 1988
“NNDR Hardship Relief”	<ul style="list-style-type: none"> - means relief which a local authority has a discretion to grant under s49 of the Local Government Finance Act 1988
“NNDR Mandatory Relief”	<ul style="list-style-type: none"> - means relief which a local authority must grant under s43 of the Local Government Finance Act 1988

- “NNDR Payer”**
- means the person or organisation who has a liability to pay the non-domestic rate
- “NNDR (Section 44A) Partly Occupied Relief”**
- means a NNDR allowance under s44A of the Local Government Finance Act 1988
- “Operational Date”**
- means the date upon which the BID Arrangements come into force – 01/08/2016
- “Proposal(s)”**
- 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 Voluntary 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”
- “Public Meeting”**
- means the meeting to be held of all BID Levy Payers pursuant to the Public Meeting Notice
- “Public Meeting Notice”**
- means a notice to be served pursuant to Clause 11.1 or 11.8 by either the Council or the BID Company which provides the following:-
 - (a) confirmation that either party is considering terminating the BID;
 - (b) details of the venue where the public meeting will be held;
 - (c) confirmation that all BID Levy Payers who attend will be permitted to make representations
- “Regulations”**
- Means the Business Improvement Districts (Wales) Regulations 2005 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”	- has the same meaning as determined in The Non Domestic Rating (Collection & Enforcement) (Local Lists) Regulations 1989
“Single Instalment Due Date”	- Means the date by which the BID Levy as set out in the Demand Notice must be paid.
“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 regarding unpaid BID Levy.
“Valuation Analysis Code”	- means the code used by the Valuation Officer in order to distinguish between Hereditament types on the Valuation List
“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 BID Company 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 the Business Improvement Districts (Wales) Regulations 2005 and all other enabling powers.

3 Commencement

- 3.1 This Agreement shall not take effect until the Ballot Result Date and in any event shall determine and cease to be of any further effect in the event that:
- 3.1.1 the BID Company fails to secure approval of the Proposals, Renewal Proposals or Alteration Proposals in a ballot, renewal ballot, alteration ballot or re-ballot;
 - 3.1.2 the Secretary of State declares void a BID ballot renewal ballot alteration ballot or re-ballot;
 - 3.1.3 the Council exercises its veto and there is no successful appeal against the veto;
 - 3.1.4 the BID Term expires save where the BID Company secures approval of Renewal Proposals in a renewal ballot or Alteration Proposals in an alteration ballot or Proposals in a re-ballot in which event this Agreement shall continue until the expiry of the BID Term set out in the Renewal Proposals, Alteration Proposals or the Proposals set out in the re-ballot provided, in relation to Renewal Proposals and Alteration Proposals the Council consents to such continuation;
 - 3.1.5 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 upon the Ballot Result Date the Council shall:

4.1.1 calculate the BID Levy for each BID Levy Payer in accordance with the BID Levy Rules; and

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

5 The BID Revenue Account

- 5.1 As soon as is reasonably practicable following the Ballot Result Date the Council shall keep a BID Revenue Account within the Council's General Fund and provide written confirmation to the BID Company of the same.
- 5.2 The BID Company will invoice the Council for monies collected on behalf of the BID Company at the end of the first month following the issue of bills and quarterly thereafter. Interest will not be paid on the BID levy.
- 5.2.1 The Council shall pay to the BID Company, upon the expiry of the first month and quarterly thereafter (commencing 30 September 2016), the BID Levy collected in that period, less a contingency for refunds as determined in the BID levy rules and for unmet payments - such contingency shall be determined as follows unless otherwise agreed:
- (a) 2% of the BID Levy collected from 01/08/2016 to 31/03/2017;
 - (b) 2% of the BID Levy collected from 01/04/2017 to 31/03/2018;
 - (c) 2% of the BID Levy collected from 01/04/2018 to 31/03/2019;
 - (d) 2% of the BID Levy collected from 01/04/2019 to 31/03/2020;
 - (e) 2% of the BID Levy collected from 01/04/2020 to 31/03/2021;
 - (f) 2% of the BID Levy collected from 01/04/2021 to 31/07/2021;
- 5.2.2 The contingency retained for each financial year will be paid over to the BID Company at the end of that financial year. Such arrangements for the last financial year are set out in 5.4 below.
- 5.2.3 The Council shall retain a contingency for any periods thereafter in accordance with a decision of the Council and such decision shall not be made without first consulting the BID Company.

- 5.3 The Council and the BID Company shall review the percentages set out at Clause 5.2.1 of this Agreement in respect of BID Levy collected from 01/08/2016 to 31/07/2021 as required (for the duration of the BID Term) and the Council shall take reasonable account of any representations made by the BID Company. At the conclusion of such review, the percentages shall be the percentages set out at paragraph 5.2.1 unless the Council decides to change the percentages.
- 5.4 Unless otherwise agreed, the Council shall pay to the BID Company such contingency as the Council has retained as at 31/07/ 2021 on 01/10/2021.
- 5.5 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 forthwith and the Council shall thereafter repay the repayment sum to the BID Levy Payer.

6 Administrative Charges

- 6.1 Expenses incurred by the Council in the administration, collection and recovery of the BID will be charged to the BID Company as administration charges.
- 6.2 Administration charges will be £18,333 per year (pro rata for part years) unless otherwise agreed.
- 6.3 The Council shall provide the BID Company with an invoice for payment of the Administrative Charges plus VAT where applicable on the following dates and for the corresponding sums:

Period	Cost	Payment Date
(I) 01.08.2016 to 31.03.2017	£12,222	01.10.2016
(ii) 01.04.2017 to 31.03.2018	£18,333	01.05.2017
(iii) 01.04.2018 to 31.03.2019	£18,333	01.05.2018
(iv) 01.04.2019 to 31.03.2020	£18,333	01.05.2019
(v) 01.04.2020 to 31.03.2021	£18,333	01.05.2020
(vi) 01.04.2021 to 31.07.2021	£6,111	01.05.2021

- 6.4 The Administrative Charges should be reviewed by both parties prior to the commencement of the next BID term on 1.8.2021.

7 Collecting the BID Levy

- 7.1 As soon as reasonably practicable following the Ballot Result Date the Council shall confirm in writing to the BID Company the anticipated date of the despatch of Demand Notices for the initial Chargeable Period and the anticipated Single Instalment Due Date.
- 7.2 Pursuant to clause 7.1 the Council shall serve a Demand Notice on each BID Levy Payer and thereafter shall continue to calculate the BID Levy and serve a Demand Notice throughout the BID Term.
- 7.3 The Council shall maintain a list of those BID Levy Payers who have paid the BID Levy and those BID Levy Payers who have not paid the BID Levy and shall make the list available to the BID Company upon its reasonable request.
- 7.4 The Council shall serve a Demand Notice or amended Demand Notice on a BID Levy Payer as soon as reasonably practicable after the Council receives notice of a change that affects liability for the BID Levy.
- 7.5 The Council shall use all reasonable endeavours to collect the BID Levy throughout the BID Term.

8 Procedures available to the Council for enforcing payment of the BID Levy

8.1 In the event that the BID Levy is not paid within [28 days] from the date that it becomes payable then (subject to the Exceptions or as may otherwise be agreed between the parties) the Council shall serve a Reminder Notice on such relevant BID Levy Payer which shall:-

(i) identify the sum payable;

(ii) provide a further minimum of 14 days for payment to be made;

(iii) confirm that the Council will make an application to the Magistrates Court for a Liability Order to recover the unpaid sum (together with costs]

8.2 If after a further minimum of 14 days from the payment date stated in the Reminder Notice the outstanding sum of the BID Levy has not been paid the Council shall make an application to the Magistrates Court for a Liability Order to recover the outstanding sum of the BID Levy as is permitted by the Regulations and the Non Domestic Rating (Collection & Enforcement) (Local Lists) Regulations 1989 (as amended).

9 Enforcement Mechanisms In The Event That The Council Fails to Enforce Collection of the BID Levy

9.1 In the event that the Council fails to enforce payment of the BID Levy pursuant to Clause 8 the BID Company shall be entitled to serve an Enforcement Notice on the Council requesting that:

9.1.1 the Council serve a Reminder Notice or

9.1.2 in the event that the Council has already served a Reminder Notice that the Council applies for a Liability Order and the Council shall thereafter provide written confirmation of the action it shall take to comply with the Enforcement Notice.

9.2 If the Council fails to provide written confirmation of the action it is taking in relation to the Enforcement Notice within 28 days of the issue of the Enforcement Notice the BID Company shall be entitled to serve an Appeal Notice on the Head of Finance of the Council and such notice shall:

9.2.1 detail the Sum Unpaid;

9.2.2 confirm that the Council has failed to use the enforcement mechanisms available to it under this Agreement to recover the sum unpaid; and

9.2.3 include written notice requesting that a meeting of the Monitoring Group take place in order to achieve a solution and/or agree a strategy to recover the Sum Unpaid such meeting to take place no later than 28 days from the date of the Appeal Notice.

10 Accounting Procedures and Monitoring

10.1 Within 1 (one) month from the BID Commencement Date the parties shall set up the Monitoring Group.

10.2 Unless otherwise agreed, upon the expiry of the first month from the BID Commencement Date and every 3 months thereafter (for the duration of BID Term) the Council shall provide the BID Company with:

- (i) the amount of the BID Levy;
- (ii) the amount of the BID Levy collected;
- (iii) details of the Collection Rate;
- (iv) details of when Reminder Notices are issued;
- (v) details of when Liability Orders made or applied for;

10.3 The Monitoring Group will convene as required.

At each meeting the Monitoring Group shall:

- 10.3.1 review the effectiveness of the collection and enforcement of the BID Levy; and
 - 10.3.2 if required by either party review and assess information provided by the parties pursuant to Clauses 10.2 and 10.3 above and make recommendations provided they are permitted by the Regulations and the terms of this Agreement.
- 10.4 Within 2 (two) months after the end of each Financial Year (for the duration of the Bid Term) the Council shall provide an Annual Report to the BID Company

11 Termination

- 11.1 Any proposals and notices for termination of the BID must comply with the requirements of The Regulations as defined.

12 Confidentiality

- 12.1 Both the Council and the BID Company, its directors and employees 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.

13. Notices

- 13.1 Any notice or other written communication to be served or given to or upon any party to this Agreement to the other shall be in writing and shall be sent to the address provided for above or such substitute address as may from time to time have been notified by that party upon 7 days written notice
- 13.2 A notice may be served by;
- 13.2.1 Delivery to the Head of Finance and Delivery at the address of the Council specified above; or
- 13.2.2 Delivery to the Finance Director at the address of the BID Company specified above;
- 13.3.3 Registered or recorded delivery post to such addresses;
- 13.3.4 Electronic Communication (provided that it is in legible form and is capable of being used for subsequent reference) to such addresses.
- 13.4 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.

14 Miscellaneous

14.1 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.

14.2 The headings appearing in this Agreement are for ease of reference only and shall not affect the construction of this Agreement.

14.3 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.

14.4 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.

14.5 References to the Council include any successors to its functions as local authority.

14.6 References to statutes, bye laws regulations orders or delegated legislation shall include any such instrument re-enacting or made pursuant to the same power.

15 Exercise of the Council's powers

15.1 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 bye-laws statutory instruments orders and regulations in the exercise of its functions as a local authority.

16 Contracts (Rights Of Third Parties)

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

17 Arbitration

17.1 The following provisions shall apply in the event of a dispute:

17.1.1 any dispute or difference of any kind whatsoever arising between the parties hereto out of or in connection with this Deed shall be referred to arbitration before a single arbitrator;

17.1.2 the parties shall jointly appoint the arbitrator not later than 28 (twenty eight) days after service of a request in writing by either party to do so and each party shall bear its own costs;

17.1.3 If the parties are unable to agree within 28 (twenty eight) days the appointment of such arbitrator then such arbitrator (hereinafter referred to as "the Tribunal") shall be appointed on the application of either party to the President for the time being of the Law Society;

17.1.4 In the event of a reference to arbitration the parties agree:

17.1.5 to prosecute any such reference expeditiously; and

17.1.6 to do all things or take all steps reasonably necessary in order to enable the Tribunal to deliver any award (interim, final or otherwise) as soon as reasonably practicable;

17.1.7 that the award shall be in writing signed by the Tribunal and shall be finalised within 21 (twenty one) days from the date of such award;

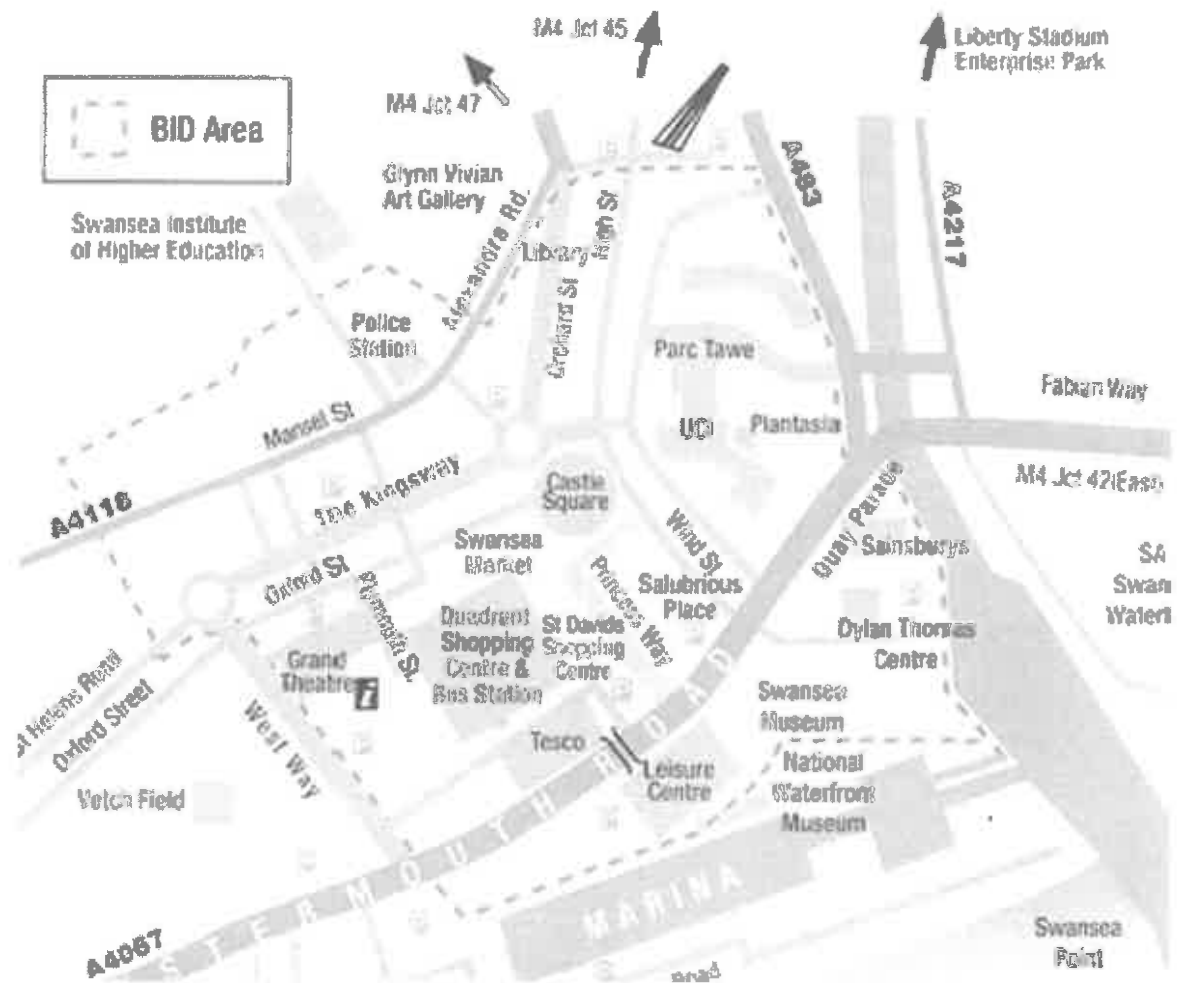
17.1.8 the award shall be final and binding both on the parties and on any persons claiming through or under them.

SCHEDULE 1 – BID AREA & MAP

The Swansea BID covers a precisely defined geographic area. It is the central commercial district as it stretches from the eastern side of Westway and Dillwyn Street to the west, the properties fronting onto Victoria Road and Oystermouth Road to the south, Mansel Street, and Alexandra Road to the north and the River Tawe to the east

The following streets are included in the BID, either in whole or part: -

Adelaide Street	Kings Lane	Somerset Place
Albert Row	Mansel Street	Salubrious Passage
Alexandra Road	Nelson Street	Salubrious Place
Bath Lane	Northhampton Lane	Singleton Street
Belle Vue Way	Orchard Street	Somerset Place
Caer Street	Oxford Street	St David's Square
Castle Square	Oystermouth Road	St Mary's Square
Castle Street	Parc Tawe	The Kingsway
Christinia Street	Park Street	The Quadrant
College Street	Pell Street	The Strand
Craddock Street	Picton Arcade	Trinity Place
De La Beche Street	Plymouth Street	Union St
Dynevor Place	Portland Street	Victoria Road
Foresters Wharf	Princess Way	Welcome Lane
Gloucester Place	Prospect Place	Wellington Street
Green Dragon Lane	Quay Parade	Whitewalls
Grove Place	Rutland Place	Wind Street
High Street	Shoppers Walk Arcade	Worcester Place
Horton Street	Singleton Street	York Street



SCHEDULE 2 – BID LEVY RULES

- The BID process is governed by Government Legislation and Regulations. As such, once a majority vote has been achieved, the BID levy becomes mandatory on all defined ratepayers.
- The BID levy will be fixed at 1% of the rateable value of all nondomestic ratepayers with a rateable value of £5,000 or more using the 2010 rating list as at 14th January 2016, which is the date of notice of the ballot. Apart from those that are located within the existing Quadrant Shopping Centre and any subsequent new shopping centre developments that are planned, built and managed as a single entity, comprising units and communal areas, with a minimum gross leasable area (GLA) of 5,000 square metres (m²) where a 0.90% levy charge will be applied.
- Those receiving either 80% mandatory and 20% discretionary charitable relief or 100% Discretionary Relief from non domestic rates will be exempt from the BID.
- Where a property is taken out of rating e.g. due to demolition or a split or merge of an existing assessment, the BID levy will apply up to the day before the effective day of removal from the Rating List and the annual BID levy will be apportioned

accordingly. This will include cases where the rateable value has been reduced to £1 or zero.

- Where a new assessment is brought into the Rating List e.g. a newly erected property or a property resulting from a split or merger, the BID levy will apply from the effective date as shown in the Rating List. The annual levy will be apportioned on a daily basis as required.
- There will be no VAT charged on the BID levy.
- The BID levy will be payable in a single instalment 28 days after the issue of the demand notice.
- The BID levy will be payable from 1st August 2016 for the first year of the BID and from 1st April for each subsequent year. The charge will be calculated on a daily basis and there will be adjustments during the year to reflect changes in the liable party.
- In accordance with The Business Improvement Districts (Wales) Regulations 2005 the City and County of Swansea Revenues and Benefits Section will be responsible for the imposition, administration, collection, recovery and application of the BID levy.
- Non payment of the BID levy will be strongly pursued via all available enforcement options as determined in the current Non Domestic Rating legislation.
- The term of the BID will be for a period of 5 years from 1st August 2016.
- The BID levy will also not be affected by the Government's Small Business Rate Relief Scheme which came into effect on 1st April 2007 in Wales.
- The BID levy is payable on the whole rating assessment irrespective if part or all of it is empty. In the case of empty properties, the BID levy will be collected at 100% from either the owner or leaseholder (if an occupational lease exists) except in cases where insolvency proceedings have commenced.

