



TENDER NO.: SC 2071/2020

LEASE, MANAGEMENT, MAINTENANCE AND SUB-LEASE OF 34 OF THE MARKET SQUARE STALLS AND THE UPKEEP OF THE ABLUTION FACILITIES SITUATED ON A PORTION OF ERF 832 AND A PORTION OF ERF 249 HERMANUS, FOR A CONTRACT PERIOD OF 9 (NINE) YEARS AND 11 (ELEVEN) MONTHS

PROCUREMENT DOCUMENT

NAME OF TENDERER:	
Total Bid Price (Inclusive of VAT) <i>(refer to Form of Offer on page: 47):</i>	

MAY 2020

PREPARED AND ISSUED BY:

Directorate: Finance:
Supply Chain Management Unit
Overstrand Municipality
PO Box 20, Hermanus, 7200

**CONTACT FOR ENQUIRIES
REGARDING SPECIFICATIONS:**

Ms. A Le Roux
Manager: Property Administration
Tel. Number: **028 316 3724**

MBD 1 – INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE OVERSTRAND MUNICIPALITY

1. TENDER DETAILS			
TENDER NUMBER:	SC 2071/2020		
TENDER TITLE:	LEASE, MANAGEMENT, MAINTENANCE AND SUB-LEASE OF 34 OF THE MARKET SQUARE STALLS AND THE UPKEEP OF THE ABLUTION FACILITIES SITUATED ON A PORTION OF ERF 832 AND A PORTION OF ERF 249 HERMANUS, FOR A CONTRACT PERIOD OF 9 (NINE) YEARS AND 11 (ELEVEN) MONTHS		
CLOSING DATE:	12 June 2020	CLOSING TIME:	12H00
SITE MEETING:	DATE:	No site meeting will be held. Bidders are kindly requested to contact A Le Roux for any further enquiries: Email address: anjaleroux@overstrand.gov.za Tel: 028 - 316 3724	
SITE MEETING ADDRESS:	N/A		
CIDB GRADING REQUIRED:	N/A	LEVEL AND CATEGORY:	N/A
BID BOX NO:	2	SITUATED AT: Overstrand Municipal Building, Magnolia Avenue, Hermanus. The bid box is generally open 24 hours a day, 7 days a week.	
OFFER TO BE VALID FOR AT LEAST:	90 DAYS	FROM THE CLOSING DATE OF BID.	
2. BIDDER'S DETAILS			
LEGAL NAME OF ORGANISATION			
TRADE NAME (if different from legal name)			
POSTAL ADDRESS			
STREET ADDRESS			
NAME OF CONTACT PERSON			
TELEPHONE NUMBER		CELL NUMBER	
E-MAIL ADDRESS			
COMPANY REGISTRATION NUMBER			
OVERSTRAND MUNICIPALITY SUPPLIER DATABASE REGISTRATION NUMBER			
3. BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO THE SUPPLY CHAIN MANAGEMENT UNIT			
CONTACT PERSON	L du Preez	TELEPHONE NUMBER	028 313 8147
		Email address	ldupreez@overstrand.gov.za
CONTACT PERSON	J Aplon	TELEPHONE NUMBER	028 313 5021
		Email address	japlon@overstrand.gov.za
TECHNICAL INFORMATION REGARDING THIS QUOTATION MAY BE OBTAINED FROM:			
CONTACT PERSON	A Le Roux	TELEPHONE NUMBER	028 316 3724
		Email address	anjaleroux@overstrand.gov.za

4. TAX COMPLIANCE REQUIREMENTS

TAX CLEARANCE STATUS PIN	
TAX CLEARANCE EXPIRY DATE	
INCOME TAX NUMBER	
VAT REGISTRATION NUMBER	
<p>a) Bidders must ensure compliance with their tax obligations.</p> <p>b) Bidders are required to submit their unique personal identification number (pin) issued by SARS to enable the organ of state to view the taxpayer's profile and tax status.</p> <p>c) Application for the tax compliance status (TCS) certificate or pin may also be made via e-filing. In order to use this provision, taxpayers will need to register with SARS as e-filers through the website www.sars.gov.za</p> <p>d) Foreign suppliers must complete the pre-award questionnaire in part B.3.</p> <p>e) Bidders may also submit a printed TCS certificate together with the bid.</p> <p>f) In bids where consortia / joint ventures / sub-contractors are involved, each party must submit a separate TCS certificate / pin / CSD number.</p>	

Are you the accredited representative in South Africa for the goods /services /works offered? If yes, enclose proof	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Are you a foreign based supplier for the goods /services /works offered? If yes, answer the questions in par. 6 below.	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

5. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

a) Is the entity a resident of the republic of South Africa (RSA)?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
b) Does the entity have a branch in the RSA?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
c) Does the entity have a permanent establishment in the RSA?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
d) Does the entity have any source of income in the RSA?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
e) Is the entity liable in the RSA for any form of taxation?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

If the answer is "No" to all of the above, then it is not a requirement to register for a tax compliance status system pin code from the South African revenue service (SARS) and if not register as per 2.3 above.

PLEASE NOTE:

- Mailed, telegraphic or faxed bids will not be accepted.
- Bids may only be submitted on the Bid Documentation provided by the Municipality (not to be re-typed).
- Bids must be delivered by the stipulated time to the correct box and address. Late bids will not be accepted for consideration.
- Tender box deposit slot is 28cm x 2.5cm.

6. CAPACITY UNDER WHICH THIS BID IS SIGNED

NAME OF PERSON DULY AUTHORISED TO SIGN THIS OFFER	
SIGNATURE	
DATE	

**NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.
NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE**

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**PART A – ADMINISTRATIVE REQUIREMENTS IN
TERMS OF THE SUPPLY CHAIN MANAGEMENT POLICY**

1. CHECKLIST

PLEASE ENSURE THAT THE FOLLOWING FORMS HAVE BEEN DULY COMPLETED AND SIGNED AND THAT ALL DOCUMENTS AS REQUESTED, ARE ATTACHED TO THE TENDER DOCUMENT:

Authority to Sign a Bid Is the form duly completed and is a certified copy of the resolution attached?	Yes	No
Tax Clearance Certificate Provide Tax clearance compliance status pin and Income Tax no.	Yes	No
MBD 4 (Declaration of Interest) Is the form duly completed and signed?	Yes	No
MBD 8 (Declaration of Past Supply Chain Practices) Is the form duly completed and signed?	Yes	No
MBD 9 (Certificate of Independent Bid Determination) Is the form duly completed and signed?	Yes	No
MBD 15 (Certificate of Payment of Municipal Accounts) Is the form duly completed and signed? Are the Identity numbers, residential addresses and municipal account numbers of ALL members, partners, directors, etc. provided on the form as requested?	Yes	No
Specifications Is the form duly completed and signed?	Yes	No
Form of Offer Is the form duly completed and signed?	Yes	No

SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			

2. TENDER NOTICE & INVITATION TO TENDER
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TENDER NO. SC 2071/2020

LEASE, MANAGEMENT, MAINTENANCE AND SUB-LEASE OF 34 OF THE MARKET SQUARE STALLS AND THE UPKEEP OF THE ABLUTION FACILITIES SITUATED ON A PORTION OF ERF 832 AND A PORTION OF ERF 249 HERMANUS, FOR A CONTRACT PERIOD OF 9 (NINE) YEARS AND 11 (ELEVEN) MONTHS
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Tenders are hereby invited for the **Lease, Management, Maintenance and Sub-lease of 34 of the market square stalls and the upkeep of the ablution facilities situated on a portion of erf 832 and a portion of erf 249, Hermanus for a contract period of 9 years and 11 months.**

Tender documents, in English, are obtainable from **Friday, 08 May 2020**, at the offices of the Supply Chain Management Unit, Overstrand Municipality, Magnolia Avenue, Hermanus from Ms Rita Neethling; Tel. 028 313 8064, between 08h30 and 15h30 upon payment of a **tender participation fee of R198-00 per set**. Alternatively the document may be downloaded free of charge from the website: www.overstrand.gov.za. Due to the lockdown regulations, bidders are encouraged to download the tender document from our municipal website.

Sealed tenders, with "**Tender No. SC2071/2020: Lease, Management, Maintenance and Sub-lease of 34 of the market square stalls and the upkeep of the ablution facilities situated on a portion of erf 832 and a portion of erf 249, Hermanus for a contract period of 9 years and 11 months**" clearly endorsed on the envelope, must be deposited in **Tender Box No. 2** at the offices of the Overstrand Municipality, Magnolia Avenue, Hermanus. Bids may only be submitted on the bid documentation issued by Overstrand Municipality.

The closing date and time of the tender is on **12 June 2020 at 12h00** and tenders will be opened in public immediately thereafter in the Supply Chain Management Committee Room, Hermanus Administration.

Please refer enquiries to **Ms. A Le Roux** at email address: anjaleroux@overstrand.gov.za and/or telephone number: **028 316 3724**.



3. AUTHORITY TO SIGN A BID

TYPE OF ENTERPRISE (Please indicate with an "X" and complete the indicated section below)

1	Company (Pty) Ltd. & Ltd.		Please complete section 1 below
2	Close Corporation (CC)		Please complete section 2 below
3	Sole Proprietor		Please complete section 3 below
4	Partnership		Please complete section 4 below
5	Consortium, Club, Trust, etc.		Please complete section 5 below
6	Joint Venture		Please complete section 6 below

1. COMPANIES - (PTY) LTD. & LTD.

1.1. If a bidder is a **COMPANY ((Pty) Ltd. OR Ltd.)**, a certified copy of the resolution by the board of directors, duly signed, authorising the person who signs this bid to do so, as well as to sign any contract resulting from this bid and any other documents and correspondence in connection with this bid and/or contract on behalf of the company must be submitted with this bid, that is, before the closing time and date of the bid.

1.2. A valid resolution must be signed by:

- 1.2.1. Majority directors; or
- 1.2.2. Chairman of the Board; or
- 1.2.3. Company Secretary

PARTICULARS OF RESOLUTION BY THE BOARD OF DIRECTORS OF THE COMPANY

Date resolution was taken			
Resolution signed by (name and surname)			
Capacity			
Name and surname of delegated authorised signatory			
Capacity			
Specimen signature			
Full name and surname of ALL director(s)			
Is a copy of the resolution attached?		YES	NO
SIGNED ON BEHALF OF COMPANY / CC:		DATE:	
PRINT NAME:			
WITNESS 1:		WITNESS 2:	

2. CLOSE CORPORATION (CC)

2.1. In the case of a **CLOSE CORPORATION (CC)** submitting a bid, a resolution by its members, authorizing a member or other official of the corporation to sign the documents on their behalf, shall be included with the bid.

2.2. A valid resolution must be signed by:

2.2.1. Majority members; or

2.2.2. Member with majority shareholding but only if such shareholding is more than 50%; or

2.2.3. Company Secretary.

PARTICULARS OF RESOLUTION BY THE MEMBERS OF THE CLOSE CORPORATION

Date resolution was taken			
Resolution signed by (name and surname)			
Capacity			
Name and surname of delegated authorised signatory			
Capacity			
Specimen signature			
Full name and surname of ALL director(s) / member (s)			
Is a copy of the resolution attached?		YES	NO
SIGNED ON BEHALF OF COMPANY / CC:		DATE:	
PRINT NAME:			
WITNESS 1:		WITNESS 2:	

3. SOLE PROPRIETOR (SINGLE OWNER BUSINESS) & NATURAL PERSON

I, _____, the undersigned, hereby confirm that I am the sole owner of the business trading as _____.

OR

I, _____, the undersigned, hereby confirm that I am submitting this bid in my capacity as natural person.

SIGNATURE:		DATE:	
PRINT NAME:			
WITNESS 1:		WITNESS 2:	



4. PARTNERSHIP

We, the undersigned partners in the business trading as _____
hereby authorize Mr / Ms _____ to sign this bid as well as any
contract resulting from the bid and any other documents and correspondence in connection with this bid and
/or contract for and on behalf of the abovementioned partnership.

The following particulars in respect of every partner must be furnished and signed by every partner:

Full name of partner	Signature

SIGNED ON BEHALF OF PARTNERSHIP:		DATE:	
PRINT NAME:			
WITNESS 1:		WITNESS 2:	

5. CONSORTIUM / CLUB / TRUST / ETC.

We, the undersigned consortium partners, hereby authorize _____
(Name of entity) to act as lead consortium partner and further authorize Mr / Ms _____
to sign this offer as well as any contract resulting from this bid and any other documents and correspondence
in connection with this bid and / or contract for and on behalf of the consortium.

The following particulars in respect of each consortium member must be provided and must be signed by each member:

Full Name of consortium member	Role of consortium member	% Participation	Signature

SIGNED ON BEHALF OF PARTNERSHIP:		DATE:	
PRINT NAME:			
WITNESS 1:		WITNESS 2:	

6. JOINT VENTURE

We, the undersigned, are submitting this bid offer in joint venture and hereby authorize Mr / Ms _____

_____ authorized signatory of the Company / Close Corporation / Partnership (name) _____,

_____ acting in the capacity of lead partner, to sign all documents in connection with the bid offer and any contract resulting from it on our behalf.

1. LEAD PARTNER (Whom the Municipality shall hold liable for the purpose of the tender)

Name of firm			
Address			Tel. No.
Signature		Designation	

2. 2nd PARTNER

Name of firm			
Address			Tel. No.
Signature		Designation	

3. 3rd PARTNER

Name of firm			
Address:			Tel. No.
Signature		Designation	

4. 4th PARTNER

Name of firm			
Address:			Tel. No.
Signature		Designation	

NOTE: A copy of the Joint Venture Agreement indicating clearly the percentage contribution of each partner to the Joint Venture, is to be submitted with the bid.

A board resolution, authorising each signatory who signed above to do so, is to be submitted with the bid.

4. GENERAL CONDITIONS OF TENDER

1. GENERAL

- 1.1 All bids must be submitted in **handwriting and in non-erasable (black or blue) ink** on the official forms supplied by the municipality.
- 1.1.1 Under no circumstances, whatsoever may the bid forms be retyped or redrafted.
- 1.2 Subject to the provisions of clause 1.3 of this document, no alterations / corrections to the information in the document (including pricing) may be performed by pasting another page over it with glue.
- 1.2.1 The use of correction fluid / tape is prohibited.
- 1.3 Notwithstanding the provisions of clause 1.2 of this document, alterations and/or corrections may only be effected as follows:
- 1.3.1 By striking a straight line in black ink through the incorrect information in such a manner that the information that has been struck through remains legible; writing, the altered or corrected information as appropriate (under, above or next to the information to be corrected), and initialling in the margin next to each and every alteration or correction.
- 1.3.2 All corrections/alterations to the Pricing Schedule / Bill of Quantities (BoQ) and / or any pricing not effected in accordance with clause 1.3.1 above, will be rejected.
- 1.4 Bids submitted must be complete in all respects.
- 1.4.1 The bidder is advised to check the number of pages and to satisfy himself that none are missing or duplicated.
- 1.4.2 The bidder must ensure that his/her bid document is securely bound.
- 1.4.2.1 All supporting documents must be submitted by either stapling it to the relevant form in the bid document, or by submitting a bound annexure containing all supporting documents.
- 1.4.2.2 The Municipality will not take any responsibility for missing / lost pages, in cases where the bidder submit loose pages (not securely attached to the bid document or annexure with supporting documents).

2. PRICING

- 2.1 Rates and prices offered by the bidder must be written onto the pricing schedule or form of offer of this document by hand, completed in full and originally signed by the duly authorised signatory.
- 2.2 All prices shall be quoted in South African currency, and be **INCLUSIVE of Value Added Tax (VAT)**.
- 2.3 All bid prices will be final and binding.
- 2.4 A bid will not be invalidated if the amount in words and the amount in figures do not correspond, in which case the amount in words shall be read out at the bid opening and shall be deemed to be the bid amount; therefore, where there is a discrepancy between the amount in figures and the amount in words, the amount in words shall apply

3. SUBMITTING A BID:

- 3.1 Sealed bids, with the **“Bid Number and Title”** clearly endorsed on the envelope, must be deposited in the relevant **bid box** as indicated in the notice of the bid, **on or before the closing date and time** of the bid.
- 3.1.1 Any bid received without the **“Bid Number and / or Title”** clearly endorsed on the envelope will not be opened and read out during the bid opening session and will not be considered
- 3.2 The bid boxes are at the entrance of the Main Cash Hall, Hermanus Municipal Offices, 1 Magnolia Avenue, Hermanus.
- 3.3 A specific bid box is provided for each bid to be deposited into and no bid will be considered which, subsequent to the closing date and time for that specific bid, is found in another box.
- 3.4 The bid box deposit slot is 28cm x 2.5cm.
- 3.5 Mailed, telegraphic, e-mailed or faxed bids **will not be accepted**.

4. BID OPENING

- 4.1 Bids shall be opened in public at the Hermanus Municipal Offices as soon as possible subsequent to the closing time for the receipt of bids.
- 4.2 Where practical, prices will be read out at the time of opening bids.
- 4.3 The Municipality will record in a register (which is open to public inspection) and publish on its website, the details of bids received by the closing date and time.
- 4.4 Any bid received after the appointed time for the closing of bids **shall not be considered** but shall be filed unopened with the other bids received, which bid(s) can be returned to the bidder at his request and cost.

INITIALS	
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5. EVALUATION AND ADJUDICATION CRITERIA:

- 5.1 Relevant specifications;
- 5.2 Value for money;
- 5.3 Capacity and capability of bidders to execute the contract;
- 5.4 Financial means and expertise; and
- 5.5 Any other objective criteria.

6. REQUIREMENTS OF A VALID BID:

- 6.1 The following duly completed documents and / or information must be submitted with the submission of the bid. Failure to comply with this requirement will invalidate the bid. The bid will not be considered and no further correspondence will be entered into with regard to the following matters:
 - 6.1.1 The tender has not been completed in non-erasable handwritten ink,
 - 6.1.2 Non-submission of a valid Tax Clearance Certificate and / or PIN,
 - 6.1.3 Incomplete Pricing Schedule or Bill of Quantities,
 - 6.1.4 A Form of Offer not signed in non-erasable ink,
 - 6.1.5 Bid submissions with material alterations / corrections not in compliance with Clause 1.2 and 1.3 above will be rejected.
- 6.2 The Municipality may, after the closing date, request additional information or clarification of tenders in writing, which will include the following:
 - 6.2.1 To obtain a copy of the most recent municipal account(s) from the recommended bidder;
 - 6.2.2 To obtain the personal income tax number(s) from the recommended bidder;
 - 6.2.3 To obtain a valid Tax Clearance Certificate and / or PIN if the certificate has expired or become inactive after the closing date of the tender;
 - 6.2.4 To obtain a valid letter of good standing from the Workmen’s Compensation Commissioner, the latest assessment and proof of payment thereof;

7. TEST FOR RESPONSIVENESS:

- 7.1 A Bid will be considered non-responsive if:
 - 7.1.1 the bid is not in compliance with the specifications;
 - 7.1.2 the bidder has not fully completed and signed where required, all the returnable documents as listed in the bid document; and/or
 - 7.1.3 the bidder has failed to clarify or submit any supporting documentation within 3 business days of being requested to do so in writing.
- 7.2 The Municipality reserves the right to accept or reject:
 - 7.2.1 any variation, deviation, bid offer, or alternative bid offer; may cancel the bidding process and reject all bid offers at any time before the formation of a contract. The MUNICIPALITY shall not accept or incur any liability to a bidder for such cancellation and/or rejection, and will only provide written reasons for such action upon receipt of a written request to do so;
 - 7.2.2 a bid offer which does not, in the Municipality’s opinion, materially and/or substantially deviate from the terms, conditions and specifications of the bid document.
 - 7.2.3 the whole bid or part of a bid or any item or part of any item, or to accept more than one bid (in the event of a number of items being offered), and the Municipality is not obliged to accept the lowest or any bid.
- 7.3 The Municipality has the right to summarily disqualify any bidder who, either at the date of submission of a bid or at the date of its award, is indebted to the Municipality in respect of any municipal rates and taxes or municipal service charges for more than three months. However, an agreement signed by the bidder whereby the bidder agrees that a percentage or fixed amount at the discretion of the municipality, be deducted from payments due to him/her for this bid, until the debt is paid in full, will also be accepted by the Municipality.

8. INCORRECT INFORMATION

Where a contract has been awarded on the strength of the information furnished by the bidder which after the conclusion of the relevant agreement, is proven to have been incorrect, the municipality may, in addition to any other legal remedy it has or may have, recover from the contractor all costs, losses or damages incurred or sustained by the municipality as a result of the award of the contract.

9. WITHDRAWAL OF BID DURING AND AFTER THE SCM PROCESS:

- 9.1 When a bidder withdraws his/her bid during the SCM bidding process, it must be in writing, prior to the award of the bid, of which Overstrand holds the right to accept or reject with or without a claim for any damages.
- 9.2 When a bidder withdraws or cancels the contract after award of the bid to the particular winner of the bid, the awarded bidder will be held responsible for any damages or administrative expenses incurred prior to the award of the bid.

INITIALS	
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10. PRECEDENCE OF TERMS AND CONDITIONS

10.1 Precedence of terms and conditions in documentation during the bidding process and after award, resulting in an formal agreement:

10.1.1 The following legislative and legal precedence will apply to documentation during the bidding process subsequent to the award of a bid to a bidder:

- (a) Municipal Financial Management Act 56 of 2003
- (b) Municipal Supply Chain Management Regulations
- (c) Supply Chain Management policy
- (d) Municipal Asset Transfer Regulations
- (e) Specifications of the bid document
- (f) Special Conditions of Contract
- (g) General Conditions of Contract
- (h) Service Level Agreements/ Service Delivery Agreements
- (i) Memorandum of Understanding/ Memorandum of Agreements
- (j) Deeds of Sale/ Lease Agreements

INITIALS	
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5. MBD 4 – DECLARATION OF INTEREST

1. No bid will be accepted from persons in the service of the state¹.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority and/or take an oath declaring his/her interest.
3. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid:

3.1.	Full name of bidder or his or her representative																		
3.2.	Identity number																		
3.3.	Position occupied in the company (director, shareholder ² etc.)																		
3.4.	Company registration number																		
3.5.	Tax reference number																		
3.6.	VAT registration number																		
3.7.	Are you presently in the service of the state?	YES		NO															
3.7.1.	If so, furnish particulars:																		

¹ MSCM Regulations: "in the service of the state" means to be –

- (a) member of – a
 - i. any municipal council; a
 - ii. any provincial legislature; or
 - iii. the National Assembly or the National Council of Provinces;
- (b) member of the board of directors of any municipal entity; a
- (c) an official of any municipality or municipal entity; a
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (e) member of the accounting authority of any national or provincial public entity; or a
- (f) an employee of Parliament or a provincial legislature. a

² "Shareholder" means a person who owns shares in the company and is actively involved in the management of the company or business and exercises control over the company.

SIGNATURE		DATE	
NAME OF SIGNATORY			
POSITION			
NAME OF COMPANY			
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3.8.	Have you been in the service of the state for the past twelve months?	YES		NO	
3.8.1.	If so, furnish particulars:				
3.9.	Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid?	YES		NO	
3.9.1.	If so, furnish particulars:				
3.10.	Are you aware of any relationship (family, friend, other) between a bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid?	YES		NO	
3.10.1.	If so, furnish particulars:				
3.11.	Are any of the company's directors, managers, principal shareholders or stakeholders in the service of the state?	YES		NO	
3.11.1.	If so, furnish particulars:				
3.12.	Is any spouse, child or parent of the company's directors, managers, principal shareholders or stakeholders in the service of the state?	YES		NO	
3.12.1.	If so, furnish particulars:				

SIGNATURE		DATE	
NAME OF SIGNATORY			
POSITION			
NAME OF COMPANY			
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3.13.	Do you or any of the directors, trustees, managers, principal shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract?	YES		NO	
3.13.1.	If so, furnish particulars:				

3.14.	Please provide the following information on ALL directors / shareholders / trustees /members below:		
full name and surname	identity number	personal income tax number	Provide State ³ employee number <small>(Only to be completed if in the service of the State)</small>

NB:

- PLEASE ATTACH CERTIFIED COPY(IES) OF ID DOCUMENT(S)
- PLEASE PROVIDE PERSONAL INCOME TAX NUMBERS FOR ALL DIRECTORS / SHAREHOLDERS / TRUSTEES / MEMBERS, ETC.

4. DECLARATION

I, the undersigned (name) _____, certify that the information furnished in paragraph 3 above is correct. I accept that the state may act against me should this declaration prove to be false.

³ **MSCM Regulations: “in the service of the state” means to be –**

- (a) a member of –
 - i. any municipal council;
 - ii. any provincial legislature; or
 - iii. the National Assembly or the National Council of Provinces;
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (e) a member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature.

SIGNATURE		DATE	
NAME OF SIGNATORY			
POSITION			
NAME OF COMPANY			
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6. MBD 8 – DECLARATION OF BIDDER’S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

1. This Municipal Bidding Document must form part of all bids invited.
2. It serves as a declaration to be used by municipalities and municipal entities in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
3. The bid of any bidder may be rejected if that bidder, or any of its directors have:
 - 3.1. abused the municipality’s / municipal entity’s supply chain management system or committed any improper conduct in relation to such system;
 - 3.2. been convicted for fraud or corruption during the past five years;
 - 3.3. willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - 3.4. been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
4. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

4.1	Is the bidder or any of its directors listed on the National Treasury’s database as a company or person prohibited from doing business with the public sector? <i>(Companies or persons who are listed on this database were informed in writing of this restriction by the National Treasury after the audi alteram partem rule was applied).</i>	Yes	No
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? <i>(To access this Register enter the National Treasury’s website, www.treasury.gov.za, click on the icon “Register for Tender Defaulters” or submit your written request for a hard copy of the Register to facsimile number (012) 3265445).</i>	Yes	No
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes	No

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4.3.1	If so, furnish particulars:		
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes	No
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes	No
4.5.1	If so, furnish particulars:		

5. CERTIFICATION

I, the undersigned (full name), _____, certify that the information furnished on this declaration form true and correct.

I accept that, in addition to cancellation of a contract, action may be taken against me should this declaration prove to be false.

SIGNATURE:		NAME (PRINT):	
CAPACITY:		DATE:	
NAME OF FIRM:			

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7. MBD 9 – CERTIFICATE OF INDEPENDENT BID DETERMINATION

1. This Municipal Bidding Document (MBD) must form part of all bids invited.
2. Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).⁴ Collusive bidding is a *per se* prohibition meaning that it cannot be justified under any grounds.
3. Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:
 - 3.1. take all reasonable steps to prevent such abuse;
 - 3.2. reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
 - 3.3. cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.
4. This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
5. In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

CERTIFICATE OF INDEPENDENT BID DETERMINATION:

In response to the invitation for the bid made by:

OVERSTRAND MUNICIPALITY

I, the undersigned, in submitting the accompanying bid, hereby make the following statements that I certify to be true and complete in every respect:

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;

⁴ Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

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5. For the purposes of this Certificate and the accompanying bid, I understand that the word “competitor” shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - 5.1. has been requested to submit a bid in response to this bid invitation;
 - 5.2. could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - 5.3. provides the same goods and services as the bidder and/or is in the same line of business as the bidder
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium⁵ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - 7.1. prices;
 - 7.2. geographical area where product or service will be rendered (market allocation)
 - 7.3. methods, factors or formulas used to calculate prices;
 - 7.4. the intention or decision to submit or not to submit, a bid;
 - 7.5. the submission of a bid which does not meet the specifications and conditions of the bid; or
 - 7.6. bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No. 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No. 12 of 2004 or any other applicable legislation.

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⁵ Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

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8. MBD 15 – CERTIFICATE FOR PAYMENT OF MUNICIPAL SERVICES

DECLARATION IN TERMS OF PARAGRAPH 38(1)(d)(i) OF THE SUPPLY CHAIN MANAGEMENT POLICY OF THE OVERSTRAND MUNICIPALITY (To be signed in the presence of a Commissioner of Oaths)

I, _____, _____ (full name and ID no.), hereby acknowledge that the Municipality may reject the tender of the tenderer if any municipal rates and taxes or municipal service charges owed by the bidder or any of its directors/members/partners to the Overstrand Municipality, or to any other municipality or municipal entity, are in arrears for more than 3 (three) months.

I declare that I am duly authorised to act on behalf of _____ (name of the firm) and hereby declare, that to the best of my personal knowledge, neither the firm nor any director/member/partner of said firm is in arrears on any of its municipal accounts with any municipality in the Republic of South Africa, for a period longer than 3 (three) months.

I further hereby certify that the information set out in this schedule and/or attachment(s) hereto is true and correct. The bidder acknowledges that failure to properly and truthfully complete this schedule may result in the tender being disqualified, and/or in the event that the tenderer is successful, the cancellation of the contract.

PHYSICAL BUSINESS ADDRESS(ES) OF THE TENDERER	MUNICIPAL ACCOUNT NUMBER

Further details of the bidder’s director(s) / shareholder(s) / partner(s) / member(s), etc.:

Director / partner / member	Physical residential address of the director / partner / member	Municipal account number(s)

PLEASE NOTE:

1. Copies of all municipal accounts, not older than 3 months, to be submitted with the bid.
2. If the entity or any of its directors/shareholders/partners/members, etc. rents/leases premises a copy of the rental/lease agreement is to be submitted with this bid.

Signature	Position	Date

<p align="center">COMMISSIONER OF OATHS</p> <p>Signed and sworn to before me at _____, on this _____ day of _____ 20_____</p> <p>by the deponent, who has acknowledged that he/she knows and understands the contents of this affidavit, it is true and correct to the best of his/her knowledge and that he/she has no objection to taking the prescribed oath, and that the prescribed oath will be binding on his/her conscience.</p> <p>COMMISSIONER OF OATHS:-</p> <p>Signature: _____</p> <p>Print name: _____</p> <p>Position: _____</p> <p>Address: _____</p> <p>Tel: _____</p>	<p>Apply official stamp of authority on this page:</p>
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SIGNATURE		DATE	
NAME OF SIGNATORY			
POSITION			
NAME OF COMPANY			



PART B – SPECIFICATIONS AND PRICING SCHEDULE

9. SPECIFICATIONS

SCOPE OF TENDER**1. INTRODUCTION**

- 1.1. The Overstrand Municipality has decided to call for tenders for the lease and management of **34 stalls** as well as the **walkways** between the stalls and a perimeter of **1 (ONE) metre around** the stalls (hereinafter referred to as the “Market Square Stalls”) situated on a portion of erven 832 and 249 Hermanus, for a period of **9 (NINE) years and 11 (ELEVEN) months** from inception date as the lease period of the current lease for the stalls will expire shortly. **The tender is for the purpose of leasing, managing, maintaining and sub-leasing 34 of the current Market Square stalls and the upkeep of the provided ablution facilities.** The Municipality owns the land.
- 1.2. The document is self-explanatory and interested parties are encouraged to read through it carefully, so as to familiarise themselves with both the overall intent of Council, as well as with the procedures for the award.
- 1.3. The tender is subject to the conditions as set out in the tender documents and to the most recent Supply Chain Management Policy and the Administration of Immovable Property Policy of the Overstrand Municipality, as amended, approved and adopted by Council.

2. THE TENDER PROCESS

The process to be followed in this proposal shall be as follow:

- 2.1. The submission of a tender price as well as information regarding the source of funds and the financial offer made must be clearly set out in the bidder’s submission as per the requirements set out in **Paragraph 9 (Tender Evaluation and Supporting documents)**, of this document.
- 2.2. The submissions will be evaluated and adjudicated by a duly constituted evaluation and adjudication committee. Should more than one bid be received for the same rental offer the bids will be evaluated further based on preference as indicated above.
- 2.3. Overstrand Municipality does not bind itself to accept the highest or any tender and reserves the right to accept any or none of the tenders submitted, as it may deem expedient. Furthermore, the Municipality reserves the right to award the tender to any bidder of the Municipality’s choice to ensure a fair and equitable distribution of the Municipality’s property.
- 2.4. The Municipality may wish to interview prospective organisations or individuals prior to awarding the tender to any bidder.
- 2.5. A lease agreement similar to the one attached per Annexure **C** to this tender documentation will be entered into with the successful bidder as soon as possible after the tender has been awarded (the draft attached must not be signed). The bidder must familiarise itself with the contents of this draft lease agreement. Should the successful bidder fail or neglect to conclude the Lease Agreement with the Municipality within the time period specified by the Municipality in writing, the terms and conditions of this tender and the policies referred to and this agreement shall be binding on both parties and enforceable by them, should the Municipality choose to enforce and claim specific performance.
- 2.6. Payment of an amount equal to the monthly lease amount tendered, is payable as a deposit on the date of creation of the municipal account as stipulated in the lease agreement.
- 2.7. The lease of the property to the successful bidder will proceed after the tender has been awarded and the approval of the Executive Mayor is obtained.

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3. THE ROLE OF THE PROPERTY WITHIN THE NATURE OF ITS LOCALITY

- 3.1. The Market Square Stalls are located near Market Square Street and Marine Drive, CBD, Hermanus. (See the Locality Map attached per Annexure A).
- 3.2. The site may only be used for the purposes of:
 - 3.2.1. managing, subleasing and maintaining the Market Square Stalls for the purposes as determined in accordance with paragraph 7. below;
 - 3.2.2. maintaining the on-site ablution facilities, walkways between the stalls and a perimeter of 1 (ONE) metre around the stalls; and
 - 3.2.3. any such other purpose as may be approved by delegated authority of the Overstrand Municipality in writing in advance.
- 3.3. Proposals should aim at contributing to the economic and community value for the local community and include maintenance and management of the Market Square Stalls.

4. PROPERTY DESCRIPTION AND ZONING RIGHTS

- 4.1. Erven no.: A portion of erven 832 and 249 Hermanus, as indicated on the locality map attached hereto marked Annexure A.
- 4.2. Zoning status: The current zoning is Transport Zone 2: Road and Parking, with a consent use for informal trading as per the Overstrand Zoning Scheme Regulations.
- 4.3. The surrounding land uses vary and include Business uses.

5. DEVELOPMENT PARAMETERS

- 5.1. Use of the property: The use of the property should be consistent with the present use of the site and in accordance with paragraph 7 below. No extension to and trading outside the Market Square Stalls will be allowed.
- 5.2. Accesses and Road provision: Access to the property will be from Market Square Street and Marine Street, Hermanus (travelling by motor vehicle) otherwise freely as per pedestrian. See the Locality Map and Site Plan attached per Annexure A and B.
- 5.3. Height Restrictions: The height of structures is limited to 1 (ONE) floor in accordance with the existing structures.
- 5.4. Not allowed: Any use other than the existing land use rights will not be allowed.
- 5.5. Allowed Uses: Trading in accordance with such uses as listed in paragraph 7 below.
- 5.6. Parking: In accordance with the existing arrangement, the surrounding public parking may be used by visitors.

6. OBLIGATIONS OF THE SUCCESSFULL BIDDER

The successful bidder's functions shall, amongst others, include the following:

- 6.1 The leasing of the individual stalls to potential entrepreneurs.
- 6.2 Administration of leases, being inter alia the collection of rentals, ensuring the correct tenant mix and the absolute minimisation of stall vacancies.
- 6.3 Insurance of the Market Square Stalls.
- 6.4 Security of the Market Square Stalls.
- 6.5 Maintenance of the Market Square Stalls (including the ablution facilities, walkways and 1 (ONE) metre surrounding the stalls).
- 6.6 Management of all the expenses and income for the operation of the Market Square Stalls.

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- 6.7 Budgeting and reporting.
- 6.8 Marketing of the stalls to ensure full occupancy.
- 6.9 Marketing of the Market Square as a viable business.

7. PREFERRED MIX OF TRADING

- 7.1. Although the final selection of the proposed tenants and goods needs to be finalised by the successful bidder, cognisance of the following needs must be adhered to when deciding on suitable tenants:
 - 7.1.1. The leasing of the individual stalls to potential entrepreneurs.
 - 7.1.2. The accommodation of the current tenants as the Market Square Stalls.
 - 7.1.3. Any traders to be part of the Market Square Stalls need to illustrate their ability to pay the required lease amount timeously.
 - 7.1.4. There must be a mix of businesses and these mixed needs should reflect the vision of the Municipality and be diverse in nature. The preferred mix of business could include, but need not be limited to, the following proposed activities:
 - 7.1.4.1. ATM's;
 - 7.1.4.2. Bookstore specialising in South African authors, Music/CD's and DVD retailer;
 - 7.1.4.3. Art store (local artists) and painted wooden art;
 - 7.1.4.4. Pottery stall (no manufacturing on site);
 - 7.1.4.5. Stationary stall (crafty postcards, etc.);
 - 7.1.4.6. Utensils (wooden pots, eat ware, etc.);
 - 7.1.4.7. Handmade painted home ware and materials (pillows, bedding, cushion covers, place mats etc.);
 - 7.1.4.8. Iron works (furniture), arts and crafts;
 - 7.1.4.9. Woodwork (traditional South African furniture, sculptures, masks etc.);
 - 7.1.4.10. Wire and bamboo works;
 - 7.1.4.11. African drums;
 - 7.1.4.12. Curios;
 - 7.1.4.13. Baskets,
 - 7.1.4.14. Antiques;
 - 7.1.4.15. Bead work;
 - 7.1.4.16. Jewellery (wood necklaces, beads, semi-precious stones, bone material etc.);
 - 7.1.4.17. Leather ware and arts (shoes, bags, etc.);
 - 7.1.4.18. Bags and hand bags;
 - 7.1.4.19. Ostrich eggs and decorative eggs;
 - 7.1.4.20. Malachite objects and glass ornaments;
 - 7.1.4.21. Gemstones and gemstone jewellery;
 - 7.1.4.22. Crystals, rocks, shells and fossils;
 - 7.1.4.23. Fairies;

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- 7.1.4.24. Temporary tattoos;
- 7.1.4.25. Traditional and modern South African fashion, Clothing, South African t-shirts and/or slogan t-shirts and/or handmade printed t-shirts; sunglasses, hats, head gear, scarves, gloves, bandanas and shoe laces; and
- 7.1.4.26. Flowers and/ or Fynbos.
- 7.1.5. Unique and handmade South African products should at all times enjoy preference.
- 7.1.6. No manufacturing of any products will be allowed on the property, specifically in and about the Stalls.
- 7.1.7. No food or beverages will be allowed to be made and/or processed and sold on the property, specifically in and about the Stalls.
- 7.1.8. As such it will be essential for the successful bidder to assess which traders/prospective tenants/entrepreneurs would be the most appropriate for the Market Square Stalls.

8. INFRASTRUCTURE

- 8.1. Water, sewer and electricity connections are available. Any upgrades will be for the account of the bidder.
- 8.2. The successful bidder will be responsible for payment of all costs relating to the connections for water, sewerage and electricity supply to the property and any other services, if needed, as well as for payment of the normal rates, taxes and tariffs for any municipal services provided to the property.
- 8.3. Each of the 34 stalls is equipped with an electrical prepaid meter for which availability charges will be levied on the account. The current charge for the 2029/2020 financial year is R385.64 (VAT included) **per meter**.

9. TENDER EVALUTATION AND SUPPORTING DOCUMENTS

Item:	Please indicate with and "X" whether the offer complies with the requirements.			Reference (Supporting documents attached)
	YES	NO	Comment	
9.1	Submissions are invited from all parties with the financial means and financial ability, stability and resources to submit an offer for the lease and management of the Market Square Stalls through submitting any of the following:			
	a) financial statements, and/or			
	b) any other suitable and acceptable proof in support of financial ability, stability and resources to honour the bid, i.e. confirmation by bank of good standing or bank statements, etc. and/or			

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	c) any other suitable and acceptable proof that the bidder is able to pay the first month rental in advance and a deposit equal to one month's rental.				
9.2	The bidders are required to submit a tender deposit of one thousand five hundred rand (R1,500.00) on submission of the tender. This amount must be in the form of a bank guaranteed payment (only guaranteed by a registered financial institution) or cheque in favour of the Overstrand Municipality and valid for at least 60 days from the date of the closure of the tender or paid into the Municipality's bank account (Reference no.SC2071/2020 -name). This guarantee/cheque will be returned to the unsuccessful bidders after the awarding process has been completed. The tender deposit will be forfeited by a bidder should he cancel/withdraw his tender at any time after the closing date of the tender or if the successful bidder fails to sign a lease agreement.				
9.3	The bidders are required to submit a compact business/ operational plan with the submission of this tender with the supporting documents indicating the following (inclusive but not necessary limited to):				
	a) A vision marketing strategy.				
	b) A management plan.				
	c) A financial plan which will include financial forecasts with a financial outline on how the Market Square Stalls will operate including projected rentals, operational expenses, etc. A projected income, expense and profit margins for the lease period must be included.				
	d) A track record setting out the skills and experiences in similar projects/ curriculum vitae's or résumés in support of their experience.				
	e) Illustrate how in the operation of the Market Square Stalls, local entrepreneurs will be advanced.				

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	f) Give an outline of the responsibilities of the managerial entity/person, including but not limited to, finding suitable tenants, day-to-day operation, maintenance, marketing and financial management.				
	g) How the current subtenants will be accommodated or dealt with.				

- 9.4 Tenders will only be accepted if the bidder submits proof of payment of the tender deposit.
- 9.5 The successful bidder will be primarily responsible for the management of the Market Square Stalls, by leasing the existing facilities (stalls) out to prospective tenants and the management of the on-site ablution facilities, walkways between the stalls and a perimeter of 1 (ONE) metre around the stalls. It is thus paramount that the successful bidder must have the necessary skills to manage and operate the Market Square Stalls as a viable business, which would entail that the following skills will be preferred:
 - 9.5.1 A proven record in facility or property management, with knowledge of the basic principles of property business.
 - 9.5.2 Knowledge of securing rentals and to obtain and keep maximum occupancy.
 - 9.5.3 The ability to ensure good tenant relations and the timeous payment of rentals from entrepreneurs.
 - 9.5.4 Maintenance of property records and the correlating analysis thereof.
 - 9.5.5 Ensuring continued operational income from the Market Square Stalls.

10. LEASE “VOETSTOOTS” AND SUBJECT TO CONDITIONS:

The property is leased as it stands, "voetstoets", and the Municipality shall not be responsible for any defects in the property either patent or latent. The property is moreover leased subject to all conditions and servitudes mentioned or referred to in the current and/or prior title deeds of the property and to all such other conditions and servitudes which may exist in regard thereto. The Municipality shall not be required to point out the boundary beacons of the property and shall not be liable for any deficiency in the extent of the property which may be revealed on any survey or re-survey, and shall not benefit by any excess.

11. GENERAL

- 11.1 The ablution facilities (toilets, etc.) must be made available to the general public during the operational hours of the Market Square Stalls. The successful bidder shall be obliged at all times, at its own cost, to keep the said ablution facilities clean and properly supplied with toilet paper.
- 11.2 The Market Square Stalls must be open for trade on the land for at least 4 (FOUR) days each calendar week, for a minimum of 5 (FIVE) hours a day and for at least 45 (FOURTY FIVE) weeks a year with the proviso that it may not be open during the hours of 20:00 until 06:00 (for the months April to end October) 21:00 until 06:00 (for the months November to end March) unless the prior written consent of the Municipality is obtained.
- 11.3 Neither the successful bidder nor any other person shall acquire or hold any licence for the sale of intoxicating liquor from or near the Market Square Stalls or in or from any buildings or structures thereon without the prior written consent of the Municipality.
- 11.4 The successful bidder shall be responsible for its own insurance and security of/on the property and goods on the property.

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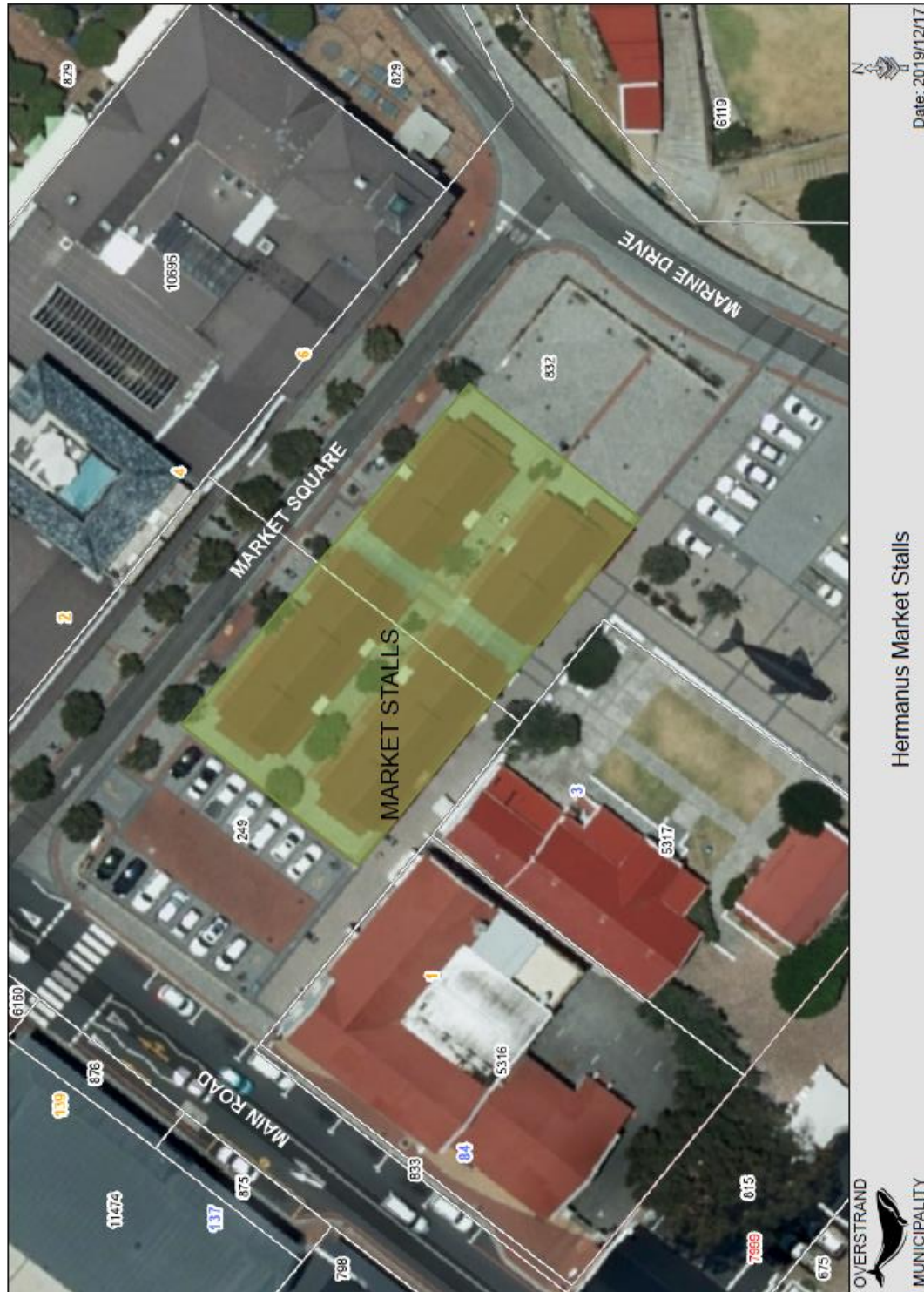
- 11.5 The stall currently used by the Tourist Information Office is excluded from this tender and will be managed by the Municipality. This tenant must have access to the ablution facilities on the property.
- 11.6 One stall currently used by the Municipality for storage is excluded from this tender.
- 11.7 Two stalls (Stall 13 and Stall 15) are excluded from this tender and will be managed by the Municipality’s Directorate: Economic & Social Development & Tourism. These tenants must have access to the ablution facilities on the property
- 11.8 The use, lease and management of the Market Square Stalls are at the successful bidder’s own risk.
- 11.9 The successful bidder shall indemnify and keep the Municipality indemnified against any claims that might arise with regards to the use, lease and management of the Market Square Stalls.
- 11.10 If required by legislation, the successful bidder must procure/obtain a valid trading licence and/or permit to trade and comply with any other specifications, within one month from commencement of the lease agreement to be entered into.
- 11.11 As a mere **guideline and not an indicative or reserve price**, the estimated market related rental is R2,000.00 (VAT excluded) per stall

12. ACCEPTANCE

The tender shall remain irrevocably open for acceptance by the Municipality for a period of at least 90 (ninety) days calculated from the date of the closing of tenders.

Notwithstanding the above period the tender shall be deemed to remain valid until formal acceptance by the Municipality of an offer at any time after the minimum validity period, unless the Municipality is notified in writing of anything to the contrary by the bidder.

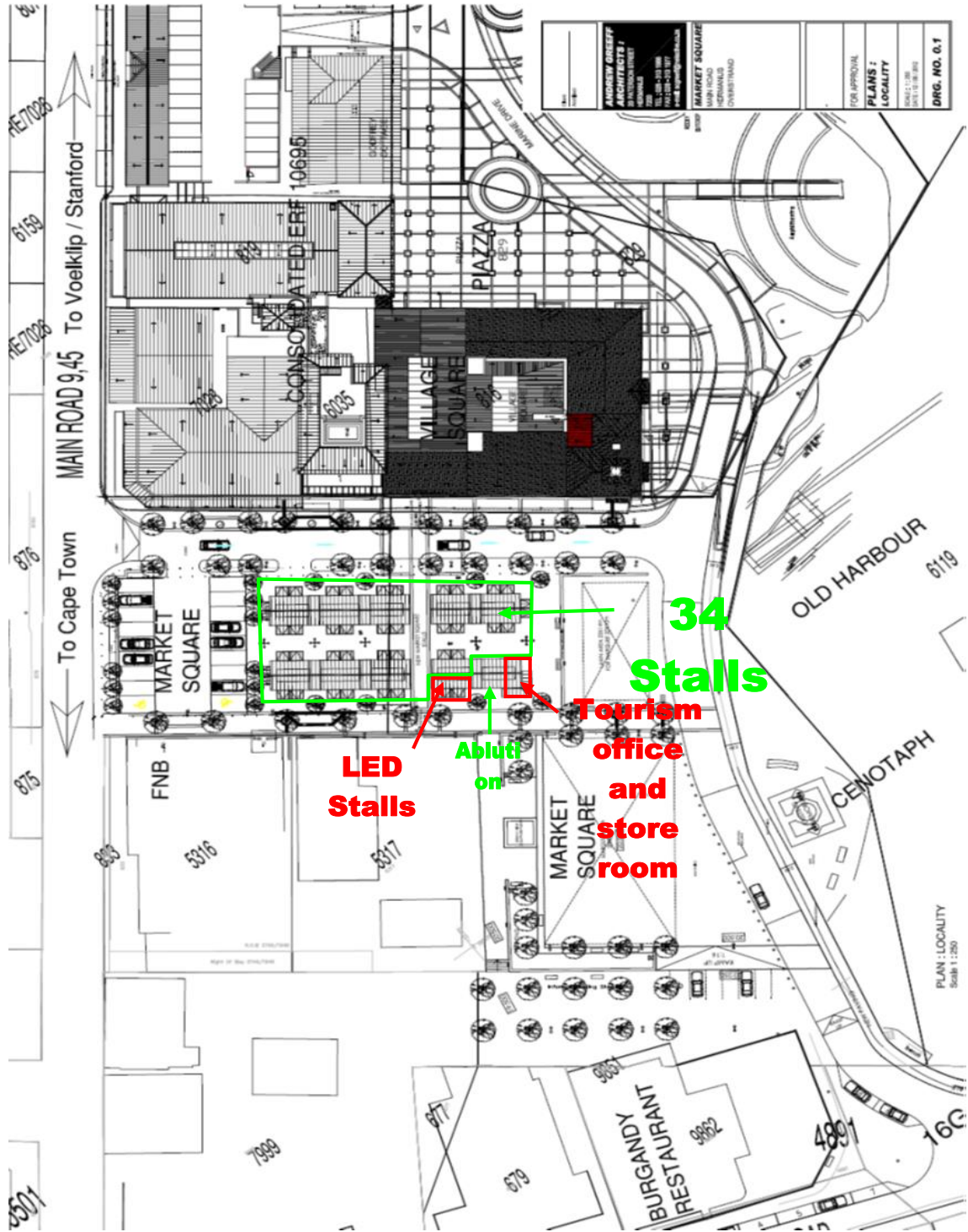
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Hermanus Market Stalls

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CAPACITY		DATE	
NAME OF FIRM			

10. ANNEXURE B – SITE MAP



SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			

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11. ANNEXURE C - DRAFT LEASE AGREEMENT

LEASE AGREEMENT

IN RE: 34 STALLS ON A PORTION OF ERVEN 832 AND 249 HERMANUS also known as the Market Square Stalls

entered into between

OVERSTRAND MUNICIPALITY

herein represented by **COENRAAD CORNELIUS GROENEWALD**
in his capacity as Municipal Manager

(hereinafter called the **LESSOR**)

and

[Do not complete]

(hereinafter called the **LESSEE**)

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WHEREAS the **LESSOR** called for tenders for the leasing of municipal property known as the Market Square Stalls situated in Market Square Street for the purposes of managing, subleasing and maintaining 34 stalls as well as maintaining the on-site ablution facilities and passages between the stalls situated on a portion of erven 832 and 249 Hermanus and shown on the plan attached hereto (marked "Annexure B") (hereinafter referred to as the "Stalls") and any such other purpose as may be approved by delegated authority of the **LESSOR** in writing in advance;

AND WHEREAS The Bid Adjudication Committee resolved on XXX that the tender be awarded to the **LESSEE**;

AND FURTHER AS the **LESSOR**, at an Executive Mayoral Committee Meeting held on XXX approved the long term lease to the **LESSEE**;

NOW THEREFORE the **LESSOR**, pursuant to the authority conferred upon it by the Administration of Immovable Property Policy of the **LESSOR**, as amended from time to time, hereby agrees to lease the Stalls to the **LESSEE** and the **LESSEE** hereby agrees to hire the Stalls from the **LESSOR**, on the following terms and conditions:

1. LEASE PERIOD

- 1.1. Notwithstanding the date of the last person signing this lease (the "Signature Date"), this lease shall endure for a period of **9 (NINE) years and 11 (ELEVEN) months** which commences on **[INSERT]** and expires on **[INSERT]**.
- 1.2. The **LESSEE** shall have no legitimate expectation that a further lease period may be agreed to by the **LESSOR** after expiry of the period referred to in clause 1.1 above.

2. RENTAL

- 2.1. The **LESSEE** shall pay to the **LESSOR** monthly rental in the amount of **RXXX (XXX) (VAT excluded)**, in respect of the Stalls, payable monthly in advance at the municipal cashiers, Overstrand Municipality, Hermanus. The rental amount shall escalate annually on the 1st of July by a percentage equal to the prevailing consumer price index (all items) in terms of the Administration of Immovable Property Policy of the **LESSOR**, as amended from time to time.
- 2.2. The **LESSEE** shall complete a service agreement form at the relevant Overstrand municipal office for the creation of a municipal account (for the levying of the lease amount, rates, services, availability fees, municipal services and other relevant costs) in the name of the **LESSEE** as described in this lease and provide the **LESSOR**'s Property Administration Department with such account number in writing within **5 (FIVE)** business days from it signing this lease.

3. DEPOSIT

- 3.1. On date of completing the service agreement and creation of the municipal account, the **LESSEE** shall pay to the **LESSOR** a deposit in the amount of **RXXX (XXX) (VAT excluded)**, which is an amount equal to **1 (ONE) months** rental.
- 3.2. The **LESSOR** may apply the deposit referred to in clause 3.1, in whole or part, in meeting any payment due by the **LESSEE** to the **LESSOR** at any time during the lease period or after the termination of this lease.
- 3.3. Whenever during the lease period the deposit is so applied in whole or part, the **LESSEE** shall on demand reinstate the deposit to its original amount.

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- 3.4. The deposit payable in terms of clause 3.1 shall annually escalate at the rate equal to which the monthly rent is escalated in terms of clause 2.1. Such increase in the deposit shall be payable by the **LESSEE** to the **LESSOR** on demand.
- 3.5. As soon as all the obligations of the **LESSEE** to the **LESSOR** have been discharged following the expiry of this lease, the **LESSOR** shall refund to the **LESSEE**, free of interest, so much of the deposit as has not been applied in terms of this lease.

4. LEASE AREA

- 4.1. It is recorded that the lease area ("Stalls"), as shown on the plan attached hereto as "Annexure B", include the 34 stalls as well as the walkways between the stalls and a perimeter of 1 (ONE) metre around the stalls.
- 4.2. The **LESSEE** acknowledges and accepts that the following stalls are excluded from this lease and does not form part of the leased Stalls:
- 4.2.1. the stall currently occupied by the Tourist Information Centre who must have access to the ablution facilities;
- 4.2.2. two stalls (Stall 13 and Stall 15) next to the Tourism Information Centre which will be managed by the **LESSEE'S** Directorate Economic Development & Social Development & Tourism. The occupiers of these stalls must have access to the ablution facilities, and
- 4.2.3. the old Standard Bank stall adjoining the Tourism Information Centre used by the **LESSOR** as a store room.

5. SUBJECTION OF LEASE

This lease is subject in all respects to:

- 5.1 the provisions of the Administration of Immovable Property Policy of the **LESSOR**, as amended from time to time, with regard to the management and administration of immovable property adopted by the municipal council of the **LESSOR**; and
- 5.2 all servitudes and conditions, if any, binding on the municipal council of the **LESSOR** in respect of the Stalls.

6. USE

- 6.1. The Stalls, together with the existing ablution facilities, as well as such buildings and other structures as may be erected in accordance with the provisions of this lease, shall be used exclusively for the purposes of:
- 6.1.1. managing, subleasing and maintaining the Stalls;
- 6.1.2. maintaining the on-site ablution facilities, passages between the Stalls; and
- 6.1.3. any such other purpose as may be approved by delegated authority of the **LESSOR** in writing in advance.
- 6.2. Access to the Stalls by the **LESSEE** or persons using the same with its authority shall be had by means only of such roads or approaches or at such other points as directed by the **LESSOR** or as otherwise agreed to in writing between the **LESSOR** and the **LESSEE**.
- 6.3. The **LESSEE** shall ensure that the ablution facilities (toilets, etc.) are made available to the general public during the operational hours of the Stalls. The **LESSEE** shall furthermore be obliged at all times, at its own cost, to keep the said ablution facilities clean and properly supplied with toilet paper.
- 6.4. The **LESSEE**, in its use of the Stalls, shall:
- 6.4.1. not use, cause or permit to be used any fences, buildings and/or structures which are or

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which may hereafter be erected on the Stalls for the display of advertisements of any description whatsoever. The **LESSEE** must however at all times actively market the Stalls by other means to ensure full occupancy thereof and subsequently market the Market Square stalls as a viable business;

- 6.4.2. conform to all applicable laws and statutory, municipal and other by-laws and regulations relating to lessees or occupiers of the Stalls;
- 6.4.3. not knowingly nor negligently cause nor allow to be caused any blockage or failure in any sewerage pipes, water pipes, drains and other supply equipment and installations serving the Stalls,
- 6.4.4. not do, nor permit to be done, any act, matter or thing which may result in any blockages or damage to the plumbing system at the Stalls, the duty to repair same shall lie with the **LESSEE**;
- 6.4.5. not do, nor permit to be done, any act, matter or thing which may render the **LESSOR'S** insurance of the buildings, structures and/or the Stalls against risk of loss or damage attributable to any of the causes insured against from time to time, either void or voidable, or which may increase the rate of premiums payable by the **LESSOR** in respect of such insurance;
- 6.4.6. not, cause, allow or permit to be done anything in, around or on the Stalls which, in the opinion of the **LESSOR**, constitutes a nuisance or may cause inconvenience in any way whatsoever, to or in any way affect the peace and comfort of other persons, and includes but is not limited to, the playing of loud music;
- 6.4.7. not, cause, allow or permit any of its tenants and/or sub-lessees to exceed their respective demarcated limits of their respective stall(s), whether it is into any walkway, passage or neighbour's stall, as the case may be;
- 6.4.8. manage all the expenses and income for the operation of the Stalls. In this regard the **LESSEE** shall submit annually audited financial statements reflecting the financial management of the Stalls to the **LESSOR's** Property Administration Department;
- 6.4.9. attend to the administration and management of sub-leases for the Stalls, which includes, *inter alia*, the collection of rentals, the correct tenant mix and reducing the amount of vacant stalls by actively seeking and procuring tenants.

7. TRADING HOURS

- 7.1. The **LESSEE** shall conduct his business on the Stalls during the hours determined within his own discretion, except during the hours of 20:00 until 06:00 (for the months April – October) and 21:00 until 06:00 (for the months November – March), for which the **LESSOR's** prior written approval is needed, which may be given subject to such terms and conditions as the **LESSOR** considers necessary.
- 7.2. The **LESSEE** shall under no circumstances close the business for a period in excess of **4 (FOUR) weeks** in each and every calendar year and shall, notwithstanding the provisions of clause 7.1, be open for not less than **4 (FOUR) days** each calendar week, for a minimum of **5 (FIVE) hours** per day, for at least **45 (FORTY FIVE) weeks** a year.

8. DUTIES OF THE LESSEE

- 8.1. The **LESSEE** shall not:
 - 8.1.1. erect or cause or permit to be erected any additional buildings and/or structures around or near the Stalls;
 - 8.1.2. effect any improvements or additions to the Stalls presently erected or to be erected; and/or

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- 8.1.3. make any substantial variations or alterations in, near or to the Stalls, including the pathways, walkways, passages and parking in and around the Stalls, without the prior written consent of the **LESSOR**, given under the hand of the Municipal Manager and until such time as the building plans therefore have been approved by the Manager: Building Control of the **LESSOR**. The **LESSEE** acknowledges and agrees that it shall not at any time, or under any circumstances, have any claim against the **LESSOR** for improvements effected to the Stalls and/or any building(s) or structure(s) erected in the vicinity of the Stalls.
- 8.2. The **LESSEE** shall, only if requested to do so by the **LESSOR** in writing, at the **LESSEE**'s cost, enclose and keep the any or all of the Stalls enclosed with suitable fences to the approval of the **LESSOR**. The **LESSEE** shall complete the aforesaid enclosure of the Stalls within a reasonable time-period after being requested to do so in writing. For the avoidance of doubt, the **LESSEE** shall not be entitled to enclose the Stalls without the prior written consent of the **LESSOR**.
- 8.3. The **LESSEE** shall be responsible at all times for maintaining good order, behaviour and government in, around, near and on the Stalls and within any walkways in the Stalls' vicinity and shall not allow the same to be frequented by persons of ill repute or bad character.
- 8.4. The **LESSEE** shall ensure that the Stalls are properly secured and protected after the close of business and shall assure him/itself that no person whatsoever is left on the Stalls at the time of closing. The **LESSEE** shall be held liable for any damage or loss that may occur from such neglect.

9. MAINTENANCE

- 9.1. The **LESSEE** shall at its own cost, keep and maintain the interior and exterior of the Stalls, the walkways between the Stalls, the area around the Stalls and the ablution facilities in a clean, sanitary and good condition, free from rubbish, litter and/or the accumulation of dirt. Without derogating from the generality of the foregoing, the **LESSEE** shall:
- 9.1.1. replace or repair all fixtures and fittings, appliances, doors, roller shutter doors, access gates, door handles, locks, keys, catches, entrances, plate glass, mirrors and windows in or serving the Stalls;
- 9.1.2. replace when necessary all fluorescent tubes and incandescent bulbs, starters, water ballasts, washers, taps, cisterns, toilet bowls and basins, and other sanitary fittings and plumbing in and on the Stalls and ablution facilities and shall be responsible at its own cost to maintain, and replace from time to time when necessary, all light fittings in the Stalls and ablution facilities in proper order and clean condition;
- 9.1.3. keep in good order and condition and in a clean, tidy and sanitary condition the ablution facilities which have been installed near the Stalls, such duty includes the provision and refill of all consumables used in the ablution facilities. For the avoidance of doubt it is recorded that the **LESSOR** shall have no maintenance or cleaning responsibilities or obligations whatsoever in regard thereto;
- 9.1.4. except for normal fixtures and fittings purposes, not drive or permit to be driven into the walls or ceiling of Stalls or any nails, screws or other instruments, nor do or permit anything to be done that may damage the walls or ceilings or any other portion of the Stalls, without the prior written consent of the **LESSOR**, which consent shall not be unreasonably withheld; and
- 9.1.5. maintain in good order and condition any floor covering, tiling, laminated flooring and/or carpeting which may be supplied by the **LESSOR** in the Stalls and agrees to be responsible for all cost incurred in remedying any stains, burns or other forms of damage caused thereto during the lease including the cost of replacing any such portion thereof as may be necessitated by any such stains, burns or other forms of damage.

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- 9.2. The duty to repair the Stalls and any buildings and/or structures and/or fixtures relating to the Stalls shall at all time lie with the **LESSEE** and upon expiration of this lease, the **LESSEE** shall return same, in good and substantial repair. Without detracting from the generality of the above, the **LESSEE** shall repair damages caused by the **LESSEE** to the Stalls inclusive of the doors, windows, ceiling(s), floors and walls which may be occasioned by any cause including forcible entry or exit and malicious damage. Should any structure, garden, fence, etc. or portion thereof of the Stalls be damaged due to any act or negligence of the **LESSEE** or person who acquired occupancy through the **LESSEE**, the **LESSEE** shall be held liable for the payment of the total cost of any such repair work.
- 9.3. No trees growing in the vicinity of the Stalls shall be cut down or interfered with without the prior written consent of the **LESSOR**, given under the hand of the delegated authority.
- 9.4. The **LESSEE** shall not remove or cause or permit to be removed from the vicinity of the Stalls any soil, clay, gravel, sand, foliage, vegetation or other matter upon or below the surface of the land without the prior written consent of the **LESSOR**, given under the hand of the delegated authority.
- 9.5. Any damage caused to the Stalls as a result of any dismantling or removal of equipment or as a result of the **LESSEE'S** failure to maintain the Stalls in such good order and condition, shall be made good by the **LESSEE** at the **LESSEE'S** own cost and expenses within **30 (THIRTY) days** after written notice have been sent to the **LESSEE**.
- 9.6. The **LESSOR** reserves the right of free access, without notice, to the Stalls for as many of its officers and servants as may be necessary for the purpose of:
- 9.6.1. inspection, maintenance, renewal, cleansing, repairs and reconstruction (where such maintenance, renewal, cleansing, repairs and reconstruction is necessary as a result of normal wear and tear or is requested and paid for by the **LESSEE**) of, or in connection with, existing underground foul sewers, rising mains, storm water drains, water mains, electric cables, or any works appurtenant thereto, or in regard to any such or other municipal services which the **LESSOR** may in future lay in or across the Stalls, the **LESSOR** reserving to itself the right to establish such services without notice. The **LESSEE** shall not build over, alter, or in any manner disturb such services except with the express consent in writing of the Director of Infrastructure and Planning of the **LESSOR** or his authorised representative in respect of the service concerned, and upon due compliance with any specified precautionary measures; and
- 9.6.2. entering upon the Stalls or any buildings or structures erected nearby and inspecting the same, and making an inventory of all defects or matters calling for repair found thereon or therein for which the **LESSEE** is responsible as provided in this lease and within **30 (THIRTY) days** of the receipt of a notice in writing from the **LESSOR** calling upon it to do so, the **LESSEE** shall make good any defects or matters requiring repair as aforesaid and if the **LESSEE** shall fail to do so, the **LESSOR** may enter upon the Stalls, buildings and structures aforesaid and remedy such defects or make and effect the repairs aforesaid and recover the cost from the **LESSEE**,
- for the avoidance of doubt, nothing contained in this clause shall have the effect of absolving the **LESSEE** from its duty of maintenance and repair as provided for in this lease.
- 9.7. The **LESSEE** may not and will not allow for any changes to be made to the electrical installation of the Stalls without the prior written consent of the **LESSOR**, given under the hand of the Municipal Manager. In the event of the **LESSOR** giving its consent, any changes must still be effected strictly in accordance with the regulations of the local authorities, as well as the suppliers of electricity.

10. INSURANCE AND RISK OF CONTENTS

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- 10.1. For the duration of this lease the Lessee shall:
- 10.1.1. pay to the **LESSOR** the monthly insurance premium in respect of the Stalls and any buildings and/or structures erected in relation to the Stalls and the **LESSOR** shall insure the Stalls and the aforementioned buildings and/or structures against damage;
 - 10.1.2. be responsible for all its own insurance against loss of income and loss or damage of movable goods on and within the Stalls due to, theft, rain, wind, hail, lightning, fire, riots, strikes, activities of states enemies and any other cause; and
 - 10.1.3. insure against public liability in respect of any incident arising out of the exercise of any of its rights under this lease or in respect of its use on the Stalls authorised by this lease.
- 10.2. All goods, property and effects of whatsoever nature owned by the **LESSEE** or any other person which at any time might be in/on/at the Stalls shall be there at the sole risk of the **LESSEE** and the **LESSOR** shall not be liable to make good any loss or damage to such goods from any cause whatsoever.

11. INDEMNITY

- 11.1. The **LESSEE** hereby indemnifies and holds the **LESSOR** and its employees, directors, executives and other representatives (collectively the "**Indemnitees**") harmless from all claims, including in connection with loss of life, bodily or personal injury or property damage, of whatsoever nature and kind and howsoever arising, whether directly or indirectly, in connection with the Stalls and/or this lease.
- 11.2. The **LESSEE** shall not have any right, remedy or claim of any nature whatsoever and howsoever arising against the **LESSOR** for any loss, damage (whether general, special or consequential), cost, expenses or injury of any nature whatsoever or howsoever arising which may be suffered by the **LESSEE**, whether directly or indirectly, in connection with the Stalls and/or this lease.

12. BREACH

- 12.1. In the event of the:
- 12.1.1. rental and/or other amounts (such as services) not being paid within **30 (THIRTY) days** after same has become due and payable; and/or
 - 12.1.2. Stalls, fence, buildings, and structures not being kept and maintained in an efficient state of repair and in good structural condition, and/or
 - 12.1.3. **LESSEE** not using the Stalls as set out herein; and/or
 - 12.1.4. **LESSEE** breaching any condition(s) of this lease and failing to remedy such breach within **30 (THIRTY) days** (or other reasonable period necessary in the circumstances) of delivery of written demand to do so,

the **LESSOR** shall be entitled to claim specific performance or cancel and terminate this lease and to re-enter upon and resume possession of the Stalls and any structures, buildings and/or other improvements effected thereto or thereon without prejudice to the right of recovery of any rent due, and to recover from the **LESSEE** such amount in respect of loss or damage as the **LESSOR** may have sustained or expenses which may be entailed upon the **LESSOR** due to the breach by the **LESSEE**. In such event the **LESSEE** shall not have the right to remove any building and/or structures which may have been erected from its own funds on the Stalls in terms of this lease.

- 12.2. In the event of this lease for any reason being cancelled, the **LESSEE** shall immediately vacate the Stalls if it is in occupation and the **LESSOR** shall not be liable for any compensation for any improvements of a permanent nature made to the Stalls by the **LESSEE** or by any other person.
- 12.3. Where the **LESSOR** selects to cancel the agreement in terms of clause 12.1, the **LESSOR** may

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decide to impose a restriction penalty on the **LESSEE** by prohibiting such **LESSEE** from doing business with the public sector for a period not exceeding **10 (TEN) years**.

- 12.4. If the **LESSOR** intends imposing a restriction on a **LESSEE** or any person associated with the **LESSEE**, the **LESSEE** will be allowed a time period of not more than **14 (FOURTEEN) days** to provide reasons why envisaged restriction should not be imposed. Should the **LESSEE** fail to respond within the stipulated **14 (FOURTEEN) days** the **LESSOR** may regard the **LESSEE** as having no objection and proceed with the restriction.
- 12.5. Any restriction imposed on any person by the **LESSOR** will, at the discretion of the **LESSOR**, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the purchase actively associated.
- 12.6. If a restriction is imposed, the **LESSOR** must, within **5 (FIVE) working days** of such imposition, furnish the National Treasury, with the following information:
- 12.6.1. the name and address of the **LESSEE** and / or person restricted by the **LESSOR**;
- 12.6.2. the date of commencement of the restriction
- 12.6.3. the period of restriction; and
- 12.6.4. the reasons for the restriction.
- 12.7. These details will be loaded in National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.
- 12.8. The **LESSEE** undertakes to pay all attorney- and client costs plus VAT, collection commission and tracing costs plus VAT which the **LESSOR** may incur in collecting any amount owing in terms of this lease by the **LESSEE** and which is not paid on the due date thereof, including interest on such amount at the maximum rate allowed from the date such amount becomes due, until receipt of payment.
- 12.9. The **LESSEE** agrees to the jurisdiction of the Magistrate's Court for the recovery of any amount due in terms hereof or any other matter/dispute which might arise from this lease. This provision shall however not be construed so as to oust the jurisdiction of the High Court and the **LESSOR** shall at all times be entitled to approach any Court of competent jurisdiction.

13. TERMINATION AND CANCELLATION

- 13.1. In the event of the **LESSEE** dissolving or ceasing to exist at any time within the period of this lease, this lease shall terminate. In this event or at the expiration of this lease, the Stalls shall revert to and vest in the **LESSOR**. The **LESSEE** shall be permitted to remove any structures, non-permanent in nature, which may have been erected by it from its own funds on the Stalls in terms of this lease within a period of **48 (FOURTY EIGHT) hours** of such termination on condition that any damage to the Stalls in the removal thereof will be compensated by the **LESSEE**. Any structures not so removed shall vest in the **LESSOR** free of compensation.
- 13.2. The **LESSEE** shall at the expiration of this lease restore and deliver up to the **LESSOR** the Stalls in a condition satisfactory to the **LESSOR**. The **LESSEE** shall compensate the **LESSOR** for any damages caused to the Stalls for whatever reason.
- 13.3. Notwithstanding anything to the contrary in this lease, whether in the instance of the **LESSOR**'s municipal council needing the land leased or any portion thereof for own use, the **LESSOR** may resume possession of the whole or any portion of the Stalls at any time on giving **3 (THREE) months'** written notice to that effect and may cancel or amend this lease accordingly.

14. DISPUTE RESOLUTION

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- 14.1. If a dispute arises in connection with this lease or its termination or invalidity, the parties shall use their best efforts to settle the dispute by mediation.
- 14.2. Upon written notice from any party to another party (the "Dispute Notice") the dispute shall be referred to a suitably qualified independent mediator. The parties shall agree the mediator's identity in writing, within **7 (SEVEN)** days of delivery of the Dispute Notice. Failing agreement, the mediator shall be appointed by the Registrar of the Arbitration Foundation of Southern Africa ("AFSA").
- 14.3. The mediation shall be held in Hermanus. The parties shall agree on the mediation procedure. Failing agreement on the mediation procedure within 14 days of delivery of the Dispute Notice, the mediation procedure shall be in accordance with the prevailing United Nations Commission on International Trade Law Model Conciliation Rules.
- 14.4. If a dispute is not settled by mediation within **30 (THIRTY)** days of delivery of the Dispute Notice, then the dispute shall be settled by arbitration.
- 14.5. The arbitrator shall be a suitably qualified independent person agreed in writing by the parties within **14 (FOURTEEN)** days of the lapse of the 30-day period contemplated in clause 14.4. Failing agreement, the arbitrator shall be appointed by the Chairperson of the Legal Practice Council upon request by any party.
- 14.6. The arbitration shall be held in Hermanus in accordance with the prevailing Arbitration Foundation of Southern Africa Rules for Commercial Arbitration.
- 14.7. The arbitrator shall set the date, time, and venue in Hermanus for the arbitration.
- 14.8. Any order or award made by the arbitrator shall be final and binding.
- 14.9. This clause 14 shall not prevent any party from seeking interim and/or urgent relief from a court of competent jurisdiction.
- 15. NO RIGHT TO CEDE**
- The prospective sub-tenant shall not, in whole or in part, except with the prior written consent of the **LESSOR** neither cede any of its rights, nor delegate any of its obligations, nor mortgage, pledge, nor encumber any of its rights under this lease, nor sub-let the Stalls, nor give up possession of the stall rented Property to any third party without the **LESSOR's** prior written consent.
- 16. SUB-LETTING**
- 16.1. The **LESSEE** may sublet the individual stalls to prospective tenants provided that:
- 16.1.1. such sub-lease is subject in all respects to the provisions of the main lease agreement entered into between the **LESSEE** and the **LESSOR** as well as the **LESSOR's** Administration of Immovable Property Policy as may be amended from time to time.
- 16.1.2. the **LESSOR** is indemnified against any claims from such prospective tenant;
- 16.1.3. the sub-lease may only be for trading purposes; and
- 16.1.4. preference be given to residents from the local community.

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16.2. The **LESSEE** shall comply in all aspects to the requirements of the **LESSOR** as may be conveyed to him/it from time to time with reference to any relevant sub-lease of a stall.

17. LESSEE'S FINANCIAL MANAGEMENT OBLIGATIONS

- 17.1. The Lessor, in terms of the regulations issued in terms of section 168 of the Local Government: Municipal Finance Management Act 56 of 2003, is obliged to monitor the implementation of, and assess the **LESSEE's** performance under this agreement and to impose financial management duties on the **LESSEE**, including transparent processes relating to internal financial control, budgeting, accountability and reporting and in order to fulfill these duties, the **LESSOR** shall be entitled to expect same duties towards it in this regard, as is expected from the **LESSEE** by the **LESSOR**, where applicable.
- 17.2. In order to comply with the above, the **LESSOR** shall be entitled to, from time to time during the lease period, request information from the **LESSEE** and or issue directives to the **LESSEE** in the above regard.
- 17.3. Without limiting the generality of the afore going, the **LESSEE** shall annually, provide the **LESSOR** with copies of the **LESSEE's** approved audited financial statements, as well as a letter from the **LESSEE's** bank, confirming the **LESSEE's** financial standing.

18. GENERAL

- 18.1. The **LESSEE** will be responsible for payment of the normal rates, services charges and tariffs for any municipal services or availability fees provided to the Stalls, whether at the request of the **LESSEE** or not.
- 18.2. Neither the **LESSEE** nor any other person shall acquire or hold any licence for the sale of intoxicating liquor from or near the Stalls or in or from any buildings or structures thereon without the prior written consent of the **LESSOR**, given under the hand of the Municipal Manager.
- 18.3. Any amendment of this lease must be agreed between the parties in writing, save for an extension as requested by the **LESSEE** of the time period within which to complete any applicable conditions, which the **LESSOR** may unilaterally extend by written notice to the **LESSEE** with or without conditions. Any indulgence which the **LESSOR** in accepting any payments after due date on in accepting a lesser sum than the amount due, shall not in any way prejudice its rights or be construed as a waiver of same by the **LESSOR**.
- 18.4. The parties hereto acknowledge that this lease constitutes the entire agreement between them and that no other conditions, stipulations, warranties or representations whatsoever have been made by or on behalf of either party other than such as are included herein.
- 18.5. Neither the **LESSEE** nor its sub-lessees and/or tenants will carry on such business nor activity in a manner which creates a nuisance, is a threat or danger to the public health and safety, or damages or defaces any municipal property.
- 18.6. The grant of the lease hereby constituted, shall under no circumstances be deemed to confer any real right or servitude of any kind in favour of the **LESSEE**. Upon a demand made by the **LESSOR**, in terms of this lease, for vacant possession of any or all of the Stalls, the **LESSEE** shall be bound to give such possession without any right to compensation, whether for useful, necessary expenses or other improvements.
- 18.7. It shall at no time be considered that the **LESSEE** has by virtue of this lease acquired any right or lawful claim to a grant of the Stalls.

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19. DOMICILIUM CITANDI ET EXECUTANDI

- 19.1. The **LESSEE** and the **LESSOR** hereby appoint and choose their respective addresses as set out in Schedule 1 of this lease for all purposes of and connected with this lease to be their *domicilium citandi et executandi*, at which addresses all notices and legal process in relation to, or arising out of, this lease may be delivered and/or served.
- 19.2. Either party shall be entitled from time to time, by written notice to the other, to change its address as set out in Schedule 1 of this lease; the **LESSEE** specifically to the **LESSOR** via its Property Administration Department, to vary its *domicilium* address to any other address within the Republic of South Africa, which is not a post office box.
- 19.3. All notices, communications or processes in terms of this lease shall be in writing, which shall include electronic mail.
- 19.4. Any notice, communication or any process addressed by one of the parties to the other, shall be deemed to have been sufficiently served and/or delivered upon the **receiving party**:
- 19.4.1. by registered mail on the **5th (FIFTH) business day** after posting; or
- 19.4.2. by fax or electronic mail on the **1st (FIRST) business day** after the date of transmission thereof; or
- 19.4.3. by hand during normal business hours at **the time of delivery**.
- 19.5. The above clauses will not be so construed as to oust the service procedures, specifically those of personal service as depicted in any applicable legislation of the Republic of South Africa.

20. REPRESENTATION ON AUTHORITY OF PARTIES

- 20.1. The signatories (whether it may be one person or more than one person) of the **LESSEE** hereby warrant, represent and confirm by signing this lease, that:
- 20.1.1. in terms of the **LESSEE'S** constitution, trust deed, memorandum of incorporation, members' agreement or any similar document, whichever case may be applicable, the entity may conclude and enter into this lease;
- 20.1.2. the necessary procedures and duties were followed and conformed to in respect of the authorisation to conclude and enter into this lease and that the signatories of this lease are mandated thereto in terms of a resolution by such entity;
- 20.1.3. he/she/they are duly authorised thereto and have the legal capacity to sign and enter into this lease on behalf of the **LESSEE**; and
- 20.1.4. the signing of and entering into the lease and the performance of the obligations in terms of this lease have been duly authorised and that this lease is a valid and legal agreement binding on the **LESSEE** and enforceable in accordance with its terms and conditions.
- 20.2. In the event that any of the signatories should no longer be involved with the business of the **LESSEE**, the onus will rest upon that particular signatory to inform the **LESSOR**, through its Property Administration Department, in writing, within **1 (ONE)** month of no longer being involved, that they have resigned and have denounced all rights and obligations as previously held. It should also be conveyed in writing who their successor will be. Such successor will also be held bound in terms of the terms and conditions of this lease as if he/she signed this lease originally, but only to the extent that actual liability will arise from date of notification to the **LESSOR**. Should no such notice be given to the **LESSOR**, the signatories will remain bound in terms of the terms and conditions of this lease.
- 20.3. The signatories hereby bind themselves as co-principal debtors, being jointly and severally liable with the **LESSEE** for all the **LESSEE'S** payment obligations in terms of this lease and specifically agree and guarantee that the **LESSEE**, notwithstanding anything contrary in terms of its

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governing document, will duly, properly and punctually performance and discharge all of its obligations under or arising from this lease. The **LESSOR** reserves the right to either institute legal action against the **LESSEE** as an entity or the signatory(ies) or both, using its discretion.

21. DESTRUCTION OR DAMAGE

Should the Stalls at any time or times during the currency of this lease be damaged or destroyed by fire, riots, force majeure or any other cause whatsoever so as to render it wholly untenable, then the **LESSEE** shall be entitled to cancel this lease by written notice to the **LESSOR** within **60 (SIXTY) days** after the date of destruction of the Stalls. If no such notice is given then this lease shall not be terminated and the **LESSEE** shall be liable for payment of rental and other amounts payable in terms of this lease.

22. HOLDING OVER

22.1. In the event of the

22.1.1. **LESSOR** cancelling this lease and the **LESSEE** disputing its right to cancel and remaining in occupation of the Stalls; or

22.1.2. **LESSEE** and **LESSOR** being engaged in a dispute regarding any aspect concerning this lease (such as a maintenance or repair dispute),

the **LESSEE** shall, pending the determination of such dispute(s) by litigation or otherwise, continue to pay to the **LESSOR** an amount equivalent to the monthly rental and or other sums payable hereunder on the date or dates upon which such sum would have been due but for the cancellation or other dispute, as the case may be, and the **LESSOR** shall be entitled to accept and recover such payments. The acceptance thereof shall be without prejudice to and shall not in any way whatsoever effect the **LESSOR'S** disputed cancellation and/or position on other issue(s) in dispute. Should a cancellation dispute be determined in favour of the **LESSOR**, the payments made and received in terms of this clause shall be deemed to be amounts paid by the **LESSEE** on account of damages suffered by the **LESSOR** by reason of the cancellation of this lease and/or the unlawful holding over by the **LESSEE**.

22.2. Save for the determination of a cancellation dispute as provided for in clause 22.1, the resolution of other disputes shall deal with the apportionment and payment of any damages.

23. SPECIAL CONDITIONS

Although the final selection of the proposed sub-tenants and goods needs to be finalised by the **LESSEE**, cognisance of the following needs must be adhered to when deciding on suitable tenants:

23.1 any trading to be part of the Market Square Stalls needs to illustrate their ability to pay the required lease amount timeously;

23.2 there need to be a mix of businesses and this mix needs to reflect the vision of the **LESSOR** and be diverse in nature. The preferred mix of business could include, but need not be limited to the following types of business:

23.2.1 ATM's;

23.2.2 Bookstore specialising in South African authors, Music/ CD's and DVD retailer;

23.2.3 Art store (local artists) and painted wooden art;

23.2.4 Pottery stall (no manufacturing on site);

23.2.5 Stationary stall (crafty postcards, etc.);

23.2.6 Utensils (wooden pots, eat ware, etc.);

23.2.7 Handmade painted home ware and materials (pillows, bedding, cushion covers, place mats etc.);

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- 23.2.8 Iron works (furniture), arts and crafts;
- 23.2.9 Woodwork (traditional South African furniture, sculptures, masks etc.);
- 23.2.10 Wire and bamboo works;
- 23.2.11 African drums;
- 23.2.12 Curios;
- 23.2.13 Baskets,
- 23.2.14 Antiques;
- 23.2.15 Bead work;
- 23.2.16 Jewellery (wood necklaces, beads, semi-precious stones, bone material etc.);
- 23.2.17 Leather ware and arts (shoes, bags, etc.);
- 23.2.18 Bags and hand bags;
- 23.2.19 Ostrich eggs and decorative eggs;
- 23.2.20 Malachite objects and glass ornaments;
- 23.2.21 Gemstones and gemstone jewellery;
- 23.2.22 Crystals, rocks, shells and fossils;
- 23.2.23 Fairies;
- 23.2.24 Temporary tattoos;
- 23.2.25 Traditional and modern South African fashion, Clothing, South African t-shirts and/or slogan t-shirts and/or handmade printed t-shirts; sunglasses, hats, head gear, scarves, gloves, bandanas, shoe laces and patik; and
- 23.2.26 Flowers and/ or Fynbos,
- 23.3 unique and handmade South African products should at all times enjoy preference;
- 23.4 no manufacturing of any products will be allowed in, on, about or around the Stalls; and
- 23.5 no food or beverages will be allowed to be made and/or processed and sold in, on, about or around the Stalls.

THUS DONE, SIGNED AND AGREED TO AT _____XXX_____

on _____XXX_____.

AS WITNESSES:

1. ___Do not sign_____

2. ___Do not sign_____

___Do not sign_____

(LESSOR)

OVERSTRAND MUNICIPALITY

THUS DONE, SIGNED AND AGREED TO AT _____XXX_____

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MUNICIPALITY

on _____ XXX _____.

AS WITNESSES:

1. Do not sign _____

2. Do not sign _____ Do not sign _____
 (LESSEE)
 [INSERT LESSEE NAME]

****Relevant Annexures to be attached to the final Lease Agreement**

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2. ACCEPTANCE

By signing this part of this Form of Offer and Acceptance, the Municipality identified below, accepts the bidder's offer. Acceptance of the bidder's offer shall form an agreement between the Municipality and the bidder upon the terms and conditions contained in this agreement, the tender data and specifications, the tender documentation and in the Lease Agreement to be concluded that is the subject of this agreement, a draft of which is attached hereto per Annexure C.

The bidder shall pay a lease deposit on date of signature of the lease agreement. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this Agreement comes into effect and is binding between the parties on the date of dispatch of one fully completed copy of this document to the bidder, signed by the authorised official of the Overstrand Municipality.

Signature(s):			
Name(s):			
Capacity:			
For the Owner:	Overstrand Municipality, Magnolia Avenue, Hermanus		
Name of witness:		Date:	
Signature of witness:			



**PART C – MOST IMPORTANT ASPECTS OF
ADMINISTRATION OF IMMOVABLE PROPERTY POLICY**

13. PART C

**MOST IMPORTANT ASPECTS OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY
OF THE OVERSTRAND MUNICIPALITY**

GENERAL PRINCIPLES

3. The Municipality may:
- (a) alienate or let or permit to be built upon, occupied, enclosed or cultivated any immovable property owned by the Municipality;
 - (b) grant a servitude, way leave, encroachment or other rights on any immovable property of which the Municipality is the owner
 - (i) subject to this policy document and the provisions of applicable legislation; or
 - (ii) unless it is precluded from so doing by law or the conditions under which such property was acquired by the Municipality.

LEASING OF MUNICIPAL IMMOVABLE PROPERTY

17. Taking into consideration the nature and duration of the lease to be entered into, the leasing of immovable property may be affected by means of either:
- 17.1 a competitive process, which may include a closed or public tender or proposal call in circumstance listed in paragraph 18 below; or
 - 17.2 a direct lease.
18. A competitive process must at all times be followed in circumstances where:
- 18.1 the lease is for a long term with an income value in excess of R10 million;
 - 18.2 the lease is for a formal business premises with a market related rental;
 - 18.3 more than one party, in discretion of the municipality, is interested in the lease of the subject property; and/or
 - 18.4 by discretion of the municipality, a competitive process will best serve the interests of the community.
20. Long term lease of municipal immovable property with an income value less than R10 million:
- 20.1 The Municipality may grant a long term lease of municipal immovable property with an income value of less than R10 million only after:
 - (a) the Accounting Officer has approved the lease in principle;
 - (b) in the case of a direct lease, the proposed lease was advertised in terms of paragraph 10.1 and 10.2 above to invite the local community and other interested parties to submit comments or representations; and
 - (b) the Executive Mayor, as delegated authority, has subsequently approved that the right may be granted.

CONDITIONS OF LEASE

36. All costs pertaining to a transaction, e.g. survey, advertisements, valuation, relocation or provision of services where necessary, shall be borne by the Lessee. The Municipality may, however, waive its right to claim all or any portion of the costs. Where necessary a deposit to cover the costs may be required.
37. An agreement for the lease of municipal immovable property shall be in writing, stipulating the terms and conditions of the contract or agreement, which shall include provisions providing for:
- (a) the termination of the contract or agreement in the case of non- or underperformance;
 - (b) dispute resolution mechanisms to settle disputes between the parties;
 - (c) a periodic review of the contract or agreement once every three years in the case of a contract or agreement for longer than three years;

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- (d) any other matters that may be prescribed, and
- (e) escalation in terms of paragraph 40 of this policy.
- 38. No immovable property shall be sub-let and no lease may be ceded or assigned without the prior written approval of the Municipality.
- 40. Rental, except where it is decided otherwise by the Municipality shall escalate on the first of July every year by a percentage fixed in accordance with the prevailing consumer price index (all items).
- 41. The lessee shall, as a rule, be liable for the payment of rates, taxes and service charges in respect of the leased property. In the case of leases to certain social care users and sports facilities at rentals lower than market value the Municipality may consider granting a rebate on rates in accordance with the rates policy of the Municipality.
- 43. The lessee shall indemnify the Municipality against any possible claims arising from the lease or use of the immovable property.
- 45. Save with prior written approval of the Municipality the property may only be used for the purpose for which it was let.
- 46. The Municipality shall at all reasonable times be entitled to enter and inspect the immovable property.
- 47. Subject to paragraph 46 above, immovable property let by the Municipality shall be inspected at least once a year by the Municipality to ensure compliance with the terms and conditions of the agreement of sale or lease.
- 48. The lessee shall be responsible for maintaining the leased property including all improvements thereon to the satisfaction of the Municipality.
- 49. Improvements provided by the Lessee and which the Council wishes to retain, shall revert, free of charge, to the Municipality once the lease period has terminated and/or in the event the agreement, due to breach of conditions, has been cancelled. Alternatively, agreement may be reached to the effect that the Lessee may remove any improvements erected from its own funds within three months of termination of the lease agreement, failing which such improvements shall revert to the Municipality free of charge without damage and if provided for in the agreement. The Lessee shall be liable for the cost involved in the removal of such improvements not required by the Municipality.
- 50. The Municipality reserves the right, where necessary, to resume immovable property let, or portion thereof, and to cancel an existing lease in its entirety where such immovable property is required for operational purpose or in the interest of the community or for any reason necessitating the cancellation thereof.

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14. DECLARATION BY TENDERER

I / We acknowledge that I / we am / are fully acquainted with the contents of the conditions of tender of this tender document and that I / we accept the conditions in all respects.

I / We agree that the laws of the Republic of South Africa shall be applicable to the contract resulting from the acceptance of *my / our tender and that I / we elect *domicillium citandi et executandi* (physical address at which legal proceedings may be instituted) in the Republic at:

I / We accept full responsibility for the proper execution and fulfillment of all obligations and conditions devolving in me / us under this agreement as the principal liable for the due fulfillment of this contract.

I / We furthermore confirm I / we satisfied myself / ourselves as to the corrections and validity of my / our tender; that the price quoted cover all the work / items specified in the tender documents and that the price(s) cover all my / our obligations under a resulting contract and that I / we accept that any mistake(s) regarding price and calculations will be at my / our risk.

I / We furthermore confirm that my / our offer remains binding upon me / us and open for acceptance by the Purchases / Employer during the validity period indicated and calculated from the closing date of the bid.

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WITNESS 1		WITNESS 2	