



TENDER NO.: SC 2096/2020

**LEASE, DEVELOPMENT, MANAGEMENT AND MAINTENANCE OF A
PORTION OF ERF 775 FISHERHAVEN AS A HOLIDAY RESORT 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 2096/2020		
TENDER TITLE:	LEASE, DEVELOPMENT, MANAGEMENT AND MAINTENANCE OF A PORTION OF ERF 775 FISHERHAVEN AS A HOLIDAY RESORT 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"/>
<p>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.</p>				

<p>PLEASE NOTE:</p> <ol style="list-style-type: none"> 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. This bid is subject to the Preferential Procurement Policy Framework Act and the Preferential Procurement Regulations, 2017, the National Treasury General Conditions of Contract (GCC) (2010) and, if applicable, any other special conditions of contract.

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

TENDER NO. SC 2096/2020

Lease, Development, Management and Maintenance of a portion of erf 775, Fisherhaven, as a resort for a contract period of 9 years and 11 months.

Tenders are hereby invited for the **Lease, Development, Management and Maintenance of a portion of erf 775, Fisherhaven, as a resort 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. SC2096/2020: Lease, Development, Management and Maintenance of a portion of erf 775, Fisherhaven, as a resort 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

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- 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.

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.

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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.

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

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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:				
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	YES		NO	

¹ *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.*

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.*



	state and who may be involved with the evaluation and or adjudication of this bid?				
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:				
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 <i>(Only to be completed if in the service of the State)</i>

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.

SIGNATURE		DATE	
NAME OF SIGNATORY			
POSITION			
NAME OF COMPANY			

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.



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
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:			



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;
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;

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.



- 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.



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 align="center">Apply official stamp of authority on this page:</p>
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PART B – SPECIFICATIONS AND PRICING SCHEDULE

SIGNATURE		NAME (PRINT)	
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NAME OF FIRM			

9. SPECIFICATIONS

SCOPE OF TENDER

1. INTRODUCTION

- 1.1. The Overstrand Municipality (the "Municipality") has decided to call for tenders for the lease, development, management and maintenance of a portion of Erf 775 Fisherhaven (±1,6066ha in extent) (the "Property") as a holiday resort for a period of 9 (NINE) years and 11 (ELEVEN) months, commencing from inception date as the lease period of the current lease for the Property will expire shortly. The aforementioned lease, development, management and maintenance of the Property, including the the upkeep of the ablution facilities, must be within the footprint of the existing building/structures situated on the Property.
- 1.2. The Municipality is keen to partner with a developer that is financially sound and environmentally sensitive to the area with a record of proven expertise to lease, develop, manage and maintain the Property as a holiday resort in an ecologically sensitive area.
- 1.3. 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 the Municipality's council, as well as with the procedures for the award.
- 1.4. The tender is subject to the conditions as set out in the tender document and to the most recent Supply Chain Management Policy and the Administration of Immovable Property Policy of the Municipality, as amended, approved and adopted by Council from time to time.

2. THE TENDER PROCESS

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

- 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 8 – Submission Requirements and Evaluation**, of this document.
- 2.2. The submissions will be evaluated and adjudicated by a duly constituted evaluation and adjudication committee.
- 2.3. The 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 decision of the Municipality will be final.
- 2.5. The Municipality may wish to interview prospective organisations or individuals prior to awarding the tender to any bidder.
- 2.6. A lease agreement, similar to the draft proposed lease agreement attached hereto marked Annexure "A", will be entered into with the successful bidder as soon as possible after the tender has been awarded (the attached 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 a lease agreement with the Municipality within 60 (SIXTY) days after acceptance of the bid by the Municipality, the terms and conditions of this tender and the policies referred to in this agreement shall be binding on both parties and enforceable by them, should the Municipality choose to enforce and claim specific performance from the successful bidder.
- 2.7. The lease of the Property to the successful bidder will proceed after the tender has been awarded and the approval of the Municipality's delegated authority is obtained.

3. ROLE OF THE PROPERTY IN TERMS OF ITS LOCALITY:

- 3.1. The Property is located in Fisherhaven right next to the Botriver lagoon on a portion of Erf 775 Fisherhaven. The Property is currently leased to the Lake Marina Yacht Boat Club for the purpose of

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operating caravan sites, managing a yacht club and activities related to that of a yacht and boat club. (See locality map attached per Annexure “B”).

- 3.2. The Title Deed of the property does not have any restrictive conditions that would prevent the proposed resort.
- 3.3. The Property may only be used for the development and management of a holiday resort.
- 3.4. Proposals should aim at contributing to the economic and community value for the local community and include maintenance and management of the Property.

4. PROPERTY DESCRIPTION AND DEVELOPMENT:

4.1 Erf no. and size of portion

The subject portion of Erf 775 Fisherhaven is approximately 1,6066ha (ONE COMMA SIX ZERO SIX SIX HECTARES) in extent,

4.2 Zoning status

4.2.1 The current zoning is Open Space Zone 2: Public Open Space which also allows for a holiday resort and associated various consent uses. The yacht club and existing uses are historic and existing rights on the Property.

4.2.2 The surrounding land uses included residential uses.

4.3 Aesthetics, Environmental and Land Use Constraints

Any proposed development must be in line with the visual harmony with the surrounding build and sensitive environment so as to fit in with the natural environment. Should it be required in terms of legislation, a proposed development will be referred to the Overstrand Heritage Committee and Heritage Western Cape if necessary. Prospective developers must take due cognisance of the existing environment and development parameters of the Overstrand Municipality Zoning Scheme Regulations in relation to the economic viability of any proposed development and also of any environmental application as required by the Department of Environmental Affairs and Development Planning in terms of Environmental Legislation.

4.4 Spatial planning

The Overstrand Growth Management Strategy clearly stipulates that an existing caravan park and yacht/boat clubhouse should be upgraded on the Property and serve as a mixed use node and promote the area as a holiday destination.

In terms of the Overstrand Spatial Development Framework it is also indicated that development in this area should be done in a sensitive manner to fit in with the natural environment.

In terms of the Overstrand Municipal Integrated Development Framework it is also stipulated that tourist destinations must be accessible, safe and attractive and developing new facilities.

4.5 Existing Structures

The Property contains the following existing building and structures:

- a hall/club house where meetings and functions can occur;
- ablution facilities;
- 39 caravan / camping stands; and
- a slipway.

5. DEVELOPMENT PARAMETERS

5.1 Use of the Property

The Property may only be developed and used mainly as a holiday resort with the Municipality's consent, which will be limited to the following:

- (a) Temporary accommodation for holiday makers, tourists and other visitors in the form of camp sites, sites for caravanning, small hotel facilities or any other related type of accommodation

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approved by the Municipality, provided that it stays within the current footprint of the existing building/structures situated on the Property;

- (b) Place of assembly limited to a public hall, hall for social/community functions or gatherings, a music hall, an exhibition hall, club house and meeting place;
- (c) Picnic sites for day visitors;
- (d) Restaurant and/or kiosk and/or gift shop insofar it is related to the main use of a holiday resort and supplementary thereto;
- (e) Aquatic recreational facilities in the form of boating, yachting and ski and related facilities.

The proposed facilities must make use of the current footprint of the existing building/structures situated on the Property as depicted on attached topographical survey plan marked Annexure "C". No extension of the Property will be considered. No extension to the footprint of the existing buildings and/or structures will be allowed without the Municipality's consent and all other authorisation(s) required in terms of other applicable legislation.

5.2 Accesses and Road provision

The Property is situated in Riverside Drive, Fisherhaven. There are two points of access to the Property, one access point is directly off Riverside Drive, while the second access point is from Riverside Drive via an existing public parking area.

5.3 Height Restrictions

There is an 8 metre height restriction for the main building and single storey of 5.5 metre maximum height restriction for all other buildings or temporary structures on the Property.

5.4 Parking

All required parking must be provided on the Property, and a site plan to such effect must be submitted for approval by the Municipality.

5.5 Coverage:

The proposed development must make use of the current footprint of the existing building/structures situated on the Property and must be depicted on a Site Development Plan which must be submitted and approved by the Municipality before the development/upgrading may be commenced with.

6. INFRASTRUCTURE

6.1. There are existing water, sewer and electricity connections available. A service investigation into the services on the Property by a consultant procured by the Municipality indicated as follows:

6.1.1 Water:

There is currently an existing 75mm diameter water main on the south border of the Property. There is an internal water reticulation system on the Property which distributes water to the ablution facilities, the club house and various caravan/camping stands.

6.1.2 Sewerage:

The Fisherhaven Sewerage Pump Station in Poplar Road pumps sewerage to the Hawston Waste Water Treatment Works. The Property does not have a gravity sewer and is serviced by means of conservancy tanks.

6.1.3 Storm water:

There is no formal storm water infrastructure on the Property and currently storm water from the Property drains directly onto the Botrivier lagoon.

6.1.4 Electricity:

The Property falls within the electricity supply area of Eskom. The successful bidder must confirm that sufficient electrical capacity is available on Eskom's network to connect/supply any proposed development.

6.2. Any required upgrades to the existing services will be for the account of the successful bidder. A service agreement for all the services, including water, sewerage, electricity, roads, storm water and

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refuse removal services must be finalised and entered into between the successful bidder and the Overstrand Municipality through its Manager: Engineering Services before commencement of the development and/or upgrades. Bulk services might be payable.

- 6.3. 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.
- 6.4. The successful bidder shall be responsible for any new bulk infrastructure and internal municipal services.
- 6.5. The successful bidder must have due regard to any necessary upgrade to the existing services that may be necessary for any proposed development.

7. ENVIRONMENTAL

Should any environmental application be triggered the successful bidder will be responsible for such costs. Should it be required in terms of legislation, a proposed development will be referred to the Overstrand Heritage Committee and Heritage Western Cape if necessary. The successful bidder must take due cognisance of the existing environment and development parameters of the Overstrand Municipality’s Zoning Scheme Regulations in relation to the economic viability of any proposed development and also of any environmental application as required by the Department of Environmental Affairs and Development Planning in terms of Environmental Legislation.

8. SUBMISSION REQUIREMENTS AND EVALUATION

8.1 Submission requirements:

Minimum Requirements:		Please indicate with and “X” whether the offer complies with the requirements.			Reference (Supporting documents attached)
		YES	NO	Comment	
8.1.1	Submissions are invited from all parties with the financial means and experience to submit a tender for the development and lease of the Property as a holiday resort for a period of 9 years and 11 months. In this regard the following must be submitted to ensure that the bidder will be able to pay the first month’s rental in advance and a deposit equal to two month’s rental:				
	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. bank statements, etc. and/or				
	c) any other suitable and acceptable proof.				
8.1.2	The bidders are required to submit a tender deposit of R5,000.00 (FIVE THOUSAND RAND) on submission of the tender. This amount must be in the form of a bank guaranteed payment (only guaranteed by a				

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	registered financial institution) or cheque in favour of the Overstrand Municipality and valid for at least 90 days from the date of the closure of the tender or paid into the Municipality's bank account. 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.			
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8.2 Evaluation requirements:

Functionality criteria:

To qualify a minimum of 70 points must be scored out of a total of 100. Bidders who do not obtain this minimum score will not be evaluated further. The tender will be scored as follows:

	EVALUATION	CRITERIA	MAXIMUM POINTS	MINIMUM POINTS TO BE ACHIEVED	POINTS AWARDED
8.2.1	Operational experience in similar developments.	2 point for each year	20	10	
8.2.2	Proof of financial ability and sustainability to develop and fund the project (additional to the rental payments) i.e. financial backing / resources to be used by or available to the bidder.	Proof of finances/financial backing by accredited financial institution	10	10	
8.2.3	Upgrading of caravan stands or creating temporary tourist accommodation structures up to 39 caravan/camping stands as part of the development.	1 point for every 10 caravan / tent sites upgraded 2 point for every 3 sites developed with temporary structures	20	10	
8.2.4	The amount of different types of facilities, other than the caravan stands and temporary accommodation, which will be provided on site.	10 points per facility type (please refer to 5.1 above)	30	20	
8.2.5	Accessibility of the following uses to the general public: (a) Caravan stands/accommodation. (b) Hall/Clubhouse facilities	0 points for no accessibility and 10 points for the maximum accessibility for each	20	20	

9. LEASE "VOETSTOOTS" AND SUBJECT TO CONDITIONS:

The Property shall be leased as it stands, "voetstoots", 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

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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.

10. GENERAL CONSIDERATION:

The bidder is strongly advised in submitting the tender regarding the development to address the following:

- (a) The proposed development and investment to be made in light of the lease period of 9 (NINE) years and 11 (ELEVEN) months.
- (b) Lease amount offered per month (including VAT);
- (c) Submitting a development plan, taking into consideration the parameters stipulated in this tender (How the development concept deals with development opportunities and constraints presented by the Property's existing sites within its surrounds. The desirability of the development in the Fisherhaven and Greater Hermanus context). The development plan must include a development program and site development plan showing the proposed development's growth over time.
- (d) Submitting a financial model, which may be in the form of a financial plan for the development and management of subsequent costs (provide financial analysis and economic modelling and the bidder's ability to mobilize the resources and to finance the project within a particular time frame);
- (d) The financial backing/resources to be utilised by the bidder for the proposed development;
- (e) Full details of the proposed professional team who will be used in the development;
- (f) Experience in similar developments (The bidders and/or his developers track record with reference to ability and experience with regard to developments of a similar nature).
- (g) How the local community will be empowered, have access to and benefit of the proposed development.

11. GENERAL

- 11.1 The successful bidder will be responsible for the upkeep, maintenance and cleaning of the Property.
- 11.2 The grant of the lease shall under no circumstances be deemed to confer any real right or servitude of any kind in favour of the bidder. Upon a demand made by the Municipality, in terms of the lease to be concluded, for quiet possession of the Property, the bidder shall be bound to give such possession without any right to compensation, whether for useful, necessary expenses or other improvements.
- 11.3 The successful bidder must ensure that the meeting facility/place of assembly is made available to the various social clubs in Fisherhaven and Hawston.
- 11.4 The proposed holiday resort and related facilities must be accessible to the whole public and not be membership orientated.

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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10. ANNEXURE A – DRAFT PROPOSED LEASE AGREEMENT

**LEASE AGREEMENT
FOR A PORTION OF ERF 775 FISHERHAVEN
(±1,6066ha in extent)**

entered into between

OVERSTRAND MUNICIPALITY

herein represented by _____ **xxx** _____
in his/her capacity as _____ **xxx** _____

(hereinafter called the **LESSOR**)

and

[Do not complete]

(hereinafter called the **LESSEE**)

WHEREAS the LESSOR called for tenders for the leasing, developing, managing and the maintenance of municipal property known as a portion of Erf 775 Fisherhaven (±1,6066ha in extent) (the “Leased Premises”), as a holiday resort as shown on the plan attached hereto marked “Annexure B”;

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

AND FURHTER 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 Leased Premises to the LESSEE and the LESSEE hereby agrees to hire the Leased Premises from the LESSOR, on the following terms and conditions:

2. LEASE PERIOD

- 2.1. 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].
- 2.2. 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 2.1 above.

3. RENTAL

3.1. The LESSEE shall pay to the LESSOR monthly rental in the amount of R[INSERT] (INSERT) (VAT

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included), in respect of the Leased Premises, 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.

- 3.2. 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, taxes, 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.

4. DEPOSIT

- 4.1. On opening of the municipal account as contemplated in clause 2.2 above, the LESSEE shall pay to the LESSOR a deposit in the amount of R[INSERT] ([INSERT]) (VAT included), which is an amount equal to 1 (ONE) months rental.
- 4.2. The LESSOR may apply the deposit referred to in clause 4.1, 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.
- 4.3. 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.
- 4.4. The deposit payable in terms of clause 4.1 shall annually escalate at the rate equal to which the monthly rent is escalated in terms of clause 3.1. Such increase in the deposit shall be payable by the LESSEE to the LESSOR on demand.
- 4.5. As soon as all the obligations of the LESSEE to the LESSOR have been discharged following the termination 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.

5. SUBJECTION OF LEASE

This lease is subject in all respects to:

- 4.1 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
- 4.2 all servitudes and conditions, if any, binding on the municipal council of the LESSOR in respect of the Leased Premises.

6. COMPLIANCE WITH LAWS AND BY-LAWS

The LESSEE shall during the currency of this agreement, at its own cost and expense, comply with all Laws and Municipal By-laws and/or any other competent authorities in connection with its operational and development activities, and it is expressly agreed that there shall be no obligation on the LESSOR to effect any repairs and/or additions to the Leased Premises in order to comply with the requirements of any Law or Municipal By-Law and/or of any other competent authorities.

7. USE

- 7.1. The Leased Premises, together with the existing buildings and other structures thereon 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 purpose of developing, managing and the maintenance as a holiday resort and the upkeep of the ablution facilities.
- 7.2. Access to the Leased Premises 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.
- 7.3. The LESSEE, in its use of the Leased Premises, shall:
- 7.3.1. not use, cause or permit to be used any fence, building and/or structure which is or which may

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hereafter be erected on the Leased Premises for the display of advertisements of any description whatsoever;

- 7.3.2. conform with all applicable laws and statutory, municipal and other by-laws and regulations relating to lessees or occupiers of the Leased Premises;
- 7.3.3. 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 Leased Premises,
- 7.3.4. 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 Leased Premises, the duty to repair same shall lie with the LESSEE; and
- 7.3.5. 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 Leased Premises 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.

8. SECURITY OF THE LAND

The LESSEE shall ensure that the Leased Premises is properly secured and protected during and after the close of business. The LESSEE shall be held liable for any damage or loss that may occur from such neglect.

9. DUTIES OF THE LESSEE

- 9.1. The LESSEE shall not:
 - 9.1.1. erect or cause or permit to be erected any buildings and/or structures on the Leased Premises;
 - 9.1.2. effect any improvements or additions to any building and/or structures presently erected or to be erected on the Leased Premises; and/or
 - 9.1.3. make any substantial variations or alterations on the Leased Premises, without the prior written consent of the LESSOR given under the hand of the Municipal Manager and until such time as the plans therefore have been approved by the delegated authority 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 Leased Premises and/or any building(s) or structure(s) erected on the Leased Premises.
- 9.2. The LESSEE shall, only if requested to do so by the LESSOR in writing, at the LESEE's cost, enclose and keep the whole of the Leased Premises enclosed with suitable fences to the approval of the LESSOR. The LESSEE shall complete the aforesaid enclosure of the Leased Premises 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 Leased Premises without the prior written consent of the LESSOR.
- 9.3. The LESSEE shall be responsible at all times for maintaining good order, behaviour and government on the Leased Premises and within any buildings and/or structures thereon and shall not allow the same to be frequented by persons of ill repute or bad character.
- 9.4. The LESSEE may not and will not allow for any changes to be made to the electrical installation of the Leased Premises without the prior written consent of the LESSOR, given under the hand of the Municipal Manager. In the event of the LESSOR giving his consent, any changes must still be effected strictly in accordance with the regulations of the local authorities, as well as the suppliers of electricity.
- 9.5. The LESSEE shall at his/its own expense prior to commencing operating from the Leased Premises procure all licences and permits necessary to exercise his/its rights in terms of this agreement and shall comply with all the requirements of the LESSOR in this regard.
- 9.6. The LESSEE must ensure that the club house is made available to the various social clubs in Fisherhaven and Hawston.
- 9.7. The LESSEE must ensure that the Leased Premises is accessible to the whole public and not membership orientated.

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10. MAINTENANCE

- 10.1. The LESSEE shall at its own cost, keep and maintain the interior and exterior of the Leased Premises and all buildings and structures thereon in a clean, sanitary and good condition and without derogating from the generality of the a foregoing, the LESSEE shall:
- 10.1.1. 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 Leased Premises' buildings and/or structures;
 - 10.1.2. 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 Leased Premises and shall be responsible at its own cost to maintain, and replace from time to time when necessary, all light fittings in the Leased Premises in proper order and clean condition;
 - 10.1.3. keep in good order and condition and in a clean, tidy and sanitary condition any ablution and bathroom facilities which have been installed in and on the Leased Premises for the exclusive use of the LESSEE. For the avoidance of doubt it is recorded that the LESSOR shall have no maintenance or cleaning responsibilities or obligations whatsoever in regard thereto;
 - 10.1.4. except for normal fixtures and fittings purposes, not drive or permit to be driven into the walls or ceiling of buildings and/or structures on the Leased Premises 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 buildings and/or structures on the Leased Premises, without the prior written consent of the LESSOR, which consent shall not be unreasonably withheld; and
 - 10.1.5. maintain in good order and condition any floor covering, tiling, laminated flooring and/or carpeting which may be supplied by the LESSOR in the Leased Premises 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.
- 10.2. The duty to repair the Leased Premises and any buildings and/or structures and/or fixtures relating to the Leased Premises shall at all times 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 Leased Premises 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 on the Leased Premises 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.
- 10.3. No trees growing on the Leased Premises shall be cut down or interfered with without the prior written consent of the LESSOR, given under the hand of the Municipal Manager. The **LESSEE** shall obtain the necessary licence from the Department of Agriculture, Forestry and Fisheries should it require that any Milkwood trees be pruned, trimmed cut or removed.
- 10.4. The LESSEE shall not remove or cause or permit to be removed from the Leased Premises 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 Municipal Manager.
- 10.5. Any damage caused to the Leased Premises as a result of any dismantling or removal of equipment or as a result of the LESSEE'S failure to maintain the Leased Premises 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.
- 10.6. The LESSOR reserves the right of free access, without notice, to the Leased Premises for as many of its officers and servants as may be necessary for the purpose of:
- 10.6.1. 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

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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 Leased Premises, 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

- 10.6.2. entering upon the Leased Premises or any buildings or structures erected thereon 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 Leased Premises, 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.

11. INSURANCE AND RISK OF CONTENTS

11.1. For the duration of this lease the Lessee shall:

- 11.1.1. pay to the LESSOR the monthly insurance premium in respect of any buildings and/or structures erected and/or to be erected on the Leased Premises and the LESSOR shall insure the buildings and/or structures on the Leased Premises against damage;
- 11.1.2. be responsible for all its own insurance against loss of income and loss or damage of movable goods on and within the Leased Premises due to, theft, rain, wind, hail, lightning, fire, riots, strikes, activities of states enemies and any other cause; and
- 11.1.3. 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 Leased Premises authorised by this lease.

11.2. 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 Leased Premises 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.

11.3. The LESSOR shall be entitled, at all reasonable times on the, to inspect the documents of the LESSEE and to obtain from the LESSEE or its auditors any information it may deem appropriate to ensure due compliance with the provisions of this clause.

12. INDEMNITY

12.1. 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 Leased Premises and/or this lease.

12.2. 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 Leased Premises and/or this lease.

13. BREACH

13.1. In the event of the:

- 13.1.1. rental and/or other amounts (such as services) not being paid within 30 (THIRTY) days after same has become due and payable; and/or

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- 13.1.2. Leased Premises, fence, buildings, and structures not being kept and maintained in an efficient state of repair and in good structural condition, and/or
- 13.1.3. LESSEE not using the Leased Premises as set out herein; and/or
- 13.1.4. 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 Leased Premises 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 Leased Premises in terms of this lease.

- 13.2. In the event of this lease for any reason being cancelled, the LESSEE shall immediately vacate the Leased Premises 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 Leased Premises by the LESSEE or by any other person.
- 13.3. 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.
- 13.4. Where the LESSOR selects to cancel the agreement in terms of clause 13.1 above, the LESSOR may 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.
- 13.5. 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 the 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.
- 13.6. 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 lease actively associated.
- 13.7. If a restriction is imposed, the LESSOR must, within 5 (FIVE) working days of such imposition, furnish the National Treasury, with the following information:
 - 13.7.1. the name and address of the LESSEE and/or person restricted by the LESSOR;
 - 13.7.2. the date of commencement of the restriction;
 - 13.7.3. the period of restriction; and
 - 13.7.4. the reasons for the restriction.
- 13.8. These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.
- 13.9. If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than 5 (FIVE) years and not more than 10 (TEN) years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the aforementioned act the Register must be open to the public. The Register can be perused on the National Treasury website.

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13.10. 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.

14. TERMINATION AND CANCELLATION

14.1. In the event of any of the following occurring:

14.1.1. the LESSEE having been dissolved and deregistered;

14.1.2. the LESSEE not utilising the Leased Premises as per this agreement;

14.1.3. where the LESSEE:

14.1.3.1. has been finally liquidated, or where any application is made to Court in such respect,

14.1.3.2. is being wound-up;

14.1.3.3. is entering into or purporting to enter into any composition or arrangement of whatsoever nature for the benefit of or more of its creditors;

14.1.3.4. is not satisfying any judgment against them within 14 (FOURTEEN) days of the date of such judgment being granted or failing make appeal or review proceedings against the judgment within the 14 (FOURTEEN) day period as stated above;

the LESSOR shall be entitled to terminate this agreement immediately without payment or compensation whatsoever to the LESSEE and without prejudice to any of the LESSOR's other rights against the LESSEE including the right to claim damages from the LESSEE.

13.2 Where the agreement is terminated for any of the above reasons or at the expiration of this agreement, the Leased Premises shall revert to and vest in the LESSOR. The LESSEE shall be permitted to remove any improvements, non-permanent in nature, which may have been effected or erected by it from its own funds on the Leased Premises within a period of 10 (TEN) days of such termination or expiration on condition that any damage caused to the Leased Premises as a result of the removal thereof will be compensated for by the LESSEE.

13.3 Any structures not removed shall vest in the LESSOR free of compensation. The LESSEE shall also be permitted to remove any material, furniture or equipment belonging to it from the Leased Premises within 14 (FOURTEEN) days of such termination or expiration of this agreement. Any material, furniture or equipment not so removed shall vest in the LESSOR free of compensation.

13.4 The LESSEE shall at the expiration, cancellation or termination of this agreement deliver to the LESSOR the said Leased Premises in a condition satisfactory to the LESSOR. The LESSEE shall compensate the LESSOR for any damages caused to the Leased Premises for whatever reason.

13.5 The termination of this agreement shall further occur:

13.5.1 at the expiry of the lease period; or

13.5.2 if the Parties agree thereto in writing.

13.6 Notwithstanding anything in this agreement contained, whether in the instance of the Council needing the Leased Premises or any portion thereof for own use, the LESSOR may resume possession of the whole or any portion of the Leased Premises at any time on giving 3 (THREE) month's written notice to that effect and may cancel or amend the agreement accordingly.

15. DISPUTE RESOLUTION

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 (FOURTEEN) days of delivery of the Dispute Notice,

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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. CESSION, ASSIGNMENT AND SUBLETTING

15.1 Cession and Assignment

15.1.1 The LESSEE shall not cede or assign all or any rights and obligations of the LESSEE under this agreement.

15.1.2 The LESSEE shall not have the right to cede, make over or sell this agreement to any person, trust, company or association.

15.2 Sub-letting

The LESSEE shall not sub-let or give up possession of any portion of the Leased Premises to any third party.

16. DOMICILIUM CITANDI ET EXECUTANDI

16.1 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.

16.2 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.

16.3 All notices, communications or processes in terms of this lease shall be in writing, which shall include electronic mail.

16.4 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:

16.4.1 by registered mail on the 5th (FIFTH) business day after posting; or

16.4.2 by fax or electronic mail on the 1st (FIRST) business day after the date of transmission thereof; or

16.4.3 by hand during normal business hours at the time of delivery.

16.5 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.

17. HERITAGE RESOURCES

17.1 The LESSEE will preserve the heritage character of the Leased Premises and its surroundings in accordance with applicable legislation and municipal strategic documents and comply with these.

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17.2 Any development on the Leased Premises must be in line with the visual harmony and with the surroundings built and sensitive environment.

18. COSTS

Each Party shall bear its own costs incidental to the negotiation, preparation and execution of this agreement.

19. REPRESENTATION ON AUTHORITY OF PARTIES

19.1 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:

19.1.1 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;

19.1.2 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;

19.1.3 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

19.1.4 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.

19.2 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.

19.3 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 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.

20. DESTRUCTION OR DAMAGE

Should the Leased Premises 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 Leased Premises. 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.

21. HOLDING OVER

In the event of the

21.1 LESSOR cancelling this lease and the LESSEE disputing its right to cancel and remaining in occupation of the Leased Premises; or

22.2 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

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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. LESSEE'S FINANCIAL MANAGEMENT OBLIGATIONS

- 22.1 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 fulfil 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.
- 22.2 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.
- 22.3 Without limiting the generality of the afore going, the LESSEE must submit annually to the LESSOR, at its Property Administration Department, Municipal Offices, Onrustrivier, within **3 (THREE)** months from the LESSEE's financial year end, copies of the LESSEE's approved audited financial statements as well as a report as to the current tenants in the property, as well as a letter from the LESSEE's bank, confirming the LESSEE's financial standing.

23. SURETYSHIP

- 23.1. If a LESSEE enters into this agreement in a representative capacity then such LESSEE binds himself as surety and co-principal debtor on behalf of the represented party for the due performance by his principal of the terms of this agreement by virtue of his signature hereto and by virtue of the deed of suretyship incorporated in this clause. If the person proposing to act in a representative capacity appears not to be in possession of proper written authority by his principal, then and in that instance the person who signed this agreement will, in his personal capacity, be liable for the due fulfilment of all the obligations of the party on whose behalf he proposes to act.
- 23.2. The Sureties by their signatures hereto, renouncing the benefits of excussion and division, the meaning of which they declare themselves to be fully acquainted, hereby bind themselves jointly and severally and in solidum, to the LESSOR and its successors in title, cessionaries or assigns, as sureties for and co-principal debtor with the LESSEE for the due and punctual payment and performance by the LESSEE of all debts and obligations (including but not limited to damages) of whatsoever nature and howsoever arising from this agreement including any amendment to thereto, which the LESSEE may now or in the future owe to the LESSOR – (all of which debts and obligations are hereinafter referred to as "the obligations"). As part of their liability in terms hereof, the Sureties bind themselves as aforesaid to pay the amount of all charges and expenses of whatsoever nature including, but without derogating from the generality of the aforesaid, attorney and own client legal costs (reckoned on the recommended non litigious tariff of the Law Society of the Cape of Good Hope or its successors) and collection commission under this agreement as well as the Sureties obligations hereunder.
- 23.3. Should the LESSEE be a registered company/close corporation it shall prior to concluding this agreement furnish the LESSOR in writing with the names and addresses of all its shareholders and directors or members, and no share or member's interest in the tenant company/close corporation shall be sold, disposed of or alienated nor shall it be permitted to make any change in the composition of its directorate or members without the written approval of the LESSOR, under the hand of the Municipal Manager, which approval will not be unreasonably withheld. Such directors or members referred to shall be obliged to sign a suretyship for the due fulfilment of the obligations of the company/close corporation in terms of this agreement.

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24. ADVERTISEMENTS

The LESSEE shall not use or cause or permit to be used any fence, building and/or structure which is or which may hereafter be erected on the Leased Premises for the display of advertisements of any description whatsoever or a name board, except with the prior written consent of the LESSOR given under the hand of the LESSOR'S delegated authority, and until such time as the necessary approval in terms of the LESSOR's applicable By-Law is given.

25. PRECEDENCE OF AGREEMENT

In the event of any conflict with or any discrepancy between this agreement and any of the annexures hereto, which are incorporated herein by reference, the terms and conditions of this agreement shall take preference.

26. CONFLICTS WITH OTHER CONTRACTS

The Parties to this agreement hereby confirm that, to the best of their knowledge, there is no conflict between this agreement and any other agreement to which either Party is a party and, should such a conflict arise or become known, such conflict will be resolved by negotiation between the Parties, failing which the provisions of this agreement will prevail.

27. VARIANCE OF AGREEMENT

Any variance/amendment of this agreement 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.

28. GOOD FAITH AND CO-OPERATION

The Parties undertake, in the spirit of co-operation to:

- 28.1 consult with each other in connection with fulfilling their obligations under this agreement; and
- 28.2 provide each other timeously with information and documentation required in terms of this agreement or applicable By-Laws of the LESSOR.

29. SEVERABILITY

29.1 This agreement constitutes the whole agreement between the Parties and, except in so far as determined otherwise in clause 14, no clause or provision of this agreement is severable from the other clauses or provisions of this agreement.

29.2 The annexures to this agreement are severable from this agreement and from one another in order to amend or delete such annexure so as to accommodate changed circumstances, events and conditions to which the Parties have agreed but only to the extent that such amended or deleted annexure does not materially detract from or amend this agreement.

30. WARRANTIES

30.1 The LESSEE warrants that:

- 30.1.1 it has taken all necessary actions to authorise its execution of this agreement;
- 30.1.2 all the proposal documents which formed part of the LESSEE's tender proposal have been duly executed on proper authority and are in full force and effect as at the Signature Date;
- 30.1.3 no litigation, arbitration, investigation or administrative proceeding against it is in progress as at the Signature Date;
- 30.1.4 it is not subject to any obligation, non-compliance with any other development contracts which is likely to have a material adverse effect on its ability to execute the development project deliverables; and

30.1.5 all information disclosed by or on behalf of the LESSEE to the LESSOR at any time up to the

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Signature Date is true, complete and accurate in all material respects.

30.2 The LESSOR warrants that:

30.2.1 it has taken all necessary actions to authorise the execution of this agreement; and

30.2.2 it has not knowingly omitted to disclose any material information in its possession or under its control relating to the Leased Premises.

31. DEVELOPMENT

31.1. The plans for any development and/or upgrades on the Leased Premises will be subject to the LESSOR recommendations and approvals. In this regard the LESSEE must submit a site development plan before any development or upgrades may be commenced with.

31.2. The LESSEE shall ensure that the Land remains zoned Open Space Zone 2: Public Open Space only and utilise it for the purpose as consented to in this agreement.

31.3. The LESSEE shall ensure that the development and/or upgrades on the Leased Premises does not exceed the footprint of the existing building/structures situated on the Leased Premises as indicated on the topographical survey plan as attached hereto marked Annexure "XXXXX".

31.4. Should the LESSEE not complete the development on the Leased Premises within a period of 2 (TWO) years from the Signature Date, the LESSOR shall be entitled to cancel this lease upon written notice to the LESSEE. The aforementioned 2 (TWO) year period may, on prior written application of the LESSEE to the LESSOR stating the reasons for the request, be extended by consent of the LESSOR given under the hand of the delegated authority of the LESSOR, which consent will not be withheld unreasonably.

31.5. The required parking for the development and/or upgrades must be provided on a site development plan.

32. INFRASTRUCTURE

32.1 There are existing water, sewer and electricity connections available. It must be noted that a services investigation into the services on the Leased Premises by a consultant procured by the LESSOR indicated as follows:

32.1.1 Water:

There is currently an existing 75mm diameter water main on the south border of the Leased Premises. There is an internal water reticulation system on the Leased Premises which distributes water to the ablution facilities, the club house and various caravan/camping stands.

32.1.2 Sewerage:

The Fisherhaven Sewerage Pump Station in Poplar Road pumps sewerage to the Hawston Waste Water Treatment Works. The Leased Premises does not have a gravity sewer and is serviced by means of conservancy tanks.

32.1.3 Stormwater:

There is no formal stormwater infrastructure on the Lease Premises and currently stormwater from the Leased Premises drains directly onto the Botrivier lagoon.

32.1.4 Electricity:

The Leased Premises falls within the electricity supply area of Eskom. The LESSEE must confirm that sufficient electrical capacity is available on Eskom's network to connect/supply any proposed development.

32.2 The LESSEE must enter into service agreements with the LESSOR for all the services, including water, sewerage, electricity, stormwater and refuse removal before commencement of the development.

32.3 The LESSEE will be responsible for payment of all costs relating to the connections for water, sewerage and electricity supply to the Premises and any other services.

32.4 The LESSEE must have due regard to any necessary upgrade to the existing services that may be necessary for any proposed development.

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AS WITNESSES:

1. ___ Do not sign _____

2. ___ Do not sign _____

___ Do not sign _____
(LESSOR)
OVERSTRAND MUNICIPALITY

THUS DONE, SIGNED AND AGREED TO AT ___ **XXX** _____
on _____ **XXX** _____.

AS WITNESSES:

1. ___ Do not sign _____

2. ___ Do not sign _____

___ Do not sign _____
(LESSEE)
[INSERT LESSEE NAME]

Annexures to be included in Final Agreement.

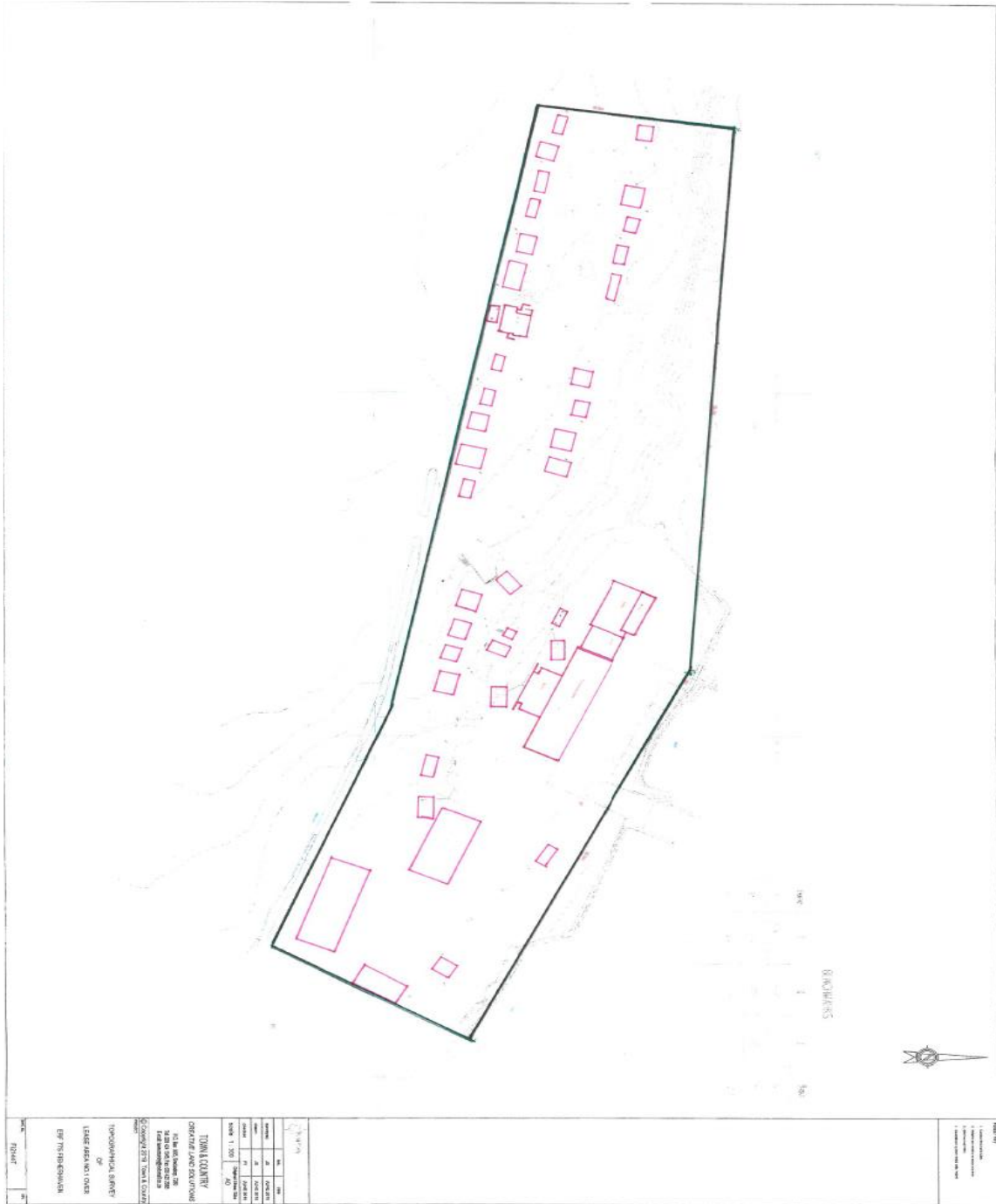
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11. ANNEXURE B – LOCALITY MAP



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12. ANNEXURE C – TOPOGRAPHICAL SURVEY PLAN



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13. FORM OF OFFER AND ACCEPTANCE

1. OFFER

The Municipality, identified in the Acceptance signature block, has solicited offers to enter into a contract in respect of the following property:

THE LEASE, DEVELOPMENT, MANAGEMENT AND MAINTENANCE OF A PORTION OF ERF 775 FISHERHAVEN AS A HOLIDAY RESORT

The bidder, identified in the offer signature block, has examined the documents listed in the tender data and addenda thereto as listed in the returnable schedules and confirms that the tender is subject to the conditions as set out in this tender documentation and the terms of the most recent Supply Chain Management Policy and the Administration of Immovable Property Policy of the Overstrand Municipality as approved and adopted by Council, and by submitting this offer has accepted the conditions of tender and the conditions as set out in the aforesaid policies.

By the representative of the bidder, deemed to be duly authorized, signing this part of this form of offer and acceptance, the bidder offers to perform all of the obligations and liabilities as described in the tender document including compliance with all its terms and conditions according to their true intent and meaning.

THE OFFERED TOTAL OF THE RENTAL <u>INCLUSIVE OF VAT PER MONTH IS:</u>	
Tendered Monthly Lease Amount for a portion of Erf 775 Fisherhaven	R
	<i>(In words)</i>

This offer may be accepted by the Municipality by signing the Acceptance part of this Form of Offer and Acceptance and returning one signed copy of this document to the bidder.

Signature(s)		
Name(s)		
Capacity		
For the bidder:		
Name of witness:	<i>(Insert name and address of organisation)</i>	Date
Signature of witness:		

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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 successful 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.

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 authorized 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:		

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

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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.
 - (c) enter into a contract which will impose financial obligations on the Municipality beyond a financial year, but if the contract will impose financial obligations on the Municipality beyond the three years covered in the annual budget for that financial year, it may only do so in accordance with the provisions of Section 33 of the MFMA, and
 - (d) enter into a public-private partnership agreement, but only in accordance with the provisions of Section 120 of the MFMA and the Public-Private Partnership Regulations.

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, specifically in circumstances 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:

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- (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;
 - (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 1st 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.

SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
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WITNESS 1		WITNESS 2	