

**8. RENEWAL OF THE LEASE AGREEMENT BETWEEN OVERSTRAND MUNICIPALITY (THE LESSEE) AND THE OVERBERG DISTRICT MUNICIPALITY (THE LESSOR) FOR THE LETTING OF A PORTION OF PORTION 79 (A PORTION OF PORTION 1) OF THE FARM AFDAKSRIVIER NO. 575**

8/3/1

H Blignaut  
15 November 2017

(028) 313 5047

Hermanus Administration

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**1. Executive Summary**

The purpose of this report is to provide the necessary information and motivation with regard to the renewal of the lease agreement between Overstrand Municipality as the lessee and the Overberg District Municipality as the lessor for the letting of a portion of Portion 79 (a portion of Portion 1) of the farm Afdaksrivier no. 575, to enable Council to take an informed decision whether to approve the renewal of the lease in terms of section 33 of the Local Government: Municipal Finance Management Act, 2003 (Act no. 56 of 2003) (MFMA).

**2. Service Delivery and Budget Implementation Plan - IGNITE**

Directorate: Infrastructure & Planning  
Department: Engineering Planning (Solid Waste Planning section)

**3. Compliance with Strategic Priorities**

Provision of democratic, accountable and ethical governance  
Provision and maintenance of municipal services  
Creation and maintenance of a safe and healthy environment

**4. Delegated Authority**

None

**5. Legal Requirements**

Local Government: Municipal Finance Management Act (MFMA), 2003 (Act 56 of 2003)  
Overstrand Municipality Contract Management Policy, as amended

**6. Background/Evaluation/Conclusion**

**Background**

The Karwyderskraal Landfill site is a very important and integral component of the solid waste disposal function of the Overstrand Municipality (OM). All solid

waste generated in the Greater Hermanus, Kleinmond, Bettiesbaai, Pringle Bay and Rooi-Els areas is disposed of at the Karwyderskraal landfill.

The Karwyderskraal Landfill site is situated on Portion 79 (a portion of Portion 1) of the farm Afdaksrivier no. 575 and is owned by the Overberg District Municipality (ODM).

As ODM was not in a financial position to construct a third solid waste disposal cell (Cell 3) on the Karwyderskraal Landfill site when it became necessary to do so, OM raised an external loan and a municipal infrastructure grant for this purpose and, in terms of the lease agreement with ODM described in this report, constructed Cell 3 and has successfully operated the cell to date.

More specifically, OM, as Lessee, and ODM, as Lessor, entered into a lease agreement for a portion of Portion 79 (a portion of Portion 1) of the farm Afdaksrivier no. 575 for a lease period of two (2) years and nine (9) months, commencing on 1 October 2014 and ending on 30 June 2017 (refer to Annexure A). On 20 November 2014 the parties concluded an addendum to the lease agreement (included in Annexure A).

In terms of the lease agreement OM has leased the land for the purpose of constructing and operating Cell 3.

Clause 3 of the lease agreement states that the Lessee has the right to renew the lease for a further period of seven (7) years and three (3) months, but if it does so the OM will be able to cancel the agreement within the renewal period by giving the Lessor three months' written notice if Cell 3 has reached full capacity.

Clause 3 of the lease agreement further states that the right of renewal may only be exercised subject to the procedures to be followed in terms of sections 33 and 116(3) of the MFMA.

OM exercised this right of renewal by notifying the ODM to this effect on 15 March 2017 (refer to Annexure B).

If the renewal period continues for more than 3 years from the renewal date of 1 July 2017, the renewal will be subject to section 33 of the MFMA.

As the possibility exists that within that 3 year period Cell 3 will not reach full capacity and the lease will consequently not be cancelled, OM is now following the process in section 33 of the MFMA.

A further reason OM is now following that process, is that is what clause 3 of the lease agreement requires. In addition, clause 3 requires that OM comply with the procedures laid down by section 116(3) of the MFMA. As will appear from the text of sections 33 and 116(3) of the MFMA below, if OM follows the

procedures laid down by section 33 of the MFMA it will simultaneously also comply with the procedures laid down by section 116(3) of the MFMA.

There is however a dispute between ODM and OM about, amongst other things, the validity of the exercise by OM of the right of renewal from 1 July 2017 onwards. ODM contends OM had to comply with sections 33 and 116(3) of the MFMA before the original lease expired on 30 June 2017. OM believes it was entitled to so exercise the right of renewal and thereafter to comply with sections 33 and 116(3) of the MFMA, provided it so complies within three years of 1 July 2017.

An interim agreement was signed by the two municipalities from 1 July 2017 (refer to Annexure C) to deal with the interim situation whilst this dispute and other related disputes regarding the rental amount from 1 July 2017 onwards and the liability of OM for the cost of rehabilitation of Cell 3 from 1 October 2014 onwards (which OM does not accept), are resolved or adjudicated upon.

The renewal operates from 1 July 2017 and the duration of the renewed lease will be for a maximum period of seven (7) years and three (3) months from that date.

It is however anticipated that the landfill cell on the land may reach full capacity on 31 March 2019, and hence the lease will be terminated with effect from that date, but this is not entirely certain, so the effective lease period may be longer.

### **Evaluation**

The terms and conditions of the lease for the renewal period which started on 1 July 2017 are and will be the same as those of the original lease which ran for the period 1 October 2014 to 30 June 2017 (refer to Annexure A).

Section 33 of the MFMA provides as follows:

**33.** (1) A municipality may 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 do so only if—

- (a) the municipal manager, at least 60 days before the meeting of the municipal council at which the contract is to be approved—
    - (i) has, in accordance with section 21A of the Municipal Systems Act—
      - (aa) made public the draft contract and an information statement summarising the municipality's obligations in terms of the proposed contract; and
      - (bb) invited the local community and other interested persons to submit to the municipality comments or representations in respect of the proposed contract; and
    - (ii) has solicited the views and recommendations of—
      - (aa) the National Treasury and the relevant provincial treasury;
      - (bb) the national department responsible for local government; and
      - (cc) if the contract involves the provision of water, sanitation, electricity, or any other service as may be prescribed, the responsible national department;
  - (b) the municipal council has taken into account—
    - (i) the municipality's projected financial obligations in terms of the proposed contract for each financial year covered by the contract;
    - (ii) the impact of those financial obligations on the municipality's future municipal tariffs and revenue;
    - (iii) any comments or representations on the proposed contract received from the local community and other interested persons; and
    - (iv) any written views and recommendations on the proposed contract by the National Treasury, the relevant provincial treasury, the national department responsible for local government and any national department referred to in paragraph (a)(ii)(cc); and
  - (c) the municipal council has adopted a resolution in which—
    - (i) it determines that the municipality will secure a significant capital investment or will derive a significant financial economic or financial benefit from the contract;
    - (ii) it approves the entire contract exactly as it is to be executed; and
    - (iii) it authorises the municipal manager to sign the contract on behalf of the municipality.
- (2) The process set out in subsection (1) does not apply to—
- (a) contracts for long-term debt regulated in terms of section 46(3);
  - (b) employment contracts; or
  - (c) contracts—
    - (i) for categories of goods as may be prescribed; or
    - (ii) in terms of which the financial obligation on the municipality is below—
      - (aa) a prescribed value; or
      - (bb) a prescribed percentage of the municipality's approved budget for the year in which the contract is concluded.
- (3) (a) All contracts referred to in subsection (1) and all other contracts that impose a financial obligation on a municipality—
- (i) must be made available in their entirety to the municipal council; and
  - (ii) may not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).
- (b) Paragraph (a)(i) does not apply to contracts in respect of which the financial obligation on the municipality is below a prescribed value.
- (4) This section may not be read as exempting the municipality from the provisions of Chapter 11 to the extent that those provisions are applicable in a particular case.

Section 116(3) of the MFMA provides as follows:

- (3) A contract or agreement procured through the supply chain management policy of the municipality or municipal entity may be amended by the parties, but only after-
- (a) the reasons for the proposed amendment have been tabled in the council of the municipality or, in the case of a municipal entity, in the council of its parent municipality; and
  - (b) the local community-
    - (i) has been given reasonable notice of the intention to amend the contract or agreement; and
    - (ii) has been invited to submit representations to the municipality or municipal entity.

The procedures prescribed by sections 33 and 116(3) of the MFMA have been duly followed. Section 116(3) applies to contracts or agreements procured through the Supply Chain Management Policy, however, in this instance this process was stipulated as a condition of the rental agreement.

This report to Council concludes the 33 process, and includes the projected financial obligations for each financial year and the impact of those financial obligations on the tariffs of OM.

The following activities were completed, in accordance with sections 33 and 116(3) of the MFMA:

- An advertisement (refer to Annexure D), inviting comments from the local community and other interested persons was published in the local media and on the municipal web site on 29 September 2017 (i.e. 60 days before the Council meeting). No comment, input or inquiry was received before the closing date of 3 November 2017, other than from ODM.
- An Information Statement discussing the proposed amendment to the contract was made available to the public from 29 September 2017 (refer to Annexure E).
- The views and recommendations of the following stakeholders have been solicited for 30 days from 2 October 2017 (refer to Annexure F): National Treasury, Provincial Treasury, Department of Local Government, and ODM. Comments were received only from the ODM (refer to Annexure G).

The comments from ODM comprised of the following:

- ODM maintains that the renewal of the lease by OM is of no legal force and effect, because approval had to be obtained in terms of section 33 of the MFMA prior to the termination of the original lease.
- ODM consequently suggests that the section 33 process be withdrawn by OM and that OM enter into negotiations with the ODM for a new lease agreement, to be backdated so as to commence from 1 July 2017.

Previously the ODM suggested an increase of 700% in the rent for this property, should a new lease agreement be negotiated.

The Municipal Manager of OM responded to ODM in writing on 10 November 2017 (refer to Annexure H), stating that, in compliance with clause 3 of the original lease, OM duly gave ODM written notice of the renewal of the lease for a further period of seven years and three months as contemplated in that on 15 March 2017 and that the exercise of the right of renewal did not have to be preceded by the process in terms of section of the MFMA. OM may follow the section 33 process after exercising its right to renewal. If it does so, the renewal of the lease is subject to the condition that if the Municipal Council of OM refuses to approve the renewal of the lease in terms of section 33 of the MFMA, the lease will then terminate. If, on the other hand, the Municipal Council of OM approves the renewal before the expiry of a period of three years from 1 July 2017, the lease will continue for the full renewal period or until it is cancelled by OM.

The projected financial implications of the renewal of the lease are illustrated in the two tables in paragraph 7 below. No adverse effects on future budgets and therefore tariffs are envisaged. The rental will remain at R5 000 per month, excluding VAT, and electricity usage will continue to be paid to ODM in addition to the rent. As before, the cost of the electricity usage will be subject to Eskom tariff increases.

If the renewal of the lease is not approved, OM will have to renegotiate the lease with ODM on terms now acceptable to ODM (including an increased rental and an acceptance by OM of liability for the cost of the rehabilitation of Cell 3) or dispose of the solid waste elsewhere (at what is likely to be a significantly greater cost because of the increased transport costs alone).

### **Conclusion**

The lease was lawfully renewed, its renewal will not have an adverse effect on the budgets and tariffs of OM for the renewal period, the renewal of the lease is in the interest of OM and its inhabitants and the lease agreement for the renewal period will secure for OM its significant capital investment in Cell 3 and will give rise to a significant financial benefit for OM (i.e. the continuation of the current terms of the lease as opposed to new, more adverse terms or having to dispose of the solid waste elsewhere).

## **7. Financial Implications**

Source of Funding: Operating Budget Provision

The estimated financial implications of the renewed lease over the renewal period of maximum 7 years and 3 months are illustrated in the table below:

Financial Year	Rent and Electricity (excluding VAT)	Rent proposed by ODM and Electricity (excluding VAT)
2017/18	R 102 080	R 462 080
2018/19	R 106 290	R 491 490
2019/20	R 110 922	R 522 834
2020/21	R 116 014	R 556 240
2021/22	R 121 615	R 591 855
2022/23	R 127 777	R 629 831
2024/24	R 134 554	R 670 332
2025/25	R 35 502	R 178 383
<b>Total</b>	<b>R 854 754</b>	<b>R 4 106 075</b>

The estimated Medium Term Expenditure Framework financial implications are summarised in the following table:

	2017/18	2018/19	2019/20
<b>mSCOA Description</b>	Operational Cost: Municipal Service	Operational Cost: Municipal Service	Operational Cost: Municipal Service
<b>mSCOA Cost Account</b>	13640222370000	13640222370000	13640222370000
<b>mSCOA Business Key</b>	20170525078507	20170525078507	20170525078507
<b>Budget Provision (excl VAT)</b>	R 128 400	R 136 104	R 144 270
<b>Balance Available (excl VAT)</b>	R 102 892	R 136 104	R 144 270
<b>Total Estimated Expenditure (excl VAT)</b>	R 102 080	R 106 290	R 110 922

## 8. Staff Implications

None

## 9. Comments from other Departments, Divisions and Administrations

None

## 10. Annexures

- Annexure A: Original Lease Agreement and Addenda
- Annexure B: OM notice of renewal of lease
- Annexure C: Interim Lease Agreement
- Annexure D: MFMA Section 33 Public Notice
- Annexure E: MFMA Section 33 Information Statement
- Annexure F: MFMA Section 33 Letter to Stakeholders
- Annexure G: MFMA Section 33 representation by ODM
- Annexure H: MFMA Section 33 response from OM to ODM

**RECOMMENDATION TO THE COUNCIL:**

1. that Council takes cognisance of the response received from Overberg District Municipality to the request for comments, representations, views and recommendations in respect of the renewal of the lease agreement between Overstrand Municipality as the lessee and Overberg District Municipality in respect of a portion of Portion 79 (a portion of Portion 1) of the farm Afdakrivier no. 575, in terms of the enabling provisions of Section 33 of the Local Government: Municipal Finance Management Act 2003 (Act 56 of 2003);
2. that Council determines that Overstrand Municipality will secure a significant capital investment and derive a significant economic financial benefit from the renewal of the lease agreement;
3. that Council approves the renewed lease agreement; and
4. that Council authorises the Municipal Manager to sign a renewal of the lease agreement on behalf of Overstrand Municipality, if necessary.

**RESPONSIBLE OFFICIALS :****H BLIGNAUT  
J VAN TAAK****TARGET DATE FOR IMPLEMENTATION :****1 JULY 2017****TARGET DATE TO INFORM APPLICANT :****N/A****TARGET DATE TO INFORM OBJECTOR :****N/A**

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1/17**LEASE AGREEMENT**

Memorandum of agreement entered into between

**OVERBERG DISTRICT MUNICIPALITY**herein represented by **DAVID PATRICK BERETTI**in his capacity as **MUNICIPAL MANAGER**, he being duly authorised thereto  
of **26 Long Street, Bredasdorp, 7280***(Hereinafter called "the LESSOR")*

and

**OVERSTRAND MUNICIPALITY**herein represented by **COENRAAD CORNELIUS GROENEWALD**in his capacity as **MUNICIPAL MANAGER**, he being duly authorised thereto  
of **Magnolia Avenue, Hermanus, 7200***(Hereinafter called "the LESSEE")***WHEREAS:**The **LESSOR** is the owner of the property known as portion 79 (a portion of portion 1) of the Farm Afdakrivier nr 575, which property is used as a land fill site;The **LESSOR** is prepared to let a portion of portion 79 (a portion of portion 1) of the Farm Afdakrivier nr 575, ±44ha in extent, (including all structures, buildings and one main water pipe on the land) as indicated on annexure A attached hereto (hereinafter called the land) to the **LESSEE** and the **LESSEE** is prepared to hire the land from the **LESSOR** for the purposes of building a new waste cell and related activities;The Council of the **LESSOR** approved the lease in principle on 26 May 2014;The **LESSOR** and the **LESSEE** have reached agreement as to the terms upon which such letting and hiring shall be made, subject to such terms being recorded in writing;**NOW THEREFORE THE PARTIES HEREBY AGREE:**That the **LESSOR**, pursuant to the authority conferred upon it by the Management and Administration of Immovable Assets Policy of the Overberg District Municipality as adopted on 20 April 2011, hereby agrees to lease to the **LESSEE** and the **LESSEE** hereby agrees to hire from the **LESSOR** the land, subject to the following terms and conditions:

Handwritten signatures and initials at the bottom right of the page, including a large signature, the initials 'OK', and other scribbles.

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2/17**1. LEASE AREA**

1.1 The LESSOR hereby lets and the LESSEE hereby hires a portion of portion 79 (a portion of portion 1) of the Farm Afdakrivier nr 575, ±44ha in extent, (including all structures, buildings and one main water pipe on the land) as indicated on annexure A attached

**2. LEASE PERIOD**

2.1. Notwithstanding the date of signature hereof, this lease shall endure for a period of 2 (TWO) years and 8 (EIGHT) months which lease period commences on 1 October 2014 and expires on 30 June 2017.

2.2. The LESSEE is entitled to cancel the agreement within the lease period if the cell to be constructed on the land has reached its full capacity in terms of the permit by giving the LESSOR three month's written notice.

**3. OPTION OF RENEWAL**

3.1. The LESSEE shall have the right to renew this lease for a further period of 7 (seven) years and 3 (three) months. The LESSEE will however be able to cancel the agreement within the renewal period by giving the LESSOR three month's written notice in advance if the cell on the land has reached its full capacity in terms of the permit.

3.2. The right of renewal shall be exercised by notice in writing from the LESSEE to the LESSOR given and received not later than 90 (ninety) days prior to the date on which the renewal period is to commence, and shall lapse if not so exercised. In the event of the LESSEE failing to give such notice, then this lease shall cease and terminate finally on the expiration date abovementioned.

3.3. The right of renewal may only be exercised subject to the procedures to be followed in terms of Sections 33 and 116(3) of Local Government: Municipal Finance Management Act (act 56 of 2003).

3.4. The LESSEE may not, however, exercise the right of renewal while in breach of default of any of the terms of this sub-lease.

3.5. If this lease does not endure at least for the full term for which it is initially contracted, the right of renewal shall lapse and any notice in exercise thereof given prior to such lapsing shall be null and void.

**4. RENTAL**

4.1. The LESSEE shall pay to the LESSOR nominal rental in the amount of R5,000.00 (Vat excluded) (FIVE THOUSAND RAND ALONE, VAT EXCLUDED) in respect of the land, payable monthly in advance at such place as the LESSOR may from time to time indicate in writing.

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4.2. The abovementioned rental amount is based on the monthly expenditure incurred by the LESSOR relating to, but not limited to, the following:

- 4.2.1 Costs of the Monitoring Committee on a quarterly basis;
- 4.2.2 Costs of the ad hoc site visits to be effected during the construction of the new cell on the property (approximately 6 site visits);
- 4.2.3 Costs of the monthly internal inspections with the LESSEE's personnel as required by the provincial proposal to ensure compliance with the permit conditions.

## 5. SUBJECTION OF LEASE

- 5.1. This lease shall be subject in all respects to the provisions of the Management and Administration of Immovable Property adopted by the Council of the LESSOR on 20 April 2011 and as may be amended from time to time.
- 5.2. This lease shall be subject to all servitudes and conditions, if any, binding on the LESSOR in respect of the land hereby leased.
- 5.3. This lease shall be subject to the current Waste Management licences applicable to the land.

## 6. UTILISATION

- 6.1. The said land and buildings, together with such buildings and other structures as may be erected in accordance with the provisions of this agreement shall be used exclusively for the purpose of erecting the new cell and subsequent operating and managing of the land fill site.
- 6.2. Access to the land 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 may be agreed upon in writing between the LESSOR and the LESSEE.

## 7. DUTIES OF THE LESSEE

- 7.1. The LESSEE shall not erect or cause or permit to be erected any additional buildings and/or structures on the land without the prior written consent of the LESSOR, given under the hand of the Municipal Manager.
- 7.2. 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 land for the display of advertisements of any description whatsoever with the provision that this clause is not intended to prohibit the erection of warning signs for security and/or safety purposes.
- 7.3. The LESSEE shall not assign its rights under this agreement nor shall it sublet the land, except with the prior written consent of the LESSOR, given under the hand of the Municipal Manager.

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- 7.4. The LESSEE shall be responsible at all times for the maintenance of good order, behaviour and government on the land 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.
- 7.5. The LESSEE in his use of the land, shall
- 7.5.1. conform with all laws and statutory, municipal and other by-laws and regulations relating to lessees or occupiers of the land, and;
- 7.5.2. 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 land; and
- 7.5.3. manage the land fill site in accordance with the permits issued by the Department of Water Affairs and the Department of Environmental Affairs.

## 8. MAINTENANCE

- 8.1. No indigenous trees growing on the land shall be cut down or interfered with without the prior written consent of the LESSOR, given under the hand of the Municipal Manager.
- 8.2. Should any structure, garden, fence, etc. or portion thereof be damaged due to any act of negligence of the LESSEE or person who acquired occupancy through him/her, the LESSEE shall be held liable for the payment of the total cost of any such repair work.
- 8.3. The LESSEE shall keep and maintain the inside and outside of the land, fences and structures included, and without limiting the LESSEE'S obligations thereto, all locks, keys inside, water pipes, window panes and water and electrical fixtures, fittings and appliances and hot water cylinders, in good and substantial repair and upon termination of the tenancy, shall deliver the same in such good and substantial repair.
- 8.4. The LESSEE shall further maintain the main water pipe line which provides water to the land (and which forms part of the land) and undertakes to repair any damage to the pipe line.
- 8.5. The LESSEE shall for the period of this lease maintain the supply of water from the main pipeline to all the water users on the pipeline.
- 8.6. The LESSOR may at all convenient times through its officers and servants enter upon the land or any buildings or structures erected thereon and inspect the same, and may make an inventory of all defects or matters calling for repair found thereon or therein for which the LESSEE is responsible as herein provided and within 10 (TEN) business days (or any extended period agreed upon by the parties) of the receipt of a notice in writing from the Municipal Manager calling upon it so to do, the

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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 land, buildings and structures aforesaid and remedy such defects or make and effect the repairs aforesaid and recover the cost from the LESSEE.


- 8.7. The LESSOR reserves the right of access, with reasonable notice to the LESSEE, to the land hereby leased for as many of its officers and servants as may be necessary for the purpose of inspection, maintenance, renewal, cleansing, repairs and reconstruction of, or in connection with, existing foul sewers, rising mains, storm water drains, water mains, electric cables, or any works appurtenant thereto, or in regard to any such or other municipal services which the LESSOR may in future lay in or across the land, the LESSOR reserving to itself the right to establish such services with reasonable notice.
- 8.8. Should work involving maintenance, clearing, construction, reconstruction or repairs on the land become necessary at any time the LESSOR shall, in performing such work cause as little inconvenience as possible to the LESSEE, regard being had to the nature of the work performed, and the LESSOR shall reinstate as nearly as reasonably possible in its original condition the surface of any ground disturbed, provided that the LESSOR shall not be liable for any damage whatsoever which may be sustained by the LESSEE or any other person or body of persons as a result of the performance by the LESSOR or his officers or servants of the work aforesaid.

#### 9. RISK OF CONTENTS

- 9.1. All goods, property and effects of whatsoever nature owned by the LESSEE or any other person which at any time might be in/or/at the said land 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.

#### 10. BREACH

- 10.1. The LESSEE hereby covenants with the LESSOR that the LESSEE will pay the rent as herein before-mentioned and agrees also faithfully to observe and fulfil each and all the conditions of this lease.
- 10.2. Should the LESSEE commit a breach of any one or more of the terms and conditions of this agreement and remain in default for 10 (TEN) business days after written notice having been delivered to the LESSEE at its *domicilium citandi et executandi*, requiring it to remedy such breach, the LESSOR shall without prejudice to any other legal remedy available, be entitled without further notice to:
- 10.2.1. institute action against the LESSEE for payment of the arrear rental (if any) and the full balance of the lease amount for the remainder of the lease agreement and for such damages as the LESSOR may have suffered; or

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- 10.2.2. cancel this agreement and recover such damages from the **LESSEE** as the **LESSOR** may have suffered, without prejudice to any other rights the **LESSOR** might have.
- 10.3. In the event of this agreement for any reason being cancelled, the **LESSEE** shall immediately vacate the land if it is in occupation and the **LESSOR** shall not be liable for any compensation for any improvements made to the land by the **LESSEE** or by any other person.
- 10.4. The **LESSEE** undertakes to pay all attorney costs plus VAT which the **LESSOR** may incur in collecting any amount owing in terms of this agreement 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.
- 10.5. Should the **LESSOR** cancel the lease and the **LESSEE** dispute the **LESSOR'S** right to do so and remain in occupation of the land then the **LESSEE** shall, pending the determination of the dispute, continue to pay all amounts due by him in terms of this lease on the due dates thereof and the **LESSOR** shall be entitled to recover, sue for and accept those payments without prejudice to and without in any manner whatsoever affecting the **LESSOR'S** claim to cancellation of this lease or any other nature whatsoever.
- 10.6. Should the dispute between the **LESSOR** and **LESSEE** be determined in favour of the **LESSOR** the payments made to the **LESSOR** in terms of 8.5 shall be regarded as amounts paid by the **LESSEE** on account of the loss sustained by the **LESSOR** as a result of the holding over by the **LESSEE** of the land.
- 10.7. 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 which might arise. This agreement does not exclude the **LESSOR'S** right to institute any action in the High Court if he so chooses.

## 11. DISPUTES

- 11.1. This agreement shall be governed by and constructed in accordance with the laws of the Republic of South Africa.
- 11.2. In the event of any dispute arising from this agreement, the parties thereto shall make every effort to settle such dispute amicably.
- 11.3. If the dispute is not capable of being settled between the parties amicably, such dispute shall be elevated to the Senior Management / Executive or their duly designated representatives for mediation purposes.
- 11.4. Should the dispute, despite such mediation remain unresolved for a period of 30 (THIRTY) days after being so referred, either party may declare such dispute a formal intergovernmental dispute by notifying the other party of such declaration in

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writing, in which event the parties will follow the procedure as outlined in the Intergovernmental Relations Framework Act, 2005.

- 11.5. Should the dispute still remain unresolved, the dispute will be adjudicated by a competent court with jurisdiction to hear the matter.

## 12. TERMINATION AND CANCELLATION

- 12.1. In the event of the LESSEE dissolving or ceasing to exist or not use the land as described above at any time within the period of this lease, the lease shall be terminated. In this event or at the expiration of this lease, the land shall revert to and vest in the LESSOR. The LESSEE shall be obliged to vacate the land within a period of one month of such termination.

## 13. GENERAL

- 13.1. The LESSEE undertakes that it will be responsible for payment at the normal rates, taxes and services charges for any municipal services provided to the land hereby leased, whether at the request of the LESSEE or not. In this regard it must be noted that water is supplied to the land free of compensation.
- 13.2. The LESSEE shall at all times well and sufficiently indemnify the LESSOR and keep the LESSOR indemnified against all liability howsoever caused or arising that may be the direct or indirect result of the use of the land in question, and against all actions, suits, proceedings, claims, demands, costs and expenses whatsoever which may be taken or made against the LESSOR or incurred or become payable by the LESSOR at the suit of any person.
- 13.3. Neither the LESSEE nor any other person shall acquire or hold any licence for the sale of intoxicating liquor upon the land or in or from any buildings or structures thereon.
- 13.4. The parties hereto acknowledge that this agreement constitutes the entire contract between them and that no other conditions, stipulations, warranties or representations whatsoever have been made by or on behalf of either party other than such as are included herein.
- 13.5. All provisions of this agreement shall remain in effect unless amended in writing and signed by both parties represented herein.
- 13.6. No agreement at variance with the terms and conditions of this agreement shall be binding on the parties unless contained in writing by the parties hereto and 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 his rights or be construed as a waiver of same by the LESSOR.

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- 11.7 The grant of the lease hereby constituted, shall under no circumstances be deemed to confer any real right or servitude of any kind in favour of the **LESSEE**. Upon a demand made by the **LESSOR**, in terms of this lease, for quiet possession of the property, the **LESSEE** shall be bound to give such possession without any right to compensation, whether for useful, necessary expenses or other improvements.
- 11.8 The land and buildings and/or structures thereon will be insured against damage or loss by the **LESSOR** in terms of this lease.
- 11.9 The parties acknowledge that they have been free to secure independent legal and other advice as to the nature and effect of all the provisions of this agreement and that they have either taken such independent legal and other advice or dispensed with the necessity of doing so. Further, the parties acknowledge that all of the provisions of this agreement have been negotiated between them and are part of the overall intention of the parties in connection with this agreement.
- 11.10 The expiration or termination of this lease shall not affect any provisions of this lease which expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 11.11 Each of the provisions of this lease has been negotiated by the parties and drafted for the benefit of the parties and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of the lease, shall not apply.
- 11.12 By signing this lease, the signatory for the parties, confirms that they are duly authorised to enter into this lease on behalf of the respective parties.

#### 14. DOMICILIUM CITANDI ET EXECUTANDI

- 14.1. The **LESSEE** hereby appoints the address as set out in Schedule 1 of this agreement for all purposes of and connected with this lease to be the *domicilium citandi et executandi* of the **LESSEE**, and any written notice or any process thereat addressed to the **LESSEE**, shall be deemed to have been sufficiently served upon the **LESSEE** by registered mail on the 5<sup>th</sup> (FIFTH) business day after posting or on the 1<sup>st</sup> (FIRST) business day following the notification day per fax or email. Any legal proceedings against the **LESSEE** may at the option of the **LESSOR** be brought and conducted in the Magistrate's Court of Hermanus and the **LESSEE** assents to any increased jurisdiction required for that purpose.

#### 15. DESTRUCTION OR DAMAGE

- 15.1 Should the land at any time or times during the currency of this lease be damaged or destroyed by fire, riots, force majeure or any other cause

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whatsoever so as to render them wholly untenable, then the LESSEE shall be entitled to cancel this lease by notice to the LESSOR given in writing within 60 (SIXTY) days after the date of destruction of the land. If no such notice is given then this lease shall not be terminated and the LESSEE shall be liable for payment of rent.

#### 16. HOLDING OVER

16.1 In the event of the LESSOR cancelling this lease and the LESSEE disputing its right to cancel and remaining in occupation of the premises the LESSEE shall, pending the determination of such dispute by litigation or otherwise, continue to pay to the LESSOR an amount equivalent to the monthly rental and or other sums payable hereunder on the date or dates upon which such sum would have been due but for the cancellation, 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 cancellation then in dispute. Should the 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 the lease and/or the unlawful holding over by the LESSEE.

#### 17. INTERPRETATION OF THIS LEASE

- 17.1 All headings are for convenience only and are not to be taken into account for the purpose of interpreting it.
- 17.2 A reference to any party includes that party's heirs, executors, administrators and assigns.
- 17.3 If a definition imposes substantive rights and obligations on a party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 17.4 Words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include artificial persons and vice versa;
- 17.5 Any schedules or addenda to this lease form an integral part hereof and words and expressions defined in this lease shall bear, unless the context otherwise requires, the same meaning in such schedule or addendum;
- 17.6 References to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
- 17.7 Any provision in this lease which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this lease shall, as to such

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jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written and severed from the balance of this lease, without invalidating the remaining provisions of this lease or affecting the validity or enforceability of such provision in any other jurisdiction;

17.8 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

17.9 References to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT. Where VAT is payable it shall be paid together with any payment.

#### 18. AGREEMENT BINDING ON SUCCESSORS IN TITLE

18.1 This agreement shall be binding on the administrators, executors, heirs, judicial managers and other successors-in-title of the parties, who shall not be entitled to terminate this agreement merely by reason of the death of a party. Each party indemnifies the other against any loss or damage of any nature whatsoever which the other may sustain if this agreement is not binding for any reason on the former's administrators, executors, heirs, judicial managers and/or other successors-in-title.

#### 19. SPECIAL CONDITIONS

19.1 The LESSOR shall assign and cede all obligations and rights in the contract under Tender number EH01/03-2009/2010: "Operation and Maintenance of the Karwyderskraal Landfill Site" (inclusive of the remaining contract period of 18 months) to the LESSEE.

19.2 The LESSOR, as holder of the waste management licence, shall have an oversight role over the operation of the land fill site on the land to ensure that it is in accordance with the waste management licence. To ensure compliance with this condition, the LESSOR shall establish and facilitate a Committee of Control on a quarterly basis as a platform to communicate compliance between the LESSEE, the LESSOR and the key stakeholders. The LESSEE will at all times have at least one representative on this Committee.

19.3 The LESSOR hereby undertakes not to conclude a transaction to alienate the land or any portion thereof during the lease period without notifying the LESSEE thereof in writing in advance.

19.4 The LESSOR shall demarcate or enclose the whole of the land hereby leased with suitable fences in accordance with the permits issued to the LESSOR. The LESSEE shall however attend to the relocation of the portion of fence indicated as AB on the attached locality plan marked annexure A.

19.5 The LESSEE must maintain the access road on the land, as from the entrance boundary, during the lease period at the cost of the LESSEE.

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19.6 The LESSEE shall have the right to accept waste from the Theewaterskloof area and may enter into an agreement with the Theewaterskloof Municipality for these purposes.

THUS DONE, SIGNED AND AGREED TO AT BREDASDORP

on 8 OCTOBER 2014.

AS WITNESSES:

1.

[Signature]

2.

[Signature]  
(LESSOR)

THUS DONE, SIGNED AND AGREED TO AT Arumans

on 10 October 2014.

AS WITNESSES:

1.

[Signature]

2.

[Signature]  
(LESSEE)

[Signature]

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<b>SCHEDULE 1</b>
-------------------

**LESSOR****OVERBERG DISTRICT MUNICIPALITY****Address**

Municipal Offices, 26 Long Street, Bredasdorp  
Private Bag X22, Bredasdorp, 7280

**Contact Numbers****Tel**

028 425 1157

**Fax**

028 425 1014

**Email**

fkotze@odm.org.za

**LESSEE****OVERSTRAND MUNICIPALITY****Address**

Municipal Offices, Magnolia Avenue, Hermanus  
PO Box 20, Hermanus, 7200

**Contact Numbers****Tel**

028 313 8000

**Fax**

028 313 2093

**Email**enquiries@overstrand.gov.za**Property Description**


A portion of portion 79 (a portion of portion 1) of  
the Farm Afdakrivier nr 575

**Lease Period**

2 years and 8 months with a right of renewal

**Lease Amount**

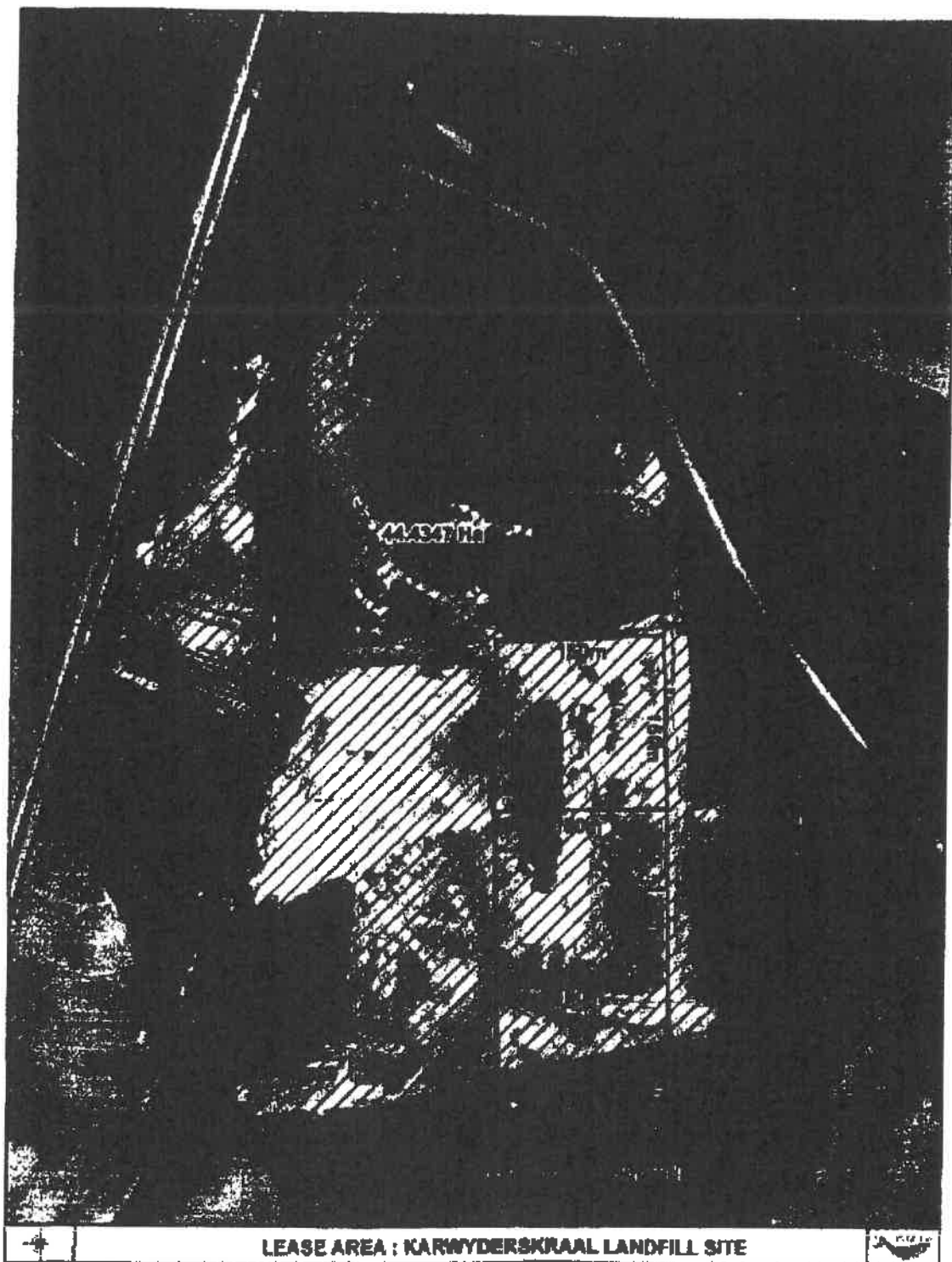
**R5,000.00 (FIVE THOUSAND RAND ALONE)**  
(Vat excluded)



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Lease: Overberg District Municipality / Overstrand Municipality

**ANNEXURE A**



LEASE AREA : KARWYDERSKRAAL LANDFILL SITE

*[Handwritten signatures and initials]*

Addendum to Lease: Overberg District Municipality / Overstrand Municipality

## LEASE AGREEMENT

Memorandum of agreement entered into between

### OVERBERG DISTRICT MUNICIPALITY

herein represented by **DAVE PATRICK BERETTI**  
in his capacity as **MUNICIPAL MANAGER**, he being duly authorised thereto  
of 26 Long Street, Bredasdorp, 7280

*(Hereinafter called "the LESSOR")*

and

### OVERSTRAND MUNICIPALITY

herein represented by **COENRAAD CORNELIUS GROENEWALD**  
in his capacity as **MUNICIPAL MANAGER**, he being duly authorised thereto  
of Magnolia Avenue, Hermanus, 7200

*(Hereinafter called "the LESSEE")*

#### WHEREAS:

1. The parties have entered into a Lease Agreement in respect of a portion of portion 79 (a portion of portion 1) of the Farm Afdakrivier nr 575, ±44ha in extent, as more fully described in the Lease Agreement entered into and signed at Bredasdorp and Hermanus on respectively 8 and 10 October 2014;
2. The parties wish to amend the lease agreement in deleting and replacing the condition contained in clause 19.1 of the abovementioned Lease Agreement;

#### NOW THEREFORE THE PARTIES AGREE THAT:

1. Clause 19.1 in the abovementioned Lease Agreement be revoked and subsequently deleted in its whole;
2. Clause 19.1 be replaced with the following:
  - 19.1.1 Until the new cell to be constructed becomes operational, which date will be communicated by the **LESSEE** to the **LESSOR** in writing, the **LESSEE** shall pay to the **LESSOR** on a monthly basis the amount of **R11,416.59 (Vat excluded) (ELEVEN THOUSAND FOUR HUNDRED AND SIXTEEN RAND AND FIFTY NINE CENTS)**, for access control and the operation of the weighbridge by the



**SECOND ADDENDUM TO LEASE AGREEMENT**

Memorandum of agreement entered into between

**OVERBERG DISTRICT MUNICIPALITY**

herein represented by **DAVE PATRICK BERETTI**

in his capacity as **MUNICIPAL MANAGER**, he being duly authorised thereto  
of **26 Long Street, Bredasdorp, 7280**

*(Hereinafter called "the LESSOR")*

and

**OVERSTRAND MUNICIPALITY**

herein represented by **COENRAAD CORNELIUS GROENEWALD**

in his capacity as **MUNICIPAL MANAGER**, he being duly authorised thereto  
of **Magnolia Avenue, Hermanus, 7200**

*(Hereinafter called "the LESSEE")*

**WHEREAS:**

1. The parties have entered into a Lease Agreement in respect of a portion of portion 79 (a portion of portion 1) of the Farm Afdakrivier nr 575, ±44ha in extent, as more fully described in the Lease Agreement entered into and signed at Bredasdorp and Hermanus on respectively 8 and 10 October 2014;
2. The parties amended the lease agreement in deleting and replacing the condition contained in clause 19.1 of the abovementioned Lease Agreement which amendment was signed by the parties on 5 and 20 November 2014 respectively.
3. The parties wishes to amend the said Lease Agreement as to the payment to Eskom for electrical usage;

**NOW THEREFORE THE PARTIES AGREE THAT:**

1. Clause 13.1 in the abovementioned Lease Agreement be revoked and subsequently deleted in its whole;
2. Clause 13.1 be replaced with the following:

13.1 The **LESSEE** undertakes that it will be responsible for payment at the normal

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Second Addendum to Lease: Overberg District Municipality / Overstrand Municipality

rates, taxes and services charges for any municipal services provided to the land hereby leased, whether at the request of the **LESSEE** or not. In this regard it must be noted that water is supplied to the land free of compensation. The **LESSEE** shall further, included in the services, pay to the **LESSOR** on a monthly basis the amount payable to Eskom for the use of electricity on the property. Such payment shall be made, additional to the rental payable, within 30 days from date of receipt of a valid tax invoice from the **LESSOR** for this purpose.

- 3. Save for the above amendments, the said Lease Agreement dated 8 and 10 October 2014 respectively and first amendment dated 5 and 20 November 2014 respectively will remain in full force and effect.

**THUS DONE, SIGNED AND AGREED TO AT BREDASDORP**

on 18.2.2015

AS WITNESSES:

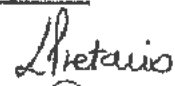

1.   
\_\_\_\_\_  
2.   
\_\_\_\_\_

  
\_\_\_\_\_  
(LESSOR)

**THUS DONE, SIGNED AND AGREED TO AT HERMANUS**

on 18 February 2015

AS WITNESSES:

1.   
\_\_\_\_\_  
2.   
\_\_\_\_\_

  
\_\_\_\_\_  
(LESSEE)

**From:** Anja Kotze  
**To:** fkotze@odm.org.za  
**CC:** Hanre blignaut; Madelein Erasmus  
**Date:** 2017/03/15 07:25 AM  
**Subject:** Hernuwing van huurkontrak vir Karwyderskraal

Beste Francois

Soos u moontlik kennis mag dra wil die Overstrand Munisipaliteit die opsie uitoefen om die bestaande huurkontrak met Overberg Distrikmunisipaliteit tov Karwyderskraal te verleng vir 'n verdere periode. Ek is in die verband besig om die hernuwingsooreenkoms te finaliseer vir voorlegging aan jul.

Die huurbedrag tov die huurarea was destyds bereken deur jul beraamde maandelikse uitgawes vir die volgende in ag te neem:

- (a) Koste van die moniteringskomitee;
- (b) Koste van ad hoc besoeke aan die huurarea gedurende die konstruksie van sel 3 (beperk tot 6 besoeke);
- (c) Koste van maandelikse inspeksies om voldoening aan die lisensies tov die huurarea te verseker.

Dit is gemene saak dat punt (b) hierbo nie meer van toepassing is nie. Aangesien die kontrak rees in volswang is, is ons van mening dat u ons sal kan voorsien van die werklike uitgawes tov punte (a) en (c) hierbo ten einde 'n nuwe huurbedrag saam te stel.

Ons verneem graag van u.

Groete

**Anja Kotze**

**Bestuurder: Eiendomsadministrasie / Manager: Property Administration**  
**Corner of Molteno & Viljoen Street Onrust River**

**M:** +27 (0) 83 461 9383

**T:** +27 (0) 28 316 3724

**F:** +27 (0) 28 316 3721

**E:** [anjakotze@overstrand.gov.za](mailto:anjakotze@overstrand.gov.za)

**Overstrand Municipality**

**A:** 1 Magnolia Street, Hermanus, 7200 | **P:** P.O Bo x 20, Hermanus, 7200

**T:** +27 (0) 28 313 8000 | **F:** +27 (0) 28 312 1894

**E:** [enquiries@overstrand.gov.za](mailto:enquiries@overstrand.gov.za) | **W:** [www.overstrand.gov.za](http://www.overstrand.gov.za)

Vision Statement: "To be a centre of excellence for the community"

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<http://www.overstrand.gov.za>

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P Please consider the environment before printing this correspondence.

**INTERIM SETTLEMENT AGREEMENT**

entered into between

**OVERBERG DISTRICT MUNICIPALITY**herein represented by **DAVID PATRICK BERETTI**in his capacity as **MUNICIPAL MANAGER**, he being duly authorised theretoof **26 Long Street, Bredasdorp, 7280***(hereinafter called "the ODM")*

and

**OVERSTRAND MUNICIPALITY**herein represented by **COENRAAD CORNELIUS GROENEWALD**in his capacity as **MUNICIPAL MANAGER**, he being duly authorised theretoof **Magnolia Avenue, Hermanus, 7200***(hereinafter called "the OM")*.**WHEREAS:**

1. The ODM and the OM are parties to a lease agreement in respect of Cell 3 of the Karwyderskraal landfill site ("the lease" and "Cell 3").
2. There is a dispute between the OM and the ODM about the validity of the exercise by the OM of the right of renewal of the lease from 1 July 2017 onwards, the monthly rental to be paid by OM from 1 July 2017 onwards, and the liability of the OM for the cost of the rehabilitation of Cell 3 under the lease from 1 October 2014 onwards.
3. The correspondence between the parties about the dispute includes a letter dated 12 May 2017 from the ODM Executive Mayor to the OM Executive Mayor ("the 12 May 2017 letter").
4. The Minister of Local Government, Environmental Affairs and Development Planning in the Western Cape Provincial Government, Mr Anton Bredell, has appointed a task team to consider and advise him on the further development of the existing regional waste disposal facility (the envisaged new Cell 4) at Karwyderskraal.
5. The OM and the ODM have reached an agreement for the interim settlement of the disputes referred to in 2 above on the terms set out below.

**NOW THEREFORE THE PARTIES AGREE THAT:**

6. Without prejudice to the ODM's rights (and in particular its contention that OM has not validly renewed the lease) and the OM's rights (and in particular its contention that it has indeed validly renewed the lease, subject to a positive decision being taken under s 33 of the Municipal Finance Management Act 56 of 2003), the OM will continue utilising Cell 3 on the same terms and conditions as those in the lease until the dispute between the parties about the validity of OM's renewal of the lease has been resolved by agreement or by the arbitration referred to below ("the interim continuation period").
7. Officials from the ODM and the OM will meet to discuss and if possible reach agreement in principle on the actual monthly amount required by ODM to ensure that (leaving aside the cost of the rehabilitation of Cell 3, referred to below) it is not out of pocket during the interim continuation period. This will entail a discussion of each of the cost items set out in paragraph 1.1 of the 12 May 2017 letter. The discussion will include whether the ODM will invariably have to incur those costs (e.g. whether the OM can take over the function) and the amounts of those costs. The ultimate aim of the discussion will be to enable the OM and the ODM either to conclude a written settlement agreement including an agreed monthly rental amount for the period after 1 July 2017 or to conclude a written agreement fixing an amount of monthly pre-agreed damages for the OM's holding over (once again, leaving aside the cost of the possible rehabilitation of Cell 3) in the event of the parties agreeing or the arbitrator deciding that the OM's renewal of the lease is not valid.
8. The ODM and the OM will as soon as possible after signature of this Settlement Agreement and in consultation with the Western Cape Department of Environmental Affairs and Development Planning, jointly brief Mr Jan Palm to prepare a formal report setting out (a) the steps that will be required for the interim rehabilitation of Cell 3, if Cell 4 is developed and thereafter the remainder of the Kawyderskraal landfill site is developed to the west and east and upwards to the maximum permitted height of 40m above ground level; (b) the steps that will be required for the rehabilitation of the Kawyderskraal landfill site after it has been fully developed; and (c) the present value of the amounts needed for (a) and (b). If necessary, the OM and the ODM may thereafter, at their own cost, obtain further formal reports dealing with (a), (b) and/or (c). The parties agree to exchange any such further report(s) once received in final form. Once the report(s) have been obtained, the parties will seek to reach agreement on (a), (b) and (c). This will be without prejudice to their rights and in particular OM's contention that, in terms of the lease and generally that it is not liable for rehabilitation costs at all and the ODM's contention that the OM is liable for those costs.



9. The ODM and the OM will use their best endeavours to settle the disputes between them about the renewal of the lease and the liability for the cost of the rehabilitation of Cell 3, as well as any disputes that may arise during or from the processes referred to in 7 and 8 above. To this end their legal representatives will meet on a without-prejudice basis. In addition, the parties will engage on these issues in the task team established by Mr Bredell.
10. If either or both of the disputes about the renewal of the lease and the liability for the cost of the rehabilitation of Cell 3 cannot be settled by 31 December 2017, the parties will co-operate to refer the dispute(s) to arbitration by a single arbitrator to be appointed by the parties jointly for resolution by way of an expedited, inquisitorial and fair process to be determined by the arbitrator after discussion with the parties.
11. Should it be resolved, either by agreement or by the arbitrator, that the lease has not been validly extended by OM, then the parties will as soon as possible meet with a view to concluding a new lease agreement, with retrospective effect from 1 July 2017.

THUS DONE, SIGNED AND AGREED TO AT Bridgeship

on 30 June 2017.

AS WITNESSES:

1. [Signature]

2. [Signature]

AS WITNESSES:

1. [Signature]

[Signature]

10/07/17

[Signature]





## **MFMA INFORMATION STATEMENT**

### **RENEWAL OF THE LEASE AGREEMENT BETWEEN OVERSTRAND MUNICIPALITY (THE LESSEE) AND THE OVERBERG DISTRICT MUNICIPALITY (THE LESSOR) FOR THE LETTING OF A PORTION OF PORTION 79 (A PORTION OF PORTION 1) OF THE FARM AFDAKSRIEVER NO. 575**

#### **1. OBJECTIVE**

Overstrand Municipality has made public the renewal of its lease agreement with the Overberg District Municipality for the letting of a portion of Portion 79 (a portion of Portion 1) of the farm Afdaksrivier no. 575, subject to approval by the Overstrand Municipal Council in terms of section 33 of the Local Government: Municipal Finance Management Act, Act no. 56 of 2003 (MFMA).

Because the actual period of the renewed lease agreement could potentially be more than three (3) years from the renewal date, being 1 July 2017, the Municipality has to comply with Section 33 of the MFMA. The renewal clause in the lease agreement also states the right of renewal may only be exercised subject to the procedures to be followed in terms of Section 33 of the MFMA.

The objective of this Information Statement is to inform the community and other interested parties of the renewal of the lease agreement.

#### **2. INVITATION**

The local community and other interested parties are invited to submit to the Municipality comments or representations in respect of the renewal of the lease agreement.

#### **3. PROCEDURE FOR SUBMISSION OF COMMENTS**

Members of the local community and other interested persons are invited to submit to the Municipality their comments or representations in respect of the renewal of the

lease agreement **before 12:00 on Friday 3 November 2017** in a **sealed envelope clearly endorsed "Long term lease agreement for a portion of Portion 79 (a portion of Portion 1) of the farm Afdakrivier no. 575"**, and addressed to: Municipal Manager, Overstrand Municipality, Magnolia Avenue, Hermanus, 7200 and to be deposited in Tender box no.7.

Written enquiries for clarification can be directed to Mr Hanré Blignaut at e-mail address: [hblignaut@overstrand.gov.za](mailto:hblignaut@overstrand.gov.za).

Any person who wishes to submit comments or representations in respect of the renewal of the long term lease agreement and who cannot write will be assisted by the Director: Infrastructure and Planning or a person designated by him at the Overstrand Civic Centre, Hermanus, up to 12:00 on Friday 3 November 2017.

#### **4. PROJECT BACKGROUND**

Overstrand Municipality (the Lessee) and Overberg District Municipality (the Lessor) entered into a lease agreement for a portion of Portion 79 (a portion of Portion 1) of the farm Afdakrivier no. 575 for a lease period of two (2) years and nine (9) months, commencing on 1 October 2014 and ending on 30 June 2017.

Overstrand Municipality leased the land for purposes of constructing and operating a new solid waste disposal cell (landfill cell).

Clause 3 of the lease agreement states that the Lessee has the right to renew the lease for a further period of seven (7) years and three (3) months, but the Lessee may then be able to cancel the agreement within three months if the landfill cell on the land has reached full capacity.

Overstrand Municipality exercised this right of renewal by notifying the Overberg District Municipality to this effect on 15 March 2017. Given that the renewal period, if it continues for more than 3 years from the renewal date of 1 July 2017 is subject to the procedures to be followed in terms of section 33 of the MFMA, Overstrand Municipality is following the Section 33 process. Clause 3 also states the right of renewal may only be exercised subject to the procedures to be followed in terms of Section 33.

The renewal operates from 1 July 2017 and the duration of the renewed lease will be for a maximum period of seven (7) years and three (3) months from 1 July 2017.

It is however anticipated that the landfill cell on the land will reach full capacity on, and hence the lease will be terminated with effect from, 31 March 2019 but this is not entirely certain and so the effective lease period may be longer.

## 5. THE RENEWED LEASE

The lease which is the subject of this public participation process is the same lease with amendments thereto as agreed upon between the Lessor and Lessee which ran for the period 1 October 2014 to 30 June 2017 (refer to Annexure A hereto).

The terms and conditions of the lease in the renewal period are the same as those in the initial period which ended on 30 June 2017.

There will be no adverse effect on the budgets and tariffs of the Lessee for the lease period of the renewed lease.

## 6. NEXT STEPS

Members of the local community and other interested persons are invited to submit to the Municipality their comments or representations in respect of the renewed lease agreement as set out above.

The Municipality will solicit and receive the views and recommendations of stakeholders, including the National and Provincial Treasuries and the National department responsible for local government.

The renewed lease agreement and all comments and views received relevant to the renewal will be presented to Council on 29 November 2017 for final approval.



Navrae:  
Enquiries: Mr H Blignaut

Ons Verw./Our Ref: Karwyderskraal  
U Verw./Your Ref:

Datum:  
Date: 2 October 2017

KANTOOR VAN DIE MUNISIPALE BESTUURDER /  
OFFICE OF THE MUNICIPAL MANAGER

National Treasury – Mr S Mkhwanazi (GTAC) & Mr W McComans (MFMA Implementation)

Provincial Treasury Western Cape – Mr Z Hoosain

Department of Co-operative Governance and Traditional Affairs (COGTA) – Mr T Lebohang

Dear Sir/Madam

**VIEWS AND RECOMMENDATIONS – RENEWAL OF LONG TERM LEASE OF A PORTION OF PORTION 79 OF THE FARM AFDAKSRIVIER NO. 575**

In terms of section 33 of the Local Government: Municipal Finance Management Act, Act no. 56 of 2003 (MFMA), we hereby request your views and recommendations in respect of the long term renewal of the lease agreement for the letting of a portion of Portion 79 of the farm Afdakrivier no. 575 by the Overstrand Municipality as the Lessee from the Overberg District Municipality as the Lessor.

In order for you to express your views and recommendation(s) as required in terms of section 33(1)(b)(iv), please find attached the following:

1. Annexure A: Information Statement
2. Annexure B: Existing Lease
3. Annexure C: Advertisement inviting the local community and interested stakeholders to submit representations on the long term renewal of the lease.

In terms of section 33(1)(a) of the MFMA you are hereby notified of the Overstrand Municipality's renewal of a lease which may potentially impose a financial obligation beyond the three years covered in the annual budget for the 2017/2018 to 2019/20 financial years.

Please express your views and recommendation(s), if any, to the undersigned within 30 days of the date of this letter, in order for the local council to take all representations into account for decision making, giving effect to section 33(1)(b)(i-iv) of the MFMA.

Yours sincerely,

  
CC GROENEWALD  
MUNICIPAL MANAGER

**OVERBERG****DISTRIKSMUNISIPALITEIT  
DISTRICT MUNICIPALITY  
UMASIPALA WESITHILI***MELD ASB/PLEASE QUOTE**Ons Verw./Our Ref.:**Navrae/Enquiries:**Bylyn/Ext.:*Privaatsak: **X22**Private Bag:  
**BREDASDORP  
7280**

Tel.: (028) 4251157

Faks/Fax: (028) 4251014

E-mail/E--pos: [fkotze@odm.org.za](mailto:fkotze@odm.org.za)

30 October 2017

**The Municipal Manager****Overstrand Municipality****Attention: Mr CC Groenewald****By email: [cgroenewald@overstrand.gov.za](mailto:cgroenewald@overstrand.gov.za)**

CC: National Treasury

Attention: Mr S Mkhwanazi (GTAC) and Mr W McComans (MFMA Implementation)

Provincial Treasury Western Cape:

Attention: Mr Z Hoosain

Department of Co-operative Governance and Traditional Affairs (COGTA):

Attention: Mr T Lebohang

**VIEWS AND RECOMMENDATIONS: RENEWAL OF LONG TERM LEASE OF A  
PORTION OF PORTION 79 OF THE FARM AFDAKSRIVIER NO 575**

We refer to your letter dated 2 October 2017 in which you have invited views and recommendations in terms of section 33 of the Local Government: Municipal Finance Management Act, No 56 of 2003 ("MFMA") in respect of the long term renewal of the lease agreement for the letting of a portion of Portion 79 of the Farm Afdakrivier No 575 by the Overstrand Municipality as the lessee from ourselves as the lessor ("the lease agreement").

Alle korrespondensie moet aan die Munisipale Bestuurder gerig word.  
All correspondence must be addressed to the Municipal Manager

In our view the proposed renewal of the lease agreement is *pro non-scripto* and of no legal force and effect. The reason for this submission is that the lease terminated on 30 June 2017 and was not lawfully renewed. We make this submission on the following grounds:

1. As stated in the Overstrand Municipality's MFMA information statement, the original lease agreement commenced on 1 October 2014 and ended on 30 June 2017, a period of two years and nine months. Clause 3.3 of the lease agreement provided that the right of renewal of the lease agreement "*may only be exercised subject to the procedures to be followed in terms of sections 33 and 116(3) of (the MFMA)*".
2. It is clear from this provision in the lease agreement that the approval in terms of section 33 of the MFMA is a suspensive condition. In other words, the approval needed to be obtained prior to the termination of the lease agreement on 30 June 2017. There is no basis in law or in terms of the lease agreement for the section 33 approval to be obtained retrospectively. By failing to obtain the approval in terms of section 33 by 30 June 2017, the lease agreement terminated automatically. Following termination, it cannot be renewed.
3. There is a logic to this interpretation in section 33 of the MFMA. The purpose of section 33 is to ensure that a municipality does not incur financial obligations beyond a period of three years without first having followed the processes set out in section 33. These processes enable the local community, other interested persons, the National and Provincial Treasuries and COGTA to properly consider the implications of the relevant contract before it is concluded. It defeats this purpose if the section 33 approval is sought once the renewed period has already commenced. In this instance, if hypothetically it were to be accepted that the lease has been lawfully renewed, it then means that the Overstrand Municipality has already been party to a contract for a period longer than 3 years (that is, since 1 October 2014) without obtaining the required section 33 approval.
4. By continuing to expend money on a lease agreement which has not been lawfully renewed, the Overstrand Municipality is incurring irregular expenditure as defined in the MFMA since it is expenditure incurred in breach of the MFMA. This has serious consequences for the Municipal Manager as Accounting Officer of the Municipality. In this regard we drew this potential infringement to the attention of the Overstrand Municipality before the lease terminated on 30 June 2017 and offered to negotiate a new lease agreement. Had our offer not been ignored, the Overstrand Municipality would not now have found itself in this current predicament.

5. Even if it were hypothetically to be argued that the Overstrand Municipality can obtain the section 33 approval within a period of three years from the commencement of the original lease agreement (that is, after the termination date of 30 June 2017), that would still have required the Overstrand Municipality to obtain the approval by 30 September 2017. No section 33 approval was obtained by that date.
6. In our view, therefore, the lease agreement terminated once and for all on 30 June 2017. The only option open to the Overstrand Municipality is to negotiate and potentially conclude a new lease agreement with our municipality as the lessor.

Accordingly, our very firm proposal to the Overstrand Municipality is that the application in terms of section 33 of the MFMA should be withdrawn. The Overstrand Municipality should immediately enter into negotiations with ourselves for a new lease agreement in respect of the abovementioned site, backdated to commence on 1 July 2017. If that new lease agreement is to endure for a period of longer than three years, then the necessary approval will need to be obtained in terms of section 33.

In addition, the Overstrand Municipality will need to give careful consideration to seeking condonation in terms of section 170 of the MFMA for the irregular expenditure already incurred.

Yours sincerely



**DP Beretti**

**Municipal Manager**



Navrae:  
Enquiries: Mr C Groenewald

Ons Verw./Our Ref: Karwyderskraal  
U Verw./Your Ref:

Datum:  
Date: 10 November 2017

KANTOOR VAN DIE MUNISIPALE BESTUURDER /  
OFFICE OF THE MUNICIPAL MANAGER

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The Municipal Manager  
Overberg District Municipality  
Private Bag X22  
**BREDASDORP**  
7280

Dear Colleague

**KARWYDERSKRAAL: VIEW AND RECOMMENDATIONS: RENEWAL OF LONG TERM LEASE OF A PORTION OF PORTION 79 OF THE FARM AFDAKSRIVIER NO 575**

Your letter in the above regard, dated 30 October 2017, refers.

Your viewpoints will be submitted to Council for consideration when the section 33 process is dealt with.

However, in compliance with clause 3 of the lease the Overstrand Municipality, represented by Ms Anja Kotze, on 15 March 2017, a date more than 90 days before the lapse of the lease period of 30 June 2017, gave the Overberg District Municipality written notice of the renewal of the lease for a further period of seven years and three months as contemplated in that clause.

The exercise of the right of renewal did not have to be preceded by the MFMA section 33 process. The Overstrand Municipality may follow the section 33 process after exercising its right to renewal. If it does so, the renewal of the lease is subject to the suspensive condition that if the Overstrand Municipality's Council refuses to approve the renewal of the lease in terms of section 33, the lease will then terminate. If, on the other hand, the Municipal Council approves the renewal before the expiry of a period of three years from 1 July 2017, the lease will continue.

Yours sincerely,

**CC GROENEWALD**  
**MUNICIPAL MANAGER**

cc: The Municipal Manager, Theewaterskloof Municipality