



TENDER NO.: SC1559/2015

**LEASE OF "MILKWOOD RESTAURANT" AT ONRUS RIVER, HERMANUS FOR
OPERATION AS A RESTAURANT**

PROCUREMENT DOCUMENT

Name of Tenderer:	
Total Bid Price (Exclusive of VAT): <i>(Refer to page 51 – Form of offer)</i>	R

FEBRUARY 2015

PREPARED AND ISSUED BY:

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

**CONTACT FOR ENQUIRIES
REGARDING SPECIFICATIONS:**

Anja Kotze
Manager: Property Administration
Tel. Number: 028 316 3724

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TENDER DETAILS						
TENDER NUMBER:	SC1559/2015					
TENDER TITLE:	LEASE OF "MILKWOOD RESTAURANT", ONRUS RIVER, HERMANUS FOR OPERATING AS A RESTAURANT					
CLOSING DATE:	2015/03/20		CLOSING TIME:	12H00		
SITE MEETING:	DATE:	N/A	TIME:	N/A	COMPULSORY:	N/A
SITE MEETING ADDRESS:	N/A					
CIDB GRADING REQUIRED:	NO	LEVEL AND CATEGORY:	N/A			
BID BOX NO:	4	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:	60	DAYS FROM THE CLOSING DATE OF BID.				

TENDERER DETAILS (Please indicate postal address for all correspondence relevant to this specific tender)			
NAME OF TENDERER:			
NAME OF CONTACT PERSON:			
PHYSICAL ADDRESS:		POSTAL ADDRESS:	
TELEPHONE #:		FAX NO.:	
E-MAIL ADDRESS:			

TENDER AMOUNT (INCLUDING VAT) :	
DATE:	
SIGNATURE OF TENDERER:	
CAPACITY UNDER WHICH THIS BID IS SIGNED:	

PLEASE NOTE:
1. Tenders that are deposited in the incorrect box will not be considered.
2. Tender box deposit slot is 28cm x 2.5cm.
3. Mailed, telegraphic or faxed tenders will not be accepted.
4. If the bid is late, it will not be accepted for consideration.
5. Bids may only be submitted on the Bid Documentation provided by the Municipality.

ENQUIRIES MAY BE DIRECTED TO:		
	ENQUIRIES REGARDING BID PROCEDURES	TECHNICAL ENQUIRIES
CONTACT PERSON:	BLAKE D'OLIVEIRA	ANJA KOTZE
TEL. #	028 313 5016	028 316 3724

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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 Is an ORIGINAL and VALID Tax Clearance Certificate attached?	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	
MBD16 (Key Performance Indicators) Is the form duly completed and signed?	Yes	No	
Specifications Is the form duly completed and signed?	Yes	No	
Form of Offer Is the form duly completed and signed?	Yes	No	
DATA BASE REGISTRATION Is the form duly completed and signed? Are ALL the supporting documents attached?	Yes	No	

SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			

2. TENDER NOTICE & INVITATION TO TENDER**TENDER NO. SC 1559/2015****LEASE OF “MILKWOOD RESTAURANT” AT ONRUS RIVER, HERMANUS FOR OPERATING A RESTAURANT**

Tenders are hereby invited for: **Lease of “Milkwood Restaurant” at Onrus River, Hermanus for operating a restaurant.**

Tender documents, in English, are obtainable from **Friday, 13 February 2015**, at the offices of the Supply Chain Management Unit, Overstrand Municipality, Magnolia Avenue, Hermanus, Tel. 028 313 8064 from Ms. R Neethling between 08h30 and 15h30, upon payment of a tender participation fee of **R143.00 per set**. Alternatively the documents may be downloaded free from the website: www.overstrand.gov.za

Sealed tenders, with “**Tender No. SC 1559/2015: Lease of “Milkwood Restaurant” at Onrus River, Hermanus for operating a restaurant..**” clearly endorsed on the envelope, must be deposited in **Tender Box No. 4** at the offices of the Overstrand Municipality, Magnolia Avenue, Hermanus. Tenders may only be submitted on the tender documentation provided by the Municipality.

The closing date and time of the tender is on **20 March 2015 at 12h00** and will be opened in public immediately thereafter in the Committee Room, Hermanus Administration.

Tenders must be valid for **60 days** after the closing date. Tenders shall be evaluated in terms of the Preferential Procurement Regulations, 2011.

The Overstrand Municipality does not bind itself to accept the highest or any tender and reserves the right to accept any tender, as it may deem expedient. Tenders are subject to the Standard Conditions of Tender and the Supply Chain Management Policy of the Overstrand Municipality.

Please refer enquiries to **Ms. A Kotze** at telephone number: **028 316 3724**.



3. AUTHORITY TO SIGN A BID

1. SOLE PROPRIETOR (SINGLE OWNER BUSINESS) AND NATURAL PERSON

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

OR

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

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

2. COMPANIES AND CLOSE CORPORATIONS

2.1. **If a Bidder is a COMPANY, 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

2.2. 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**.

PARTICULARS OF RESOLUTION BY BOARD OF DIRECTORS OF THE COMPANY/MEMBERS OF THE CC

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)			
1.		2.	
3.		4.	
5.		6.	
7.		8.	
9.		10.	
Is a CERTIFIED COPY of the resolution attached?		YES	NO

SIGNED ON BEHALF OF COMPANY / CC:		DATE:	
PRINT NAME:			
WITNESS 1:		WITNESS 2:	



3. 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:	

4. CONSORTIUM

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 tender and any other documents and correspondence in connection with this tender and / or contract for and on behalf of the consortium.

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



4. CERTIFICATE OF AUTHORITY FOR JOINT VENTURES

This returnable schedule is to be completed by JOINT VENTURES

We, the undersigned, are submitting this tender 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 tender offer and any contract resulting from it on our behalf.

(i) Name of firm (Lead partner)			
Address			
		Tel. No.	
Signature		Designation	

(ii) Name of firm			
Address			
		Tel. No.	
Signature		Designation	

(iii) Name of firm			
Address:			
		Tel. No.	
Signature		Designation	

(iv) Name of firm			
Address			
		Tel. No.	
Signature		Designation	

NOTE: A copy of the Joint Venture Agreement showing clearly the percentage contribution of each partner to the Joint Venture, shall be appended to this Schedule.



5. GENERAL CONDITIONS OF CONTRACT – GOVERNMENT PROCUREMENT

1. DEFINITIONS

The following terms shall be interpreted as indicated:

- 1.1. "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
- 1.2. "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.3. "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.4. "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
- 1.5. "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally
- 1.6. "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 1.7. "Day" means calendar day.
- 1.8. "Delivery" means delivery in compliance of the conditions of the contract or order.
- 1.9. "Delivery ex stock" means immediate delivery directly from stock actually on hand
- 1.10. "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
- 1.11. "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
- 1.12. "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable.
- 1.13. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.14. "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.15. "GCC" means the General Conditions of Contract.
- 1.16. "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.17. "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.

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- 1.18. "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.19. "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.20. "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.21. "Project site" where applicable, means the place indicated in bidding documents.
- 1.22. "Purchaser" means the organization purchasing the goods.
- 1.23. "Republic" means the Republic of South Africa.
- 1.24. "SCC" means the Special Conditions of Contract.
- 1.25. "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.26. "Supplier" means the successful bidder who is awarded the contract to maintain and administer the required and specified service(s) to the State.
- 1.27. "Tort" means in breach of contract.
- 1.28. "Turnkey" means a procurement process where one service provider assumes total responsibility for all aspects of the project and delivers the full end product / service required by the contract.
- 1.29. "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

2. Application

- 2.1. These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2. Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3. Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3. General

- 3.1. Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2. Invitations to bid are usually published in locally distributed news media and on the municipality / municipal entity website.

4. Standards

- 4.1. The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.

5. Use of contract documents and information; inspection.

- 5.1. The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.
- 5.2. The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.

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- 5.3. Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4. The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

6. Patent rights

- 6.1. The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
- 6.2. When a supplier developed documentation / projects for the municipality / municipal entity, the intellectual, copy and patent rights or ownership of such documents or projects will vest in the municipality / municipal entity.

7. Performance security

- 7.1. Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2. The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3. The performance security shall be denominated in the currency of the contract or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
 - 7.3.1. bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
 - 7.3.2. a cashier's or certified cheque
- 7.4. The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified.

8. Inspections, tests and analyses

- 8.1. All pre-bidding testing will be for the account of the bidder.
- 8.2. If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspections tests and analysis, the bidder or contractor's premises shall be open, at all reasonable hours, for inspection by a representative of the purchaser or an organization acting on behalf of the purchaser.
- 8.3. If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4. If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the goods to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5. Where the goods or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such goods or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6. Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.

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- 8.7. Any contract goods may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected goods shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with goods which do comply with the requirements of the contract. Failing such removal the rejected goods shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute goods forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected goods, purchase such goods as may be necessary at the expense of the supplier.
- 8.8. The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 22 of GCC.

9. Packing

- 9.1. The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2. The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, and in any subsequent instructions ordered by the purchaser.

10. Delivery

Delivery of the goods shall be made by the supplier in accordance with the documents and terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified.

11. Insurance

The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified.

12. Transportation

Should a price other than an all-inclusive delivered price be required, this shall be specified.

13. Incidental

- 13.1. The supplier may be required to provide any or all of the following services, including additional services, if any:
 - 13.1.1. performance or supervision of on-site assembly and/or commissioning of the supplied goods;
 - 13.1.2. furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - 13.1.3. furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
 - 13.1.4. performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
 - 13.1.5. training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.
- 13.2. Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

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14. Spare parts

- 14.1. As specified, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
 - 14.1.1. such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and;
 - 14.1.2. in the event of termination of production of the spare parts:
 - 14.1.2.1. advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - 14.1.2.2. following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

- 15.1. The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
- 15.2. This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.
- 15.3. The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4. Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5. If the supplier, having been notified, fails to remedy the defect(s) within the period specified, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

16. Payment

- 16.1. The method and conditions of payment to be made to the supplier under this contract shall be specified.
- 16.2. The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3. Payments shall be made by the purchaser **no later than thirty (30) days** after submission of an **invoice, statement** or claim by the supplier.
- 16.4. Payment will be made in Rand unless otherwise stipulated.

17. Prices

Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized or in the purchaser's request for bid validity extension, as the case may be.

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18. Variation orders

In cases where the estimated value of the envisaged changes in purchase does not vary more than 15% of the total value of the original contract, the contractor may be instructed to deliver the goods or render the services as such. In cases of measurable quantities, the contractor may be approached to reduce the unit price and such offers, may be accepted provided that there is no escalation in price.

19. Assignment

The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.

20. Subcontracts

The supplier shall notify the purchaser in writing of all subcontracts awarded under this contract, if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

21. Delays in the supplier's performance

- 21.1. Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2. If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3. The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- 21.4. Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 22 without the application of penalties.
- 21.5. Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without cancelling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22. Penalties

Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

23. Termination for default

- 23.1. The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
 - 23.1.1. if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
 - 23.1.2. if the Supplier fails to perform any other obligation(s) under the contract; or

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- 23.1.3. if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2. In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3. Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4. If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the supplier as having no objection and proceed with the restriction.
- 23.5. Any restriction imposed on any person by the purchaser will, at the discretion of the purchaser, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the purchase actively associated.
- 23.6. If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- 23.6.1. the name and address of the supplier and / or person restricted by the purchaser;
- 23.6.2. the date of commencement of the restriction
- 23.6.3. the period of restriction; and
- 23.6.4. the reasons for the restriction.
- These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.
- 23.7. 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 five years and not more than 10 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 Act the Register must be open to the public. The Register can be perused on the National Treasury website.

24. Anti-dumping and countervailing duties and rights

When, after the date of bid, provisional payments are required, or antidumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him.

25. Force Majeure

- 25.1. Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

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25.2. If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination for insolvency

The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

27. Settlement of Disputes

27.1. If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

27.2. If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

27.3. Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.

27.4. Notwithstanding any reference to mediation and/or court proceedings herein,

27.4.1. the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and

27.4.2. the purchaser shall pay the supplier any monies due for goods delivered and / or services rendered according to the prescripts of the contract.

28. Limitation of liability

28.1. Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to Clause 6;

28.1.1. the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

28.1.2. the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment

29. Governing language

The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.

30. Applicable law

The contract shall be interpreted in accordance with South African laws, unless otherwise specified.

31. Notices

31.1. Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice

31.2. The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

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32. Taxes and duties

- 32.1. A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2. A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3. No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid SARS must have certified that the tax matters of the preferred bidder are in order.
- 32.4. No contract shall be concluded with any bidder whose municipal rates and taxes and municipal services charges are in arrears.

33. Transfer of contracts

The contractor shall not abandon, transfer, cede, assign or sublet a contract or part thereof without the written permission of the purchaser.

34. Amendment of contracts

No agreement to amend or vary a contract or order or the conditions, stipulations or provisions thereof shall be valid and of any force unless such agreement to amend or vary is entered into in writing and signed by the contracting parties. Any waiver of the requirement that the agreement to amend or vary shall be in writing, shall also be in writing.

35. Prohibition of restrictive practices.

- 35.1. In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder(s) is / are or a contractor(s) was / were involved in collusive bidding.
- 35.2. If a bidder(s) or contractor(s) based on reasonable grounds or evidence obtained by the purchaser has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in section 59 of the Competition Act No 89 Of 1998.
- 35.3. If a bidder(s) or contractor(s) has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

General Conditions of Contract (revised July 2010)

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6. GENERAL CONDITIONS OF TENDER

1. Sealed tenders, with the “**Tender Number and Title**” clearly endorsed on the envelope, must be deposited in the **tender box indicated** at the offices of the Overstrand Municipality, Magnolia Avenue, Hermanus.
2. The tender must be lodged by the Tenderer in the tender box in the Main Cash Hall, Hermanus Municipal Offices, Magnolia Avenue, Hermanus

PLEASE NOTE:

- 2.1. Tenders that are deposited in the incorrect box will not be considered.
 - 2.2. Tender box deposit slot is 28cm x 2.5cm.
 - 2.3. Mailed, telegraphic or faxed tenders will not be accepted.
 - 2.4. Documents may only be completed in black ink.
 - 2.5. The use of correction fluid/tape is not allowed.
 - 2.5.1. In the event of a mistake having been made, it shall be crossed out in ink and be accompanied by an initial at each and every alteration.
 - 2.5.2. Alterations or deletions not signed by the Tenderer may render the tender invalid.
 - 2.6. All bids must be submitted in writing on the official forms supplied (not to be re-typed)
 - 2.7. All prices shall be quoted in South African currency and be **INCLUSIVE of VAT**.
3. Any Tender received after the appointed time for the closing of Tenders shall not be considered but shall be filed unopened with the other Tenders received or may be returned to the Tenderer at his request.
 4. Tenders may not be telefaxed to the Municipality and therefore any tenders received by fax will **not** be considered.
 5. A separate Tender box is provided for the reception of Tenders and no Tender will be considered which, subsequent to the closing hour for Tenders, may be found in another box.
 6. Tenders shall be opened in public at the Hermanus Municipal Offices as soon as possible after the closing time for the receipt of tenders.
 7. The Municipality shall have the right to summarily disqualify any Tenderer who, either at the date of submission of this tender or at the date of its award, is indebted to the Municipality in respect of any rental, levies, rates and/or service charges; ALTERNATIVELY;
 - 7.1. That an agreement be signed whereby the Tenderer agrees that a percentage or fixed amount at the discretion of the Municipality, be deducted from payments due to him for this tender, until the debt is paid in full.
 - 7.2. The tenderer shall declare **all** the Municipal account numbers in the Overstrand Area for which the enterprise or the proprietors or directors in their personal capacity is/ are responsible or co-responsible.
 8. This bid will be evaluated and adjudicated according to the following criteria:
 - 8.1. Relevant specifications
 - 8.2. Value for money
 - 8.3. Capability to execute the contract
 - 8.4. PPPFA & associated regulations

[insert any other criteria]

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9. Invoices

All invoices must be forwarded to the following address:

Overstrand Municipality
 PO Box 20
 Hermanus, 7200

10. Value-Added Tax (VAT)

- 10.1. Tax invoices are to comply with the requirements as contained in the Value Added Tax Act, Act 89 of 1991. The content of the invoice must contain sufficient information for audit purposes.
- 10.2. It is a requirement of this contract that the amount of value-added tax (VAT) must be shown clearly on each invoice.
- 10.3. The amended Value-Added Tax Act requires that a Tax Invoice for supplies in excess of R3,000 should, in addition to the other required information, also disclose the VAT registration number of the recipient, with effect from 1 March 2005.
- 10.4. The VAT registration number of the Municipality is 4140106396.

11. Standard Payment Terms

- 11.1. All money owed by the municipality must be paid within 30 calendar days of receiving the relevant invoice or statement, unless prescribed otherwise for certain categories of expenditure.
- 11.2. Payment Cycles for the first 12 months of business with the Overstrand Municipality to Survivalist enterprises / Micro-enterprises
- 11.3. Survivalist enterprises / Micro-enterprises are entitled to a weekly payment cycle by the municipality.
- 11.4. In order to qualify for a weekly payment, a supplier must be classified as a Survivalist enterprises / Micro-enterprises on the Municipality's supplier database.
- 11.5. A weekly payment to Survivalist enterprises / Micro-enterprises is not a right in terms of this policy. Survivalist enterprises / Micro-enterprises may request such payments which may be made at the discretion of the Municipality.

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7. MBD 2 – TAX CLEARANCE CERTIFICATE REQUIREMENTS

It is a condition of bid that the taxes of the successful bidder **must** be in order, or that satisfactory arrangements have been made with South African Revenue Services (SARS) to meet the bidder’s tax obligations.

1. In order to meet this requirement, bidders are required to complete in full the TCC 0001 form, “Application for a Tax Clearance Certificate” and submit it to any SARS branch office nationally. The Tax Clearance Certificate Requirements are also applicable to foreign bidders / individuals who wish to submit bids.
2. SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.
3. The original Tax Clearance Certificate must be submitted together with the bid. Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate will not be accepted.
4. In bids where Consortia / Joint Ventures / Sub-Contractors are involved, each party must submit a separate Tax Clearance Certificate.
5. Copies of the TCC 001 “Application for a Tax Clearance Certificate” form are available from any SARS branch office nationally or on the website www.sars.gov.za
6. Applications for the Tax Clearance Certificates may also be made via e-Filing. In order to use this provision, taxpayers will need to register with SARS as e-Fileers through the website www.sars.gov.za

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8. 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:														

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

1. a member of –
 - i. any municipal council;
 - ii. any provincial legislature; or
 - iii. the National Assembly or the National Council of Provinces;
2. a member of the board of directors of any municipal entity;
3. an official of any municipality or municipal entity;
4. 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);
5. a member of the accounting authority of any national or provincial public entity; or
6. 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.



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

NB:

a) **PLEASE ATTACH CERTIFIED COPY(IES) OF ID DOCUMENT(S)**

b) **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 –

1. a member of –
 2. any municipal council;
 3. any provincial legislature; or
 4. the National Assembly or the National Council of Provinces;
5. a member of the board of directors of any municipal entity;
6. an official of any municipality or municipal entity;
7. 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);
8. a member of the accounting authority of any national or provincial public entity; or
9. an employee of Parliament or a provincial legislature.



9. 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:			



10. 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.

SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			

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.



11. MBD 15 – CERTIFICATE FOR PAYMENT OF MUNICIPAL SERVICES

DECLARATION IN TERMS OF CLAUSE 112(1) OF THE MUNICIPAL FINANCE MANAGEMENT ACT (NO.56 OF 2003) - (To be signed in the presence of a Commissioner of Oaths)

I, _____, _____ (full name and ID no.), hereby acknowledge that according to SCM Regulation 38(1)(d)(i), the Municipality may reject the tender of the tenderer if any municipal rates and taxes or municipal service charges owed by the Tenderer 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 Tenderer 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 / Shareholder / Partners, etc.:

Director / Shareholder / partner	Physical address of the Business	Municipal Account number(s)	Physical residential address of the Director / shareholder / partner	Municipal Account number(s)

NB: Please attach certified copy(ies) of ID document(s)
 If the entity or any of its Directors/Shareholders/Partners, etc. rents/leases premises, a copy of the rental/lease agreement must be submitted with this tender.

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>Position: _____</p> <p>Address: _____</p> <p>Tel: _____</p>	<p>Apply official stamp of authority on this page:</p>
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12. MBD 16 – KEY PERFORMANCE INDICATORS

1. KEY PERFORMANCE INDICATORS (KPIs)			
1.1.	Work(s) performed / goods delivered within timeframes specified		
1.2.	Work(s) performed / goods delivered within financial framework specified		
1.3.	Acceptable quality of work(s) performed / goods delivered		
1.4.	OTHER:		
	(a)		
	(b)		
	(c)		
	(d)		
	(e)		
<p>I / We acknowledge that I / we am / are fully acquainted with the abovementioned Key Performance Indicators (KPIs) applicable to this tender / contract as stipulated by the Municipality and that I / we accept these Key Performance Indicators (KPIs) in all respects.</p> <p>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 / item(s) specified in the tender document and that the price 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.</p>			
SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			
WITNESS 1		WITNESS 2	



PART B – SPECIFICATIONS AND PRICING SCHEDULE



13. SPECIFICATIONS

SCOPE OF TENDER

1. INTRODUCTION

- 1.1. The Overstrand Municipality has decided to enter into a new agreement for the lease of a portion of the Remainder of Farm nr 581, Onrustrivier, known as the Milkwood Restaurant for a period of 9 years and 11 months from inception for the purpose of operating a restaurant and upkeep of the ablution facilities, as the lease period of the current lease will expire shortly. The Municipality owns the land.
- 1.2. The document is self-explanatory and interested parties are encouraged to read through it carefully, so as to familiarise themselves with both the overall intent of Council, as well as with the procedures for the award.
- 1.3. The tender is subject to the conditions as set out in the tender documents and to the most recent Supply Chain Management Policy and the Administration of Immovable Property Policy of the Overstrand Municipality, as amended, approved and adopted by Council.

2. THE TENDER PROCESS

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

- 2.1. The submission of a tender price as well as information regarding the source of funds and the financial offer made must be clearly set out in the bidder's submission as per the requirements set out in **Paragraph 7 – Submission Requirements and Evaluation**, of this document.
- 2.2. The submissions will be evaluated and adjudicated by a duly constituted evaluation and adjudication committee. It should be noted that the Municipality is not obliged to accept any of the tenders submitted.
- 2.3. Overstrand Municipality does not bind itself to accept the highest or any tender and reserves the right to accept any or none of the tenders submitted, as it may deem expedient. Furthermore the Municipality reserves the right to award to any bidder of the Municipality's choice to ensure a fair and equitable distribution of the Municipality's property to all people of the Western Cape Province in particular, and RSA in general.
- 2.4. The Municipality may wish to interview prospective organisations or individuals prior to awarding the tender to any bidder.
- 2.5. The decision of the Municipality will be final.
- 2.6. A Lease Agreement similar to the one attached per Annexure **C** to the tender documentation will be entered into with the successful bidder as soon as possible after the tender has been awarded. Should the successful bidder fail or neglect to conclude the Lease Agreement with the Municipality within the time period specified by the Municipality in writing, the terms and conditions of this tender and the policies referred to and this agreement shall be binding on both parties and enforceable by them.
- 2.7. Payment of an amount equal to the monthly lease amount tendered is payable as a deposit on date of signature of the lease agreement.
- 2.8. The lease of the property to the successful bidder will proceed after the tender has been awarded.

SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			



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

- 3.1. The site is located near Beach Road, Onrus Beach, Onrustrivier. (See the Locality Map attached per Annexure **A**)
- 3.2. The site may only be used for the purpose of:
 - (a) operating a Restaurant that is licensed to serve liquor and serving meals and refreshments;
 - (b) a facility providing take-away meals, snacks and refreshments;
 - (c) ablution facilities; and
 - (d) such other purpose as may be approved by the Municipality.

4. PROPERTY DESCRIPTION AND ZONING RIGHTS

- 4.1. Erf no. and size of portion: The subject portion of the Remainder of farm nr 581 is ±750m² in extent. See the Site Plan attached per Annexure **B**.
- 4.2. Zoning status: The current zoning is Public Open space with the historical vested land use right for a Restaurant.
- 4.3. The surrounding land uses vary and include Residential and Public Place.
- 4.4. The property will be leased as it stands, “voetstoets” and no additional land use rights will be considered at this stage.

5. DEVELOPMENT PARAMETERS

- 5.1. Utilisation of the property
Utilisation of the property should be consistent with the present use of the site. No extension to the existing buildings will be allowed.
- 5.2. Accesses and Road provision
Access to the property will be from Beach Road, Onrus Beach, Onrustrivier. See the location Map and Site Plan attached per Annexures **A** and **B**.
- 5.3. Height Restrictions
The height of buildings is limited to one (1) floor in accordance with the existing building.
- 5.4. Not allowed
Any use other than the existing land use rights will not be allowed.
- 5.5. Allowed Uses
Operating a Restaurant is allowed subject to the successful bidder obtaining the necessary licences.
- 5.6. Parking
In accordance with the existing arrangement, the surrounding public parking may be used by visitors.

SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			



6. INFRASTRUCTURE

6.1. Water, sewer and electricity connections are available.

7. SUBMISSION REQUIREMENTS AND EVALUATION

7.1. Submissions are invited from all parties with the financial means and experience to submit a proposal for the lease of the property.

7.2. **The bidders are required to submit a tender deposit of five thousand rand (R5,000.00) on submission of the tender.** This amount must be in the form of a bank guaranteed payment (only guarantee by a registered financial institution) in favour of the Overstrand Municipality and valid for 60 days from the date of the closure of the tender. Failure to comply with this requirement will lead to the disqualification of the bidder. This guarantee 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.

7.3. Tender offers will only be accepted if the tenderer submits proof of payment of the tender participation fee, if applicable, and tender deposit.

8. LEASE “VOETSTOOTS” AND SUBJECT TO CONDITIONS:

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

9. ACCEPTANCE

The tender shall remain irrevocably open for acceptance by the Municipality for a period of 60 days calculated from the date of the closing of tenders.

10. GENERAL

10.1 The successful bidder herewith agrees not to make any objection against future similar land use proposals for the subject site and/or the surrounding Municipal property.

10.2 The ablution facilities (toilets, showers, etc.) must be made available to the general public during the hours of 09:00 till 18:00. The successful bidder shall be obliged at all times, at its own cost, to keep the said ablution facilities clean and properly supplied with toilet paper.

10.3 The business may not be closed for a period in excess of four weeks in each and every calendar year and shall be open for not less than 7 hours per day for 6 days of every week whilst the business is not closed. The business may not be open during the hours of 24:00 until 06:00 unless the prior written consent of the Municipality is obtained.

SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			

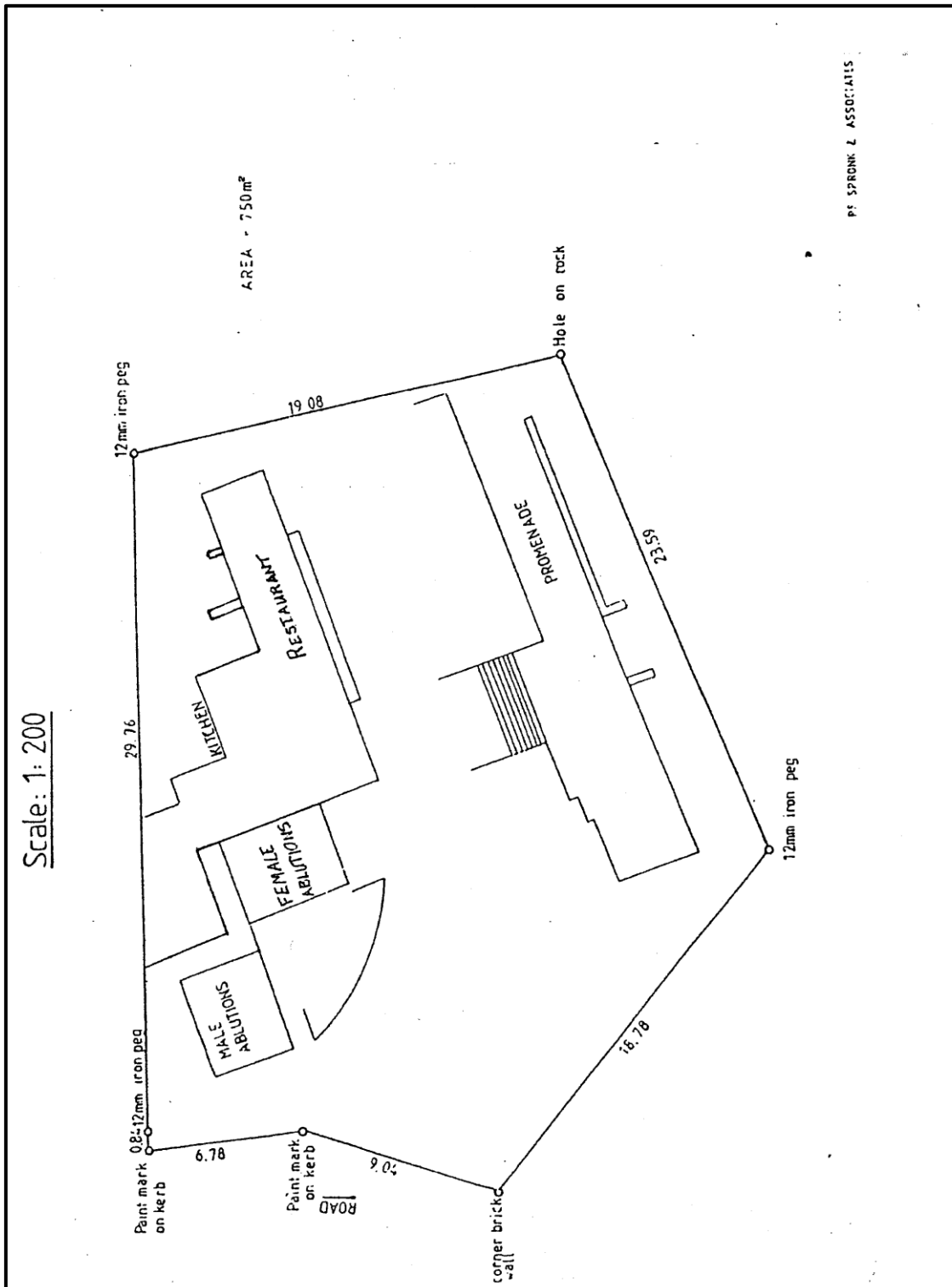


14. ANNEXURE A – LOCALITY MAP



SIGNATURE		NAME (PRINT)		DATE	
CAPACITY			NAME OF FIRM		

15. ANNEXURE B – SITE MAP



SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			

16. ANNEXURE C - DRAFT LEASE AGREEMENT

LEASE AGREEMENT

**PORTION OF THE REMAINDER OF FARM
NR 581, ONRUSTRIVIER**

entered into between

OVERSTRAND MUNICIPALITY

herein represented by _____
in his capacity as Municipal Manager
(hereinafter called the **LESSOR**)

and

OF _____

(hereinafter called the **LESSEE**)

- 3.4. The deposit payable in terms of clause 3.1 above shall annually escalate at the rate equal to which the monthly rent is escalated in terms of clause 2.1 above. Such increase in the deposit shall be payable by the **LESSEE** to the **LESSOR** on demand.
- 3.5. As soon as all the obligations of the **LESSEE** to the **LESSOR** have been discharged following the 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 the above provisions.

4. SUBJECTION OF LEASE

- 4.1. This lease shall be subject in all respects to the provisions of the Administration of Immovable Property Policy of the Overstrand Municipality with regard to the Management and Administration of Immovable Property adopted by the Council of the Municipality and as may be amended from time to time.
- 4.2. This lease shall be subject to all servitudes and conditions, if any, binding on the Council in respect of the land hereby leased.

5. UTILISATION

- 5.1. The said land, 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 agreement, shall be used exclusively for the purpose of:
 - 5.1.1 operating a Restaurant that is licensed to serve liquor and serving meals and refreshments;
 - 5.1.2 a facility providing take-away meals, snacks and refreshments;
 - 5.1.3 ablution facilities; and
 - 5.1.4 such other purpose as may be approved by the Municipality.
- 5.2. 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 in writing between the **LESSOR** and the **LESSEE**.

6. DUTIES OF THE LESSEE

- 6.1. The **LESSEE** shall not erect or cause or permit to be erected any buildings and/or structures on the land without the prior written consent of the **LESSOR** given under the hand of the Municipal Manager, nor shall the **LESSEE** effect any improvements or additions to any building and/or structures presently erected or to be erected on the land in terms of this lease, nor make any substantial variations or alterations on the land without the prior written consent of the **LESSOR** given under the hand of the Municipal Manager and after the mentioned approval, until such time as the plans therefore has been approved by the Manager: Building Control of the Overstrand Municipality.
- 6.2. The **LESSEE** shall not at any time, or under any circumstances, have any claim against the **LESSOR** for improvements effected to the leased land or the building.
- 6.3. The **LESSEE** shall not assign its rights under this agreement in whole or in part, except with the prior written consent of the **LESSOR**, given under the hand of the Municipal Manager, nor shall

it sublet it.

- 6.4. 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.
- 6.5. 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.
- 6.6. The **LESSEE** shall not allow any person to reside overnight on the land.
- 6.7. The **LESSEE** undertakes for the currency of this lease to pay to the **LESSOR** the monthly insurance premium in respect of any buildings and/or structures or any buildings and/or structures to be erected on the land which they are utilising. The buildings and/or structures will be insured against damage or loss by the **LESSOR** in terms of this lease.
- 6.8. The **LESSEE** shall during the currency of this lease be responsible for all insurance against loss by theft, loss or damage of movable goods within the land by, rain, wind, hail, lightning, fire, riots, strikes, activities of states enemies or any cause and also against loss of income.
- 6.9. The **LESSEE** shall, during the term of this lease agreement, 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 land authorised by this agreement. The **LESSEE** shall indemnify the **LESSOR** against any claim arising from any such event, except to the extent that such claim has arisen as a result of the **LESSOR'S** wilful default.
- 6.10. The **LESSEE** shall at his/its own expense prior to commencing trading 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.
- 6.11. Should the **LESSEE** wish to sell the business, the **LESSEE** shall be obliged to furnish a written Curriculum Vitae of the prospective purchaser to the **LESSOR**, together with such further details as may be required by the **LESSOR**.
- 6.12. The **LESSEE** in his use of the land, shall
 - 6.12.1. conform with all laws and statutory, municipal and other by-laws and regulations relating to lessees or occupiers of the land;
 - 6.12.2. 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
 - 6.12.3. not do, nor permit to be done, any act, matter or thing which may render the **LESSOR'S** insurance of the land and/or the property 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 the land with regard to such insurance

7. MAINTENANCE

- 7.1. No 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.
- 7.2. The **LESSEE** shall not remove or cause or permit to be removed from the land any soil, clay, gravel, sand 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.
- 7.3. The **LESSEE** shall at all times keep the land inside and outside in a clean and tidy condition and free from all rubbish, litter or other accumulation of dirt to the satisfaction of the **LESSOR**.
- 7.4. The **LESSEE** shall at all times keep and maintain the inside and outside of the land, as well as any buildings and/ or structures to be erected on the land, in good and effective order and condition, 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. The **LESSEE** shall during the tenancy, at his own cost and expense, provide its own electric bulbs and fluorescent tubes for use in the leased land.
- 7.5. Without restricting the generality of the provisions under this clause, the **LESSEE** undertakes to exercise all reasonably possible care in respect of carpeting/ wooden floors (laminated or ordinary) and/ or tiling in the land (if any) 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.
- 7.6. Should any structure, garden, fence, etc or portion thereof on the land be damaged due to any act or negligence of the **LESSEE** or person who acquired occupancy through him/ her, he shall be held liable for the payment of the total cost of any such repair work.
- 7.7. Any damage caused to the land as a result of any dismantling or removal of equipment or as a result of the **LESSEE'S** failure to maintain the land 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**.
- 7.8. 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** of the receipt of a notice in writing from the Municipal Manager calling upon it so to do, 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 land, buildings and structures aforesaid and remedy such defects or make and effect the repairs aforesaid and recover the cost from the **LESSEE**.

- 7.9. The **LESSOR** reserves the right of free access, without notice, 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 without notice. The **LESSEE** shall not build over, alter, or in any manner disturb such services except under the express permission in writing of the Director of Infrastructure and Planning or his authorised representative in respect of the service concerned, and upon due compliance with any specified precautionary measures.
- 7.10. Should work involving maintenance, clearing, construction, reconstruction or repairs 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** of the work aforesaid.
- 7.11. The **LESSEE** may not and will not allow for any changes to be made to the electrical installation of the land 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.
- 7.12. The **LESSEE** shall comply in all aspects to the requirements of the **LESSOR** and Health Inspector as may be conveyed to him/it from time to time.

8. RISK OF CONTENTS

- 8.1. 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 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.

9. SETTLEMENT OF DISPUTES

- 9.1 If any dispute or difference of any kind whatsoever arises between the **LESSOR** and the **LESSEE** in connection with or arising out of this agreement, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 9.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the **LESSOR** or the **LESSEE** may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 9.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 9.4 Notwithstanding any reference to mediation and/or court proceedings herein,

- 9.4.1 the parties shall continue to perform their respective obligations under the agreement unless they otherwise agree; and
- 9.4.2 the **LESSEE** shall pay the **LESSOR** any monies due according to the prescripts of this agreement.

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 In the event of:
- 10.2.1 the rental not being paid within **30 (THIRTY) days** from the date when the same becomes due and payable, or
- 10.2.2 the said land, fence, buildings, and structures aforesaid not being kept and maintained in an efficient state of repair and in good structural condition, or
- 10.2.3 any or all of the conditions of this lease not being duly observed and fulfilled in accordance with the true intent and meaning thereof, and after the **LESSEE** has been given **30 (THIRTY) days** notice by registered mail, e-mail or fax;
- the **LESSOR** shall be entitled to cancel and terminate this lease and to re-enter upon and resume possession of the land, fence, buildings and structures aforesaid and any 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** by reason of the failure of the **LESSEE** to observe and fulfil the conditions of this lease. 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 land in terms of the lease.
- 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- and own 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 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. 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 agreement. 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.

11. TERMINATION AND CANCELLATION

- 11.1 In the event of the following occurring:

- 11.1.1 The **LESSEE** dissolving or ceasing to exist;
- 11.1.2 The **LESSEE** not use the land as described above at any time within the period of this lease;
- 11.1.3 The **LESSEE** or where the **LESSEE** is a partnership, in the case of any of the partners:
- (a) being sequestrated, whether provisionally or finally or where any application is made to Court in such respect, or
 - (b) making an application for the surrender of his estate, or
 - (c) entering into or purporting to enter into any composition or arrangement of whatsoever nature for the benefit of one or more of his/its creditors, or
 - (d) not satisfying any judgment against him/them within 10 (TEN) days of the date of such judgement being granted or failing to make an Appeal or Review proceedings against the judgment within the 10 (TEN) day period aforesaid; OR
- 11.1.4 The **LESSEE** being an company or close corporation is:
- (a) being liquidated, whether provisionally or finally, or where any application is made to Court in such respect, or
 - (b) being wound-up;
 - (c) entering into or purporting to enter into any composition or arrangement of whatsoever nature for the benefit of one or more of his/its creditors,
 - (d) not satisfying any judgment against him/them within 10 (TEN) days of the date of such judgement being granted or failing to make an Appeal or Review proceedings against the judgment within the 10 (TEN) day period aforesaid;

then in any or more of such events, the **LESSOR** shall be entitled to terminate this lease immediately, without payment of any 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**. In this event or at the expiration of this lease, the land shall revert to and vest in the **LESSOR**. The **LESSEE** shall be permitted to remove any structures, non-permanent in nature, which may have been erected by it from its own funds on the land in terms of this lease within a period of **48 (FOURTY EIGHT)** hours of such termination or expiration on condition that any damage to the land in the removal thereof will be compensated by the **LESSEE**. Any structures not so removed shall vest in the **LESSOR** free of compensation. The **LESSEE** shall also be permitted to remove any material, furniture or equipment belonging to him/ her/ it from the land within **48 (FOURTY EIGHT) hours** of such termination or expiration of this lease. Any material, furniture or equipment not so removed shall vest in the **LESSOR** free of compensation.

- 11.2 The **LESSEE** shall at the expiration of this lease restore and deliver up to the **LESSOR** the said land in a condition satisfactory to the **LESSOR**. The **LESSEE** shall compensate the **LESSOR** for any damages caused to the land for whatever reason.

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

12. GENERAL

- 12.1 The **LESSEE** undertakes that it will be responsible for payment at the normal rates, taxes and tariffs for any municipal services provided to the land hereby leased, whether at the request of the **LESSEE** or not.
- 12.2 The **LESSEE** shall not install or permit anybody to install inside or outside the land any vending or games machines, whether operated mechanically or by electronic devices.
- 12.3 The **LESSEE** shall sell no commodity from the land in glass containers or bottles for consumption on the beach and adjoining areas.
- 12.4 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.
- 12.5 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 without the prior written consent of the **LESSOR**, given under the hand of the Municipal Manager. Should the necessary consent be granted, the **LESSEE** shall not do, permit or allow or suffer any person to do anything on the land, buildings or structures thereon which would be an infringement of the law for the time being regulating the sale, supply and/or delivery of intoxicating liquor.
- 12.6 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 or 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**.
- 12.7 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.
- 12.8 The **LESSEE** will not carry on such business in a manner which creates a nuisance, is a threat or danger to the public health and safety, or damages or defaces any Municipal property.
- 12.9 No dogs, except dogs assisting the visually impaired, or any other animals shall be allowed on the land.
- 12.10 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.

12.11 It shall at no time be considered that the **LESSEE** has by virtue of this Agreement of Lease acquired any right or lawful claim to a grant of the land.

13. DOMICILIUM CITANDI ET EXECUTANDI

13.1 The **LESSEE** and the **LESSOR** hereby appoints and choose their respective addresses as set out in Schedule 1 of this agreement 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 this agreement or any action arising therefrom may be delivered and/ or served.

13.2 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 agreement; 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.

13.3 All notices, communications or processes in terms of this agreement shall be in writing.

13.4 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 **LESSEE**:-

13.4.1 By registered mail on the **5th (FIFTH) business day** after posting;

13.4.2 By fax or electronic mail on the **1st (FIRST) business day** after the date of transmission thereof;

13.4.3 By hand during normal business hours at **the time of delivery**.

13.5 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.

14. REPRESENTATION ON AUTHORITY OF PARTIES

14.1 The signatories (whether it may be one person or more than one person) of the **LESSEE** confirm by signing this agreement, that:

14.1.1 In terms of the entity'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 agreement.

14.1.2 The necessary procedures and responsibilities were followed and conformed to in respect of the authorisation to conclude and enter into this agreement and that the signatories of this agreement are mandated thereto in terms of a resolution by such entity.

14.1.3 The signatories represent and warrant that he/she/ they are duly authorised thereto and has the legal capacity to sign and enter into this agreement.

14.1.4 The signatories confirm that the signing of and entering into the agreement and the performance of the obligations in terms of this agreement have been duly authorised

and that the agreement is a valid and legal agreement binding on the **LESSEE** and enforceable in accordance with its terms and conditions.

14.2 In the event that 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** 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 agreement as if he/ she signed this agreement 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 agreement.

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 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 land 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. TRADING HOURS

17.1 The **LESSEE** shall conduct his business on the land during the hours determined within his own discretion, except during the hours of 24:00 until 06:00 for which the **LESSOR'S** prior written approval is needed, which may be given subject to such terms and conditions as the **LESSOR** considers necessary.

17.2 The **LESSEE** shall under no circumstances close the business for a period in excess of four weeks in each and every calendar year and shall, notwithstanding the provisions of clause 17.1 above, be open for not less than 7 (SEVEN) hours per day for 6 (SIX) days of each and every week whilst the business is not closed.

18. SECURITY OF THE LAND

18.1 The LESSEE shall ensure that the land are properly secured and protected after the closes of business and shall assure him/itself that no person whatsoever is left on the land at the time of closing. The LESSEE shall be held liable for any damage or loss that may occur from such neglect.

19. USE OF ABLUTION FACILITIES BY GENERAL PUBLIC

19.1 The ablution facilities (toilets, showers, etc.) must be made available to the general public during the hours of 09:00 till 18:00. The **LESSEE** shall be obliged at all times to keep the said ablution facilities clean and tidy and properly supplied by toilet paper.

20. SURETYSHIP

20.1 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 fulfillment of all the obligations of the party on whose behalf he proposes to act.

20.2 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.

20.3 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 fulfillment of the obligations of the company/close corporation in terms of this agreement.

THUS DONE, SIGNED AND AGREED TO AT HERMANUS

on _____.

AS WITNESSES:

1. _____

2. _____

(LESSOR)
OVERSTRAND MUNICIPALITY

THUS DONE, SIGNED AND AGREED TO AT _____

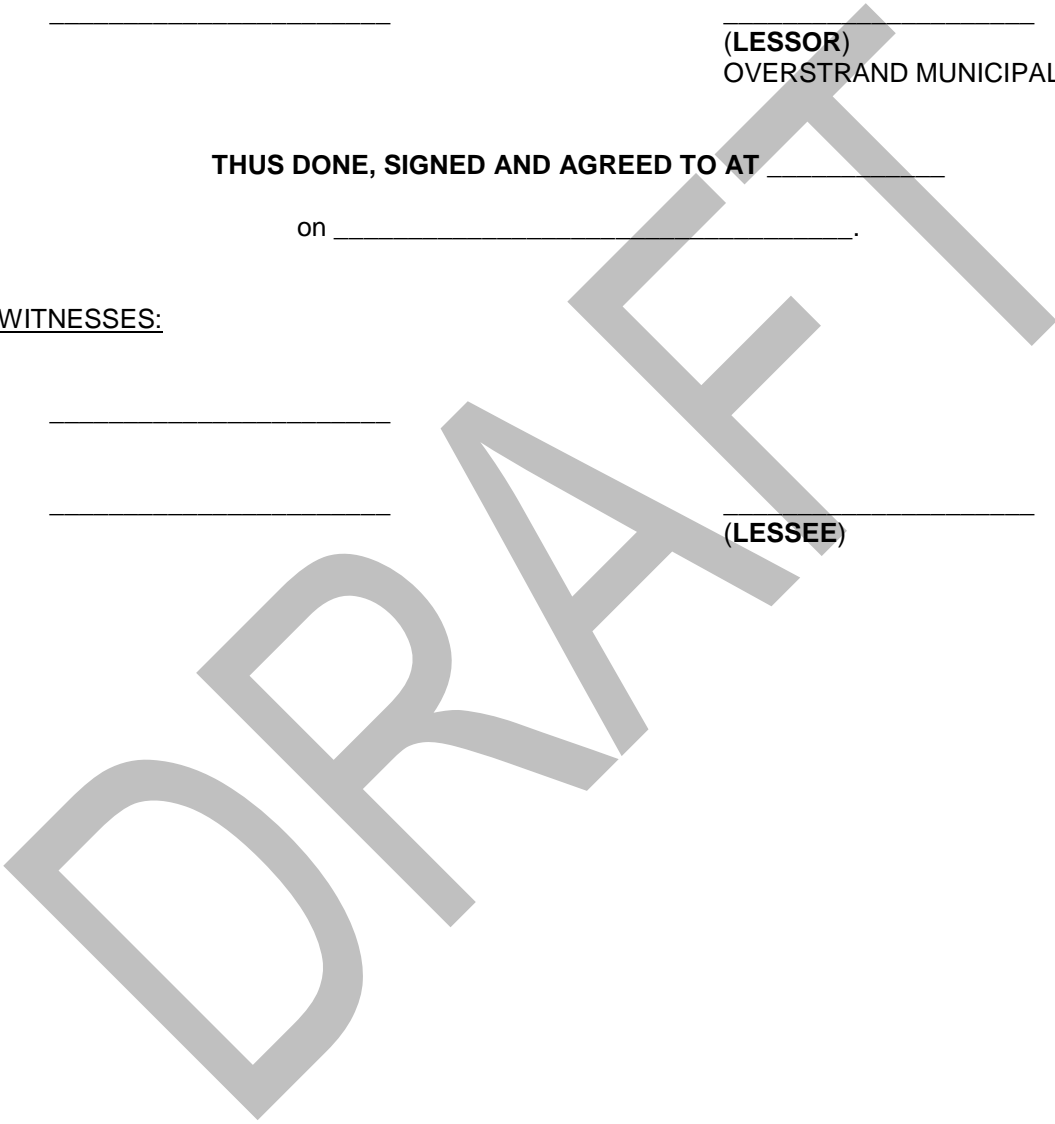
on _____.

AS WITNESSES:

1. _____

2. _____

(LESSEE)



SCHEDULE 1

LESSOR**OVERSTRAND MUNICIPALITY****Address**

Municipal Offices, 8 Magnolia Avenue, Hermanus, 7200
PO Box 20, Hermanus, 7200

Contact Numbers**Tel**

(028) 316 - 3724

Fax

(028) 316 - 3721

E-mail

enquiries@overstrand.gov.za

LESSEE**Address****Telephone number****Cell****Email****Property Description**

Portion of the Remainder of Farm nr 581, Onrustrivier

Lease Period**Lease Amount****Municipal Account Number**

17. 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:

LEASE OF A PORTION OF THE REMAINDER OF FARM NR 581, ONRUSTRIVER, KNOWN AS MILKWOOD RESTAURANT, FOR THE PURPOSE OF OPERATING A RESTAURANT.

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 PRICES <u>EXCLUSIVE OF VAT</u> IS:	
Tendered Monthly Lease Amount for a portion of the remainder of Farm nr 581, Onrustrivier.	<div style="text-align: center; font-weight: bold; font-size: 1.2em;">R</div>
	<div style="text-align: center; font-weight: bold; font-size: 1.2em;">(In words)</div>

This offer may be accepted by the Municipality by signing the Acceptance part of this Form of Offer and Acceptance and returning one copy of this document, originally signed, to the tenderer before the end of the period of validity stated in the tender data.

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



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 tenderer upon the terms and conditions contained in this agreement, the tender data and specifications, the tender documentation and in the Lease Agreement to be concluded that is the subject of this agreement, a draft of which is attached hereto per Annexure **C**.

The bidder shall pay an amount equal to the monthly lease amount tendered as a deposit on date of signature of the lease agreement and within two weeks after receiving a completed signed copy of this agreement, including the schedule of deviations (if any), arrange for the delivery of any guarantees, proof of insurance and any other documentation to be provided in terms of the agreement. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this Agreement comes into effect and is binding between the parties on the date of dispatch of one fully completed copy of this document to the bidder, originally 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:		

18. 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 correctness 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	
NAME OF FIRM			
WITNESS 1		WITNESS 2	



**PART C – ADMINISTRATION OF IMMOVABLE PROPERTY
POLICY**

19. MOST IMPORTANT ASPECTS OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF THE OVERSTRAND MUNICIPALITY
LEASING OF MUNICIPAL IMMOVABLE PROPERTY

17. Taking into consideration the nature and duration of the lease to be entered into, the leasing of immovable property may be affected by means of either:
- 17.1 a competitive process, which may include a closed or public tender or proposal call in circumstance listed in paragraph 18 below; or
 - 17.2 a direct lease.
18. A competitive process must at all times be followed in circumstances where:
- 18.1 the lease is for a long term with an income value in excess of R10 million;
 - 18.2 the lease is for a formal business premises with a market related rental;
 - 18.3 more than one party, in discretion of the municipality, is interested in the lease of the subject property; and/or
 - 18.4 by discretion of the municipality, a competitive process will best serve the interests of the community.
20. Long term lease of municipal immovable property with an income value less than R10 million
- 20.1 The Municipality may grant a long term lease of municipal immovable property with a value 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 municipal council has approved that the right may be granted.

CONDITIONS OF LEASE

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