



**TENDER NO.: SC 1608/2015**

**LEASE AND MANAGEMENT OF A PORTION OF ERF 832 AND ERF 249  
HERMANUS, KNOWN AS THE MARKET STALLS**

**PROCUREMENT DOCUMENT**

<b>NAME OF TENDERER:</b>	
<b>Total Bid Price (Exclusive of VAT) (refer to page 40):</b>	

**MAY 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**

<b>KLEINMOND</b> Private Bag X3 Kleinmond; 7195 Tel: 028 271 8100 Fax: 028 271 4678	<b>HERMANUS</b> PO Box 20 Hermanus; 7200 Tel: 028 313 8000 Fax: 028 313 8048	<b>STANFORD</b> PO Box 84 Stanford; 7210 Tel: 028 341 0640 Fax: 028 341 0445	<b>GANSBAAI</b> PO Box 26 Gansbaai; 7220 Tel: 028 384 0111 Fax: 028 384 0241
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TENDER DETAILS						
TENDER NUMBER:	<b>SC1608/2015</b>					
TENDER TITLE:	<b>LEASE AND MANAGEMENT OF A PORTION OF ERF 832 AND ERF 249 HERMANUS, KNOWN AS THE MARKET STALLS</b>					
CLOSING DATE:	<b>2015/05/29</b>		CLOSING TIME:	<b>12H00</b>		
SITE MEETING:	DATE:	<b>N/A</b>	TIME:	<b>N/A</b>	COMPULSORY:	<b>N/A</b>
SITE MEETING ADDRESS:	<b>N/A</b>					
CIDB GRADING REQUIRED:	<b>NO</b>	LEVEL AND CATEGORY:	<b>N/A</b>			
BID BOX NO:	<b>7</b>	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:	<b>60</b>	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 (EXCLUSIVE OF 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:	<b>BLAKE D'OLIVEIRA</b>	<b>ANJA KOTZE</b>
TEL. #	<b>028 313 5016</b>	<b>028 316 3724</b>

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

<b>1. CHECKLIST</b>
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**PLEASE ENSURE THAT THE FOLLOWING FORMS HAVE BEEN DULY COMPLETED AND SIGNED AND THAT ALL DOCUMENTS AS REQUESTED, ARE ATTACHED TO THE TENDER DOCUMENT:**

<b>Certificate of Clarification Meeting Attendance</b> Is the form duly completed and signed by both tenderer and agent of the Overstrand Municipality?	Yes	No	
<b>Authority to Sign a Bid</b> Is the form duly completed and is a <b>certified copy</b> of the <b>resolution</b> attached?	Yes	No	
<b>Tax Clearance Certificate</b> Is an <b>ORIGINAL</b> and <b>VALID</b> Tax Clearance Certificate attached?	Yes	No	
<b>MBD 4</b> (Declaration of Interest) Is the form duly completed and signed?	Yes	No	
<b>MBD 8</b> (Declaration of Past Supply Chain Practices) Is the form duly completed and signed?	Yes	No	
<b>MBD 9</b> (Certificate of Independent Bid Determination) Is the form duly completed and signed?	Yes	No	
<b>MBD 15</b> (Certificate of Payment of Municipal Accounts) Is the form duly completed and signed? Are the <b>Identity numbers, residential addresses</b> and <b>municipal account numbers</b> of <b>ALL</b> members, partners, directors, etc. provided on the form as requested?	Yes	No	
<b>Specifications</b> Is the form duly completed and signed?	Yes	No	
<b>Form of Offer</b> Is the form duly completed and signed?	Yes	No	

SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			

**2. TENDER NOTICE & INVITATION TO TENDER****TENDER NO. SC 1608/2015****LEASE AND MANAGEMENT OF A PORTION OF ERF 832 AND ERF 249 HERMANUS, KNOWN AS THE MARKET STALLS**

Tenders are hereby invited for the **Lease and Management of a Portion of Erf 832 and Erf 249 Hermanus, known as the Market Stalls.**

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

Sealed tenders, with: "**Tender No.: SC1608/2015 Lease and Management of a Portion of Erf 832 and Erf 249 Hermanus, known as the Market Stalls.**" clearly endorsed on the envelope, must be deposited in **Tender Box No. 7** at the offices of the Overstrand Municipality, Magnolia Avenue, Hermanus. Bids may only be submitted on the bid documentation issued by Overstrand Municipality.

The closing date and time of the tender is on **29 May 2015** at **12h00** and tenders will be opened in public immediately thereafter in the Supply Chain Management Committee Room, Hermanus Administration.

Tenders must be valid for a period of **60 days** after the closing date.

The 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. Tenders are subject to the Supply Chain Management Policy and the Administration of Immovable Property Policy of the Overstrand Municipality.

Please refer enquiries to **Anja 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/TRUST**

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:	

<b>4. GENERAL CONDITIONS OF TENDER</b>
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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
3. **PLEASE NOTE:**
  - 3.1. Tenders that are deposited in the incorrect box will not be considered.
  - 3.2. Tender box deposit slot is 28cm x 2.5cm.
  - 3.3. Mailed, telegraphic or faxed tenders will not be accepted.
  - 3.4. Documents may only be completed in black ink.
  - 3.5. The use of correction fluid/tape is not allowed.
    - 3.5.1. 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.
    - 3.5.2. Alterations or deletions not signed by the Tenderer may render the tender invalid.
  - 3.6. All bids must be submitted in writing on the official forms supplied (not to be re-typed)
  - 3.7. All prices shall be quoted in South African currency and be **EXCLUSIVE of VAT**.
4. 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.
5. Tenders may not be telefaxed to the Municipality and therefore any tenders received by fax will **not** be considered.
6. 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.
7. Tenders shall be opened in public at the Hermanus Municipal Offices as soon as possible after the closing time for the receipt of tenders.
8. 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;
  - 8.1. 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.
  - 8.2. 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.
9. This bid will be evaluated and adjudicated according to the following criteria:
  - 9.1. Relevant specifications
  - 9.2. Financial means and expertise
  - 9.3. Capability to perform in terms of the contract

*[insert any other criteria]*

**10. Invoices – Not applicable for the Leasing or Sale of Property**

All invoices must be forwarded to the following address:

Overstrand Municipality  
 PO Box 20  
 Hermanus, 7200

**11. Value-Added Tax (VAT) - Not applicable for the Leasing or Sale of Property**

- 11.1. 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.
- 11.2. It is a requirement of this contract that the amount of value-added tax (VAT) must be shown clearly on each invoice.
- 11.3. 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.
- 11.4. The VAT registration number of the Municipality is 4140106396.

**12. Standard Payment Terms - Not applicable for the Leasing or Sale of Property**

- 12.1. 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.
- 12.2. Payment Cycles for the first 12 months of business with the Overstrand Municipality to Survivalist enterprises / Micro-enterprises
- 12.3. Survivalist enterprises / Micro-enterprises are entitled to a weekly payment cycle by the municipality.
- 12.4. 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.
- 12.5. 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.

<b>5. MBD 2 – TAX CLEARANCE CERTIFICATE REQUIREMENTS</b>
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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](http://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-Filers through the website [www.sars.gov.za](http://www.sars.gov.za)



**6. MBD 4 – DECLARATION OF INTEREST**

1. No bid will be accepted from persons in the service of the state<sup>1</sup>.
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.	<b>Full Name of bidder or his or her representative</b>													
3.2.	<b>Identity Number</b>													
3.3.	<b>Position occupied in the Company (director, shareholder <sup>2</sup> etc.)</b>													
3.4.	<b>Company Registration Number</b>													
3.5.	<b>Tax Reference Number</b>													
3.6.	<b>VAT Registration Number</b>													
3.7.	<b>Are you presently in the service of the state?</b>	YES		NO										
3.7.1.	If so, furnish particulars:													
3.8.	<b>Have you been in the service of the state for the past twelve months?</b>	YES		NO										
3.8.1.	If so, furnish particulars:													

<sup>1</sup> 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.

<sup>2</sup> "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.



<b>3.9.</b>	<b>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?</b>	<b>YES</b>		<b>NO</b>	
3.9.1.	If so, furnish particulars:				
<b>3.10.</b>	<b>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?</b>	<b>YES</b>		<b>NO</b>	
3.10.1.	If so, furnish particulars:				
<b>3.11.</b>	<b>Are any of the company's directors, managers, principal shareholders or stakeholders in the service of the state?</b>	<b>YES</b>		<b>NO</b>	
3.11.1.	If so, furnish particulars:				
<b>3.12.</b>	<b>Is any spouse, child or parent of the company's directors, managers, principal shareholders or stakeholders in the service of the state?</b>	<b>YES</b>		<b>NO</b>	
3.12.1.	If so, furnish particulars:				
<b>3.13.</b>	<b>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?</b>	<b>YES</b>		<b>NO</b>	
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 <sup>3</sup> 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			

<sup>3</sup> 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.



**7. 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>	<b>Yes</b>	<b>No</b>
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, <a href="http://www.treasury.gov.za">www.treasury.gov.za</a>, 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>	<b>Yes</b>	<b>No</b>
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?	<b>Yes</b>	<b>No</b>
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?	<b>Yes</b>	<b>No</b>
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?	<b>Yes</b>	<b>No</b>
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:			



**8. 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).<sup>4</sup> 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;

<sup>4</sup> 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 consortium<sup>5</sup> 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)	
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NAME OF FIRM			

<sup>5</sup> 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.



**9. 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 style="text-align: center;"><b>COMMISSIONER OF OATHS</b></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><b>COMMISSIONER OF OATHS:-</b></p> <p>Position: _____</p> <p>Address: _____</p> <p>Tel: _____</p>	<p style="text-align: center;"><b>Apply official stamp of authority on this page:</b></p>
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## **PART B – SPECIFICATIONS AND PRICING SCHEDULE**



**10. SPECIFICATIONS**

**SCOPE OF TENDER**

**1. INTRODUCTION**

- 1.1. The Overstrand Municipality has decided to call for tenders for the lease and managing of a portion of Erf 832 and 249, Hermanus, known as the “Market Square Stalls, for a period of 3(THREE) years from inception date as the lease period of the current leases for the individual stalls will expire shortly. The tender is for the purpose of leasing, managing, maintaining and sub-leasing the current Market Square stalls and the upkeep of the provided ablution facilities. The Municipality owns the land.
- 1.2. The document is self-explanatory and interested parties are encouraged to read through it carefully, so as to familiarise themselves with both the overall intent of Council, as well as with the procedures for the award.
- 1.3. The tender is subject to the conditions as set out in the tender documents and to the most recent Supply Chain Management Policy and the Administration of Immovable Property Policy of the Overstrand Municipality, as amended, approved and adopted by Council.

**2. THE TENDER PROCESS**

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

- 2.1. The submission of a tender price as well as information regarding the source of funds and the financial offer made must be clearly set out in the bidder’s submission as per the requirements set out in **Paragraph 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.

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2.9. The property will not be alienated during the lease and will remain the property of the Overstrand Municipality.

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

3.1. The site is located near Mark Street and Marine Street, CBD, Hermanus. (See the Locality Map attached per Annexure **A**)

3.2. The site may only be used for the purpose of:

- (a) management, subleasing and maintenance of the Market Square Stalls for the purposes as determined in accordance with paragraph 7.6 below;
- (b) maintaining the ablution facilities; and
- (c) any such other purpose as may be approved by the Municipality.

3.3. Proposals should aim at contributing to the economic and community value for the local community and include maintenance and management of the asset.

**4. PROPERTY DESCRIPTION AND ZONING RIGHTS**

4.1. Erf no.: A portion of Erf 832 and 249, Hermanus as indicated on the Site Plan attached per Annexure **B**.

4.2. Zoning status: The current zoning is Transport Zone 2: Road and Parking, with a consent use of informal trading as per the Overstrand Zoning Scheme Regulations.

4.3. The surrounding land uses vary and include Business uses.

**5. DEVELOPMENT PARAMETERS**

5.1. Utilisation of the property

Utilisation of the property should be consistent with the present use of the site and in accordance with paragraph 7.6 below. No extension to the structures will be allowed.

5.2. Accesses and Road provision

Access to the property will be from Mark Street and Marine Street, CBD, Hermanus (travelling by motor vehicle) otherwise freely as per pedestrian. See the Locality Map and Site Plan attached per Annexures **A** and **B**.

5.3. Height Restrictions

The height of structures is limited to one (1) floor in accordance with the existing structures.

5.4. Not allowed

Any use other than the existing land use rights will not be allowed.

5.5. Allowed Uses

Informal trading in accordance with such uses as suggested in paragraph 7.6.

**6. INFRASTRUCTURE**

6.1. Water, sewer and electricity connections are available.

6.2. The successful bidder will be responsible for payment at the normal rates, taxes and tariffs for any municipal services provided to the property.

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**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 and management 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) or cheque 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 or cheque will be returned to the unsuccessful bidders after the awarding process has been completed. The tender deposit will be forfeited by a bidder should he cancel/withdraw his tender at any time after the closing date of the tender.
- 7.3. Tender offers will only be accepted if the bidder submits proof of payment of the tender deposit.
- 7.4. The bidder are requested to submit a compact business plan with supporting documents indicating the following:
  - 7.4.1. An operational plan (inclusive inter alia of, but not necessary limited to; a vision marketing strategy, management plan, financial plan which will include financial forecasts) with a financial outline on how the Stalls will operate including projected rentals, operational expenses, etc. This needs to be based on the proposed list of activities / trading for the Stalls, see in this regard paragraph 9.3 and furthermore should also illustrate the financial backing/financial resources (e.g. bank or financial statements) to manage and maintain the asset to its full potential.
  - 7.4.2. An illustration of their skills and expertise. This can be done through the submittal of a track record (setting out skills and experiences) in similar projects as well as the curriculum vitae's or résumés.
  - 7.4.3. An illustration of the approach towards the management and operation of the Market Square Stalls.
  - 7.4.4. An illustration on how in the operation of the Stalls, tenants from the local community will be used.
  - 7.4.5. An indication of the projected income, expenses and profit margins for the three year lease period.
  - 7.4.6. An outline of the responsibilities of the bidder, including, but not limited to, finding suitable tenants, day-to-day operation, maintenance, marketing and financial management.
- 7.5. Interested bidders are requested to submit financial statements or any other suitable proof in support of stability, i.e. evidence must be provided to substantiate and confirm for financial viability and the capability to carry out a project of this scale.

**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.

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**9. GENERAL CONSIDERATIONS**

- 9.1. The successful bidder will be primarily responsible for the management of the Market Square Stalls, by leasing the existing facilities (stalls) out to prospective tenants. It is thus paramount that the successful bidder must have the necessary skills to manage and operate the Market Square Stalls as a viable business. The following skills will be preferred:
  - 9.1.1. A proven record in facility or property management, with knowledge of the basic principles of property business.
  - 9.1.2. Knowledge of securing rentals and to obtain and keep maximum occupancy.
  - 9.1.3. The ability to ensure good tenant relations and the timeous payment of rentals from entrepreneurs.
  - 9.1.4. Maintenance of property records and the correlating analysis thereof.
  - 9.1.5. Ensuring operational income from the Stalls.
- 9.2. Consequently the successful bidder's functions would need to include the following:
  - 9.2.1. The leasing of individual stalls to tenants from the local community.
  - 9.2.2. Administration of leases, being inter alia the collection of rentals, ensuring the correct tenant mix and the absolute minimisation of stall vacancies.
  - 9.2.3. Insurance of the Stalls.
  - 9.2.4. Security of the Stalls.
  - 9.2.5. Maintenance of the Stalls (including the ablution facilities).
  - 9.2.6. Management of all expenses and income for the operation of the Stalls.
  - 9.2.7. Budgeting and reporting.
  - 9.2.8. Marketing of the Stalls to ensure full occupancy.
  - 9.2.9. Marketing of the Market Square as a viable business.
- 9.3. **Preferred mix of trading:** Although the final selection of the proposed tenants and goods needs to be finalised by the successful bidder, cognisance of the following needs must be adhered to when deciding on suitable tenants:
  - 9.3.1. Preference must be given to source tenants from the local community.
  - 9.3.2. Any trading to be part of the Market Square Stalls needs to illustrate their ability to pay the required lease amount timeously.
  - 9.3.3. There need to be a mix of businesses and this mix needs to reflect the vision of the Municipality and be diverse in nature. The preferred mix of business could include, but need not be limited to the following:  
 Proposed activities:
    - 9.3.3.1. ATM's (contract with Standard Bank to be entered into);
    - 9.3.3.2. Bookstore specialising in South African authors, Music/ CD's and DVD retailer;
    - 9.3.3.3. Art store (local artists) and painted wooden art;
    - 9.3.3.4. Pottery stall (no manufacturing on site);
    - 9.3.3.5. Stationary stall (crafty postcards, etc);

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- 9.3.3.6. Utensils (wooden pots, eat ware, etc);
- 9.3.3.7. Handmade painted home ware and materials (pillows, bedding, cushion covers, place mats etc);
- 9.3.3.8. Iron works (furniture), arts and crafts;
- 9.3.3.9. Woodwork (traditional South African furniture, sculptures, masks etc);
- 9.3.3.10. Wire and bamboo works;
- 9.3.3.11. African drums;
- 9.3.3.12. Curios;
- 9.3.3.13. Baskets,
- 9.3.3.14. Antiques;
- 9.3.3.15. Bead work;
- 9.3.3.16. Jewellery (wood necklaces, beads, semi-precious stones, bone material etc);
- 9.3.3.17. Leather ware and arts (shoes, bags, etc);
- 9.3.3.18. Bags and hand bags;
- 9.3.3.19. Ostrich eggs and decorative eggs;
- 9.3.3.20. Malachite objects and glass ornaments;
- 9.3.3.21. Gemstones and gemstone jewellery;
- 9.3.3.22. Crystals, rocks, shells and fossils;
- 9.3.3.23. Fairies;
- 9.3.3.24. Tempory tattoos
- 9.3.3.25. Traditional and modern South African fashion, Clothing, South African t-shirts and/or slogan t-shirts and/or handmade printed t-shirts; sunglasses, hats, head gear, scarves, gloves, bandanas, shoe laces and patik; and
- 9.3.3.26. Flowers and/ or Fynbos.
- 9.3.4. Unique and handmade South African products should at all times enjoy preference.
- 9.3.5. No manufacturing of any products will be allowed on the property, specifically in and about the Stalls.
- 9.3.6. No food or beverages will be allowed to be made and/or processed and sold on the property, specifically in and about the Stalls.
- 9.3.7. As such it will be essential for the successful bidder to assess which traders/prospective tenants/entrepreneurs would be the most appropriate for the Market Square Stalls.

**10. SPECIFIC CONDITIONS OF THE LEASE AGREEMENT**

10.1. The ablution facilities (toilets, etc.) must be made available to the general public during the operational hours of the Stalls. The successful bidder shall be obliged at all times, at its own cost, to keep the said ablution facilities clean and properly supplied with toilet paper.

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- 10.2 The Stalls must be open for trade on the land for at least 4 (FOUR) days each calendar week, for a minimum of 5 (FIVE) hours a day and for at least 45 (FOURTY FIVE) weeks a year and may under no circumstances be closed for a period in excess of 4 (FOUR) weeks in each and every calendar year. The Stalls may not be open during the hours of 20:00 until 06:00 (for the months April to end October) and 21:00 until 06:00 (for the months November to end March) unless the prior written consent of the Municipality is obtained.
- 10.3 No alcohol may be sold from the property and/or stalls.
- 10.4 The successful bidder shall be responsible for its own insurance and security of/on the property and goods on the property.
- 10.5 The stall currently used by the Tourist Information Centre is excluded from this tender and will be managed by the Municipality. This tenant must however have access to the ablution facilities on the property.
- 10.6 One stall currently used by the Municipality for storage is excluded from this tender.
- 10.7 The successful bidder must accommodate the NSRI on the property at a rental as negotiated by the parties.
- 10.8 The successful bidder must accommodate the ATM of Standard Bank on the property at the current rental paid by them to the Municipality. The lease agreement of Standard Bank Ltd will be ceded to the successful bidder, for the remainder of the lease period in terms thereof, should the lease be finalized before this lease commences. If the agreement is not finalized, the successful bidder shall be obliged to enter into an agreement with Standard Bank.
- 10.9 In order to promote local and social economic development within the Overstrand area, it is a condition of this tender that the subleasing of the individual stalls on the property must be to residents of the local community, as per the Overstrand Municipality's Administration of Immovable Property Policy of 2014, Section 152 of the Constitution of the Republic of South Africa of 1996.
- 10.9.1 The Administration of Immovable Property Policy of 2014 stipulates that:  
*"The local residents of a specific area will be afforded preference in respect of the letting of immovable properties within that demarcated/designated area."*
- 10.9.2 Section 152 of the Constitution stipulates that:  
 (1) *The objects of local government are –*  
 (c) *To promote social and economic development;*  
 (2) *A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).*

## 11. CURRENT RENTAL

The current rental the Municipality receives from the leasing of the property is **R54,798.81 (FIFTY FOUR THOUSAND SEVEN HUNDRED AND NINETY EIGHT RAND AND EIGHTY ONE CENTS)** (VAT excluded) per month.

## 12. 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.

SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			

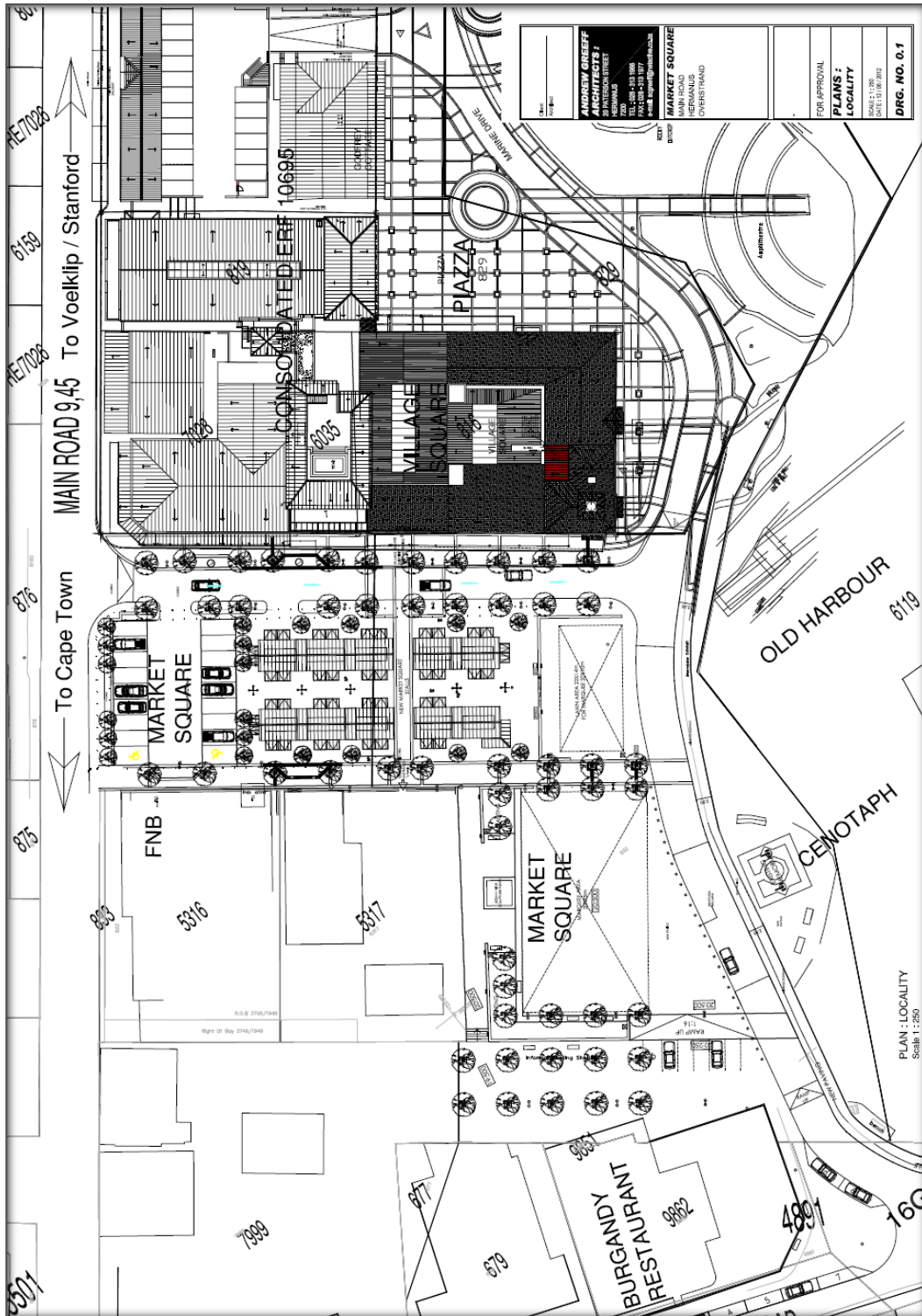


ANNEXURE A – LOCALITY MAP



SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			

ANNEXURE B – SITE MAP



SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			



**LEASE AGREEMENT**

**A PORTION OF ERF 832 AND 249,  
HERMANUS  
also known as  
The Market Square Stalls**

entered into between

**OVERSTRAND MUNICIPALITY**

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

and

\_\_\_\_\_  
OF \_\_\_\_\_

(hereinafter called the **LESSEE**)



**WHEREAS** the **LESSOR** called for tenders for the leasing of Municipal Property, being a portion of Erf 832 and 249, Hermanus, known as the "Market Square Stalls" (hereinafter referred to as "the land") situated near Mark Street and Marine Street, CBD, Hermanus and shown on the locality plan attached hereto marked "Annexure #" for the purpose of **the lease, management, sub-letting, supervising and maintenance of the land for informal trading or any other such purpose as may be approved by the LESSOR in writing.**

**AND WHEREAS** the **Bid Adjudication Committee** resolved on (date) that the tender be awarded to the **LESSEE** (minutes to be attached)

**NOW THEREFORE THE PARTIES AGREE** that the **LESSOR**, pursuant to the authority conferred upon it by the Administration of Immovable Property Policy of the Overstrand Municipality, as amended from time to time, hereby agrees to lease to the **LESSEE** and the **LESSEE** hereby agrees to hire from the **LESSOR** the land, subject to the following terms and conditions:

### 1. LEASE PERIOD

- 1.1. Notwithstanding the date of signature hereof, this lease shall endure for a period of **3 (THREE) years** which commences on **(date)** and expires on **(date)**.
- 1.2. After the expiry period referred to in clause 1.1 above the **LESSEE** shall have no legitimate expectation that a further lease period may be agreed to by the **LESSOR**.

### 2. RENTAL

- 2.1. The **LESSEE** shall pay to the **LESSOR** rental in the amount of **R (amount) per month (VAT excluded)**, in respect of the land, such rental to escalate every year on the 1<sup>st</sup> of July by a percentage equal to the prevailing consumer price index (all items) in terms of the Municipality's Administration of Immovable Property Policy, as amended from time to time, payable monthly in advance at the municipal cashiers, Overstrand Municipality, Hermanus.
- 2.2. If not done before signature of this agreement, the **LESSEE** shall complete a service agreement form at the Overstrand Municipal Office for the creation of a Municipal Account (for the levying of the lease amount, rates and taxes and municipal services) in the name of the **LESSEE** as described in this agreement and provide the Property Administration Department with such account number within **3 (THREE) business days** from signing of this agreement.

### 3. DEPOSIT

- 3.1. On signature of this lease, the **LESSEE** shall pay the **LESSOR** a deposit in the amount of **R (amount)**, which is an amount equal to **1 (ONE) month** of the rental.
- 3.2. The **LESSOR** may apply the above amount, in whole or part, in meeting any payment due by the **LESSEE** to the **LESSOR** at any time during the lease period or after the termination of the lease.
- 3.3. Whenever during the lease period the deposit is so applied in whole or part, the **LESSEE** shall on demand reinstate the deposit to its original amount.
- 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, as amended from time to time, 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 **the lease, management, sub-letting, supervising and maintenance of the land for informal trading or any other such purpose as**

may be approved by the LESSOR in writing and no other activities will be allowed on the leased land.

- 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.
- 6.4. The LESSEE shall be responsible at all times for the maintenance of good order, behaviour and government on the land and within any buildings and/or structures thereon and shall not allow the same to be frequented by persons of ill repute or bad character.
- 6.5. The LESSEE nor its prospective tenants shall allow any person to reside overnight on the land.
- 6.6. The LESSEE undertakes for the currency of this lease to pay to the LESSOR the monthly insurance premium in respect of the buildings and/or structures presently erected or to be erected in accordance with this agreement 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.
- 6.7. 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.
- 6.8. 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.
- 6.9. The LESSEE in his use of the land, shall
- 6.9.1. conform with all laws and statutory, municipal and other by-laws and regulations relating to lessees or occupiers of the land;
- 6.9.2. 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
- 6.9.3. 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.
- 6.10 The LESSEE and/or his employees and/or tenants shall not do anything in or on the land or permit or cause anything to be done which, in the opinion of the LESSOR, constitutes a nuisance or may cause inconvenience in any way whatsoever, to or in any way affect the peace and comfort of other persons, which will include but is not limited to the playing of loud music.
- 6.11 The LESSEE shall ensure that its tenants do not exceed the demarcated limits of the respective stalls, either into the public walk-way or into their neighbour's stall.

## 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 ensure that the land, specifically the walkways between the stalls and the areas around the stalls as well as the ablution facilities, at all times are kept and maintained 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** as may be conveyed to him / it from time to time with reference to any relevant sub-lease of a stall on the land.

## 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 **30 (THIRTY) 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 or by hand;

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 Where the **LESSOR** selects to cancel the agreement in terms of paragraph 10.2 above, the **LESSOR** may decide to impose a restriction penalty on the **LESSEE** by prohibiting such **LESSEE** from doing business with the public sector for a period not exceeding **10 (TEN) years**.



- 10.6 If a **LESSOR** intends imposing a restriction on a **LESSEE** or any person associated with the **LESSEE**, the **LESSEE** will be allowed a time period of not more than **14 (FOURTEEN) days** to provide reasons why envisaged restriction should not be imposed. Should the **LESSEE** fail to respond within the stipulated **14 (FOURTEEN) days** the **LESSOR** may regard the **LESSEE** as having no objection and proceed with the restriction.
- 10.7 Any restriction imposed on any person by the **LESSOR** will, at the discretion of the **LESSOR**, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the purchase actively associated.
- 10.8 If a restriction is imposed, the **LESSOR** must, within **5 (FIVE) working days** of such imposition, furnish the National Treasury, with the following information:
- 10.8.1 the name and address of the **LESSEE** and / or person restricted by the **LESSOR**;
  - 10.8.2 the date of commencement of the restriction
  - 10.8.3 the period of restriction; and
  - 10.8.4 the reasons for the restriction.
- These details will be loaded in National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.
- 10.9 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than **5 (FIVE) years** and not more than **10 (TEN) years**. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.
- 10.10 The **LESSEE** agrees to the jurisdiction of the Magistrate's Court for the recovery of any amount due in terms hereof or any other matter/dispute which might arise from this 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 sequestered, 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) months** 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 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.
- 12.3 Neither the **LESSEE** nor any other person shall acquire or hold any licence for the sale of intoxicating liquor upon the land or in or from any buildings or structures thereon without the prior written consent of the **LESSOR**, given under the hand of the Municipal Manager.
- 12.4 No agreement at variance with the terms and conditions of this agreement shall be binding on the parties unless contained in writing by the parties hereto and any indulgence which the **LESSOR** in accepting any payments after due date on in accepting a lesser sum than the amount due, shall not in any way prejudice his rights or be construed as a waiver of same by the **LESSOR**.
- 12.5 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.
- 12.6 The **LESSEE** or its tenants 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.
- 12.7 The grant of the lease hereby constituted, shall under no circumstances be deemed to confer any real right or servitude of any kind in favour of the **LESSEE**. Upon a demand made by the **LESSOR**, in terms of this lease, for quiet possession of the property, the **LESSEE** shall be bound to give such possession without any right to compensation, whether for useful, necessary expenses or other improvements.
- 12.8 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 **5<sup>th</sup> (FIFTH) business day** after posting;
- 13.4.2 By fax or electronic mail on the **1<sup>st</sup> (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. ADVERTISING

- 15.1 The **LESSEE** or its prospective tenants shall not, without prior written consent of the **LESSOR**, erect, affix, paint or otherwise display, or cause or allow to be erected, affixed, painted or otherwise displayed on the land, specifically any wall or fence, building and / or structure which is or which may hereafter be erected on the land, or any portion thereof, any sign, signboard, screen or other device for the purpose of any advertising of any nature, including the trade name of the **LESSEE** any franchise or other marketing operation with which he is associated, as well as any products sold by the **LESSEE**.

#### 16. DESTRUCTION OR DAMAGE

- 16.1 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.

#### 17. HOLDING OVER

- 17.1 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**.

## 18. TRADING HOURS

- 18.1 The **LESSEE** shall conduct his business on the land during the hours determined within his own discretion, except during the hours of 20:00 until 06:00 (for the months April – October) and 21:00 until 06:00 (for the months November – March), for which the **LESSOR'S** prior written approval is needed, which may be given subject to such terms and conditions as the **LESSOR** considers necessary.
- 18.2 The **LESSEE** shall under no circumstances close the business for a period in excess of **4 (FOUR) weeks** in each and every calendar year and shall, notwithstanding the provisions of clause 18.1 above, be open for not less than **4 (FOUR) days** each calendar week, for a minimum of **5 (FIVE) hours** per day, for at least **45 (FORTY FIVE) weeks** a year.

## 19. SECURITY OF THE LAND

- 19.1 The **LESSEE** shall ensure that the land are properly secured and protected after the close 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.

## 20. SUB-LETTING

- 20.1 The **LESSEE** may sublet the individual stalls to prospective tenants provided that:
- 20.1.1 Such sub-lease is subject in all respects to the provisions of the main lease agreement entered into between the **LESSEE** and the **LESSOR** as well as the Lessor's Administration of Immovable Property Policy as may be amended from time to time.
- 20.1.2 The **LESSOR** is indemnified against any claims from such prospective tenant;
- 20.1.3 The sub-lease may only be for informal trading purposes.
- 20.1.4 Preference be given to residents from local community.
- 20.1.5 The prospective tenant shall not, except with the prior written consent of the **LESSOR**, cede or assign all or any of the rights and obligations of the prospective tenant under sub-lease, sub-sub-let the stall rented in whole or part; or give up possession of the stall rented Property to any third party. However, the **LESSOR** shall not unreasonably withhold its consent to a sub-sub-letting.

## 21. LESSEE'S FINANCIAL MANAGEMENT OBLIGATIONS

- 21.1 The Lessor, in terms of the regulations issued in terms of section 168 of the Local Government: Municipal Finance Management Act 56 of 2003, is obliged to monitor the implementation of, and assess the **LESSEE'S** performance under this agreement and to impose financial management duties on the **LESSEE**, including transparent processes relating to internal financial control, budgeting, accountability and reporting and in order to fulfill these duties, the **LESSOR** shall be entitled to expect same duties towards it in this regard, as is expected from the **LESSEE** by the **LESSOR**, where applicable.
- 21.2 In order to comply with the above, the **LESSOR** shall be entitled to, from time to time during the lease period, request information from the **LESSEE** and or issue directives to the **LESSEE** in the above regard.
- 21.3 Without limiting the generality of the afore going, the **LESSEE** shall annually, within **3 (THREE) months** from the **LESSEE'S** financial year end, provide the **LESSOR** with copies of the **LESSEE'S** approved audited financial statements, as well as a letter from the **LESSEE'S** bank, confirming the **LESSEE'S** financial standing.

## 22. SURETYSHIP

- 22.1 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.

- 1. 22.2 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.
- 22.3 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.

**23. SPECIAL CONDITIONS**

23.1 The **LESSEE** must accommodate the following tenants on the land should they wish to proceed with the leasing of their respective stalls:

- 23.1.1 The NSRI; and
- 23.1.2 Standard Bank for the operation of the ATM at the current rental paid by them to the Municipality;

23.2 The **LESSEE** acknowledges and accepts that the following stalls are excluded from this lease and does not form part of the land:

- 23.2.1 The stall currently occupied by the Tourist Information Centre;
- 23.2.2 The stall currently used by the **LESSOR** as a store room.

**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)

MUNISIPALITEIT



MUNICIPALITY

**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](mailto:enquiries@overstrand.gov.za)

**LESSEE**

\_\_\_\_\_

\_\_\_\_\_

**Address**

\_\_\_\_\_

**Telephone number**

\_\_\_\_\_

**Cell**

\_\_\_\_\_

**Email**

\_\_\_\_\_

**Property Description**

A portion of Erf 832 and 249, Hermanus.

**Lease Period**

**3 (THREE) years**

**Lease Amount**

\_\_\_\_\_ **per month (VAT excluded),**  
escalating every 1<sup>st</sup> of July by a percentage equal to the  
Consumer Price Index (CPI).

**Municipal Account Number**

\_\_\_\_\_

SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			

<b>11. FORM OF OFFER AND ACCEPTANCE</b>
---

**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 AND MANAGEMENT OF A PORTION OF ERF 832 AND ERF 249 HERMANUS, KNOWN AS THE MARKET STALLS**

The bidder, identified in the offer signature block, acknowledges that he/she 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, 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.

<b>THE OFFERED TOTAL OF THE PRICES FOR THE LEASE AND MANAGEMENT OF A PORTION OF ERF 832 AND ERF 249 HERMANUS, KNOWN AS THE MARKET STALLS EXCLUSIVE OF VAT IS:</b>	
<b>In figures</b>	R
<b>In Words</b>	

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 bidder.

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 bidder upon the terms and conditions contained in this agreement, the tender data and specifications, the tender documentation and in the Deed of Sale to be concluded that is the subject of this agreement, a draft of which is attached hereto per Annexure #.

Payment of 10% (ten percent) of the agreed purchase price is required and payable within 7 business days of signature of the deed of sale. The successful bidder shall be obliged to furnish the Municipality within 14 days after being requested thereto with a bank or other acceptable guarantee for the payment of the balance of the purchase price by registration of the transfer in the Deeds Office.

Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement and subsequent forfeiture of any monies paid to the Overstrand Municipality.

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:		
<b>For the Owner:</b>	<b>Overstrand Municipality, Magnolia Avenue, Hermanus</b>	
Name of witness:		Date:
Signature of witness:		

<b>12. DECLARATION BY TENDERER</b>
------------------------------------

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

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

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

SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			
WITNESS 1		WITNESS 2	



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

**13. MOST IMPORTANT ASPECTS OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF THE OVERSTRAND MUNICIPALITY****GENERAL PRINCIPLES**

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

**DISPOSAL OR TRANSFER OF IMMOVABLE PROPERTY**

5. The Municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a municipal immovable property needed to provide the minimum level of basic services, save where the transfer is to another organ of state, as provided for in section 14(6) of the MFMA read with Regulation 24 in Chapter 3 of the MATR.
6. A decision by the municipal council that a specific immovable property is not needed to provide the minimum level of basic municipal services, may not be reversed by the Municipality after that immovable property has been sold, transferred or otherwise disposed of in accordance with Section 14(3) of the MFMA.
7. Any transfer of ownership of immovable property must be fair, equitable, transparent, competitive and consistent with the supply chain management policy of the Municipality in accordance with Section 14(5) of the MFMA.

**CONDITIONS OF SALE**

27. All costs pertaining to a transaction shall be borne by the successful bidder/purchaser, e.g. survey, advertisements, valuation, rezoning, relocation or provision of services where necessary, etc. The Municipality may, however, waive its right to claim the costs should it be to its advantage to bear the costs.
28. Should existing services need to be relocated or secured by means of the registration of a servitude in favour of the Municipality as a result of the alienation of the immovable property, all related costs shall be for the account of the successful bidder/purchaser.
31. Save with prior approval, the immovable property alienated may only be used for the purpose for which it was originally sold and purposes permitted by town planning scheme regulations pertaining to such purposes.
32. The agreement of sale shall be finalised and concluded within 120 days from the date of the Municipality's official written request and registration must be affected within 120 days of signature of the agreement by both parties; failure to comply shall cause the sale to lapse.
34. A 10% deposit will be due and payable by the purchaser/successful bidder upon signature of the deed of sale.
35. Interest on the purchase price must be charged by the Municipality should payment or transfer be delayed due to an action or failure on the part of the successful bidder/ purchaser.