

# ADDITIONAL ITEMS

7.2	<b>CORPORATE SERVICES: (PC: CLLR AR FRAZENBURG)</b>
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7.2.1	<b>REPORT IN REGARD TO THE AUCTION 3 COUNCIL ERWEN IN ONDERPAPEGAAIBERG: DISPOSAL OF ERF 4810 (3 SWAWELAAN) ,ERF 4811 (3A SWAWELAAN) AND ERF 4812 (6 TINKTINKIE STREET) STELLENBOSCH</b>
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Collaborator No:  
 IDP KPA Ref No: Good Governance  
 Meeting Date: 15 June 2021

- SUBJECT:REPORT IN REGARD TO THE AUCTION 3 COUNCIL ERWEN IN ONDERPAPEGAAIBERG: DISPOSAL OF ERF 4810 (3 SWAWELAAN) ,ERF 4811 (3A SWAWELAAN) AND ERF 4812 (6 TINKTINKIE STREET) STELLENBOSCH**

- PURPOSE**

To inform Council of the outcome of the auction that took place on 29 June 2021 and to request Council to consider the disposal of three erven, erf 4810,4811 and erf 4812 to the highest bidders at the auction.

- DELEGATED AUTHORITY**

For decision by Municipal Council.

- EXECUTIVE SUMMARY**

Erf 4810 and 4811 (3 and 3A Swawellaan) as well as 6 Tinktinkie street) were used as rental properties for council employees and have been vacant for a long period. Stellenbosch Municipality is the owner of the three erven. Council resolved in October 2020 to have the erven sold by Public Auction.

The municipality obtained a valuation from a valuator for the properties which was lower than the general valuations.

Erf number	Street Address	Extent of property	Municipal Valuation	Valuation report
4810	3 Swawellaan	987m <sup>2</sup>	R1,926,000.00	R1 200 000.00
4811	3A Swawellaan	987m <sup>2</sup>	R1,810,000.00	R1 200 000.00
4812	6 Tinktinkie Street	1056m <sup>2</sup>	R1,849,000.00	R1 900 000.00

The Municipal Manager then decided to set the reserve price for the valuations at the general valuation price. The terms of the auction is attached as **APPENDIX 1**.

At the auction that took place on 29 April 2021 at the property bidders were also allowed to bid on line. The provision that the erven must be sold to different bidders were observed and the highest bids received at the auction was as follows:

Erf number	Street Address	Extent of property	Reserve price	Highest bid
4810	3 Swawellaan	987m <sup>2</sup>	R1,926,000.00	R 2 150 000.00
4811	3A Swawellaan	987m <sup>2</sup>	R1,810,000.00	R 2 160 000.00
4812	6 Tinktinkie Street	1056m <sup>2</sup>	R1,849,000.00	R 2 150 000.00

## 5. RECOMMENDATIONS

- (a) that Council consider the disposal of the 3 erven to the bidders that bid the highest at the auction;
- (b) that the Municipal Manager be authorised to conclude the sale agreements;
- (c) that the municipality will request a certificate of registered titles as the properties have not been registered as separate titles;
- (d) that the new buyer register the property from the mother erf (3721) at their own costs

## 6. DISCUSSION / CONTENT

### 6.1 Background

Council has a lot of rental stock that in the past have been reserved for Council employees. The housing administration, who manage the rental stock, was requested to review the current allocation policy. That policy is under discussion at the LLF before being submitted to council for approval. The principle is that council should, wherever possible dispose of the separate rental properties for employees except where the properties are linked to the presence of an employee on the premises to deliver the municipal services. The maintenance of the properties creates a huge burden on council finances; also agreements lead to properties not being vacated when the employees' contracts are terminated and other people move in with employees and then remain in the properties after the employees move out. The properties are not looked after by the residents. The properties in question were vacated in 2017, 2018 and January 2020 respectively and have not been allocated to other employees since.

### 6.2. DISCUSSION

#### 6.2.1 Location and context

The three properties are located in the town ship in Stellenbosch known as "Onder Papegaaiberg". Council owns several properties in this area that was allocated to employees in the past. As the properties are currently vacant and have been vacant for a long time it has been vandalised quite badly and a lot of complaints are received. There is no employee whose rights are affected as the properties are vacant and disposal can go ahead without waiting for the new staff allocation policy to be approved.

6.2.2 Property description

6.2.2.1 3 Swawelaan (erf 4810) – 987 vierkante meter (appendix 2.1)



6.2.2.2 3A Swawelaan (erf 4811) – 987 vierkante meter (Appendix 2.2)



### 6.2.2.3 6 Tinktinkie Street (erf 4812) – appendix 2.3 – 1056 vierkante meter



### 6.2.3 Ownership

The ownership of all three properties vests with Stellenbosch Municipality by virtue of Title Deed T280/1972. The properties have not yet been registered as separate properties in the deeds office although sub division has taken place and is registered with the authorities.

The municipality will request a certificate of registered titles and the new buyer will have to register the property from the mother erf (3721) at their own costs.

### 6.3 Financial Implications

The disposal is recommended on market related prices set as a reserved price. The municipality will have to pay an auctioneer.

### 6.4 Legal Implications

#### **Municipal Finance management act, no 56 of 2003 (MFMA)**

In terms of section 14(1) of the MFMA *“a municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services.”*

Further, in terms of sub-section (2)

*“ a municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in subsection (1), but only after the municipal council, in a meeting open to the public—*

- (a) *has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and*

- (b) *has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.”*

In terms of subsection (5) *“any transfer of ownership of a capital asset in terms of subsection (2) must be fair, equitable, transparent, competitive and consistent with the supply chain management policy which the municipality must have and maintain in terms of section 111.*

### **Municipal Asset Transfer Regulations(ATR)**

In terms of Regulation 5 of the ATR :-

*“1) A municipality may transfer or dispose of a non-exempted capital asset only after—*

- (a) *the accounting officer has in terms of regulation 6 conducted a public participation process to facilitate the determinations a municipal council must make in terms of section 14(2)(a) and (b) of the Act; and*
- (b) *the municipal council—*
- (i) has made the determinations required by section 14(2)(a) and (b)\* and*
- (ii) has as a consequence of those determinations approved in principle that the capital asset may be transferred or disposed of.*
- (2) *Sub-regulation (1)(a) must be complied with only if the capital asset proposed to be transferred or disposed of is a high value \*capital asset.*

\* i.e. in excess of R50M

### **Property Management Policy**

In terms of par.7.2.1 of the policy, **“unless otherwise provided for in this policy”, the disposal of Viable Immovable property shall be effected-**

- (a) *by means of a process of **public competition**; and*
- (b) ***at market value** except when the public interest or the plight of the poor demands*

*Further, in terms of par.7.2.3, before alienating Immovable property or rights in Immovable property the Municipality shall be satisfied that **alienation is the appropriate methodology and that reasonable economic, environmental and social return cannot be derived whilst ownership of the Immovable property or Property rights is retained by the Municipality.***

*In term of par.9.1 of the Policy, the Municipality may use any of the following methods, depending on the circumstances pertaining the specific Immovable property:*

- a) *The type of a formal tender may vary, depending on the nature of the transaction:*
- i) *Outright tender may be appropriate where the Immovable property ownership is not complex, and the Municipality is seeking obligations to be placed on the successful tenderer which are clear and capable of specification in advance.*
- ii) *Qualified tenders/call for proposals will be appropriate where the Immovable property ownership position is complex or the development proposals for the*

*Immovable property are insufficiently identified or otherwise incapable of detailed specification at the pre-tender stage.*

- iii) Call for proposals on a build-operate transfer (B.O.T) basis will be used if a developer is required to undertake the construction, including the financing, of a facility on Municipal-owned land, and the operation and maintenance thereof. The developer operates the facility over a fixed term during which it is allowed to charge facility users appropriate fees, rentals and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract, to enable the developer to recover its investment and operating and maintenance expenses in the project. The developer transfers the facility to the municipality at the end of the fixed term.*
- b) The nature of the formal tender process is that a legally binding relationship is formed between the parties when the Municipality accepts a tender in writing. It is essential therefore, that every aspect of the disposal is specified in the tender documents. The tender documents could include a contract for sale or lease which could be completed with the tenderer's details, the tender price and be signed by the tenderer. A binding legal agreement is created upon the acceptance in writing of a tender by the Municipality.*
- c) Such a process may, depending on the nature of the transaction, include a two-stage or two- envelope bidding process (proposal call) in terms of which only those bidders that meet the pre-qualification criteria specified in the first stage are entitled to participate in the second stage.*

#### **Public Auction**

- a) Disposal by public auction may be appropriate where there is no obvious potential purchaser and where speed and the best price can be obtained by auction.*
- b) The decision to dispose of Immovable property by way of public auction must be recorded in writing and must include-*
  - (i) the reasons justifying a disposal by public auction;*
  - (ii) the reserve price, if any, for the auction;*
  - (iii) the authority for a staff member to attend the auction and to act on behalf of the Municipality.*
- c) The contract for sale or lease must be ready for exchange at the auction.*
- d) The binding contract will be made on the acceptance of the highest bid providing it has reached the reserve price. Contracts for the sale or lease will immediately be signed and exchanged.*
- e) The terms and conditions of each auction shall be determined on a project-by-project basis, appropriate to the specific characteristics and attributes of the Immovable property, and to the Municipality's strategic objectives.*
- f) Where the services of an auctioneer are utilised, the auctioneer's commission shall be payable by the successful bidder and shall not form part of the financial offer to the Municipality.*

**6.5 Staff Implications**

No additional staff implications.

**6.6 Previous / Relevant Council Resolutions****38<sup>TH</sup> COUNCIL MEETING: 2020-10-28: ITEM 11.2.4****RESOLVED** (majority vote)

- (a) that Erf 4810, Erf 4811 and Erf 4812 Stellenbosch, be identified as land not needed to Provide the minimum of basic services;
- (b) that Council approves the disposal of the 3 erven by public auction at a market related price with a reserve set price determined by a valuation;
- (c) that the Municipal Manager be authorised to conclude the sale agreements after the auction, provided that the sale prices are not lower than the reserve price; and
- (d) that the three erven be disposed of two different buyers.

*The following Councillors requested that their votes of dissent be minuted:*

*Cllrs FT Bangani-Menziwe (Ms); C Moses (Ms); RS Nalumango; N Sinkinya (Ms); P Sitshoti (Ms) and LL Stander.*

**6.7 Risk Implications**

Addressed in the item.

**6.8 Comments from Senior Management**

Comments were only requested from the CFO and Municipal Manager.

**6.8.1 CFO**

Attended the auction in person on behalf of the Municipality and supports the recommendations

**6.8.2 Municipal Manager:**

Supports the recommendations

**ANNEXURES:**       **Appendix 1: Council resolution 28/10/2020**  
                           **Appendix 2: Terms of Reference for the auction**  
                           **Appendix 3: Report from auctioneer**

**FOR FURTHER DETAILS CONTACT:**

<b>NAME</b>	Annalene de Beer
<b>POSITION</b>	Director
<b>DIRECTORATE</b>	Corporate Services
<b>CONTACT NUMBERS</b>	021-8088018
<b>E-MAIL ADDRESS</b>	Annalene.deBeer@stellenbosch.gov.za
<b>REPORT DATE</b>	11 June 2021.

# APPENDIX 1

<b>11.2.4</b>	<b>POSSIBLE DISPOSAL OF ERF 4810 (3 SWAWELAAN), ERF 4811 (3A SWAWELAAN) AND ERF 4812 (6 TINKTINKIE STREET) STELLENBOSCH</b>
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**Collaborator No:**

**IDP KPA Ref No:** Good governance and Compliance

**Meeting Date:** 14 October 2020 and 28 October 2020

**1. SUBJECT: POSSIBLE DISPOSAL OF ERF 4810 (3 SWAWELAAN), ERF 4811 (3A SWAWELAAN) AND ERF 4812 (6 TINKTINKIE STREET) STELLENBOSCH**

**2. PURPOSE**

To consider the disposal of three erven in Onder Papegaaiberg, erf 4810, erf 4811 and erf 4812 through public auction.

**3. DELEGATED AUTHORITY**

For decision by Municipal Council.

**4. EXECUTIVE SUMMARY**

Erf 4810 and erf 4811 (3 and 3A Swawelaan), as well as 6 Tinktinkie street were used as rental properties for council employees and have been vacant for a long period. When the employment contracts of the previous lessees ended, it was resolved not to lease the properties again to employees before a new council policy on allocation of rental housing to employees has been approved.

Stellenbosch Municipality is the owner of the three erven. Council is in the process of consultation on the new housing allocation policy for employees, and one of the principles of the new policy is to do away with rental properties for employees, except where an employee on the property and in the rental unit is linked to the work the employee is responsible for on a specific site. The vacancy of the three properties has led to vandalism and it is expected that each of the properties will cost at least R200 000 to upgrade to a liveable condition.

It would be a better option to sell the properties as is than to undertake the repair work and to take the costs for the repairs and maintenance into consideration when selling the properties than to go through a tender process for the repair and maintenance, appointment of contractors and then after the repairs are complete, to guard the houses until it can be sold. It is recommended that a minimum price be set at the auction based on an evaluation of market value of the properties and to dispose of the three erven through a public auction process. The properties are unlikely to be worth more than R10 million each. The current general valuation is as follows:

Erf 4810 - R1, 926,000.00 (One million nine hundred and twenty-six thousand rand)

Erf 4811 - R1,810,000.00 (One million eight hundred and ten thousand rand)

Erf 4812 – R1,849,000.00 (One million eight hundred and forty-nine thousand rand)

**38<sup>TH</sup> COUNCIL MEETING: 2020-10-28: ITEM 11.2.4****RESOLVED** (majority vote)

- (a) that Erf 4810, Erf 4811 and Erf 4812 Stellenbosch, be identified as land not needed to Provide the minimum of basic services;
- (b) that Council approves the disposal of the 3 erven by public auction at a market related price with a reserve set price determined by a valuation;
- (c) that the Municipal Manager be authorised to conclude the sale agreements after the auction, provided that the sale prices are not lower than the reserve price; and
- (d) that the three erven be disposed of to different buyers.

*The following Councillors requested that their votes of dissent be minuted:*

*Clrs FT Bangani-Menziwe (Ms); C Moses (Ms); RS Nalumango; N Sinkinya (Ms); P Sitshoti (Ms) and LL Stander.*

**FOR FURTHER DETAILS CONTACT:**

<b>NAME</b>	<b>Annalene de Beer</b>
<b>POSITION</b>	<b>Director</b>
<b>DIRECTORATE</b>	<b>Corporate Services</b>
<b>CONTACT NUMBERS</b>	<b>021-8088018</b>
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<b>REPORT DATE</b>	<b>13-10-2020</b>

# APPENDIX 2

MAY 2021



**TERMS AND CONDITIONS OF SALE OF IMMOVABLE  
PROPERTY BY PUBLIC AUCTION  
(INCORPORATING A SURETYSHIP)**

**Place of Auction: SIMULCAST    Date of Auction: 29 MAY 2021    Time of Auction: 9:00am**

**RILEY AUCTIONEERS (PTY) LTD  
3 BERKSWELL ROAD  
GRESSWOLD, GAUTENG  
(the "Auctioneer")**

Mandated on behalf of and duly instructed by

**STELLENBOSCH MUNICIPALITY  
T280/1972**

"Hereinafter referred to as the "Buyer"

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intends to and hereby offers for sale by public auction to prospective Purchasers the following property more fully described as:

**ERF 4811 STELLENBOSCH, WESTERN CAPE**

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("the Property")

measuring approximately: (987 sqm) in extent

Situated at:

**ONDER PAPEGAAIBERG, STELLENBOSCH**

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## INTRODUCTION

The Auctioneer undertakes in terms of what is herein set out and its mandate and authority granted to it by the Seller, to sell the aforementioned property by public auction on behalf of the Seller, to the Purchaser on the following terms and conditions and according to the published Rules of Auction:

### 1. AUCTION PROCEDURE:

- 2.1 The terms and conditions of this agreement incorporate the Rules of Auction which is available on the website at [www.rileyauctions.co.za](http://www.rileyauctions.co.za) and are available from the Auctioneer's offices on 011 440 5663. The Rules will also be available at the auction.
- 1.2 The Auctioneer shall have the sole and exclusive control and the right to regulate any bidding as it may arise, which rights include the authority to correct any error made by him, whether by commission or omission.
- 1.3 Should the Auctioneer have any reason to believe that a Purchaser is not able to pay the deposit or the purchase price, he is entitled to refuse an Offer from such a Purchaser, or accept it provisionally, until he is satisfied that the Purchaser is able to pay the aforesaid amount. Should an offer be rejected under these circumstances, the Sale Object can immediately be put up for sale again.
- 1.4 The highest bidder, whose bid is accepted by the Auctioneer upon the fall of the hammer, shall subject to acceptance of his bid by the Seller, become the Purchaser. Should any dispute arise, the Auctioneer's decision and determination concerning the same shall be final and binding upon the parties.
- 1.5 The Auctioneer may, if so mandated by the Seller, forthwith at any time after the fall of the hammer, specifically and unequivocally accept on behalf of the Seller the highest bid from the highest bidder and so cause a firm agreement to come into being between the Seller and the Purchaser, on the basis that the property has been sold to the Purchaser on the terms and conditions contained herein.
- 1.6 The Auctioneer on behalf of the Seller, the Seller or either's representative may bid at the auction on behalf of the Seller up to the reserve price, if any.

- 2.1 The parties undertake as soon as possible to sign and complete all documents required to give effect hereto as required by the Auctioneer and / or the transferring attorney ("the conveyancer") appointed by the Seller.

## 2. PURCHASE PRICE:

- 2.1 The purchase price of the property (being the highest bid at the auction or subsequent improved offer – see paragraph 4 below) is R\_\_\_\_\_

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**excluding value added tax (if applicable) and is payable as set out hereunder:**

- 2.2 A deposit equal to **10% (ten percent)** of the purchase price is payable by the Purchaser to the Auctioneer on signature hereof by the Purchaser, which amount will be held by the Auctioneer (in a non-interest bearing account) pending acceptance of the bid by the Seller. Thereafter, the Auctioneer shall pay over to the Seller or the Seller's conveyancer (at the election of the Seller or the Auctioneer) the said deposit amount (hereinafter referred to as "the trust amount"), after deducting agreed costs, disbursements and expenses.
- 2.3 The balance of the purchase price will be paid over by the Purchaser to the Seller or the Seller's conveyancer (again at the election of the Seller or the Auctioneer) within **30 (thirty)** calendar days of acceptance of this agreement by the Seller, or shall be secured by a bank guarantee, or guarantees, as required by and on terms acceptable to the Seller and the conveyancer within the same **30 (thirty)** calendar days aforesaid from date of acceptance of this agreement, which guarantees shall be payable against registration of transfer of the property into the name of the Purchaser.
- 2.4 The Purchaser hereby authorises the Auctioneer, upon written acceptance of this agreement by the Seller, to pay over the trust amount to either the Seller or the Seller's conveyancer (as nominated by the Seller or its Agent) and the conveyancer to utilise such portion of the trust amount as may be required for the purpose of obtaining clearance figures. The Seller and the Purchaser hereby irrevocably instruct and authorise the recipient to invest the trust amount in an interest bearing trust account, such as contemplated in terms of Section 86(4) of the Legal Practise Act No 28 of 2014 where the interest accrues for the benefit of the Seller.

## 3. SALE OF A PROPERTY AS PART OF A GOING CONCERN

- 3.1 The Seller and the Purchaser hereby agree that –
- 3.1.1 should the property be an enterprise or part of an enterprise which is capable of separate operation as defined in Section 1 of the Value Added Tax Act, Act 89 of 1991 (hereinafter referred to as the "VAT Act"); and
- 3.1.2 such enterprise is being disposed of (in terms of this agreement and by the prior advises of the Auctioneer) as a "going concern" within the meaning of Section 11(1)(e)(i) of the VAT Act; and

- 3.1.3 such enterprise is, on the signature date, and will, on the transfer date, be “an income earning activity” within the meaning of Section 11(1)(e)(I) (aa) of the VAT Act; and
- 3.1.4 the property together with all assets necessary for the carrying on of the enterprise will be transferred to the Purchaser on the transfer date, and the purchase price referred to in 2.1 shall be inclusive of value-added tax (hereinafter referred to as "VAT") as defined in the VAT Act, at the rate of zero percent. Notwithstanding the a foregoing, should VAT, for whatever reason, be levied upon this transaction (or any portion hereof) at a rate higher than zero percent, such VAT shall be paid by the Purchaser against delivery to it by the Seller of an original tax invoice in respect thereof and shall be calculated on the basis that the purchase price is exclusive of VAT.

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- 3.2 The Seller warrants to the Purchaser that, as at the time of supply of the enterprise to the Purchaser (as defined in section 9(1) of the VAT Act) it shall be registered as a VAT vendor, as defined in the VAT Act.
- 3.3 The Purchaser warrants to the Seller that, as at the time of supply of the enterprise to the Purchaser (as defined in section 9(1) of the VAT Act) it shall be registered as a VAT vendor, as defined in the VAT Act.

#### 4. ACCEPTANCE:

- 4.1 This document constitutes an Offer to Purchase by the Purchaser, which is subject to written acceptance by the Seller within **60 (DAYS) calendar days** business days (hereinafter referred to as “the offer period”) from date hereof and shall remain irrevocable and open for acceptance by the Seller at any time during the offer period. For the sake of clarity, the Purchaser’s offer is open for acceptance until 17h00 on the 60<sup>TH</sup> (**SIXTIETH**) business day after the signature hereof by the Purchaser, the counting of the 60<sup>TH</sup> (**SIXTIETH**) business days to commence on the 1<sup>st</sup> (**first**) business day after date of signature hereof and shall endure until 17h00 on the 60<sup>TH</sup> (**SIXTIETH**) business day thereafter.
- 4.2 During the offer period, the Seller or the Auctioneer may continue to market the property in the normal course of business as they may deem fit and in consequence of same, they may take in further and better written Offers to Purchase from prospective Purchasers, to be submitted for the Seller’s consideration.
- 4.3 The Auctioneer shall advise the Purchaser in writing (which may either be by telefax or by electronic mail) of any higher written offer (hereinafter referred to as “a competing offer”) which is received from any third party during the offer period. The Purchaser shall, for a period of 24 (twenty-four) hours (hereinafter referred to as “the option period”) after transmission of the written advice of the competing offer by the Auctioneer as aforesaid, have the option to increase the purchase price offered by him in terms of this agreement to an amount equal to the purchase price of the competing offer, but subject otherwise to all other terms and conditions of this agreement.
- 4.4 If the Purchaser wishes to exercise the option to match the competing offer during the option period, the Purchaser must do so in writing in clear and unambiguous terms, which notice must be delivered to the Auctioneer before the expiry of the 24 (twenty-four) hour option period. This written notice must either be hand delivered to

the business premises of the Auctioneer and a receipt signed in respect thereof, or may be telefaxed to the Auctioneer at the indicated telefax numbers or email, provided that in such an instance the Purchaser must telephonically confirm receipt of the said telefax or email at the business premises of the Auctioneer, as the onus rests upon the Purchaser to confirm receipt of the said notice by the Auctioneer.

- 4.5 If the Purchaser fails to exercise the option during the option period, the Seller shall be entitled, but not obliged, to accept the competing offer. Should the Seller however elect not to accept the competing offer, the offer contained in this agreement shall remain irrevocable and of full force and effect and open for acceptance by the Seller until the lapse of the offer period as set-out above.

- 4.6 Should the Purchaser exercise the option within the option period and match the competing offer, the purchase price in terms of this agreement shall be the increased amount. The Seller shall be entitled until the lapse of the offer period to accept this agreement at any increased purchase price. This option process is a continuation of the original process and any sale thus concluded shall be a sale by auction.
- 4.7 The date of sale of the property shall, for purposes of this agreement, be deemed to be the date of written acceptance of this offer, or the increased offer, by the Seller. The Auctioneer will at the sole discretion of the Auctioneer thereafter notify the Purchaser in writing of such acceptance by pre-paid registered post, by hand delivery, by e-mail transmission or facsimile transmission.
- 4.8 Should the Seller not accept the Purchaser's offer; the Auctioneer shall immediately repay to the Purchaser any deposit plus buyer's commission and VAT thereon paid by him (including any amount paid in terms of clause 2.3).
- 4.9 The Seller reserves the right to decline the Purchaser's offer. The Seller shall have no obligation to accept the offer and shall not be obliged to furnish a reason for the rejecting of an offer. If the Seller rejects the Purchaser's offer, the Seller shall be entitled to accept any other offer that may be received in respect of the property.
- 4.10 In the event of the Seller requiring the consent of the Master of the High Court to effect transfer, then transfer of the property will be subject to such consent being obtained in writing as soon as possible and in the normal course of the conveyancing process. If such consent is refused or not obtained for whatever reason within a reasonable period (solely within the discretion of the Seller), then this offer will be voidable at the instance of the Seller and neither party shall have a claim against the other arising here from and both will reasonably be restored to their prior position.
- 4.11 Insofar as the Purchaser is a Company or Close Corporation and such Company or Close Corporation is not yet formed and the person signing as Purchaser acts or purports to act as agent or trustee for such Company or Close Corporation to be formed: -
- 4.11.1 such person undertakes in his/her personal capacity that the company or close corporation for which he/she is acting as agent or trustee will be formed within 30 (thirty) days of conclusion of this contract and will, within 14 (fourteen) days of being incorporated or formed, adopt or ratify this contract without modification;
- 4.11.2 if the said company or close corporation is not incorporated or formed within the period prescribed in 4.11.1, or having been incorporated or formed does not adopt or ratify this contract within the period of 14 (fourteen) days, then such person shall, in his personal capacity, be deemed to be the Purchaser in terms of this contract;

- 4.11.3 if the said company or close corporation is incorporated or formed and does adopt or ratify this agreement as contemplated in 4.11.1 and 4.11.2, then such person by his/her/their signature binds himself/herself/themselves in favour of the Seller as surety for and co-principle debtor in solidum with such company or close corporation, under renunciation of the benefits of division, excussion and cession of action, for the due performance of all the obligations of the said company or close corporation in terms of or arising out of these Conditions of Sale.
- 4.11.4 If the Purchaser purports to be a legal entity which it subsequently transpires is not properly constituted or incorporated, the natural person signing this document shall be deemed to be the Purchaser and shall assume all the liabilities and obligations of the Offeror/Purchaser in terms hereof.

#### 5. AUCTIONEER'S COMMISSION AND ENTITLEMENT:

- 5.1 The SELLER shall in addition to the purchase price of the property, pay the Auctioneer's commission at the rate **THREE PERCENT (3%) SELLERS COMMISSION** plus VAT, calculated on the purchase price of the Property.
- 5.2 It is specifically agreed that the commission is earned and will be payable to the Auctioneer. The 3% commission can be set off against the purchase price, before it is paid over to the Seller.
- 5.3 The parties agree that payment of any portion of the purchase price and the commission (even if made in separate payments) is deemed to be one indivisible transaction and payment of all amounts due under this agreement is required in order for the Purchaser to discharge its payment obligations arising from this agreement.
- 5.4 The Seller and the Purchaser acknowledge that the Auctioneer, is the sole effective cause of the sale of the property to the Purchaser.

#### 6. RISK, CONTROL & INSURANCE:

- 6.1 The sole risk and control and benefit in and to the property shall, unless otherwise agreed in writing and signed by both parties, pass to the Purchaser on **receipt of Guarantees** and from that date, the Purchaser shall be liable for all imposts levied on the property, inclusive of and without limiting the generality hereof, all municipal rates and taxes, licences and other official and/or municipal and consumable charges.
- 6.2 Neither the Seller nor the Auctioneer shall be liable to the Purchaser for any damage or loss suffered, or inconvenience experienced by the Purchaser caused by any pests, insects or vermin, irrespective of when the damage, loss or inconvenience were caused.

- 6.3 From the date upon which the sole risk vests in the Purchaser, the Purchaser shall at his own expense insure the property and all improvements thereon against all general risks, losses or damages from any cause whatsoever including public liability.
- 6.4 The Purchaser shall inform the insurer and/or the underwriter of the Seller's insurable interest in and to the property and shall insist that the Seller's interest is recorded in the insurance policy or schedule. The Seller's interest shall persist until date of registration of transfer in the Deeds Office of the property into the Purchaser's name.
- 6.5 Should an event occur which gives rise to a claim covered by the terms of the insurance policy, then the Purchaser shall immediately commence the correct procedure to lodge a claim against the insurer arising from this policy.
- 6.6 The parties acknowledge that the happening of an insurable event shall not in any manner detract from the validity of this agreement, nor shall it be a cause for the delay of the transfer of the property or frustrate full consummation of this agreement in any manner.
- 6.7 The Purchaser shall remain fully liable to indemnify the Seller against any and all losses in and upon the property, notwithstanding the above requirements and notwithstanding whether or not the Purchaser complied with same, it being recorded that the above does not detract from or negate the Purchaser's liability towards the Seller in any form or manner in respect of any losses or damages suffered by the Seller arising herefrom, the intention being to always restore the Seller to its pre-event condition, either by the insurer through the policy or the Purchaser itself, or a combination of them.

## 7. OCCUPATION:

- 7.1 The date of occupation for purposes of this agreement, **is on transfer of the property PENDING ALL REQUIRED CERTIFICATES.**
- 7.2 This date therefore does not refer to the actual date of the Purchaser moving into the property or receiving the keys thereto. The Seller cannot give any warranty or guarantee that the Purchaser will obtain vacant occupation of the property on that date, and the Purchaser shall have no claim of whatsoever nature against the Seller should vacant occupation not be obtained on the said date or at all.
- 7.3 From the date of occupation of the property and pending transfer, the Purchaser shall not sell, let or in any other manner dispose of, or alienate or encumber (whether temporarily or otherwise) the property or cede and assign any of its rights or obligations relating to the occupation thereof, except with the express written consent of the Seller.

- 7.4 **The Purchaser shall pay occupational interest on or before the first day of each and every month directly to the conveyancer, at the rate of 12% (twelve percent) per annum (pro-rated monthly) calculated on the reduced balance of the purchase price remaining after the deposit and any additional amounts paid by the Purchaser towards the purchase price have been deducted, the intention of the parties being that the larger the deposit amount paid by the Purchaser towards the purchase price, the less occupational interest will be paid by the Purchaser. Should the Purchaser so elect, it may deposit the full purchase price with the conveyancer, in which event there shall be no occupational interest payable. Occupational interest commences from the date of occupation up to and including the date of registration of transfer, paid monthly in advance without any deduction or set-off. If the purchaser deposits the balance of the purchase price with the conveyancer, the conveyancer shall invest the relevant amount with a registered bank pending transfer, the interest thereon to accrue to the seller.**
- 7.5 The Seller will within reason assist the Purchaser at the Purchaser's expense, as may be reasonably necessary and/or required by law, to assist the Purchaser in obtaining vacant occupation of the property, but without the Seller obtaining any liability to pay for or effect any eviction itself, or obtaining any liability in respect of an unsuccessful eviction, or in respect of any damages suffered whatsoever by the Purchaser as a result hereof.
- 7.6 If the property is leased, this agreement is entered into subject to the rights of the tenants under any existing lease agreement or law, as well as under the Rental Housing Act if applicable and from the date of occupation the Purchaser accepts all pre-existing obligations and liabilities arising from any lease agreement with any tenants, notwithstanding any omission by either the Seller or Auctioneer to point out such obligations or liabilities.

## **8. CONDITION OF PROPERTY:**

- 8.1 The Seller and the Auctioneer point out to the Purchaser that the immovable property sold herewith contains improvements and structures which could possibly have been constructed some time ago and will accordingly not have the same characteristics as a newly constructed building.
- 8.2 The Purchaser therefore acknowledges and accepts that the condition of the improvements will not be equivalent to that of a newly constructed building and that due to the effluxion of time or as a result of wear and tear, certain latent (concealed and not known to the Seller or Auctioneer), and also patent (obvious and apparent upon inspection) defects will have developed in the property or its accessories, fixtures and fittings, particularly with regards to the condition of the roof, roof trusses, ceiling, electrical-, plumbing- and sewerage reticulations, walls, glazing, windows and skylight fittings, floors, fixtures and fittings, gates, pool or pond motors, garden installations and similar items.
- 8.3 The Purchaser agrees to have particular regard to potential problems including but not limited to roof leaks, rising damp, patently broken fixtures and fittings and appurtenances, possible swimming pool and pond leaks, possible broken electrical- and water installations such as swimming pool motors and pumps, irrigation systems, pond reticulations, electric gate motors, electrical garage doors, alarm systems, defective electric fencing and alarm systems and the like.

- 8.4 By its signature hereto, the Purchaser therefore accepts the condition of the property as it is and to the extent as it now lies and furthermore acknowledges that neither the Seller nor the Auctioneer hold themselves out to be experts in immovable property and that their failure to specifically point out each and every defect in the property cannot be ascribed to any misrepresentation on their part.
- 8.5 Neither the Seller nor the Auctioneer are therefore liable to the Purchaser for any defects, shortcomings, missing keys or movables, lost fixtures and fittings or any flaw otherwise in and to the property, nor for any damages suffered by the Purchaser by reason of such defects.
- 8.6 The Purchaser agrees to inspect the property to its satisfaction and accepts that neither the Seller nor the Auctioneer provide any guarantees or warranties, or make any representations concerning the nature of the property or regarding the condition or quality of the property or any of the improvements thereon, nor regarding any of the accessories thereto or in regard to any of the zoning or other town planning matters.
- 8.7 The property is therefore sold in the condition as it lies, which include all the conditions and the servitudes currently registered against the property and evidenced in the existing title deed thereto. Neither the Seller nor the Auctioneer are therefore accountable or liable for any deficiency in the extent of the property and the Purchaser agrees that it has fully acquainted itself with the situation, nature, condition, beacons, extent and locality of the property as well as all conditions of title and servitudes prior to entering into this agreement and accepts that neither the Seller nor the Auctioneer give any warranties in respect thereof and will therefore not accept any liability in respect thereof.
- 8.8 The Purchaser acknowledges that the Seller and the Auctioneer provided it with the opportunity to fully acquaint itself with the aforementioned clauses or the condition and status of the property, and that neither of them accepts any liability to the Purchaser in respect of same.
- 8.9 The Purchaser therefore willingly enters into this transaction, being fully aware of the condition of the property and improvements and without having been induced or influenced to enter into same by any warranties or representations or statements made or information given by either the Seller or the Auctioneer prior to the signature hereof, other than as set out in this agreement.

#### **9. TRANSFER, VAT AND COSTS THEREOF:**

- 9.1 The Purchaser and the Seller hereby undertake to sign all documents and fulfil all obligations as contained herein in order to give effect to this agreement and the completion thereof both timeously and in full on the basis that time is of the essence to effect registration of transfer of the property into the Purchaser's name. Transfer of the property will be effected by the conveyancer within a reasonable time after the Purchaser has complied with the terms and conditions of this agreement and paid to the conveyancer Transfer Duty or Value-Added Tax ("VAT") whichever is applicable, costs of transfer, transfer fees, disbursements and any other amounts due hereunder or required in the transfer process.

- 9.2 If the South African Revenue Services regard this sale as a VAT transaction, then the Purchaser shall, in addition to the purchase price, pay the Seller the amount of VAT calculated at the standard rate, it being specifically recorded that the purchase price excludes VAT. Such payment shall be made or secured at the time the balance of the purchase price is paid or secured in terms of 2.2 and 2.3 above.
- 9.3 The Purchaser and/or the individuals signing this document and acting in a representative capacity, warrant that their tax affairs with the South African Revenue Services (hereinafter referred to as "SARS") are in order and up to date or, in the event of this not being the case, that agreement has been reached and that the necessary arrangements have been made with SARS in respect thereof.
- 9.4 The Seller shall, after registration of transfer of the Property, furnish notice to the Local Authority and/or Eskom terminating any consumer agreements in respect of the supply of water, electricity or other services to the Property. The Seller shall under no circumstances be liable for any loss or damage whatsoever arising as a result of the Seller terminating any consumer supply agreements after the registration of transfer; and
- 9.5 The Purchaser shall forthwith after date of transfer; substitute himself with respect to the deposits and/or guarantees in respect of the Property paid to the local Authority and/or Eskom by the Seller, if any. The Purchaser shall notify the Seller that such substitution has been effected and the Seller shall be responsible for obtaining the return of any guarantees or refunds of any deposits from the local authority and/or Eskom.

#### **10. FINANCIAL INTELLIGENCE CENTRE ACT ("FICA")**

- 10.1 The Seller and the Purchaser acknowledge that the Auctioneer and conveyancer are designated "accountable institutions" in terms of FICA.
- 10.2 The Seller and the Purchaser hereby agree to comply with all the FICA requirements of the Auctioneer and the conveyancer and to supply the Auctioneer and the conveyancer with all their respective FICA requirements within three days of demand made, therefore.
- 10.3 The Seller and the Purchaser hereby acknowledge that the conveyancer is not permitted in terms of FICA to invest and administer any deposits or any other monies paid in terms of this agreement, unless the Seller and the Purchaser have provided the conveyancer with the documentation and information the conveyancer requires in terms of FICA.
- 10.4 The Seller and the Purchaser hereby agree that neither the Auctioneer nor the conveyancer shall be liable for any loss or damage suffered by either of them, as a result of either Seller or the Purchaser failing to comply with the provisions of this clause 10.

**11. INTEREST ENTITLEMENT:**

In the event that any payment or obligation is not paid in full on the due date, interest will be payable by the defaulting party thereon and calculated at the prime overdraft rate, as determined by the main bankers of the Auctioneer, plus 2 % per annum calculated from the date of default until the date that the default is remedied, both days being included.

**12. COMPANY TO BE FORMED:**

12.1 In the event of the Purchaser signing this offer in a capacity as agent for a Company to be formed, and the Purchaser fails within 20 (twenty) days from date of acceptance of this offer, to register the Company having as one of its objects the ratification and adoption of this agreement, or such Company, if formed fails to adopt or ratify this agreement within 7 (seven) days after the date of its incorporation, then, and in such event, the Purchaser shall be deemed, as from the date of acceptance hereof, to have entered into this agreement in his personal capacity, and to have acquired and accepted all the rights and obligations of the Purchaser under this agreement, subject to the condition that all parties may in writing agree otherwise.

12.2 **In the event of such Company being registered and duly adopting or ratifying this agreement, the said Purchaser, the signatory to this agreement or of Schedule 1 hereto, shall be deemed to be bound to the Seller as surety and co-principal debtor *in solidum* with such Company for the due performance by it as the replacement Purchaser of all the terms, conditions and other obligations arising from this agreement, subject to the terms and conditions as set out in Schedule 1 hereto. (See schedule 1).**

**13. ASSOCIATIONS OR TRUSTS:**

If any person purports to represent another person, association or a trust and sign this agreement in that capacity, then the individual so signing shall be **personally liable** to procure the signatures of the other relevant individuals mandated to sign documents and agreements of this nature, in terms of that association's constitution or the trust's Deed of Trust. If the other designated persons either do not exist at the time of signing this document or if their signatures are not procured by the individual signing this agreement within two weeks from date of signature hereof, then and in that event, such person signing shall be **personally liable** and bound by the terms hereof and shall in all respects be considered to be the Purchaser in terms of this agreement.

**14. AGENT / NOMINEE AND PROHIBITION ON FURTHER SALE**

14.1 Where the Purchaser is acting as an agent or nominee for a principal, the Purchaser shall be entitled, by notice in writing to that effect addressed to the Seller or Auctioneer, to nominate its principal in its place as Purchaser, upon the following terms and conditions:

14.1.1 notice of such nomination shall be handed to the Seller or the Auctioneer by not later than close of business on the day of acceptance of this offer by the Seller, accompanied by a copy of the agreement, *inter alia*, so appointing the Purchaser as agent or nominee;

- 14.1.2 the notice shall set out the name and address of the nominee so nominated as Purchaser;
- 14.1.3 the notice shall be accompanied by the principal's written acknowledgement:
- 14.1.3.1 that it is fully aware of all the terms and conditions of this agreement as well as the rules of auction as fully set out in such written acknowledgement; and
  - 14.1.3.2 that it is bound by the provisions of this agreement and the rules of auction as the Purchaser;
- 14.2 Should the Purchaser nominate a nominee in terms of this clause, then:
- 14.2.1 all reference to the Purchaser in this agreement shall be deemed to be a reference to its nominee; and
- 14.2.2 the Purchaser, by its signature hereto, hereby interposes and binds itself jointly and severally as **surety** and **co-principal debtor** in solidum to the Seller and the Auctioneer for all the obligations of the nominee in terms of this agreement, including damages and losses and consequential damages as may arise.
- 14.3 Should the Purchaser fail to nominate a principal by close of business on the date of acceptance by the Seller, then it shall be bound to perform all his obligations as Purchaser in terms of this agreement.
- 14.4 Other than set out above in respect of nominee agreements, the Purchaser shall not without the express written consent of the Seller on-sell the property, or alienate, cede and/or assign any of its rights and responsibilities under this agreement to any third party prior to registration of transfer of the property into its name. Any transaction entered by the Purchaser in contradiction of this prohibition may be ignored as *pro non scripto* by the Seller.

## 15. CANCELLATION:

- 15.1 Should the Purchaser fail to comply with any of the terms or conditions of this agreement within 7 (seven) days of dispatch of written demand, the Seller and/or the Auctioneer on behalf of the Seller (acting on the written instructions of the Seller) shall, on such breach, be entitled without further written notice to either:
- 15.1.1 cancel this agreement, take occupation of the property and have the property resold by auction or private treaty, in its sole discretion. The Purchaser shall then be liable for all costs of such re-sale, any deficiency in price which results therefrom and other damages and losses including consequential damages as may arise. All payments made by the Purchaser to the Seller and/or the Auctioneer pursuant to this agreement shall be forfeited by the Purchaser in favour of the Auctioneer and the Seller respectively, or alternatively be regarded as liquidated, pre-estimated damages and/or losses suffered by them; or

15.1.2 hold the Purchaser bound by this agreement and to claim forthwith payment of the entire purchase price and other benefits and entitlements and any other losses and damages caused as a result of such breach; and in either instance

15.1.3 hold the Purchaser liable in terms of the agreement to pay all commissions, VAT and charges and expenses as incurred and contemplated in this agreement.

15.2 The Purchaser will be liable for all legal costs incurred by the Seller and/or the Auctioneer arising out of a breach of this agreement, on the attorney and own client scale of costs, including the collection costs relating to the payment of the purchase price and/or commission, as the case may be.

#### **16. REPAIRS AND IMPROVEMENTS AND VACATION ON CANCELLATION:**

16.1 The Purchaser will not be entitled to effect any alterations to the property without the prior written consent of the Seller. The Seller shall not be obliged to compensate the Purchaser for any alterations or improvements effected to the property, whether same were authorised or not, in the event of this transaction being cancelled.

16.2 The Purchaser shall not have a builder's lien, improvement lien or creditor's lien over the property or any portion thereof, regardless of whether any building works were effected with the Seller's consent or not.

16.3 The Purchaser shall be liable to the Seller upon cancellation for any damages suffered by the Seller as a result of any unauthorised alterations, demolition or improvements effected by the Purchaser to the immovable property.

16.4 The Purchaser and/or any persons occupying the property through or under the authority of the Purchaser shall be obliged to immediately vacate the property upon cancellation of this agreement for any reason whatsoever, it being agreed that no tenancy shall be created by any occupation of the Purchaser or any one through him, prior to registration of transfer. Should the Seller take any steps to procure vacant possession of the property in such an instance, the Purchaser shall be liable for all costs, fees and expenses incurred by the Seller pertaining to same.

#### **17. ELECTRICAL / GAS / PLUMBING COMPLIANCE CERTIFICATES:**

17.1 The **PURCHASER** shall be liable to provide Certificates of Compliance in regard to any of the electrical or plumbing installations in and to the property in terms of any relevant legislation, regulations or ordinances, including but not limited to the Electrical Installation Regulations of the Occupational Health and Safety Act No 85 of 1993, the Pressure Equipment Regulations of 2009, or the Water By-Law of the City of Cape Town 2010. At Purchasers risk and cost."

17.2 The Purchaser shall be obliged to obtain such certificate/s at its own cost including the cost of any work required to any installation before such Certificate of Compliance can be issued.

17.3 Should an Entomologist's Certificate be required by any person or institution, the Purchaser shall, at its own expense obtain such certificate, and neither the Seller nor the Auctioneer shall be liable for any costs relating to such certificate being obtained.

**18. FIXTURES AND FITTINGS:**

- 18.1 The property is sold together with any buildings or other improvements thereon and to the extent as it lies. Upon the same terms and conditions ventilated in clause 7 above (which terms are incorporated herein by reference, but appropriately adapted to what is pertinently described herein), neither the Seller nor the Auctioneer assume any liability in respect of the condition, usability, serviceability or possible state of disrepair of any of the buildings or improvements thereon, nor in respect of any of the fixtures and fittings therein, including stoves and whatever assets are sold in terms of this agreement, all of it in the condition as it currently lies.
- 18.2 Neither the Seller nor the Auctioneer will therefore be liable for any claims of whatsoever nature made by the Purchaser should the aforesaid improvements or fixtures and fittings either become unaccounted for, or are not be in the same condition upon the date of occupation as it might have been on the date of signature hereof.
- 18.3 The parties record that **not all assets upon the property are included in the sale agreement** and that all cranes, gantries, cold rooms, spray booths, compressors, generators and production line equipment are specifically excluded from the sale and remain the property of the Seller, unless otherwise agreed upon in writing.

**19. MAGISTRATE'S COURT JURISDICTION:**

For the purposes of all or any proceedings arising out of this agreement, the parties hereby consent to the jurisdiction of the Magistrate's Court and the Regional Court, otherwise having jurisdiction under Section 28 of the Magistrates' Court Act 32 of 1944, as amended; notwithstanding that the proceedings would otherwise be beyond the monetary jurisdiction of the Magistrate's or Regional Court. This clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said Courts, pursuant to the Magistrates' Court Act of 1944, as amended. Notwithstanding the foregoing, this shall not preclude either party from approaching the High Court of South Africa for any relief sought.

**20. JOINT AND SEVERAL LIABILITY:**

Should there be more than one Purchaser, all Purchasers shall all be individually, jointly and severally liable for all the obligations in terms hereof, as well as for the payment of all obligations and benefits assumed hereunder and for complying with all the terms and conditions of this agreement of whatever nature.

**21. COSTS**

In the event of a breach of this agreement, the defaulting party shall be liable for all legal costs incurred by the Seller or Auctioneer in enforcing any of their rights arising herefrom, on an attorney and client scale, including collection commission.

**22. WHOLE AGREEMENT (NO AMENDMENT):**

- 22.1 This agreement constitutes the whole agreement between the parties relating to the subject matter hereof.
- 22.2 No amendment of this agreement or any provision or term of the agreement, or any other document issued or executed pursuant to or in terms of this agreement and no settlement of any disputes arising under this agreement and no extension of time, waiver or relaxation or suspension or consensual cancellation of any of the provisions or terms of this agreement or of any agreement or other document issued pursuant to or in terms of this agreement shall be binding unless recorded in a written document signed by the relevant parties. Any such extension, waiver, relaxation, suspension or the like which is so provided or made will be strictly construed as relating strictly to the matter in respect whereof it was made or provided.
- 22.3 No extension of time, or waiver, or relaxation of any of the provisions or terms of this agreement or any agreement or other document issued or executed pursuant to, or in terms of this agreement, will operate as an estoppel against the Seller and/or the Auctioneer in respect of any rights under this agreement, nor shall it operate so as to preclude the Seller and/or the Auctioneer thereafter from exercising any rights strictly in accordance with this agreement.
- 22.4 This agreement may be executed by the parties in one or more counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same agreement. This agreement may also be executed by any one of the parties signing an original and telefaxing the original for signature to another party. Signature of a faxed copy shall be deemed to be the signature of an original.

**23. INTERPRETATION:**

- 23.1 The headings of the clauses in this agreement are for the purpose of convenience and reference only, and shall not be used in the interpretation of, nor modification or amplification of the terms of this agreement or any clause thereof. Unless the contrary intention appears, words importing: -
  - 23.1.1 any one gender includes the other gender;
  - 23.1.2 singular include the plural and vice versa; and
  - 23.1.3 any reference to persons includes natural persons, corporate or unincorporated entities and the state and for purposes of this agreement, also refers to trusts as represented by their trustees.
- 23.2 In the event that the Purchaser is a consumer, this agreement will be read subject to the Consumer Protection Act, 68 or 2008 and should any clause or time period referred to in the clauses be in conflict with any of the rights of the Purchaser in terms of the Act, then such a clause or time period shall be substituted with any rights afforded by the Act to such Purchaser.

## 24. DOMICILIUM ADDRESS FOR ALL NOTICES

- 24.1 The Purchaser hereby chooses as service address (*domicilium citandi et executandi*) for all purposes under this agreement, whether in respect of Court process, notices or other documents or communications of whatever nature, the following address:

Residential Address:	
Postal Address:	
Telephone Number:	
Fax Number:	
Cell Number:	
Email:	

- 24.2 The Seller hereby chooses as its service address (*domicilium citandi et executandi*) for all purposes under this agreement, whether in respect of Court process, notices or other documents or communications of whatever nature, the following address care of the Auctioneer:

Physical Address:	Unit Number 12, Corlett City 3 Berkswell Road, Bramley
Postal Address:	P O Box 2492, Bedfordview, 2008
Telephone Number:	011 440 5663
Fax Number:	086 775 2289
Email:	<b>admin@rileyauctions.co.za</b>

- 24.3 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing, but it will be competent to give notice by telefax or email.

- 24.4. Any notice by any party:

24.4.1 delivered by hand to a person apparently not less than 16 years of age and apparently residing or employed there during ordinary business hours at the physical address chosen as the other party's *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; and

24.4.2 sent by pre-paid registered post, telefax or email to the other party's chosen telefax numbers stipulated above, or email address shall be deemed to have been received on the date of transmission thereof (unless the contrary is proven).

- 24.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by the Purchaser shall be an adequate written notice or communication to the Purchaser notwithstanding that it was not sent or delivered to the other party's *domicilium citandi et executandi*.

25. **MATRIMONIAL PROPERTY ACT CONSEQUENCES:**

To the extent necessary, the Purchaser hereby warrants that all written consents required by the Matrimonial Property Act No 88 of 1984 in respect of this agreement or any matters arising therefrom or in terms hereof have been duly given.

26. **SEVERABILITY:**

Should any clause herein be ruled to be unenforceable, the offending clause shall be severed from this agreement and the residual clauses shall survive and remain fully binding on the Purchaser and Seller.

27. **APPROVAL FOR CERTAIN FUNDAMENTAL TRANSACTIONS (THIS CLAUSE IS NOT APPLICABLE TO INSOLVENT SELLERS)**

27.1 The parties declare that they are aware of the provisions of Section 112 of the Companies Act, which states that if the Seller is a company and the property constitutes either the whole or the greater part of the undertaking of the Seller, then the shareholders of the Seller need to approve this transaction by way of a special resolution.

27.2 Accordingly, the Seller declares that the provisions of Section 112 are/are not (~~delete whichever is not applicable~~) applicable to the sale of this property.

27.3 If Section 112 is applicable to the sale of this property and the special resolution has not yet been obtained from the shareholders as described in Section 112 of the Companies Act, then the Directors of the Seller warrant that they will procure the said special resolution within 14 (fourteen) days from date of acceptance of this agreement, specifically mentioning therein that the shareholders ratify this sale of the property.

28. **SPECIAL CONDITIONS:**

**DECLARATION BY AUCTIONEER:**

I, the undersigned \_\_\_\_\_, being the Auctioneer who conducted the auction, hereby certify that the Rules of Auction are, to best of my knowledge and belief, according to the requirements of Regulation 21 of the Consumer Protection Act, Act 68 of 2008.

I, the undersigned, \_\_\_\_\_, being the Purchaser, \_\_\_\_\_ (full names)

Identity Number \_\_\_\_\_

hereby offer to purchase the property from the Seller for the Purchase Price recorded in this agreement, being R\_\_\_\_\_ (Words) \_\_\_\_\_ (purchase price) **excluding value added tax (if applicable)**

SIGNED at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_

As witnesses:

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

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

\_\_\_\_\_  
**PURCHASER**  
Duly authorised

\_\_\_\_\_  
**Signature of Purchaser's Spouse (If applicable)**

SIGNED at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_

As witnesses:

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

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

\_\_\_\_\_  
**AUCTIONEER**  
(Duly authorised and who accepts all benefits hereby conferred)

SIGNED at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_

As witness:

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

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

\_\_\_\_\_  
**SELLER**  
(who signs personally or warrants authority to sign this agreement)

## Schedule 1 SURETYSHIP

I/we, the undersigned \_\_\_\_\_  
 \_\_\_\_\_ do hereby bind  
 myself/ourselves jointly and severally as Surety/ies for and co-principal debtor/s in *solidum* with  
 the Purchaser \_\_\_\_\_ (as defined in the Terms and  
 Conditions of Sale to which this suretyship is attached) to and in favour of the Seller  
 \_\_\_\_\_ (as defined) for the due and punctual payment  
 and performance by the Purchaser of all obligations assumed in terms of the Terms and  
 Conditions of Sale with which I/we acknowledge myself/ourselves to be fully acquainted.

I/we hereby renounce all benefits of the legal exceptions of division, excussion, cession of action,  
 error and the like and hereby confirm my/our understanding thereof as well as my/our  
 understanding of the effect of the renunciation.

### Surety No. 1

Signature \_\_\_\_\_

Consent of Spouse (if applicable) \_\_\_\_\_

Full name \_\_\_\_\_

Marital status \_\_\_\_\_

Street address \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Postal address \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Place of signature \_\_\_\_\_

Date of signature \_\_\_\_\_

### Witnesses

1. Signature _____	2. Signature _____
Full name _____	Full name _____
Occupation _____	Occupation _____
Street address _____	Street address _____

**Surety No. 2**

Signature

\_\_\_\_\_

Consent of Spouse (if applicable)

\_\_\_\_\_

Full name

\_\_\_\_\_

Marital status

\_\_\_\_\_

Street address

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Postal address

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Place of signature

\_\_\_\_\_

Date of signature

\_\_\_\_\_

**Witnesses**

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

Full name \_\_\_\_\_ Full name \_\_\_\_\_

Occupation \_\_\_\_\_ Occupation \_\_\_\_\_

Street address \_\_\_\_\_ Street address \_\_\_\_\_

Signed and Accepted by the Seller at \_\_\_\_\_ on this the \_\_\_\_\_ day of

\_\_\_\_\_

As witness:

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

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

\_\_\_\_\_

**SELLER**

# **APPENDIX 3**

STELLENBOSCH MUNICIPALITY X3 PROPERTIES ERF 4810, 4811 AND 4812  
29 MAY 2021  
REPORT

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## **PURPOSE**

The purpose of this report is to provide management with the status quo and outcome of auction held on 29 MAY 2021 by Riley Auctioneers on behalf of STELLENBOSCH MUNICIPALITY.

## **DISCUSSION**

### **1 Appointment of the auction**

Riley Auctioneers has been appointed by STELLENBOSCH MUNICIPALITY for auctions to dispose the municipal properties ERF 4810, 3 SWAWELAAN ERF 4811 3A SWAWELAAN AND ERF 4812 6 TINKTINKE STREET, ONDERPAPEGAAIBERG, STELLENBOSCH, WESTERN CAPE by way of public simulcast online auction.

### **2. Asset Finding and Requests**

- STELLENBOSCH MUNICIPALITY needed to dispose of obsolete and redundant properties in the Onderpapegaaiberg suburb.

### **2 Schedules sale dates for auction:**

The date of the auction was:

SATURDAY 29 MAY 2021 @9:00am

**Venue:** ON THE PROPERTIES AND ONLINE

**Viewing:** 27-28 MAY 2021 from 9:00am to 15:00pm

**Assets:** x3 PROPERTIES ERF 4810, 4811 AND 4812

### **Advertising**

The auction was intensively advertised in the local newspaper, Riley Auctions Webpage, using but not limited to BulkSMS, Email Marketing, Social Media and other various platforms. Corexx boards were also put all over STELLENBOSCH town on hot traffic spots to attract buyers.

Website link: <https://rileyauctions.co.za/current-auction/onsite-and-webcast-auction-3-properties-in-stellenbosch/>

**3 Risks and challenges identified during Auction and preparations:**

- The houses had no electricity, had to hire generator for power and network
- Weather
- The state and condition of the properties resorted us to cutting the grass on each property

**FINANCIAL IMPLICATION:****Registered Buyers 20**

- R 20 000 Registration fee to be eligible to bid on auction for each buyer.

**Successful Buyers 3**

- 3% sellers comm
- 15% Vat applicable for assets for buyers

**Unsuccessful Buyers 17**

- Buyers were unsuccessful on auction therefore refund of registration fee was issued

**Total Realised R 6 460 000 (Excl. Vat)**

The number of items sold are 3 lots and the total sales to date are R 6 460 000.00 ex VAT

**RECOMMENDATIONS:**

- (Please consult auctioneer for proposal on the above recommendations.)

**CONCLUSION:**

We are confident in our claim that no other south African based auction service provider can offer you the extensive experience in respect to assets disposal and management our record of compliance speaks for itself. In closing it is important to note we have constantly achieved prices in excess of the anticipated reserves by yourself as a client.

We trust that the above is in order. Please feel free to contact our office of any further queries and suggestions. We are also proud to have realise and optimized the assets above recommended

## ONLINE REPORT

3

LOTS

1

WITH ABSENTEE BIDS

3 (100.00%)

100.00% COMPLETE

WATCHED

30

REGISTRATIONS

1 (3.33%)

3.33% COMPLETE

ACTIVE BIDDERS

1

ABSENTEE BIDS

R1,000,000

TOTAL VALUE

**Android** (1)**iOS** (0)**Web** (0)**Unknown** (0)

50

LIVE BIDS

R85,230,000

TOTAL VALUE

**Android** (1)**iOS** (0)**Web** (25)**Unknown** (24)

3

LOTS SOLD

100.00%

100.00% COMPLETE

SOLD

R6,460,000

TOTAL SOLD

# VENDU ROLLS

*XB Auctioneers*

**Stock Vendu Roll - Confidential**  
 Prepared By : RILEY AUCTIONEERS  
 Date Printed : 29/05/2021  
 Page : 1

Auction: STELLENBOSCH MUNICIPALITY X3 PROPERTY ALLOTION

Lot/Stock Seller	Description	Buyer	Amount	Remarks
001	3 BEDROOM HOUSE - 3 SWAWELAAN ONDERPAPEGAAL			2,000,000
012 STELLENE		<i>534 Floor</i>	<i>R2 150 000</i>	<i>STC SOLD</i>
002	3 BED ROOM HOUSE - 34 SWAWELAAN ONDERPAPEGAAL			2,000,000
012 STELLENE		<i>3119 ONLINE</i>	<i>R2 160 000</i>	<i>STC SOLD</i>
003	3 BEDROOM HOUSE - 6 TINKINK E STREET, ONDERPAPEGAAL			2,000,000
012 STELLENE		<i>366 Floor</i>	<i>R2 150 000</i>	<i>STC SOLD</i>

*XB*  
*29/05/2021*

*Mandlenkosi Mgqoshu@ Stellenbosch.gov.za - 073 528 1513*  
*(f) Kerin Carolus@ Stellenbosch.gov.za - 0833885579*





### BARRIERS

## Empowering deprived youth

SINCE the economic devastation wreaked by Covid-19, Statistics SA has pegged youth unemployment at a seemingly insurmountable 61.3%.

But it is only economic opportunity that is standing between South Africa's youth and their journey to success?

Young people from disadvantaged backgrounds often face psychological barriers that can affect their career trajectory, over and above the more obvious economic disparity, according to Momentum Metropolitan group CSI manager Charlene Lackey, who says that to truly tackle youth unemployment, educators and employers need to acknowledge the existence of these invisible mental barriers, and take the right steps to help young people overcome these hurdles.

"Often, when a young person is awarded an opportunity – particularly if it's one that they place a high value on – they're hesitant to challenge the status quo, or believe they don't have the experience or expertise to offer their perspective or to ask questions."

"This is particularly heightened when the employee or student in question tends to be part of an under-represented demographic group in corporate South Africa," she says, added that this reticence is limiting, as it can prevent a young person fully benefiting from a specific opportunity.

Sofia Neves, managing director of Life Choices, an NPO focused on helping young people from low-income backgrounds to lead fulfilling lives, said that one cannot ignore "the unique background of every person".

"These young people are in situations where only they know what it means to survive. If part of your brain is more geared towards survival, and has been for most of your life, this is going to affect your cognitive understanding of things, your creativity, as well as the decisions you make every day," said Neves.

These effects are amplified by poverty, unemployment, criminality and now Covid-19, which makes many home situations untenable for youth from poor communities, she said.

"Many of our beneficiaries live with their relatives, and because of Covid-19, now have to help carry their families as well as build their own lives, which adds to the psychological burden. Although these are tough situations that millions of young people face, many employers are disconnected from this reality, or unaware of the burden that home life can put on a young hopeful," she said.

Beyond home life, upbringing and environment also plays a role in creating psychological barriers to success, Neves said.

"You can be top of your class at your township school, then arrive at university with hundreds of other young learners who come from more privileged backgrounds, who might speak better English than you, or simply have more resources. This can have a significant impact on one's self-esteem."

Neves said understanding and acknowledgement was needed when someone was unfamiliar with the requirements of the working world, as well as the psychological baggage they may carry. | Staff Reporter

## CORONAVIRUS (Covid-19)



ALL gang bosses have malicious intentions. Their only purpose is to make money through drugs, illegal firearms, human trafficking, kidnapping, murder and corruption, the writer says.

### INTERVIEW

# Lowdown on gangsterism



ROEGCHANDA PASCOE

THE Cape Argus recently launched its Statfish project which aims to help encourage young people to steer away from crime. The project is a platform for individuals and organisations to tell our readers what they do to empower the youth or to share their knowledge.

Well known Cape Flats community activist Roegchanda Pascoe was asked about her views on the problem of gangs and gangsterism.

Identify the problems caused by gang violence. Gang violence in communities is devastating, especially on family life. For the boy child it is extremely difficult. He can resist being pulled into gangs, but then must settle for being bullied.

At times, they join a gang out of revenge after a loved one is killed. Poverty and opportunity are other big factors. Gang violence results in people becoming prisoners in their own homes.

Eventually, children have neither freedom of movement nor can they enjoy the daily positive activities and experiences life has to offer. Our kids are ultimately forced to join street gangs associated with prison gangs and their respective so-called "numbers".

Some kids also find a sense of belonging in the circle of gang members and bosses. Sadly, this is short-lived as all gang bosses have malicious intentions – the only purpose is to make money by selling drugs, illegal firearms, human trafficking, kidnapping, murder and corruption, just to name a few.

What gives rise to gangs? Dysfunctionality, no positive social cohesion, and the lack of state entities to provide decent services. These create fertile soil for gangs to rise and prey on the fear and vulnerability of our people. It was initially reported that apartheid coloured



A SAPS special task force raids houses of suspected gang members in Delft. | Amand Hough African News Agency (ANA)



POLICE search a block of flats in Hanover Park for drugs.

communities gave rise to gangsterism, which is true.

However, the apartheid-era gang were mostly established by prison gangs which wanted to make money selling drugs in their respective areas.

Policies and respect for the broader community were, however, in place in most areas as these gangsters feared the police.

Today, gang bosses thrive in organised crime, and to survive the game you must have SAPS members on your payroll. Over the past 20 years there have been several corrupt top-ranking SAPS members directly associated with prominent gang bosses. Ex-SAPS commissioner Jackie Seleke is an example.

What measures are applied by the police and the government to curb gangsterism? Are these working?

There should be a cohesive multi-pronged approach to tackle the problems. It means family, community, education, health, social development and housing all have a role to play.

The judiciary, prison and parole system should focus on rehabilitation, so we can establish whether an offender can be returned to the community.

Police have taken measures like establishing serious and violent crime units to address gangsterism on the Cape Flats, as well as establishing other units that focus on crimes, such as syndicate fraud and child protection.

Reliable Intelligence since 1986 indicated that several SAPS members were involved in corruption with gang bosses to bring their drugs and firearms into our province, hence the dissolving of several similar units over time, but not before several innocent people, witnesses, kids and the elderly were killed by gangsters who were fed information by the corrupt SAPS officials.

What can be done to prevent gangsterism?

Effective immediately, independent community-driven organisations must be established. Extremely strict clearance levels must be the order of the day to ensure communities' trust.

The organisations should not be affiliated with one another but rather have the same goals – to stamp out corruption and gangsterism at provincial and national level. Corrupt officials, as well as political bosses, must be arrested if evidence is obtained, even if it's in the form of affidavits.

The government and the private sector must play vital roles in funding these community initiatives.

Which areas in Cape Town are most affected by gangs?

The areas that have been created by the apartheid regime and where, even under a new dispensation, poverty is rife. Having to live below the breadline is a harsh reality for our people. It's unbelievable how our people survived all these years. We've also seen some affluent areas face a rise in crime, but not as badly as poorer communities like Manenberg, Mitchells Plain, Delft, Elsies River, Kraaifontein, Hanover Park, Ocean View and Atlantis, to name a few.

What advice would you give to families where children are joining gangs?

Where I reside in Manenberg, I would accompany parents to the gang leader and warn him about recruiting the particular child but, to the child, there is nothing more than a motherly or fatherly approach. One cannot always blame parents because some children join gangs even though they have everything they need.

My advice to families is to do some self-reflection and try to identify what motivated that child to seek love, comfort and a feeling of belonging in such a toxic place. We can help the child return to school, mosque, church and so on. Let the child participate in sport and get to the library where possible.

My advice to the child: Do not do drugs or alcohol or even smoke cigarettes. Don't ever join gangs as your life will be either short or you will end up in prison while the gang bosses, and the corrupt keep making money to the detriment of our poor communities. Do your best to invest in a lawful career. Work hard and pursue a career such as an attorney, a doctor or a teacher. Go into sport. The sky is the limit as soon as you focus on positive goals. Always give back to your community.

What is your advice for those in gangs?

Gangsterism is not a job you walk in and out of as you wish. In time, the gang comes back to recall you. There are many who have changed their ways but paid a hefty price, either by their daughters or wives being raped or killed for their freedom from the gang. It is never too late to repent even though there is "blood in blood out" – a gang slogan used worldwide. Many former gangsters have made a success of their lives, have careers and are blessed with beautiful families.

Should schools educate children about gangsterism?

Kids should be taught about gangsterism by their parents, so schools can focus on the curriculum.



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**29 MAY 2021 AT 9AM**

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7.2.3	<b>RETURN ITEM: PROPOSED AMENDED LEASE AGREEMENT: KARLIEN AND KANDAS CRECHE: ERVEN 12758 AND 12759, STELLENBOSCH</b>
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Collaborator No:

IDP KPA Ref No:

Good Governance

Meeting Date:

15 June 2021

**1. SUBJECT: RETURN ITEM: PROPOSED AMENDED LEASE AGREEMENT: KARLIEN AND KANDAS CRECHE: ERVEN 12758 AND 12759, STELLENBOSCH**

**2. PURPOSE**

To inform Council of the outcome of the public participation process and to make a final determination on the proposed amended Lease Agreement.

**3. DELEGATED AUTHORITY**

The Executive Mayor in consultation with the Executive Mayoral committee, has the delegated authority to make a decision regarding Lease Agreements for less than 10 years and values that will be less than R5 million.

**4. EXECUTIVE SUMMARY**

Stellenbosch Municipality took over a Lease Agreement between Karlien en Kandas Creche and the Dutch Reform church when the properties (erven 12758 and 12759) were transferred to Stellenbosch Municipality in 2001. This agreement was for an undetermined period, and had an early termination clause (6 months). This Agreement was replaced with a new Lease Agreement in 2004, also for an undetermined period. Changes to the existing lease can only be implemented with the agreement of the lessee as rights are in existence in terms of the current agreement. The Lessee has indicated that they will accept the change in the lease period. The nature of the business of the crèche requires that they get at least 12 months' notice to ensure that the children are accommodated should they need to move out of the current facility.

Council considered the matter on 2021-01-27 and decided, *inter alia*, to approve, in principle, the amendment of the Lease Agreement from an undetermined period to a period of 9 years and 11 months, subject thereto that it be advertised for public inputs/objections.

Following the above resolution an Official Notice was published, soliciting inputs/objections from the public (**APPENDIX 3**).

At the closing date no inputs/objections were received.

The Executive Mayor, in consultation with the Executive Mayoral Committee, may now make a final determination on the proposed, amended Lease Agreement.

**5. RECOMMENDATIONS**

- (a) that it be noted that, following the public notice period, no inputs or objections were received;
- (b) that the lease be amended to indicate a lease period of 9 years and 11 months;
- (c) that the Municipal Manager be authorised to determine a new market related rental.
- (d) that the clause for early termination of the contract by either party be indicted as 12 months given the nature of the business.

- (e) that the application for the rezoning of the properties be dealt with by the Lessor and that the costs be carried by the Lessee.

## 6. DISCUSSION / CONTENT

### 6.1 Background

#### 6.1.1 Acquisition of properties

Erven 12758 and 12759 were acquired by Stellenbosch Municipality by virtue of an Exchange of Land Agreement concluded between Stellenbosch Municipality and the Dutch Reform Church in May 1993.

#### 6.1.2 Ownership

The properties were transferred to Stellenbosch Municipality on 2001.01.23 and now vests with the Municipality by virtue of Title Deed T4375/2001.

#### 6.1.3 Lease Agreement

At the time of acquiring the properties from the Dutch Reform Church: Welgelegen a Lease Agreement was in place between then and Karlien and Kandas (Mrs. Vlok). The agreement was for an undetermined period, but with a 6 months early termination clause.

In terms of the legal principle "huur gaan voor koop", this lease agreement was taken over by Stellenbosch Municipality. The rental at the time was R100/month.

#### 6.1.4 New Lease Agreement

On 2004.08.08 a new Lease Agreement was concluded in an effort to make the monthly rental more market related. In terms of the new Lease Agreement a monthly rental of

R340-00 was payable, with an annual escalation of 10%. The term of the agreement was still for an undetermined period.

## 6.2. DISCUSSION

### 6.2.1 Proposed further amendment of the Lease Agreement: Council resolution

Following a request to this extent, a request for a further amendment to Lease Agreement, to allow for a fixed-term of 9 years and 11 months, instead of an undetermined period, was considered by Council on 2021-01-27. Having considered the matter, Council resolved as follows:

- "(a) that it be confirmed that erven 12758 and 12759 were identified as land not needed for municipal purpose for the period for which the rights are awarded;*
- (b) that Council notes that a current lease agreement with the Lessee exists;*
- (c) that Council approves, in principle, the amendment to the period of lease from an undetermined period to a period of 9 years and 11 months;*
- (d) that public comments/objections be requested on the amendment of the lease, and that the item be resubmitted after the public participation process; and*

- (e) *that the determination of the monthly rental and the decision on the costs for rezoning of the property stand over until after the public participation process has been completed”*

A copy of the agenda item and minutes are attached as **APPENDIX 1** and **2**, respectively.

### 6.2.2 Public Notice

Following the above resolution an Official Notice was published in “Die Burger”, soliciting public inputs/objections on the proposed, amendment Lease Agreement. A copy of the Official Notice is attached as **APPENDIX 3**.

The closing date for written inputs/objections was on 2021-03-12. At the closing date no such inputs/objections were received.

### 6.2.3 Location and context

Erven 12758 and 12759 are situated in Rhodestreet, as shown on Fig 1 and 2, below.



Fig 1: Location and context: Erven 12758/9



**Fig 2: Extent of property**

#### **6.2.4 Ownership**

As was indicated above, ownership of the properties vests with Stellenbosch Municipality.

#### **6.2.5 Zoning**

Although it was a condition of the Exchange of Land Agreement that the properties were to be rezoned, and although the Municipality started the process of rezoning, the properties were never formally rezoned from single residential to educational/institutional purposes to allow for a crèche to be operated. The properties are still zoned for single residential use. To continue the use on the property the rezoning of the land has to be finalised.

#### **6.2.6 Current rental payable**

The current monthly rental amounts to R1796.61. Over and above the monthly rental, the crèche is also liable for annual levies in relation to sewer and refuse removals as well as services consumed.

#### **6.3 Financial Implications**

Should Council approve the recommendations, a new monthly rental will be determined.

#### **6.4 Legal Implications**

##### **6.4.1 Asset Transfer Regulation**

In terms of Section 34 (1) of the ATR a Municipality may grant a right to use, control or manage a capital asset only after-

- a) The Accounting officer has concluded a public participation process\*; and
- b) The municipal council has approved in principle that the right may be granted.

\*Sub regulation (1) (a) (public participation process), however, must be complied with only if-

- The capital asset in respect of which the right is to be granted has a value in excess of R10M\*; and
- A long-term right is proposed to be granted (i.e. longer than 10 years).

None of the assets has a value in excess of R10M.

In terms of Regulation 36, the municipal council must, when considering such approval, take into account:

- a) whether such asset may be required for the municipality's **own use** during the period for which such right is to be granted;
- b) the extent to which any compensation to be received will result in a significant economic or **financial benefit** to the municipality;
- c) the **risks and rewards** associated with such right to use; and
- d) the **interest of the local community**

In terms of Regulation 41, if an approval in principle has been given in terms of regulation 34 (1)(b), the municipality (read Mayco) may grant the right only in accordance with the **disposal management system\*** of the municipality, irrespective of:-

- a) the value of the asset; or
- b) the period for which the right is granted

\*The policy on the Management of Council owned property is deemed to be Stellenbosch Municipality's disposal management System.

#### 6.4.2 Policy on the Management of Council owned property

In terms of paragraph 9.2.2 of the Policy, the Municipal Council may dispense with the prescribed, competitive process, and may enter into a private treaty agreement through any convenient process, which may include direct **negotiations**, but only in **specific circumstances**, and only after having **advertised** Council's intention.

**One of the circumstances listed in (l) is lease contracts with existing tenants of immovable properties, not exceeding ten (10) years.** Seeing that the crèche offers a service to the community, albeit at a fee, it is recommended that Council approve a Lease Agreement on a private treaty basis, i.e. direct negotiations. It is further recommended that the rental be determined at 50% of market rental.

Further, in terms of paragraph 9.2.2.2, the **reasons for any such deviation** from the competitive process **must be recorded**.

In terms of paragraph 22.1.4 the fair market rentals will be determined by the average of the valuations sourced from service providers, unless determined otherwise by the Municipal Manager taking into account the estimated rental(s) *vis-à-vis* the cost of obtaining such valuations.

**6.5 Staff Implications**

This report has no additional staff implications to the Municipality.

**6.6 Previous / Relevant Council Resolutions**

Council on 2021-01-27, having considered the matter, Council resolved as follows:

- “(a) that it be confirmed that erven 12758 and 12759 were identified as land not needed for municipal purpose for the period for which the rights are awarded;*
- (b) that Council notes that a current lease agreement with the Lessee exists;*
- (c) that Council approves, in principle, the amendment to the period of lease from an undetermined period to a period of 9 years and 11 months;*
- (d) that public comments/objections be requested on the amendment of the lease, and that the item be resubmitted after the public participation process; and*
- (e) that the determination of the monthly rental and the decision on the costs for rezoning of the property stand over until after the public participation process has been completed”*

A copy of the agenda item and minutes are attached as **APPENDIX 1** and **2**, respectively

**6.7 Risk Implications**

Risks are addressed in the item.

**6.8 Comments from Senior Management****6.8.1 Municipal Manager:**

The recommendations are supported.

**ANNEXURES:**        **Appendix 1: Agenda item**  
                              **Appendix 2: Council minutes**  
                              **Appendix 3: Official Notice**

**FOR FURTHER DETAILS CONTACT:**

<b>NAME</b>	<b>Piet Smit</b>
<b>POSITION</b>	<b>Manager: Property Management &amp; Facilities Management</b>
<b>DIRECTORATE</b>	<b>Corporate Services</b>
<b>CONTACT NUMBERS</b>	<b>021-8088189</b>
<b>E-MAIL ADDRESS</b>	<b><a href="mailto:Piet.smit@ Stellenbosch.gov.za">Piet.smit@Stellenbosch.gov.za</a></b>
<b>REPORT DATE</b>	<b>19-05-2021</b>

# APPENDIX 1



Collaborator No:  
IDP KPA Ref No:  
Meeting Date:

*(To be filled in by administration)*  
Good Governance  
20 and 27 January 2021

**1. SUBJECTPROPOSED AMENDED LEASE AGREEMENT: KARLIEN AND KANDAS CRECHE: ERVEN 12758 AND 12759, STELLENBOSCH**

**2. PURPOSE**

To obtain Council's approval to amend the Lease Agreement between Stellenbosch Municipality and Karlien and Kandas crèche in regard to erven 12758 and 12759, Stellenbosch.

**3. DELEGATED AUTHORITY**

The Executive Mayor in consultation with the Executive Mayoral committee has delegated powers to make a decision in regard to lease agreements for less than 10 years and values that will be less than R5 million.

**4. EXECUTIVE SUMMARY**

Stellenbosch Municipality took over a Lease Agreement between Karlien en Kandas Creche and the Dutch Reform church when the properties (erven 12758 and 12759) were transferred to Stellenbosch Municipality in 2001. This agreement was for an undetermined period, and had an early termination clause (6 months). This Agreement was replaced with a new Lease Agreement in 2004, also for an undetermined period (**Appendix 3**). Changes to the existing lease can only be implemented with the agreement of the lessee as rights are in existence in terms of the current agreement's term. The Lessee has indicated that they will accept the change in the lease period. The nature of the business of the crèche requires that they get at least 12 months' notice to ensure that the children are accommodated should they need to move out of the current facility

The item served before Mayco in November 2019, but was referred back due to the link the property has with erf 13246..The item on erf 13246 was resubmitted for consideration early in 2020, but the item on erf 13246 was referred back and therefore this item was also not dealt with. Both items are resubmitted for consideration.

## **5. RECOMMENDATIONS**

- 5.1 that it be confirmed that erven 12758 and 12759 was identified as land not needed for municipal purposes for the period for which the rights are awarded;
- 5.2 that Council note that a current lease agreement with the Lessee exists;
- 5.2 that Council consider to amend the period of the lease from an undetermined time to 9 years and 11 months based on the following conditions:
  - a) Monthly rental: 50% of market value, to be determined by an independent valuer, as contemplated in par 22.1.4 of the Property Management Policy;
  - c) Annual escalation: 6%;
  - d) An early termination clause of 12 months written notice (given the nature of the purpose for which the lessee uses the property), should the property be required for municipal purposes.
- 5.3 that the public comments/objections be requested and the item be resubmitted in terms of the delegation after the public participation process.
- 5.4 that the lessee be responsible for the costs of the rezoning of the property. Should the rezoning not be approved the lease agreement will have to be terminated.

## **6. DISCUSSION / CONTENT**

### **6.1 Background**

#### **6.1.1 Acquisition of properties**

Erven 12758 and 12759 were acquired by Stellenbosch Municipality by virtue of an Exchange of Land Agreement concluded between Stellenbosch Municipality and the Dutch Reform Church in May 1993.

#### **6.1.2 Ownership**

The properties were transferred to Stellenbosch Municipality on 2001.01.23 and now vests with the Municipality by virtue of Title Deed T4375/2001. Copies of the Deeds Records are attached as **APPENDIX 1**.

#### **6.1.3 Lease Agreement**

At the time of acquiring the properties from the Dutch Reform Church: Welgelegen a Lease Agreement was in place between then and Karlien and Kandas (Mrs. Vlok). The agreement was for an undetermined period, but with a 6 months early termination clause. A copy of the Lease Agreement is attached as **APPENDIX 2**.

In terms of the legal principle “huur gaan voor koop”, this lease agreement was taken over by Stellenbosch Municipality. The rental at the time was R100/month.

#### 6.1.4 New Lease Agreement

On 2004.08.08 a new Lease Agreement was concluded in to make the monthly rental more market related. Correspondence and a copy of the Lease Agreement is attached as **APPENDIX 3**. In terms of the new Lease Agreement a monthly rental of R340-00 was payable, with an annual escalation of 10%. The term of the agreement was for an undetermined period.

#### 6.1.5 Request for further amendment of Lease Agreement

On 2019.07.11 the Director: Corporate Services addressed a memo to the Manager: Property Management requesting some information in regard to the Lease Agreement. A copy of the memo is attached as **APPENDIX 4**.

## 6.2. DISCUSSION

### 6.2.1 Location and context

Erven 12758 and 12759 are situated in Rhodestreet, as shown on Fig 1 and 2, below.



Fig 1: Location and context: Erven 12758/9



**Fig 2: Extent of property**

### 6.2.2 Ownership

As was indicated above, ownership of the properties vests with Stellenbosch Municipality.

### 6.2.3 Zoning

Although it was a condition of the Exchange of Land Agreement that the properties were to be rezoned, and although the Municipality started the process of rezoning (see notices published on 1996.05.10 hereto attached as **APPENDIX 5**), the properties were never formally rezoned from single residential to educational/institutional purposes to allow for a crèche to be operated. The properties are still zoned for single residential use. See copy of zoning certificate issued on 2009-09-01, hereto attached as **APPENDIX 6**.

### 6.2.4 Current rental payable

The current monthly rental amounts to R1796.61. Over and above the monthly rental, the crèche is also liable for annual levies in relation to sewer and refuse removals as well as services consumed.

## 6.2 Financial Implications

Should Council approve the recommendations, a new monthly rental (at 50% of market rental) will be determined.

## 6.3.1 Asset Transfer Regulation

In terms of Section 34 (1) of the ATR a Municipality may grant a right to use, control or manage a capital asset only after-

- a) The Accounting officer has concluded a public participation process\*; and
- b) The municipal council has approved in principle that the right may be granted.

\*Sub regulation (1) (a) (public participation process), however, must be complied with only if-

- The capital asset in respect of which the right is to be granted has a value in excess of R10M\*; and
- A long-term right is proposed to be granted (i.e. longer than 10 years).

None of the assets has a value in excess of R10M.

In terms of Regulation 36, the municipal council must, when considering such approval, take into account:

- a) whether such asset may be required for the municipality's **own use** during the period for which such right is to be granted;
- b) the extent to which any compensation to be received will result in a significant economic or **financial benefit** to the municipality;
- c) the **risks and rewards** associated with such right to use; and
- d) the **interest of the local community**

In terms of Regulation 41, if an approval in principle has been given in terms of regulation 34 (1)(b), the municipality (read Mayco) may grant the right only in accordance with the **disposal management system\*** of the municipality, irrespective of:-

- a) the value of the asset; or
- b) the period for which the right is granted

\*The policy on the Management of Council owned property is deemed to be Stellenbosch Municipality's disposal management System.

## 6.3.2 Policy on the Management of Council owned property

In terms of paragraph 9.2.2 of the Policy, the Municipal Council may dispense with the prescribed, competitive process, and may enter into a private treaty agreement through any convenient process, which may include direct **negotiations**, but only in **specific circumstances**, and only after having **advertised** Council's intention.

**One of the circumstances listed in (l) is lease contracts with existing tenants of immovable properties, not exceeding ten (10) years.** Seeing that the crèche

offers a service to the community, albeit at a fee, it is recommended that Council approve a Lease Agreement on a private treaty basis, i.e. direct negotiations. It is further recommended that the rental be determined at 50% of market rental.

Further, in terms of paragraph 9.2.2.2, the **reasons for any such deviation** from the competitive process **must be recorded**.

In terms of paragraph 22.1.4 the fair market rentals will be determined by the average of the valuations sourced from service providers, unless determined otherwise by the Municipal Manager taking into account the estimated rental(s) *vis-à-vis* the cost of obtaining such valuations.

#### 6.4 Staff Implications

This report has no additional staff implications to the Municipality.

#### 6.5 Previous / Relevant Council Resolutions

The approval of the rental agreement did not serve before Council.

#### 6.6 Risk Implications

Risks are addressed in the item.

#### 6.7 Comments from Senior Management

##### 6.7.1 Municipal Manager:

The recommendations are supported.

- ANNEXURES:**
- Appendix 1: Windeed Records**
  - Appendix 2: Lease Agreement**
  - Appendix 3: New Lease Agreement**
  - Appendix 4: Memo from DCS**
  - Appendix 5: Notices that were published**
  - Appendix 6: Zoning Certificate**

#### FOR FURTHER DETAILS CONTACT:

<b>NAME</b>	<b>Piet Smit</b>
<b>POSITION</b>	<b>Manager: Property Management</b>
<b>DIRECTORATE</b>	<b>Corporate Services</b>
<b>CONTACT NUMBERS</b>	<b>021-8088189</b>
<b>E-MAIL ADDRESS</b>	<b><a href="mailto:Piet.smit@ Stellenbosch.gov.za">Piet.smit@ Stellenbosch.gov.za</a></b>
<b>REPORT DATE</b>	<b>30 October 2020</b>

# APPENDIX 2

11.2.2	<b>PROPOSED AMENDED LEASE AGREEMENT: KARLIEN AND KANDAS CRECHE: ERVEN 12758 AND 12759, STELLENBOSCH</b>
--------	---

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

20 January 2021 and 27 January 2021

**1. SUBJECT: PROPOSED AMENDED LEASE AGREEMENT: KARLIEN AND KANDAS CRECHE: ERVEN 12758 AND 12759, STELLENBOSCH**

**2. PURPOSE**

To obtain Council's approval to amend the Lease Agreement between Stellenbosch Municipality and Karlien and Kandas crèche in regard to erven 12758 and 12759, Stellenbosch.

**3. DELEGATED AUTHORITY**

The Executive Mayor in consultation with the Executive Mayoral committee has delegated powers to made a decision in regard to lease agreements for less than 10 years and values that will be less than R5 million.

**4. EXECUTIVE SUMMARY**

Stellenbosch Municipality took over a Lease Agreement between Karlien en Kandas Crèche and the Dutch Reform church when the properties (erven 12758 and 12759) were transferred to Stellenbosch Municipality in 2001. This agreement was for an undetermined period, and had an early termination clause (6 months).

This Agreement was replaced with a new Lease Agreement in 2004, also for an undetermined period (**APPENDIX 3**). Changes to the existing lease can only be implemented with the agreement of the lessee as rights are in existence in terms of the current agreement's term. The Lessee has indicated that they will accept the change in the lease period. The nature of the business of the crèche requires that they get at least 12 months' notice to ensure that the children are accommodated should they need to move out of the current facility

The item served before Mayco in November 2019, but was referred back due to the link the property has with erf 13246. The item on erf 13246 was resubmitted for consideration early in 2020, but the item on erf 13246 was referred back and therefore this item was also not dealt with. Both items are resubmitted for consideration.

The item served before Council in November 2020. No resolution was taken as it stood down for further deliberation. It is resubmitted for consideration.

**40<sup>TH</sup> COUNCIL MEETING: 2021-01-27: ITEM 11.2.2****RESOLVED** (majority vote)

- (a) that it be confirmed that erven 12758 and 12759 were identified as land not needed for municipal purpose for the period for which the rights are awarded;
- (b) that Council notes that a current lease agreement with the Lessee exists;
- (c) that Council approves, in principle, the amendment to the period of lease from an undetermined period to a period of 9 years and 11 months;
- (d) that public comments/objections be requested on the amendment of the lease, and that the item be resubmitted after the public participation process; and
- (e) that the determination of the monthly rental and the decision on the costs for rezoning of the property stand over until after the public participation process has been completed.

*Councillors F Adams; G Cele (Ms) and LK Horsband (Ms) requested that their votes of dissent be minuted.*

**FOR FURTHER DETAILS CONTACT:**

<b>NAME</b>	<b>Piet Smit</b>
<b>POSITION</b>	<b>Manager: Property Management</b>
<b>DIRECTORATE</b>	<b>Corporate Services</b>
<b>CONTACT NUMBERS</b>	<b>021-8088189</b>
<b>E-MAIL ADDRESS</b>	<b><a href="mailto:Piet.smit@ Stellenbosch.gov.za">Piet.smit@ Stellenbosch.gov.za</a></b>
<b>REPORT DATE</b>	<b>30 October 2020</b>

# APPENDIX 3



**OFFICIAL NOTICE**

**PROPOSED AMENDMENT OF LEASE AGREEMENT: KARLIEN AND KANDAS: ERVEN 12758 AND 12759, DIE BOORD, STELLENBOSCH**

**1. Introduction**

Notice is hereby given in terms of Section 34 (1) of the Asset Transfer Regulations read with paragraph 9.2.2 of the Policy on the Management of Council-owned property of Council's intention to amend the existing Lease Agreement with Karlien and Kandas in relation to the above property; i.e to allow for a contract period of 9 years and 11 months in stead of the undetermined period as per the existing agreement.

**2. Background**

Erven 12758 and 12759, Stellenbosch were acquired by Stellenbosch Municipality in 1993 by virtue of an Exchange of Land Agreement with the Dutch Reform Church. At the time of acquiring the properties a lease agreement was already in place between the Dutch Reform Church and Karlien and Kandas in terms whereof the facility was used as a creche. The lease agreement was taken over by the Municipality. During 2004 the Agreement was amended to allow for a market related rental and no end period to the contract existed. This provision is not in line with the Asset transfer regulations.

Council negotiated with Karlien and Kandas to bring the contract in line with the legislation and has in principle approve to amend the current agreement to change the lease period from undetermined date to a 9 year and 11 months period. Before a final decision is taken Council must do a public participation process to elicit public input through requesting comments/objections/alternative proposals on the amendment of the lease. The monthly rental will have to be determined and the property needs to be rezoned to make provision for the current use.

**3. Invitation to submit comments /inputs or alternative proposals**

Interested and affected parties / individuals are hereby invited / called upon to submit comments /inputs or objections in respect of the proposed granting of the rights referred to above. Any such comments /inputs/objections must be in writing and must reach the Office of the Manager: Property Management by no later than **12-03- 2021** at close of business at the address or e-mail listed below:

**Physical address:** 3rd floor ABSA building, Pleinstreet, Stellenbosch  
**e-mail:** piet.smit@stellenbosch.gov.za

**4. Persons with disabilities**

Notice is further given in accordance with Section 21 of the Local Government: Municipal Systems Act, No 32 of 2000 that anyone with disabilities or who is unable to write, but need to participate in the process, may present him/ herself during office hours at the office of the Manager: Property Management, where a staff member of the Municipality will assist such person to transcribe that person's comments/inputs or alternative proposals.

.....  
**G METTLER**  
**MUNICIPAL MANAGER:**  
**STELLENBOSCH MUNICIPALITY**

.....  
**DATE**

7.2.4	<b>RETURN ITEM: EX LIFE CRAFT CENTRE: PORTION OF ERF 143, FRANSCHHOEK: CALL FOR PROPOSALS</b>
-------	---

Collaborator No:

IDP KPA Ref No:

Good Governance

Meeting Date:

15 June 2021

**1. SUBJECT: RETURN ITEM: EX LIFE CRAFT CENTRE: PORTION OF ERF 143, FRANSCHHOEK: CALL FOR PROPOSALS**

**2. PURPOSE**

To provide feedback to council after the call for proposal was advertised on the future of the piece of land on which the life craft centre was previously located namely erf 143, Franschoek.

**3. DELEGATED AUTHORITY**

Council or the Executive Mayor in consultation with the Executive Mayoral Committee where it deals with a lease agreement of less than 10 years and the land value is below R10 Million.

**4. EXECUTIVE SUMMARY**

During 2004 Stellenbosch Municipality and the Life Craft Centre concluded a Lease Agreement, in terms where they would lease a portion of erf 143, Stellenbosch for a period of 9 years and 11 months. Council resolved on 25 November 2020 not to enter into a new lease agreement with them and requested the department to publish a call for proposals to see what the community think the space should be used for or to get inputs from businesses who may be interested to use the space. The notice was published in January 2021 and is attached as **APPENDIX 4**. Only one application has been received – attached as **APPENDIX 5**.

**5. RECOMMENDATION**

For consideration.

**6. DISCUSSION / CONTENT**

**6.1 Background**

**6.1.1 Council resolution**

On 25 November Council considered an application from the Life Craft Centre an for the renewal of the Lease Agreement. Having considered the application, Council resolved as follows:

*” **RESOLVED** (majority vote with 1 abstention)*

*(a) that a portion of Erf 143, Franschoek, be identified as land not needed for own use as provided for in Regulation 36 of the Asset Transfer Regulations;*

*(b) that Council does **not** approve the application;*

*(c) that the department be requested to **advertise for businesses** to provide proposals on the future use of the property, and that the proposals include an indication of the type of business, a business plan, and the number of employment opportunities;*

*(d)that Council will consider the proposals and then make a determination on which proposal to approve before a lease agreement will be entered into with a new lessee; and*

*(e)that the Life Craft Centre be **given notice** to vacate the property by no later than 30 March 2021”.*

Hereto attached as **APPENDIX 1** and **2** respectively, the Agenda item that served before Council as well as the Minutes.

### **6.1.2 Letter of termination**

Following the above resolution the Life Craft Centre was informed of the termination of the Lease Agreement as from 1 April 2021. See letter attached as **APPENDIX 3**.

### **6.1.3 Public notice: Call for Proposal**

A public notice, calling for proposals, was published, with closing date for submissions by not later than 25 January 2021. A copy of the notice is attached as **APPENDIX 4**.

### **6.1.4 Submission received**

At the closing date only one submission was received, that of Mr Avery Arendse of Bike Life Café, a copy of which is attached as **APPENDIX 5**.

## **6.2. DISCUSSION**

### **6.2.1 The Proposal**

Bike Life Café is a Franschhoek based cycling café, bicycle shop and service court with bicycle rentals. They want to relocate the business to erf 143. He is offering a monthly rental of R4 000.00.

### **6.2.2 Fair market rental**

Please find hereto attached as **APPENDIX 6** a valuation report compiled by Pendo Property Valuers, valuing the monthly rental R260/m<sup>2</sup>. The rentable space is approximately 98m<sup>2</sup>, resulting in a fair market rental is of R25 480.00 (Exclusive of VAT).

## **6.3 Financial Implications**

Council must consider the offer of the rental against the market related rental for the space as indicated by the valuation report.

## **6.4 Legal Implications**

See par. 6.2.2.1 of agenda item that served before Council.

## **6.5 Staff Implications**

No additional staff implications.

## **6.2 Previous / Relevant Council Resolutions**

See paragraph 6.1.1 above.(**Appendix 1**).

**6.3 Risk Implications**

The amount of rent offered is a lot lower than the market related rental. The business cannot be classified as a business for which council may lease at below market value. The area has been standing empty from 1 April which may lead to vandalism.

**6.4 Comments from Senior Management**

Senior management was requested to comment on the draft item – send out on 5 March 2021. Only the PMU unit commented on behalf of Infrastructure.

**6.4.1 Director: Infrastructure Services**

Agree with the recommendations.

**6.4.2 Director: Planning and Economic Development**

No comments received

**6.4.3 Chief Financial Officer**

No comments received.

**6.4.4 Municipal Manager**

Notes the recommendation

- ANNEXURES:**
- Appendix 1 Agenda item
  - Appendix 2 Minutes from Council
  - Appendix 3: Letter of termination
  - Appendix 4: Public Notice
  - Appendix 5: Submission received
  - Appendix 6: Valuation report

**FOR FURTHER DETAILS CONTACT:**

<b>NAME</b>	<b>Piet Smit</b>
<b>POSITION</b>	<b>Manager: Property Management</b>
<b>DIRECTORATE</b>	<b>Corporate Services</b>
<b>CONTACT NUMBERS</b>	<b>021-8088189</b>
<b>E-MAIL ADDRESS</b>	<b><a href="mailto:Piet.smit@ Stellenbosch.gov.za">Piet.smit@ Stellenbosch.gov.za</a></b>
<b>REPORT DATE</b>	<b>2021-06- 09</b>

# APPENDIX 1



# STELLENBOSCH

STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

Collaborator No: *(To be filled in by administration)*  
 IDP KPA Ref No: **GOOD GOVERNANCE**  
 Meeting Date: **22 and 29 January 2020**

**1. SUBJECT:**

2.

**PROPOSED RENEWAL OF LEASE AGREEMENT: FRANSCHHOEK LIVE CRAFT CENTRE: ERF 143, FRANSCHHOEK**

**2 PURPOSE**

To obtain Council's approval for the renewal of the Lease Agreement with Franschhoek Life Craft Centre.

**3. DELEGATED AUTHORITY**

Council must consider the matter.

**4. EXECUTIVE SUMMARY**

Various Lease Agreements terminated over the past few years, where the contracts did not allow for an automatic renewal. The Supply Chain Management Policy (at the time) also did not provide for the renewal of these agreements, without following a tender process. The agreements continued in terms of common law on a month to month basis as council did not terminate the agreement and the tenant kept using the property.

The new Property Management Policy, however, now allow for a process whereby Council can dispose with the prescribed, competitive process, subject to Council's intention so to act being advertised for public inputs, before making a final decision.

The tenants in October 2019 send letters requesting to renew the lease agreement (**Appendix 1 and 2**).

**5. RECOMMENDATIONS**

a) that a portion of Erf 143, Franschhoek, be identified as land not needed for own use during the period for which such rights are to be granted, as provided for in Regulation 36 of the Asset Transfer Regulations;

- b) that Council, consider the application **in principle** to approve a lease and determine the period of the extension, subject thereto that Council's intention to enter into such an agreement be advertised for public inputs/comments, as provided for in paragraph 9.2.2 of the Property Management Policy; and further subject to a 3 months early termination clause.
- c) that, in the meantime, an independent valuer be appointed to determine the fair market rental for the property referred to in (a), and;
- d) that Council, determine a fair rate in principle, linked to the fair market value);

## **6. DISCUSSION / CONTENTS**

### **6.1. Background**

#### **6.1.1 Initial Lease Agreement**

Franschhoek Life Craft Centre and Stellenbosch Municipality concluded a year Lease Agreement in relation to a portion of erf 143, Franschhoek in 2004 for a period of 9 years and 11 months. This agreement has subsequently lapsed in 2014.

#### **6.1.2 Attempt to renew lease agreement**

Over the past 5 years various attempts were made to either renew the Lease Agreement, and in the meantime the leases continued on a month to month basis. None of these attempts, however, were successful, as the SCM Policy (at the time) did not allow for a process of renewal without following a public competitive process.

#### **6.1.3 Application for renewal of lease agreement**

Hereto attached as **APPENDIX 1** an application received from Franschhoek Live Craft Centre, requesting that their lease agreement be renewed for a further period of 5 years. Also hereto attached as **APPENDIX 2** correspondence received from Remax, wherein they pledge to provide financial assistance to the FLCC, should their lease agreement be extended.

## **6.2 Discussion**

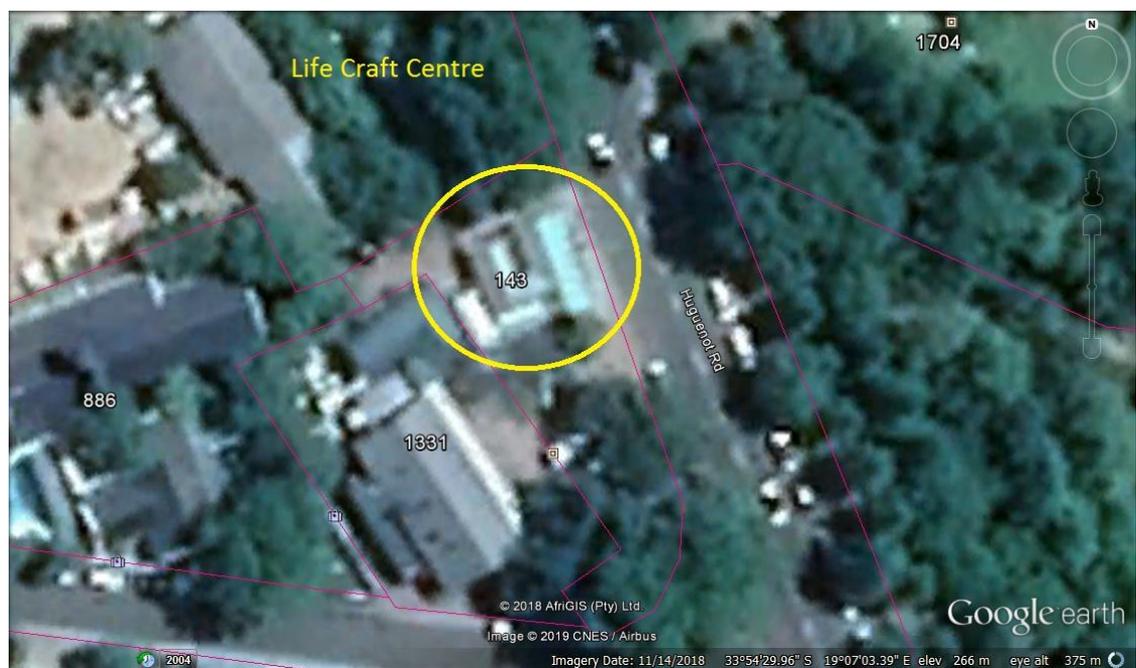
### **6.2.1 Location and context**

#### **6.2.1.3 Franschhoek Life Craft Centre**

The Franschhoek Live Craft Centre is operating on a portion of erf 143, Huguenote Road, Franschhoek as indicated on Fig 1 and 2 below.



**Fig 1: Location and context**



**Fig 2: Extent of property**

## 6.2.1 Legal requirements

### 6.2.2.1 Asset Transfer Regulation

In terms of Section 34 (1) of the ATR a Municipality may grant a right to use, control or manage a capital asset only after-

- a) The Accounting officer has concluded a public participation process\*; and
- b) The municipal council has approved in principle that the right may be granted.

\*Sub regulation (1) (a) (public participation process), however, must be complied with only if-

- a) The capital asset in respect of which the right is to be granted has a value in excess of R10M\*; and
- b) A long-term right is proposed to be granted (i.e. longer than 10 years).

None of the assets has a value in excess of R10M.

In terms of Regulation 36, the municipal council must, when considering such approval, take into account:

- a) whether such asset may be required for the municipality's **own use** during the period for which such right is to be granted;
- b) the extent to which any compensation to be received will result in a significant economic or **financial benefit** to the municipality;
- c) the **risks and rewards** associated with such right to use; and
- d) the **interest of the local community**

In terms of Regulation 41, if an approval in principle has been given in terms of regulation 34 (1)(b), the municipality (read Mayco) may grant the right only in accordance with the **disposal management system\*** of the municipality, irrespective of:-

- a) the value of the asset; or
- b) the period for which the right is granted

\*The policy on the Management of Council owned property is deemed to be Stellenbosch Municipality's disposal management System.

### 6.2.1.2 Policy on the Management of Council owned property

In terms of paragraph 9.2.2 of the Policy, the Municipal Council may dispense with the prescribed, competitive process, and may enter into a private treaty agreement through any convenient process, which may include direct negotiations, but only in specific circumstances, and only after having advertised Council's intention so to act.

One of the circumstances listed in (l) is lease contracts with existing tenants of immovable properties, not exceeding ten (10) years. Such agreements may be renegotiated where the Executive Mayor is of the opinion that public competition would not serve a useful purpose, subject to such renewal being advertised, calling for public comment.

Further, in terms of paragraph 9.2.2.2, the reasons for any such deviation from the competitive process must be recorded.

In terms of paragraph 22.1.4 the fair market rentals will be determined by the average of the valuations sourced from service providers, unless determined otherwise by the Municipal Manager taking into account the estimated rental(s) *vis-à-vis* the cost of obtaining such valuations.

Seeing that the Life Craft Centre is a NGO, and taking into account the high prices in Franschhoek, it is recommended that they be responsible for 10% of market rental, to be determined by an independent valuer.

### **6.3. Financial Implications**

The current rent payable by the tenants is R115 per year (vat included). The current arrears is R2 978.00 and the last payment was in August 2019.

### **6.4 Legal Implications**

The recommendations contained in this report comply with Council's policies and all applicable legislation.

### **6.5 Staff Implications**

This report has no staff implications to the Municipality.

### **6.6 Previous / Relevant Council Resolutions:**

None

### **6.7 Risk Implications**

Risks addressed in the item and will further be covered by the lease agreement.

### **6.8 Comments from Senior Management:**

#### **6.8.1 Director: Infrastructure Services**

Agree with the recommendations

#### **6.8.2 Director: Planning and Economic Development**

No comments received

**6.8.3 Chief Financial Officer:**

No comments received

**ANNEXURES:**      **Appendix 1: Application from FLCC**  
                         **Appendix 2: Letter from REMAX (Financial assistance)**

**FOR FURTHER DETAILS CONTACT:**

<b>NAME</b>	PIET SMIT
<b>POSITION</b>	<b>MANAGER: PROPERTY MANAGEMENT</b>
<b>DIRECTORATE</b>	<b>CORPORATE SERVICES</b>
<b>CONTACT NUMBERS</b>	<b>021-8088189</b>
<b>E-MAIL ADDRESS</b>	<a href="mailto:Piet.smit@stellenbosch.gov.za">Piet.smit@stellenbosch.gov.za</a>
<b>REPORT DATE</b>	<b>2019-11-27</b>

# APPENDIX 2

<b>E-MAIL ADDRESS</b>	<u><a href="mailto:Annalene.Debeer@ Stellenbosch.gov.za">Annalene.Debeer@ Stellenbosch.gov.za</a></u>
<b>REPORT DATE</b>	10 November 2020

<b>11.2.2</b>	<b>APPLICATION FOR A OF LEASE AGREEMENT: FRANSCHHOEK LIFE CRAFT CENTRE: ERF 143, FRANSCHHOEK</b>
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**Collaborator No:**

**IDP KPA Ref No:**

**Meeting Date:**

**Good Governance and Compliance**

**17 November 2020 and 25 November 2020**

**1. SUBJECT: APPLICATION FOR A OF LEASE AGREEMENT: FRANSCHHOEK LIFE CRAFT CENTRE: ERF 143, FRANSCHHOEK**

**2. PURPOSE**

For Council to consider the application for the approval of a Lease Agreement with Franschhoek Life Craft Centre.

**3. DELEGATED AUTHORITY**

Council must consider the matter.

**4. EXECUTIVE SUMMARY**

Various Lease Agreements terminated over the past few years, where the contracts did not allow for an automatic renewal. The Supply Chain Management Policy (at the time) also did not provide for the renewal of these agreements, without following a tender process. The agreements continued in terms of common law on a month to month basis as council did not terminate the agreement and the tenant kept using the property.

The new Property Management Policy, however, now allow for a process whereby Council can dispose with the prescribed, competitive process, subject to Council's intention so to act being advertised for public inputs, before making a final decision.

The tenants in October 2019 send letters requesting to renew the lease agreement (**APPENDIX 1 and 2**). Technically the agreement has lapsed especially as they are not paying the rent. They have however continued to use the building.

The item was submitted to Mayco in January 2020, but was referred back to the department. The Executive Mayor wanted to gather more information in regard to the use of the property and the viability. Since then the Covid-19 pandemic brought major changes to the economy and the tourist industry. No further feedback was received and the item is resubmitted for consideration.

**39<sup>TH</sup> COUNCIL MEETING: 2020-11-25: ITEM 11.2.2****RESOLVED** (majority vote with 1 abstention)

- (a) that a portion of Erf 143, Franschoek, be identified as land not needed for own use as provided for in Regulation 36 of the Asset Transfer Regulations;
- (b) that Council does not approve the application;
- (c) that the department be requested to advertise for businesses to provide proposals on the future use of the property, and that the proposals include an indication of the type of business, a business plan, and the number of employment opportunities;
- (d) that Council will consider the proposals and then make a determination on which proposal to approve before a lease agreement will be entered into with a new lessee; and
- (e) that the Life Craft Centre be given notice to vacate the property by no later than 30 March 2021.

**FOR FURTHER DETAILS CONTACT:**

<b>NAME</b>	PIET SMIT
<b>POSITION</b>	<b>MANAGER: PROPERTY MANAGEMENT</b>
<b>DIRECTORATE</b>	<b>CORPORATE SERVICES</b>
<b>CONTACT NUMBERS</b>	<b>021-8088189</b>
<b>E-MAIL ADDRESS</b>	<b><u><a href="mailto:Piet.smit@ Stellenbosch.gov.za">Piet.smit@ Stellenbosch.gov.za</a></u></b>
<b>REPORT DATE</b>	<b>2020-11-01</b>

# APPENDIX 3



2020-01-14  
Our ref: Live Craft F/Hoek

The Chairperson  
Franschhoek Live Craft Centre  
Main Road  
Franschhoek  
7610

Dear Mr Fray

**APPLICATION FOR, EXTENTION OF LEASE AGREEMENT: PORTION OF ERF 143, FRANSCHHOEK**

Your application for the extension of your Lease Agreement for a portion of erf 143, Franschhoek, refers.

Council considered the matter on 2020-11-25.

Having considered the application, Council decided as follows:

**39<sup>TH</sup> COUNCIL MEETING: 2020-11-25: ITEM 11.2.2**

***“RESOLVED (majority vote with 1 abstention)***

- (a) *that a portion of Erf 143, Franschhoek, be identified as land not needed for own use as provided for in Regulation 36 of the Asset Transfer Regulations;*
- (b) *that Council does not approve the application;*
- (c) *that the department be requested to advertise for businesses to provide proposals on the future use of the property, and that the proposals include an indication of the type of business, a business plan, and the number of employment opportunities;*
- (d) *that Council will consider the proposals and then make a determination on which proposal to approve before a lease agreement will be entered into with a new lessee; and*
- (e) *that the Life Craft Centre be given notice to vacate the property by no later than 30 March 2021”.*

You are hereby given notice to vacate the property by no later then 30 March 2021.

Yours faithfully

.....  
**PIET SMIT**  
**MANAGER: PROPERTY MANAGEMENT**

# APPENDIX 4



**OFFICIAL NOTICE**

**CALL FOR PROPOSALS: LEASE AGREEMENT: PORTION OF ERF 143, FRANSCHHOEK**

**INVITATION TO SUBMIT WRITTEN PROPOSALS**

The purpose of this notice is to invite proposals from interested businesses to provide proposals on the future use of the property. The proposal to include an indication of the type of business, a business plan, amount work opportunities that will be created, rental proposed. Council will consider the proposals and then make a determination on which proposal to approve before a lease agreement will be entered into with a new lessee.

Proposals should, *inter alia*, deal with the following:

- Indication of type of business;
- A business plan, including the applicant's financial readiness to implement his/her plan, should his/her proposal be approved;
- Number of job opportunities that will be created;
- Possible capital investment in upgrading of facility (if any);
- Experience in running such a business;
- Proposals on how BBBEE, and LED will be promoted;
- Proposed term of Lease; and
- Proposed monthly rental

**PROPERTY DESCRIPTION**

The property is situated at 68 Huguenote Road, Franschhoek.  
The site is approximately 200m<sup>2</sup> in extent. The building is approximately 90m<sup>2</sup> in extent.

**SUBMISSION OF PROPOSALS**

Written submissions must be submitted to the Manager: Property Management by not later than **25 January 2021, at 12:00**. The proposals can be hand delivered or e-mailed to the Manager: Property Management.

Email: [piet.smit@stellenbosch.gov.za](mailto:piet.smit@stellenbosch.gov.za)

Physical address: 3rd Floor, Oude Bloemhof (Absa) Building, corner of Rhyneveld and Plein Streets, Stellenbosch.

Postal Address: P O Box 17, Stellenbosch 7599

Cell phone: 084 506 5065

Landline: 021 808 8189



Streetview of building

**FURTHER INFORMATION**

Further information, is available at the office of the Manager: Property Management during office hours.

**PERSONS WITH DISABILITIES**

Notice is further given in accordance with Section 21 of the Local Government: Municipal Systems Act, No 32 of 2000 that anyone with disabilities or who is unable to write, but need to participate in the process, may present him/herself during office hours at the office of the Manager: Property Management, where a staff member of the Municipality will assist such person to transcribe that person's comments/inputs or alternative proposals.

**GERALDINE METTLER**  
**MUNICIPAL MANAGER: STELLENBOSCH MUNICIPALITY**

**DATE**

# APPENDIX 5

# BIKE LIFE CAFÉ



Avery Arendse

Adress: Grebe Street 20 Paarl

ID: 9104245207080

Tell: 0826054858

## 1. Introduction and description of business idea :

Bike Life Café is a Franschhoek based cycling café, bicycle shop, service course with bicycle rentals.

At Bike Life Café we are a bicycle shop, with a small coffee shop (basically a 2 in 1). We provide the fixing of bicycles, renting out bicycles (tourist that wants to tour Franschhoek via bicycle), and sales of cycling accessories with something to eat and drink for all other cyclist training in and around the Franschhoek area. We are situated in Franschhoek, as this is the ideal place for cyclist in and around Cape Town to make Franschhoek (Bike Life Café) their ideal pit stop to freshen up and get something to eat and drink before the training ride back home. Also while the cyclist stop for refreshments, the shop can provide bicycle repairs, wash and lube or accessories if needed.

Franschoek is the perfect area because of all the cyclist are training through Franschhoek especially for the big cycling races like the Argus cycle tour and the Double century. Franschhoek is also a big tourist destination, there for the renting out of bicycles are also very popular. We also provide the repairing of bicycles for all the local cyclist that need help or want to buy cycling accessories according to their needs.

## 2. About myself:

I am a single male aged 29, born in Paarl (Western Cape) and have no children yet.

I also have one sibling (sister) who is married with one child.

My parents also stay in Paarl. My mother was a school secretary who recently retired, and my father is a well-known business man in Paarl, who currently runs 3 businesses.

My sister works on a farm actually also in Franschhoek (Solms Delta) as a social worker.

I myself is a keen cyclist who rode professionally in Johannesburg and Europe for 6 years and had to stop competitive cycling due to an injury. After getting the injury I moved back to Paarl, and started to help my father with his shop (Paarl Exhaust). I worked for about a year and decided to open up my own business in Paarl called Afterlife (night club/pub). After running and managing Afterlife successfully for 5 years I decided to spread my wings (business) to the sport that gave so much to me. I decided on a different theme as just the normal bicycle shop.

As I also trained a lot to Franschhoek as a cyclist myself, I decided that this is the perfect destination for a cycling café, as most cyclist make Franschhoek their pit stop to refresh themselves before riding back home.

### 3. Creating Job Opportunity

First the job opportunity within Bike Life Café. We will start at giving at least 3 job opportunities for people who lives in Franschoek. This 3 job descriptions will be as follow:

- 1- Front of house (Sales man or woman).
- 2- Coffee barista
- 3- Bicycle mechanic

Next we will create job opportunities within the local community itself. We will scout for certain tour guides and give them the opportunity to provide for themselves. Through allowing them to take our rental bicycles and giving the tourist a tour through Franschoek. This could be for wine tours or even just for sight-seeing Franschoek on a bicycle. So job opportunity could be a big thing.

As we will grow we will need to appoint more staff to Bike Life Café itself within the shop. Possibilities are endless.

I will also love to start a cycling event (race) in Franschoek. Some sort of a criterium race similar to what they do in Belgium and the Netherlands. So the race will be in Franschoek and start and finish point will be in front of Bike Life Café. Age groups from 10 years old to 60+. Usually this brings the whole family together with their supporters and also the local community as spectators. During and after the race people usually get something to eat and drink, so this will support the other businesses in Franschoek as well.

#### 4. Possible capital investment in upgrading of facility:

As the building currently is, for now it will be perfect just like it is. We will be setting up the bicycle workshop in the one room at the back so that's perfect, we will just add the tools and work stand to the room.

We will also be adding a counter desk at the door entry, with a space for a small coffee machine.

Inside we will be decorating the shop with bicycle accessories and bicycles.

We will also like to use the front porch of the shop and add around 5 small tables and chairs for outside. This will be for the cyclist who wants to stop for a quick coffee.

## 5. Experience in running such a business:

I currently myself have been running and managing this business for a year now.

Before this I have been helping out at the bicycle shop in Paarl for around 2 years on and off only when they really needed help because I also still had to manage my other business as well. I was a sales person (selling bicycles), and could also help in the workshop (fixing bicycles). I have also been cycling for 15years, so I know my way around a bicycle.

As I'm in the cycling scene, I know clubs and groups, so I will just invite the clubs on group rides to Bike Life Café Franschhoek for a coffee stop.

Also not forgetting I have been managing a pub/club successfully for more than 5 years.

## 6. Proposals on BBBEE:

Ownership: Sole ownership.

Management: Currently I am managing the shop myself.

Equipment Equity: Are following all the rules and regulations that be need to be obliged to of the labor department.

Skills Development: All current staff has the skillset in their department to be operating the shop. As the business grows we will add more people to work and they will be trained as needed at Bike Life Café.

Socio-Economic Development: As I currently stated we will appoint people from the Cape Winelands area, to develop community and we will also implement bicycle clinics at schools in Franschhoek. Bicycle clinics will help people learn about bicycles and cycling as a sport. We also want to start a cycling club to help provide for the less fortunate children or even for any person that wants to take up cycling as a sport. We will go on group training rides and also to cycling races in and around Cape Town.

7. Proposed term of lease, and proposed monthly rental:

We are looking for a long term lease. This is definitely a long term vision. Possibly 5 years and plus. This can be opened for discussion.

The monthly rental could be more or less something like R4000, this is also open for discussion.

## 8. Financial Business plan and readiness:

Startup capital: We already have everything we need for the business.

## Equipment, tools and stock:

Equipment, tools and stock	Supplier	Amount
Cycling accessories	ASG Sports	R30 000
Accessories and Bicycle parts	Parow cycle house	R35 000
Accessories and Bicycle parts	Trend Mania	R4 000
Bicycles	Silverback	R20 000
Bicycle cleaner	Nam Gear	R5 000
Accessories and tools	Supersport Cycles	R30 000

## Fixed business costs monthly:

Fixed costs	Amount
Premises Rental	R4000
Salaries	R6000
Transportation	R2000
Telephone	R600
Advertising and promotion	R500
Insurance	R2000
Electricity and water	R1500
Total:	R16 600

Actual Sales: Value of the stock in hand R150 000

## Sales per month:

Product	Selling price	Units sold	Total sales
Bicycle services	R350,R550,R850		R10 000
Bicycle Rentals	R250 per day		R12 000
Accessories	R5 to RR500		R5 000
Bicycles	R12 000		R5 000
Coffee/snacks	R20		R5 000

Total income per month: R37 000

Breakeven analysis: Breakeven amount to cover all costs per month will be R16 600

Marketing plan:

Target Market: Our customers are mainly cyclist or cycling related. We provide services for your everyday people as well. People using their bicycles for transport to work.

We also target the tourism sector as this is a huge part of Franschhoek. Tourist using rental bicycles exploring the town. We will invite cycling groups for training rides to Franschhoek to have a coffee at Bike Life Café.

We order our stock weekly.

Service Research: I started 2 years in advance of planning this business and spotted a gap as there is nothing in Franschhoek like Bike Life Café. Targeting cycling groups from outside to come stop at a specific cycling café. Tourist and wine farms are also always looking for bicycle rentals.

Competitor Research: There is only 1 other cycling shop in Franschhoek. They provide bicycle services and bicycle rentals. They don't have much accessories to supply to cyclist. Also they don't do a coffee theme, so they just doing bicycle rentals and services.

We definitely have the pulling power to invite cycling groups to Bike Life Café that they don't have. The mechanic from us is also

top class. They don't have such a good mechanic as some of their customers spoke to me and confirmed it.

Supplier's research:

ASG Sports	021 879 0281
Silverback	021 386 7777
Parow cycle house	021 951 4637
Trend Mania	011 496 1790
Supersport Cycles	011 917 9134
Terbodore Coffee	021 876 4716
Coke	0860 112 526
Basic foods	021 872 0319

Product price: We are definitely the cheapest in Franschhoek, but it's not about that, we provide quality and very good service.

We promote locally with handing out flyers and also use Facebook and Instagram as marketing options. On Facebook and Instagram we can target our target group specifically.

Organizational Management:

Business structure: Sole Proprietor

Administration: - Receipt book  
 - Invoice book  
 - Sales record  
 - Stock control  
 - Cash book  
 - Appointment book

Conclusion: Our overall goal is to make this business a huge sustainable success. Not only that but to use this opportunity to give to back to the community in terms of setting up the cycling clinics for the children and

provide job opportunities for the people in the Cape Winelands. To put more people on bicycles and keeping a healthy and fitter life.

# APPENDIX 6



## VALUATION REPORT

DETERMINATION OF THE MARKET RENTAL OF:  
FRANSCHHOEK LIVE CRAFT CENTRE PREMISES  
LOCATED ON ERF 143 FRANSCHHOEK

Client:

STELLENBOSCH MUNICIPALITY

5 June 2020

Compiled by:

**Johan Klopper**

Professional Valuer

Member of the SA Institute of Valuers

BCom Law (University of Stellenbosch), NDip: Property Valuation (UNISA)



5 June 2020

Mr. Piet Smit  
 Stellenbosch Municipality  
 Property Management  
 Plein Street  
 Stellenbosch  
 7600

## VALUATION CERTIFICATE

I, the undersigned, Johan Klopper, Professional Valuer registered in terms of the Property Valuer's Profession Act, 2000 (Act No 47 of 2000) do hereby certify that I have inspected and valued the following immovable property namely:

**FRANSCHHOEK LIVE CRAFT CENTRE PREMISES LOCATED ON ERF 143 FRANSCHHOEK,  
 PAARL REGISTRATION DIVISION, in the WESTERN CAPE**

I consider the monthly market rental rate of the abovementioned property to be as follows:

Description	Amount	In words
Retail	R 260 / m <sup>2</sup>	Two Hundred and Sixty Rand per square meter (Excluding VAT)

As at: **1 June 2020**

Signed at Stellenbosch this 5<sup>th</sup> day of June 2020.

**J. Klopper**  
 Professional Valuer  
 Registration Number: 6372/0

PENDO PROPERTY SERVICES CC T/A PENDO PROPERTY VALUERS  
 Reg. No. 2009/230603/23 • VAT Reg. No. 4530269028  
 Member: J. Klopper

Verified Level 4 B-BBEE Contributor

## VALUATION REPORT

### 1. GENERAL INFORMATION

#### 1.1 Instructions

Instructions were received from the Stellenbosch Municipality to determine the fair market rental of the Live Craft Centre premises in Huguenot Street, located on a portion of Erf 143 Franschhoek. Stellenbosch Municipality is in the process of negotiations to determine a market related rental for purposes of renewal of a lease agreement.

Definition of market rental: *"The estimated amount for which the property should be leased on the date of valuation between a willing lessor and a willing lessee in an arm's length transaction after property marketing, wherein the parties acted knowledgeably, prudently and without compulsion."*

#### 1.2 Inspection date

22 May 2020

#### 1.3 Effective date of valuation

1 June 2020

#### 1.4 Limiting conditions

Information was received from third parties regarding the comparable properties. No warranty as to the accuracy of this information can be made.

We have not carried out a structural survey, nor have we tested the service installations, woodwork or other parts of the structure which are covered, unexposed or inaccessible and are therefore unable to report that such parts of the property are free of rot, beetle or other defects. This valuation is therefore based on the assumption that the building is in a reasonable state of repair, unless expressly stated otherwise in this report.

Any possible contamination of the subject property as a result of an environmental incident has also not been taken into account, nor have we examined the cost of any remedial measures involved.

In this report all values referred to exclude VAT, unless expressly stated otherwise.

"The Coronavirus (COVID-19) has been declared a pandemic with a state of national disaster in place. Substantial turmoil has occurred in local and international financial markets and due to the developing situation; it is not possible at this time to quantify its long-term or short-term effects on real estate markets or on the subject property. The value opinion contained in this valuation is based on findings of an analysis of market data available to the valuer at the time of the assignment. The impact of the lockdown has not yet reflected in the data. Consequently, less certainty and a higher degree of caution should be attached to this value opinion, and this should not be seen as a reliable forecast into an uncertain future. It is advised that this report be reviewed in shorter intervals than that which has been the norm".

Due to the prevailing Covid-19 lockdown provisions internal access to the premises was not possible. The valuer was accordingly instructed to do an external inspection.

Maps and sketches that form part of this report are included for illustration purposes only and are not necessarily to scale.

This valuation is for the purpose as stated in this report and should not be used for any other purpose. Neither all nor any part of this report shall be conveyed to the public or anybody other than the addressee or their principles through advertising, public relations, news sales or any other media without the written consent of the author.

## 2. OWNERSHIP INFORMATION

<b>Description</b>	Erf 143 Franschoek, Western Cape
<b>Registered owner</b>	Stellenbosch Municipality
<b>Erf Size</b>	743 m <sup>2</sup>

## 3. MUNICIPAL INFORMATION

<b>Local Authority</b>	Stellenbosch Municipality
<b>Address</b>	68 Huguenot Street, Franschoek
<b>Usage</b>	Retail
<b>Municipal Valuation</b>	R 2 062 000 (GV2017)

## 4. PHYSICAL FEATURES

### 4.1 Situation / Locality

The subject property is located at 68 Huguenot Street on the northern periphery of the Franschoek town centre. The immediate vicinity is characterised by retail premises serving the vibrant tourism market. See location map below:

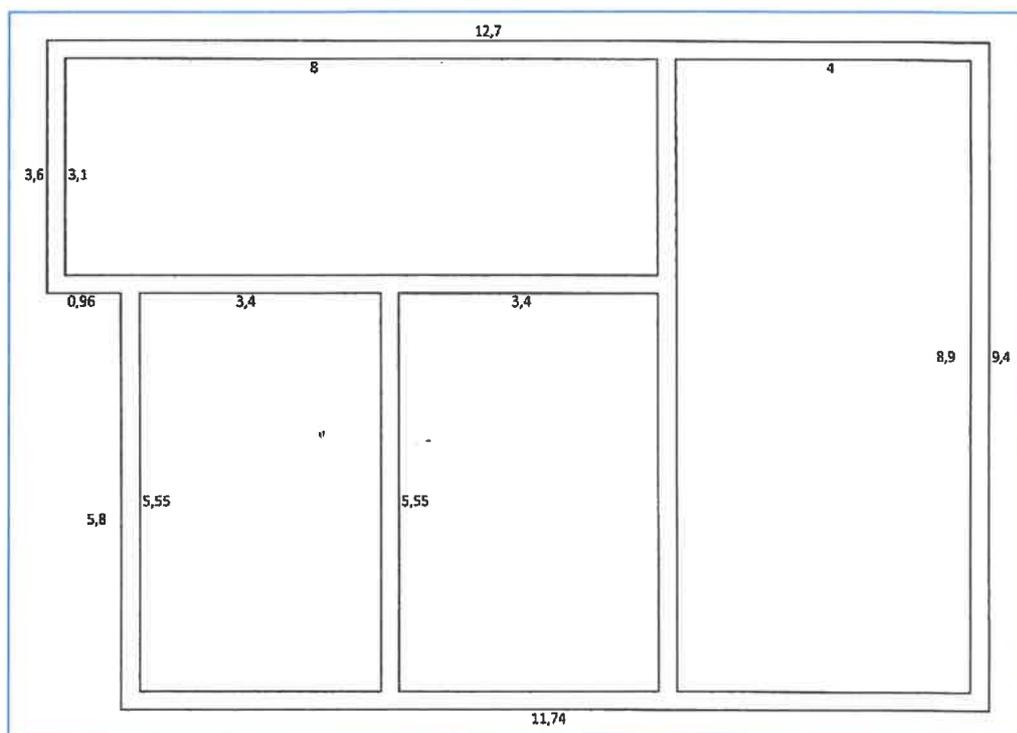


#### 4.2 Description of the site and improvements

This building to be valued currently accommodates the Live Craft Centre. See aerial photograph below:



The building comprises a single storey plastered and painted superstructure with a pitched corrugated iron roof. Based on on-site measurements, the total construction size of improvements is approximately 114 m<sup>2</sup>, while the usable, rentable area is estimated to be approximately 98 m<sup>2</sup>. Accommodation comprises 4 rooms utilised as a craft market. Refer to the sketch below:



The accommodation can generally be described as dated, but in a reasonable state of repair. Refer to **Annexure A** for photographs of the subject property.

## 5. VALUATION METHOD

The direct comparison approach is deemed the most suitable valuation method in determining the market rental of the subject property. This approach is based on the principle of comparability and substitution. The assumption is that if similar assets in a similar market place are leased at a particular value, then the comparable asset will be leased at a similar price. Specific note was taken of the site specific characteristics, location and market conditions when determining the market rental of the subject property.

## 6. VALUE DETERMINATION

### 6.1 Market research

The property market in the immediate vicinity was investigated, and the valuer liaised with local role players to ascertain acceptable market levels for the subject property. The following relevant market information was obtained and applied in the valuation process:

No	Description	Monthly Rate (Excl. VAT)	Remarks
1	Cabriere Street (Artison Village)	R 145 / m <sup>2</sup>	Office premises of approximately 52m <sup>2</sup> located in relative close proximity to the subject property. Significant upward adjustment justified for the subject property due to superior location and utility.
2	2 Haumann Street (Place Vendomme)	R 333 / m <sup>2</sup>	Asking rental of retail premises of approximately 51m <sup>2</sup> located in relative close proximity to the subject property.
3	2 Haumann Street (Place Vendomme)	R 273 / m <sup>2</sup>	Retail premises of approximately 33m <sup>2</sup> located in relative close proximity to the subject property.
4	2 Haumann Street (Place Vendomme)	R 227 / m <sup>2</sup>	Retail premises of approximately 198m <sup>2</sup> located in relative close proximity to the subject property. The location of the subject property is considered superior, which suggests that an upward adjustment would be justified.
5	Huguenot Road	R 427 / m <sup>2</sup>	Asking rental for retail premises of approximately 150m <sup>2</sup> located in town centre. Indicative of the premium for retail accommodation in Huguenot Road (Main Road) in the commercial centre of Franschoek, but a local broker indicated that it is very unlikely that this rental will be achieved in the current market.
6	Huguenot Road	R 432 / m <sup>2</sup>	Current rental for prime retail premises in town centre. Superior location to subject property, with significant downward adjustment justified for the subject property.

### 6.2 Determination of market rental

The market information listed above points to a rather wide range of R 145 / m<sup>2</sup> to R 427 / m<sup>2</sup> for office accommodation in this node. The subject property is located on the periphery of the commercial centre of Franschoek where a high premium is attached to retail space due to the excellent exposure and access to passing trade and traffic. Retail premises in the town centre generally achieve higher rentals than properties on the periphery. Numbers 5 – 6 are considered superior in terms of location, with downward adjustments justified.

Numbers 2 – 4 generally offer slightly superior accommodation on the periphery of the town centre, but with inferior exposure to passing trade, which suggests that the market rate of the subject property should fall in the range between R 227 / m<sup>2</sup> and R 333 / m<sup>2</sup>.

After making the necessary adjustment for the site specific characteristics, location and other value forming characteristics, the valuer is of the opinion that a market rental of **R 260 / m<sup>2</sup>** would be fair and reasonable for the subject property, based on the available market information.

### 6.3 Disposal policy to NGO or non-commercial entities

The valuer was also requested to provide a recommendation regarding an appropriate discount to be applied to the market rental where assets are leased to NGO's or non-commercial public benefit entities. In this regard the valuer investigated disposal policies and budget tariffs of other organs of state, pertaining to NGO's and similar entities, to determine an appropriate range. The table below provides insight into the discounted rates offered to NGO's and similar organisations:

Organ of State	Comments
City of Cape Town	In term of the 2020/2021 Draft Asset Management Tariff Policy 10% - 25% of market rental will apply in respect of land (including improvements) leased for educational purposes.
Stellenbosch Municipality	In terms of the 2019-2020 Tariff schedule, rentals to NPO's and non-commercial entities are authorised at 20% of approved rate
Drakenstein Municipality	30% of calculated fees for NPO's, NGO's and religious organisations.
Overstrand Municipality	Discounted rate of up to 30% of market rate for NGO.

The above table suggests that NGO's and similar organisations generally enjoy discounted rental rates of between 10% and 30% of the market rate. A greater perceived public benefit would justify a higher discount.

## 7. DECLARATION

I, Johan Klopper a registered Professional Valuer, declare that I have inspected the above property and that I have conducted this valuation assignment to the best of my knowledge and skills. I have no present or contemplated interest in this property, and accordingly certify that this valuation was undertaken on a completely independent basis.

Based on our research and experience, we are of the opinion that the **MONTHLY MARKET RENTAL RATES** of the Live Craft Centre premises located on Erf 143 Franschoek, as at 1 June 2020, amounts to:

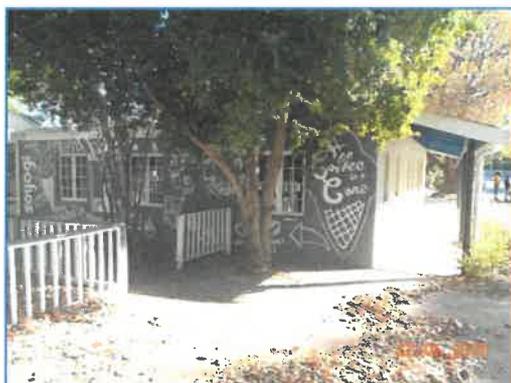
Description	Amount	In words
Retail	R 260 / m <sup>2</sup>	Two Hundred and Sixty Rand per square meter (Excluding VAT)

Signed at STELLENBOSCH on this the 5<sup>th</sup> day of June 2020.



J. Klopper  
 Professional Valuer (Reg. No. 6372/0)  
 Member of the SA Institute of Valuers  
 BCom (Law); NDip (Property Valuation)

**ANNEXURE A: PHOTOGRAPHS OF SUBJECT PROPERTY**



End of report

<b>7.2.5</b>	<b>LEASE PROPOSAL FOR ERECTION OF FREESTANDING TELECOMMUNICATION BASE STATION ERF 8116, STELLENBOSCH: ILANGA TECHNOLOGIES (PTY) LTD on behalf of INVICTA TOWERS</b>
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**Collaborator No:**

**IDP KPA Ref No:**

**Good Governance**

**Meeting Date:**

**15 June 2021**

**1. SUBJECT: LEASE PROPOSAL FOR ERECTION OF FREESTANDING TELECOMMUNICATION BASE STATION ERF 8116, STELLENBOSCH: ILANGA TECHNOLOGIES (PTY) LTD on behalf of INVICTA TOWERS**

**2. PURPOSE**

To consider, in principle, a Lease Proposal received from ILanga Technologies, on behalf of Invicta Towers, for the erection of freestanding Telecommunication Base Stations on erf 8116, Stellenbosch. The erf is situated in Paradyskloof on an open piece of land.

**3. DELEGATED AUTHORITY**

In terms of Delegation EM85 the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated authority to *“Approve Lease Agreements on Council properties for a period shorter than 10 years and a contract value of less than R5M”*.

**4. EXECUTIVE SUMMARY**

A Lease Proposal for the erection of freestanding Telecommunication base stations on erf 8116, Stellenbosch, was received from Ilanga Technologies on behalf of Invicta Towers in January 2021 according to Mr Smit from the properties department.

In terms of the Property Management Policy Council may conclude these kind of agreements on a private treaty basis, i.e. without following a public tender process, subject thereto that Council's intention to enter into such an agreement be advertised for public inputs/comments/objections.

That process has not taken place yet. The applicant also applied for similar rights on erf 4261 Stellenbosch. The latter application is dealt with in a separate item.

**5. RECOMMENDATIONS**

- (a) that the portion of erf 8116, as indicated on Fig 4, be identified as land not needed for own use of during the period for which the rights are to be awarded;
- (b) that Council consider the application in regard to erf 8116.
- (c) that Should Council in principle approve a lease that a public participation process take place to elicit the public's comments/alternative proposals or objections to the lease and/or the erecting of such tower on the erf.
- (d) that council consider the final approval when the item is returned to Council after the Public Participation process
- (e) that it be noted that the current infrastructure( water pipes) on the site may not be disturbed and that further infrastructure may be added to the site in future.
- (f) that it be noted that should council approve the application all sub-leasing on the tower will have to be approved by Council.

---

## 6. DISCUSSION / CONTENT

### 6.5 Background

#### 6.1.1 Application /Proposal to Lease Municipal Land for freestanding telecommunication base stations

Hereto attached as **APPENDIX 1** is an applications/proposal received from ILanga Technologies on behalf of Invicta Towers to conclude Lease Agreements with Stellenbosch Municipality, to enable them to erect freestanding telecommunication base station on erven 8116, Stellenbosch. They have also applied for a similar lease on erf 4261 which is dealt with in a separate item.

### 6.2. DISCUSSION

#### 6.2.1 Location and context

##### 6.2.1. Erf 8116

Erf 8116 is situated in Paradyskloof as indicated on Fig 3 and 4, below.



Fig 3: Location and context



**Fig 4: The Site**

### 6.2.2 Ownership

The ownership of 8116 vests with Stellenbosch Municipality by virtue of Title Deeds T44240/1974 and T44262/1985, respectively.

### 6.2.3 Legal requirements

#### 6.2.3.1. Asset Transfer Regulations

In terms of Section 34 (1) of the ATR a Municipality may grant a right to use, control or manage a capital asset only after-

- c) The Accounting officer has concluded a public participation process\*; and
- d) The municipal council has approved in principle that the right may be granted.

\*Sub regulation (1) (a) (public participation process), however, must be complied with only if-

- a) The capital asset in respect of which the right is to be granted has a value in excess of R10M\*; and
- b) A long-term right is proposed to be granted (i.e. longer than 10 years).

None of the assets has a value in excess of R10M.

In terms of Regulation 36, the municipal council must, when considering such approval, take into account:

- a) whether such asset may be required for the municipality's **own use** during the period for which such right is to be granted;
- b) the extent to which any compensation to be received will result in a significant economic or **financial benefit** to the municipality;

- c) the **risks and rewards** associated with such right to use; and
- d) the **interest of the local community**

In terms of Regulation 41, if an approval in principle has been given in terms of regulation 34 (1)(b), the municipality (read Mayco) may grant the right only in accordance with the **disposal management system\*** of the municipality, irrespective of:-

- c) the value of the asset; or
- d) the period for which the right is granted

\*The Policy on the Management of Council owned property is deemed to be Stellenbosch Municipality's Disposal Management System.

#### **6.2.3.2 Policy on the Management of Council owned property**

In terms of paragraph 9.2.2 of the Policy, the Council may dispense with the prescribed, competitive process, and may enter into a private treaty agreement through any convenient process, which may include direct **negotiations**, but only in **specific circumstances**, and only after having **advertised** Council's intention so to act. One of the circumstances listed in (g) is where unsolicited applications/proposals are received from telecommunication companies to construct or put up communication infrastructure on municipal land, such as masts, dishes, etc., subject to the approved tariff structure\*. \*See par. 6.4.3 below.

Further, in terms of paragraph 9.2.2.2, the reasons for any such deviation from the competitive process must be recorded.

#### **6.2.3.4 Telecommunication Mast Infrastructure Policy (2017)**

Council adopted the above policy in 2017. Should Council therefor approve of the application to conclude a Lease Agreement for the construction of a freestanding telecommunication base station, it will be subject thereto that all the necessary Land Use rights and building plan approvals are obtained from the Planning Department.

Only when such approvals/authorisations are in place, the Lease Agreement will come into operation.

#### **6.4 Financial Implications**

In terms of the approved tariff structure a monthly fee of R6300 will be payable. They will also be responsible for the actual cost in relation to the publication of the public notice.

Should Council approve of the application it will result in an annual income of R75 600.00; i.e R749 700 over a lease period of 9 years and 11 months (without taking into account the annual escalation).

#### **6.5 Legal Implications**

See par. 6.2.3. above.

#### **6.6 Staff Implications**

There are no additional staff implications.

**6.7 Previous / Relevant Council Resolutions**

None

**6.8 Risk Implications**

There is infrastructure on the land and any building plans will have to take that into account. Should the land be needed for future use for the provision of services the attachments to the land will have to be removed or will become municipal property if not removed without paying for the improvements by the Municipality.

**6.9 Comments from Senior Management**

The item was sent for comments on 5 February 2021. No other comments were received.

Comments from Infrastructure services attached as **APPENDIX 2**.

**ANNEXURES:**        **Appendix 1: Proposal from ILanga to lease Erf 8116**  
                              **Appendix 2: Input from Infrastructure Services**

**FOR FURTHER DETAILS CONTACT:**

<b><i>NAME</i></b>	<b>Piet Smit</b>
<b><i>POSITION</i></b>	<b><i>Manager: Property Management</i></b>
<b><i>DIRECTORATE</i></b>	<b><i>Corporate Services</i></b>
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<b><i>REPORT DATE</i></b>	<b><i>2021-06-09</i></b>

# APPENDIX 1

# PROPOSAL TO LEASE MUNICIPAL LAND FOR A FREESTANDING TELECOMMUNICATION BASE STATION

Erf 8116, STELLENBOSCH



**STELLENBOSCH**  
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNISIPALITEIT • UMASIPALA • MUNICIPALITY

**Curt van Wyk**

Town and Regional Planner (Site Acquisition)

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## PROPOSED TELECOMMUNICATION BASE STATION

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## 1 MOTIVATION

### 1.1 HISTORICAL BACKGROUND

Over recent years' cellular communication in South Africa evolved from merely a means of convenience to an essential business tool, means of communication and safety measure. Initial high tariff rates limited the accessibility of the products and its service. However, over time more reasonable consumer tariffs and packages have been introduced, making cellular communication more accessible to a much larger sector of the population.

Data usage on the networks are also becoming faster, more affordable and more accessible. User behavior patterns are continuously changing in reaction to cheap internet, new data intensive smart phones, data intensive applications and websites, and an increasing social media driven society. These factors resulted in the average consumer data usage doubling every year.

The current cellular infrastructure is not equipped to handle this demand which leads to a congested network with connection problems and dropped calls on the voice network and limited and unstable internet connections on the data network.

Cellular service provider is taking steps to improve their network by keeping abreast with the advances in communication technology and providing increased capacity in terms of coverage in the areas where there is an increased demand. We strive to make this technology available to the wider spectrum of the population.

Newer technology like LTE provide faster internet to more users which alleviate the pressure on the base station, but its range is very limited. A single old generation GSM voice based base stations could cover dozens of kilometers. The new LTE base stations have a maximum coverage range of 500m depending on the number of users.

The congestion of existing sites together with a decrease in its coverage range necessitates that the distance between base stations decrease resulting in the construction of new freestanding and rooftop cellular base stations.

It is calculated that cellular network operators are South Africa will build 2800 new base stations in the next 5 years.

The proposed site is located at a nominal point as identified by network planners. By utilizing sites located at the network's nominal point the number of future base stations are limited and an effective service network can be developed.



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## PROPOSED TELECOMMUNICATION BASE STATION

## 2 INTRODUCTION

### 2.1 REGISTERED OWNER

The registered owner of the subject property is identified as STELLENBOSCH MUNICIPALITY. Consent will be needed from this institution in order to proceed with the submission of a land use application (consent use) and building plans for the proposed free standing telecommunication base station.

### 2.2 CLIENT

Invicta Towers and Ilanga Technologies (Pty) Ltd will submit a land use and building plan application to Stellenbosch Local Municipalities for the permission to erect a free standing telecommunication base station on the subject property, Erf 8116, Stellenbosch Municipality.

## 3 REGISTERED DETAIL

### 3.1 TITLE DEED & CONVEYANCER'S INVESTIGATION

Table 1 reflects the current registered detail of Erf 8116, Stellenbosch.

TABLE 1 – REGISTERED DETAILS			
REGISTERED DESCRIPTION	TITLE DEED NO.	REGISTERED OWNER	EXTENT
Erf 8116, Stellenbosch	T44262/1985	STELLENBOSCH MUNICIPALITY	1,3741ha

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## PROPOSED TELECOMMUNICATION BASE STATION

## 3.2 WINDEED OF SUBJECT PROPERTY

Please see extract of the subject property's windeed below.

Printed: 2020-11-23 09:16

## WinDeed Property Report

A LexisNexis® Product

**Township** STELLENBOSCH, Erf 8116/0

### REGISTERED PROPERTY DETAILS

Property Type	ERF	Diagram Deed	DU 1000/800
Erf Number	8116	Registered Size	1,3741HA
Portion Number	0	Municipality	STELLENBOSCH MUN
Township	STELLENBOSCH	Province	WESTERN CAPE
Registration Division	STELLENBOSCH RD	Coordinates (Lat/Long)	-33.962112 / 18.852623
Deeds Office	CAPE TOWN		

### OWNER DETAILS

**Owner 1 of 1**

Person Type	COMPANY	Title Deed	T44262/1985
Name	MUN STELLENBOSCH	Purchase Date	-
Registration Number		Purchase Price (R)	-
Share (%)	-	Registration Date	1985/12/03

### MAPS




### PROPERTY INFORMATION

Address	-
Primary Use	-
Estate	-

#### Room Configuration

Bedrooms	2	Reception Areas	-
Bathrooms	1	Study/Office	-
Kitchens	1		
Internal Finishes	-		

#### General Information

Door Number	-	Roof Type	-
Floor Size (m²)	-	Wall Type	-
Storeys	-	Construction Year	-

#### Other Features

Garages	-	Additional Dwellings	-
Garden	-		
Pool	-		

### MUNICIPAL VALUATION

Municipal Valuation		Valuation Year	-
Zoning Usage			

## 4 SITE & CONTEXTUAL ANALYSIS

### 4.1 LOCATION



**Figure 1. Locality**

Erf 8116, Stellenbosch is located in the suburb of Paradyskloof in Stellenbosch. (Please see figure 1. and attached locality plan)

## PROPOSED TELECOMMUNICATION BASE STATION

## 4.2 LAND USE

The property is currently zoned Public Open Space Zone and therefore a free standing telecommunication base station is permitted as a consent use according to the Stellenbosch Municipality Zoning Scheme By-Law 2019, applicable to Stellenbosch.



Figure 2 – Zoning map

## 5 DEVELOPMENT PROPOSAL

## 5.1 APPLICATION SPECIFICATIONS

The client, Invicta Towers, with consent of the property owner wishes to submit building plans in order to erect a 30m on an 8m x 8m (64m<sup>2</sup>) area.



Figure 3 – Proposed site

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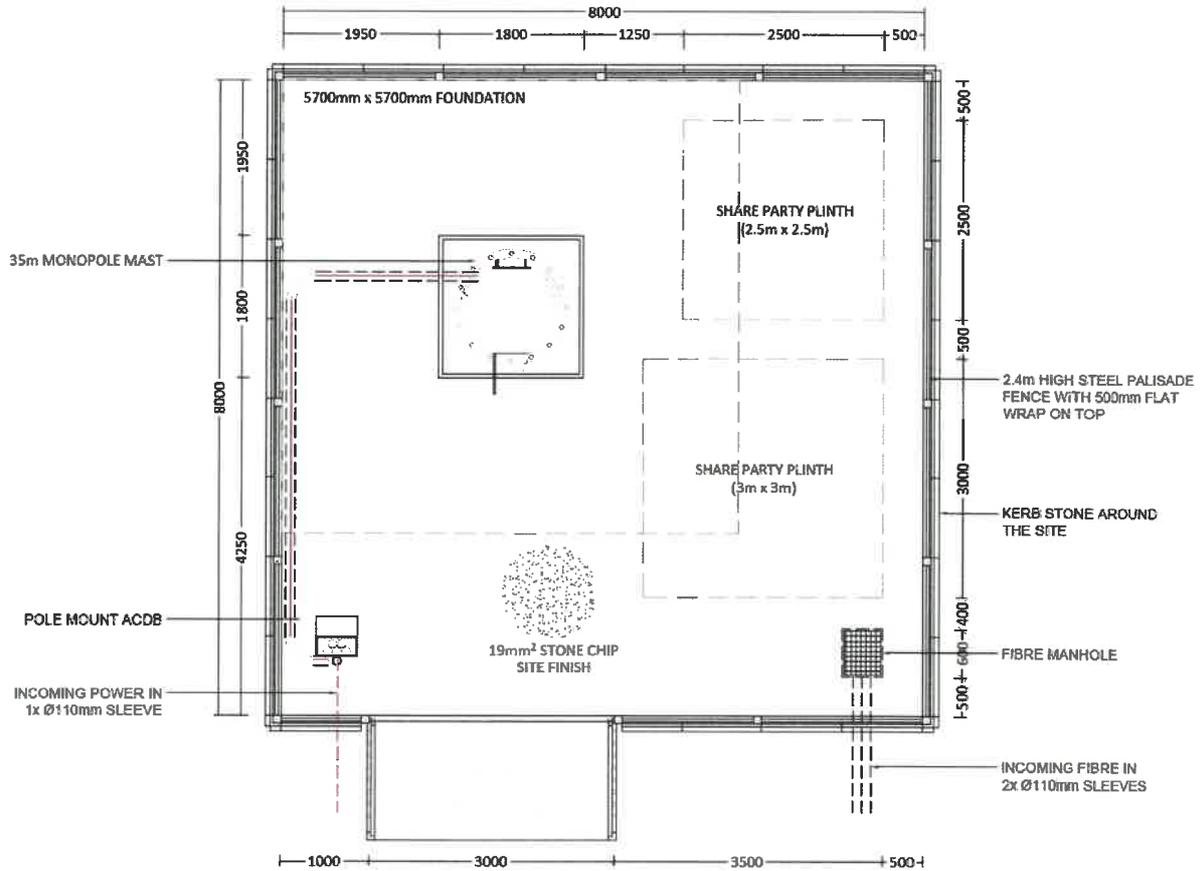
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PROPOSED TELECOMMUNICATION BASE STATION

5.2 DEVELOPMENT CONCEPT

The application comprises the following proposed development parameters:

The total ground coverage of the proposed free standing telecommunication base station (tree tower) will be 64m<sup>2</sup> (8m x 8m) in extent. (Please see figure 4. below)



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PROPOSED TELECOMMUNICATION BASE STATION

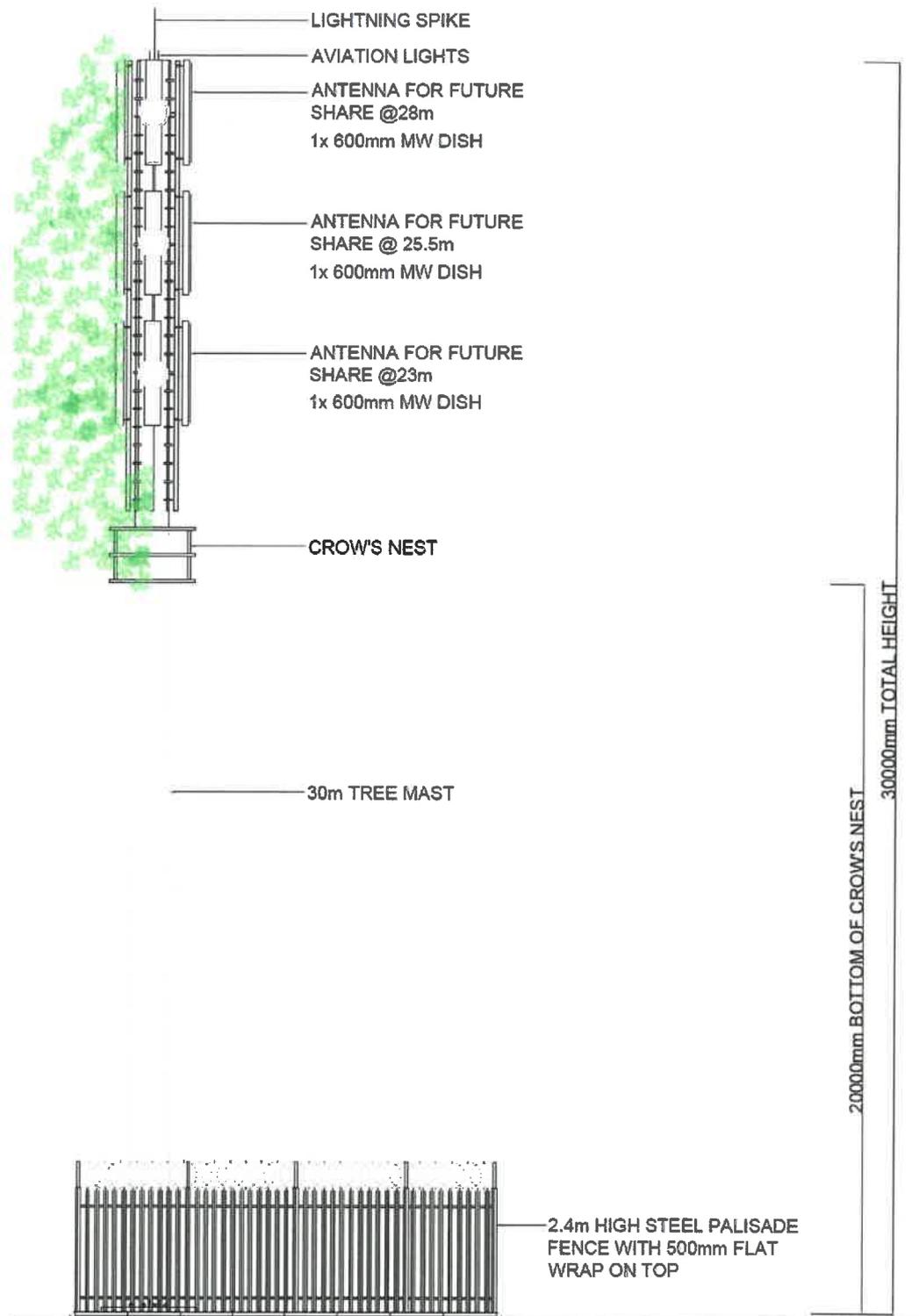


Figure 4. Proposed freestanding telecommunication mast



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## PROPOSED TELECOMMUNICATION BASE STATION

## 5.3 ACCESS

The subject property gains access from Blaauwklippen Road as depicted in figure 5-6 below.



*Figure 5. Access to subject property*



*Figure 6. Picture of access to subject property*

#### 5.4 NEED AND DESIRABILITY

INVICTA TOWERS is required to continuously upgrade and expand the current cellular network to keep up with advancing technology and escalating demand. This advancing cellular technology incorporates internet connectivity in addition to cellular telephony and more and more subscribers rely on their cellular networks for internet connections as modems or directly through their handsets. Internet connections use up far more of the network capacity than regular calls and consequently the current networks are rapidly becoming inadequate resulting in dropped calls.

The existing coverage for this area is not very good and subscribers experience network congestion and dropped calls and it has been determined by the radio planners that it is necessary to supplement the network in this area with an additional base station. The site that has been selected forms part of a capacity upgrade plan in the area. The serving cells in the area are reaching their capacity limit and from a planning and optimization perspective it is essential that a new site be built to prevent future congestion. The site will also give coverage to the surroundings as there are complaints received by the Network Quality Department in this regard.

Cellular phones have become an integral part of our way of life and fulfill an important role in most people's daily life. Cellular phones have become of utmost importance since communication is made much easier and more readily available. To provide effective cellular phone communications, cellular telephone masts must be provided by the various public operators and placed on specific locations predetermined by professional personnel.

The current demand and popularity of cellular telephones surpassed all expectations and subsequently the existing networks are insufficient to handle daily calls in certain areas. Presently cellular telephones are an everyday use article with a large percentage of subscribers throughout the country. Nowadays it is hard to find a person that does not use a cellular phone. The development of cellular telephone masts is of national interest because it promotes communications and places telephone communication within reach of the entire population.

Data usage through cellular phones, modems, and other mobile devices such as iPads, Smart Phones, etc., all require good 3G (and recently added 4G) coverage to operate effectively. The more evolved the devices become, the denser the telecommunication infrastructure will have to become as more and more signal / coverage will be required.

The permission application is submitted to the Stellenbosch Municipality to obtain the desired rights as required by our client and prescribed by ruling policies and legislation. The application is made to lease 64m<sup>2</sup> to permit the construction of a telecommunication mast on the application site.



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## PROPOSED TELECOMMUNICATION BASE STATION

The position was calculated, considering the topography, surrounding land uses and available land, ecological sensitivity, and the placement of other Telecommunication masts in the area. The socio-economic profile of the consumers is also considered. Additionally, the technical specifications of the Radio-planner must be adhered to.

The current cellular telephone infrastructure in this part of and surrounding areas are reaching their maximum carrying capacities. Cellular telephone masts have a limited number of calls / data usages that it can handle at any given time. If the number of calls / data usage is exceeded, it results in calls being cut off and slow internet connections.

The need for additional infrastructure is also determined by the number of subscribers that contact service providers and complain about poor signals in their areas. Therefore, a need arises for more cellular telephone infrastructure in the Stellenbosch area.

As mentioned above, several complaints on poor signal have been received from residents in the area. A Telecommunication mast, being 30m high and requiring a site that will be approximately 64m<sup>2</sup> in total, was therefore proposed by INVICTA TOWERS in order to serve this area of Stellenbosch Municipality, the surrounding community and future developments with sufficient 2G and 3G (and 4G) signal/coverage.

Broadband penetration in general within South Africa is very low. This situation can be ascribed to the unavailability of electronic communication infrastructure which largely includes Telecommunication Masts. For this to be rectified, the Department of Telecommunications and Postal Services (DTPS) has placed enormous pressures on services providers in South Africa such as MTN(Pty) Ltd to provide more infrastructure. According the National Broadband Policy for South Africa, 2010, some disadvantages associated with the lack of adequate infrastructure include:

- Lower access to efficacy in Government Processes
- South Africa becomes a less competitive destination for investment
- An increase in the digital divide

Reduced access to employment opportunities and job creation.

The DTPS has stated in the National Broadband Policy for South Africa, 2010, that in order for their vision for universal access to Broadband to be achieved in 2020, the country has to see an increase in reliable, robust and secure infrastructure that is available, accessible and affordable to all. For the cost of communication to be reduced, there should be a rollout of infrastructure such as Telecommunication masts throughout South Africa.

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## PROPOSED TELECOMMUNICATION BASE STATION

## 5.5 CONCLUSION

The proposed free standing telecommunication mast base station on Erf 4261, Stellenbosch, will provide an essential and sort after service to the surrounding community, businesses and commuters. The proposed Telecommunication site is in line with the Stellenbosch Municipality's Stellenbosch Municipality Zoning Scheme By-Law 2019, and have a minimal impact on the surrounding property.

We trust that the application will meet your requirements and will receive your positive consideration.

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# **APPENDIX 2**



Please find the water services infrastructure on proposed site.

This site might be earmarked for future water infrastructure and any new structures must be discussed with water services.

**From:** Lize-Mari Visser [<mailto:Lize-Mari.Visser@stellenbosch.gov.za>]

**Sent:** Friday, 05 February 2021 08:54

**To:** Adriaan Kurtz <[Adriaan.Kurtz@stellenbosch.gov.za](mailto:Adriaan.Kurtz@stellenbosch.gov.za)>; Clayton Hendricks <[Clayton.Hendricks@stellenbosch.gov.za](mailto:Clayton.Hendricks@stellenbosch.gov.za)>; Jeri-Lee Mowers <[Jeri-Lee.Mowers@stellenbosch.gov.za](mailto:Jeri-Lee.Mowers@stellenbosch.gov.za)>; Johan Fullard <[Johan.Fullard@stellenbosch.gov.za](mailto:Johan.Fullard@stellenbosch.gov.za)>; Nombulelo Zwane <[Nombulelo.Zwane@stellenbosch.gov.za](mailto:Nombulelo.Zwane@stellenbosch.gov.za)>

**Cc:** Deon Louw <[Deon.Louw@stellenbosch.gov.za](mailto:Deon.Louw@stellenbosch.gov.za)>; Joy Julius <[Wayleave@stellenbosch.gov.za](mailto:Wayleave@stellenbosch.gov.za)>; Justine Fielies <[Justine.Fielies@stellenbosch.gov.za](mailto:Justine.Fielies@stellenbosch.gov.za)>; Megan Daniels <[Megan.Daniels@stellenbosch.gov.za](mailto:Megan.Daniels@stellenbosch.gov.za)>; Tanya Carstens <[Tanya.Carstens@stellenbosch.gov.za](mailto:Tanya.Carstens@stellenbosch.gov.za)>; Tashlee Ismail <[Tashlee.Ismail@stellenbosch.gov.za](mailto:Tashlee.Ismail@stellenbosch.gov.za)>

**Subject:** FW: Kan ek dit maar uistuur vir kommentaar en vir wie almal

Good morning,

Please provide comment by 09/02/2021.



Kind regards,

**Lizé-Mari Visser**

Personal Assistant to  
Director: Infrastructure Services

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Stellenbosch, 7600  
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7.2.6	<b>APPLICATION TO LEASE: PORTION OF ERF 4261 (DALSIG), STELLENBOSCH : CELLPHONE TOWER(S) : ATLAS TOWERS AND ILANGA TECHNOLOGIES, ON BEHALF OF INVICTA TOWERS</b>
-------	--

Collaborator No:

IDP KPA Ref No:

Good Governance

Meeting Date:

15 June 2021

**1. SUBJECT:APPLICATION TO LEASE: PORTION OF ERF 4261 (DALSIG), STELLENBOSCH : CELLPHONE TOWER(S) : ATLAS TOWERS AND ILANGA TECHNOLOGIES, ON BEHALF OF INVICTA TOWERS**

**2. PURPOSE**

To inform council of the 2 applications received from 2 different companies namely Atlas Towers and Ilanga Technologies, on behalf of Invicta Towers allowing them to construct new base stations on a portion of erf 4261, Stellenbosch. Council must consider the applications to lease the land for this purpose.

**3. DELEGATED AUTHORITY**

In terms of Delegation EM85 the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated authority to “*Approve Lease Agreements on Council properties for a period shorter than 10 years and a contract value of less than R5M*”.

**4. EXECUTIVE SUMMARY**

On 2018-06-18, following a written request to this effect, a Special Power of Attorney was issued to Atlas Towers to apply for the necessary authorisation to construct a new base station (communication tower) on a portion of erf 4261, Stellenbosch. The delegation to sign these requests was subsequently revoked from the Manager Properties and Maintenance.

This application (building plan) was subsequently approved and they now want to enter into a Lease Agreement with the Municipality (**APPENDIX 3**). The application is dated 5 December 2018.

A further application to erect a base station tower on the same property was also received from Ilanga Technologies, on behalf of Invicta Towers (**APPENDIX 4**). The application is undated, but was received in January 2021 according to Mr Smit from the property department.

In terms of the Property Management Policy Council may conclude lease agreements on a private treaty basis, i.e. without following a public tender process, subject thereto that Council’s intention so to enter into such a contract is advertised for public inputs/comments/objections. It is however clear that there are competing interests on this land and Council must take that into account when considering the applications.

There is also a reservoir on the property and the Water Services department has indicated that further infrastructure may be built on the site in future (**APPENDIX 5**). On the reservoir there are telemetry towers and other signals may interfere with our network services from the site. The Mayor in consultation with the Mayoral Committee can therefore consider the application.

**5. RECOMMENDATION**

For consideration

## 6. DISCUSSION / CONTENT

### 6.1 Background

#### 6.1.1 Application for a Power of Attorney

On 2018.06.18, following a written request to this effect, a Special Power of Attorney was issued to Atlas Towers to apply for the necessary authorisation to construct a new base station (communication tower) on a portion of Erf 4261, Stellenbosch, a copy of which is attached as **APPENDIX 1**.

#### 6.1.2 Approval of building plans

On 22 November 2018 this Department was informed that the necessary authorisation (building plan approval) has been received from Stellenbosch Municipality, a copy of which is attached as **APPENDIX 2**. They have applied for a Lease Agreement with Stellenbosch Municipality to enable them to construct a base station on a portion of erf 4261, Stellenbosch. A copy of the application is attached as **APPENDIX 3**. A further application to erect a base station tower on the same property was also received from Ilanga Technologies, on behalf of Invicta Towers (**APPENDIX 4**).

### 6.2. DISCUSSION

#### 6.2.1 Property description

Erf 4261, Stellenbosch is situated in Nootgedacht street in Dalsig, as shown, on Fig 1 and 2, below.

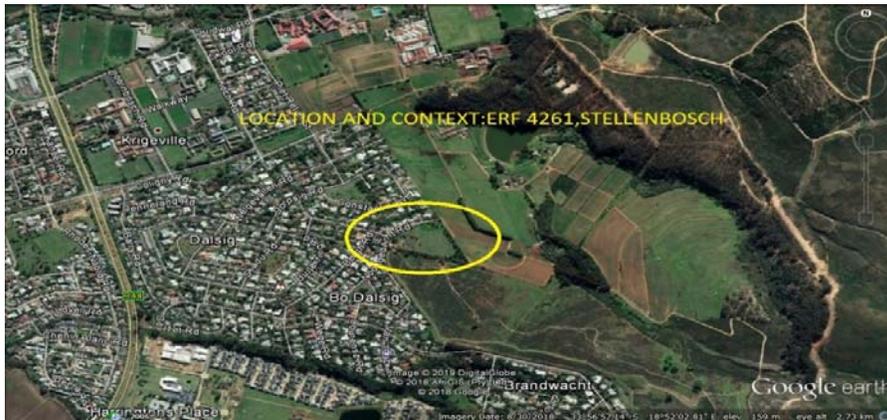


Fig 1: Location and context



**Fig 2: Size of property**

### 6.2.3 Current use

The site currently house a municipal reservoir, but there is enough space to cater for the base station. The department indicated that the site might be needed for further infrastructure in future.

### 6.2.4 Ownership

The ownership of erf 4261 vests with Stellenbosch Municipality by virtue of Title Deed T44240/1974.

### 6.3 Financial Implications

In terms of the approved tariff structure a monthly fee of R6300 will be payable. They will also be responsible for the actual cost in relation to the publication of the public notice.

Should Council approve of the application it will result in an annual income of R75 600.00; i.e. R749 700 over a lease period of 9 years and 11 months (without taking into account the annual escalation).

It needs to be taken into account that the base stations are sub-leased to companies who wants to put disks or smaller towers on to provide internet. Space is then rented from the company that has the base station.

### 6.5 Legal Implications

#### 6.5.1 Asset Transfer Regulations

In terms of Section 34 (1) of the ATR a Municipality may grant a right to use, control or manage a capital asset only after-

- e) The Accounting officer has concluded a public participation process\*; and

f) The municipal council has approved in principle that the right may be granted.

\*Sub regulation (1) (a) (public participation process), however, must be complied with only if-

c) The capital asset in respect of which the right is to be granted has a value in excess of R10M\*; and

d) A long-term right is proposed to be granted (i.e. longer than 10 years).

None of the assets has a value in excess of R10M.

In terms of Regulation 36, the municipal council must, when considering such approval, take into account:

- a) whether such asset may be required for the municipality's **own use** during the period for which such right is to be granted;
- b) the extent to which any compensation to be received will result in a significant economic or **financial benefit** to the municipality;
- c) the **risks and rewards** associated with such right to use; and
- d) the **interest of the local community**

In terms of Regulation 41, if an approval in principle has been given in terms of regulation 34 (1)(b), the municipality (read Mayco) may grant the right only in accordance with the **disposal management system\*** of the municipality, irrespective of:-

- e) the value of the asset; or
- f) the period for which the right is granted

\*The policy on the Management of Council owned property is deemed to be Stellenbosch Municipality's disposal management System.

### 6.5.2 Policy on the Management of Council owned property

In terms of paragraph 9.2.2 of the Policy, the Council may dispense with the prescribed, competitive process, and may enter into a private treaty agreement through any convenient process, which may include direct **negotiations**, but only in **specific circumstances**, and only after having **advertised** Council's intention so to act.

One of the circumstances listed in (g) is where unsolicited applications/proposals are received from telecommunication companies to construct or put up communication infrastructure on Municipal land, such as masts, dishes, etc., subject to approved tariff structure\*.

\*See par. 4.3 below.

Further, in terms of paragraph 9.2.2.2, the reasons for any such deviation from the competitive process must be recorded.

**6.5.3 Telecommunication Mast Infrastructure Policy (2017)**

Council adopted the above policy in 2017. Should Council therefor approve of the application to conclude a Lease Agreement for the construction of a freestanding telecommunication base station, it will be subject thereto that all the necessary Land Use rights and building plan approvals are obtained from the Planning Department.

Only when such approvals/authorisations are in place, the Lease Agreement will come into operation.

**6.6 Staff Implications**

There are no staff implications, should the recommendations be approved.

**6.7 Previous / Relevant Council Resolutions**

None

**6.8 Risk Implications**

Risks are indicated in the item.

**6.9 Comments from Senior Management**

The item was sent out for comments on 5 February 2021 and the water services commented – see **Appendix 5**.

- ANNEXURES:**
- Appendix 1: Special Power of Attorney**
  - Appendix 2: Building Plan approval**
  - Appendix 3: Application**
  - Appendix 4: Application Ilanga Technologies, on behalf of Invicta Towers**
  - Appendix 5: Comments from Water Services Department**

**FOR FURTHER DETAILS CONTACT:**

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<b>DIRECTORATE</b>	<b>Corporate Services</b>
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<b>E-MAIL ADDRESS</b>	<b>Annalene.deBeer@stellenbosch.org.za</b>
<b>REPORT DATE</b>	<b>2021 – 06-10</b>

# APPENDIX 1

# PROPOSAL TO LEASE MUNICIPAL LAND FOR A FREESTANDING TELECOMMUNICATION BASE STATION

Erf 8116, STELLENBOSCH



**STELLENBOSCH**  
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNISIPALITEIT • UMASIPALA • MUNICIPALITY

**Curt van Wyk**

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## PROPOSED TELECOMMUNICATION BASE STATION

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# 1 MOTIVATION

## 1.1 HISTORICAL BACKGROUND

Over recent years' cellular communication in South Africa evolved from merely a means of convenience to an essential business tool, means of communication and safety measure. Initial high tariff rates limited the accessibility of the products and its service. However, over time more reasonable consumer tariffs and packages have been introduced, making cellular communication more accessible to a much larger sector of the population.

Data usage on the networks are also becoming faster, more affordable and more accessible. User behavior patterns are continuously changing in reaction to cheap internet, new data intensive smart phones, data intensive applications and websites, and an increasing social media driven society. These factors resulted in the average consumer data usage doubling every year.

The current cellular infrastructure is not equipped to handle this demand which leads to a congested network with connection problems and dropped calls on the voice network and limited and unstable internet connections on the data network.

Cellular service provider is taking steps to improve their network by keeping abreast with the advances in communication technology and providing increased capacity in terms of coverage in the areas where there is an increased demand. We strive to make this technology available to the wider spectrum of the population.

Newer technology like LTE provide faster internet to more users which alleviate the pressure on the base station, but its range is very limited. A single old generation GSM voice based base stations could cover dozens of kilometers. The new LTE base stations have a maximum coverage range of 500m depending on the number of users.

The congestion of existing sites together with a decrease in its coverage range necessitates that the distance between base stations decrease resulting in the construction of new freestanding and rooftop cellular base stations.

It is calculated that cellular network operators are South Africa will build 2800 new base stations in the next 5 years.

The proposed site is located at a nominal point as identified by network planners. By utilizing sites located at the network's nominal point the number of future base stations are limited and an effective service network can be developed.



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## PROPOSED TELECOMMUNICATION BASE STATION

## 2 INTRODUCTION

### 2.1 REGISTERED OWNER

The registered owner of the subject property is identified as STELLENBOSCH MUNICIPALITY. Consent will be needed from this institution in order to proceed with the submission of a land use application (consent use) and building plans for the proposed free standing telecommunication base station.

### 2.2 CLIENT

Invicta Towers and Ilanga Technologies (Pty) Ltd will submit a land use and building plan application to Stellenbosch Local Municipalities for the permission to erect a free standing telecommunication base station on the subject property, Erf 8116, Stellenbosch Municipality.

## 3 REGISTERED DETAIL

### 3.1 TITLE DEED & CONVEYANCER'S INVESTIGATION

Table 1 reflects the current registered detail of Erf 8116, Stellenbosch.

TABLE 1 – REGISTERED DETAILS			
REGISTERED DESCRIPTION	TITLE DEED NO.	REGISTERED OWNER	EXTENT
Erf 8116, Stellenbosch	T44262/1985	STELLENBOSCH MUNICIPALITY	1,3741ha

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PROPOSED TELECOMMUNICATION BASE STATION

3.2 WINDEED OF SUBJECT PROPERTY

Please see extract of the subject property's windeed below.

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WinDeed Property Report
windeed  
A LexisNexis® Product

**Township** STELLENBOSCH, Erf 8116/0

REGISTERED PROPERTY DETAILS

Property Type	ERF	Diagram Deed	DU 1000/800
Erf Number	8116	Registered Size	1,3741HA
Portion Number	0	Municipality	STELLENBOSCH MUN
Township	STELLENBOSCH	Province	WESTERN CAPE
Registration Division	STELLENBOSCH RD	Coordinates (Lat/Long)	-33.962112 / 18.852623
Deeds Office	CAPE TOWN		

OWNER DETAILS

Owner 1 of 1

Person Type	COMPANY	Title Deed	T44262/1985
Name	MUN STELLENBOSCH	Purchase Date	-
Registration Number		Purchase Price (R)	-
Share (%)	-	Registration Date	1985/12/03

MAPS




PROPERTY INFORMATION

Address	-	-	-
Primary Use	-	-	-
Estate	-	-	-

Room Configuration

Bedrooms	2	Reception Areas	-
Bathrooms	1	Study/Office	-
Kitchens	1		
Internal Finishes	-		

General Information

Door Number	-	Roof Type	-
Floor Size (m²)	-	Wall Type	-
Storeys	-	Construction Year	-

Other Features

Garages	-	Additional Dwellings	-
Garden	-		
Pool	-		

MUNICIPAL VALUATION

Municipal Valuation	Valuation Year
Zoning Usage	-



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## 4 SITE & CONTEXTUAL ANALYSIS

### 4.1 LOCATION



**Figure 1. Locality**

Erf 8116, Stellenbosch is located in the suburb of Paradyskloof in Stellenbosch. (Please see figure 1. and attached locality plan)

## PROPOSED TELECOMMUNICATION BASE STATION

## 4.2 LAND USE

The property is currently zoned Public Open Space Zone and therefore a free standing telecommunication base station is permitted as a consent use according to the Stellenbosch Municipality Zoning Scheme By-Law 2019, applicable to Stellenbosch.



Figure 2 – Zoning map

## 5 DEVELOPMENT PROPOSAL

## 5.1 APPLICATION SPECIFICATIONS

The client, Invicta Towers, with consent of the property owner wishes to submit building plans in order to erect a 30m on an 8m x 8m (64m<sup>2</sup>) area.



Figure 3 – Proposed site

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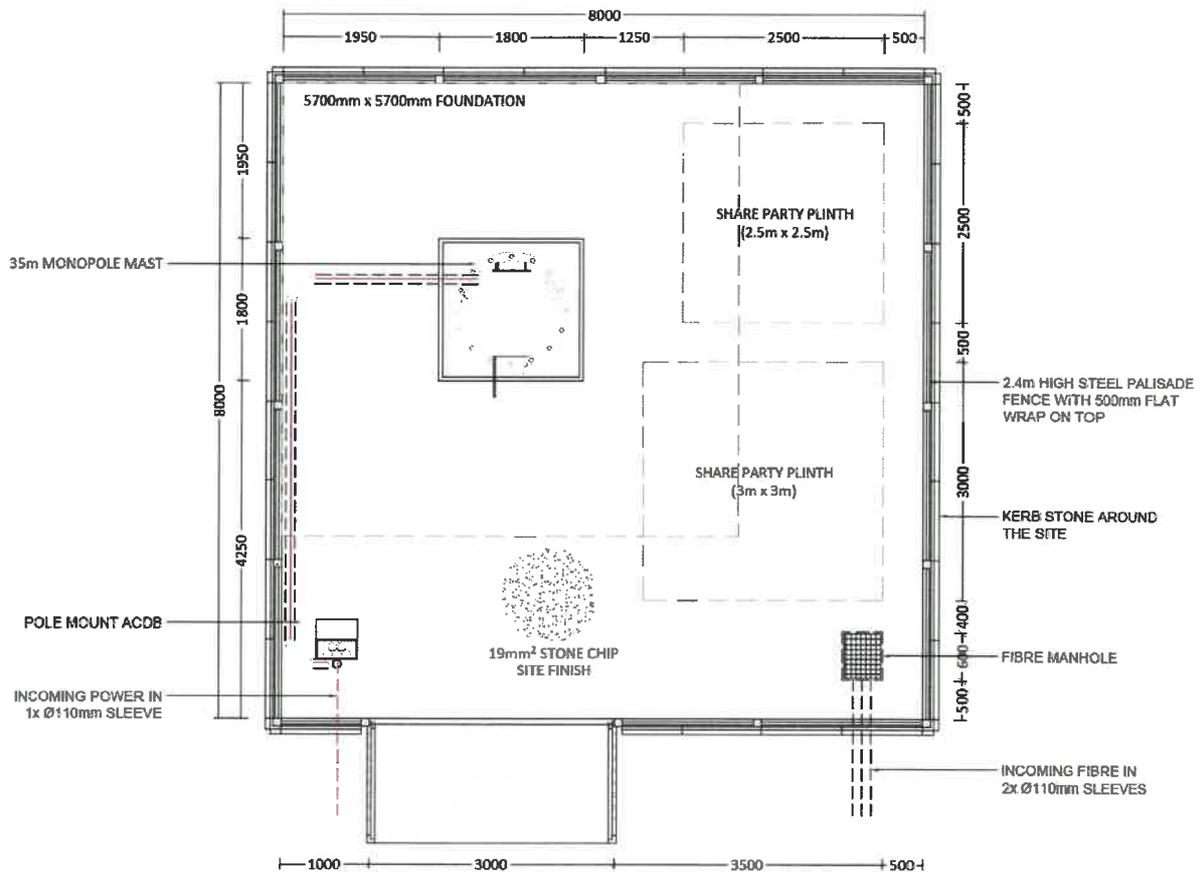
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PROPOSED TELECOMMUNICATION BASE STATION

5.2 DEVELOPMENT CONCEPT

The application comprises the following proposed development parameters:

The total ground coverage of the proposed free standing telecommunication base station (tree tower) will be 64m<sup>2</sup> (8m x 8m) in extent. (Please see figure 4. below)



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PROPOSED TELECOMMUNICATION BASE STATION

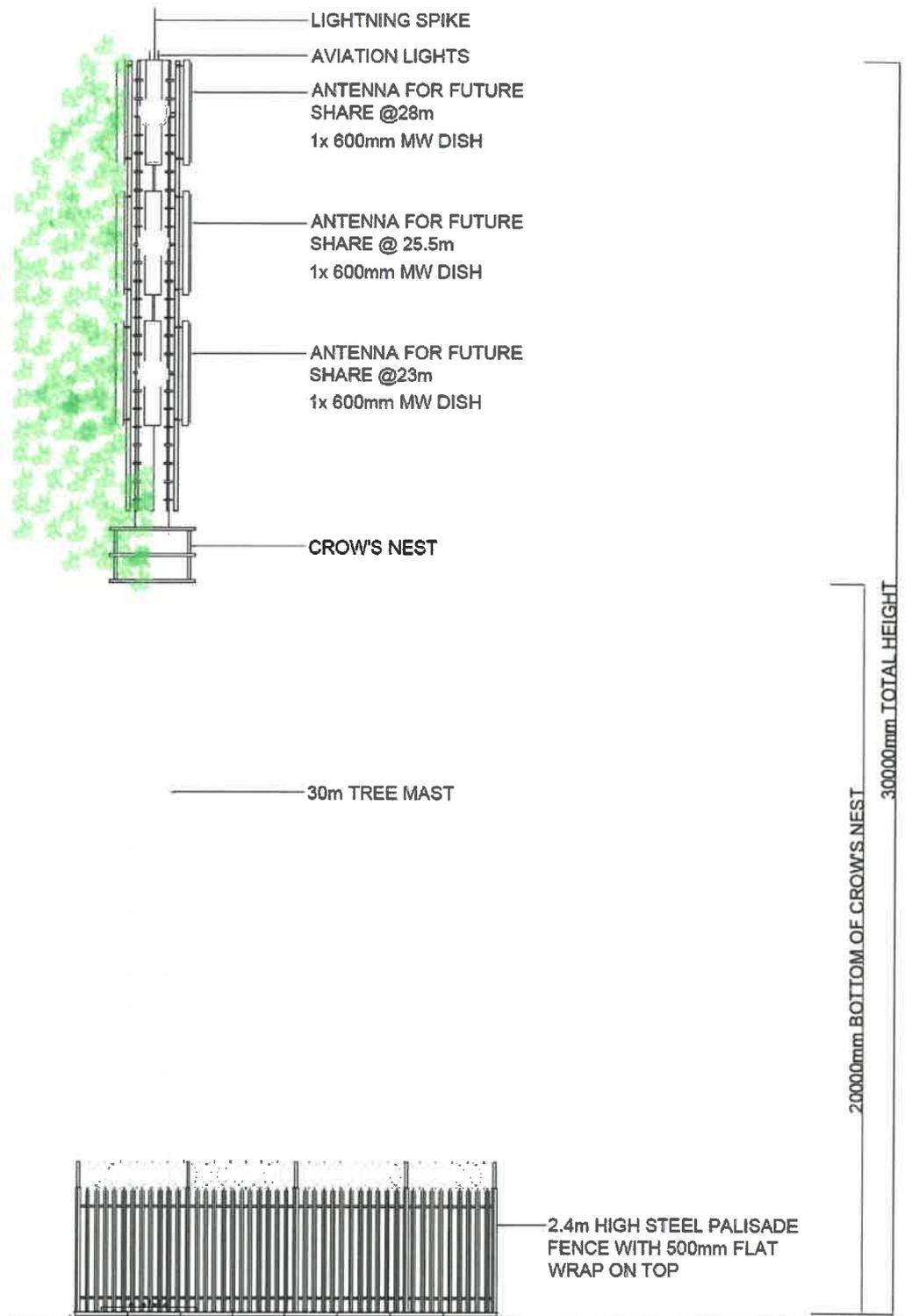


Figure 4. Proposed freestanding telecommunication mast



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## PROPOSED TELECOMMUNICATION BASE STATION

## 5.3 ACCESS

The subject property gains access from Blaauwklippen Road as depicted in figure 5-6 below.



*Figure 5. Access to subject property*



*Figure 6. Picture of access to subject property*

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#### 5.4 NEED AND DESIRABILITY

INVICTA TOWERS is required to continuously upgrade and expand the current cellular network to keep up with advancing technology and escalating demand. This advancing cellular technology incorporates internet connectivity in addition to cellular telephony and more and more subscribers rely on their cellular networks for internet connections as modems or directly through their handsets. Internet connections use up far more of the network capacity than regular calls and consequently the current networks are rapidly becoming inadequate resulting in dropped calls.

The existing coverage for this area is not very good and subscribers experience network congestion and dropped calls and it has been determined by the radio planners that it is necessary to supplement the network in this area with an additional base station. The site that has been selected forms part of a capacity upgrade plan in the area. The serving cells in the area are reaching their capacity limit and from a planning and optimization perspective it is essential that a new site be built to prevent future congestion. The site will also give coverage to the surroundings as there are complaints received by the Network Quality Department in this regard.

Cellular phones have become an integral part of our way of life and fulfill an important role in most people's daily life. Cellular phones have become of utmost importance since communication is made much easier and more readily available. To provide effective cellular phone communications, cellular telephone masts must be provided by the various public operators and placed on specific locations predetermined by professional personnel.

The current demand and popularity of cellular telephones surpassed all expectations and subsequently the existing networks are insufficient to handle daily calls in certain areas. Presently cellular telephones are an everyday use article with a large percentage of subscribers throughout the country. Nowadays it is hard to find a person that does not use a cellular phone. The development of cellular telephone masts is of national interest because it promotes communications and places telephone communication within reach of the entire population.

Data usage through cellular phones, modems, and other mobile devices such as iPads, Smart Phones, etc., all require good 3G (and recently added 4G) coverage to operate effectively. The more evolved the devices become, the denser the telecommunication infrastructure will have to become as more and more signal / coverage will be required.

The permission application is submitted to the Stellenbosch Municipality to obtain the desired rights as required by our client and prescribed by ruling policies and legislation. The application is made to lease 64m<sup>2</sup> to permit the construction of a telecommunication mast on the application site.



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## PROPOSED TELECOMMUNICATION BASE STATION

The position was calculated, considering the topography, surrounding land uses and available land, ecological sensitivity, and the placement of other Telecommunication masts in the area. The socio-economic profile of the consumers is also considered. Additionally, the technical specifications of the Radio-planner must be adhered to.

The current cellular telephone infrastructure in this part of and surrounding areas are reaching their maximum carrying capacities. Cellular telephone masts have a limited number of calls / data usages that it can handle at any given time. If the number of calls / data usage is exceeded, it results in calls being cut off and slow internet connections.

The need for additional infrastructure is also determined by the number of subscribers that contact service providers and complain about poor signals in their areas. Therefore, a need arises for more cellular telephone infrastructure in the Stellenbosch area.

As mentioned above, several complaints on poor signal have been received from residents in the area. A Telecommunication mast, being 30m high and requiring a site that will be approximately 64m<sup>2</sup> in total, was therefore proposed by INVICTA TOWERS in order to serve this area of Stellenbosch Municipality, the surrounding community and future developments with sufficient 2G and 3G (and 4G) signal/coverage.

Broadband penetration in general within South Africa is very low. This situation can be ascribed to the unavailability of electronic communication infrastructure which largely includes Telecommunication Masts. For this to be rectified, the Department of Telecommunications and Postal Services (DTPS) has placed enormous pressures on services providers in South Africa such as MTN(Pty) Ltd to provide more infrastructure. According the National Broadband Policy for South Africa, 2010, some disadvantages associated with the lack of adequate infrastructure include:

- Lower access to efficacy in Government Processes
- South Africa becomes a less competitive destination for investment
- An increase in the digital divide

Reduced access to employment opportunities and job creation.

The DTPS has stated in the National Broadband Policy for South Africa, 2010, that in order for their vision for universal access to Broadband to be achieved in 2020, the country has to see an increase in reliable, robust and secure infrastructure that is available, accessible and affordable to all. For the cost of communication to be reduced, there should be a rollout of infrastructure such as Telecommunication masts throughout South Africa.

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## PROPOSED TELECOMMUNICATION BASE STATION

## 5.5 CONCLUSION

The proposed free standing telecommunication mast base station on Erf 4261, Stellenbosch, will provide an essential and sort after service to the surrounding community, businesses and commuters. The proposed Telecommunication site is in line with the Stellenbosch Municipality's Stellenbosch Municipality Zoning Scheme By-Law 2019, and have a minimal impact on the surrounding property.

We trust that the application will meet your requirements and will receive your positive consideration.

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# APPENDIX 2



Please find the water services infrastructure on proposed site.

This site might be earmarked for future water infrastructure and any new structures must be discussed with water services.

**From:** Lize-Mari Visser [<mailto:Lize-Mari.Visser@stellenbosch.gov.za>]

**Sent:** Friday, 05 February 2021 08:54

**To:** Adriaan Kurtz <[Adriaan.Kurtz@stellenbosch.gov.za](mailto:Adriaan.Kurtz@stellenbosch.gov.za)>; Clayton Hendricks <[Clayton.Hendricks@stellenbosch.gov.za](mailto:Clayton.Hendricks@stellenbosch.gov.za)>; Jeri-Lee Mowers <[Jeri-Lee.Mowers@stellenbosch.gov.za](mailto:Jeri-Lee.Mowers@stellenbosch.gov.za)>; Johan Fullard <[Johan.Fullard@stellenbosch.gov.za](mailto:Johan.Fullard@stellenbosch.gov.za)>; Nombulelo Zwane <[Nombulelo.Zwane@stellenbosch.gov.za](mailto:Nombulelo.Zwane@stellenbosch.gov.za)>

**Cc:** Deon Louw <[Deon.Louw@stellenbosch.gov.za](mailto:Deon.Louw@stellenbosch.gov.za)>; Joy Julius <[Wayleave@stellenbosch.gov.za](mailto:Wayleave@stellenbosch.gov.za)>; Justine Fielies <[Justine.Fielies@stellenbosch.gov.za](mailto:Justine.Fielies@stellenbosch.gov.za)>; Megan Daniels <[Megan.Daniels@stellenbosch.gov.za](mailto:Megan.Daniels@stellenbosch.gov.za)>; Tanya Carstens <[Tanya.Carstens@stellenbosch.gov.za](mailto:Tanya.Carstens@stellenbosch.gov.za)>; Tashlee Ismail <[Tashlee.Ismail@stellenbosch.gov.za](mailto:Tashlee.Ismail@stellenbosch.gov.za)>

**Subject:** FW: Kan ek dit maar uistuur vir kommentaar en vir wie almal

Good morning,

Please provide comment by 09/02/2021.



Kind regards,

**Lizé-Mari Visser**

Personal Assistant to  
Director: Infrastructure Services

T: +27 21 808 8213 | F: +27 883 9912  
1<sup>st</sup> Floor, Ecclesia Building, 71 Plein Street,  
Stellenbosch, 7600  
[www.stellenbosch.gov.za](http://www.stellenbosch.gov.za)

# **APPENDIX 3**

**Director: Property Management**

Stellenbosch Municipality  
Town House Complex  
Plein Street  
Stellenbosch  
7600

5 December 2018

**APPLICATION TO LEASE A PORTION OF ERF 4261 STELLENBOSCH**

Dear Mr Smit,

Our client, Atlas Tower, would like to lease a portion of Erf 4261 Stellenbosch, for the installation of a freestanding telecommunication base station.

The base station is proposed at the following coordinates: 33°57'2.51"S; 18°52'2.47"E. The proposed position has been indicated on the attached site plan. The lease space required is 100m<sup>2</sup> in order to accommodate the equipment units for the various service providers, as well as the mast. The height of the tower is proposed at 25m and the structure type is proposed as a monopole mast, camouflaged as a tree. The main purpose of this tower will be to provide improved network coverage for the various service providers (MTN, Vodacom, Cell C and Telkom Mobile) for the area of Welgelegen, Stellenbosch.

The proposed base station will be greatly beneficial to residents of Welgelegen and the surrounding communities, businesses and commuters in the area by providing improved network coverage for all mobile users. Telecommunications service coverage in the area is poor.

Please note that a building plan application was approved on 19 November 2018.

Please notify us should any additional information be required. We look forward to your positive consideration of this application.

Yours faithfully



Dirko Loots  
**Warren Petterson Planning**

# APPENDIX 4

# PROPOSAL TO LEASE MUNICIPAL LAND FOR A FREESTANDING TELECOMMUNICATION BASE STATION

Erf 4261, STELLENBOSCH



STELLENBOSCH

STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNISIPALITEIT • UMASIPALA • MUNICIPALITY

**Curt van Wyk**

Town and Regional Planner (Site Acquisition)

+27(0)718 711 630



Email: [curt@ilangatech.com](mailto:curt@ilangatech.com)

## PROPOSED TELECOMMUNICATION BASE STATION

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## PROPOSED TELECOMMUNICATION BASE STATION

# 1 MOTIVATION

## 1.1 HISTORICAL BACKGROUND

Over recent years' cellular communication in South Africa evolved from merely a means of convenience to an essential business tool, means of communication and safety measure. Initial high tariff rates limited the accessibility of the products and its service. However, over time more reasonable consumer tariffs and packages have been introduced, making cellular communication more accessible to a much larger sector of the population.

Data usage on the networks are also becoming faster, more affordable and more accessible. User behavior patterns are continuously changing in reaction to cheap internet, new data intensive smart phones, data intensive applications and websites, and an increasing social media driven society. These factors resulted in the average consumer data usage doubling every year.

The current cellular infrastructure is not equipped to handle this demand which leads to a congested network with connection problems and dropped calls on the voice network and limited and unstable internet connections on the data network.

Cellular service provider is taking steps to improve their network by keeping abreast with the advances in communication technology and providing increased capacity in terms of coverage in the areas where there is an increased demand. We strive to make this technology available to the wider spectrum of the population.

Newer technology like LTE provide faster internet to more users which alleviate the pressure on the base station, but its range is very limited. A single old generation GSM voice based base stations could cover dozens of kilometers. The new LTE base stations have a maximum coverage range of 500m depending on the number of users.

The congestion of existing sites together with a decrease in its coverage range necessitates that the distance between base stations decrease resulting in the construction of new freestanding and rooftop cellular base stations.

It is calculated that cellular network operators in South Africa will build 2800 new base stations in the next 5 years.

The proposed site is located at a nominal point as identified by network planners. By utilizing sites located at the network's nominal point the number of future base stations are limited and an effective service network can be developed.



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## PROPOSED TELECOMMUNICATION BASE STATION

## 2 INTRODUCTION

### 2.1 REGISTERED OWNER

The registered owner of the subject property is identified as STELLENBOSCH MUNICIPALITY. Consent will be needed from this institution in order to proceed with the submission of the land use (consent use) application and building plans for the proposed free standing telecommunication base station.

### 2.2 CLIENT

Invicta Towers and Ilanga Technologies (Pty) Ltd will submit a land use and building plan application to Stellenbosch Local Municipalities for the permission to erect a free standing telecommunication base station on the subject property, Erf 4261, Stellenbosch Municipality.

## 3 REGISTERED DETAIL

### 3.1 TITLE DEED & CONVEYANCER'S INVESTIGATION

Table 1 reflects the current registered detail of Erf 4261, Stellenbosch.

TABLE 1 – REGISTERED DETAILS			
REGISTERED DESCRIPTION	TITLE DEED NO.	REGISTERED OWNER	EXTENT
Erf 4261, Stellenbosch	T44246/1974	STELLENBOSCH MUNICIPALITY	2,4320ha

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## PROPOSED TELECOMMUNICATION BASE STATION

## 3.2 WINDEED OF SUBJECT PROPERTY

Please see extract of the subject property's windeed below.

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windeed  
A LexisNexis® Product

**WinDeed Property Report**

Township **STELLENBOSCH**, Erf **4261/0**

REGISTERED PROPERTY DETAILS

Property Type	ERF	Diagram Deed	T44246/974
Erf Number	4261	Registered Size	2,4320HA
Portion Number	0	Municipality	STELLENBOSCH MUN
Township	STELLENBOSCH	Province	WESTERN CAPE
Registration Division	STELLENBOSCH RD	Coordinates (Lat/Long)	-33.950125 / 18.866207
Deeds Office	CAPE TOWN		

OWNER DETAILS

Owner 1 of 1

Person Type	COMPANY	Title Deed	T44246/1974
Name	MUN STELLENBOSCH	Purchase Date	-
Registration Number	-	Purchase Price (R)	-
Share (%)	-	Registration Date	1974/12/31

MAPS




PROPERTY INFORMATION

Address	-
Primary Use	-
Estate	-

Room Configuration

Bedrooms	1	Reception Areas	-
Bathrooms	1	Study/Office	-
Kitchens	1		
Internal Finishes	-		

General Information

Door Number	-	Roof Type	-
Floor Size (m <sup>2</sup> )	-	Wall Type	-
Storeys	-	Construction Year	-

Other Features

Garages	-	Additional Dwellings	-
Garden	-		
Pool	-		

MUNICIPAL VALUATION

Municipal Valuation	-	Valuation Year	-
Zoning Usage	-		

## PROPOSED TELECOMMUNICATION BASE STATION

## 4 SITE &amp; CONTEXTUAL ANALYSIS

## 4.1 LOCATION



**Figure 1. Locality**

Erf 4261, Stellenbosch is located in the suburb of Welgelegen in Stellenbosch. (Please see figure 1. and attached locality plan)



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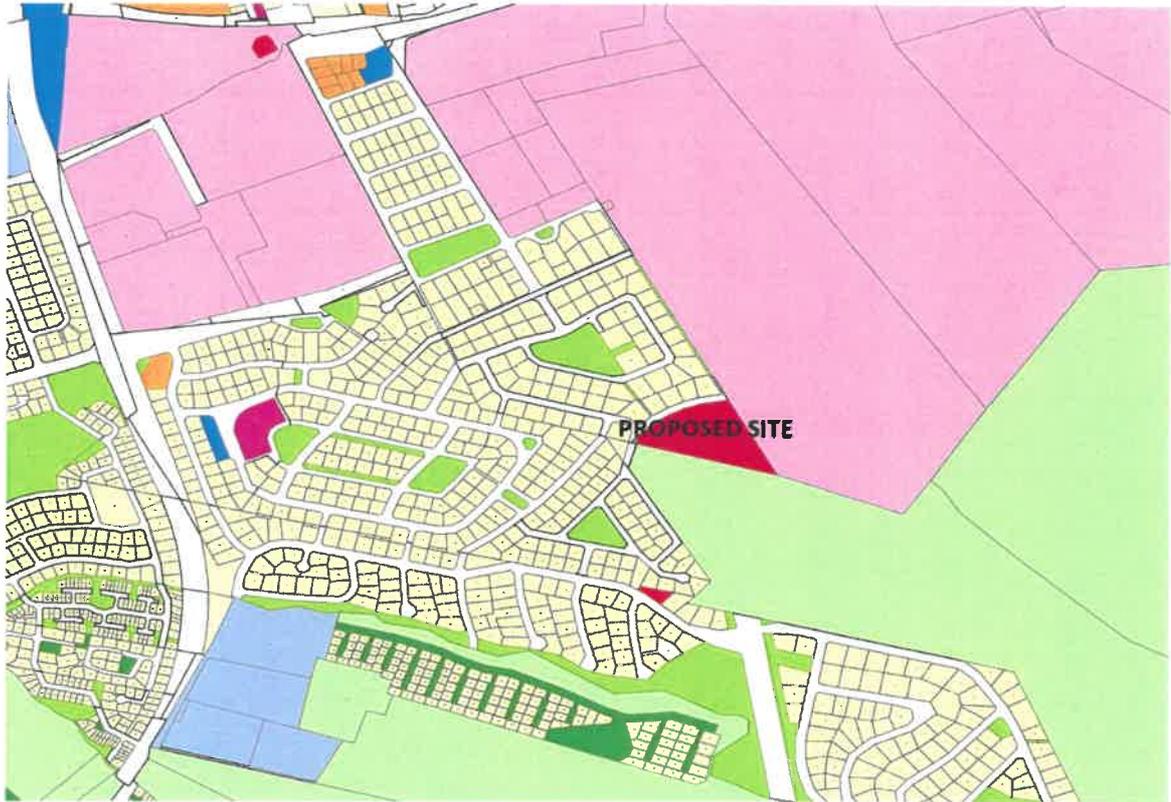
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## PROPOSED TELECOMMUNICATION BASE STATION

## 4.2 LAND USE

The property is currently zoned Utility Service Zone and therefore a free standing telecommunication base station is permitted as a consent use according to the Stellenbosch Municipality Zoning Scheme By-Law 2019, applicable to Stellenbosch.



*Figure 2 – Zoning map*

## 5 DEVELOPMENT PROPOSAL

## 5.1 APPLICATION SPECIFICATIONS

The client, Invicta Towers, with consent of the property owner wishes to submit building plans in order to erect a 30m TREE TOWER on an 8m x 8m (64m<sup>2</sup>) area.

PROPOSED TELECOMMUNICATION BASE STATION

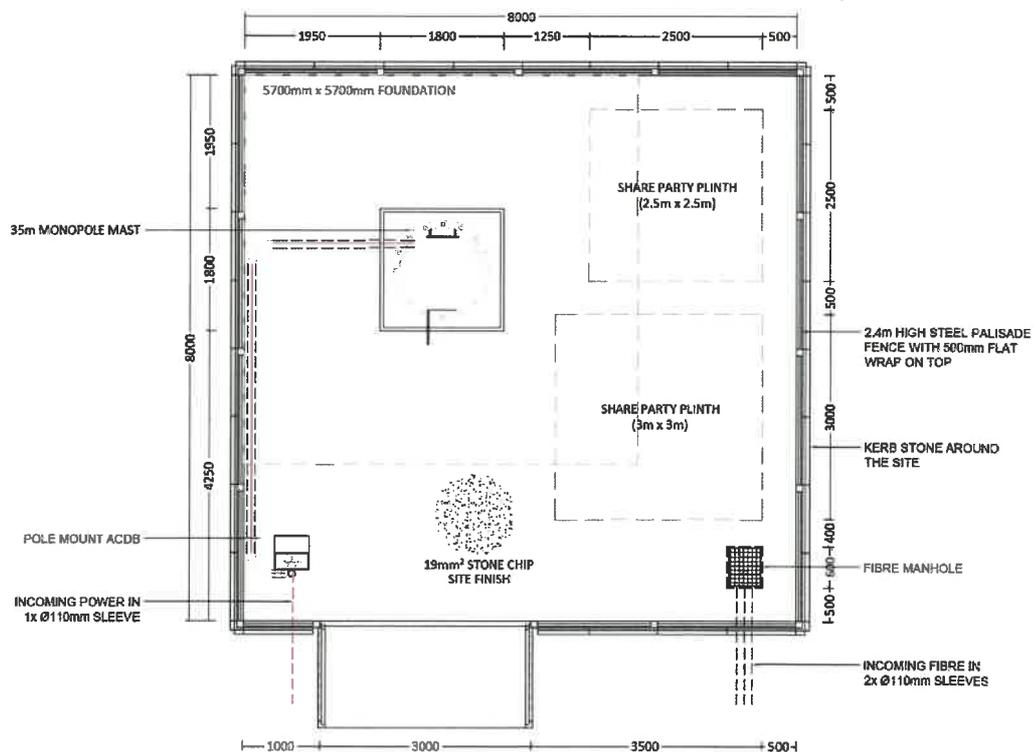


Figure 3 – Proposed site

5.2 DEVELOPMENT CONCEPT

The application comprises the following proposed development parameters:

The total ground coverage of the proposed free standing telecommunication base station (tree tower) will be 64m<sup>2</sup> (8m x 8m) in extent. (Please see figure 3. below)



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PROPOSED TELECOMMUNICATION BASE STATION

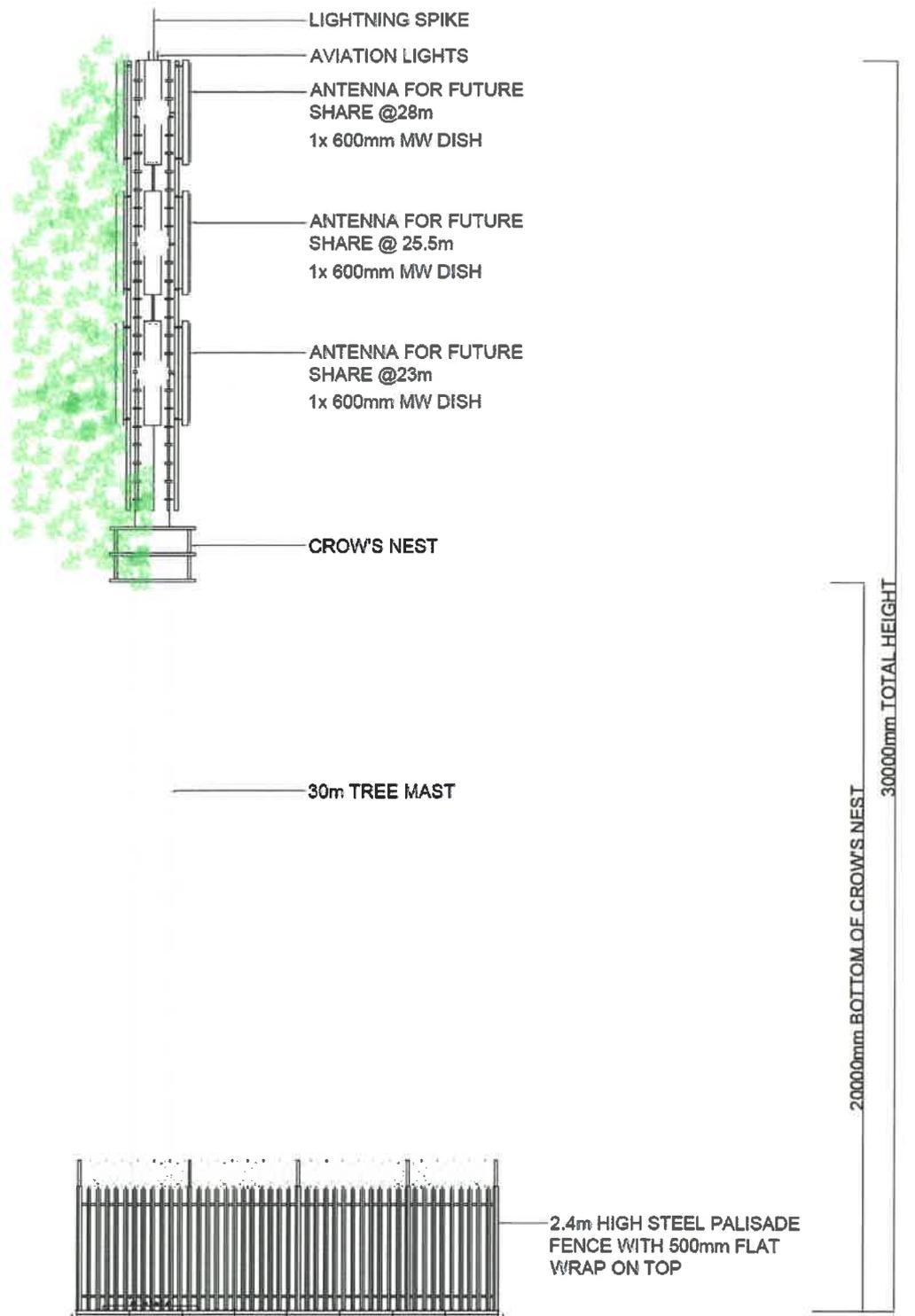


Figure 4. Proposed freestanding telecommunication mast



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PROPOSED TELECOMMUNICATION BASE STATION

5.3 ACCESS

The subject property gains access from Nooitgedacht Street as depicted in figure 4-5 below.



Figure 5. Access to subject property

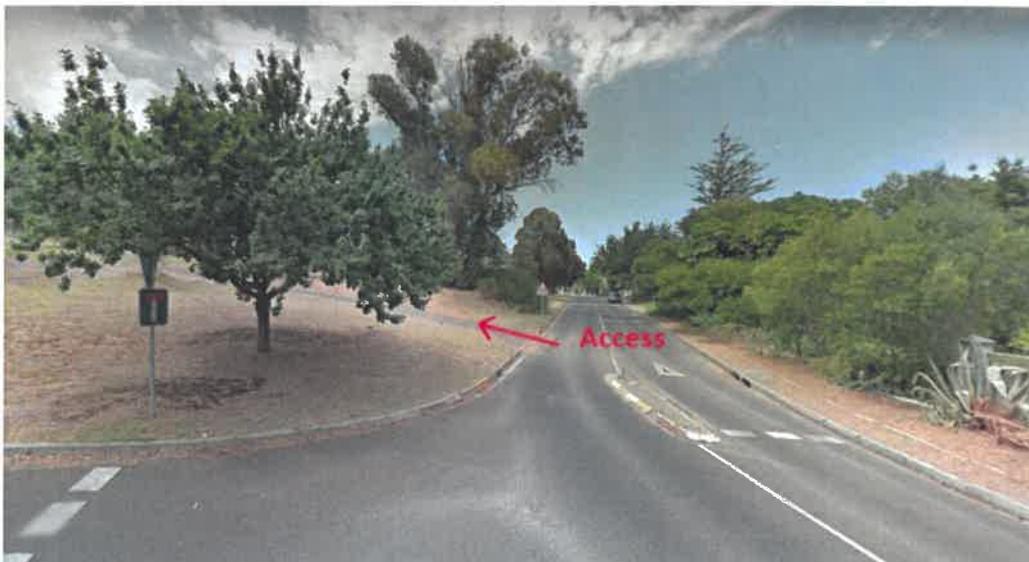


Figure 6. Picture of access to subject property



**ILANGA TECHNOLOGIES (PTY) LTD**

164, 3<sup>rd</sup> Avenue, Bredell, Kempton Park, Gauteng, South Africa  
 P.O. Box 14273, Bredell, 1623  
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## PROPOSED TELECOMMUNICATION BASE STATION

## 5.4 NEED AND DESIRABILITY

INVICTA TOWERS is required to continuously upgrade and expand the current cellular network to keep up with advancing technology and escalating demand. This advancing cellular technology incorporates internet connectivity in addition to cellular telephony and more and more subscribers rely on their cellular networks for internet connections as modems or directly through their handsets. Internet connections use up far more of the network capacity than regular calls and consequently the current networks are rapidly becoming inadequate resulting in dropped calls.

The existing coverage for this area is not very good and subscribers experience network congestion and dropped calls and it has been determined by the radio planners that it is necessary to supplement the network in this area with an additional base station. The site that has been selected forms part of a capacity upgrade plan in the area. The serving cells in the area are reaching their capacity limit and from a planning and optimization perspective it is essential that a new site be built to prevent future congestion. The site will also give coverage to the surroundings as there are complaints received by the Network Quality Department in this regard.

Cellular phones have become an integral part of our way of life and fulfill an important role in most people's daily life. Cellular phones have become of utmost importance since communication is made much easier and more readily available. To provide effective cellular phone communications, cellular telephone masts must be provided by the various public operators and placed on specific locations predetermined by professional personnel.

The current demand and popularity of cellular telephones surpassed all expectations and subsequently the existing networks are insufficient to handle daily calls in certain areas. Presently cellular telephones are an everyday use article with a large percentage of subscribers throughout the country. Nowadays it is hard to find a person that does not use a cellular phone. The development of cellular telephone masts is of national interest because it promotes communications and places telephone communication within reach of the entire population.

Data usage through cellular phones, modems, and other mobile devices such as iPads, Smart Phones, etc., all require good 3G (and recently added 4G) coverage to operate effectively. The more evolved the devices become, the denser the telecommunication infrastructure will have to become as more and more signal / coverage will be required.

The permission application is submitted to the Stellenbosch Municipality to obtain the desired rights as required by our client and prescribed by ruling policies and legislation. The application is made to lease 64m<sup>2</sup> to permit the construction of a telecommunication mast on the application site.

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## PROPOSED TELECOMMUNICATION BASE STATION

The position was calculated, considering the topography, surrounding land uses and available land, ecological sensitivity, and the placement of other Telecommunication masts in the area. The socio-economic profile of the consumers is also considered. Additionally, the technical specifications of the Radio-planner must be adhered to.

The current cellular telephone infrastructure in this part of and surrounding areas are reaching their maximum carrying capacities. Cellular telephone masts have a limited number of calls / data usages that it can handle at any given time. If the number of calls / data usage is exceeded, it results in calls being cut off and slow internet connections.

The need for additional infrastructure is also determined by the number of subscribers that contact service providers and complain about poor signals in their areas. Therefore, a need arises for more cellular telephone infrastructure in the Stellenbosch area.

As mentioned above, several complaints on poor signal have been received from residents in the area. A Telecommunication mast, being 30m high and requiring a site that will be approximately 64m<sup>2</sup> in total, was therefore proposed by INVICTA TOWERS in order to serve this area of Stellenbosch Municipality, the surrounding community and future developments with sufficient 2G and 3G (and 4G) signal/coverage.

Broadband penetration in general within South Africa is very low. This situation can be ascribed to the unavailability of electronic communication infrastructure which largely includes Telecommunication Masts. For this to be rectified, the Department of Telecommunications and Postal Services (DTPS) has placed enormous pressures on services providers in South Africa such as MTN(Pty) Ltd to provide more infrastructure. According the National Broadband Policy for South Africa, 2010, some disadvantages associated with the lack of adequate infrastructure include:

- Lower access to efficacy in Government Processes
- South Africa becomes a less competitive destination for investment
- An increase in the digital divide

Reduced access to employment opportunities and job creation.

The DTPS has stated in the National Broadband Policy for South Africa, 2010, that in order for their vision for universal access to Broadband to be achieved in 2020, the country has to see an increase in reliable, robust and secure infrastructure that is available, accessible and affordable to all. For the cost of communication to be reduced, there should be a rollout of infrastructure such as Telecommunication masts throughout South Africa.

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## PROPOSED TELECOMMUNICATION BASE STATION

## 5.5 CONCLUSION

The proposed free standing telecommunication mast base station on Erf 4261, Stellenbosch, will provide an essential and sort after service to the surrounding community, businesses and commuters. The proposed Telecommunication site is in line with the Stellenbosch Municipality's Stellenbosch Municipality Zoning Scheme By-Law 2019, and will have a minimal impact on the surrounding property.

We trust that the application will meet your requirements and will receive your positive consideration.

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# APPENDIX 5

**Annalene De Beer****Subject:** FW: Water services comments - Ilanga communication- Towers to be erected

**From:** Adriaan Kurtz <[Adriaan.Kurtz@stellenbosch.gov.za](mailto:Adriaan.Kurtz@stellenbosch.gov.za)>  
**Sent:** Friday, 05 February 2021 16:31  
**To:** Lize-Mari Visser <[Lize-Mari.Visser@stellenbosch.gov.za](mailto:Lize-Mari.Visser@stellenbosch.gov.za)>; Clayton Hendricks <[Clayton.Hendricks@stellenbosch.gov.za](mailto:Clayton.Hendricks@stellenbosch.gov.za)>; Jeri-Lee Mowers <[Jeri-Lee.Mowers@stellenbosch.gov.za](mailto:Jeri-Lee.Mowers@stellenbosch.gov.za)>; Johan Fullard <[Johan.Fullard@stellenbosch.gov.za](mailto:Johan.Fullard@stellenbosch.gov.za)>; Nombulelo Zwane <[Nombulelo.Zwane@stellenbosch.gov.za](mailto:Nombulelo.Zwane@stellenbosch.gov.za)>; Lorelle Adams <[Lorelle.Adams@stellenbosch.gov.za](mailto:Lorelle.Adams@stellenbosch.gov.za)>  
**Cc:** Deon Louw <[Deon.Louw@stellenbosch.gov.za](mailto:Deon.Louw@stellenbosch.gov.za)>; Joy Julius <[Wayleave@stellenbosch.gov.za](mailto:Wayleave@stellenbosch.gov.za)>; Justine Fielies <[Justine.Fielies@stellenbosch.gov.za](mailto:Justine.Fielies@stellenbosch.gov.za)>; Megan Daniels <[Megan.Daniels@stellenbosch.gov.za](mailto:Megan.Daniels@stellenbosch.gov.za)>; Tanya Carstens <[Tanya.Carstens@stellenbosch.gov.za](mailto:Tanya.Carstens@stellenbosch.gov.za)>; Tashlee Ismail <[Tashlee.Ismail@stellenbosch.gov.za](mailto:Tashlee.Ismail@stellenbosch.gov.za)>  
**Subject:** Water services comments - Ilanga communication- Towers to be erected

Dear all

Please note from Water services our infrastructure. The sketch is indicative of the services and the position might differ from the indicated positions.

Please find the water services infrastructure on proposed site.

This site might be earmarked for future water infrastructure and any new structures must be discussed with water services.



**From:** Lize-Mari Visser [<mailto:Lize-Mari.Visser@stellenbosch.gov.za>]  
**Sent:** Friday, 05 February 2021 08:54  
**To:** Adriaan Kurtz <[Adriaan.Kurtz@stellenbosch.gov.za](mailto:Adriaan.Kurtz@stellenbosch.gov.za)>; Clayton Hendricks

7.3	<b>FINANCIAL SERVICES: (PC: CLLR P CRAWLEY (MS))</b>
7.3.2	<b>TABLING OF APPLICATION FOR COUNCIL SUPPORT/APPROVAL FOR THE DBSA GRANT FUNDING AGREEMENT RELATING TO COMPLETED WORK DONE ON THE CAPITAL EXPENDITURE FRAMEWORK (CEF)</b>

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance and Compliance

15 June 2021

**1. SUBJECT: TABLING OF APPLICATION FOR COUNCIL SUPPORT/APPROVAL FOR THE DBSA GRANT FUNDING AGREEMENT RELATING TO COMPLETED WORK DONE ON THE CAPITAL EXPENDITURE FRAMEWORK (CEF)**

**2. PURPOSE**

To obtain Council's approval for the Development Bank of South Africa (DBSA) grant funding agreement in respect of work done on the Capital Expenditure Framework.

**3. DELEGATED AUTHORITY**

Council

**4. EXECUTIVE SUMMARY**

In accordance to section 21(n) of the Spatial Planning and Land Use Management Act (SPLUMA), Act No. 16 of 2013, the content of a municipal spatial development framework must determine a Capital Expenditure Framework (CEF) for the municipality's development programmes. This means that the CEF is informed by the Spatial Development Framework i.e. stating the spatial vision of the municipality where the CEF states the financial vision of the municipality.

The Municipality has entered into a Grant Agreement ("the Agreement") with the DBSA, in terms of which the DBSA has availed R2 000 000 to the benefit of the Municipality for the development of its Capital Expenditure Framework (CEF). As per the 25<sup>th</sup> meeting of the Council of Stellenbosch municipality, the Municipal Manager was duly authorised and mandated, to sign the Grant Agreement on its behalf, and to sign and/or dispatch all documents and notices to be signed and/or dispatched by it under or in connection with the Agreement. This agreement was concluded during the 2019/20 financial year and has been attached as **APPENDIX1**.

**5. RECOMMENDATIONS**

- (a) that Council hereby confirms support for the Project, accepts the DBSA's grant funding and infrastructure planning support on the terms set out in the Agreement,
- (b) that the **Municipal Manager** be and is hereby authorised and mandated to sign the Agreement on its behalf, and to sign and/or dispatch all documents and notices to be signed and/or dispatched by it under or in connection with the Agreement.
- (c) that the Municipal Manager is further authorised to provide the DBSA with the Designated and Authorised Signatories, any of whom shall represent the Municipality on the Project Steering Committee for the purposes stated in the Agreement; and

- (d) that The Municipality provides the relevant FICA documentation required by the DBSA in terms of regulations 3, 4, 5 and 6 of FICA (the Financial Intelligence Centre Act, 38 of 2001).

## **6. DISCUSSION / CONTENTS**

### **6.1 Discussion**

In accordance to section 21(n) of the Spatial Planning and Land Use Management Act (SPLUMA), Act No. 16 of 2013, the content of a municipal spatial development framework must determine a Capital Expenditure Framework (CEF) for the municipality's development programmes. This means that the CEF is informed by the Spatial Development Framework i.e. stating the spatial vision of the municipality where the CEF states the financial vision of the municipality.

The Municipality has entered into a Grant Agreement ("the Agreement") with the DBSA, in terms of which the DBSA has availed R2 000 000 to the benefit of the Municipality for the development of its Capital Expenditure Framework (CEF). As per the 25<sup>th</sup> meeting of the Council of Stellenbosch municipality, the Municipal Manager was duly authorised and mandated, to sign the Grant Agreement on its behalf, and to sign and/or dispatch all documents and notices to be signed and/or dispatched by it under or in connection with the Agreement. This agreement was concluded during the 2019/20 financial year and has been attached as **APPENDIX 1**.

Pursuant to the Agreement, the Municipality applied the grant funding solely for the project alluded to above. The funding provided was utilised for the updating of the CEF which runs parallel to the Demand Quantification and Modelling, the compilation of a Long Term Financial Plan/Tool and the compilation of an Asset Management Framework. With the aid of the DBSA funding, the Municipality has developed and submitted its Capital Expenditure Framework (CEF) to the Department of Cooperative Governance and Traditional Affairs (COGTA) within agreed timelines.

### **6.2 Financial Implications**

The Development Bank of South Africa allocated grant funding to the amount of R2 million.

### **6.3 Legal Implications**

The item is compliant with the relevant legislation.

### **6.4 Staff Implications:**

None

### **6.5 Previous / Relevant Council Resolutions:**

None

### **6.6 Risk Implications**

None

### **6.7 Comments from Senior Management:**

The item was not circulated for comment except to Municipal Manager

**6.7.1 Municipal Manager**

Supports the recommendations.

**Appendices:**

- Appendix 1: Development Bank of South Africa Grant Funding Agreement

**FOR FURTHER DETAILS CONTACT:**

<b>NAME</b>	Kevin Carolus
<b>POSITION</b>	Chief Financial Officer
<b>DIRECTORATE</b>	Financial Services
<b>CONTACT NUMBERS</b>	021 – 808 8528
<b>E-MAIL ADDRESS</b>	Kevin.carolus@stellenbosch.gov.za
<b>REPORT DATE</b>	10 June 2021

# APPENDIX 1

## GRANT AGREEMENT

between

**DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED**



and

**STELLENBOSCH LOCAL MUNICIPALITY**



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## 1. PARTIES

1.1. The Parties to this Agreement are:

1.1.1. **The Development Bank of Southern Africa Limited**, a development finance institution reconstituted and incorporated in terms of section 2 of the Development Bank of Southern Africa Act, 1997 (Act No. 13 of 1997); (referred to as the “**DBSA**”); and

1.1.2. **Stellenbosch Local Municipality**, a municipality established in terms of section 12 of the Local Government Municipal Structures Act, 1998 (Act No. 117 of 1998) as amended from time to time; (referred to as “**Recipient**” in this document).

## 2. DEFINITIONS

2.1. The headings to the clauses, schedules and annexures of this Agreement are for reference purposes only and shall in no way govern or affect the interpretation of nor modify nor amplify the terms of this Agreement nor any clause, schedule or annexure hereof.

2.2. Unless the context dictates otherwise, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

2.2.1. “**Agreement**” means this Grant agreement including any schedules or annexures hereto;

2.2.2. “**Applicable Laws**” means all applicable laws, ordinances, regulations, judgments and orders of any competent court or executive authority having the force of law in the Republic of South Africa and/or other applicable and competent jurisdiction;

2.2.3. “**Application**” means the letter of request for support which the Recipient submitted to the DBSA;

2.2.4. “**Application Date**” means the date upon which the Application was received by the DBSA from the Recipient;

2.2.5. “**Approval Date**” means the date upon which the Application was approved by the DBSA being 18 September 2019;

- 2.2.6. **“Availability Period”** means a period calculated from the date of the agreement between the DBSA and the Recipient and terminating on the 31 March 2023
- 2.2.7. **“Bank Account”** means the Professional Services Provider’s bank account in which the Grant Amount shall be deposited and from which all transactions related to the Purpose shall be operated;
- 2.2.8. **“Business Day”** means any day other than a Saturday, Sunday or a day which is a statutory public holiday in the Republic of South Africa;
- 2.2.9. **“Coercive Practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a Party;
- 2.2.10. **“Collusive Practice”** means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
- 2.2.11. **“Commercialisation”** means the use of any Intellectual Property, with or without additions or modifications, for purposes of generating profit, whether through manufacturing, sales, rendering of services or by any other lawful means without limitation;
- 2.2.12. **“Confidential Information”** means all information confidential to a Party, to the extent that it is not freely and publicly available, commercial, financial, technical, scientific and research information; trade secrets, passwords, or other secret codes, information disclosed with the permission of third parties in which the third parties have confidentiality rights, information legally protected from disclosure, any information the unauthorised disclosure of which could be expected to cause harm or risk to the Party having disclosed the confidential information and any other information designated by such disclosing Party as confidential or which is manifestly confidential;
- 2.2.13. **“Constitutional Documents”** means in respect of any person at any time, the then current and up-to-date constitutional documents of such person at such time (including, without limitation, such person’s memorandum of incorporation, certificate of incorporation, certificate to commence business, certificate of change of name (if applicable), special resolutions or any other document/s constituting or evidencing the incorporation of such person) as may be required by the DBSA;

- 2.2.14. **“Corrupt Practice”** means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another;
- 2.2.15. **“Disbursement”** means any amount drawn down by the Recipient and disbursed by the DBSA to the Recipient under and in terms of the agreement between the Recipient and the Professional Services Provider, and **“Disbursed”** shall be construed accordingly;
- 2.2.16. **“Effective Date”** means the first Business Day after the DBSA notifies the Recipient that all of the conditions precedent set out in clause 6.1.2 have been fulfilled or waived, as the case may be;
- 2.2.17. **“Event of Default”** means any one or more events or circumstances as envisaged in clause 15;
- 2.2.18. **“FICA”** means the Financial Intelligence Centre Act, 2001 and all notices and regulations passed thereunder;
- 2.2.19. **“Financial Year”** means each year commencing on **01 April** of each year and ending on **31 March** of the following year;
- 2.2.20. **“GAAP”** means the Generally Accepted Accounting Principles as approved from time to time by the International Accounting Standards Committee;
- 2.2.21. **“Grant”** means the grant funding (Development Subsidy) made available by the DBSA in support of the Recipient under this Agreement in an aggregate sum not exceeding the Grant Amount;
- 2.2.22. **“Grant Amounts”** means an amount of R2 000 000.00 (two million rand) inclusive of value added tax and all applicable taxes thereon;
- 2.2.23. **“IFRS”** means the International Financial Reporting Standards as approved from time to time by the International Accounting Standards Board;
- 2.2.24. **“Insolvency Event”** means, in relation to any person, any of the following events or circumstances:
- 2.2.24.1. an order or declaration is made or a meeting of the directors or shareholders of such person is convened to consider the passing of, or a resolution is passed for the administration, custodianship, curatorship, bankruptcy, liquidation, winding-up or dissolution

- (whether provisional or final) of it or its estate or placing it in business rescue;
- 2.2.24.2. it is unable (or admits inability) to pay its debts generally as they fall due or is (or admits to being) otherwise insolvent or stops, suspends or threatens to stop or suspend payment of all or a material part of its debts or proposes or seeks to make or makes a general assignment or any arrangement or composition with or for the benefit of its creditors or a moratorium is agreed or declared or takes effect by operation of law in respect of or affecting all or a material part of its indebtedness;
- 2.2.24.3. is “financially distressed” as such term is defined in the Companies Act, 2008 or is reasonably likely to become “financially distressed” within the immediately ensuing 12 (twelve) month period;
- 2.2.24.4. it takes any proceeding or other step with a view to the general readjustment, rescheduling or deferral of its indebtedness (or any part thereof which it would otherwise be unable to pay when due) or proposes to take any such step;
- 2.2.24.5. any receiver, administrative receiver, administrator, compulsory manager, curator, trustee in bankruptcy, liquidator, practitioner, business rescue practitioner or the like is appointed in respect of it or any material part of its assets or it requests any such appointment;
- 2.2.24.6. any act which, if such act was committed by an individual, would be an act of insolvency within the meaning of section 8 of the Insolvency Act, 1936 or any equivalent legislation in any jurisdiction to which such person is subject;
- 2.2.24.7. it takes or any affected person takes any steps to invoke business rescue proceedings; or
- 2.2.24.8. enforcement of any security interest over any assets;
- 2.2.25. **“Intellectual Property”** means any intellectual property, including but not limited to all technical, commercial, financial and marketing information and know-how, including all concepts, specifications, data, diagrams, chemical structures, manufacturing and production techniques and designs,

specifications and formulae, products, systems, methods, processes, formulae, memoranda, reports, manuals, and computer modelling; all inventions, designs, trade-marks and other works, whether registrable or the subject matter of an application for such registration or of copyright or not; as well as all statutory intellectual property, comprising all patents and trade-marks, whether registered or being or yet to be applied for, and all copyright in any works, including but not limited to, literary works and computer programmes; relating to any research, development and/or Commercialisation;

2.2.26. **“Material Adverse Effect”** means any event or combination of events and/or circumstances which, in the opinion of the DBSA, has or might reasonably be expected to have a material adverse effect on:

2.2.26.1. the Projects, business, operations, property, condition (financial or otherwise) or prospects of the Recipient; and/or

2.2.26.2. the ability of the Recipient to perform its obligations in terms of this Agreement, and/or

2.2.26.3. the ability of the Professional Services Provider to perform its obligations as more fully set out in the Project Implementation Plan; and/or

2.2.26.4. the ability of the Recipient to exercise and enforce any right granted or intended or purported to be granted to it under this Agreement; and/or

2.2.26.5. the validity, enforceability and/or legality of this Agreement or any other Project document;

2.2.27. **“Minimum Information”** means the minimum information to be provided with the Disbursement Request as set out in Schedule 2 all in form and substance satisfactory to the DBSA;

2.2.28. **“Monthly Progress Report”** means a report in form and substance to the satisfaction of the DBSA, to be submitted monthly by the Professional Services Provider signed off by the Recipient or at such other times as may be requested by the DBSA, which report shall contain:

2.2.28.1. the physical and financial progress of the planning support being provided by the DBSA;

- 2.2.28.2. such other information as may be required by the DBSA in respect of the planning support being provided to the Recipient by the DBSA;
- 2.2.29. **"Parties"** means the DBSA and the Recipient;
- 2.2.30. **"Permitted Recipients"** means employees, directors, officers, professional advisors, financiers and consultants of the Recipient;
- 2.2.31. **"Potential Event of Default"** means any event or circumstance which, with the giving of notice, lapse of time or expiry of a grace period or making of any determination under this Agreement or fulfilment of any other condition, would be or constitute an Event of Default;
- 2.2.32. **"Prime Overdraft Rate"** means the publicly quoted basic rate of interest from time to time levied by the corporate banking division of Standard Bank Limited, being the bankers of the DBSA, on the overdrawn accounts of their most favoured corporate customers in the private sector, *prima facie* proof of which shall be a certificate by any manager of said bank, whose authority and/or appointment it shall not be necessary to prove;
- 2.2.33. **"Professional Services Provider"** means an entity appointed by the Recipient to assist with the planning support services required for the Project and to be paid from the Grant.
- 2.2.34. **"Project"** means the updating of the Capital Expenditure Framework (CEF) of the Recipient to be implemented as described more fully in the Project Implementation Plan (Schedule 4);
- 2.2.35. **"Project Budget"** means the budget which sets out all expenses related to the Project, submitted to and approved in writing by the DBSA, as set out in the Project Implementation Plan;
- 2.2.36. **"Project Completion Date"** means the date upon which the DBSA approves in writing the Project Completion Report;
- 2.2.37. **"Project Completion Report"** means the report to be prepared by the Professional Services Provider in consultation with the Recipient following the Project Completion Date and approved in writing by the DBSA for purposes of Project closure;

- 2.2.38. **“Project Implementation Plan”** means the implementation plan prepared by the Professional Services Provider on behalf of the Recipient and approved in writing by the DBSA setting out the Project deliverables against which to measure the progress of the Project and the Project Budget and to ensure compliance with the obligations of the Professional Services Provider as set out therein accompanied by a Disbursement Schedule, including any amendments thereof as may be agreed in writing between the Parties as set out in Schedule 4;
- 2.2.39. **“Project Progress Reports”** means the monthly progress reports to be submitted by the Professional Services Provider after sign off by the Recipient to the DBSA containing, *inter alia*:
- 2.2.39.1. the Project's progress (physical and financial) for the month and cumulative for the Financial Year, against the Project Implementation Plan;
  - 2.2.39.2. a presentation of quantitative and qualitative data collected from the monitoring of outcome indicators;
  - 2.2.39.3. any factors that have or could reasonably be expected to have a Material Adverse Effect;
  - 2.2.39.4. if applicable, any proposed changes to the Project Implementation Plan;
  - 2.2.39.5. a description of the planned progress for the next month in accordance with the Project Implementation Plan; and
  - 2.2.39.6. any such other information as may be required by the DBSA;
- 2.2.40. **“Purpose”** means utilising the Grant Amount solely for payment of the Project expenses incurred by the Professional Service Provider as set out in the Project Budget;
- 2.2.41. **“Quarter”** means a period of 3 (three) consecutive calendar months during the Financial Year, ending on the last day of June, September, December or March, and **“Quarterly”** shall be construed accordingly;
- 2.2.42. **“Recipient”** means Stellenbosch Local Municipality as outlined in 1.1.2 above,

- 2.2.43. **“Signature Date”** means the date upon which this Agreement is signed by the Party signing last, provided that all Parties sign this Agreement;
- 2.2.44. **“Taxes”** means all taxes (including value added tax), charges, imposts, levies, deductions, withholdings or fees of any kind whatsoever, or any amount or payment on account of or as security for any of the foregoing by whomsoever and on whomsoever imposed, levied, collected, withheld or assessed, together with any penalties, additions, fines, surcharges or interest relating thereto, and **“Tax”** and **“Taxation”** shall be construed accordingly;
- 2.2.45. **“Terminal Disbursement Date”** means the last Disbursement date referred to in the Disbursement Schedule; and
- 2.2.46. **“Termination Date”** means the date on which the Project has reached Project Completion Date and the Recipient has no further actual or contingent obligation in respect of the Projects.

### 3. INTERPRETATION OF AGREEMENT

- 3.1. Any reference in this Agreement to:
- 3.1.1. an amendment includes a supplement, novation or re-enactment and amended is to be construed accordingly;
- 3.1.2. Law shall be construed as any law (including statutory, common or customary law), statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order, other legislative measure, directive, requirement, request or guideline (whether or not having the force of law but, if not having the force of law, is generally complied with by the persons to whom it is addressed or applied) of any government, supranational, local government, statutory or regulatory or self-regulatory or similar body or authority or court and the common law, as amended, replaced, re-enacted, restated or reinterpreted from time to time;
- 3.1.3. a **month** means a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day but one in the next calendar month, except that if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one;

- 3.1.4. a **schedule** shall, subject to any contrary indication, be construed as reference to an appendix to this Agreement.
- 3.2. In this Agreement, unless the context otherwise indicates:
- 3.2.1. all words and expressions referring to any one gender shall be capable of being construed as a reference to the other genders;
- 3.2.2. the words signifying the singular shall include the plural and vice versa;
- 3.2.3. a reference to a natural person shall be capable of being construed as a reference to a juristic person and vice versa;
- 3.2.4. where figures are referred to in numerals and in words in this Agreement, if there is any conflict between the two, the words shall prevail;
- 3.2.5. words and phrases defined in this Agreement shall bear the meaning assigned to them throughout this Agreement;
- 3.2.6. words and phrases used in this Agreement, which are defined or used in any statute, which applies to the subject matter, professional person, goods, or services shall be construed in accordance with the applicable statute or regulations; and
- 3.2.7. headings of clauses and schedules are for convenience only and shall not govern or affect the interpretation, modify or amplify the terms within this Agreement, nor any clause or appendix thereof.
- 3.3. In the event of a conflict between the provisions of this Agreement and those of its schedules, the provisions of this Agreement will supersede those of its schedules.
- 3.4. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 3.5. In the event that a day for performance of any obligation in terms of this Agreement falls on a day that is not a Business Day, the day for performance of the obligation shall be the next Business Day.

#### 4. INTRODUCTION

- 4.1. The Recipient has applied to the DBSA for updating of the Capital Expenditure Framework by submitting the Application. The Application was approved by the DBSA on the Approval Date. The Recipient intends that the Grant be used for the Purpose, all on the terms and conditions contained in this Agreement.
- 4.2. The Recipient agrees to procure the Professional Service provider to assist in the development the Project. The Grant will be used to pay the Professional Service Providers Fees and the Recipient shall pay the Professional Services Provider.
- 4.3. This Agreement records the terms and conditions upon which the Grant Amount is provided to the Recipient by the DBSA.

#### 5. GRANT

- 5.1. Subject to the terms of this Agreement, the DBSA makes available to the Recipient, the Grant equal to the Grant Amount.
- 5.2. The Recipient is to ensure that the Grant is used solely for the Purpose.

#### 6. CONDITIONS PRECEDENT AND CONDITIONS OF DISBURSEMENTS

##### 6.1. Conditions Precedent

- 6.1.1. All rights and obligations of the Parties under this Agreement shall be subject to the DBSA notifying the Recipient that it has received the documents and evidence set out in Schedule 1 ("**Conditions Precedent**"), in form and substance satisfactory to the DBSA.
- 6.1.2. The DBSA may in its sole discretion, on written notice to the Recipient waive any of the Conditions Precedent (where capable of being waived). The DBSA shall promptly notify the Recipient upon being satisfied that all of the Conditions Precedent have been fulfilled or waived, as the case may be.

##### 6.2. Disbursements

- 6.2.1. The DBSA shall manage the Disbursement process. However, the obligation of the DBSA to make any Disbursement in terms of this Agreement is subject to the fulfilment of the following conditions:
  - 6.2.1.1. no Event of Default or Potential Event of Default having occurred and/or is continuing; and

6.2.1.2. the representations and warranties made in terms of this Agreement by the Recipient are true and correct in all respects; and

6.2.1.3. the Disbursement (or any part thereof) is not a reimbursement of, or to be used for the benefit of any Person who is prohibited from doing business with the Government of the Republic of South Africa; and

### 6.3. Disbursement Procedure

6.3.1. Subject to the terms and conditions of this Agreement, the DBSA shall upon the completion of specific project milestones by the Professional Service Provider, make progressive disbursements to the Recipient in the total amount in accordance with Schedule 3 (Source and Application of Funds).

6.3.2. The DBSA shall make the Disbursements to the Recipient directly (and to no third party) in South African Rand.

6.3.3. The Disbursement Date shall be a Business Day within the Availability Period and within 30 (thirty) Business Days of a DBSA approved Disbursement Request.

6.3.4. Notwithstanding anything to the contrary herein contained, the DBSA may validly act on all information, instructions and requests contained in or attached to a Disbursement Request without liability or responsibility to check the accuracy of such information.

6.4. The Recipient hereby acknowledges and agrees that all Disbursements shall constitute valid Disbursements made by the DBSA to the Recipient, the benefit of which shall have been received by the Recipient.

6.5. If any monies are Disbursed by the DBSA in terms of this Agreement in the mistaken belief that all of the Conditions Precedent or Disbursement conditions, as the case may be, have been fulfilled or waived in accordance with this Agreement and it is subsequently discovered that not all the Conditions Precedent or the Disbursement Conditions have been fulfilled or waived, then the DBSA, acting reasonably, reserves the right to withhold the next Disbursement until such time as the relevant Condition Precedent or Disbursement Condition has been fulfilled or waived.

## 6.6. Limitation

6.6.1. Notwithstanding anything provided in this Agreement, the DBSA shall only be obliged to make a Disbursement on the project:

6.6.1.1. if the DBSA is satisfied with the outcome of its consideration of a Disbursement Request submitted by the Recipient .

6.6.2. The Disbursement Request shall be considered by the DBSA:

6.6.2.1. alongside the Project Progress Report;

6.6.2.2. in the context of the Project Budget and expenditure to date;

6.6.2.3. against the Project cash-flows to date and Disbursement Schedule.

## 7. DURATION

7.1. The Parties agree that subject to:

7.1.1. the fulfilment or waiver, as the case may be, of the Conditions Precedent;

7.1.2. there being no Event of Default or Potential Event of Default,

7.1.3. this Agreement shall commence on the Effective Date and shall continue until the Termination Date.

## 8. ROLES AND RESPONSIBILITIES OF THE DBSA

8.1. The role and responsibility of the DBSA shall include but not be limited to the following activities in relation to the Project:

8.1.1. facilitating the Disbursement of the Grant in terms of the provisions of this Agreement;

8.1.2. periodically reviewing the Project and outlining any discrepancies in respect of the Project Implementation Plan, which the Recipient is obliged to rectify;

8.1.3. reviewing the Project Progress Reports and Disbursement Requests to ensure that the Project is progressing in accordance with this Agreement;

8.1.4. if the DBSA, in its sole discretion deems necessary, undertaking periodic on-site visits to the Project to verify the progress of the Project;

- 8.1.5. ensuring and maintaining on-going communication with the Recipient throughout the Agreement; and
  - 8.1.6. providing oversight to the Project in conjunction with the Recipient to ensure delivery in line with the approved Project Implementation Plan.
- 8.2. The Parties hereby agree that the DBSA reserves the right to undertake the necessary measures to ensure delivery in line with the approved Project Implementation Plan.

## 9. ROLES AND RESPONSIBILITIES OF THE RECIPIENT

- 9.1. The role and responsibility of the Recipient shall include but not be limited to the following activities in relation to the Project:
- 9.1.1. liaison and coordination with all provincial and national stakeholders in terms of facilitating stakeholder participation in the Project, as well as information, guidelines, approvals, etc. that is required to successfully complete the Project.
  - 9.1.2. provision to the Professional Services Provider of available information, records, databases, etc. in respect of the municipality and its water services infrastructure, especially where such information, records, databases, etc. are required for the successful implementation of the Project.
  - 9.1.3. take full ownership of the outputs of the planning support service provided by the DBSA.
  - 9.1.4. in the implementation phase of the identified Projects, and to the extent permitted by law, give the DBSA the right of first refusal to fund the projects identified in the outputs of the infrastructure planning support in accordance with the Recipient's Supply Chain Management processes and any other applicable procurement laws.
  - 9.1.5. engage, collaborate, and work with DBSA, other funding sources, relevant sector Departments, and National Treasury to unlock fiscal allocations e.g. MIG, INEP, etc. by making use of the assistance of the DBSA's Project Preparation Unit ("DBSA-PPU") to prepare relevant priority projects (that will be identified in the outputs of the infrastructure planning support) up to MIG registration stage.
  - 9.1.6. mobilise funding and other relevant resources from the DBSA, other funding sources, and /or from the fiscal allocations, to take the implementation-ready priority projects identified in the infrastructure plan, and the priority projects

subsequently prepared by the DBSA-PPU, to implementation (construction) stage.

- 9.1.7. include the prioritised projects identified by the outputs of the infrastructure planning support in the municipality's Integrated Development Plan (IDP) and make the necessary future budgetary allocations towards the implementation of the Projects.
- 9.1.8. use DBSA services, procurement systems and processes where required to procure the technical resources required to execute the Project.
- 9.1.9. under no circumstances, terminate, abandon, interrupt, materially change or suspend the implementation of the Project without the prior written consent of the DBSA;
- 9.1.10. facilitate the completion of the Project by the Professional Services Provider by no later than the Project Completion Date, unless otherwise agreed in terms of clause 10;
- 9.1.11. ensure that risk management procedures are in place to deal with the identified risks to the Project;
- 9.1.12. promptly notify the DBSA upon the occurrence of an Event of Default or Potential Event of Default and the steps that the Recipient is taking to remedy it;
- 9.1.13. as soon it comes to the Recipient's attention, promptly inform the DBSA of any Material Adverse Effect and/or event or circumstance that interferes or threatens to interfere with the accomplishment of the purposes of the Project or the Grant or the performance by the Recipient of its obligations under this Agreement;
- 9.1.14. comply with all Applicable Laws including all environmental laws and ensure that the Professional Services Provider engaged by the DBSA to perform services in connection with the Project complies with all Applicable Laws;
- 9.1.15. obtain and maintain in force (and where appropriate, renew in a timely manner) all authorisations (governmental, regulatory or otherwise) that are necessary for the implementation of the Project ("**Authorisations**");

- 9.1.16. insure and keep insured, with financially sound and reputable insurers, all its assets and business against all insurable losses to include the insurances required by Applicable Laws;
- 9.1.17. ensure that no changes in the nature or scope of the Project are made without the prior written consent of the DBSA and that there are no changes to the Project which would be inconsistent with the terms of this Agreement;
- 9.1.18. permit the DBSA or any other duly authorised representatives of the DBSA (whose appointment as such it shall not be necessary to prove), with reasonable notice and during normal business hours:
  - 9.1.18.1. to visit the premises of the Recipient and the place where the Project is being conducted and all other premises of the Recipient;  
and
- 9.1.19. ensure that a Project Steering Committee (PSC) is constituted by the Recipient and meets at regular intervals suitable to the duration of the Project. The PSC is to provide strategic oversight over the implementation of the project and is to be chaired by a senior official designated by the Recipient's Accounting Officer.;
- 9.1.20. the Recipient will allow the DBSA to review and approve the text of any proposed publicity concerning this Grant prior to its release;
- 9.2. Following the Project Completion Date, the Recipient shall sign off its acceptance of the outputs of the infrastructure planning support provided through the Professional Services Provider, and notify its Council of the completion of the Project.
- 9.3. To the extent that it is possible to do so, the Recipient hereby undertakes that any information or document submitted by it in terms of this Agreement shall be true and correct and hereby waives any right it may have over the professional work contained and within such document or information following therefrom.
- 9.4. Notwithstanding anything contained in this Agreement, the DBSA reserves the discretion to verify and confirm any information or document submitted by the Recipient in the performance or execution of its duties and obligations in terms of this Agreement.

## 10. EXTENSION OF DURATION OF THE PROJECT

- 10.1. If at any time the Recipient anticipates that the Professional Services Provider will be unable to complete the Project by the Project Completion Date, the Recipient shall without delay notify the DBSA in writing of:
- 10.1.1. the projected period for which the Project is anticipated to be delayed;
  - 10.1.2. the reason/s for the anticipated delay; and
  - 10.1.3. the steps, if any, which the Recipient has taken and/or intends to take to avoid or mitigate the anticipated delay.
- 10.2. Upon receipt of notification from the Recipient in terms of clause 10.1, the DBSA shall be entitled, but not obliged, without prejudice to its other rights in terms of this Agreement, to:
- 10.2.1. extend the period of the Project from that recorded in the Project Implementation Plan to such longer period as the DBSA may in its sole discretion determine; and/or
- 10.3. If the contents of the documentation referred to in clause 10.1 are not true and correct or are not free from any misrepresentations, whether intentional or negligent, the DBSA shall be entitled to exercise its rights as set out in clause 15 without prejudice to any other rights it may have.
- 10.4. Any expenses incurred in respect of preparing the Application will not be considered as part of the Project Budget.
- 10.5. The decision of the DBSA regarding the validity and/or amount of expenses is final.
- 10.6. The DBSA shall be entitled at any time and for any reason whatsoever to perform an audit on any expenses incurred in relation to the Project. The Recipient shall provide the DBSA with all information and assistance as expected to conduct such audit and consents to any adjustments to the Project Budget which may arising from such an audit.

## 11. MONITORING

- 11.1. The Parties will be responsible for the monitoring of the implementation of the Project. Two levels of monitoring of the Project will be carried out:
- 11.1.1. the Parties will monitor the output of the activities carried out by the Professional Services Provider. This will be accomplished by the monitoring of

reports submitted by the Professional Services Provider in accordance with the provisions and time-lines set out in the Project Implementation Plan, together with any additional information which may be required by the DBSA in its sole discretion from time to time for monitoring purposes; and

- 11.1.2. the Parties will monitor the measurable Project outcomes by monitoring progress made and the deliverables achieved by the Professional Services Provider.

## 12. CONFIDENTIALITY

- 12.1. The Parties undertake to treat all Confidential Information as strictly confidential between themselves and not to divulge any Confidential Information and/or or proprietary information in respect of each other to other parties unless otherwise required by law or agreed to in writing or required by the DBSA in order to fulfil the conditions of this agreement. The following may however be made public by the DBSA:

- 12.1.1. after this Agreement has been signed, the Application Date, name of the Recipient, Grant Amount and the Project Completion Date; and

- 12.1.2. after the final deliverables have been completed or the Project has been cancelled or terminated, the name of the Project, actual Grant Amount paid, Project Completion Date and a concise generic description of the Project.

- 12.2. The Recipient may disclose the Confidential Information of the DBSA to its Permitted Recipients, provided that:

- 12.2.1. the Recipient will take such steps as are necessary to ensure that the Recipient's employees to which Confidential Information is disclosed adhere to this Agreement;

- 12.2.2. any disclosure by the Recipient's employees of the DBSA's Confidential Information contrary to this Agreement will be an unauthorised disclosure by the Recipient.

- 12.3. The Recipient will not use the Confidential Information for any purpose other than:

- 12.3.1. that for which it is disclosed in connection with this Agreement;

- 12.3.2. as otherwise permitted by the DBSA in writing; or

- 12.3.3. in accordance with this Agreement.

- 12.4. The DBSA does not warrant that the Confidential Information it discloses is accurate or complete and the DBSA will not be liable for any losses, damages, costs or penalties suffered by, or claims made against, the Recipient as a result of any inaccuracies in, or incompleteness of, the Confidential Information disclosed.
- 12.5. The Recipient hereby indemnifies the DBSA against any loss, cost, damages, expense or liability arising from, or in connection with, disclosure of Confidential Information contrary to this Agreement by the Recipient, or Permitted Recipients or third parties to which the Recipient has made disclosure.
- 12.6. Upon the request of the DBSA, the Recipient will, within 5 (five) Business Days, return, destroy or expunge from any storage device all Confidential Information other than documents prepared by the Recipient; provided that if required by Law or for purposes of this Agreement, the Recipient may retain 1 (one) copy of the Confidential Information for the period so required.

### **13. UNDERTAKINGS BY THE RECIPIENT**

The Recipient hereby undertakes:

- 13.1. to immediately inform the DBSA in writing of the material details of any financing the Recipient acquires from other private sector or governmental sources, banking and/or financial institutions in respect of the Project;
- 13.2. to respond, to the best of its ability, to any questionnaires for the purpose of evaluating its satisfaction with the support provided by the DBSA.

### **14. REPRESENTATIONS AND WARRANTIES**

- 14.1. The Recipient represents and warrants that:
- 14.1.1. it has the power to enter into and perform, and has taken all the necessary action to authorise its entry into and performance under this Agreement;
- 14.1.2. the entry into and performance by it of the terms and conditions as contemplated by this Agreement will not conflict with:
- 14.1.2.1. any Applicable Law;
- 14.1.2.2. its Constitutional Documents; and/or
- 14.1.2.3. any agreement or instrument binding upon it or any of its assets;

- 14.1.3. it has disclosed to the DBSA all information at its disposal pertaining to the Project in the Application and during the DBSA's investigation thereof;
- 14.1.4. it has disclosed to the DBSA any financing for the Project made available by or applied for from any governmental source and private sector including any banking and/or financial institution;
- 14.1.5. all the Intellectual Property rights existing and developed as a result of the Project, which the Recipient owns or claims to own is not in any manner whatsoever owned by any other party;
- 14.1.6. its business has been conducted and will be conducted in compliance with all Applicable Laws, including but not limited to all relevant environmental legislation;
- 14.1.7. all Authorisation have been obtained or effected and are of full force and effect and no steps have been taken against the Recipient for the revocation, variation or refusal of any material authorisation in respect of the Project and all fees (if any) payable in connection therewith, if due, have been paid and no Event of Default (howsoever described) has occurred in the performance of any of the terms or conditions thereof which is material to the effectiveness of any of the foregoing;
- 14.1.8. no Event of Default or Potential Event of Default:
  - 14.1.8.1. has occurred or is continuing under or in respect of any agreement or document to which the Recipient is a party or by which it may be bound, including this Agreement;
  - 14.1.8.2. might reasonably be expected to result from the conclusion of this Agreement to which it is a party or the making of any of the Disbursements to the Recipient;
- 14.1.9. there is no litigation, arbitration or administrative proceeding current or pending against, to the best of the Recipient's knowledge and belief, threatened against the Recipient which may, if adversely determined, have a Material Adverse Effect;
- 14.1.10. no legal suit, action, proceeding or process or any other steps have been taken or, to the best of the Recipient's knowledge and belief (and after making reasonable enquiries) have been threatened for the winding up or liquidation

(whether voluntary or involuntary, provisional or final), or de-registration of the Recipient or for the appointment of a liquidator, business rescue practitioner or similar officer over the Recipient or over any of the assets of the Recipient;

14.1.11. no Insolvency Event in relation to the Recipient has occurred;

14.1.12. it cannot claim immunity from suit or action;

14.1.13. since the Application Date and the Signature Date no facts or circumstances have occurred which may have a Material Adverse Effect.

14.2. The DBSA is entering into this Agreement relying on each of the representations and warranties made by the Recipient, each of which shall be deemed to be a separate representation and warranty which is material and having induced the DBSA to enter into this Agreement.

## 15. EVENTS OF DEFAULT

15.1. Each of the following shall constitute an Event of Default under this Agreement:

15.1.1. any event or condition has occurred which in the opinion of the DBSA has or could be expected to have a Material Adverse Effect;

15.1.2. the Recipient fails to comply with any of its obligations under this Agreement, and any such failure continues for a period of 14 (fourteen) days after the date on which the DBSA notifies the Recipient of that failure or, if earlier, the date on which such Recipient becomes or should have, with diligence, become aware of such failure;

15.1.3. the Project is abandoned, suspended or terminated for any reason whatsoever by the Recipient;

15.1.4. any representation or warranty made by the Recipient in this Agreement or in any Disbursement Request or in connection with the execution and implementation of this Agreement is found to have been incorrect in any respect;

15.1.5. an Insolvency Event in relation to the Recipient occurs;

15.1.6. any Authorisation necessary for the Recipient to comply with its obligations under this Agreement or to carry out the Project for any reason ceases to be in full force and effect and is not restored or reinstated within 14 (fourteen) days of written notice by the DBSA to the Recipient;

- 15.1.7. any Project document or any of its provisions are revoked, terminated, repudiated, declared void, becomes unlawful or ceases to be in full force and effect without, in each case, the prior written consent of the DBSA, and in that event, if capable of being remedied, is not remedied to the satisfaction of the DBSA within 14 (fourteen) days of the DBSA's notice to the Recipient;
  - 15.1.8. the Recipient has modified the nature or the objective of the Project without the prior written approval of the DBSA;
  - 15.1.9. in the opinion of the DBSA, it is imminent that any authority will condemn, nationalise, seize, expropriate, or otherwise assume custody or control of, all or any substantial part of the business, operations, property or other assets of the Recipient or take any action for the dissolution of the Recipient or any action that would prevent the Recipient or its employees from carrying on all or a substantial part of the Business or operations;
  - 15.1.10. it appears that material information in the Application is incorrect or that material information was not disclosed;
- 15.2. Forthwith upon the occurrence of an Event of Default and at any time thereafter, if such event continues, the DBSA shall in its sole and absolute discretion be entitled (but not obliged), without prejudice to any other rights which the DBSA may have, by notice to the Recipient to:
- 15.2.1. suspend any amounts available but not Disbursed under the Grant or declare any amounts available but not Disbursed under the Grant to be automatically cancelled and to declare that no further Disbursement be made available under the Grant; and/or
  - 15.2.2. declare that the obligations of the DBSA in terms of this Agreement shall be cancelled forthwith, whereupon the same shall be so cancelled; and/or
  - 15.2.3. claim immediate payment of any amount disbursed under the Grant, any damages costs and other amounts incurred in consequence of such Event of Default from the Recipient in terms of this Agreement.
- 15.3. Notwithstanding any provision to the contrary in this Agreement, the DBSA may by notice to the Recipient cancel the whole or part of the Grant, as the case may be, if:
- 15.3.1. the Project activities are interrupted for a consecutive period of 2 (two) calendar months; or

- 15.3.2. the DBSA determines that any person who is engaged in Corrupt Practice, a Coercive Practice, a Collusive Practice or a fraudulent practice, without the Recipient having taken timely and appropriate action satisfactory or to address such practice when they occur; or
- 15.3.3. the Recipient has modified the nature or the objective of the Project without the prior approval of the DBSA.

## 16. PUBLICATIONS

Should the Recipient wish to publish results of the Project deliverables carried out pursuant to this Agreement, the Recipient shall first obtain written approval from the DBSA and supply it with a copy of the proposed publication, who shall review the proposed publication and notify the Recipient, within 30 (thirty) calendar days after receipt, in writing whether the DBSA consents to such Publication.

## 17. INTELLECTUAL PROPERTY

- 17.1. Any Intellectual Property already existing at Signature Date and utilised in terms of this Agreement shall remain the Intellectual Property of the Party in whom that Intellectual Property had vested at the Signature Date but each Party hereby grants the other Party a non-exclusive right to use such Intellectual Property for the purposes of the project.
- 17.2. Subject to clause 17.3 below, all Intellectual Property generated by the DBSA through the Professional Services Provider in the Project shall vest in both the Recipient and the DBSA, and the Recipient shall be entitled to use the Intellectual Property for any purposes whatsoever, including without limitation for Commercialisation.
- 17.3. The Recipient hereby grants the DBSA a non-exclusive right to use any and all of the Intellectual Property generated by the Project for purposes of publicity, marketing, and further research.
- 17.4. Should this Agreement be terminated by reason of breach by the Recipient, the Intellectual Property generated by the Professional Services Provider in terms of the Project shall remain vested in the DBSA and the DBSA shall be entitled to use the Intellectual Property however it may elect in its sole discretion, including without limitation for purposes of Commercialisation.
- 17.5. The Recipient furthermore grants non-exclusive right to any and all third parties to use the Intellectual Property generated by the Project for any purposes within the border of the Republic of South Africa which are for the benefit of the Republic of South Africa.

This clause 17.5 is a *stipulatio alteri* capable of acceptance at any time. This clause 17.5 shall not preclude the Recipient from having exclusive rights to the Intellectual Property outside the borders of the Republic of South Africa.

- 17.6. The Recipient shall enter into appropriate agreements with third parties participating in the Project to ensure the effective management of intellectual Property generated in the course of the Project.

## 18. ARBITRATION

- 18.1. Should any dispute between the Parties with regard to the interpretation, the carrying into effect and implementation of any one or more of the provisions of this Agreement, any of the rights and obligations or either Party arising from the Agreement, the termination or purported termination of, or arising from the termination of, or the rectification or proposed rectification of the Agreement, or pursuant to this Agreement, or any other matter which in terms of this Agreement requires agreement by the Parties, the Parties shall, in the first instance, attempt to come to an agreement in relation to any such dispute by consultation and negotiation in good faith and in the second instance proceed to arbitration.
- 18.2. A dispute shall be determined in terms of this clause after written notice has been given by the aggrieved Party to the other Party.
- 18.3. This clause shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 18.4. The arbitration shall be held:
- 18.4.1. at a venue to be agreed between the disputing Parties, failing which at the offices of the Arbitration Foundation of South Africa (“**AFSA**”) closest to the DBSA’s *domicilium* address;
- 18.4.2. with only the legal and other representatives of the Parties present thereat;
- 18.4.3. *mutatis mutandis* in accordance with the provisions of the Supreme Court Act, 1959, the rules made in terms of that Act and the practice of the division of the High Court referred to in clause 23;
- 18.4.4. otherwise in terms of the Arbitration Act, 1965;
- 18.4.5. it being the intention that the arbitration shall be held and completed as soon as possible.

- 18.5. The arbitrator shall failing agreement between the Parties be such person as appointed by AFSA.
- 18.6. The decision of the arbitrator shall be final and binding on the Parties and may be made an order of the court referred at the instance of any of the Parties.
- 18.7. The Parties agree to keep the arbitration including the subject-matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone unless required by Law.
- 18.8. The provisions of this clause:
- 18.8.1. constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and
- 18.8.2. are severable from the rest of this Agreement and shall remain in effect despite determination of or invalidity for any reason of this Agreement.

## 19. SEVERABILITY

The Parties agree that each and every provision of this Agreement is severable from the remaining provisions of this Agreement and should any provision of this Agreement be in conflict with any applicable law, or be held to be unenforceable or invalid for any reason whatsoever, such provision should be treated as *pro non scripto* and shall be severable from the remaining provisions of this Agreement which shall continue to be of full force and effect.

## 20. CESSION AND DELEGATION

- 20.1. The Recipient shall not be entitled to cede, assign, delegate or otherwise transfer any of its rights or obligations under this Agreement to any third party, without the prior written consent of the DBSA.
- 20.2. The DBSA shall be entitled, without the Recipient's consent, to cede, delegate or assign all or any of its rights, benefits and obligations or obligation only under this Agreement to any third party.

## 21. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreements as at the date of signature of the Party last signing one of the counterparts.

## 22. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.

## 23. JURISDICTION

The parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that division) in regard to all matters arising from this Agreement.

## 24. COSTS

24.1. Each Party shall bear its own costs of and incidental to the negotiation and preparation of this Agreement.

24.2. If in any legal proceedings relating to the enforcement by either party of its rights in terms of this Agreement, a court awards costs to any party, such costs shall be determined and recoverable on the scale as between an attorney and his own client and shall include collection charges, the costs incurred by such party in endeavouring to enforce such rights prior to the institution of legal proceedings and the costs incurred in connection with the satisfaction or enforcement of any award or judgment awarded in favour of such party in relation to its rights in terms of or arising out of this Agreement.

## 25. NOTICES AND DOMICILIA

25.1. The Parties choose as their *domicilia citandi et executandi* their respective addresses set out in this Agreement for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.

25.2. For purposes of this Agreement the Parties' respective addresses shall be as follows:

### 25.2.1. DBSA:

Physical address: 1258 Lever Road

Headway Hill

Midrand

1685

Telephone number: +27 11 313 3911

Fax number: +27 11 313 3086

Email address: [claimadmin@dbsa.org](mailto:claimadmin@dbsa.org) and [MohaleR@dbsa.org](mailto:MohaleR@dbsa.org)

Attention: Group Executive: Project Preparation and General Legal Counsel

#### 25.2.2. Stellenbosch Local Municipality

Physical address: Town House Complex  
Plein Street  
Stellenbosch  
7600

Telephone number: +27 21 808 8111

Email address: [Geraldine.Mettler@stellenbosch.gov.za](mailto:Geraldine.Mettler@stellenbosch.gov.za)

Attention: Geraldine Mettler - Municipal Manager

or at such other address in the Republic of South Africa of which the Party concerned may notify the other in writing provided that no street address shall be changed to a post office box or post *restante*.

25.3. Any notice given in terms of this Agreement shall be in writing and shall:

25.3.1. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

25.3.2. if transmitted by facsimile be deemed to have been received by the addressee on the day following the date of dispatch, unless the contrary is proved.

25.4. Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from another including by way of facsimile transmission shall be adequate written notice or communication to such Party.

## 26. RELAXATION

No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement. No single or partial exercise of any right by any party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

## 27. VARIATION

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any rights arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.

## 28. WHOLE AGREEMENT

This Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.

## 29. INDEMNITY

- 29.1. The Recipient, including any person acting for or on behalf of the Recipient, shall exercise due care and diligence in the performance of its duties in terms of this Agreement and the Recipient, including any person acting for or on behalf of the Recipient, shall be liable to the DBSA where the Recipient has failed to exercise such due care and diligence.
- 29.2. The Recipient indemnifies and holds the DBSA harmless against any liabilities, arising out of the conduct of the Recipient, its employees, agents and or other natural or juristic persons connected with the Recipient, in conducting the work pursuant to this Agreement.
- 29.3. Notwithstanding anything to the contrary set out in this Agreement, the Recipient hereby indemnifies and shall hold the DBSA harmless against any claims, damages, expenses and costs (including those asserted by third parties) directly or indirectly related to this Agreement, in delict, for breach of statutory duty or otherwise.

- 29.4. The Recipient shall indemnify and hereby indemnifies the DBSA against any expenditure incurred in vain, any fruitless or wasteful expenditure incurred and any expenditure which could have been avoided had reasonable care been exercised or expenditure incurred as a result of fraud, theft or negligence or commission and/or omission during the execution of the Project.

### **30. ANTI-CORRUPTION AND GOOD FAITH**

- 30.1. In implementing this Agreement and in all further dealings with each other, the Parties undertake to observe utmost good faith and to give effect to the intent and purpose of this Agreement.
- 30.2. The Recipient will not make or cause to be made any offer, gift or payment or consideration or benefit of any kind, which would or could be construed as an illegal or corrupt practice, either directly or indirectly to any party, as an inducement or reward in relation to the execution of this Agreement including any activity contained in the Prevention and Combating of Corrupt Activities Act, 2004.
- 30.3. Any such practice will be a ground for termination of this Agreement.

### **31. ATTESTATION**

The Parties hereby acknowledge having read and signed this Agreement and its schedules, the contents of which are understood and accepted by both the Parties.

Signed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2019

For and on behalf of:

**Development Bank of Southern Africa Limited**

\_\_\_\_\_  
Name:

Capacity:

Who warrants authority

Signed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2019

For and on behalf of:

**Stellenbosch Local Municipality**

\_\_\_\_\_  
Name:

Capacity:

Who warrants authority