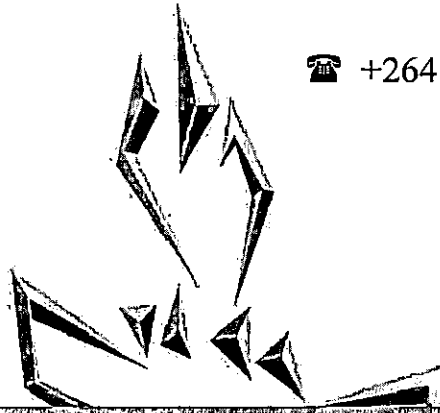


DOCUMENT 1

CITY OF WINDHOEK

✉ 59, Windhoek

☎ +264 61 2902911

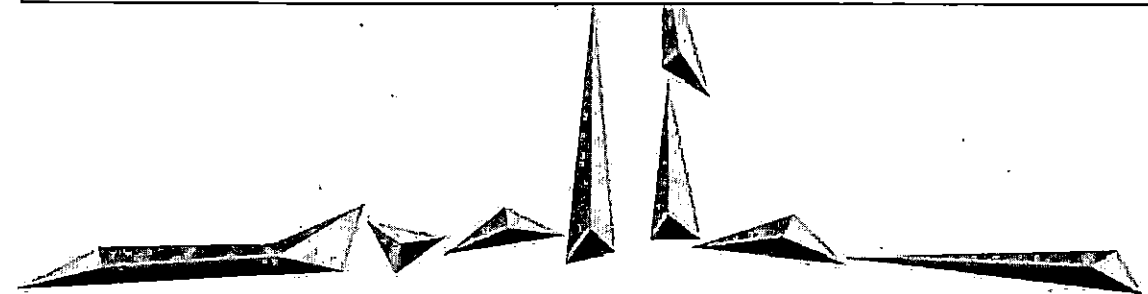


NOTICE is hereby given of the monthly meeting of the

MUNICIPAL COUNCIL OF WINDHOEK

to be held on **Thursday, 27 October 2022 at 17:30**, in the new Council Chambers, Windhoek.

.....
ACTING CHIEF EXECUTIVE OFFICER



ENQUIRIES: Ms T Edward/mgo
Ms M Garises

REF: 27-10-2022.ca

TELEPHONE: 2902597/2902557

DATE: 2022-10-21

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[Municipal Council Agenda: 2022-10-27]

1 OPENING BY PRAYER
(3/2/1)

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[Municipal Council Agenda: 2022-10-27]

**2 OFFICIAL ANNOUNCEMENTS, STATEMENTS
AND COMMUNICATIONS BY THE MAYOR -
COUNCILLOR MS SS GAWANAS**
(3/1/6/8)

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[Municipal Council Agenda: 2022-10-27]

3 APPLICATIONS FOR LEAVE OF ABSENCE
(3/1/5/1)

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[Municipal Council Agenda: 2022-10-27]

4 DECLARATION OF INTEREST
(3/1/5/1)

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5 CONFIRMATION OF MINUTES

[Municipal Council Agenda: 2022-10-27]

**5.1 MUNICIPAL COUNCIL MEETING
HELD ON 29 SEPTEMBER 2022**
(3/2/1)

The minutes of the monthly meeting of the Municipal Council of Windhoek held on 29 September 2022 are submitted for confirmation.

[Municipal Council Agenda: 2022-10-27]

**5.2 SPECIAL MUNICIPAL COUNCIL MEETING
HELD ON 12 OCTOBER 2022**
(3/2/1)

The minutes of the special meeting of the Municipal Council of Windhoek held on 12 October 2022 are submitted for confirmation.

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[Municipal Council Agenda: 2022-10-27]

6 PETITIONS
(3/2/1)

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[Municipal Council Agenda: 2022-10-27]

7 MOTIONS
(3/2/1)

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[Municipal Council Agenda: 2022-10-27]

**8 ANSWERS TO QUESTIONS OF WHICH
NOTICE HAS BEEN GIVEN**
(3/1/6/3) (16/15/1)

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9 MINUTES OF MANAGEMENT COMMITTEE

[Municipal Council Agenda: 2022-10-27]

9.1 APPROVAL OF MINUTES (MC 18/2022)

The minutes of the Management Committee meeting (MC 18/2022) held on 3 October 2022 was approved by the said Committee on 18 October 2022 and is submitted for notice with the exception of Items GOV.1 GOV.2, GOV.7, GOV.9, FNS.1, FNS.2 and IND.1, which follow immediately hereunder for consideration.

It is

RECOMMENDED

That the minutes of the Management Committee meeting (MC 18/2022) held on 3 October 2022, be noted by its members, with the exception of Items GOV.1 GOV.2, GOV.7, GOV.9, FNS.1, FNS.2 and IND.1.

[Municipal Council Agenda: 2022-10-27]

9.1.1 GOV.1 [INF] APPROVAL OF THE INTEGRATED WASTE MANAGEMENT PLAN (IWMP) (2022 TO 2027) FOR THE SOLID WASTE MANAGEMENT DIVISION (16/4)

Management Committee at its meeting held on 19 July 2022 per Item GOV.1 amongst others *inter alia* resolved as follows:

That this matter be referred back in order for the Strategic Executive: Infrastructure, Water and Technical Services, in consultation with the Chief Executive Officer (Acting Manager: Mayoral and Council Affairs), to arrange a workshop for all Councillors on the Integrated Waste Management Plan (IWMP), to interrogate the same properly in order to ensure that the needs are met, whereafter it be resubmitted at the Management Committee meeting scheduled to be held on 16 August 2022, for consideration.

The workshop for all Councillors on the Integrated Waste Management Plan (IWMP) was conducted on 18 August 2022 and eight (8) Councillors were in attendance (refer to the Attendance Register, **attached as page 1 to the agenda**).

The matter is herewith submitted to Council, for consideration.

Strategic Executives Forum resolution

The Strategic Executives Forum at its meeting held on 30 May 2022 *inter alia* resolved as follows:

- *Recommended on condition that the Strategic Executive: Infrastructure, Water and Technical Services incorporate the concerns of the Strategic Executive: Urban and Transport Planning on how Rent-A-Drum's waste should be dealt with, prior to placement on the Management Committee agenda, for consideration.*

Response from the Strategic Executive: Infrastructure, Water and Technical Services to the Rent-A-Drum (RAD) comments

The Municipal Council of Windhoek, being a regulator at the local level by virtue of section 94(1) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended) has the responsibility of ensuring that waste generated within its jurisdiction is managed in an effective and efficient manner through development of systems and policy documents.

The Solid Waste Management Division wants to make it categorically clear that the formulated Integrated Waste Management Plan (IWMP) is not there to focus on how an individual participant such as Rent-A-Drum (RAD) would be affected by the implementation of the plan. The plan is aimed at providing a five (5) year strategic direction on waste management practices in the City, one of which is waste reduction and by virtue includes recycling. Additionally, the focus is to provide an enabling environment for all role players within the recycling industry.

Rent-A-Drum (RAD) has been a strategic partner of the Municipal Council of Windhoek for many years and the intention is not to jeopardise its business activities, but to create a conducive environment by formulating policy framework geared at regulating recycling industries in the City. The division takes cognisance of the fact that there are many upcoming recycling entities in Windhoek, who need to be empowered and supported without creating fear of monopolising the industry. Rent-A-Drum (RAD) focus through the Clear-Bag System has been in the affluent suburbs such as Olympia, Kleine Kuppe, Avis, Eros to mention but a few.

In 2015, the division engaged with Rent-A-Drum (RAD) to roll-out the Clear-Bag System to Katutura (Luxury Hill) and other areas in the western suburbs however, there was a reluctance to roll-out the Clear-Bag System due to concern of low recyclable volumes to be collected. Thus, this effort did not bear the results that was intended for. Our strategic intent is to strengthen recycling activities and to reduce waste littering by providing incentives to target communities to participate in the recycling initiative. The challenge faced by the division in the target communities is that of littering and illegal dumping of waste of which majority is recyclable waste.

Therefore, it is prudent for the division to engage the target communities in a meaningful manner that is sustainable, and the initiatives planned/proposed in the Integrated Waste Management Plan (IWMP) is believed to be able to achieve this.

In light of the above, during final analysis the focus of the division is on the north western suburbs, i.e. Katutura, Khomasdal and Rocky Crest, including the informal settlement where waste management is a serious challenge in terms of littering and illegal dumping. These are the areas that Rent-A-Drum (RAD) is not active in due to challenges highlighted and thus alternative initiatives are proposed to be implemented to address the present challenges as noted.

Therefore, the division sees the initiatives proposed to be complementary to others such as Rent-A-Drum (RAD) and thus is not in direct competition with already running recycling initiatives. It should be seen as widening the coverage of areas 'serviced' and hence should contribute towards the objective of reduction of waste to the landfill site.

Background

The Municipal Council of Windhoek through the Solid Waste Management Division, being a regulator at local level, by virtue of section 94(1) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended) has developed Solid Waste Management Regulations No. 16 of 2011 which empower the Municipal Council of Windhoek to regulate waste management activities within its area of jurisdiction. The regulation is a legal document which was formulated based on the objectives and principles in the Solid Waste Management Policy (approved by Council in 2009) to support the implementation of waste management hierarchy.

The objective of the Solid Waste Management Policy is to provide overall strategic direction to waste management within the City. The Municipal Council of Windhoek recognises that a clean environment is an integral part of a functional society and is instrumental in attracting economic activity to the City, and must therefore be conserved at all costs. The Municipal Council of Windhoek also realises that the war against waste will not be won by picking up papers and cleaning up pollution and therefore is committed to educating and raising awareness regarding an integrated approach to waste management in the City.

The implementation of the waste management hierarchy requires a change in the mind-set and behaviour of our residents, but this will ultimately result in sustainable waste management practices. Within the Solid Waste Management Policy under Objective 4, the Solid Waste Management Division is required to develop and implement an Integrated Waste Management Plan (IWMP).

Introduction

In order to achieve the goal of reducing the amount of waste generated and consequently landfilled, and adopting a more sustainable approach to waste management, the Municipal Council of Windhoek set up eleven (11) specific objectives to be achieved through the Solid Waste Management Policy. Objective 4 refers specifically to the implementation of the Integrated Waste Management Plan (IWMP) in order to facilitate the shift away from end-of-pipe treatment methodologies and prolific landfilling to more progressive approaches including waste minimisation and cleaner production.

Additionally, section 6(5)(7) of the Pollution Control and Waste Management Bill of 1999 requires that Local Authorities prepare and submit for approval a local Integrated Waste Management Plan (IWMP) for its area of jurisdiction. The National Solid Waste Management Strategy of 2017, Objective 1 (Task 2.1.1) also mandates local authorities to develop and implement Solid Waste Management Plans. Therefore, the development of the City's Integrated Waste Management Plan (IWMP) is in line with the national regulatory framework.

The Integrated Waste Management Plan (IWMP) can be described as a document that outlines various aspects of waste management, including the containment, collection, transportation, and disposal of waste. This plan identifies existing solid waste systems, assesses gaps and needs, and sets forth the ways to design, implement, and monitor a more effective and sustainable Solid Waste Management Programme.

The Municipal Council of Windhoek, since the establishment of the Solid Waste Management Division in 1998, has taken a proactive approach to waste management. In 2010, the Municipal Council of Windhoek formulated the First (1st) Generation Five (5) Year Integrated Waste Management Plan (IWMP) which culminated in the promulgation of the Solid Waste Management Regulations and development of various waste management strategies. With the implementation of the Second (2nd) Generational Plan (2022 to 2027) the focal area will be the adoption of the *Zero Waste to Landfill Concept* which advocates for recycling initiatives at all levels with the diverting of waste from the landfill site.

Additionally, the concept will look at a circular economy through value addition to waste and creation of greens jobs to the local communities.

The formulation of both strategic plans were based on our Solid Waste Management Policy objectives. The Integrated Waste Management Plan (IWMP) aims to implement the following specific objectives, and is outlined in the Solid Waste Management Policy. Activities were identified under each objective key:

- Objective 1: Legislative Framework, Political Will and Co-operative Governance;
- Objective 2: Waste Minimisation, Cleaner Production and Sustainable Consumption;
- Objective 3: Optimisation of Resources;
- Objective 4: Integrated Waste Management Planning;
- Objective 5: Waste Information System (WIS);
- Objective 6: Health Care Risk Waste (HCRW) Management Strategy and Plan;
- Objective 7: Priority Waste;
- Objective 8: Capacity Building through Education and Awareness Raising;
- Objective 9: Community participation in waste management activities;
- Objective 10: Research and Development; and
- Objective 11: Best Practice Guidelines and Standards.

Gap and needs analysis

The gap and needs analysis study was done to support the formulation of the Integrated Waste Management Plan (IWMP) which is summarised into seven (7) aspects of waste management affecting the containment, collection, transportation, treatment and disposal of waste generated within the boundaries of the Municipal Council of Windhoek and will be addressed during the implementation of the second (2nd) Integrated Waste Management Plan (IWMP):

1 Waste minimisation, recycling, re-use and recovery

- Separation of waste at source either through the two (2) bin or Clear-Bag System need to be rolled out to all the suburbs where feasible;

- Garden refuse and organic waste need to be diverted from the satellite and landfill site; therefore, the Municipal Council of Windhoek need to start a composting programme with other relevant stakeholders;
- A framework for the co-ordination of establishing and running community-based recycling programmes has to be initiated;
- There is a need to develop a Recycling Policy in line with the Waste Reduction Strategy to drive and enforce the waste minimisation and recycling agenda;
- There is a need for the formation of partnerships in order to facilitate the involvement of all relevant stakeholder groups to ensure the sustainability of recycling programmes and attainment of set targets;
- There is a need to embrace and engage the existing informal recycling sector in new proposed formal recycling programmes and discourage the continual unfolding of informal recyclers;
- The Municipal Council of Windhoek as the custodian in waste management should take a lead and operate in a manner that shows their dedication to facilitating waste minimisation and recycling principles by introducing waste separation at source initiatives in all the Municipal Council of Windhoek offices and operational sites;
- An effective recycling programme in a form of schools recycling competition must be implemented in all schools around the City; and
- Convenient recycling drop-off centres or waste buy-back centres need to be established at convenient locations, e.g. at existing transfer stations and satellite sites.

2 Education and awareness raising

- Although the Municipal Council of Windhoek already has a number of initiatives to increase public awareness of waste management related issues, a more coordinated approach and increased co-operation is required particularly around the practical issues relating to recycling, e-waste, illegal dumping, medical waste and household hazardous waste;
- There is a need to continually and consistently undertake awareness and education programmes that target all relevant stakeholder groups; and
- A platform (e.g. a telephone hotline, Facebook and WhatsApp groups etc.) is needed for the public to report waste management issues and access relevant information (e.g. non-collection of waste, reporting illegal dumping, closest satellite and transfer centres).

3 Compliance, monitoring and enforcement

- Illegal dumping and littering continue to be major issues requiring ongoing expensive interventions (street cleaning, clean-up campaigns, illegal dump clearing etc.);
- There is a need to update the existing Solid Waste Management Regulations to ensure relevance to the Municipal Council of Windhoek's needs and focus and priorities as well as alignment with the National Waste Management Strategy; and
- The Municipal Council of Windhoek has to enhance enforcement campaigns - conducting major targeted compliance enforcement campaigns each month, in partnership with the City Police is needed.

4 Human resource, finance and administration

- A number of critical positions such as Drivers and Operators are currently vacant and need to be filled;
- There is a need to fill vacancies within the Licensing; Research and Education; Finance, Administration and Assets Divisions; so that they meet the divisional needs and objectives;
- The billing and bin management system need to be reviewed and updated, as currently there is no strategy on bin replacement and the use of broken bins;
- There is a need to periodically conduct the Bin Audit, as this will ensure that clients are billed correctly as per amount of wheelie bins issued;
- Payment of sundry invoices is a challenge as non-Windhoek residents are also disposing waste at the Kupferberg Landfill site. This results in non-payment for using the site. In partnership with the Department of Finance and Corporate Services, a cash management system needs to be developed and implemented;
- There is also a need to create an interface between the TRAKSCALE Software at the Kupferberg Landfill site and the e-Venus System to enable the correct and timely billing of clients; and
- There is a need to optimise and invest in fleet for the division to meet ever increasing demand for waste management services.

5 Waste generation and collection

- Frequent breakdown of the vehicle responsible for collection and transportation of waste due to old age is a challenge, this causes a serious backlog in the collection of waste at the point of generation;

- There is a need for the Municipal Council of Windhoek to follow provisions made in the approved Fleet Management Policy as far as fleet repair, maintenance and replacement is concerned;
- The Municipal Council of Windhoek also need to look at the alternative containment system of general waste in the informal settlements. Currently, each household in the informal settlement is issued with two (2) black bags per week, and this has proven to be ineffective as residents indiscriminately dump full black bags everywhere; and
- The development of priority waste strategies (E-Waste) is paramount to manage the disposal thereof.

6 Waste treatment and waste disposal

- The existing landfill site is nearing its end of life with limited options to extend the life span. The Municipal Council of Windhoek needs to produce ways of saving/maximising landfill airspace such as:
 - Waste minimisation and recycling options; and
 - Investigate alternative sites or expand the current site for the provision of future general and hazardous waste disposal facility.
- The need exists for the provision of new garden refuse and building rubble satellite sites and waste transfer stations in the following areas: Ongos Valley, Cimbebasia, Groot Aub, Avis and Prosperita.

7 Waste Information System (WIS)

- The Solid Waste Management Policy and Waste Management regulations emphasises on the need for the development of a Waste Information System (WIS);
- The current database is only limited to Registration and Licencing of generators and transporters;
- The Waste Information System (WIS) should essentially be a centralised database that includes information about all waste generated within the Municipal Council of Windhoek as provided by waste generators, transporters, treatment and disposal facilities and as attained through various audits and studies; and
- Information captured into the Waste Information System (WIS) will include information regarding the generator, transporter, quantity, type, treatment and final disposal.

Based on the gaps identified, the needs for the Municipal Council of Windhoek are identified and subsequently addressed as part of target setting and formulation of the action plan in the subsequent section.

Key achievements of the first (1st) Integrated Waste Management Plan (IWMP) and summary of the second (2nd) Generational Integrated Waste Management Plan (IWMP)

1 Objective 1: Legislative Framework, Political Support and Co-operative Governance

1.1 Achievements of the first (1st) Integrated Waste Management Plan (IWMP) (2010 to 2015)

- Solid Waste Management Policy approved by Council in 2009 (Council Resolution 306/09/2009);
- Solid Waste Management Regulations Promulgated in 2011;
- Co-operation with other municipalities both locally and internationally fostered e.g. Okakarara, Khorixas and Gobabis Town Council; and
- Co-operation with national and international bodies, Forums, Non-Governmental Organisations (NGOs) and Private Companies e.g. Japan International Co-operation Agency (JICA), American College of Clinical Pharmacy (ACCP), Recycle Namibia Forum (RNF), Namibia Association of Local Authority Officials (NALAO) and Waste Recyclers.

1.2 Key focus areas of the second (2nd) Integrated Waste Management Plan (IWMP) (2022 to 2027)

- Review of the Solid Waste Management Regulations and Policy;
- Investigate and benchmark on creation of Compliance Section at Solid Waste Management Division;
- Effective enforcement of the Solid Waste Management Regulations;
- Strengthen political support through organising Councillors' open days; and
- Strengthen co-operation with the Ministry of Environment, Tourism and Forestry through the Solid Waste Management Advisory Committee.

2 Objective 2: Waste Minimisation

2.1 Achievements of the first (1st) Integrated Waste Management Plan (IWMP) (2010 to 2015)

- Draft Waste Reduction Strategy developed;

- Create recycling initiatives and programmes:
 - Roll-out the household Clear-Bag System with Rent-A-Drum (RAD);
 - Roll-out the Ward Contractor Clear-Bag System with Rent-A-Drum (RAD);
 - Community Recycling with Development Workshop; and
 - Recycling programmes at schools with Recycling Namibia Forum (RNF).
- Registration of the generators' programme, which requires industries to submit Waste Management Plans for Cleaner Production.

2.2 Key focus areas of the second (2nd) Integrated Waste Management Plan (IWMP) (2022 to 2027)

- Finalise and implement the Waste Reduction Strategy;
- Establishment of two (2) Waste Buy-Back-Centres;
- Introduce circular economy and value addition through incubating up-cyclers;
- Strengthening of the school recycling programme;
- Strengthen waste minimisation and treatment;
- Recycling at source (two (2) bin or Clear-Bag System) roll out to all suburbs;
- Strengthen waste education and awareness; and
- Draft Waste Recycling Policy.

3 Objective 3: Optimisation of resources

3.1 Achievements of the first (1st) Integrated Waste Management Plan (IWMP) (2010 to 2015)

- Manual and mechanical waste management systems developed:
 - Household refuse removal, front-end-loader, skip removal and Ward Contractor system.
- Administrative, financial and human resources systems developed:
 - Tariff, bin management and fleet management system.

- Waste disposal facilities commissioned and decommissioned:
 - Commissioned: Kleine Kuppe and Brakwater transfer sites, and Otjomuise and satellite sites; and
 - Decommissioned: Olympia landfill site.

3.2 Key focus areas of the second (2nd) Integrated Waste Management Plan (IWMP) (2022 to 2027)

- Improve billing and revenue collection systems;
- Implement Fleet Management Strategy;
- Expansion of the current Kupferberg General and Hazardous Waste Disposal Facility;
- Review and improve the waste management systems; and
- Commission satellite sites at the Mix Settlement and Rocky Crest.

4 Objective 4: Integrated Waste Management Plan (IWMP)

4.1 Achievements of the first (1st) Integrated Waste Management Plan (IWMP) (2010 to 2015)

- The first (1st) Integrated Waste Management Plan (IWMP) developed and implemented; and
- Licensing and registration system developed.

4.2 Key focus areas of the second (2nd) Integrated Waste Management Plan (IWMP) (2022 to 2027)

- Annual review of the activities; and
- Annual planning and reporting based on the Integrated Waste Management Plan (IWMP).

5 Objective 5: Implementation of Waste Information System

5.1 Achievements of the first (1st) Integrated Waste Management Plan (IWMP) (2010 to 2015)

- Sub-systems of the Waste Information System (WIS) developed and implemented:
 - Registration and licensing information system;
 - Health Care Risk Waste (HCRW) information system;

- Overtime capturing system; and
- Bin management system.

5.2 Key focus areas of the second (2nd) Integrated Waste Management Plan (IWMP) (2022 to 2027)

- Develop the Waste Information System (WIS) to include all relevant sub-systems; and
- Establish a solid waste management page on the Internet – possibly on www.windhoekcc.org.na.

6 Objective 6: Health Care Risk Waste (HCRW) Management Strategy and Plan

6.1 Achievements of the first (1st) Integrated Waste Management Plan (IWMP) (2010 to 2015)

- Developed strategy which culminated in the establishment of the Health Care Risk Waste (HCRW) facility.

6.2 Key focus areas of the second (2nd) Integrated Waste Management Plan (IWMP) (2022 to 2027)

- Improve and optimise the Health Care Risk Waste (HCRW) facility;
- Market the facility; and
- Review tariff for Health Care Risk Waste (HCRW).

7 Objective 7: Priority waste

7.1 Achievements of first (1st) Integrated Waste Management Plan (IWMP) (2010 to 2015)

- Health Care Risk Waste (HCRW) Management Strategy approved and implemented;
- Draft the Tyre Management Strategy;
- Draft the Hazardous Waste Management Strategy.

7.2 Key focus areas of the second (2nd) Integrated Waste Management Plan (IWMP) (2022 to 2027)

- Finalise Tyre Management Strategy;
- Finalise Hazardous Waste Management Strategy;

- Develop E-Waste Management Strategy; and
- Radioactive Waste Management Strategy.

8 Objective 8: Capacity building - ongoing education and awareness

8.1 Achievements of the first (1st) Integrated Waste Management Plan (IWMP) (2010 to 2015)

- Developed the Marketing and Customer Education Strategy;
- Education and awareness programmes implemented;
- Mayoral Clean-Up Campaigns organised in all constituencies;
- Solid Waste Management fun days and carnivals held;
- Marketing and customer education through:
 - Solid Waste Management newsletters, Information Education Communication (IEC) materials developed and distributed;
 - Solid Waste Management Website, billboards, mobile trailers, branding of trucks.
- Open days for Teachers and Councillors.

8.2 Key focus areas of the second (2nd) Integrated Waste Management Plan (IWMP) (2022 to 2027)

- Marketing and Customer Education Strategy review;
- Reintroduce carnivals and schools' recycling competitions;
- Strengthen waste education and awareness programme indicated above; and
- Reintroduce open days with the Municipal Council of Windhoek's staff and Management.

9 Objective 9: Community participation

9.1 Achievements of the first (1st) Integrated Waste Management Plan (IWMP) (2010 to 2015)

- Community structures to support waste management programmes established in entire City e.g. skip volunteers; and
- Community organised clean ups supported.

9.2 Key focus areas of the second (2nd) Integrated Waste Management Plan (IWMP) (2022 to 2027)

- Strengthen the current working structures for community participation such as Constituency Development Committee (CDC) members;
- Encourage community participation in waste management through various projects in order to ensure ownership of waste management projects; and
- Encourage communities to view waste as a resource and so encourage entrepreneurial activities utilising recyclable or re-usable waste products.

10 Objectives 10 and 11: Research, Development and Best Practice Guidelines and Standards

10.1 Achievements of first (1st) Integrated Waste Management Plan (IWMP) (2010 to 2015)

- Studies and investigations conducted; and
- Bin and Waste Audits initiated and conducted.

10.2 Focus areas of second (2nd) Integrated Waste Management Plan (IWMP) (2022 to 2027)

- Investigate the economic feasibility and suitable business model for composting of garden and organic waste;
- Study the feasibility of the waste reclamation and circular economy, and develop incubator programme (value addition);
- Investigate the feasibility and suitable circular economy business model for Waste Buy-Back Centres; and
- Conduct Bin and Waste Audit.

Monitoring and Review Programme of the Integrated Waste Management Plan (IWMP)

Monitoring of the implementation programme as outlined in section 5 allows for the respective sections of the Solid Waste Management Division to annually plan activities as per the Integrated Waste Management Plan (IWMP) and ensure that the plan is implemented within the designated period. Annual reporting of the activity plan will allow the Chief: Solid Waste Management to measure progress of implementation.

1 Reporting

It is required that annual reports be prepared which must contain information on the implementation of this Integrated Waste Management Plan (IWMP).

2 Monitoring and review

It is intended that relevant targets and activities for each section will form part of their annual plan, and progress against these targets will be monitored by the Chief: Solid Waste Management during their respective annual performance reviews. Monitoring and evaluation should be on a bi-annual basis (two (2) years).

3 Revision of the Integrated Waste Management Plan (IWMP) activities

The Integrated Waste Management Plan (IWMP) should be viewed as a living document and it is recommended that the targets and objectives be reviewed and updated annually based on both progress and constraints encountered, as part of the preparation of the annual report.

Management Committee, having considered the matter

RECOMMENDED

- 1 That the Integrated Waste Management Plan (IWMP), **attached as pages 2 - 15 to the agenda**, which will govern all waste management activities and processes within the Municipal Council of Windhoek, be approved.
- 2 That approval be granted to the Strategic Executives: Infrastructure, Water and Technical Services; and Human Resources and Corporate Services to fill the vacancies in the Solid Waste Management Division to support the implementation of the Integrated Waste Management Plan (IWMP).
- 3 That Council commit itself to ensure that resources are put in place for the successful implementation of the Integrated Waste Management Plan (IWMP).
- 4 That the financial implications of N\$303 015 000.00 to implement Integrated Waste Management Plan (IWMP) (2022 to 2027), be noted.
- 5 That progress be measured against the Integrated Waste Management Activity Plan (IWMP).

Financial implications

Funds required

N\$303 815 000

[Municipal Council Agenda: 2022-10-27]

9.1.2 GOV.2 [EDC] TENDER
(2/1/1)

This matter, submitted to the Councillors under separate cover, is to be dealt with in terms of section 14(2)(a) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended) which reads as follows:

Every meeting of a local authority council shall be open to the public, except on any matter relating to -

- (ii) *any offer to be made by the local authority council by way of tender or otherwise for the purchase of any property;*

unless the local authority council by a majority of at least two-thirds of its members present at the meeting in question determines such a meeting to be so open.

[Municipal Council Agenda: 2022-10-27]

9.1.3 GOV.7 [CEO] STAFF MATTER
(4/6/P) (3/1/4)

This matter, submitted to the Councillors under separate cover, is to be dealt with in terms of section 14(2)(a) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended) which reads as follows:

Every meeting of a local authority council shall be open to the public, except on any matter relating to -

- (i) *the appointment, promotion, conditions of employment and discipline of any particular officer or employee of a local authority council;*

unless the local authority council by a majority of at least two-thirds of its members present at the meeting in question determines such a meeting to be so open.

[Municipal Council Agenda: 2022-10-27]

9.1.4 GOV.9 [CEO] CONFIDENTIAL MATTER
(3/1/4/1)

This matter, submitted to the Councillors under separate cover, is to be dealt with in terms of section 14(2)(a) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended) which reads as follows:

Every meeting of a local authority council shall be open to the public, except on any matter relating to -

- (ii) *any offer to be made by the local authority council by way of tender or otherwise for the purchase of any property;*

unless the local authority council by a majority of at least two-thirds of its members present at the meeting in question determines such a meeting to be so open.

[Municipal Council Agenda: 2022-10-27]

**9.1.5 FNS.1 [HPH] REQUEST FOR PERMISSION
TO SELL THE REMAINING ERVEN
IN OTJOMUISE EXTENSION 5 AND
KHOMASDAL EXTENSION 4 ON
BEHALF OF THE MUNICIPAL
COUNCIL OF WINDHOEK
(L/Otjomuise Ext. 5) (L/Khomasdal Ext. 4)**

Introduction

*** The purpose of this item is to submit to Council applications, **attached as pages 16 - 17 and 18 - 19 respectively to the agenda**, received from two (2) Public Private Partnership (PPP) Development Partners, being Ino Investment Holdings (Pty) Ltd and Heikky Property Development (Pty) Ltd, requesting for permission to sell on behalf of the Municipal Council of Windhoek, the remaining erven within their project areas in line with the Development Agreement signed between the parties.

Background

The concept of Public Private Partnerships (PPPs) came into existence after the Municipality learned that it could no longer meet the demand in delivering serviced land to its residents. The original intent of the Public Private Partnerships (PPPs) was for:

- The private sector to source funding to implement the projects due to the limited funds from Council budget and limited ability for Council to source funds to service land;
- The Developer to provide technical resources to implement the projects; and
- The Public Private Partnership (PPP) to provide efficiency during the implementation process and to expedite the execution of land servicing projects.

*** The implementation of such projects was authorised by Council per Resolution 264/08/2010, **attached as page 20 to the agenda**. The resolution paved the way for the implementation of Public Private Partnership (PPP) Agreements between Council and Ino Investment Holdings (Pty) Ltd and Heikky Property Development (Pty) Ltd, as per Council Resolutions 407/11/2012 and 290/12/2016, **attached as pages 21 and 22 - 23 respectively to the agenda**. The Development Agreements for the two (2) projects are **attached as pages 24 - 172 and 173 - 312 respectively to the agenda**.

The Addendum to the Development Agreement of Otjomuise Extension 5 together with Council Resolutions 89/05/2019 and 177/08/2019 authorising the outright sale, is **attached as pages 313 - 314 and 315 respectively to the agenda**. A list of Public Private Partnership (PPP) Projects is included in Table 1, for ease of reference:

Table 1: Public Private Partnership (PPP) Projects

Development	Developer	Development Agreement (date signed)	Total area (hectare)	Number of erven					
				Single	General Residential	Business	Institutional	Other	Total
Alienation/Sales phase									
Academia Extensions 1 and 2	Acacia Investments	5 October 2011	56.51	447	11	2	3	14	477
Otjomuise Extension 4	Betula Nigra	5 October 2011	49.30	116	83	1	1	5	206
Erf 2317, Otjomuise (co-development)	Betula Nigra	5 October 2011	11.94	0	1	0	0	0	1
Otjomuise Extension 5	Ino Investment Holdings (Pty) Ltd	23 August 2013	33.74	357	5	3	2	0	367
Khomasdal Extension 4 (Erven 6219 to 6250)	Heikky Property Development (Pty) Ltd	31 May 2017	1.960	25	2	0	0	0	27
Rocky Crest Extension 4	Otweya Land Developer	15 May 2017	45.00	231	19	22	2	12	286
Kleine Kuppe Extension 1 (Phase 2B)	Champac Investments	15 May 2017	20.42	88	0	0	0	0	88
Design and construction phase									
Kleine Kuppe Extension 1 (Phase 2B)	Champac Investments	15 May 2017	20.42	0	10	0	1	3	14
Auasblik Extension 1	Sinco Investments	15 June 2017	57.23	269	3	1	1	9	283
Klein Windhoek Extension 4	Twine Investment Holdings	15 May 2017	42.00	161	4	2	0	4	171
Rocky Crest Extension 5	Waterberg Investments	15 May 2017	43.00	254	21	2	3	23	303
Rocky Crest Extension 6	Shikongo Investments	31 May 2017	25.00	254	6	10	1	8	279
Statutory planning phase									
Otjomuise Extension 12	Omba Holdings	31 May 2017	12.40	0	71	12	1	18	102
Cimbebasia Extension 7	Wilru Investments	9 May 2017	15.40	227	1	0	1	0	229
Prosperita (Erven 72 and 73)	Tuye-Buco Construction	31 May 2017	3.420	0	0	70	0	0	70
Total				2 429	237	125	16	96	2 903

The initial sale process was lengthy and could take between twelve (12) to eighteen (18) months or more complete. In an event where the successful Tenderer failed to secure a bank guarantee/funding from a financial institution or where allocation is cancelled by the City, the offer would be extended to the next person in line. This meant that the allocation process will have to start all over again, because the shortlist generated, which contains the particulars of all successful purchasers, should be exhausted before the City makes such an erf available for the next sale.

To reduce the lengthy sale process, Council per Resolution 289/11/2019, **attached as page 316 to the agenda**, approved the implementation of the Closed Bid sale process for the sale of 'single' and 'general residential' zoned erven. The main idea was to shorten and simplify the sale process.

Table 2: Comparison of the old normal sale process and the Closed Bid sale process

Process	Duration	
	Normal sale process	Closed Bid sale process
Preparation of Condition of Sales	4 weeks	4 weeks
Submission to the Strategic Executives Forum, Management Committee and Council to approve upset prices, erf conditions and to advertise	8 weeks	8 weeks
Ministerial approval to sell	13 weeks	0
Advertising in the local media	4 weeks	2 weeks
Tendering and validity period: - Data capturing; - Sorting and recording of applications; - Develop short list of maximum five (5) applicants per erf; - Prepare final report to the Municipal Council of Windhoek (Internal Audit) for verification; and - Prepare sales submission to Council.	16 weeks	4 weeks Registration (2 weeks); bidding and allocation (1 day); Audit verification (1 week); signing of Deed of Sale (1 week)
Council approval for award	4 weeks	0
Acceptance of offer by buyer and payment of reservation fee	1 week	1 week
Obtaining proof of financing (reservation period)	8 weeks	8 weeks
Signing of Deed of Sale	1 week	0
Submission of Letter of Undertaking, instruction to attorney to transfer the property, registration and payment of purchase price	8 weeks	8 weeks
Submission of Sales Report to Council		2 weeks
Total	67 weeks (15 months)	37 weeks (8 months)

The Closed Bid sale process was first implemented in February 2020 with the sale of Rocky Crest Extension 4 erven which proved to be extremely efficient, transparent and effective. This was followed by other projects such as Khomasdal Extension 16, Otjomuise Extension 5 and Khomasdal Extension 4. However, the later projects were impacted by the outbreak of the COVID-19 Pandemic that had a huge negative impact on the existing economic climate (people either losing their jobs, getting salary cuts and the financial institutions tightening their requirements to minimise the risks of non-payment).

Consequently, the prevailing economic conditions had a direct impact on the successful implementation and finalisation of the sale of erven as more people found themselves struggling to afford the erven. Although the City continued to conduct sales of properties amidst the pandemic, this came with adjustments to the Closed Bid sale process so as to comply with the COVID-19 Regulations, especially related to limits on gatherings. Overall, the pandemic negatively affected the sale of erven and as such prolonged cost recovery for the Developers to be able to re-pay the loans secured for the servicing of the land, which loans continues to accrue interest at the cost of the profit shares anticipated.

Application

In letters dated 10 February 2021, Ino Investment Holdings (Pty) Ltd and Heikky Property Development (Pty) Ltd put a formal request to sell the remaining erven on behalf of Council via private treaty. The erven as put forward by the Developers were three (3) 'residential' and two (2) 'business' zoned properties with an upset price of N\$3 980 410.00 in Otjomuise Extension 5 (Phases 1 and 2) and six (6) 'residential' zoned erven with an upset price N\$3 980 410.00.

As indicated in the abovementioned applications, the annual interest for the five (5) unsold erven in Otjomuise Extension 5 was estimated to be N\$385 486.73 or N\$32 123.89 monthly, whilst the annual interest for six (6) erven in Khomasdal Extension 4 was estimated at N\$388 089.98 or N\$32 340.83 monthly. Clearly, a delay in concluding sales erodes on the proceeds from the project.

Although the Developers brought forth proposals as indicated above, the Strategic Executive: Housing, Property Management and Human Settlement would like to recommend that the remaining/unsold erven be sold outright to the Developers to close the project and exonerate Council from further losses and risk associated with failing to close the project on time. Further to the above, several attempts were made to sell the remaining erven without success.

Update on sales and upset price of unsold erven

1 Otjomuise Extension 5

Initial sales in Otjomuise Extension 5 (Phases 1 and 2) followed the old sale process, which by design was protracted. Sales were held in 2018, 2019 and 2020 - after all the efforts, a total of one hundred and eighty nine (189) out of two hundred and twelve (212) erven were sold and transferred under Phases 1 and 2 of the project by June 2021. Phase 3, with a total of one hundred and fifty seven (157) erven was sold outright to the Developer who in turn released the erven to the market swiftly. Council Resolution 89/05/2019 in which the outright sale was approved is attached as pages 313 - 314 to the agenda.

Further attempts were made to sell the remaining twenty three (23) erven. In June 2022, a total of fifteen (15) out of the twenty three (23) erven were sold, thus reducing the number of unsold erven to eight (8).

Table 3: Summary of available erven in Otjomuise Extension 5 (Phases 1 and 2)

Project	Approved erven for sale	Allocation letters issued, reservation letters signed and Deed of Sale signed (As of June 2021)	Cancelled (no next in line)/no bids received, available for sale in next round (As of June 2021)	Erven sold on subsequent rounds (less erven taken) (As of June 2022)	Erven available for sale, not taken in subsequent rounds As of June 2022)
Phase 1	95	93	2	-	-
Phase 2	117	96	21	-	-
Total	212	189	23	23 (15 sold)	8
Phase 3	157	Sold on outright to Developer			

Details of the remaining erven, size, zoning, density and upset price is included on Tables 4 and 5, for ease of reference. 'Single residential' zoned erven are separated from 'general residential' and 'business' zoned erven:

Table 4: Remaining 'single residential' zoned erven, Otjomuise Extension 5 (Phases 1 and 2)

No.	Erf No.	Size (m²)	Zoning	Density	Upset price (N\$)
1	2378	1 229	Residential	1:250 m²	835 720.00
2	2380	1 005	Residential	1:250 m²	683 400.00
3	2416	609	Residential	1:250 m²	414 120.00
4	2561	503	Residential	1:250 m²	342 040.00
Total					2 275 280.00

Table 5: Remaining 'general residential' and 'business' zoned erven, Otjomuise Extension 5 (Phase 1 and 2)

No.	Erf No.	Size (m²)	Zoning	Density/ bulk	Upset price (N\$)
1	2333	6 462	General residential	1:100 m²	5 408 306.20
2	2335	698	Business	Bulk of 1	1 012 100.00
3	2337	783	Business	Bulk of 1	1 135 350.00
Total					7 555 756.20

2 Khomasdal Extension 4

Council per Resolution 139/06/2019, **attached as pages 317 - 319 to the agenda**, approved the sale of twenty seven (27) erven in Khomasdal Extension 4. The project was approved as turnkey (plot and plan) and was exclusive to first time buyers only, on tender method of sale.

Following Council approval, erven were advertised for sale in August 2019 on a plot and plan basis. Only five (5) Tenderers were successful while the rest were disqualified for not meeting the requirements. Later, four (4) out of five (5) successful Tenderer cancelled their allocation leaving only one (1) successful Tenderer. All unallocated/cancelled erven, twenty six (26) erven in total of which two (2) are zoned 'general residential' were put on sale again using the Closed Bid sale process in October 2020.

During the October 2020 sale, five (5) erven from the twenty four (24) single residential erven received no bids while nineteen (19) received bids. Later, three (3) Bidders cancelled their allocation. From the three (3) erven that were cancelled two (2) erven needed to be reallocated to the next Tenderer in line. This meant that as of June 2021 Council anticipated to transfer sixteen (16) single residential erven.

The two (2) general residential erven received offers as well. In addition, there is a second Tenderer in line on each which may result in a reallocation to the next in line. It is worth noting that that the Tenderer in line on both general residential erven is the same company. The client will settle for one (1) erf leaving the remaining erf to the market for sale during the next round of sales. In total there are six (6) 'single residential' zoned erven and one (1) 'general residential' erf available in Khomasdal Extension 4.

Table 6: Status of sales by October 2020 (outcome of 2019 and 2020 land sales - Khomasdal Extension 4

Project	Approved erven for sale	Allocation letters issued, reservation letters signed, Deed of Sale signed (As of August 2019)	Cancelled (no next in line)/no bids received, available for sale in next round (As of August 2019)	Erven sold on subsequent rounds (less erven taken) (As of October 2020)	Erven available for sale, not taken in subsequent rounds (As of October 2020)
Single residential (<i>general public</i>)	18	0	18	19 (16 sold)	5
Single residential (<i>youth</i>)	3	0	3		
Single residential (<i>City of Windhoek staff members</i>)	4	1	3		
General residential	2	0	2	1	1
Total	27	1	26	20	6

Details of the remaining erven, size, zoning, density and upset price is included as per Tables 7 and 8, for ease of reference. 'Single residential' zoned erven are separated from 'general residential' and 'business' zoned erven:

Table 7: 'Single residential' zoned erven, Khomasdal Extension 4

No.	Erf No.	Size (m ²)	Zoning	Density	Upset price (N\$)
1	6220	568	Residential	1:300 m ²	573 175.00
2	6234	517	Residential	1:300 m ²	522 170.00
3	6235	847	Residential	1:300 m ²	855 470.00
4	6237	753	Residential	1:300 m ²	760 530.00
5	6244	651	Residential	1:300 m ²	657 510.00
Total					3 368 855.00

Table 8: 'General residential' zoned erven, Khomasdal Extension 4

No.	Erf No.	Size (m ²)	Zoning	Upset price (N\$)
1	6669	1 896	General residential	2 787 120.00
2	6670	1 961	General residential	2 882 670.00
Total				5 669 790.00

Proposal to sell the remaining erven to the Developer

The request by the Developer to alienate land on behalf of Council is anchored on a sub clause titled 'Alienations' in both Public Private Partnership (PPP) Agreements, being sub clause 16.3 in the Otjomuise Extension 5 agreement and sub clause 17.3 in the Khomasdal Extension 4 agreement.

The Public Private Partnership (PPP) Agreements for Otjomuise Extension 5 *inter alia* reads as follows:

16.3.1 Council shall (upon recommendation of the Project Team who will in their opinion determine if it is contractually reasonable to do so) obtain all the Required Approvals or follow the procedure required by law to alienate the Serviced Erven; and

- 16.3.2 *Council shall (if it has obtained those approvals) inform the Project Team and the Developer in writing to arrange the alienation process on its behalf.*
- 16.3.3 *The Developer would appoint as their principal marketing and real estate companies who will be in charge of all sales and adjudication reports for the offer to purchase process under the auspices and direction of the Project Team.*
- 16.3.4 *The Developer will reserve 20 % of all single residential [sic] located in Otjomuise Extension 5 for staff of the City of Windhoek to meet Council Resolution 57/02/2012 (separate cover item).*
- 16.3.6 *Should staff members not be interest to acquire erven under this Agreement, the Council may elect to reserve the 20 % of single residential erven for its other housing projects and inform the Developer of its decision in this regard within 3 months from the date of land having been reserved for staff members in terms of sub clause 16.3.4 and for that purpose pay in the Revenue Account an amount equal to the predetermined upset price for the erven to remain in Council ownership.*

Clause 16.3 should be read together with clause 6.3 and 6.31 in which it is stated that, the Council and Developer shall *avail all lawful and commercially reasonable endeavours for the alienation of all the serviced erven ...*

Clause 16.4.1 of the Public Private Partnership (PPP) Agreement provides confirmation that Ministerial approval precede sales and dictate the method of sale for the serviced erven to be *Offer to Purchase* for 'residential' zoned erven and *Tender* for 'non-residential' zoned erven. The Revenue Account and Net Project Profit is set out under clause 17. The said clause *inter alia* reads as follows:

- 17.1 *For the management of this Agreement the Parties agree that the Developer will open the Revenue Account at the Bank in the name of the Developer for the benefit of the Project as set out hereimunder as soon as possible after the Effective Date.*
- 17.5 *Proceeds from sales of serviced erven will be made in the into this Revenue Account as Interim Sales Payments when the erven serviced under the Project have been sold as set out in clauses 6 and 18 until all erven have been sold.*

AND

- 17.9.4 *If the estimated Project Net Profit (plus VAT thereon) reflects a shortfall and it is less than the aggregate of the Proceeds received under clause 17.5 –*
- 17.9.4.1 *the Project Team and Developer shall continue to market unsold erven and pay Proceeds into the Revenue Account as set out in clause 17.5 and distribute the Proceeds as set out in sub clause 17.6: Provided that if on the fulfilment date or on a date of a termination event or default date, erven remain unsold or the Project costs cannot be recovered from sales, after an application of clause 19.2, then Council must make good the shortfall into the Revenue Account for costs incurred under sub clause 17.6.1 to 17.6.3 together with VAT thereon.*

Having regard to the above, it is recommended that all remaining erven in both extensions (Otjomuise Extension 5 and Khomasdal Extension 4) be sold outright to the two (2) Developers at 50 % of the upset price as set out per Tables 9 to 12. The outright sale to be extended to erven that becomes available for sale for the following reasons:

- No bids received after two (2) rounds of advertisements,
- Cancellations, or
- Where the shortlist is exhausted.

Table 9: Remaining 'single residential' zoned erven, Otjomuise Extension 5 (Phases 1 and 2)

No.	Erf No.	Size (m ²)	Zoning	Density	Upset price (N\$)	50 % of upset price (N\$)
1	2378	1 229	Residential	1:250 m ²	835 720.00	417 860.00
2	2380	1 005	Residential	1:250 m ²	683 400.00	341 700.00
3	2416	609	Residential	1:250 m ²	414 120.00	207 060.00
4	2561	503	Residential	1:250 m ²	342 040.00	171 020.00
Total					2 275 280.00	1 137 640.00

Table 10: Remaining 'general residential' and 'business' zoned erven, Otjomuise Extension 5 (Phase 1 and 2)

No.	Erf No.	Size (m ²)	Zoning	Density/ bulk	Upset price (N\$)	50 % of upset price (N\$)	15 % VAT (N\$)
1	2333	6 462	General residential	1:100 m ²	5 408 306.20	2 704 153.10	N/A
2	2335	698	Business	Bulk of 1	1 012 100.00	506 050.00	75 907.50
3	2337	783	Business	Bulk of 1	1 135 350.00	567 675.00	85 151.25
Subtotal						3 777 878.10	161 058.75
Total						3 938 936.85	

Table 11: 'Single residential' zoned erven, Khomasdal Extension 4

No.	Erf No.	Size (m ²)	Zoning	Density	Upset price (N\$)	50 % of upset price (N\$)
1	6220	568	Residential	1:300 m ²	573 175.00	286 587.50
2	6234	517	Residential	1:300 m ²	522 170.00	261 085.00
3	6235	847	Residential	1:300 m ²	855 470.00	427 735.00
4	6237	753	Residential	1:300 m ²	760 530.00	380 265.00
5	6244	651	Residential	1:300 m ²	657 510.00	328 755.00
Total					3 368 855.00	1 684 427.50

Table 12: 'General residential' zoned erven, Khomasdal Extension 4

No.	Erf No.	Size (m ²)	Zoning	Upset price (N\$)	50 % of upset price (N\$)
1	6669	1 896	General residential	2 787 120.00	1 393 560.00
2	6670	1 961	General residential	2 882 670.00	1 441 335.00
Total				5 669 790.00	2 834 895.00

As set out clearly in the Development Agreement, the Municipal Council of Windhoek and the Developer shall avail all lawful and commercially reasonable endeavours for the alienation of all the serviced erven, and further that, if it so happens at the closure of the project that erven remain unsold or project costs not recovered from sales, Council must make good the shortfall into the Revenue Account for costs incurred. Given the above and bearing in mind prevailing dynamics of the property market, outright sale will enable the Council to get an exit out of the Public Private Partnership (PPP) Agreements and reduce exposure to project risks which includes loss of potential revenue.

Section 31(1) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended) *inter alia* stipulates as follows:

a municipal council or a town council may delegate or assign in writing, in writing and on such conditions as it may determine, to its management committee or its chief executive officer or any other staff member, any power conferred or any duty imposed upon it by or under this Act or any other law, except any power excluded from such delegation.

Alienation of Council owned land is done in accordance with the Local Authorities Act, 1992 (Act 23 of 1992 (as amended)). Under normal circumstances, unless delegated, the power to alienate land is exercised by Council with prior approval of the Minister subject to sections 30(1)(t) and 63(2) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended). The Project Team does not fit the description of *any other staff member* and is also not an Advisory Committee provided for under section 30(1)(w) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended) but rather a professional team constituted to ensure successful implementation of the project.

To avoid challenges related to delegation of power whilst at the same time ensure successful closure of the Public Private Partnership (PPP) Projects, outright sale is considered a viable option.

Conclusion

This item motivated the applications received from two (2) Public Private Development (PPP) Partners, namely Ino Investment Holdings (Pty) Ltd and Heikky Property Development (Pty) Ltd, for permission to sell remaining serviced erven within their project areas on behalf of Council in line with the Development Agreement signed between parties. After careful consideration of procedures related to sale of land, it was found beneficial to both parties in the partnership that an outright purchase offer for the remaining serviced erven at 50 % of the upset price be extended to the development partners. Such an approach will be shorter, quicker to execute and reduce the continued exposure of the two (2) projects to risks which includes erosion of the potential profit share.

Management Committee, having considered the matter

RECOMMENDED

- 1 That the request from Ino Investment Holdings (Pty) Ltd and Heikky Property Development (Pty) Ltd to sell the remaining serviced erven on behalf of the Municipal Council of Windhoek, be noted.

- 2 That approval be granted to sell the remaining unsold/cancelled erven in Otjomuise Extension 5 (Tables 9 and 10) at **50 % of the upset price** plus VAT, where applicable, to Ino Investment Holdings (Pty) Ltd on private treaty:

Table 9: Remaining 'single residential' zoned erven, Otjomuise Extension 5 (Phases 1 and 2)

No.	Erf No.	Size (m ²)	Zoning	Density	Upset price (N\$)	50 % of upset price (N\$)
1	2378	1 229	Residential	1:250 m ²	835 720.00	417 860.00
2	2380	1 005	Residential	1:250 m ²	683 400.00	341 700.00
3	2416	609	Residential	1:250 m ²	414 120.00	207 060.00
4	2561	503	Residential	1:250 m ²	342 040.00	171 020.00
Total					2 275 280.00	1 137 640.00

Table 10: Remaining 'general residential' and 'business' zoned erven, Otjomuise Extension 5 (Phase 1 and 2)

No.	Erf No.	Size (m ²)	Zoning	Density/ bulk	Upset price (N\$)	50 % of upset price (N\$)	15 % VAT (N\$)
1	2333	6 462	General residential	1:100 m ²	5 408 306.20	2 704 153.10	N/A
2	2335	698	Business	Bulk of 1	1 012 100.00	506 050.00	75 907.50
3	2337	783	Business	Bulk of 1	1 135 350.00	567 675.00	85 151.25
Subtotal						3 777 878.10	161 058.75
Total						3 938 936.85	

- 2.1 That Ino Investment Holdings (Pty) Ltd pay **N\$5 076 576.85** as purchase consideration for Erven 2378, 2380, 2416, 2561, 2333, 2335 and 2337, Otjomuise Extension 5 as per paragraph 2 above (Tables 9 and 10).
- 2.2 That Ino Investment Holdings (Pty) Ltd exonerate the Municipal Council of Windhoek from any financial liabilities or obligations relating to the Otjomuise Extension 5 Public Private Partnership (PPP).
- 3 That approval be granted to sell the remaining unsold/cancelled erven in Khomasdal Extension 4 (Tables 11 and 12) at **50 % of the upset price** to Heikky Property Development (Pty) Ltd on private treaty:

Table 11: 'Single residential' zoned erven, Khomasdal Extension 4

No.	Erf No.	Size (m ²)	Zoning	Density	Upset price (N\$)	50 % of upset price (N\$)
1	6220	568	Residential	1:300 m ²	573 175.00	286 587.50
2	6234	517	Residential	1:300 m ²	522 170.00	261 085.00
3	6235	847	Residential	1:300 m ²	855 470.00	427 735.00
4	6237	753	Residential	1:300 m ²	760 530.00	380 265.00
5	6244	651	Residential	1:300 m ²	657 510.00	328 755.00
Total					3 368 855.00	1 684 427.50

Table 12: 'General residential' zoned erven, Khomasdal Extension 4

No.	Erf No.	Size (m²)	Zoning	Upset price (N\$)	50 % of upset price (N\$)
1	6669	1 896	General residential	2 787 120.00	1 393 560.00
2	6670	1 961	General residential	2 882 670.00	1 441 335.00
Total				5 669 790.00	2 834 895.00

- 3.1 That Heikky Property Development (Pty) Ltd pay **N\$4 519 322.50** as purchase consideration for Erven 6220, 6234, 6235, 6237, 6244, 6669 and 6670, Khomasdal Extension 4 as per paragraph 3 above (Tables 11 and 12).
 - 3.2 That Heikky Property Development (Pty) Ltd exonerate the Municipal Council of Windhoek from any financial liabilities or obligations relating to the Otjomuise Extension 5 Public Private Partnership (PPP).
 - 4 That the sale of all the erven as per paragraphs 2 and 3 above, be supervised by the Strategic Executive: Housing, Property Management and Human Settlement and the respective project teams for transparency purposes.
 - 5 That the erf size, zoning, density and bulk be verified and confirmed by parties to the agreement before signing of the Deed of Sale and any error detected be rectified procedurally.
 - 6 That the Chief Executive Officer (Corporate Legal Adviser) prepare an Addendum to the respective Development Agreements and Deeds of Sale to give effect to paragraph 5 above.
 - 7 That the outright sale of the erven in Otjomuise Extension 5 and Khomasdal Extension 4 be advertised in terms of section 63(2) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended).
 - 8 That the outright sale of the erven in Otjomuise Extension 5 and Khomasdal Extension 4 be subject to Ministerial approval in terms of section 30(1)(t) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended).
 - 9 That the outright sale be extended to erven in other Public Private Partnership (PPP) Projects that become available for sale for the following reasons:
 - 9.1 No bids received after two (2) rounds of advertisements,
 - 9.2 Cancellations, or
 - 9.3 Where the shortlist is exhausted.
 - 9.4 That the sale be at 50 % of the upset price on condition that the Municipal Council of Windhoek be exonerated from any financial liabilities or obligations relating to the Public Private Partnership (PPP) Project.
 - 10 That the resolution be implemented prior to confirmation of the minutes.
-

[Municipal Council Agenda: 2022-10-27]

9.1.6

FNS.2 [EDC] LEASE OF ERVEN R/6296 AND 6300, KATUTURA (HERERO MALL) FOR INFORMAL TRADING ACTIVITIES (L/6296/Kat) (L/6300/Kat)

Management Committee at its meeting held on 3 October 2022 per Item FNS.2 *inter alia* resolved as follows:

1 That the Strategic Executive: Economic Development and Community Services include a list with the following information to the item prior to the matter serving at Council, for consideration:

1.1 Structure number;

1.2 Name of Lessee;

1.3 Monthly rental amount; and

1.4 Type of business.

Pursuant to the above directive from Management Committee, the Strategic Executive: Economic Development and Community Services is responding as follows:

- Paragraphs 1.1 to 1.4 as quoted above, were addressed as per the list of traders who have built structures on either Erven R/6296 or 6300, Katutura, **attached as pages 331(a) – 331(c) to the agenda**, whilst the list, **attached as page 331(d) to the agenda**, contains the names of traders operating from open spaces on the abovementioned erven. It should be noted that the electricity meters will only be installed in the completed structures which are in compliance with the necessary legal requirements such as Liquor Licenses, Fitness Certificates and Health Regulations etc. The number of traders has slightly increased from the total of seventy (70) traders initially submitted due to a total of seven (7) additional traders whose structures were not completed at the time of the initial inspection and eleven (11) other traders operating from open sites at Erven R/6296 and 6300, Katutura. All the traders now need to be included as they will also be expected to pay a monthly rental fee.

- Council is empowered under section 30(1)(u) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended) to determine tariffs, charges, fees and other monies levied for services rendered by the local authority, by notice in the Government Gazette. In light of the above, Council under section 30(1)(u) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended), has approved the rental fee (tariff) for **undeveloped sites of N\$188.24 (VAT inclusive) per month** as per Government Gazette No. 7843 of 1 July 2022 (refer to the relevant pages, **attached as pages 326 - 331 to the agenda**). The abovementioned rental tariff have not been implemented yet at the site hence the need to sign Lease Agreements with the traders.

- The abovementioned rental tariff is a gazetted rate as determined for undeveloped sites. Given the nature of activities of the Herero Mall, that includes the sale of alcohol which is different from the rest of the undeveloped sites, it is proposed that a per square metre rental tariff be determined by the Strategic Executive: Housing, Property Management and Human Settlement for implementation during the 2022/2023 rental tariff review. This will also enable consultation with all traders as well as serve as effective notice period. Furthermore, it will enable traders to be given an option to either reduce the sizes of their structures in order to ensure that rental would remain affordable and/or to decongest the spaces and realign some structures in order to improve hygiene and safety at the sites.
- The approved rental tariffs will accordingly also be reviewed on an annual basis and will be subject to annual escalation. The traders will take responsibility for the cleaning of the sites and the ablution facilities as well as security services.

The item is herewith submitted.

Introduction/Purpose

The Municipal Council of Windhoek has approved the accommodation of informal trading activities on Erven R/6296 and 6300, Katutura and about seventy (70) traders are operating at these sites. Since its establishment, the operators at Erven R/6296 and 6300, Katutura have engaged themselves in a variety of business activities which mainly consist of the sale of alcohol, food, light industry as well as tailors, salons, meat-cutting, car wash, general retail, and other services such as shoe and tyre repairs. The traders have erected makeshift structures stretching across both Erven R/6296 and 6300 Katutura. This type of structures, however, significantly hampers the safety and hygiene of traders and customers and do not positively contribute to the creation of a conducive environment for the surrounding areas and other users.

In order to ensure that minimum health requirements are met at the abovementioned sites, the Municipal Council of Windhoek has made provision for minimum infrastructure improvements, such as the provision of initially six (6) temporary ablution facilities, communal water supply through prepaid meters and the fencing of Erven R/6296 and 6300, Katutura in 2017 at a total cost of N\$245 308.65 (VAT inclusive). Subsequently, the Municipal Council of Windhoek has made provision for two (2) additional ablution facilities during 2022 at a total cost of N\$180 896.61 (VAT inclusive) and installed prepaid electricity meters in sixty three (63) structures erected by the traders at the cost of N\$959 268.00 as approved by Council per Resolution 91/04/2022, **attached as pages 320 - 321 to the agenda.** (The item that served at the Council meeting is **attached as pages 322 - 325 to the agenda**, for ease of reference).

Although the Municipal Council of Windhoek has made provision for all the abovementioned services at both Erven R/6296 and 6300, Katutura, there are no Lease Agreements signed with the traders operating at the sites. This item therefore seeks approval for the drafting and signing of Lease Agreements with the traders operating at Erven R/6296 and 6300, Katutura.

Background

The Strategic Executives Forum at its meeting held on 8 September 2022 *inter alia* resolved as follows;

Recommended on condition that the Strategic Executive: Economic Development and Community Services address the following, prior to placement on the Management Committee agenda, for consideration:

- *Leases will be entered into with lessees operating a mixed variety of businesses; and*
- *Leases will be entered into subject to compliance with the legal requirements, e.g. liquor licenses.*

Management Committee at its meeting held on 4 July 2017 per Item PBS.1 *inter alia* resolved as follows:

- 1 *That the request by the traders for the provision of temporary ablution facilities and water on Erf R/6296, Katutura, be noted.*
- 2 *That the total amount of N\$245 308.65 be provided for the setting up of the toilets and for an electricity connection.*
- 3 *That, should any municipal electrical infrastructure need to be relocated, dismantled or replaced as per the request from the applicant, all costs involved be for the applicant's own account.*
- 4 *That only one (1) service connection from the municipal electrical network be allowed per erf.*
- 5 *That only one (1) additional meter point will be allowed for an approved flat on erven that is zoned 'single residential' and that for more meter points the erf be rezoned to 'general residential'.*
- 6 *That for erven that are zoned 'general residential', 'business', 'office', 'institutional' or 'industrial' and a service connection larger than 3 x 60 ampere is required, the applicant and/or his/her Electrical Engineering Representative contact the Strategic Executive: Electricity, well in advance, during the planning stage, before any building plans have been approved to determine whether the existing electrical network can handle the additional loading or whether a substation building or site is to be provided by the applicant at his/her own cost to incorporate an additional substation; and also to determine the financial contribution to be made by the applicant towards the upgrade cost of the network.*
- 7 *That the Acting Strategic Executive: Economic Development and Environment, Mr F Koujo, put the report of this item on the Public Meetings agenda of the Katutura Central Constituency to inform the public that it has been budgeted for in the 2017/2018 CAPEX and work will commence soon.*

- 8 *That the Acting Strategic Executive: Economic Development and Environment, Mr F Koujo, expedite the implementation of at least Phase 1 of the temporary ablution facilities, as soon as possible.*
- 9 *That the resolution be implemented prior to approval of the minutes.*

Discussion

The high incidence of illegal trading in many parts of the Municipal Council of Windhoek prompted the latter to embark on the identification and upgrading of sites to enable traders to operate in a formalised manner and in a safe and conducive environment by providing access to basic services such as ablution and running water. In line with this, the Municipal Council of Windhoek through the Department of Economic Development and Community Services has identified and approved Erven R/6296 and 6300, Katutura as trading sites to accommodate traders.

The traders at this site are registered with the Department of Economic Development and Community Services for control purposes. The traders at Erven R/6296 and 6300, Katutura are currently not paying any rentals for the usage of the sites apart from the fact that they have prepaid water meter installed and the traders are taking care of the water supply at the site. Monthly rental payments need to be introduced at the sites for the occupation of the land and upon signing Lease Agreement. This measure will curb the further illegal occupation of the land and will reduce the level of crime at the site.

Strategic significance (ensure revenue enhancement protection)

The item is aimed at improved revenue collection at the site. This will be achieved through the prepaid meters installed on-site for both water and electricity. In addition, the item also seeks to implement rental collections for the usage of the site by the traders, which will result in additional income to Council as further discussed below.

Financial implications

Description		Amount (N\$)
Financial implications	Installation of seventy (70) prepaid electricity meters by the Department of Electricity	959 268.00
Revenue implications	N\$163.69 rental tariff x eighty one (81) = N\$13 258.89 per month - rental to be collected per annum from the current eighty one (81) traders operating on-site	159 106.68
Estimated revenue from electricity	N\$200.00 monthly electricity consumption per trader x seventy (70) x twelve (12)	168 000.00 per annum

Compliance

In order to exercise proper control and management of the sites (Erven R/6296 and 6300, Katutura), the Department of Economic Development and Community Services need to enter into yearly Lease Agreements with the traders, which will be renewable after a cycle of twelve (12) months. The Lease Agreements will be signed with the traders and should accommodate diverse business activities in line with a business complex, as the sites accommodate a combination of trading and light industrial activities, which are normally separated. Additionally, a significant portion of the traders also trade in alcohol sales, which are strictly prohibited at the markets.

Approving the sales of alcohol at the sites would also require that proper measures be put in place to maintain order and safety, as well as compliance with additional legal requirements in respect of obtaining liquor licenses and fitness certificates. The makeshift structures currently used by the traders at the sites will be marked with a numbering system in order to demarcate all the structures where the electrical prepaid meters have been installed already.

Consultation with Stakeholder departments

- Electricity

There has been ongoing consultations with the Department of Electricity and the installation of the underground electrical cables and prepaid meters is completed. The activation of electricity on-site will only be done upon the signing of Lease Agreements by the traders at the site.

- Legal

Lease Agreements with alcohol traders and light industrial activity operators should only be signed once the traders are in full compliance with the Liquor Act, Health Regulations and the Environmental Management Act, 2007 (Act 7 of 2007). Provision should also be made in consultation with the Health and Environmental Management Services Division on the prevention of pollution and all mitigating factors. The impact of trade in alcohol within the surrounding areas should also be assessed with adjacent property owners etc.

Conclusion

The effective management of the sites (Erven R/6296 and 6300, Katutura) will improve significantly with the introduction of the Lease Agreements with all the traders, since it will curb the further increase in the number of illegal traders operating at the site whilst suitable design and operational models are still being considered. Additionally, this will enable the provision of basic services and the recovery of the cost of these services and to allow for the switching on of the electricity services already installed.

Management Committee, having considered the matter

RECOMMENDED

- 1 That it be noted that the installation of electricity services at Erven R/6296 and 6300, Katutura has been completed as per Council Resolution 91/04/2022, **attached as pages 320 - 321 to the agenda.**
- 2 That the Chief Executive Officer (Corporate Legal Adviser) draft a Lease Agreement to facilitate the signing of a Lease Agreement between the Municipal Council of Windhoek and the traders operating the following business activities at Erven R/6296 and 6300, Katutura:
 - 2.1 Food outlets;
 - 2.2 Alcohol outlets;
 - 2.3 Selling of fresh meat;
 - 2.4 Clothing and shoe repair;

- 2.5 Tailoring;
 - 2.6 Pawn shop (buy and sell);
 - 2.7 Kastang connector or vendor of electricity, airtime, NamWater bill and municipal account payments etc.);
 - 2.8 Hair and beauty salons;
 - 2.9 Welding;
 - 2.10 Mechanical workshops; and
 - 2.11 Car wash businesses.
- 3 That the signing of the Lease Agreements be subject to compliance with the necessary legal requirements such as Liquor Licenses, Fitness Certificates and Health Regulations.
 - 4 That the Strategic Executive: Housing, Property Management and Human Settlement determine a more accurate rental tariff per square metre, to be implemented in accordance with the sizes of the different structures during the 2022/2023 Financial Year, following consultation with the traders.
 - 5 That the impact of the trade in alcohol within the surrounding areas be assessed with adjacent property owners.
 - 6 That the Strategic Executive: Economic Development and Community Services be mandated to enter into yearly Lease Agreement with traders at Erven R/6296 and 6300, Katutura.
 - 7 That the resolution be implemented prior to confirmation of the minutes.

[Municipal Council Agenda: 2022-10-27]

9.1.7

IND.1 [UTP] EVALUATION AND APPROVAL OF APPLICATIONS FOR THE RENAMING OF STREETS IN HONOUR OF MERITORIOUS RESIDENTS WITHIN THE JURISDICTION OF THE MUNICIPAL COUNCIL OF WINDHOEK (16/3/7/1)

Background

Management Committee at its meeting held on 8 June 2022, during the discussion of numerous street renaming items *inter alia* resolved as follows:

That this matter be kept in abeyance in order for the Strategic Executive: Urban and Transport Planning to submit a brief motivation to Council on how an application to name/rename a street should be dealt with in line with Council Resolution 76/04/2017, whereafter this matter be concluded, depending on the outcome of Council.

In response this submission has been prepared to propose a feasible mechanism for the future evaluation of street renaming applications. The submission served at the Heritage Committee on 21 September 2022 and is herewith submitted for consideration.

Introduction

Historically the renaming of streets, upon application by the public or otherwise, were realised by means of approval by the Municipal Council of Windhoek upon recommendation by Management Committee.

Further to the above Council by virtue of Resolution 76/04/2017 established a Policy as guideline towards the evaluation of street renaming applications. Amongst other the policy allows for the establishment of a Councillors Committee in terms of section 30(1)(w) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended) to preside over matters covered by the policy.

The practice ever since has been for the committee established as per the above to make recommendations to the Council based on following the procedures and guidelines as laid down in the Street and Place Naming Guidelines, **attached as pages 332 - 342 to the agenda.**

Point at issue

Currently each recommendation from the Councillors Heritage Committee translates into a submission to Management Committee for consideration and potential onwards recommendation to Council. As per the latest round of evaluations this resulted in approximately thirty (30) individual submissions which had to be considered at a single meeting.

Regardless of the content of any meeting agenda of Management Committee or the Municipal Council of Windhoek an addition of this magnitude is likely to expand the agenda beyond what is manageable for a single meeting or even multiple meetings.

Given recent sentiments expressed regarding the focus of Council on matters of critical importance the question was raised as to whether the current procedure is efficient and results in the most optimal use of Council meeting time and resources.

Proposal for amended procedure

The legal mechanism for the renaming of streets in honour of residents who are deemed to comply with the criteria as laid down in the applicable policy is section 30(1)(q) as follows:

30(1) Subject to the provisions of subsections (2) and (3), a local authority council shall have the power -

(q) to confer honours upon any person who has in the opinion of the local authority council rendered meritorious service to its residents;

Given that a formal policy has been established by the Municipal Council of Windhoek providing a solid framework for the execution of work under the policy, which policy also include the instituting of a Councillors Committee to deal with matters pertaining the mandate of the Council to deal with street renaming in honour of distinguished residents lends itself to safe delegation, thereby freeing up Council meetings for matters of a more discerning nature.

Interestingly enough, and given that the Committee in question comprise of Councillors the Local Authorities Act, 1992 (Act 23 of 1992) (as amended) does not allow the delegation of powers by the Municipal Council of Windhoek to Councillors or Committees made up of Councillors. The law does however allow for the Municipal Council of Windhoek to delegate its powers under section 31(1) to Management Committee as follows:

31(1) A municipal council or a town council may delegate or assign in writing, in writing and on such conditions as it may determine, to its management committee or its chief executive officer or any other staff member, any power conferred or any duty imposed upon it by or under this Act or any other law.

Management Committee in return has the authority under section 31(3) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended) to delegate any powers conferred upon it by the Municipal Council of Windhoek to Council members as follows:

31(3) A management committee may delegate, in writing and with the prior written approval of and on the conditions determined by the municipal council or town council concerned –

(a) any power conferred upon it by this Act; or

(b) any power which has been delegated to it under subsection (1),

to any member of the municipal council or town council, or to the chief executive officer or any staff member of the municipal council or town council concerned, or to any two or more of such persons conjointly.

Accordingly, it is proposed that the mandate of the Municipal Council of Windhoek to confer honours onto residents for meritorious service through the renaming of street to Management Committee for the onward delegation to the Municipal Council of Windhoek's Heritage Committee.

Conclusion

The current process whereby each and every application for the renaming of streets in the honour of distinguished residents results in an unnecessarily large administrative burden while the volume of applications is exhausting valuable Council resources which could be much better spent otherwise.

As a result, it is recommended that the mandate of Council be delegated to its Heritage Committee through the applicable allowances under the Local Authorities Act, 1992 (Act 23 of 1992) (as amended).

Management Committee, having considered the matter

RECOMMENDED

- 1 That the Municipal Council of Windhoek delegate its powers in terms of section 30(q) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended) to confer honours on residents through the renaming of streets and/or places to its Management Committee in terms of section 31(1) of the said Act for onward delegation to the Heritage Committee established in terms of section 30(1)(w) of the said Act.
- 2 That any application so received be dealt with by the designated structure in terms of the applicable Council established policy.
- 3 That the Heritage Committee submit biannual reports to the Municipal Council of Windhoek on all its activities pursuant to this delegation of powers.
- 4 That the resolution be implemented prior to confirmation of the minutes to assist with the dealing of currently outstanding applications.

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[Municipal Council Agenda: 2022-10-27]

9.2 APPROVAL OF MINUTES (MC 19/2022)

The minutes of the Management Committee meeting (MC 19/2022) held on 18 October 2022 is submitted to Management Committee members for approval.

[Municipal Council Agenda: 2022-10-27]

9.3 MINUTES (MC 19/2022)

The minutes of the Management Committee meeting (MC 19/2022) held on 18 October 2022 as approved by its members at this Council meeting, is submitted for notice with the exception of Items GOV.3, GOV.4, GOV.5, GOV.6, GOV.8, GOV.12, GOV.16, GOV.17, GOV.19, GOV.22, GOV.30, FNS.1, FNS.2 and SOP.1, which follow immediately hereunder for consideration.

It is

RECOMMENDED

That the minutes of the Management Committee meeting (MC 19/2022) held on 18 October 2022, be noted by its members, with the exception of Items GOV.3, GOV.4, GOV.5, GOV.6, GOV.8, GOV.12, GOV.16, GOV.17, GOV.19, GOV.22, GOV.30, FNS.1, FNS.2 and SOP.1.

[Municipal Council Agenda: 2022-10-27]

9.3.1

GOV.3 [EDC] APPROVAL OF THE WINDHOEK ECONOMIC DEVELOPMENT (WED) STRATEGY AND PUBLIC GUIDE (2022 TO 2027) (2/1/12)

Introduction/Purpose

Effective co-operation and co-ordination between stakeholders and partners can only be achieved within the context of a common and targeted strategy, hence the need for a holistic Windhoek Economic Development Strategy (WEDS), which is a developmental strategy as it *defines the priority goals, coherently explains how set goals can be reached, identifies the policy tools and explores tradeoffs and the time frame.* (Priewe, 2015, page 3)

The purpose of this submission is hence to present the Windhoek Economic Development Strategy (WEDS), Public Guide, and Implementation Plan (2022 to 2027), **attached as pages 343 - 474, 475 - 496 and 497 - 507 respectively to the agenda**, to Council for endorsement.

Background

Council has consistently spearheaded Local Economic Development programmes and following the conclusion of the previous Local Economic Development Strategy, covering the period 2010 to 2015, embarked upon the formulation of its 3rd Windhoek Economic Development Strategy (WEDS) (2022 to 2027) following the allocation of funding for this purpose.

Previous submissions

- The Strategic Executives Forum at its meeting held on 21 April 2022 *inter alia* resolved as follows:

- *A presentation of the Windhoek Economic Development Strategy to be made to all the Strategic Executives.*

The presentation took place on 14 June 2022 (see minutes, **attached as pages 508 - 510 to the agenda**), where it was amongst others *inter alia* resolved as follows:

- *The item to be resubmitted, including the benefit and cost to Council.*
- The Strategic Executives Forum at its meeting held on 4 August 2022 *inter alia* resolved as follows:
 - *That this matter be referred to a soon to be convened special STRATCOM meeting, in order for the Strategic Executive: Economic Development and Community Services to make another presentation for the Strategic Executives on this matter to be thoroughly well vested with this strategy, whereafter it be signed off by the Chief Executive Officer to serve at the Management Committee, for consideration.*

The presentation took place at the STRATCOM meeting of 24 August 2022.

Discussion

Taking cognisance of the cross-cutting and economic development goals, the overall Vision of becoming a SMART and CARING City, and the need to facilitate an enabling environment to encourage economic development and investment in the City, the Windhoek Economic Development (WED) Strategy (2022 to 2027) proposes the six (6) Strategic Pillars as per Figure 2, **attached as page 356 to the agenda**, which are described as follows:

- **Agriculture and Agro-Processing**

The objective of this strategic intervention is to increase the cultivation of agricultural products and to add value to this primary input through local manufacturing and processing plants. This is of strategic importance to reduce food-security risk to the City.

- **Informal Sector**

The objective of this strategic intervention is to diversify, integrate and support existing informal businesses in Windhoek through business support, improved infrastructure, and facilities.

- **Micro, Small and Medium Enterprise (MSME) Development**

The objective of this strategic intervention is for the municipality to diversify and expand existing formal and informal businesses in the Municipal Council of Windhoek through business support and networking and to stimulate the development of new businesses.

- **Tourism**

The objective of this strategic intervention is for the Municipal Council of Windhoek to improve on its tourism product offering to encourage tourists to extend their stay within the City.

- **Transport and Logistics**

The objective of this strategic intervention is for the Municipal Council of Windhoek to improve connectivity by improving its local and bulk transport and logistics networks.

- **Social Development**

The objective of this strategic intervention is for Council to become a caring city by addressing the social needs of those who reside in it. The Growth Lab at the Harvard University has additionally identified hospitals and schools as a weakness of Windhoek which forms part of the Social Development Strategic Pillar in the Windhoek Economic Development Strategy (WEDS). (The Growth Lab at Harvard University, 2022).

Expected outcomes of the Windhoek Economic Development Strategy (WEDS)

The key benefit of the Windhoek Economic Development Strategy (WEDS) is the identification of both public and private sector investment opportunities based on a comprehensive review of the City's status quo, including its social, labour, economic, spatial and infrastructure conditions. The said Strategy further addresses the current and future issues faced by the municipality, which impact the creation of an enabling environment for investment, employment creation and economic growth within Windhoek.

The Windhoek Economic Development Strategy (WEDS) indicates the best options for municipal resource allocation to encourage local economic growth, job creation as well as improved infrastructure that will translate into increased wellness and prosperity for those who reside in Windhoek.

The expected outcomes of the implementation of the Windhoek Economic Development Strategy (WEDS) is indicated as per Figure 1, **attached as page 355 to the agenda.**

Strategic implications/significance

The Windhoek Economic Development Strategy (WEDS) is aligned towards the new Vision: *Towards a sustainable and caring city*. This is with specific reference to the Economic Sustainability Strategic Pillar, which refers to enhancing economic development by availing investors to a favourable economic environment.

The Municipal Council of Windhoek should therefore takes a developmental approach in socio-economic development within Windhoek. The different spheres of government, namely local, regional, and national government needs to collaborate to ensure that investment can take place. This includes improved integration and co-operation between the different spheres of government, national ministries, and different stakeholders.

Financial implications

The financial implications for implementing the five (5) year strategy is as follows:

Year	Amount required (N\$)
Year 1 (2022 to 2023)	105 000.00
Year 2 (2023 to 2024)	3 700 000.00
Year 3 (2024 to 2025)	3 170 000.00
Year 4 (2025 to 2026)	3 170 000.00
Year 5 (2026 to 2027)	3 000 000.00

Possible risks

The risks associated with the implementation of the Strategy which can impact project implementation and outcome are as follows:

- Financial resource risk;
- Unco-ordinated implementation of interventions;
- Non-implementation of legal and policy initiatives that impact environment; and
- Bureaucracy.

The risk will be mitigated by a co-ordinated and streamlining approach in forming partnerships and collaborations on areas of mutual interest with external stakeholders.

Compliance check/legal implications

The Strategy will adhere and work in accordance with the laws of the country and organisational policies and regulations. However, no legal implications are envisaged at this time.

Consultation with stakeholder departments and other interested parties

The following extensive consultations took place during the formulation of the Strategy with internal stakeholders (divisional heads and strategic executives):

High level consultations	Timelines
Transformational Strategic Plan (2017 to 2022) under Social Progress, Economic Advancement and Infrastructure Development Theme	2017
Call for consultancy services (closing date of bids)	January 2018
Award to Burmeister & Partners (Procurement Committee minutes July 2018, inception meeting)	August 2018
Strategic Executives and Divisional Heads	October 2018
Status Quo Report to Strategic Executives and Divisional Heads (presentation by Burmeister & Partners)	May 2019
Strategic Executives and Divisional Heads (circulation)	May 2020
Strategic Executives and Divisional Heads (re-circulation)	June 2020
Councillors and Strategic Executives (memo Chief Executive Officer)	August 2020
Strategic Executives Forum – 8 October 2020 (presentation by Burmeister & Partners)	October 2020
Councillors' Induction and Onboarding Programme	December 2020
Councillors' Induction and Onboarding Programme	January 2021
Presentation to Strategic Executives	June 2022
Presentation to Strategic Executives	August 2022

The following list of external stakeholders were interviewed:

- Ministry of Health and Social Services, Mr Thomas Meeli;
- Omeya, Mr Peter Herle;
- National Heritage Council of Namibia, Ms Helena Nengola;

- Burmeister & Partners, Mr Ronals Kobas;
- Ministry of Public Enterprises;
- Jimmy Construction, Mr Beukes;
- Gondwana Collection, Mr Leon Barnard; and
- Ohlthaver & List, Ms Hoeksema and Mr Wenk.

In addition to the above, the following surveys were conducted:

- Retail survey with a sample of three hundred and fifty (350) businesses;
- Manufacturing survey with sample of two hundred and ninety (290) businesses; and
- Tourism survey with a sample of three hundred and thirty (330) businesses.

Options

The Strategy is instrumental and providing a guiding framework for the Municipal Council of Windhoek's intent in facilitating socio-economic development in the City.

Conclusions and recommendations

The Windhoek Economic Development Strategy (WEDS) provides a catalyst for the local economy to prosper. This can only be achieved with targeted and effective co-ordination and co-operation between stakeholders and sufficient budgetary allocation for the implementation of projects. The COVID-19 Pandemic, after four (4) years of low economic growth, has put further strain on the local economy resulting in major job losses in the country and in the City. It is vital for the Municipal Council of Windhoek to support and prioritise broad economic development, beyond just Micro, Small and Medium Enterprises (MSMEs), through the implementation of the Windhoek Economic Development Strategy (WEDS) that will facilitate the creation of a growing and resilient local economy.

Management Committee, having considered the matter

RECOMMENDED

- 1 That the Windhoek Economic Development Strategy (WEDS), Public Guide, and Implementation Plan (2022 to 2027),), **attached as pages 343 - 474, 475 - 496 and 497 - 507 respectively to the agenda**, be approved.
- 2 That sufficient budgetary allocation be made for the 2022/2023, 2023/2024, 2024/2025, 2025/2026 and 2026/2027 Financial Years for the implementation of the Windhoek Economic Development Strategy (WEDS), subject to Council approval and the availability of funds.

- 3 That quarterly progress reports be submitted to Council on the implementation of the Windhoek Economic Development Strategy (WEDS) projects.
- 4 That the Strategic Executive: Economic Development and Community Services be mandated to engage internal and external stakeholders on the proposed establishment of the Windhoek Economic Development and Investment Forum consisting of representatives of the industry (private and public sector), Academia and other relevant stakeholders.
- 5 That the Strategic Executive: Economic Development and Community Services submit the Terms of Reference (ToR), structure, and proposed founding members of the Forum to Council for consideration.
- 6 That the resolution be implemented prior to confirmation of the minutes.

[Municipal Council Agenda: 2022-10-27]

9.3.2

GOV.4 [EDC] APROVAL OF THE WINDHOEK TOURISM STRATEGY (2021 TO 2025) (2/1/12)

Introduction/Purpose

Following the public procurement process, the Municipal Council of Windhoek subsequently contracted PriceWaterhouse Coopers (PwC) to develop a Tourism Strategy for Windhoek inclusive of a review of the tourism sector with a focus on its future opportunities and its development requirements. Council intends to pursue innovative opportunities for the development and marketing of Windhoek as a tourist destination of choice. Success will be determined by the organisation's ability to positively influence the direction of future developments, infrastructure and legislation that directly or indirectly impacts the Windhoek's tourism experience through strategic alliances, partnerships, lobbying and education.

The purpose of this item is to present for approval and implementation the Windhoek Tourism Strategy (2021 to 2025), **attached as pages 511 - 579 to the agenda.**

Background

The Strategic Executives Forum at its meeting held on 21 April 2022, amongst others *inter alia* resolved as follows:

- *A presentation of the Windhoek Sustainable Tourism Strategy to be made to all the Strategic Executives at the next STRATCOM meeting.*

The presentation took place at the STRATCOM meeting of 24 August 2022, upon which it was amongst others *inter alia* resolved as follows:

- *The item to be resubmitted after the Strategic Executives' input are incorporated for further discussions and referral.*

Tourism has been a key enabler for economic development and one of the fastest growing sectors worldwide creating one in ten new jobs globally. In Namibia, the tourism sector grew by 8 % in 2018, outperforming overall GDP which contracted amidst a recession. The sector was forecasted to grow by 6.6 % per annum from 2018 to 2028 (pre-COVID), indicating that it remains a vital sector to the nation's economic recovery.

The Namibian Government through the Ministry of Environment, Tourism and Forestry, recognises the sector's potential for growth and contribution to GDP by including it in the National Development Plan 5), and the development of specific plans, such as the recently launched Namibia Tourism Sector Recovery Plan (2022 to 2024), aimed at increasing the value proposition of the sector.

However, the socio-economic impact of the COVID-19 Pandemic was disastrous, particularly for the tourism industry with tourist arrivals declining significantly by 89.4 % to one hundred and sixty nine thousand five hundred and sixty five (169 565) arrivals by the end of 2020 (Ministry of Environment, Tourism and Forestry). It was further reported that over one thousand (1 000) companies applied for financial assistance through the Stimulus package offered by the Central Government. Approximately one hundred (100) tourism businesses closed temporarily or permanently, and it is estimated that over a one thousand (1 000) could further have been lost in 2021 depending on the impact of either further or easing of restrictions (Ministry of Environment, Tourism and Forestry).

The impact of COVID-19 on tourism is impacting the entire value chain, and equally so the Windhoek Tourism and Travel Sector is faced with several challenges, the most crucial being that of transforming its tourism products and generating tourism during and post-COVID. According to the Bank of Namibia's (BON's) Annual Report 2020, the Namibian tourism industry lost N\$3.2 billion during the pandemic, while a study carried out by the tourism sector, showed that about 70 % of businesses recorded bookings below 10 %.

Strategic implications/significance

The Sustainable Tourism Strategy is aligned to the Windhoek Strategic Plan (2022 to 2027), the National Documents such as Vision 2030 through the National Development Plan 5), Harambee Prosperity Plan 2 and the National Tourism Developmental and Promotional Strategies as mentioned in the Strategy document.

Financial implications

The financial implications are as follows:

Year	Budget year	Amount (N\$)
Social Sustainability		
Year 1	2022/2023	50 000.00
Year 2	2023/2024	2 250 000.00
Year 3	2024/2025	900 000.00
Year 4	2025/2026	650 000.00
Year 5	2026/2027	600 000.00
Subtotal		4 450 000.00

Year	Budget year	Amount (NS)
Financial Sustainability		
Year 1	2022/2023	0.00
Year 2	2023/2024	1 700 000.00
Year 3	2024/2025	1 000 000.00
Year 4	2025/2026	1 000 000.00
Year 5	2026/2027	0.00
Subtotal		3 700 000.00
Total		8 150 000.00

The Project Implementation Plan, **attached as pages 580 - 584 to the agenda**, highlights the Strategy's annual financial implications.

Possible risks

The risk of not having an approved framework will hamper capitalising on this lucrative industry that has a potential enhance the local economy and in return create jobs. Successful tourism-led development requires certain preconditions in terms of having certain assets for tourism development. There is a fundamental requirement for localities to develop a total tourism product or portfolio of products which will attract visitors.

The competitive position of any tourism destination is determined to a significant extent by the diversity and quality of its resources and services.

In particular, considerable emphasis is given to the importance of **quality of assets** as a factor in impacting upon the competitiveness of tourism spaces. Assets can be natural beauty (mountain), heritage resources, unique wildlife etc. and socio-cultural resources (including festivals and sports events). Overall, the attractiveness of particular tourism spaces arises from its blend of resources and services. Davidson and Maitland (1997, page 23) observe: *Without such a mix, a place will not work as a destination*. A second critical precondition for success is appropriate and effective planning and management of tourism at destinations. The need for visitor management planning arises from the fact that whilst the private sector driven tourism industry may be successful at attracting visitors to destinations, it is often less successful at protecting destinations from the negative effects of tourism development., hence the need for a Sustainable Tourism Development Strategy.

Compliance check/legal implications

The Strategy identified reviews and implementations of laws, policies, regulations and rules to ease tourism developmental initiatives in order for the city to maximise and benefit from the mainstream tourism both direct and indirectly to enhance the city's economy and to maximise local impacts.

Consultations with stakeholder departments and other interested parties

The process was consultative and sessions were held with departments (environmental scanning), Strategic Executive (environmental scanning and planning), tourism, heritage, arts and culture (environmental scanning and planning).

A comprehensive review of tourism development and promotion initiatives in the Municipal Council of Windhoek were accomplished through desktop studies and thorough stakeholder interviews. A total of twenty eight (28) tourism and travel sector stakeholders were interviewed during the information gathering stage. Most of the interviews were conducted with industry association bodies and only a small number of interviewees were direct tourism and travel suppliers. In addition to external stakeholders, internal stakeholders from departments in the Municipal Council of Windhoek were interviewed to identify initiatives that their departments already implement in line with pre-existing strategies that will be beneficial to the local tourism sector. A benchmark desktop study was conducted to identify the initiatives that three (3) similar cities to Windhoek have successfully implemented to facilitate the development of their tourism sectors. (The Benchmarking Report is **attached as pages 585 - 606 to the agenda**). The cities that were used to benchmark were Kigali in Rwanda, Nairobi in Kenya and Johannesburg in South Africa. These cities were used, either for their proximity and shared cultures and history, or how they used robust policies to change their socio-economic environment by using tourism as the ideal developmental tool.

Through the Co-operation Agreement between the Municipal Council of Windhoek, the City of Bremen and University of Applied Sciences Bremen, the latter conducted an Assessment of Sustainable Tourism Development in Windhoek, Namibia, Baseline Study, which was led by Professor Dr R Hartmann and Ms E Eckert of Hochschule Bremen at the end of 2019. (The Baseline Study is **attached as pages 607 - 741 to the agenda**).

Options

It is apparent that the Namibian tourism industry will have to transform in order to become more resilient and will have to focus on a strategy of sustainable development in conjunction with disaster risk reduction and climate change. The Municipal Council of Windhoek thus intends to take up a more active role in the development of a sustainable tourism sector in Windhoek through the implementation of a Tourism Development Strategy. The purpose of this Strategy is to assess and develop the competitiveness of Windhoek as a destination and to implement initiatives that will improve the City's competitive position to attract more tourists and improve visitor satisfaction and in return enhance the City's economy.

Conclusion

It is widely recognised that tourism can be a powerful catalyst for inclusive economic growth, if properly harnessed and carefully developed, and concerted efforts are employed by all stakeholders to facilitate improvements in quality of service, safety standards and physical infrastructure as a means of attracting tourists and investment to a region.

The aim of the Windhoek Tourism Strategy is to leverage our local resources to improve Windhoek's, and by extension Namibia's, competitiveness as a destination thus achieving sustainable socio-economic development for the betterment of livelihoods. The achievement of the ideals of the Strategy would require effective co-ordination and co-operation among stakeholders and the allocation of sufficient resources. It is therefore imperative that the Windhoek Tourism Strategy is approved by the Municipal Council of Windhoek and fully implemented to enable us to achieve its developmental goals for our City.

Management Committee, having considered the matter

RECOMMENDED

- ***
- 1 That the Windhoek Tourism Strategy (2021 to 2025), Project Implementation Plan, Benchmarking Report and Baseline Study, **attached as pages 511 – 579, 580 – 584, 585 - 606 and 607 - 741 respectively to the agenda**, be noted.
- ***
- 2 That the Windhoek Tourism Strategy (2021 to 2025), **attached as pages 511 – 579 to the agenda**, be approved.
 - 3 That sufficient budgetary allocation be made for the 2022/2023, 2023/2024 and 2024/2025 Financial Years for the implementation of the Windhoek Tourism Strategy, subject to Council approval and the availability of funds.
 - 4 That the Strategic Executive: Economic Development and Community Services be mandated to engage internal and external stakeholders on the proposed establishment of the Windhoek Tourism Forum consisting of representatives of the industry (private and public sector), Academia and other relevant stakeholders.
 - 5 That the Strategic Executive: Economic Development and Community Services submit the Terms of Reference (ToR), structure and proposed members of the Windhoek Tourism Forum to Council, for consideration.
 - 6 That quarterly strategy implementation progress reports be submitted to Council by the Strategic Executive: Economic Development and Community Services on the implementation of the Windhoek Tourism Strategy.
 - 7 That the resolution be implemented prior to confirmation of the minutes.

[Municipal Council Agenda: 2022-10-27]

9.3.3 GOV.5 [EDC] APPROVAL OF THE MICRO, SMALL AND MEDIUM ENTERPRISE (MSME) DEVELOPMENT STRATEGY (2022 TO 2027) (2/1/12)

Introduction/Purpose

The significant role played by small businesses is increasingly recognised all over the world. The potential of small businesses to create employment has caused governments in many countries to pay more concerted attention to the positive development of the small business sector. In November 2016, Cabinet adopted the national Micro, Small and Medium Enterprise (MSME) Policy, developed by Ministry of Industrialisation, Trade and SME Development. The Micro, Small and Medium Enterprise (MSME) Policy is aligned to the national objectives as expressed in Vision 2030, the National Development Plan 5, the National Industrial Policy, the Harambee Prosperity Plan 2 and the Growth at Home Strategy.

The national Micro, Small and Medium Enterprise (MSME) Policy 2016 envisages *Thriving MSMEs that ensure effective utilisation of available resources and that contribute significantly to the economic development of Namibia through sustained job creation and economic growth.*

Significant importance is placed on the development of small businesses as a key driver of job creation and economic growth. It is with this growth target in mind that the local government are encouraged to cascade national development priority areas in their strategic interventions.

The purpose of this submission is hence to present the Micro, Small and Medium Enterprise (MSME) Strategy (2022 to 2027), **attached as pages 742 - 769 to the agenda**, to Council for endorsement and implementation.

Background

The Municipal Council of Windhoek through the Economic Development Division is consistently spearheading relevant business support initiatives to impact the small business sector to contribute towards socio-economic development within the communities. Subsequently, the initiative was taken to embark upon the in-house formulation of Council's first Micro, Small and Medium Enterprise (MSME) Development Strategy for the period 2022 to 2027.

Previous submissions

- The Strategic Executives Forum at its meeting held on 4 August 2022 *inter alia* resolved as follows:
 - *That this matter be referred to a soon to be convened special STRATCOM meeting, in order for the Strategic Executive: Economic Development and Community Services to make another presentation for the Strategic Executives on this matter to be thoroughly well vested with this strategy, whereafter it be signed off by the Chief Executive Officer to serve at the Management Committee, for consideration.*

The presentation took place at the STRATCOM meeting of 24 August 2022.

- The Strategic Executives Forum at its meeting held on 21 April 2022 *inter alia* resolved as follows:
 - *A presentation of the Windhoek Economic Development Strategy to be made to all the Strategic Executives.*

The presentation took place on 14 June 2022 (see minutes, **attached as pages 508 - 510 to the agenda**), where it was amongst others *inter alia* resolved as follows:

- *The item to be resubmitted, including the benefit and cost to Council.*

Discussion

The crafting of the Micro, Small and Medium Enterprise (MSME) Development Strategy followed an extensive process of consultation with internal and external stakeholders through three workshops to ensure a comprehensive and co-ordinated strategy approach.

The Micro, Small and Medium Enterprise (MSME) Development Strategy is envisaged to drive the creation of platforms towards engagement and development of the small business sector in Windhoek, thus facilitating an enabling business environment that encourages accountability of all key actors in the value chain to provide accessible, credible and adequate business support services for a vibrant Micro, Small and Medium Enterprise (MSME) sector.

Vision Statement: Micro, Small and Medium Enterprise (MSME) Development Strategy of the Municipal Council of Windhoek

A transformed City of Windhoek with a strong and blossoming entrepreneurship ecosystem, which creates jobs, prosperity and opportunities for a dynamic and diversified local economy.

Micro, Small and Medium Enterprise (MSME) Development Strategy principles

- Collaboration, partnerships and promotion

Strengthened local Micro, Small and Medium Enterprise (MSME) support system and fostering entrepreneurs' collaborations to create seamless value chains. This means that businesses join forces to pool resources, decrease costs, access new markets and develop unique skills. Entrepreneurs use information and spaces to create these joint ventures. There are online platforms, either on social media or a purpose-made website, where Micro, Small and Medium Enterprises (MSMEs) learn about existing businesses and discuss business ideas. A seamless value chain creates more jobs, cheaper products, and access to market.

- Access to physical and technological infrastructure

Facilities for entrepreneurs are modern, secure and make efficient use of existing spaces. There are numerous hubs, incubators, co-working spaces, accelerators, trading facilities, marketplaces and storages facilities in Windhoek. They are available, dependable and affordable. These spaces have not been built entirely from scratch but are hosted in existing spaces. The spaces are scalable and modular, meaning that entrepreneurs flexibly use them according to their business needs and schedules, and the spaces can be converted depending on the changing demands. In these facilities entrepreneurs share ideas and build partnerships.

- **Access to information and support services**

Information travels freely in the market and enterprises use online services to run their business. Instead of only word-of-mouth, entrepreneurs get information about other Micro, Small and Medium Enterprises (MSMEs) through several public and private services offering business information. Entrepreneurs make use of affordable market research. Small and Medium Enterprises (SMEs) have the skills and connectivity to use digital platforms for marketing, sales, e-commerce, purchasing, business to business, client relationship management, recruiting and pooling resources.

- **Effective legal and regulatory framework**

The legal and regulatory framework within which Micro, Small and Medium Enterprises (MSMEs) operate needs to be reviewed, to ensure that it is enabling rather than obstructive. This encompasses local bylaws and as well as the processes that impact fast-tracked economic development.

Strategic implications/significance

The Micro, Small and Medium Enterprise (MSME) Development Strategy is aligned towards the new Vision: *Towards a sustainable and caring city*. This is with specific reference to the Economic Sustainability Strategic Pillar, which refers to: *Enhancing economic development by availing investors to a favourable economic environment*.

Financial implications

The financial implications for implementing the five (5) year Strategy is as follows:

Year	Amount required (N\$)
Year 1 (2022 to 2023)	220 000.00
Year 2 (2023 to 2024)	3 000 700.00
Year 3 (2024 to 2025)	3 000 032.00
Year 4 (2025 to 2026)	130 000.00
Year 5 (2026 to 2027)	75 000.00

The Project Implementation Plan, attached as pages 770 - 775 to the agenda, highlights the Strategy's financial implications.

Possible risks

The risk associated with the implementation of the Strategy is the financial risk which can impact project implementation and outcome. The risk will be mitigated by partnerships and collaborations on areas of mutual interest with external stakeholders. Through partnerships with various stakeholders, leverage on development programmes will seek to maximise resources (cost saving), avoid duplication, create synergy, capitalise on each other's strength and maximise service provision and impact within the Micro, Small and Medium Enterprise (MSME) sector.

Compliance check/legal implications

The Strategy will adhere, be implemented in accordance with the laws of the country as well as the organisational policies and regulations. However, no legal implications are envisaged at this time.

Consultation with stakeholder departments and other interested parties

The compilation of the Micro, Small and Medium Enterprise (MSME) Development Strategy commenced with the presentation of the Micro, Small and Medium Enterprise (MSME) Policy priority areas that sought interventions and cascading into local government strategic frameworks. The extensive consultations commenced with the internal stakeholders and took place in the form of workshops and focus group discussions.

These discussions took place as follows:

- Internal stakeholders

- Consultations took place with the Economic Development, Health-Business Registration, Youth and Social Services, Public Participation and Marketing Divisions;
- Presentations were made to the Municipal Council of Windhoek on 13 October 2020 and 16 November 2021 (see minutes, **attached as pages 776 - 779 to the agenda**); and
- Presentations were made to the Strategic Executives Forum on 14 June 2022 and 24 August 2022.

- External stakeholders

The second discussion sought input from the value chain actors after the input from the internal stakeholders. The following external stakeholders were consulted:

- Dololo; NCRST; Kongalend; Ministry of Industrialisation and Trade; Ministry of Labour; Khomas Regional Council (KRC), Business and Intellectual Property Authority (BIPA); Start-up Namibia; and a number of entrepreneurs from the manufacturing and service industry.

Options

The formulation of the first Micro, Small and Medium Enterprise (MSME) Development Strategy for the period 2022 to 2027 was done in-house. The secondary data that outlined the national development priority areas of government in the Micro, Small and Medium Enterprise (MSME) Policy, National Development Plan 5 and Harambe Prosperity Plan 2 set the foundation upon which drafting of the Strategy and the Implementation Plan commenced. The draft Strategy was then circulated to all technical departments for comments.

Conclusion

The Municipal Council of Windhoek is tasked with the responsibility to lead local economic development in the City. With the robust partnerships in place the next step would be to promote and leverage resources to ensure the provision of business support and relevant development services that will lead towards the creation of sustainable employment and a business environment that stimulates business prosperity and quality of life.

This Strategy takes a developmental approach structured on initiatives that contribute towards socio-economic and transformational development within the communities.

Management Committee, having considered the matter

RECOMMENDED

- 1 That the Micro, Small and Medium Enterprise (MSME) Development Strategy (2022 to 2027), **attached as pages 742 - 769 to the agenda**, be approved.
- 2 That sufficient budgetary allocation be made for the 2022/2023, 2023/2024, 2024/2025, 2025/2026 and 2026/2027 Financial Years for the implementation of the Micro, Small and Medium Enterprise (MSME) Development Strategy, subject to Council approval and the availability of funds.
- 3 That quarterly progress reports be submitted to Council on the implementation of Micro, Small and Medium Enterprise (MSME) development projects.
- 4 That the Strategic Executive: Economic Development and Community Services be mandated to engage internal and external stakeholders on the proposed establishment of the Micro, Small and Medium Enterprise (MSME) Development Strategy Forum consisting of representatives of industry (private and public sector), Academia and other relevant stakeholders.
- 5 That the Strategic Executive: Economic Development and Community Services submit the Terms of Reference (ToR), structure and proposed founding members of the Forum to Council, for consideration.
- 6 That the resolution be implemented prior to confirmation of the minutes.

[Municipal Council Agenda: 2022-10-27]

9.3.4

GOV.6 [EDC] APPROVAL OF THE INVESTMENT INCENTIVES AND PROMOTION STRATEGY (IIPS) AND PUBLIC GUIDE (2022 TO 2027) (2/1/12)

Introduction/Purpose

Private investment (both domestic and foreign) plays a critical role in the development of local economies and is an integral part of national growth. Developing countries that lack the resources to fund their own development, look at foreign capital to augment domestic sources. This has been the strategy used by many countries and cities over the years and the high levels of foreign private capital inflows into such countries have resulted in ranking of several territories as 'high performers' in terms of attracting Foreign Direct Investment (FDI) according to the World Investment Report, a publication of the United Nations Conference on Trade and Investment (UNCTAD).

Private sector investment is crucial to achieving the Municipal Council of Windhoek's developmental goals and as such Windhoek needs to expand its economy to ultimately create more employment opportunities. There are different strategies to attract job creating investment (domestic and foreign) and cities around the world frequently use investment incentives as one instrument to stimulate private sector investment in the local economy. Equally, investment promotion strategies provide local authorities with plans for attracting both domestic and foreign investment into their cities. In order to proactively attract investment into Windhoek, there was a need to:

- Assess the prevailing investment environment; and
- Develop an investment promotion and incentives strategy for the City.

Where the Windhoek Economic Development Strategy assessed the areas that the City needs to focus on to ensure that it is creating an enabling environment for investment, employment creation and economic growth. The Investment Incentives and Promotion Strategy (IIPS) seeks primarily to improve the investment climate and enabling environment. The role of the City is to create a roadmap for investors on how both local and foreign investors can seamlessly invest in the capital with the ultimate goal of new investments - that will create new jobs.

The purpose of this submission is to present for approval and implementation the first (1st) Windhoek Investment Incentives and Promotion Strategy (IIPS) and Public Guide (2022 to 2027), **attached as pages 780 - 937 and 938 – 948 respectively to the agenda.**

Background

While job creation is not the primary role of local authorities, we have a developmental mandate to stimulate economic advancement by creating a conducive local environment. Job creation must feature at the heart of economic advancement if the City takes seriously its mission to enhance the quality of lives of all its residents and strives to be a 'high performer'. The Namibia Labour Force Survey of 2018 reports an official unemployment rate of 33.4 % for the country and an even more pronounced unemployment rate amongst the youth of 46.1 % in 2018. Employment creation in the City must be at the core of

building a productive, inclusive and sustainable local economy which recognises the value of and systematically puts to work its human capital resources.

The Municipal Council of Windhoek cannot achieve this developmental outcome on its own but must work at putting in place modalities and forming strategic partnerships such as the Special Rating Areas (SRAs) and Windhoek Economic Development and Investment Forum in collaboration with the public and private sector, Non-Governmental Organisations (NGOs), even other cities to encourage job creation by being proactive and providing a more enabling business environment that attracts domestic and foreign investment into the local economy.

The Department of Economic Development and Community Services (Economic Development Division) tried for a number of years to develop two (2) documents, i.e. an Investment Promotion Strategy and an Incentives Strategy. However, sufficient funds were never allocated to developing the two (2) Strategies, thus it was decided that the Strategies, i.e. the Investment Promotion Strategy and Incentives Strategy be combined. In 2017, the Municipal Council of Windhoek increased the emphasis on providing an Enabling Environment for Tourism, Trade and Investment in its Transformational Strategic Plan (2017 to 2022) under the theme Social Progress, Economic Advancement and Infrastructure Development.

A call for consultancy services guided by the then the Municipal Council of Windhoek's Strategic Objective to *Provide an Enabling Environment for Tourism, Trade and Investment*, as well as the Departmental Objective to *Facilitate Tourism, Trade and Investment Opportunities in Windhoek* was contracted to Burmeister & Partners in October 2018. The outcome of the consultancy was to develop and publish an Investment Incentives and Promotion Strategy Report as well as a Public Guide. These strategic tools aim to outline the Municipal Council of Windhoek's intent and focus in terms of attracting new local and foreign direct investment into the capital over five (5) years.

The primary focus of the consultancy was *inter alia* to have a strategy document that recommends viable and sustainable instruments that Council can plan, cost and implement to attract, retain, grow/expand investments to Windhoek. The Consultancy focused, amongst others, on choices (areas of development) that can be developed to achieve the growth and development goals of Windhoek.

Previous submissions

- The Strategic Executives Forum at its meeting held on the 4 August 2022 *inter alia* resolved as follows:
 - *That this matter be referred to a soon to be convened special STRATCOM meeting, in order for the SE: EDC to make another presentation for the SEs on this matter to be thoroughly well vested with this strategy, whereafter it be signed off by the CEO to serve at the Management Committee, for consideration.*

The presentation took place at the STRATCOM meeting of 24 August 2022.

- The Strategic Executives Forum at its meeting held on the 21 April 2022 *inter alia* resolved as follows:

- *A presentation of the Windhoek Economic Development Strategy to be made to all the Strategic Executives.*

The presentation took place on 14 June 2022 (see minutes, **attached as pages 508 - 510 to the agenda**), where it was amongst others *inter alia* resolved as follows:

- *The item to be resubmitted, including the benefit and cost to Council.*

The item is herewith submitted together with a five (5) year Implementation Plan, **attached as pages 949 - 955 to the agenda**, demonstrating the benefit and cost to Council.

Discussion

The role of the Municipal Council of Windhoek regarding investment is to create a roadmap for investors on how easily they can invest in the City. The Windhoek Investment Incentives and Promotion Strategy (IIPS) seeks to increase investment and improve the investment climate and enabling environment in the jurisdiction of Windhoek by achieving the following goals:

- **To create an enabling environment for investment**
 - To reduce red tape by improving internal procedures and processes;
 - To improve bulk infrastructure;
 - To improve connectivity;
 - To improve access to resources; and
 - To improve access to funding and incentives.
- **To identify investment opportunities**
 - To identify comparative advantages;
 - To identify key investment sectors; and
 - To identify potential projects.
- **To improve stakeholder and investor communication and stakeholder engagements**
 - To improve the Municipal Council of Windhoek's internal stakeholder communication;

- To improve the Municipal Council of Windhoek's and potential investor communication;
 - To improve the Municipal Council of Windhoek's and existing business community communication;
 - To improve the Municipal Council of Windhoek's and other stakeholder communication; and
 - To create an efficient Windhoek Economic Development Strategy (WEDS) and Investment Partnership.
- **To improve regional competitiveness**
- To improve local business competitiveness;
 - To improve local business productivity; and
 - To improve the education levels and skills.
- **To increase awareness of investment opportunities**
- **To develop investment promotion claims**
- To develop niche investment opportunities; and
 - To improve global rankings (on indexes).
- **To attract investment**
- To encourage existing business/investors to expand their operations and production;
 - To encourage existing business/investors to enter new geographical markets (e.g. exports);
 - To encourage existing business/investors to expand their product ranges; and
 - To encourage new investors to invest in Windhoek.

To attain the above the Investment Incentives and Promotion Strategy (IIPS) centres on three (3) Strategic Pillars of the Investment Incentives and Promotion Strategy (IIPS) (2022 to 2027) as per Figure 1, **attached as page 956 to the agenda**, which are described as follows:

- **Upgrading general business and innovation environment**

The objective of this strategic intervention is for the Municipal Council of Windhoek to create and promote a conducive investment environment that will provide potential investors with an attractive value proposition (incentives) as investors are increasingly reviewing investment opportunities based on available information in a holistic manner.

- **Business Attraction Management**

The objective of this strategic intervention is for the Municipal Council of Windhoek's investment unit to proactively manage with relevant stakeholders the process of business attraction.

- **Investment Promotion**

The objective of this strategic intervention is for the Municipal Council of Windhoek to increase investment by conducting targeted investment promotion activities.

Expected outcomes of the Investment Incentives and Promotion Strategy (IIPS)

The Municipal Council of Windhoek can expect, based on the range of parameters, key outcomes of the Investment Incentives and Promotion Strategy (IIPS) to include, but are not limited to the following:

- **Overall investment outcomes**

- Number of new investors;
- Dollar value of investment; and
- Investor retention.

- **Relevant investment promotion outcomes**

- Number of website visitors;
- Call-to-Action page visitors; and
- AdWords.

- **Number of promotion activities performed per annum**

- **Windhoek Economic Development Strategy (WEDS) and Investment Forum**
- **Stakeholder engagements**
 - Number of stakeholders engaged; and
 - Number of stakeholder engagement meetings.
- **Personal selling**
 - Number of prospects engaged; and
 - Number of prospect meetings.

- **Number of bulk mailers sent**
- **Customer Relationship Management (CRM) System**
 - Number of stakeholder profiles created; and
 - Number of prospect profiles created.

Strategic implications/significance

The Investment Incentives and Promotion Strategy (IIPS) is aligned to the new 2022 to 2027 Vision of the Municipal Council of Windhoek, namely *Towards a Sustainable and Caring City by 2032*.

The Investment Incentives and Promotion Strategy (IIPS) speaks to the Economic Advancement Organisational Theme, which refers to ensuring that the City is productive, inclusive and sustainable through rendering access to urban services, socio-economic opportunities, spatial inclusiveness, quality urban environment and vibrant city life.

The overarching Strategic Objective of the initiative has all the Strategic Pillars, programmes and activities proposed for implementation aimed at ensuring quality of life for all our residents and stakeholders by focusing on creating a favourable environment for investors that supports and promotes the creation of employment opportunities within the City.

Economic benefits and financial implications

The Investment Incentives and Promotion Strategy (IIPS) aims ultimately to create sustainable new employment opportunities in the capital (direct benefit to residents) as well as generate income for Council (consumption of Municipal services by the newly employed). To measure overall impact of the Investment Incentives and Promotion Strategy (IIPS), information on new jobs created within the jurisdiction of Windhoek must be collected on a quarterly basis as part of monitoring and evaluation and reported on.

The Strategy further aims to improve the investment climate and enabling environment which will attract more private investment into the capital.

In addition, new business comes with new resources, technology and skills that, through exposure, learning and skills transfers, may vastly improve an areas' business and management practices, technology and innovation.

Finally, bringing economic opportunities (new businesses) closer to the labour market through integrated land-use planning and the targeted development of west and north-centralised commercial and industrial corridors will lessen the demand for public transport and its subsequent burden on the city (road maintenance, subsidised bus services costs, etc.).

The financial implication for implementing the five (5) year strategy is as follows:

Year	Amount required (NS)
Year 1 (2022/2023)	100 000.00
Year 2 (2023/2024)	2 020 000.00
Year 3 (2024/2025)	1 820 000.00
Year 4 (2025/2026)	1 468 000.00
Year 5 (2026/2027)	1 020 000.00
Total	6 428 000.00

Possible risks

The successful implementation of the Investment Incentives and Promotion Strategy (IIPS) is subject to risks, which the Municipal Council of Windhoek should be cognisant of in order to mitigate proactivity. The potential risks can be categorised in three (3) groups:

- On national level: Where the Municipal Council of Windhoek will not have much influence to mitigate, i.e. Namibia's credit rating by international financial institutions. Being aware the mitigation for the Municipal Council of Windhoek is to become in itself economical independent to portray investor confidence.
- On institutional level: The Municipal Council of Windhoek is in control, or should be, of the implementation of the Investment Incentives and Promotion Strategy (IIPS). The Strategy should be seen as whole and not lose-standing projects. The political will to implement should be expressed not only in words, but also in deeds. The first important recommendation to this success is the creation of an 'Investment Unit' who should be empowered on high level with the authority, responsibility and accountability to implement the Investment Incentives and Promotion Strategy (IIPS). While Council has been approached by the Namibia Investment Promotion and Development Board (NIPDB) to collaborate, the function of the latter is that of a national investment promotion agency. The Namibia Investment Promotion and Development Board (NIPDB) is an agency mandated by Cabinet to promote the country as a whole hence Windhoek still needs to have an empowered unit that will ensure that the capital does not lose out on attracting strategic investors.
- On project level: Once investment projects/incentives has been developed, risks for each project will have to be identified, monitored and where necessary mitigation should follow.

Compliance check/legal implications

The Strategy will adhere and work in accordance with the laws of the country and organisational policies and regulations. However, no legal implications are envisaged at this time.

Consultations

Extensive consultations took place as follows during the formulation of the Strategy with internal high-level stakeholders (Divisional Heads, Strategic Executives and Councillors):

High level consultations	Timelines
Transformational Strategic Plan (2017 to 2022) under Social Progress, Economic Advancement and Infrastructure Development Theme	2017
Call for consultancy services (closing date of bids)	January 2018
Award to Burmeister & Partners (Procurement Committee minutes July 2018, inception meeting)	August 2018
Strategic Executives and Divisional Heads	October 2018
Status Quo Report to Strategic Executives and Divisional Heads (presentation by Burmeister & Partners)	May 2019
Strategic Executives and Divisional Heads (circulation)	May 2020
Strategic Executives and Divisional Heads (re-circulation)	June 2020
Councillors and Strategic Executives (memo Chief Executive Officer)	August 2020
Strategic Executives Forum – 8 October 2020 (presentation by Burmeister & Partners)	October 2020
Councillors' Induction and Onboarding Programme	December 2020
Councillors' Induction and Onboarding Programme	January 2021
Presentation to Strategic Executives	June 2022
Presentation to Strategic Executives	August 2022

In addition to the above and as part of the status quo report to inform the Investment Incentives and Promotion Strategy (IIPS), the following Windhoek based businesses were surveyed:

- Trade and retail (three hundred and sixty eight (368));
- Manufacturers (two hundred and ninety three (293)); and
- Tourism industry (three hundred and thirty (330)).

Options

In the current structure the Economic Development Division is part of the Department of Economic Development and Community Services. When it comes to implementation, the Economic Development Division's hands are tied, by way of speech, as the latter is not able to directly take control of their projects, for example: They have to budget through other service departments and much needed investment sourced directly by individual departments; the result is that economic-oriented projects are fragmented, and their projects and timeframe for implementation are competing on a wider level with other priorities, the result is that the Economic Development Division does not have control and economic development is at the mercy of other service departments; a situation that has led to disjointed economic development and investment promotion failure.

In order to unlock economic development and investment promotion, it is critical that the supporting infrastructure as recommended by the Windhoek Economic Development Strategy be put in place to create an enabling environment.

Therefore, it is proposed to investigate the placement and constitution of the Department of Economic Development and Community Services to enable a targeted Economic Development focus within which the dedicated investment management function should operate, hereinafter referred to as the Investment Unit (currently called the 'Investment Promotion and Liaison Unit'). This recommendation should be prioritised also considering the proposed collaboration with the Namibia Investment Promotion Development Board (NIPDB) as per proposed pending Memorandum of Understanding between Council and the Namibia Investment Promotion Development Board (NIPDB) currently under development (still to be submitted to Council, for consideration).

Conclusion

There is clearly a need for an approved Investment Incentives and Promotion Strategy (IIPS), aligned with the Windhoek Economic Development Strategy (WEDS), if the Capital City is to increase employment opportunities, its global competitiveness and halt the slipping of its ranking in terms of various international indexes.

Investment incentives and promotion strategies are important for cities in terms of attracting much-needed investment that contributes to poverty alleviation, job creation and economic growth. It has been proven that countries and cities, through the following strategies draw more investment (domestic and foreign) than those that do not:

- Upgrade their investment environment;
- Proactively managed the attraction of investors; and
- Promote their 'places'.

By crafting a roadmap for investors on how they can seamlessly invest in Windhoek, the City will attract new investment into the capital that will result in the creation of new jobs and increased revenue for the Municipal Council of Windhoek. Fact is that Namibia (and the City by default as Capital) has experienced a decline in foreign direct investment over the past seven (7) years and is slipping year-on-year on international indexes. In addition, Credit Rating Agencies have placed Namibia at below investment grade which means that investing in Namibia (and Windhoek) is seen as risky and as a result the cost of credit to invest in Namibia is increasing.

For the Municipal Council of Windhoek to be productive, inclusive and sustainable, targeted pro-active activities have to be realised that create jobs for Windhoek residents which will invariably increase consumer spending. Only with an increase in consumer spending will residents be able to afford housing, municipal services and achieve a higher quality of life. It is therefore imperative that this, the first Investment Incentives and Promotion Strategy which aims to provide direction is approved by the Municipal Council of Windhoek and implemented to enable the City to achieve its developmental goals.

Management Committee, having considered the matter

RECOMMENDED

- 1 That the Windhoek Investment Incentives and Promotion Strategy (IIPS) and Public Guide (2022 to 2027), **attached as pages 780 – 927 and 928 – 948 respectively to the agenda**, be approved.
- 2 That the Strategic Executive: Human Capital and Corporate Services, in consultation with the Chief Executive Officer (Executive: Strategy and Performance Management), review the proposed structure of the Economic Development Division and location of the Investment Unit and submit recommendations in this regard to Council.
- 3 That the 2023/2024 Budget requested be approved and sufficient budgetary allocation by the Strategic Executive: Economic Development and Community Services be included during the annual budget discussion and be made available for the 2024/2025, 2025/2026, 2026/2027 Financial Years for the implementation of the Investment Incentives and Promotion Strategy (IIPS), subject to Council approval and the availability of funds.
- 4 That the Strategic Executive: Economic Development and Community Services formulate an Investment Incentives Policy to provide a statement of intent that will govern the provision and application of incentives offered by the Municipal Council of Windhoek to all domestic and foreign investors.
- 5 That the Strategic Executive: Economic Development and Community Services work closely together with the Chief Executive Officer (Manager: External Relations and Networking) at engaging with all relevant departments, the public and private sector, Non-Governmental Organisations (NGOs) and Academia, as well as other cities to introduce innovative modalities and form strategic partnerships (as recommended in the Investment Incentives and Promotion Strategy (IIPS)) that encourage job creation and strengthens local economic advancement.
- 6 That the Strategic Executive: Economic Development and Community Services, in consultation with the Strategic Executive: Finance and Customer Services, be mandated to receive all manner of donations targeting economic advancement on behalf of the Municipal Council of Windhoek and that a separate item number be created for this purpose.
- 7 That Ministerial approval be obtained to accept foreign donations made, in terms of section 30(1)(z)(i) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended).
- 8 That quarterly reports be submitted to Council on the progress of the Investment Incentives and Promotion Strategy (IIPS) projects, inclusive of donations received and rebates, where applicable, be implemented.
- 9 That the resolution be implemented prior to confirmation of the minutes.

[Municipal Council Agenda: 2022-10-27]

9.3.5

GOV.8 [HPH] APPROVAL OF BENEFICIARIES AND ERF CONDITIONS FOR THE MUNICIPAL COUNCIL OF WINDHOEK'S AFFORDABLE HOUSING PROGRAMME – ERVEN 6019 TO 6026, KHOMASDAL (L/6019-6026/Khd)

Introduction

Council per Resolution 191/08/2022, **attached as pages 960 - 961 to the agenda**, resolved to start the Affordable Housing Programme by way of a pilot project on Erven 6019 to 6026, Khomasdal. It was, *inter alia* resolved as follows:

- 3 *That six (6) houses be sold to qualifying first time buyers on Council's verified Waiting List.*
- 4 *That two (2) houses be reserved for Council employees in line with Council Resolution 234/08/2011.*
- 8 *That erf comments be prepared after the installation of services, and such be presented to Council for approval together with names of qualifying beneficiaries to be sourced from the Waiting List mentioned above.*

The construction of the eight (8) houses is underway, and completion is set for November 2022. In keeping with Council Resolution 191/08/2022, a Deeds Search was conducted on seventy eight (78) potential beneficiaries from Council's verified Land Waiting List to pave the way for the selection of six (6) beneficiaries and a further Deed Search was conducted on forty four (44) beneficiaries on Council's Waiting List for the lease of municipal houses to enable the selection of two (2) beneficiaries. The outcome of the Deed Search is **attached as pages 962 – 963 and 964 respectively to the agenda**.

Given the above, the purpose of this item is to present the following for consideration and approval:

- Selection criteria;
- List of beneficiaries;
- Procedure for handling households not meeting the set requirement; and
- Erf conditions.

The need to have beneficiaries approved by Council on an urgent basis will ensure occupation of houses on a rent-to-own basis to avoid vandalism and additional costs through appointment of security guards.

Discussion

1 Affordability

All beneficiaries shall be subjected to an affordability check prior to signing of the Deed of Sale. However due to time constraint exacerbated by a tight construction schedule assessment of affordability was not conducted, pre-approval from financial institutions or ability to pay cash will serve as proof of affordability. Financial institutions conduct their own affordability assessment as part of the pre-approval requirement.

2 Refined selection criteria

Council per Resolution 191/08/2022 approved the generic alienation and allocation criteria. The criteria is expanded to clearly indicate citizenship, movement on the waiting list, inclusion of a pre-approval as part of the affordability requirement, credit check and good standing on municipal accounts. The refined selection criteria are as follows:

2.1 Council's Land Waiting List (general public)

- The applicant must be a Namibian citizen or in possession of a Permanent Residence Permit. Certified copies of the relevant documents must be submitted with the application.
- The applicant must not currently have a property registered in their names with the Directorate of Deeds Registries (Deeds Office) within the legal boundaries of the Municipal Council of Windhoek, meaning that the beneficiary must be a first-time buyer in terms of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended).
- The applicant who is the longest on the Waiting List to be given first preference for the project and such proof be presented by the applicant and shall be verified by officials in the Department of Housing, Property Management and Human Settlement (Housing and Land Delivery Division).
- All selected beneficiaries identified through the Waiting Lists shall have an income of N\$25 000.00 per month or higher to qualify for the houses. This requirement is project specific and shall change from one project to the next depending on development level and input costs.
- The applicant must provide any of the following documents as proof affordability prior to signing the Deed of Sale:
 - Pre-approval from the bank;
 - Bank Guarantee; and
 - Proof of funds from the bank (cash).

- No house shall be sold to persons with outstanding municipal accounts. All outstanding accounts should be cleared before signing of the Deed of Sale. to effect the above, all prospective purchasers must undergo a credit check with the Strategic Executive: Finance and Customer Services to determine whether they owe the Municipal Council of Windhoek any money on services and rates.

2.2 Waiting List for the lease of municipal houses (Council employees)

The selection criteria for Council employees shall be the same as that for members of the general public, except that preference shall be given to those employees that fall in the B and C-Bands salary grading as resolved by Council.

3 Deed Search and selection of beneficiaries

A Deed Search was conducted on waiting lists presented to Council per Resolution 191/08/2022, being seventy eight (78) potential beneficiaries from Council's verified Land Waiting List and a further Deed Search was conducted on forty four (44) beneficiaries on Council's Waiting List for the lease of municipal houses, to enable selection of two (2) beneficiaries.

After applying the selection criteria, eight (8) beneficiaries were identified from the Land Waiting List for the general public and two (2) beneficiaries from the Waiting List for the lease of municipal houses.

The lists are presented in Tables 1 and 2. On the latter list, Nos. 3 and 7 were selected because all other potential beneficiaries either owned properties or retired:

Table 1: Land Waiting List for the general public

Demographic					Selection Criteria			
No.	Name	ID No.	Age	Gender	Registered (year)	Number of years on list	Namibian Citizen	Deeds Search
1	Johannes Kasanapi	6110090500129	60	Male	2000	22	Yes	Does not own
2	Absalom Uusiku	67122800164	55	Male	2001	21	Yes	Does not own
3	Justus Nyambali	73101500494	48	Male	2001	21	Yes	Does not own
4	Edla K Pujatura	77111100433	44	Female	2002	20	Yes	Does not own
5	Nicolaus N Festus	6705251100763	55	Male	2003	19	Yes	Does not own
6	Barkieas E Angula	76122400556	45	Male	2004	18	Yes	Does not own

Table 2: Waiting List for the lease of municipal houses

Demographic					Selection Criteria				
No.	Name	ID No.	Age	Gender	Registered (year)	Number of years on list	Grading	Namibian Citizen	Deed Search
1	LS Shakwa	73122500930	49	M	06/06/2008	14	B4	Yes	Owns Erf 5096, Otjomuise
2	Seyave	63102800645	59	M	08/07/2008	14	Retired: 31/01/2019	Yes	Does not own
3	EM Nakathingo	81041410360	41	F	16/07/2008	14	C3	Yes	Does not own
4	EK Haifidi	63050900695	59	M	24/07/2008	14	B4	Yes	Owns Erf 1152, Wanaheda
5	M Khi-khoeb	78051400038	44	M	17/10/2008	14	B5	Yes	Owns Erf 2805, Katutura

Demographic					Selection Criteria				
No.	Name	ID No.	Age	Gender	Registered (year)	Number of years on list	Grading	Namibian Citizen	Deed Search
6	Beukes	56081700345		F	26/11/2008	14	Retired: 31/08/2016	Yes	Does not own
7	Neis	66052900059	56	F	03/2009	13	B3	Yes	Does not own

In the event that any of the selected beneficiaries are unable to complete the transaction due to financial constraints or failure to meet requirement per the set criteria, permission is sought to replace the disqualified beneficiary with another beneficiary from the Waiting Lists in reference.

Erf conditions

The erf conditions for Erven 6019 to 6026, Khomasdal, as indicated per Table 3, were compiled from detailed engineering drawings released for construction by the technical departments as preliminary and post-construction assessment of the site conditions:

Table 3: Erf conditions

No.	Erf	Zoning	Size (m ²)	Density	Upset price (erf only) (NS)	Rate/m ² (NS)	Erf comments/conditions
1	6019	Single residential	549	1:300 m ²	289 000.00	526.41	<ul style="list-style-type: none"> - Access available; - Access via the panhandle from Sigma Street; - Erf lower than adjacent street level; - Sidewalk levels may not be changed for access; - The natural flow of stormwater may not be impeded; - Water and sewer available; - A 3 metre wide sewer servitude with one (1) manhole in the natural watercourse through the erf; - Sewer line along the western boundary of erf; - A 3 metre wide building line for each boundary line shall be maintained for future municipal services; and - Electricity available.
2	6020	Single residential	312	1:300 m ²	164 000.00	525.64	<ul style="list-style-type: none"> - Access available; - Erf lower than the adjacent street level; - Sidewalk levels may not be changed for access; - The natural flow of stormwater may not be impeded; - Water and sewer available; - A 3 metre wide sewer servitude in the natural watercourse through the erf; - Sewer line along the northern boundary of erf; - A 3 metre wide building line for each boundary line shall be maintained for future municipal services; and - Electricity available.
3	6021	Single residential	653	1:300 m ²	343 000.00	525.27	<ul style="list-style-type: none"> - Access available; - Access via the panhandle from Sigma Street; - Erf lower than the adjacent street level; Sidewalk levels may not be changed for access; - The natural flow of stormwater may not be impeded; - Water and sewer available; - Sewer line crossing the panhandle; - A 3 metre wide building line for each boundary line shall be maintained for future municipal services; and

No.	Erf	Zoning	Size (m²)	Density	Upset price (erf only) (N\$)	Rate/m² (N\$)	Erf comments/conditions
							- Electricity available.
4	6022	Single residential	360	1:300 m²	189 000.00	525.00	<ul style="list-style-type: none"> - Access available; - Erf lower than the adjacent street level; - Sidewalk levels may not be changed for access; - The natural flow of stormwater may not be impeded; - Water and sewer available; - Sewer line along the northern boundary of erf; - A 3 metre wide building line for each boundary line shall be maintained for future municipal services; and - Electricity available.
5	6023	Single residential	738	1:300 m²	361 000.00	489.16	<ul style="list-style-type: none"> - Access available; - Access via the panhandle from Sigma Street; - Erf lower than the adjacent street level; - Sidewalk levels may not be changed for access; - The natural flow of stormwater may not be impeded; - Water and sewer available; - Sewer line crossing the panhandle; - A 3 metre wide building line for each boundary line shall be maintained for future municipal services; and - Electricity available.
6	6024	Single residential	415	1:300 m²	218 000.00	525.30	<ul style="list-style-type: none"> - Access available; - Erf lower than the adjacent street level; - Sidewalk levels may not be changed for access; - The natural flow of stormwater may not be impeded; - Water and sewer available; - Sewer line along the northern boundary of erf; - A 3 metre wide building line for each boundary line shall be maintained for future municipal services; - Electricity available; and - Electrical kiosk installed in front of erf.
7	6025	Single residential	1 022	1:300 m²	440 000.00	430.53	<ul style="list-style-type: none"> - Access available; - Access via the panhandle from Sigma Street; - Erf lower than the adjacent street level; - Sidewalk levels may not be changed for access; - The natural flow of stormwater may not be impeded; - The stormwater inlet structure on the south eastern corner of the erf may not be impeded; - Water and sewer available; - Sewer line crossing the panhandle; - A 3 metre wide building line for each boundary line shall be maintained for future municipal services; and - Electricity available.
8	6026	Single residential	595	1:300 m²	312 000.00	524.37	<ul style="list-style-type: none"> - Access available; - Erf lower than the adjacent street level; - Sidewalk levels may not be changed for access; - The natural flow of stormwater may not be impeded; - Water and sewer available; - A 3 metre wide sewer servitude with one (1) manhole in the natural watercourse through the erf; - Sewer manhole on the north western corner of the erf.

No.	Erf	Zoning	Size (m ²)	Density	Upset price (erf only) (NS)	Rate/m ² (NS)	Erf comments/conditions
							<ul style="list-style-type: none"> - A 3 metre wide building line for each boundary line shall be maintained for future municipal services; and - Electricity available.

The abovementioned erf conditions (Table 3) are read together with the following conditions, which should be included in the Deed of Sale:

- That surface stormwater run-off be accommodated according to clause 35 of the Windhoek Town Planning Scheme (see Info 35 of the Town Planning Scheme).
- That no development be considered on or over any stormwater system or structure.
- That access be to the satisfaction of the Strategic Executive: Urban and Transport Planning.
- That earthwork, i.e. filling and shaping on the erf be done to municipal standards and accommodative of the stormwater run-off.

Conclusion

This item motivated the need to consider and approve refined selection criteria, list of beneficiaries for Erven 6019 to 6026, Khomasdal, procedure for handling households not meeting the set requirement, and erf conditions. As indicated in the motivation, construction of the eight houses is currently underway and completion is set for November 2022. To avoid vandalism or incurring of additional costs to protect the asset it is recommended that approval of beneficiaries be secured before the completion of houses.

Management Committee, having considered the matter

RECOMMENDED

- 1 That the start of the Municipal Council of Windhoek's Affordable Housing Programme by way of a pilot project on Erven 6019 to 6026, Khomasdal and the approval per Council Resolution 191/08/2022 to sell six (6) houses to qualifying first time buyers on Council's verified Waiting List and two (2) houses to Council employees on the Waiting List for the lease of council houses in line with Council Resolution 234/08/2011, be noted.
- 2 That, the generic allocation criteria approved by Council per Resolution 191/08/2022, be refined and expanded as follows for both the general public (from Council's Land Waiting List) and Council employees (from the Waiting List for the lease of municipal houses):
 - 2.1 That the applicant be a Namibian citizen or in possession of a Permanent Residence Permit, and certified copies of the relevant documents be submitted with the application.

- 2.2 That the applicant not currently have a property registered in their names with the Directorate of Deeds Registries (Deeds Office) within the legal boundaries of the Municipal Council of Windhoek, meaning that the beneficiary must be a first-time buyer in terms of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended).
- 2.3 That the applicant who is the longest on the Waiting Lists be given first preference for the project and such proof be presented by the applicant, to be verified by officials in the Department of Housing, Property Management and Human Settlement (Housing and Land Delivery Division).
- 2.4 That all selected beneficiaries identified through the Waiting Lists have an income of N\$25 000.00 per month or higher to qualify for the houses.
- 2.4.1 That it be noted that the requirement as per paragraph 2.4 above, is project specific and shall change from one project to the next depending on the development level and input costs.
- 2.5 That the applicant provide any of the following documents as proof affordability prior to signing the Deed of Sale:
- 2.5.1 Pre-approval from the bank;
- 2.5.2 Bank Guarantee; and
- 2.5.3 Proof of funds from the bank (cash);
- 2.6 That no house be sold to persons with outstanding municipal accounts, and all outstanding accounts should be cleared before signing of the Deed of Sale:
- 2.6.1 That to effect paragraph 2.6 above, all prospective purchasers undergo a credit check with the Strategic Executive: Finance and Customer Services to determine whether they owe the Municipal Council of Windhoek money on services and rates.
- ***
- 3 That it be noted that a Deed Search was conducted on all seventy eight (78) potential beneficiaries on the Municipal Council of Windhoek's verified Land Waiting List, **attached as pages 962 - 963 to the agenda**, for the purpose of the purpose of selecting six (6) qualifying beneficiaries, upon which the six (6) beneficiaries per Table 1 met the set requirement and as such approved for allocation:

Table 1: Land Waiting List for the general public

Demographic					Selection Criteria			
No.	Name	ID No.	Age	Gender	Registered (year)	Number of years on list	Namibian Citizen	Deeds Search
1	Johannes Kasanapi	6110090500129	60	Male	2000	22	Yes	Does not own
2	Absalom Uusiku	67122800164	55	Male	2001	21	Yes	Does not own
3	Justus Nyambali	73101500494	48	Male	2001	21	Yes	Does not own
4	Edla K Pujatura	77111100433	44	Female	2002	20	Yes	Does not own
5	Nicolaus N Festus	6705251100763	55	Male	2003	19	Yes	Does not own
6	Barkieas E Angula	76122400536	45	Male	2004	18	Yes	Does not own

- 4 That it be noted that a Deed Search was conducted on all fourty four (44) beneficiaries on the Municipal Council of Windhoek's Waiting List for the lease of municipal houses, **attached as page 964 to the agenda**, for the purpose of the selecting two (2) qualifying beneficiaries, upon which two (2) beneficiaries per Table 2 met the set requirement and as such approved for allocation:

Table 2: Waiting List for the lease of municipal houses

Demographic					Selection Criteria				
No.	Name	ID No.	Age	Gender	Registered (year)	Number of years on list	Grading	Namibian Citizen	Deed Search
1	LS Shakwa	73122500930	49	M	06/06/2008	14	B4	Yes	Owens Erf 5096, Otjomuise
2	Seyave	63102800645	59	M	08/07/2008	14	Retired: 31/01/2019	Yes	Does not own
3	EM Nakathingo	81041410360	41	F	16/07/2008	14	C3	Yes	Does not own
4	EK Haifidi	63050900695	59	M	24/07/2008	14	B4	Yes	Owens Erf 1152, Wanaheda
5	M Khi-khoeb	78051400038	44	M	17/10/2008	14	B5	Yes	Owens Erf 2805, Katutura
6	Beukes	56081700345		F	26/11/2008	14	Retired: 31/08/2016	Yes	Does not own
7	Neis	66052900059	56	F	03/2009	13	B3	Yes	Does not own

- 5 That permission be granted to the Strategic Executive: Housing, Property Management and Human Settlement to select beneficiaries from the two (2) waiting lists using an established selection criteria in the event that the eight (8) selected beneficiaries from the two (2) Waiting Lists are unable to complete their transactions.
- 5.1 That all substitutions as set out per paragraph 5 above, be approved by the Chief Executive Officer.
- 6 That the Strategic Executive: Housing, Property Management and Human Settlement conduct preliminary affordability assessments and allocate individual erven to beneficiaries based on their level of affordability by way of a confirmation of allocation letter.
- 6.1 That the allocation as per paragraph 6 above, be approved by the Chief Executive Officer.
- 7 That the following erf conditions for Erven 6019 to 6026, Khomasdal be approved and incorporated in the Deeds of Sale:

Table 3: Erf conditions

No.	Erf	Zoning	Size (m ²)	Density	Upset price (erf only) (N\$)	Rate/m ² (N\$)	Erf comments/conditions
1	6019	Single residential	549	1:300 m ²	289 000.00	526.41	<ul style="list-style-type: none"> - Access available; - Access via the panhandle from Sigma Street; - Erf lower than adjacent street level; - Sidewalk levels may not be changed for access; - The natural flow of stormwater may not be impeded; - Water and sewer available;

No.	Erf	Zoning	Size (m ²)	Density	Upset price (erf only) (N\$)	Rate/m ² (N\$)	Erf comments/conditions
							<ul style="list-style-type: none"> - A 3 metre wide sewer servitude with one (1) manhole in the natural watercourse through the erf; - Sewer line along the western boundary of erf; - A 3 metre wide building line for each boundary line shall be maintained for future municipal services; and - Electricity available.
2	6020	Single residential	312	1:300 m ²	164 000.00	525.64	<ul style="list-style-type: none"> - Access available; - Erf lower than the adjacent street level; - Sidewalk levels may not be changed for access; - The natural flow of stormwater may not be impeded; - Water and sewer available; - A 3 metre wide sewer servitude in the natural watercourse through the erf; - Sewer line along the northern boundary of erf; - A 3 metre wide building line for each boundary line shall be maintained for future municipal services; and - Electricity available.
3	6021	Single residential	653	1:300 m ²	343 000.00	525.27	<ul style="list-style-type: none"> - Access available; - Access via the panhandle from Sigma Street; - Erf lower than the adjacent street level; Sidewalk levels may not be changed for access; - The natural flow of stormwater may not be impeded; - Water and sewer available; - Sewer line crossing the panhandle; - A 3 metre wide building line for each boundary line shall be maintained for future municipal services; and - Electricity available.
4	6022	Single residential	360	1:300 m ²	189 000.00	525.00	<ul style="list-style-type: none"> - Access available; - Erf lower than the adjacent street level; - Sidewalk levels may not be changed for access; - The natural flow of stormwater may not be impeded; - Water and sewer available; - Sewer line along the northern boundary of erf; - A 3 metre wide building line for each boundary line shall be maintained for future municipal services; and - Electricity available.
5	6023	Single residential	738	1:300 m ²	361 000.00	489.16	<ul style="list-style-type: none"> - Access available; - Access via the panhandle from Sigma Street; - Erf lower than the adjacent street level; - Sidewalk levels may not be changed for access; - The natural flow of stormwater may not be impeded; - Water and sewer available; - Sewer line crossing the panhandle; - A 3 metre wide building line for each boundary line shall be maintained for future municipal services; and - Electricity available.
6	6024	Single residential	415	1:300 m ²	218 000.00	525.30	<ul style="list-style-type: none"> - Access available; - Erf lower than the adjacent street level; - Sidewalk levels may not be changed for access; - The natural flow of stormwater may not be impeded; - Water and sewer available;

No.	Erf	Zoning	Size (m²)	Density	Upset price (erf only) (NS)	Rate/m² (NS)	Erf comments/conditions
							<ul style="list-style-type: none"> - Sewer line along the northern boundary of erf; - A 3 metre wide building line for each boundary line shall be maintained for future municipal services; - Electricity available; and - Electrical kiosk installed in front of erf.
7	6025	Single residential	1 022	1:300 m²	440 000.00	430.53	<ul style="list-style-type: none"> - Access available; - Access via the panhandle from Sigma Street; - Erf lower than the adjacent street level; - Sidewalk levels may not be changed for access; - The natural flow of stormwater may not be impeded; - The stormwater inlet structure on the south eastern corner of the erf may not be impeded; - Water and sewer available; - Sewer line crossing the panhandle; - A 3 metre wide building line for each boundary line shall be maintained for future municipal services; and - Electricity available.
8	6026	Single residential	595	1:300 m²	312 000.00	524.37	<ul style="list-style-type: none"> - Access available; - Erf lower than the adjacent street level; - Sidewalk levels may not be changed for access; - The natural flow of stormwater may not be impeded; - Water and sewer available; - A 3 metre wide sewer servitude with one (1) manhole in the natural watercourse through the erf; - Sewer manhole on the north western corner of the erf; - A 3 metre wide building line for each boundary line shall be maintained for future municipal services; and - Electricity available.

8 That in addition to the erf conditions, Erven 6019 to 6026, Khomasdal be subjected to the following stormwater conditions and same be incorporated in the Deeds of Sale:

8.1 That surface stormwater run-off be accommodated according to clause 35 of the Windhoek Town Planning Scheme (see Info 35 of the Town Planning Scheme), stating:

8.1.1 That no stormwater drainage pipe, canal, work or obstruction (except stormwater drain pipes, canal or work which have been authorised in writing by the local authority or which have been or may be built, laid or erected in terms of any law) be constructed on or over the property or located in such a way that:

- The flow of stormwater from a higher lying property to a lower lying property is impeded or obstructed and through which any property is or may be endangered; or
- The flow of a natural watercourse (in which the local authority allow flood water to run-off, be discharged or to be canalised) is or can be changed, canalised or impeded.

- 8.1.2 That the maintenance of such stormwater pipe, channel or work be the responsibility of the owner of the concerned property.
 - 8.2 That prior approval be obtained from the Strategic Executive: Urban and Transport Planning if the accommodation of the stormwater on the erf is contemplated.
 - 8.3 That engineering drawings on how the stormwater would be accommodated to the satisfaction of the Strategic Executive: Urban and Transport Planning be submitted for approval simultaneously with the building plans.
 - 8.4 That all existing stormwater pipes, outlets and inlets or any other stormwater system be clearly indicated on all building plans submitted, prior to the approval thereof.
 - 8.5 That no building plans be approved until the stormwater conditions are met.
 - 8.6 That no development be considered on or over any stormwater system or structure.
 - 8.7 That earthwork, i.e. filling and shaping on the erf be done to municipal standards and accommodative of stormwater run-off.
 - 8.8 That access be to the satisfaction of the Strategic Executive: Urban and Transport Planning.
 - 8.9 That a condition for the resale of this property be included in the Title Deed of the erf, whereby transfer to a third party only take place with confirmation of the Municipal Council of Windhoek. [Approval will only be granted after the Strategic Executive: Urban and Transport Planning has certified that the stormwater has been accommodated satisfactorily.]
- ***
- 9 That this resolution be joined to, and read together with Council Resolution 191/08/2022, **attached as pages 960 - 961 to the agenda.**
 - 10 That the resolution be implemented prior to confirmation of the minutes.

[Municipal Council Agenda: 2022-10-27]

9.3.6

GOV.12 [CEO] COUNCIL RECESS – 2022/2023 AND SCHEDULE OF MEETINGS FOR 2023 (3/2/1)

Section 14(1)(a) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended) authorises the Chief Executive Officer to convene Municipal Council meetings not less than ten (10) times in every year reckoned from 1 January, at intervals of not more than ten-(10) weeks. This allows for Council to go into recess.

Management Committee, having considered the matter

RECOMMENDED

- 1 That Council go into recess from Thursday, **2 December 2022**, until Sunday, **15 January 2023** and that the first Management Committee meeting be held on **Tuesday, 17 January 2023** with the first Council meeting scheduled for **Thursday, 26 January 2023**.
- 2 That the Chief Executive Officer be authorised to convene special Management Committee or Council meetings during the recess period, if deemed necessary.
- 3 That all urgent matters that may occur during the recess period be decided upon by the Chairperson of Management Committee and any two (2) additional members of Management Committee, with the proviso that all resolutions be submitted to Management Committee at its first meeting to be held on **17 January 2023**, for condonation.
- 4 That members of Management Committee provide the Chief Executive Officer with the necessary details regarding their whereabouts and contact numbers during the recess period in order to execute paragraph 3 above.
- *** 5 That the schedule for Management Committee and Council meetings for the Year 2023, **attached as pages 965 - 966 to the agenda**, be noted.
- 6 That departments ensure to plan their various programmes/activities around the approved Schedule of Meetings.
- 7 That the resolution be implemented prior to confirmation of the minutes.

[Municipal Council Agenda: 2022-10-27]

9.3.7 **GOV.16 [CEO] REQUEST TO ACCEPT THE DONATION TOWARDS THE CITY OF WINDHOEK SANITATION PROGRAMME BY MAUREL & PROM NAMIBIA (PTY) LTD (5/14/1/1)**

Introduction

- *** Following an engagement with the Municipal Council of Windhoek's External Relations and Networking Division in mid-September 2022, Maurel & Prom Namibia (Pty) Ltd, in a letter dated 23 September 2022, **attached as page 967 to the agenda**, pledged to contribute to the Municipal Council of Windhoek sanitation programme, to the tune of USD27 000.00 (estimated at N\$489 240.00).

Background

With a history of almost two (2) centuries, Maurel & Prom Namibia (Pty) Ltd is an oil and gas exploration and production company listed on the regulated market of Euronext Paris. Furthermore, with its headquarters in both Paris and in its subsidiaries, Maurel & Prom Namibia (Pty) Ltd possesses a solid technical expertise, and a long operational experience, especially in Africa. The Group has a portfolio of high-potential assets focused on Africa and Latin America, consisting of both production assets and opportunities in the exploration or appraisal phase. The Group also holds a 20.46 % stake in Seplat, one of Nigeria's main operators that is listed on the stock exchanges of both London and Lagos. Maurel & Prom Namibia (Pty) Ltd also has financial support from its majority shareholder, the Indonesian national oil company Pertamina.

Likewise, Namibia accommodates a subsidiary of Maurel & Prom Namibia (Pty) Ltd with their continued activities in asset exploration and appraisal countrywide and their Namibian office headquarters remain located in the Municipal Council of Windhoek. Hence, following discussions with Honourable Christopher Likuwa, Regional Councillor of the Tobias Hainyeko Constituency and their exposure to the sanitation necessities in Windhoek's informal settlement, they have seen it best fit to make a donation to the Municipal Council of Windhoek to aid in the provision of sanitation facilities for the Tobias Hainyeko Constituency.

Subsequently, the Municipal Council of Windhoek's External Relations and Networking Division secured a consultative meeting with the Deputy General Manager of Maurel & Prom Namibia (Pty) Ltd, Ms Genieive Mangubat-Coppard, where the donation was announced.

Sanitation conditions in the informal settlement

With the lowest levels of sanitation coverage in southern Africa, Namibia has, to date, managed to ensure that merely 34 % of its population have access to sanitation facilities. This is coupled with the fact that 50 % of the residents in the informal settlements do not have access to toilets, plaguing these communities with the increasing spread of diseases and continuous decline of health conditions due to the ongoing practice of open defecation. Similarly, it is important to note that recent data provided by the United Nations Children's Fund's (UNICEF's) Namibia Multidimensional Poverty Report indicates that sanitation is only preceded by transportation in its contribution to multidimensional poverty.

It is with this understanding that the Municipal Council of Windhoek continues to champion initiatives and support for sufficient and adequate ablution facilities, particularly in the informal settlements. Hence, this donation by Maurel & Prom Namibia (Pty) Ltd comes at an imperative time as the Municipal Council of Windhoek is in need of additional funding to realise its goals for the implementation of sanitation facilities.

Purpose of this submission

It is against the aforementioned background that this submission seeks the approval of Management Committee and acceptance of the donation by the Municipal Council of Windhoek towards the Municipal Council of Windhoek's sanitation programme to the tune of USD27 000.00 (estimated at N\$489 240.00).

Management Committee, having considered the matter

RECOMMENDED

- 1 That the pledged donation by Maurel & Prom Namibia (Pty) Ltd, valued at USD27 000.00 (estimated at N\$489 240.00), towards the Municipal Council of Windhoek's Sanitation Programme, be noted and approved.
- 2 That the Strategic Executive: Infrastructure, Water and Technical Services, in consultation with the Strategic Executive: Housing, Property Management and Human Settlement, identify sanitation sites where this donation could be applied.
- 3 That the resolution be implemented prior to confirmation of the minutes.

[Municipal Council Agenda: 2022-10-27]

9.3.8

GOV.17 [EDC] PETITION: REMOVAL OF THE CURT VON FRANCOIS STATUE (16/17/P)

Management Committee at its meeting held on 6 April 2022 per Item GOV.2 *inter alia* resolved as follows:

- 1 *That due to the historical connotation to the Curt von Francois Statue, this matter be referred back in order for the Acting Strategic Executive: Economic Development and Community Services to address the following, whereafter it be resubmitted to Management Committee, for consideration:*
 - 1.1 *Conduct broader consultations with the affected communities;*
 - 1.2 *Explore the various options taking into consideration the financial implications thereof; and*
 - 1.3 *Cite the referencing/source documents regarding the historical background of the statue as contained in the body of the submission.*

Two (2) days of consultation in the form of a workshop took place from 15 to 16 June 2022 with stakeholders, which included amongst others, the University of Namibia (UNAM); National Heritage Council of Namibia (NHC); National Museum; Ministry of Education, Arts and Culture (Directorate of Culture); United Nations Educational, Scientific and Cultural Organization (UNESCO); Museum Association of Namibia; numerous petitioners as well as descendants of Curt von Francois (his grandson).

The Cultural Heritage Management workshop recommended as follows:

- *That the City embrace a new narrative to counter the almost exclusive colonial heritage landscape, which participants felt is the present overarching cultural expression in the city.*
- *That it be noted that there is a need to correct the history of Windhoek and that Curt von Francois has been misrepresented as the 'founder of Windhoek'.*
- *That it be noted that the Statue is not a declared national monument.*
- *That the meeting was inconclusive as to where to place the Statue following its removal, however, participants discussed various options.*
- *That the decision rest with Council as to where to relocate the Statue to.*
- *That public participation (residents, civic and cultural organisations) be solicited as to what to erect on the site following removal of the Statue, however, a number of ideas were discussed, such as a sculpture representing unity in the city.*

The abovementioned resolution was subsequently discussed at the Heritage Committee meeting held on 21 September 2022 (minutes **attached as pages 968 - 973 to the agenda**), where the Committee, *inter alia* resolved as follows:

- *That the matter be referred to Management Committee whereby it will be recommended to Council with recommendation of the Heritage Committee as resolved by Council resolution 332/10/2020 for consideration.*
- *That the Heritage Workshop Report of 15 and 16 June 2022 be attached to the item for Management Committee and Council consideration.*
- *That it be noted that the proposed future utilisation of the site requires Public Participation/consultation involvement whereby an advert should be placed in the newspapers upon Council Resolution.*

The matter is herewith resubmitted.

Background

On 10 June 2020, Council received a Petition, **attached as pages 974 – 1025 to the agenda**, signed by four hundred and seventy six (476) petitioners, requesting for the removal of the Curt von Francois Statue and the replacement thereof with the Jonker Afrikaner Statue which was to be erected on 18 October 2020. In addition, the Petition recommended the commissioning of a new statue through an open call to all Namibian artists and sculptures. The Curt von Francois Statue erected in front of the current Town House building, on 18 October 1965, aimed to celebrate the founding of the City, Windhoek.

Council at its special meeting held on 15 October 2020 per Resolution 332/10/2020 *inter alia* resolved as follows:

That this matter be referred to serve at the Street and Place Naming/Renaming Committee, to deliberate and consult the relevant stakeholders for input, whereafter it be resubmitted to Management Committee/Council, for consideration.

The purpose of this submission is to provide feedback to Council for further directives on the petition to remove the Curt von Francois Statue.

Feedback

1 Consultations

The Department of Economic Development and Community Services, through the Tourism Section (Economic Development Division), considered current regulatory instruments and consulted the following institutions on the procedures to follow regarding the removal of a statue or monument:

- The National Heritage Act, 2004 (Act 27 of 2004);
- The Museum Associations of Namibia; and
- The Heritage Council of Namibia.

During consultations it was determined that there were no guidelines/procedures that can be applied, apart from the National Heritage Council that has a mandate to protect the nationally declared heritage sites under whose jurisdiction these sites fall.

A Cultural Heritage Management workshop was hosted from 15 to 16 June 2022 with stakeholders, which included amongst others, the University of Namibia (UNAM); National Heritage Council of Namibia (NHC); National Museum; Ministry of Education, Arts and Culture (Directorate of Culture); United Nations Educational, Scientific and Cultural Organization (UNESCO); Museum Association of Namibia; the petitioners as well as a descendant of Curt von Francois (his grandson).

The main objective of the workshop was to 'solicit input from the relevant stakeholders on matters relating to the development of a legal framework that deals with the identification, registration, protection, restoration, reconstruction, management, sustainable use, removal and conservation of places and objects of heritage significance within the Windhoek municipal area' (the workshop report is **attached as pages 1026 - 1037 to the agenda**).

2 Key issues

When discussing colonial monuments, one must consider the following three (3) aspects (Museums Association of Namibia):

- The context of the period, and the events, and persons they commemorate;

- The circumstances, placing and purpose of the monument's erection; and
- The message the monument continues to send out with its current presence.

2.1 Historical background of the Curt von Francois Statue

- 2.1.1 The statue commemorates Major Curt von Francois. In 1889, the German Government sent him to Namibia with a contingent of soldiers to enforce German rule after Chief Maharero Tjamuaha had expelled the German representative Heinrich Göring. Curt von Francois first established a military fort at Tsaobis to control the trade route from Walvis Bay, and in 1890, he moved with his soldiers to Windhoek and built a fort there. He made use of the fact that Windhoek, which had been established as a town fifty (50) years earlier by Jonker Afrikaner, was at the time an unoccupied disputed territory between Maharero and Afrikaner's son Jan Jonker. Francois requested further military reinforcements from Germany, and when those arrived in 1892, he led an unprovoked surprise attack against Hendrik Witbooi at Hoornkrans which killed eighty (80) Nama, mostly women and children. Thus he started the first colonial war in Namibia. As he was entirely unsuccessful in this war, he was recalled to Germany and was replaced with Major Theodor Leutwein.
- 2.1.2 In 1965, the former apartheid Municipal Council of Windhoek wanted to reinforce the notion that Windhoek was a white city, and invented an anniversary to celebrate this idea. In the apartheid mindset, the city had been founded by a colonial white man, therefore they celebrated seventy five (75) years since Curt von Francois ordered to build a fort in Windhoek. To publicise the fiction of a 'pure white' history, they ordered a bronze statue of the alleged 'Founder of Windhoek' to be erected in front of the municipal building.
- 2.1.3 Fifty six (56) years later, the statue still proclaims in front of the Municipality building that a German colonial officer founded Windhoek in 1890. One hundred and twenty nine (129) years after he started the first colonial war in Namibia with a massacre of women and children, and two (2) years after a bible that was looted at that occasion was finally returned to Namibia, Curt von Francois is still being honoured at a very prominent place in Windhoek with a more-than-life size sculpture.

2.2 Findings

- 2.2.1 Namibia, like most African countries, have colonial statues, monuments and museums and the City currently has twenty eight (28) statues recorded, as per list, **attached as pages 1038 - 1040 to the agenda.**
- 2.2.2 It is further worth noting that consultation with the National Heritage Council of Namibia confirmed that the Curt von Francois Statue is not proclaimed as a National Heritage Monument.

- 2.2.3 There is furthermore a need for clear and transparent guidelines to create a policy framework that will, in future, guide Council in respect of the erection future statues, removal or non-removal of statues that would ultimately stand up against scrutiny. This framework will pave the way for future consultative deliberations and heritage sites management within the municipal area.

Deliberations

Following consideration and deliberations, the Heritage Committee concluded as follows:

- *It was confirmed by the department that consultations with the Museums Association of Namibia and the National Heritage Council of Namibia (NHC) took place.*
- *That further on a Cultural Heritage Management workshop was hosted from 15 to 16 June 2022 with stakeholders, which included amongst others, the University of Namibia (UNAM); National Heritage Council of Namibia (NHC); National Museum; Ministry of Education, Arts and Culture (Directorate of Culture); United Nations Educational, Scientific and Cultural Organization (UNESCO); Museum Association of Namibia; the petitioners as well as a descendant of Curt von Francois (his grandson).*
- *The Curt von Francois Statue is not a proclaimed National Heritage Resource.*
- *That it be recommended that the request from the petitioners be granted.*
- *That it be recommended that the Curt von Francois Statue be removed and displayed at the Windhoek City Museum.*
- *That the Heritage Committee will propose options for the future utilisation of this site at a later stage.*

Conclusion

While there is an ongoing argument whether to keep colonial statues or remove them, with forceful arguments for and against both, the alternative argument may be to rather re-contextualise existing statues within the correct historical background and additionally erect statues to balance the narrative.

It cannot be denied that the said Statue is part of the City's historical landscape and it is equally important to acknowledge that the Namibian past was indeed painful and brutal. In the interest of National Reconciliation, it is thus essential that this history be accurately told and commemorated within the correct historical context and not to glorify a false narrative.

Management Committee, having considered the matter

RECOMMENDED

- 1 That the submission pertaining to the removal of the Curt von Francois Statue, be noted.
- 2 That it be noted that the Curt von Francois Statue is not a proclaimed National Heritage Resource.
- 3 That the proposal by the Petitioners to remove the Curt von Francois Statue, be approved.
- 4 That the Strategic Executives: Economic Development and Community Services; and Infrastructure, Water and Technical Services, budget for and be tasked to remove and re-erect the statue at the Windhoek City Museum.
- 5 That the proposal by the Petitioners to replace the Curt von Francois statue with a statue of Jonker Afrikaner, be noted.
- 6 That it be noted that the proposed future utilisation of the site require further public consultations whereby the Strategic Executive: Economic Development and Community Services, in collaboration with the Chief Executive Officer (Manager: Corporate Communication, Marketing and Public Participation), place an advertisement in two (2) local newspaper upon the Council Resolution.
- *** 7 That the Cultural Heritage Management Workshop Report of 15 to 16 June 2022, **attached as pages 1026 - 1037 to the agenda**, be noted.
- 8 That the resolution be implemented prior to confirmation of the minutes.

[Municipal Council Agenda: 2022-10-27]

9.3.9

GOV.19 [EDC] APROVAL FOR THE DONATION OF TREES, SHRUBS AND FLOWER BOXES FROM THE RMB/FNB NAMIBIA GROUP (16/23/4)

Council per Resolution 327/10/2020 *inter alia* resolved as follows:

That this matter deferred in order for the Strategic Executive: Economic Development and Community Services, in Consultation with Chief Executive Officer (Manager: Mayoral and Council Affairs) to request for the applicants make a presentation on the donation of indigenous trees and other beautifications shrubs from the RMB Namibia Group to Councillors and the Councillors Forum, whereafter it be resubmitted to Management Committee/Council, for consideration.

*** The presentation to Councillors was facilitated on 6 October 2022 at the Councillors Forum. The presentation and attendance list are **attached as pages 1041 – 1049 and 1050 respectively to the agenda.**

The matter is herewith resubmitted.

Introduction

The purpose of the item is to request the Municipal Council of Windhoek (Council) to accept the donation of indigenous trees, shrubs and flower boxes from RMB/FNB Namibia Group as proposed. This donation will not only beautify the city but will assist the City's efforts to combat climate change and its negative effects on the environment. The donation consists of four hundred (400) indigenous trees, shrubs and one hundred (100) flower boxes. The donation is applicable for the period of three (3) years, whereby the RMB/FNB Namibia Group pledge to provide over hundred and thirty (130) trees and thirty three (33) flower boxes per year.

*** The RMB/FNB Namibia Group will donate trees, shrubs and branded flower boxes to the Council that will be planted along high traffic flow main arterial roads and at council facilities such as markets, offices including state schools. The flower boxes will be positioned around the city streets, markets, cemeteries and traffic islands. The contribution of trees will furthermore assist in the celebration of National Arbor Day for the next three (3) years. (See request and reply letters, **attached as pages 1051 and 1052 respectively to the agenda.**)

The donor must obtain written approval from the Economic Development Division in order to reserve space for outdoor advertising.

On behalf of Council, the Mayor and the Chief Executive Officer will accept the donation.

Background and discussion

Deliberations about the creation of green spaces around the city and strategies to counteract climate change were started in June 2019 between the Strategic Executive: Economic Development and Community Services (Parks Division) and the RMB/FNB Namibia Group. As part of their corporate social responsibility and green efforts, the said Group has served the Windhoek Municipal Council with a letter of intent outlining their plans to give a sizeable number of indigenous trees, shrubs and flower boxes as donation.

Given the increasing harmful effects of extreme weather and climate change on our ecosystem, this act of corporate social responsibility by the RMB/FNB Namibia Group has come at the perfect time. Council's current financial position, and the economic crisis of the country at large, makes it challenging to fund the procurement of trees, shrubs and other aesthetic horticultural products that will enhance green spaces around the city.

This noble corporate gesture from external stakeholders will go a long way toward helping Council achieve its responsibility for beautifying the city and planting of indigenous trees that can withstand Namibian conditions.

The selected indigenous trees and shrubs have non-aggressive roots that would not destroy walls and paving around the city. All the current exotic and aging trees around Hosea Kutako Drive, David Hosea Meroro Street and Robert Mugabe Avenue and other streets (estimated number of forty two (42) dead trees) will be removed to accommodate the donated indigenous trees and shrubs.

The flower boxes will be placed on the centre of street islands between the street lamps, specifically on Auas road from the intersection with Sean McBride Street up to the intersection with Mataman Street, as well as Independence Avenue from Hosea Kutako Drive up to the Katutura Customer Care Centre and many more street islands. The locations were identified by the Parks Division based on the lack of semi-purified water reticulation to enable planting at these locations and the flower boxes are able to be moved to allow for work to be conducted should the need arise.

Council will maintain the flower boxes filled with annual flowers. The RMB/FNB Namibia Group will brand the sides of the flower boxes as part of an advertising campaign. The Outdoor Advertising Technical Committee is to assess the branding size and other visibility issues while taking into account current concessionaires and the outdoor advertising strategy.

The quotation received from Windhoecker Beton & Kunststein Industrie CC (WIBEKU) is **attached as page 1053 to the agenda:**

Street name	Flower boxes/ trees/shrubs	Quantity
Frank Fredericks Drive	Flower boxes	28
Auas Road	Flower boxes	24
Independence Avenue	Flower boxes	28
David Hosea Meroro Street	Flower boxes	7
Circle at Mandume Ndemufayo Avenue and Hintrager Street intersection	Flower boxes	3
Circle at David Hosea Meroro/Otjomuise and Long Island Streets, Rocky Crest	Flower boxes	4
Augustino Neto Street next to Langerhans Pharmacy	Flower boxes	6
Total		100

Street name	Trees/Shrubs	Quantity
Mandume Ndemufayo Avenue and John Meinert Street	Trees	21
Mandume Ndemufayo Avenue and David Hosea Meroro Street	Trees	7
Mandume Ndemufayo Avenue	Trees	7
Robert Mugabe Avenue from Helidoor Street to the Fire Brigade	Trees	5
Robert Mugabe Avenue and Toivo Ya Toivo Street	Shrubs	50
Robert Mugabe Avenue adjacent to the State House in Auasblick and Suiderhof	Shrubs	40
Robert Mugabe Avenue and Jason Hamutenya Ndandi Street	Trees	12
Robert Mugabe Avenue and Sean McBride Street	Trees	5
Fire Brigade circle - Robert Mugabe and Independence Avenues	Trees/shrubs	55
Hosea Kutako Drive and Mathama Ghandi Street	Shrubs	21
Hosea Kutako Drive and Independence Avenue	Shrubs	60
Jasper Street, Academia	Tree	1
Parks Division Office	Trees	5
Frankie Frederick Drive at the Grove Mall	Trees	30
Sam Nujoma Drive in Avis	Trees	5

Street name	Trees/Shrubs	Quantity
Werner List Street	Trees/Shrubs	18
Hosea Kutako Drive and Frans Indongo Street	Shrubs	10
Hosea Kutako Drive at Rhino Park	Shrubs	6
Hosea Kutako and Sam Nujoma Drives to TV Moore Street	Shrubs	30
Hosea Kutako and Sam Nujoma Drives to TV Moore Street	Trees	12
Total		400

Impact of donation

Due to insufficient budget allocations in the previous years, tree donation by the RMB/FNB Namibia will assist Council to enhance the beautification and green landscape of the city.

The replacement of exotic trees around the City with indigenous trees that uses minimal water will have additional advantage for the Council, such as a decrease in water consumption in terms of maintenance requirements. The other benefit to Council is the utilisation of flower boxes that will require a limited amount of semi-purified water reticulation.

Facilities designated for planting trees and shrubs

Facility name	Trees/Shrubs
Gammams Cemetery	Shrubs
Oponganda Cemetery Extension B	Trees
Old Location Cemetery	Shrubs
Oponganda Cemetery office	Trees
Katutura Cemetery entrance	Trees
Khomasdal Cemetery office	Trees
Eros play parks	Trees
Katutura Customer Care	Trees/Shrubs
Wanaheda Customer Care	Shrubs
Soweto Customer Care	Shrubs
Okuryangava Customer Care	Trees/Shrubs
Khomasdal Customer Care	Shrubs
Soweto Market	Shrubs
Sam Nujoma Stadium VIP entrance	Shrubs
Katutura circle in Independence Avenue	Shrubs
Pionierspark play park	Trees
Brakwater Recreational Park	Trees
Goreangab Recreational Park	Trees

Specifications of trees and shrubs that will be donated

The products include the following species for the first year after approvals:

Type of tree	Type	Quantity	Price/unit (N\$)	Total (VAT inclusive) (N\$)
<i>Bolusanthus speciosus</i> (Wisteria)	Tree (20L), 1 to 1.2 metre	16	450.00	7 200.00
<i>Dombeya rotundifolia</i> (Wild pear)	Tree (40L), 2 metre	24	990.00	23 760.00
<i>Portulacaria afra</i> (Elephant bush)	Shrub (10L), 60 cm	134	60.00	8 040.00
<i>Carissa macrocarpa</i> (Large num-num)	Shrub (N4), 30 cm	40	60.00	2 400.00
<i>Mundulea sericea</i> (Cork bush)	Shrub (20L), 1.3 metre	12	650.00	7 800.00

Type of tree	Type	Quantity	Price/unit (N\$)	Total (VAT inclusive) (N\$)
<i>Peltophorum africanum</i> (Weeping Wattle)	Tree (20L), 1.5 metre	42	450.00	18 900.00
Flower boxes	Concrete boxes	33	1 640.00	54 120.00
Total	Flower boxes: 33	Trees/Shrubs: 268		122 220.00

Implementation of Strategic Plan goals

Approval of this donation will be in support of a key performance area for the Parks Division to horticulturally beautify and make the City habitable and attractive.

Fiscal impact/financing

The donation of trees, shrubs and flower boxes by the RMB/FNB Namibia Group will cover all purchasing of trees, shrubs and flower boxes, while the Council will be responsible for the removal of the existing dead trees, rehabilitating holes and purchasing of fertilisers, estimated at a cost of N\$20 000.00, and supply of compost (which is produced inhouse) as well as the eventual maintenance thereof.

Conclusion

This donation provides Council with the much-needed ability to provide greenery around the city due to the significantly reduced budget for plants and the hosting of the Arbor Day event. It should be noted the presentation to the Councillors Forum was facilitated and concluded on 6 October 2022.

Upon approval, it is proposed that the Mayor and The MB/FNB Namibia Group delegate officiate an official handing over ceremony to be determined in line with the Office of the Mayor Office and the RMB/FNB Namibia Group's events calendar.

Management Committee, having considered the matter

RECOMMENDED

- 1 That the intent by the RMB/FNB Namibia Group to donate four hundred (400) indigenous trees, with a total value of N\$100 000.00 and flower boxes, including shrubs to the value of N\$145 000.00 to the Municipal Council of Windhoek (Parks Division), over a period of three (3) years, be noted and accepted.
- 2 That it be noted that the following estimated cost of indigenous trees, shrubs and flower boxes are only for the first year (the value for the two (2) remaining years cannot be estimated currently due to fluctuations in price of goods and products):

Type of tree	Type	Quantity	Price/unit (N\$)	Total (VAT inclusive) (N\$)
<i>Bolusanthus speciosus</i> (Wisteria)	Tree (20L), 1 to 1.2 metre	16	450.00	7 200.00
<i>Dombeya rotundifolia</i> (Wild pear)	Tree (40L), 2 metre	24	990.00	23 760.00
<i>Portulacaria afra</i> (Elephant bush)	Shrub (10L), 60 cm	134	60.00	8 040.00

Type of tree	Type	Quantity	Price/unit (N\$)	Total (VAT inclusive) (N\$)
<i>Carissa macrocarpa</i> (Large num-num)	Shrub (N4), 30 cm	40	60.00	2 400.00
<i>Mundulea sericea</i> (Cork bush)	Shrub (20L), 1.3 metre	12	650.00	7 800.00
<i>Peltophorum africanum</i> (Weeping Wattle)	Tree (20L), 1.5 metre	42	450.00	18 900.00
Flower boxes	Concrete boxes	33	1 640.00	54 120.00
Total	Flower boxes: 33	Trees/Shrubs: 268		122 220.00

- 3 That the RMB/FNB Namibia Group be allowed to brand their logo on the flower boxes only subject to the provisions of the Outdoor Advertising Policy and Regulations.
- 4 That the following be noted:
 - 4.1 That the RMB/FNB Namibia Group shall directly apply, at the applicant's cost, for outdoor advertising leases and/or license holders for advertising space on existing approved structures in the vicinity of trees planted at its own cost and for its own maintenance over the duration of the donation.
 - 4.2 That the trees and flower boxes will be planted and placed respectively on high traffic flow roads as per the list provided and subject to approval of actual locations by technical departments and the Traffic Division as well.
 - 4.3 That the selected indigenous trees and shrubs has non-aggressive roots that would not destroy walls and paving around the City.
 - 4.4 That the exotic trees around Hosea Kutako Drive, David Hosea Merero Street and Robert Mugabe Avenue have reached their lifecycle, and most have dried up or died, and they will be removed by the Parks Division, and replaced by the new trees.
 - 4.5 That the first ground-breaking Tree Planting Ceremony will be done, following the approval of the donation, in October 2023, but that the placing and planting of flower boxes commence after the approval by Council.
- 5 That the Chief Executive Officer liaise with the Office of the Mayor to acknowledge and accept the donation.
- 6 That the RMB/FNB Namibia Group participate in the Tree Planting Project to be launched by the latter on National Arbor Day in October 2023 on a date to be agreed by the two (2) parties.
- 7 That in terms of the donation, the RMB/FNB Namibia Group provide Council with a total number of four hundred (400) indigenous trees/shrubs and one hundred (100) flower boxes over a period of three (3) years.
- 8 That it be noted that this tree donation shall be for a three (3) year period, starting on October 2023 and ending on October 2026.
- 9 That the initiative to beautify streets of the Municipal Council of Windhoek with annuals in flower boxes on street islands, be noted.

- 10 That one (1) flower box be placed in between the streetlights and other as per indicated spacing.
- 11 That the Parks Division do the planting of seasonal plants, watering and maintenance.
- 12 That the RMB/FNB Namibia Groups procure the flower boxes and donate to the Municipal Council of Windhoek.
- 13 That the resolution be implemented prior to confirmation of the minutes.

[Municipal Council Agenda: 2022-10-27]

9.3.10

GOV.22 [CEO] CONFIDENTIAL MATTER (5/12/3/2)

This matter, submitted to the Councillors under separate cover, is to be dealt with in terms of section 14(2)(a) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended), which reads as follows:

Every meeting of a local authority council shall be open to the public, except on any matter relating to -

- (ii) *any offer to be made by the local authority council by way of tender or otherwise for the purchase of any property;*

unless the local authority council by a majority of at least two-thirds of its members present at the meeting in question determines such a meeting to be so open.

[Municipal Council Agenda: 2022-10-27]

9.3.11

GOV.30 [ELE] UPDATE REPORT WITH REGARD TO THE GRANTING OF PERMISSION TO ONGOS VALLEY DEVELOPMENT ELECTRICITY DISTRIBUTION COMPANY TO OPERATE UNDER THE MUNICIPAL COUNCIL OF WINDHOEK'S DISTRIBUTION AND SUPPLY LICENSES AS AUTHORISED BY THE MINISTER OF MINES AND ENERGY (16/2/1)

Background

Council per Resolution 270/09/2022 amongst others *inter alia* resolved as follows:

- 4.10 *That Management Committee update Council on this matter at every Council meeting.*

Pursuant to the above resolution, this item seeks to provide an update to Council of action taken since above resolution was passed.

Update on action taken as per Council Resolution 270/09/2022

The letters of the Ministry of Mines and Energy, the Electricity Control Board (ECB) and the Developer, under the signature of the Mayor, **attached as pages 1054 – 1055, 1056 and 1057 – 1063 respectively to the agenda**, informing them of Council Resolution 270/09/2022, **attached as pages 1061 – 1063 to the agenda**, was finalised on 7 October 2022.

Engagement between the Strategic Executives: Electricity; and Housing, Property Management and Human Settlement and the Chief Executive Officer (Manager: Mayoral and Council Affairs) are ongoing to finalise the date of the in-house meeting with all the Councillors and Technical Teams regarding the Ongos Development. The plan is to still have this meeting within October 2022 depending on the availability of all stakeholders.

Management Committee, having considered the matter

RECOMMENDED

That the Update Report with regard to the granting of permission to Ongos Valley Development Electricity Distribution Company to operate under the Municipal Council of Windhoek's Distribution and Supply Licenses, as authorised by the Minister of Mines and Energy, be noted.

Financial implications

None

[Municipal Council Agenda: 2022-10-27]

9.3.12

FNS.1 [HPH] APPLICATION TO PURCHASE A PORTION OF ERF 7961, KATUTURA EXTENSION 20 FOR CONSOLIDATION WITH ERF 10671, KATUTURA EXTENSION 18 (L/7961/Kat) (L/10671/Kat)

Introduction

The purpose of this item is to submit to Council an application received from the owners of Erf 10671, Katutura Extension 20 to purchase a portion of Erf R/7961, Katutura Extension 18 for consolidation with Erf 10671, Katutura Extension 18 and to seek Council's approval thereof.

Application

An application dated 7 December 2018, **attached as page 1064 to the agenda**, was received from Mr OT Shangala, ID No. 741206 0029 7 and Ms V Shangala, ID No. 750613 0014 9, the owners of Erf 10671, Katutura Extension 20 to purchase a portion of Erf R/7961, Katutura Extension 18 for consolidation with Erf 10671, Katutura Extension 20.

Property description and locality

Erf 10671, Katutura Extension 20 is zoned 'residential' with a density of 1:250 m², is ± 715 m² in extent and is situated in Grens Street.

Erf R/7961, Katutura Extension 18 is zoned 'public open space', is ± 17 530 m² in extent and is situated between Claudius Kandovazu Street and Monte Christo Road.

The locality of the erven is indicated on the plan, **attached as page 1065 to the agenda.**

Technical comments

Technical comments were requested, and the following comments can be reported:

Comments from the Strategic Executive: Electricity

- Technical Support

There is in principle no objection to the application submitted to purchase a portion of Erf R/7961, Katutura Extension 18 for consolidation with Erf 10671, Katutura Extension 20: Provided:

- That where MV/HV overhead lines are in close proximity and servitudes have not been registered, the following horizontal clearing width apply for allowing access to the line and for safety reasons:
 - 220/132 kV – 25 metres either side of the overhead line structure; and
 - 66/33/22/19/11 kV – 11 metres either side of the overhead line structure, and therefore **no permanent structure is be erected within the stipulated area.**
- That should any municipal electrical infrastructure need to be relocated, dismantled or replaced as per request received from the applicant, all cost related thereto be for the applicant's account.
- That only one (1) service connection from the municipal electrical network be allowed per erf.
- That only one (1) additional meter point be allowed for an approved flat on erven that is zoned 'single residential', and for more meter points, the erf be rezoned to 'general residential'.
- That for erven that are zoned 'general residential', 'business', 'office', 'institutional' or 'industrial' and a service connection larger than 3 x 60 ampere is required, the applicant and/or his/her electrical engineering representative contact the Strategic Executive: Electricity well in advance, during the planning stage, before any building plans have been approved to determine whether the existing electrical network can handle the additional loading or whether a substation building or site is to be provided

by the applicant at his/her own cost to incorporate an additional substation; and also to determine the financial contribution to be made by the applicant towards the upgrade cost of the network.

Comments from the Strategic Executive: Infrastructure, Water and Technical Services

- **Bulk Water and Waste Water**

No water services are affected. Any further water requirements shall be for the applicant's account.

- **Engineering Services**

No sewer services are affected. Any further sewer requirements shall be for the applicant's account.

- **Solid Waste Management**

There is no objection to the application submitted for purchasing a portion of Erf 7961, Katutura Extension 18 to consolidate with Erf 10671, Katutura Extension 20. However, the Solid Waste Management Division advises the owners to make use of solid waste disposal sites near them for building rubble. It further discourage them from dumping their waste in riverbeds during construction period or when renovating their houses.

Comments from the Strategic Executive: Economic Development and Community Services

- **Environmental and Health Management Services**

There is no objection to the sale of a 10 metre portion as per Policy: Provided:

- That it be noted that Erf R/7961, Katutura Extension 18 is zoned 'public open space', and the rezoning of a public open space to any other land use is a listed activity in the Environmental Management Act, 2007 (Act 7 of 2007).
- That the applicant obtain environmental clearance from the Health and Environmental Services Division of the Municipal Council of Windhoek once the application has been approved.

- **Parks**

There is no objection to consolidate only a 10 metre portion with Erf 10671, Katutura Extension 20.

Comments from the Strategic Executive: Urban and Transport Planning

- Urban Planning

The proposed portion should be subdivided from Erf R/7961, Katutura Extension 18 and consolidated with Erf 10671, Katutura Extension 20. In terms of clause 5(3) of the Windhoek Town Planning Scheme, the subdivided portion will assume the same zoning of Erf 10671, Katutura Extension 20 upon consolidation.

There is no objection to the subdivision of a $\pm 239 \text{ m}^2$ portion of Erf R/7691, Katutura Extension 18 for consolidation purposes with Erf 10671, Katutura Extension 20: Provided:

- That the use of the land and building(s) comply with the provisions of the Windhoek Zoning Scheme.
- That Erf R/7961, Katutura Extension 18 be subdivided into proposed Portion A and the Remainder as indicated on the subdivision plan, Plan PDT/10671KAT, **attached as page 1066 to the agenda**, and the same plan be submitted to the Ministry of Urban and Rural Development.
- That the proposed Portion A be closed off as public open space in line with section 50(1)(c) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended).
- That the City prepare the closure notices for the applicant.
- That the applicant advertise the intended closure as per section 50(3) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended) and follow all processes as per the said Act for closure.
- That the applicant be responsible for the cadastral town planning applications to the Ministry of Urban and Rural Development.
- That the applicant submit copies of the approved erf diagrams to the Strategic Executive: Urban and Transport Planning upon approval of the subdivision and consolidation.
- That the cost of the town planning procedures be for the applicant's account.
- That the current conditions registered against Erf 10671, Katutura Extension 20 be retained with the usual short standard conditions of the Municipality, including a minimum building value equal to two (2) times the municipal valuation of the erf.

- **Planning, Design and Traffic Flow**

There is no objection to the purchase of a 10 metre portion of Erf R/7961, Katutura Extension 18 for consolidation with Erf 10671, Katutura Extension 20: Provided:

- That an Urban Arterial Account (UAA) contribution of N\$11 244.00 be applicable to be paid in Item 5001/05/2/05/1032.
- That no access be allowed from a public open space.

- **Roads and Stormwater**

A stormwater investigation was done and the following is reported:

- Erf 10671, Katutura Extension 20 has a general downward slope from the north east towards the south west;
- There is no stormwater system crossing Erf 10671, Katutura Extension 20, except for surface stormwater run-off;
- The proposed Portion A of Erf R/7961, Extension 18 has a general downward slope from the north east towards the south west;
- There is no stormwater system crossing the proposed Portion A of Erf R/7961, Extension 18, except for surface stormwater run-off; and
- It should however be noted that a minor stormwater course flows ± 15 metres away from to the south western boundary of Erf 10671, Katutura Extension 20, flowing into a westerly direction towards a larger stormwater course flowing along Erf R/7961, Katutura Extension 18.

There is no objection to the proposed purchase of a portion of Erf R/7961, Katutura Extension 18 and consolidation with Erf 10671, Grens Street Katutura Extension 20: Provided:

- That surface stormwater run-off be accommodated according to clause 35 of the Windhoek Town Planning Scheme.

Comments from the Strategic Executive: Housing, Property Management and Human Settlement

- **Property Management**

There is no objection against the subdivision and sale of Portion A ($\pm 239 \text{ m}^2$ in extent) of Erf R/7961, Katutura Extension 18 to the owners of Erf 10671, Katutura Extension 20 for consolidation purposes. The portion applied for does not have its own access to enable it to be considered for the creation of a single residential erf. Therefore, the application can be supported.

- Valuations

Portion A of Erf R/7961, Katutura Extension 18 is $\pm 239 \text{ m}^2$ in extent, and after consolidation with Erf 10671, Katutura Extension 20 the size of the consolidated erf will be $\pm 954 \text{ m}^2$ in total. As a result the development potential is enhanced in terms of the density being 1:250 m^2 . Therefore, Portion A ($\pm 239 \text{ m}^2$ in extent) of Erf R/7961, Katutura Extension 18 will be sold to the owners of Erf 10671, Khomasdal Extension 20 at full purchase price of N\$80 100.00, as determined by the Strategic Executive: Housing, Property Management and Human Settlement as per the Valuation Certificate dated 22 September 2022, **attached as page 1067 to the agenda**. Council Resolution 276/08/2004 (Policy), **attached as page 1068 to the agenda**, makes provision that if the portion to be consolidated is sold at full purchase price, the costs of the town planning and cadastral procedures be deducted from the purchase price, therefore Portion A of Erf R/7961, Katutura Extension 18 ($\pm 239 \text{ m}^2$ in extent) will be sold to the owners of Erf 10671, Katutura Extension 20 at a price after deducting the costs of the town planning procedures.

Should the owners of Erf 10671, Katutura Extension 20, wish to take occupation of Portion A ($\pm 239 \text{ m}^2$ in extent) of Erf R/7961, Katutura Extension 18 prior to the conclusion of the sale, it be leased to applicants once the preliminary diagrams are available, pending the finalising of the sale, at a monthly rental of N\$667.50. The rental was calculated at 10 % of the purchase price divided by twelve (12) months, and should be further subject to annual escalation in line with the Namibia Inflation Rate.

Site visit

A site visit was conducted on 23 September 2022 and it was confirmed that Portion A ($\pm 239 \text{ m}^2$ in extent) of Erf R/7961, Katutura Extension 18 is free from encroachments and illegal occupation. A photograph of the site is **attached as page 1069 to the agenda**.

Neighbour's consent

A favourable neighbour's consent, **attached as page 1070 to the agenda**, has been obtained from the owner of Erf 7571, Katutura Extension 18.

Conclusion

The item together with the technical comments received is herewith submitted to Council, for consideration. It is proposed that Erf R/7961, Katutura Extension 18 be subdivided into Portion A ($\pm 239 \text{ m}^2$ in extent) and the Remainder as indicated on the subdivision plan, Plan PDT/10671KAT, **attached as page 1066 to the agenda**, and that Portion A ($\pm 239 \text{ m}^2$ in extent) be sold to the owners of Erf 10671, Katutura Extension 20.

Management Committee, having considered the matter

RECOMMENDED

- 1 That Erf R/7961, Katutura Extension 18 be subdivided into Portion A ($\pm 239 \text{ m}^2$ in extent) and the Remainder as indicated on the subdivision plan, Plan PDT/10671KAT, **attached as page 1066 to the agenda.**
- 2 That approval be granted for the sale of Portion A ($\pm 239 \text{ m}^2$ in extent) Erf R/7961, Katutura Extension 18 to the owners of Erf 10671, Katutura Extension 20 for consolidation purposes.
- 3 That Portion A ($\pm 239 \text{ m}^2$ in extent) of Erf R/7961, Katutura Extension 18 be closed as a public open space in terms of section 50(1) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended).
 - 3.1 That the City prepare the closure notice and that the applicants/owners of Erf 10671, Katutura Extension 20, at own cost, be responsible for inserting the notice in the media, placing a copy on-site and for distribution to affected neighbours.
 - 3.2 That proof of successful advertising be provided to the Strategic Executive: Urban and Transport Planning before the transfer process.
- 4 That Portion A ($\pm 239 \text{ m}^2$ in extent) of Erf R/7961, Katutura Extension 18 be consolidated with Erf 10671, Katutura Extension 20 into one (1) erf, simultaneously with transfer.
- 5 That the standard conditions registered against Erf 10671, Katutura Extension 20 be retained against the consolidated erf.
- 6 That upon consolidation, Portion A of Erf R/7961, Katutura Extension 18 assume the same zoning as Erf 10671, Katutura Extension 20, being 'residential' with a density of 1:250 m^2 , in terms of clause 5(3) of the Windhoek Zoning Scheme.
- 7 That the applicants/owners of Erf 10671, Katutura Extension 20 obtain an Environmental Management Clearance Certificate from the Strategic Executive: Economic Development and Community Services in terms of the Environmental Management Act, 2007 (Act 7 of 2007).
- 8 That the applicants/owners of Erf 10671, Katutura Extension 20 be responsible for the town planning and cadastral procedures, i.e. closure, subdivision, consolidation, survey and registration of the newly consolidated erf and all costs involved.
- 9 That the costs of the town planning and cadastral procedures be deducted from the purchase price.

- 10 That, after obtaining the Environmental Management Clearance Certificate and successful completion of the closure, town planning and cadastral procedures, Portion A ($\pm 239 \text{ m}^2$ in extent) of Erf R/7961, Katutura Extension 18 be sold to the owners of Erf 10671, Katutura Extension 20 for consolidation purposes at full market price of N\$335.00/ m^2 thus N\$80 100.00 as indicated on the Valuation Certificate dated 22 September 2022, **attached as page 1067 to the agenda**, less the costs as per paragraph 9 above.

- 11 That the sale of Portion A ($\pm 239 \text{ m}^2$ in extent) of Erf R/7961, Katutura Extension 18 be subject to the following conditions:
 - 11.1 That surface stormwater run-off be accommodated according to clause 35 of the Windhoek Town Planning Scheme, stating:
 - 11.1.1 That no stormwater drainage pipe, canal, work or obstruction (except stormwater drain pipes, canal or work which have been authorised in writing by the local authority or which have been or may be built, laid or erected in terms of any law) be constructed on or over the property or located in such a way that:
 - The flow of stormwater from a higher lying property to a lower lying property is impeded or obstructed and through which any property is or may be endangered; or
 - The flow of a natural watercourse (in which the local authority allow flood water to run-off, be discharged or to be canalised) is or can be changed, canalised or impeded.
 - 11.1.2 That the maintenance of such stormwater pipe, channel or work be the responsibility of the owners of the concerned property.
 - 11.2 That should any municipal electrical infrastructure on the sidewalk need to be relocated to accommodate a new access to the erf, all costs involved be for the applicant's account.
 - 11.3 That only one (1) service connection and one (1) meter point be allowed from the municipal electrical network.
 - 11.4 That only one (1) additional meter point be allowed for an approved flat on erven that are zoned 'single residential' and for more meter points, the erf be rezoned to 'general residential'.
 - 11.5 That it be noted that that no water or sewer services are affected and that any further water and sewer requirements shall be for the applicants' accounts.
 - 11.6 That the use of the land and building(s) comply with the provisions of the Windhoek Town Planning Scheme.
 - 11.7 That the current conditions registered against Erf 10671, Katutura Extension 20 be retained with the standard conditions of the Municipality, including a minimum building value equal two (2) times the municipal valuation of the erf.
 - 11.8 That an amount of N\$11 244.00 be contributed to the Urban Arterial Account (UAA) and be paid in Item 5001/05/2/05/1032.
 - 11.9 That no access be obtained over the public open space.

- 12 That the applicants/owners of Erf 10671, Katutura Extension 20:
 - 12.1 Submit proof to the Strategic Executive: Housing, Property Management and Human Settlement not later than six (6) months from the date of this Council Resolution that the Environmental Management Clearance Certificate has been obtained and the proposed closure, subdivision and consolidation have been submitted to the Urban and Regional Planning Board for consideration.
 - 12.2 Submit proof to the Strategic Executive: Housing, Property Management and Human Settlement within sixty (60) days after the issuing of the Closure, Subdivision and Consolidation Certificate that a Surveyor has been appointed.
 - 12.3 Submit draft erf diagrams to the Strategic Executive: Housing, Property Management and Human Settlement within three (3) months after appointment of the Surveyor, indicating that the survey has been completed and that the diagrams have been submitted to the Surveyor General for approval.
 - 12.4 Sign the Deed of Sale not later than sixty (60) days after the approval of the diagrams by the Surveyor General and having been requested to do so by the Strategic Executive: Housing, Property Management and Human Settlement and pay the purchase price.
 - 12.5 That should the applicants/owners of Erf 10671, Katutura Extension 20 fail to comply with any of the conditions stipulated, or fail to finalise the sale within eighteen (18) months from the date of this Council Resolution, the allocation of Portion A ($\pm 239 \text{ m}^2$ in extent) of Erf R/7961, Katutura Extension 18 to the owner of Erf 10671, Katutura Extension 20 beyond the eighteen (18) months be subject to the price escalation to be determined by the Strategic Executive: Housing, Property Management and Human Settlement.
- 13 That, should the applicant wish to take occupation of Portion A ($\pm 239 \text{ m}^2$ in extent) of Erf R/7961, Katutura Extension 18, prior to the conclusion of the sale thereof, Portion A ($\pm 239 \text{ m}^2$ in extent) of Erf 7961, Katutura be leased to the applicant once the preliminary diagrams are available, pending the sale, at a monthly rental of N\$667.50, further subject to the annual escalation in line with the Namibia Inflation Rate.
- 14 That the sale/lease of Portion A ($\pm 239 \text{ m}^2$ in extent) of Erf R/7961, Katutura Extension 18 be advertised in terms of section 63(2) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended).
- 15 That the sale/lease of Portion A ($\pm 239 \text{ m}^2$ in extent) of Erf R/7961, Katutura Extension 18 be subject to Ministerial approval in terms of section 30(1)(t) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended).
- 16 That the Chief Executive Officer (Corporate Legal Adviser) draft the Deed of Sale.
- 17 That the resolution be implemented prior to confirmation of the minutes.

Financial implications

Service rendered	Funds required (NS)	Funds available
Advertisement cost	4 000.00	Item 4000/20/1/10/0025

[Municipal Council Agenda: 2022-10-27]

9.3.13 FNS.2 [HPH] STAFF MATTER
(L/5462/Khd)

This matter, submitted to the Councillors under separate cover, is to be dealt with in terms of section 14(2)(a) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended) which reads as follows:

Every meeting of a local authority council shall be open to the public, except on any matter relating to -

- (i) *the appointment, promotion, conditions of employment and discipline of any particular officer or employee of a local authority council;*

unless the local authority council by a majority of at least two-thirds of its members present at the meeting in question determines such a meeting to be so open.

[Municipal Council Agenda: 2022-10-27]

**9.3.14 SOP.1 [ELE] REQUEST FOR APPROVAL OF
HIGH MAST LED FLOOD LIGHT POSITIONS
TO BE PROVIDED IN THE WINDHOEK
INFORMAL SETTLEMENTS FOR
THE 2022/2023 FINANCIAL YEAR**
(3/3/12)

Background

The Strategic Executives Forum at its meeting held on 18 August 2022 *inter alia* resolved as follows:

- *Recommended on condition that the Strategic Executive; Electricity first address the following, thereafter, place the item on the agenda of the next Councillors Advisory Committee on Basic Services, prior to the matter serving at Management Committee, for consideration:*
 - *Update the item with the criteria;*
 - *Consult the Head: City Police and Strategic Executive: Housing, Property Management and Human Settlement; and*

- *Cluster the constituencies where the high mast LED flood lights will be installed and provide reasons for the selection.*

The Department of Electricity made a presentation on the subject matter to the Councillors Advisory Committee on Basic Services which resulted in site visits to the areas held on 9 and 15 September 2022. The Councillors Advisory Committee on Basic Services inputs and other request are thus incorporated hence the item is hereby submitted to Management Committee, for consideration.

The Ministry of Urban and Rural Development availed funds to the amount of N\$9 769 000.00 to the Municipal Council of Windhoek for the 2022/2023 Financial Year for the upgrading and development of informal settlement and low-income areas in Windhoek. An amount equal to N\$6 994 167.45 of the total allocation is earmarked for electrification of various informal settlements as approved by Council. The balance equal to N\$2 774 832.55 is earmarked for provision of high mast flood lights in different informal settlements as identified by the security agencies.

Purpose of the item

This item seeks Council approval for the five (5) nominated Locations/Informal Settlements which should be considered for the provision of high mast flood lights during the 2022/2023 Financial Year.

Proposed locations of high mast flood lights

The Department of Electricity requested possible positions for the installation of high mast flood lights from the City Police. The following areas were identified as dark hotspot areas where people are being robbed at night as well as early morning hours:

No.	Area	Constituency
1	Tobias Hainyeko Primary School riverbank	Tobias Hainyeko
2	Riverbank behind Ovatelo Connecting Ombili and Oshitenda	Tobias Hainyeko
3	Nalitungwe Robots, Soweto	John Pandeni
4	Ombili 4-Way	Moses Garoëb
5	MTC Tower, Okahandja Park	Tobias Hainyeko
6	Havana 4-Way	Moses Garoëb
7	Havana circle	Moses Garoëb
8	Havana dumping site	Samora Machel
9	Omuwapu Street, Babilon	Tobias Hainyeko
10	Behind new Police Station, Omuwapu Street	Tobias Hainyeko
11	Goreangab Soccer Field (between dumping site and Chinese Garden)	Samora Machel
12	End of Outapi Street, Havana	Moses Garoëb
13	Behind Frans Indongo Primary School	Tobias Hainyeko
14	Eehambo daNehale Interlocks and Deeper	Moses Garoëb
15	Sam Nujoma Drive, between Road Block and Otjomuise Road	Khomasdal Constituency
16	Otjomuise Riverbed, Istanbul Street	Khomasdal Constituency
17	Sonderwater, Katutura	Katutura East

The department did a cost estimate for the provision of high mast flood lights including power supplies for all the above areas which was estimated to be N\$8 493 202.82 the summarised cost estimate is **attached as page 1072 to the agenda.**

Based on the above cost estimate and the available budget of N\$2 774 832.55 which is earmarked for provision of high mast flood lights, five (5) high mast flood lights can be provided to various informal areas.

The Councillors Advisory Committee on Basic Services on provision of basic services visited the 17 listed sites in order to recommend the required 5 sites to be provided with high mast flood lights. The site visits took place on the 9 and 15 September 2022.

Based on the findings from the sites visits, the following localities are recommended:

No.	Area	Constituency	Estimated cost (N\$)
1	Havana Dumping Site	Samora Machel	492 541.34
2	Goreangab Soccer Field (toward Ongos)	Samora Machel	482 541.34
3	Eehambo daNehale Interlocks and Deeper (Nalitungwe)	Moses Garoëb	662 541.34
4	Behind Frans Indongo Primary School	Tobias Hainyeko	542 541.34
5	Sonderwater, Katutura	Katutura East	442 541.34
Contingency funds			152 125.85
Total budget 2022/2023 Financial Year			2 774 832.55

Management Committee, having considered the matter

RECOMMENDED

- 1 That approval be granted to provide the following five (5) areas/sites from the list of identified hotspot areas by the Head: City Police with high mast flood lights during the 2022/2023 Financial Year:

No.	Area	Constituency
1	Havana Dumping Site	Samora Machel
2	Goreangab Soccer Field (toward Ongos)	Samora Machel
3	Eehambo daNehale Interlocks and Deeper (Nalitungwe)	Moses Garoëb
4	Behind Frans Indongo Primary School	Tobias Hainyeko
5	Sonderwater, Katutura	Katutura East

- 2 That the exact location of the high mast flood lights be finalised in consultation with Constituency Councillors' Offices.
- 3 That the resolution be implemented prior to confirmation of the minutes to allow the Strategic Executive: Electricity to start implementing the project as a matter of urgency.

Financial implications

Funds required

No.	Area	Constituency	Estimated cost (N\$)
1	Havana Dumping Site	Samora Machel	492 541.34
2	Goreangab Soccer Field (toward Ongos)	Samora Machel	482 541.34
3	Eehambo daNehale Interlocks and Deeper (Nalitungwe)	Moses Garoëb	662 541.34

No.	Area	Constituency	Estimated cost (N\$)
4	Behind Frans Indongo Primary School	Tobias Hainyeko	542 541.34
5	Sonderwater, Katutura	Katutura East	442 541.34
Contingency funds			152 125.85
Total budget 2022/2023 Financial Year			2 774 832.55

Funds available

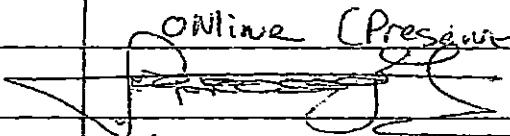
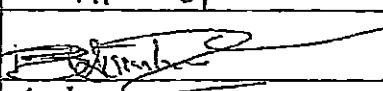
N\$2 774 832.55 - Grant Funding from the Ministry of Urban and Rural Development (2022/2023 Financial Year) Budget Allocation

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ATTENDANCE REGISTER: COUNCILLORS



Workshop/Presentation/Meeting Title: Workshop with Councillors on the Integrated Waste Management Plan (IWMP)
Venue: Council Chambers
Date of Workshop/Event: 18 August 2022
Starting time: 14:30
Closing time: 16:30
Date Submitted: 19/08/2022

NAMES	SIGNATURES
Cllr Sade Shireen Gawanas Mayor	online (Present)
Cllr Joseph Uapingene Deputy Mayor	
Cllr Ndesihafela Larandja MC Chairperson	Apology
Cllr Ivan Skrywer MC Member	Apology
Cllr Dr Ottilie Saarty Uukule MC Member	
Cllr Bernadus Araeb MC Member	Apology
Cllr Juergen Hecht MC Member	online (Present)
Cllr Fransina Ndateelela Kahungu	online (Present)
Cllr Clemencia Claudia Hanases	Hanases
Cllr Dr Job Anupanda	Apology
Cllr Queen Omagano Kamati	online (Present)
Cllr Austin Kwenani	online (Present)
Cllr Ilse Keister	Apology
Cllr Shafiishuna Sam Nijoma	Apology
Cllr Magdalena Lombardt	M/Lombardt

Year	2022/23				2023/24				2024/25				2025/26				2026/27								
Quarters	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4					
OBJECTIVE 1 :DEVELOP LEGISLATIVE FRAMEWORK, FOSTER POLITICAL WILL & FACILITATE COOPERATIVE GOVERNANCE																									
	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Stakeholders	SWM Driver	Key Performance Indicators	Cost (N\$)	Target
	2022/23				2023/24				2024/25				2025/26				2026/27								
GOALS																									
1.1 SWM Regulations & Policy reviewed																									
ACTIVITIES																									
1.1.1 Plan for the regulations & policy review developed and implemented																					Legal	Licensing	Action Plan Approved by SWM Chief	OPEX	Plan fully implemented by 2022
1.1.2 Incorporate suggested amendments of the Regulations & Policy																					Legal	Licensing	No. of amendments	N\$150,000	100% Amended Regulations implementable by 2025
1.1.3 Amendments launched & Information sessions held with various stakeholders																					Legal	Licensing	Sessions held	N\$100,000	
1.2 Compliance and Enforcement system developed and implemented																									
1.2.1 Conduct systematic monitoring of compliance with regulations at all levels																					City Pol	All	No. of monitoring conducted	OPEX	100% complaints by 2024
1.2.2 Establishment of an anonymous non-compliance reporting system																					Finance	All	No. of non-compliance reports	OPEX	50% Increase in illegal dumping reports by 2024
1.2.3 Ongoing peace officer training & refresher to both old and new staff for adherence to compliance & enforcement protocol																					Legal, City Pol	Operations& Licensing	No. of officials trained	OPEX	100% of officials trained by 2024
1.2.4 Review and update the fine system of SWM Regulations																					Legal, City Pol	Operations & Licensing	% of fine system reviewed	N\$50,000	100% reliable fine system by 2025
1.2.5 Study and benchmark the possibility of SWM Division to create Compliance Section to deal with all compliance issues																					HCCS	Operations & Licensing	Benchmark Study conducted	N\$150,000	
1.3 Cooperation among various departments within the City of Windhoek enhanced																									
1.3.1 Develop Councillors Open Day Program to foster Political Will (Both CoW & Constituency)																					Office of the Mayor	Licensing	No. of Open Days Conducted	OPEX	1 Councillor Open Day per year
1.3.2 Areas of cooperation (departmental) identified & forums established (e.g City Pol, ED)																					Internal stakeholders	L & S	Forums, committees	N\$60,000	100% of relevant departments engagement
1.4 Cooperation with National bodies and relevant stakeholders																									

1.4.1 Engage National and Regional government in dialogue and discussion pertaining to measures to ensure the implementation of the integrated waste management hierarchy principles across all levels of government	↔				↔					↔					↔				↔									Office of the Mayor, CEO	Licensing	Number (#) of engagements out of the planned engagements	N\$40,000	One (1) engagement per year
1.4.2 Encourage and promote Public Private Partnerships (PPP's) in a controlled environment and to the benefit of the City of Windhoek, the residents & environment					→																							Office of the Mayor, CEO	Licensing	PPP proposal formulated and approved	N\$30,000	80% of private sector & community engagement by 2023
<p><u>Legend:</u></p> <p>On-going ↔</p> <p>Implemented →</p>																																

Year	2022/23				2023/24				2024/25				2025/26				2026/27									
Quarters	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4						
OBJECTIVE 2 : WASTE MINIMIZATION AND CLEANER PRODUCTION																					Stakeholders	SWM Driver	Key Performance Indicators	Cost (N\$)	Target	
	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr						
	2022/23				2023/24				2024/25				2025/26				2026/27									
GOALS																										
2.1 Waste minimisation/reduction strategy developed and implemented																										
ACTIVITIES																										
2.1.1 Finalize the draft waste reduction strategy (i.e. reuse, recycling (resource recovery))	→	→	→																		Operations	Licensing	No. of draft strategies presented to management out of planned	N\$50,000	Strategy Approval by August 2023	
2.1.2 Develop and implement marketing and education program for recycling initiatives and waste buy-back centres	→	→																		Public Participation, City of Bremen	Licensing	Program + Budget approved	N\$5.4 Mill	100% program implemented		
2.1.3 Develop programmes and strategy to encourage separation at source (Clear Bag System/2-bin system)	→	→	→																	Public Participation, City of Bremen	Licensing & Operations	No. of household separating waste	N\$280,000	100% households in pilot area separate waste by 2023		
2.1.4 Review and implement school recycling competition		→	→	→	→															Public Participation, City of Bremen	Licensing	Data collection report, Infrastructure	N\$500,000	6 Competitions completed by 2024, 90 Recycling bins procured and distributed to schools by 2023		
2.1.5 Investigate the feasibility and suitable circular economy business model for Waste Buy-Back Centres	→	→	→																	Economic Development, City of Bremen	Licensing	Report finalised	N\$765,000	Final Study Report by 2022		
2.1.6 Establishment and Construction of waste buy-back centres				→	→															City of Bremen	Licensing	No. of buy back centres	N\$6 Mill	2 buy back centres constructed and operational by 2022		
2.1.7 Optimize and continually Improve waste buy-back centres									→	→	→	→	→	→	→	→	→	→	→	City of Bremen	Licensing	Resources optimized according to plan and budget	N\$9.5 Mill	Centres management according to plan and budget		
2.1.8 Study the feasibility of the Waste reclamation & circular economy and develop incubator program (Value Addition)	→	→																		Economic Development	Licensing	No. of Incubators trained	N\$600,000	Train 6 Incubators by 2025		
2.1.9 Optimize and continually Improve Waste reclamation & circular economy incubator program				→	→	→	→	→	→	→	→	→	→	→	→	→	→	→	→	Economic Development	Licensing	Resources optimized according to plan and budget	N\$4 Mill	Program management according to plan and budget		
2.1.10 Organize Waste Management Seminars/Workshops	→				→				→				→							Public Participation, City of Bremen	Licensing	No. of exhibition conducted	N\$400,000	Four (4) seminars/workshops by 2025		

Year	2022/23				2023/24				2024/25				2025/26				2026/27								
Quarters	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4					
OBJECTIVE 3 : OPTIMIZATION OF RESOURCES																									
	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Stakeholders	SWM Driver	Key Performance Indicators	Cost (N\$)	Target
GOALS																									
2022/23				2023/24				2024/25				2025/26				2026/27									
3.1 Human Resources System developed and Implemented																									
ACTIVITIES																									
3.1.1 CoW performance management system maintained																					HCCS	Fin & Admin	% Performance Standards maintained	OPEX	100% submission of Performance Agreements & Assessments
3.1.2 Review the divisional structure to ensure that it supports the implementation of an IWMP	⇒																				HCCS	Fin & Admin	Percentage (%) of structure approved	OPEX	Proposed structure approved
3.1.3 Review of Job Descriptions and align to the Divisional Objectives	⇒	⇒																			HCCS	Fin & Admin	Percentage (%) of JDs reviewed and re-aligned	OPEX	Identified JDs reviewed & re-aligned by 2023
3.1.4 Maintain correct staffing levels for efficient service delivery	⇒	⇒																			HCCS	Fin & Admin	Percentage (%) Vacancy Rate Filled	OPEX	100% filled vacancies by 2022
3.2 Financial Management Systems developed and Implemented																									
3.2.1 Improve Billing & Revenue Collection Systems	⇒	⇒	⇒																		Finance	Fin & Admin	Percentage (%) Revenue Recovered	OPEX	100% recovery of debt money by 2023
3.2.2 Improve overtime management procedures and develop mechanisms to reduce overtime																					Finance	Fin & Admin	Percentage (%) Reduction In Overtime Claimed per month	OPEX	Reduce overtime by 20% annually
3.2.3 Income and Expenditure control system reviewed and implemented																					Finance	Fin & Admin	No. of systems developed & implemented	OPEX	100% systems completed by 2023
3.2.4 Motivate for appropriate budgeting to deliver an efficient and effective waste management service		⇒				⇒				⇒				⇒				⇒			Finance	Fin & Admin	Percentage (%) of proposed budget approved	OPEX	100% budget approval
3.2.5 As part of ring-fencing, the establishment of a SWM development fund to finance waste management infrastructure		⇒	⇒	⇒																	Finance	Fin & Admin	Percentage (%) SWM development fund established	OPEX	100% fund developed by 2024
3.3 Asset management systems developed and Implemented																									
3.3.1 SWM Asset register reviewed, updated & implemented																					Finance	Fin & Admin	Number of items available per type of item	OPEX	Asset register functioned & interfaced with CoW register by 2023

3.5 Plan for the cost-effective landfill rehabilitation, closure and post closure maintenance developed and implemented																				
3.5.1 Plan developed and implemented for Satellite sites																Environment	Treatment	Approved plan	OPEX	100% plan implemented as approved
3.5.2 Plan developed and implemented for Kupferberg																Environment	Treatment	Approved plan	OPEX	100% plan implemented as approved
3.6 Administrative systems developed and implemented																				
3.6.1 Develop procedures for procurement of goods and services																PMU	Fin & Admin	Percentage (%) procurement mechanisms implemented	OPEX	100% mechanisms put in place by 2023
3.6.2 Develop procedures for issuing of Personal Protective Equipment (PPE)																PMU, Operations	Fin & Admin	Procedures approved	OPEX	Procedures implemented in 2023
3.7 Manual and mechanical waste management systems optimised																				
3.7.1 Proposed Ward Contractor System (SPV) reviewed and updated																HCCS	Operations	Operational specifications submitted to HCCS	OPEX	100% procedures submitted when requested
3.7.2 Develop a Household/Business Refuse Removal System Operational guidelines																Licensing	Operations	Percentage (%) of guidelines completed	N\$50,000	100% guidelines developed and ready for use by 2023
3.7.3 Conduct a re-demarcation exercise of household waste removal areas to accommodate expansions																Licensing	Operations	% of areas demarcated	N\$100,000	Refuse Calendar implemented in 2023
3.7.4 Develop operational guidelines for Skip and Front-End-Loader System																Licensing	Operations	Percentage (%) of guidelines completed	N\$50,000	100% guidelines developed and ready for use by 2023
3.7.5 Procure and distribute street bins and pole refuse bins																Admin	Operations	No. of containers procured & distributed	N\$1 Mill	100% coverage in all identified critical locations
3.7.6 Continually improve the HCRW management system																Treatment	Licensing	Percentage (%) of functional facility	OPEX	100% functional facility at all times
3.7.7 Operational Resources managed																	All	Resources optimized	OPEX	100% resources managed optimally
3.7.8 Continually improve Licensing & Registration System																Fin & Admin	Licensing	Percentage (%) of functional system	N\$100,000	100% functional system at all times

3. Manage illegal dumping hotspots and problematic skip containers																					
3.8.1 Map and quantify hotspots and problematic hotspots in the City	→	→	→														Licensing	Operations	No. of hotspots identified and mapped	N\$150,000	100% hotspots mapped by 2023
3.8.2 Develop a robust cleaning program to reduce hotspots	→	→	→														Licensing	Operations	Percentage (%) reduction in hotspots	OPEX	20% annual reduction of hotspots

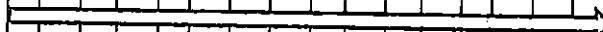
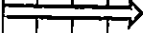
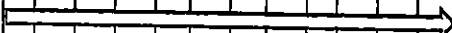
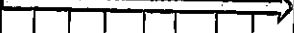
Legend:

On-going →

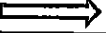
Implemented →

Year	2022/23				2023/24				2024/25				2025/26				2026/27									
Quarters	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4						
OBJECTIVE 4: INTEGRATED WASTE MANAGEMENT PLAN	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Stakeholders	SWM Driver	Key Performance Indicators	Cost (M\$)	Target	
	2022/23				2023/24				2024/25				2025/26				2026/27									
GOALS																										
4.1 Monitoring and review of the Implementation of the IWMP on an annual basis.																										
ACTIVITIES																										
4.1.1 Review the iWMP on an annual basis in order to ensure alignment with the organisational strategic plan				⇒				⇒					⇒							⇒	Chief	Licensing	Percentage (%) reviewed	OPEX	100% review annually	
4.1.2 Ensure that all sections have developed and submit annual operational plans based on the IWMP	⇒			⇒				⇒					⇒							⇒	Chief	Fin & Admin	Plan submitted	OPEX	One (1) plan annually	
4.1.3 All sections to prepare annual reports on the implementation progress	⇒			⇒				⇒					⇒							⇒	Chief	Fin & Admin	Plan submitted	OPEX	One (1) report annually	
<div>Legend:</div> <div>On-going⇒</div> <div>Implemented⇒</div>																										

Year	2022/23				2023/24				2024/25				2025/26				2026/27														
Quarters	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4											
OBJECTIVE 5: ESTABLISH A WASTE INFORMATION SYSTEM (WIS)																															
	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Stakeholders	SWM Driver	Key Performance Indicators	Cost (N\$)	Target						
	2022/23				2023/24				2024/25				2025/26				2026/27														
GOALS																															
5.1 Implementation of the WIS																															
ACTIVITIES																															
5.1.1 WIS databases developed and implemented	→																										ICT	Licensing	% sub-systems developed annually	N\$300,000	100% functional WIS by 2024
5.1.2 Information disseminated to various users																															
5.1.3 Enforce the timely submission of information and assess / verify all submitted data																															
5.1.4 Monitor and review the WIS database																															
5.1.5 Establish a Solid Waste Management Page on Internet –possibly on www.windhoekcc.org.na	→																														
Legend: On-going → Implemented →																															

Year	2022/23				2023/24				2024/25				2025/26				2026/27													
Quarters	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4										
OBJECTIVE 7 : PRIORITY WASTES	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Stakeholders	SWM Driver	Key Performance Indicators	Cost (N\$)	Target					
	2022/23				2023/24				2024/25				2025/26				2026/27													
GOALS																														
7.1 Strategies and guidelines for each priority waste identified and developed																														
Activities																														
7.1.1 Finalize the development of hazardous waste & Tyre Management strategy																					Treatment, Operations	Licensing	Percentage (%) hazardous waste strategy completed	N\$50,000	Strategies approved by 2023					
7.1.2 Implement hazardous waste mamangement strategy																							Treatment, Operations	Licensing	Number (#) of projects Implemented	N\$150,000	100% Iplementable strategy by 2024			
7.1.3 Implement Tyre Management strategy																							Treatment, Operations	Licensing	Percentage (%) of tyres reduced	N\$1 Mill	10% waste reduction annually from 2024			
7.1.4 Develop E-Waste Management strategy																					Treatment, Operations	Licensing	Percentage (%) of strategy developed	N\$50,000	100% strategy developed by 2023					
7.1.5 Implement E-Waste Management strategy																										Treatment, Operations	Licensing	Percentage (%) of strategy implemented	N\$500,000	100% Iplementable strategy by 2024
7.1.6 Market and raise awareness for residents to drop off priority waste at transfer and landfill sites																						Treatment, Operations	Licensing	No. of locations identified & approved	N\$500,000	Centres fully functional by 2024				
Legend: On-going  Implemented 																														

Year	2022/23				2023/24				2024/25				2025/26				2026/27									
Quarters	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4						
OBJECTIVE 8 : CAPACITY BUILDING - ONGOING EDUCATION AND AWARENESS																										
	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Stakeholders	SWM Driver	Key Performance Indicators	Cost (N\$)	Target	
GOALS	2022/23				2023/24				2024/25				2025/26				2026/27									
8.1 School Waste Education Programs Developed & Implemented																										
ACTIVITIES																										
8.1.1 Review and Implement Integrated Marketing & Customer Education Strategy	→																				Operations	Licensing	Strategy reviewed	N\$150,000	Strategy finalised by 2023	
8.2 Establish Capacity building & Awareness Raising Program																										
8.2.1 Capacity building through training of SWM officials to enable them to carry out the requirements of the Policy and regulations	→																				Operations	Licensing	Number (#) of SWM staff trained	N\$50,000	All staff trained by 2023	
8.2.2 Develop & implement awareness and education program at Industry level	→																				Operations	Licensing	Developed program	N\$150,000	Program implementable by 2023	
8.2.3 Continued education and awareness raising at the community level	→	→	→	→	→	→	→	→	→	→	→	→	→	→	→	→	→	→	→	→	Operations	Licensing	No. of awareness raising program	N\$150,000	Two (2) programs per year	
8.2.4 Review and Implement SWM Driver Training Program	→																				Operations	Licensing	No. of drivers trained	N\$100,000	Six (6) drivers trained per year	
8.2.5 Organise recycling information sessions for CoW officials	→			→			→			→			→			→					Operations	Licensing	No. of Information sessions held	N\$100,000	1 session per year	
Legend: On-going → Implemented →																										

Year	2022/23				2023/24				2024/25				2025/26				2026/27									
Quarters	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4						
OBJECTIVE 9 : COMMUNITY PARTICIPATION	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Stakeholders	SWM Driver	Key Performance Indicators	Cost (N\$)	Target	
	2022/23				2023/24				2024/25				2025/26				2026/27									
GOALS																										
9.1 Community participation guideline developed and implemented																										
Activities																										
9.1.1 Establish a Neighborhood Watches & Community structures working guidelines to support waste management																					Operations	Licensing	Guidelines developed & implemented	N\$50,000	All registered neighborhood watches engaged by 2022	
9.1.2 Initiate competition guidelines for clean suburbs in CoW																					Operations	Licensing	Number (#) of competitions	N\$150,000	One (1) competition per year	
<div>Legend:</div> <div>On-going </div> <div>Implemented </div>																										

Year	2022/23				2023/24				2024/25				2025/26				2026/27									
Quarters	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4						
OBJECTIVE 10: RESEARCH, DEVELOPMENT AND BEST PRACTICE GUIDELINES & STANDARDS																										
	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	Jan	Apr	Stakeholders	SWM Driver	Key Performance Indicators	Cost (N\$)	Target	
	2022/23				2023/24				2024/25				2025/26				2026/27									
GOALS																										
10.1 Studies and Investigations conducted																										
ACTIVITIES																										
10.1.2 Research and Investigation of alternative waste containment system In the Informal settlement	→																				Operations	Licensing	Research conducted	OPEX	Implement findings by 2023	
10.1.3 Conduct studies & Investigations to improve SWM systems and services	→				→				→				→				→				Operations	Licensing	No. of operational systems reviewed	OPEX	One (1) operational system reviewed per year	
10.2 Continuous best practice																										
10.2.1 Bin Audit Conducted	→												→									Operations	Licensing	No. of audits conducted	OPEX	1 audit after 2 years
10.2.2 Waste Audit Conducted									→								→					Operations	Licensing	No. of audits conducted	OPEX	1 audit after 2 years
Legend:																										
On-going →																										
Implemented →																										



10 February 2021

The Chief Executive Officer
City of Windhoek
P. O. Box 59
Windhoek
Namibia

Attention: Mrs. S. Simpson
cc. Mr. B. Amuenje

OTJOMUISE EXT.5 PHASE 1 AND 2: REQUEST FOR PRIVATE TREATY

Reference is made on the remaining erven that do not have successful bidders according to the sales progress report.

We are pleading with City of Windhoek, Property Department, to grant us, Ino Investment Holdings (Pty) Ltd (the developer), permission to sell the remaining 5 (Five) erven, with a total purchase price amounting to N\$ 3,953,710.00 as listed below; through private treaty.

ERF NO	ERF SIZE	PHASE	ZONING	UPSET PRICE
2378	1229	Phase2	Residential	835,720.00
2379	914	Phase2	Residential	621,520.00
2408	554	Phase1	Residential	349,020.00
2335	698	Phase2	Business	1,012,100.00
2337	783	Phase2	Business	1,135,350.00
TOTAL				3,953,710.00

Ino Investment Holdings (PTY) Ltd, cnr of Julius Nyerere and Jan jonker street,
Ausspanplatz, Windhoek, Company Registration: 2012/1041, P.O BOX 23537, Windhoek, Tel: 061- 259045,
FAX: 061- 259056, E-mail: info@ino.co.na
Directors: T. Uusiku, F. Nghiyolwa, F. Iyambo

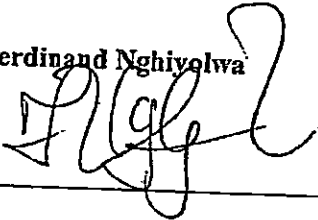
The annual interest for the specified erven is N\$ 385 486.73 and is approximately N\$ 32, 123.89 every month. We anticipated this to take more than 8 months before we have all the proceeds, if we follow the close bid sale method due the way selling process is conducted. This will cost us approximately N\$ 256 991.15 for the eight months.

We therefore, request permission to sell the remaining erven on private treaty as a way to reduce losses which may be incurred due to the financing costs, as a result of delays in the sale of erven through close bid method.

We look forward to your response.

Yours Sincerely,

Ferdinand Nghiyolwa

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Director



HEIKKY

Property Development (Pty) Ltd

P O BOX 2034 WINDHOEK C/O NELSON MANDEL & HUGO HAHN STREET 43 NELSON MANDELA

REG. NO.: 2013/0441

10 February 2021

The Chief Executive Officer
City of Windhoek
P. O. Box 59
Windhoek
Namibia

Attention: Mrs. S. Simpson
cc. Mr. B. Amuenje

KHOMASDAL LITHOP: REQUEST FOR PRIVATE TREATY

Reference is made on the remaining erven that do not have successful bidders according to the sales progress report.

We are pleading with City of Windhoek, Property Department, to grant us, Heikky Property Development (Pty) Ltd (the developer), permission to sell the remaining 6 (Six) erven, with a total purchase price amounting to N\$ 3,980,410.00 as listed below; through private treaty.

ERF NO	ERF SIZE	ZONING	UPSET PRICE
6234	517	Residential	522,170.00
6235	847	Residential	855,470.00
6236	715	Residential	722,150.00
6237	753	Residential	760,530.00
6244	651	Residential	657,510.00
6248	458	Residential	462,580.00
			3,980,410.00

The annual interest for the specified erven is N\$ 388 089.98 and is approximately N\$ 32, 340.83 every month. We anticipated this to take more than 8 months before we have all the proceeds, if

Directors: S. Kathena, H. Amwele &
P. Nghifikepunye

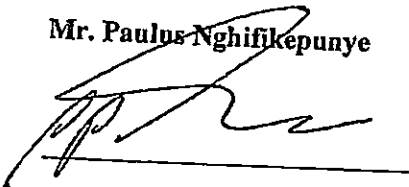
we follow the close bid sale method due the way selling process is conducted. This will cost us approximately N\$ 258 726.64 for the eight months.

We therefore, request permission to sell the remaining erven on private treaty as a way to reduce losses which may be incurred due to the financing costs, as a result of delays in the sale of erven through close bid method.

We look forward to your response.

Yours Sincerely,

Mr. Paulus Nghifikepunye

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Director

[Municipal Council Minutes: 2010-08-31]

3.22

**UPG.1 [PLA] PROPOSAL TO ENTER INTO
JOINT VENTURE/PUBLIC PRIVATE
PARTNERSHIPS TO INCREASE THE
RATE OF SERVICED LAND DELIVERY
(3/1/6/9/2)**

On proposal by Councillor Ms E Trepper, it was

RESOLVED

- 1 That approval be granted for the City of Windhoek to enter into joint ventures or public private partnerships with reputable organisations/ institutions to increase the volume and rate of the provision of service land.
- 2 That Academia Extension 1, with an extension of Otjomuise and Klein Windhoek Extension 4 with extension of Otjomuise, be considered on a pilot basis.
- 3 That the Strategic Executives: Finance and Planning, Urbanisation and Environment investigate the best financial models to favourably enhance the revenue of the City of Windhoek in such joint ventures or public private partnerships, once applications are received and report same to Council for consideration.
- 4 That the Strategic Executive: Planning, Urbanisation and Environment, in conjunction with relevant internal entities, spearhead the process once applications are received, subject to approval by Council.

RESOLUTION 264/08/2010

[Municipal Council Minutes: 2012-11-21]

8.2.21 BRB.20 [PLA] PUBLIC PRIVATE PARTNERSHIP (PPP) JOINT VENTURE (JV) DEVELOPMENT TO INO INVESTMENTS FOR SERVICING OF LAND (L/R/308/OTJ)

On proposal by Councillor Ms AM Kafula, it was

RESOLVED

- 1 That Council Resolution 341/09/2012, attached as pages 116 - 117, be rescinded.
- 2 That Otjomuise Extension 5 be allocated to Ino Investments for the servicing of land through a Public Private Partnership (PPP) as reflected in the presentation made to Councillors on 18 June 2012.
- 3 That the Strategic Executive: Urban Planning and Property Management negotiate the terms of the Public Private Partnership (PPP) with Ino Investments, in order to protect Council's interest and report back to Council.
- 4 That, should any cadastral changes or rezoning be necessary for the provision of the infrastructure, it be made part of the terms of negotiation. [It should be made clear from the on-set that such shall be done at the cost of the developer and to the satisfaction of the Strategic Executive: Urban Planning and Property Management.]
- 5 That it be noted that service comments for Otjomuise Extension 5 and the proposed development period, have not yet been obtained, but any development thereon must be subjected to the regulations and stipulations of the Strategic Executives of Infrastructure, Water and Technical Services, Electricity; Environment and Economic Development, Community Services and Urban Planning and Property Management, and such must be reflected clearly during the negotiation of the Public Private Partnership (PPP) Agreement.
- 6 That Ino Investments enter into the Public Private Partnership (PPP) Agreement no later than sixty (60) days after the approval of the terms of such agreement by Council and after having been requested to do so by the Chief Executive Officer.
- 7 That an Environmental Impact Clearance Certificate (EMP) be submitted before the terms of the Public Private Partnership (PPP) Agreement is concluded.
- 8 That Ministerial approval in terms of section 30(1)(t) and 30(1)(aa) of the Local Authorities Act, 1992 (Act 23 of 1992) to enter into the Public Private Partnership (PPP) with Ino Investments be obtained.
- 9 That the resolution be implemented prior to confirmation of the minutes.

RESOLUTION 407/11/2012

[Special Municipal Council Minutes: 2016-12-02]

3.2.5

**ITEM 8.7.5 - PWL3 [PLA] SUBMISSION OF
PUBLIC PRIVATE PARTNERSHIP (PPP)/
JOINT VENTURE (JV) NEGOTIATION –
HEIKKY TRADING ENTERPRISES CC
(3/1/6/9/2)**

On proposal by Councillor MJ Amadhila, it was

RESOLVED

- 1 That the submission of Heikky Trading Enterprises CC be noted.
- 2 That the proposal (info) from the Public Private Partnership (PPP)/Joint Venture (JV) partner be noted.
- 3 That it be noted that the Public Private Partnership (PPP)/Joint Venture (JV) Agreement has already been commented on by the Working Committee for Contract Documentation (WCCD) members and others.
- 4 That it be noted that the Public Private Partnership (PPP)/Joint Venture (JV) Agreement was already used on two (2) previous occasions.
- 5 That the Public Private Partnership (PPP)/Joint Venture (JV) Development Agreement be noted and approved in principle.
- 6 That the electricity network design and installation be guided by the following:
 - 6.1 That the Developer appoint a Professional Registered Electrical Engineer to determine all load requirements and designs for the medium and low voltage reticulation for Erven 6219 to 6250, Khomasdal.
 - 6.1.1 That the design work be submitted to the Strategic Executive: Electricity for approval.
 - 6.2 That all designs for medium voltage reticulation be in accordance with Council standards, specifications and guided by the 2015-2020 Electrical Master Plan or as updated annually thereafter.
 - 6.3 That all electrical work, both designs and installations form part of the Public Private Partnership (PPP)/Joint Venture (JV) Agreement.
 - 6.4 That as per the determined load demand of the development, the associated network contribution be paid by each Developer to cater for network upgrade upstream of the associated electrical network.
 - 6.5 That all related electrical infrastructure, such as distribution stations and miniature substations be allocated its own erf with registered servitude

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H. N. M.E.
M. J. A. N. G.

not less than 3 metre x 6 metre for miniature substations and not less than 18 metre x 20 metre for distribution substations.

- 6.6 That all electrical work from designs, installations and testing be carried out by the Developers and as approved by the Strategic Executive: Electricity.
- 6.7 That the as-built drawings be submitted in CAD 2014 or latest as newer versions becomes available to Council.
- 7 That Council accede to the proposed 50:50 profit sharing.
- 8 That Council agree that this be a turnkey project (plot and plan).
- 9 That the interest on the capital be shared between the City and the Developer.
- 10 That the general residential erven be co-developed.
- 11 That the layout be optimised to increase yield.
- 12 That permission be granted to finalise the Public Private Partnership (PPP)/Joint Venture (JV) Agreement by including project specific Suspensive Conditions.
- 13 That financing be secured within sixty (60) days from the date of this Council Resolution, else the proposed entering into a Public Private Partnership (PPP)/Joint Venture (JV) be terminated.

RESOLUTION 290/12/2016

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DEVELOPMENT AGREEMENT**FOR****THE PLANNING, DESIGN AND CONSTRUCTION OF INFRASTRUCTURE WORKS AND
SERVICES WITHIN THE TOWNSHIP OF OTJOMUISE EXTENSION 5****Between****THE MUNICIPAL COUNCIL OF WINDHOEK****and****INO INVESTMENTS (PTY) LTD****Registration number (2012/1041)**

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J.N. Seb
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SECTION 1 MEMORANDU

SECTION 2 GENERAL ANI

1 GENE

2 PARTI

SECTION 3 SPECIFIC PARTI

SECTION 4 COUNCIL'S STANDARD

SECTION 5 PROJECT SPECIFIC TECH

SECTION 6.A & B AGREEMENT DATA, DRAWING
DOCUMENTS, SCHEDULES, A

SCHEDULES	
A	General Plan/Layout
B	Township establishment

APPENDICES	
1	Quality Assurance Procedures on PPP Infrastru
2	Minor Outstanding Work and Defects

ANNEXURES	
1	Council Resolution 407/11/2012
2	INO Investments (Pty) Ltd - Director's Resolutio
3	INO Investments (Pty) Ltd - PowerPoint Presen

SECTION 1MEMORANDUM OF DEVELOPMENT AGREEMENT

made and entered into by and between

THE MUNICIPAL COUNCIL OF WINDHOEK
As per Council Resolution 407/11/2012 attached as Annexure 1

of

80 Independence Avenue, Windhoek, Namibia

Herein represented by NILO KAMBWA TAAPOPI and LUDWIG NARIB (Strategic Executive: Urban Planning and Property Management) in their respective capacities as Chief Executive Officer and representative of the Chairperson of the Management Committee of the said Municipal Council acting as such in terms of Section 31A.(a) of the Local Authorities Act, No. 23 of 1992

(hereinafter referred to as the "Council")

And

INO INVESTMENT (PTY) LTD
 Registration number 2012/1041

Herein represented by FERDINAND NGHIDIPUTATE NGHIYOLWA in his capacity as director of the Developer duly authorised thereto by a signed resolution taken by the Developer, a copy of which is attached as Annexure 2.

(hereinafter referred to as the "Developer")

WHEREAS:

[Handwritten signatures and initials]
 J.N. S.W. M.T. T.H. SH

A The Council is the owner of certain immovable property known as

CERTAIN Portion 274 (a Portion of Portion B) of the Farm Windhoek Town and Townlands 31

SITUATE In the Municipality of Windhoek
Khomas Region, Registration Division K

MEASURING 33,7369 (Three Three comma Seven Three Six Nine) hectares in extent as will more fully appear from approved Diagram A/591/93 in possession of Council on which the Township Otjomuise Extension No. 5 has been laid out (in this Agreement referred to as "Otjomuise Ext 5" and hereinafter referred to as the "Property").

- B In order to speed up land delivery in its area of jurisdiction, the Council has ~
- B.1 generally resolved to conclude development agreements with the private sector in terms of which funding is to be sourced, Infrastructure services will be installed to the Property owned by the Council and the sale of the Property to be jointly marketed and sold as set out hereinafter; and
- B.2 specifically resolved to conclude an agreement with the Developer in terms of which the Developer will procure funding, and provide Permanent Works to the Property.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. PARTIES

1.2 The Parties to this Agreement are –

1.2.1 The Municipal Council of Windhoek; and

1.2.2 Ino Investments (Pty) Ltd

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A.M. / D.T. / L.S. / 2 / T.I.

2. INTERPRETATION

In this Agreement, unless the context indicates a contrary intention, the words and expressions used in this Section 1 shall have the same meaning as are assigned to them in Section 2.

3. THE PROJECT

3.1 The Project will consist of Council making available the Property as unserviced land

3.1.1 For the construction of the Permanent Works by Developer for Otjomuise Extension 5, including the culvert on Stockholm Street between Otjomuise Extension 4 and Otjomuise Extension 5, in accordance with Sections 2 to 6 of this Agreement within the time frames to be set out in an approved Programme; and

3.1.2 the alienation of the Serviced Erven of the Property by Developer in conjunction with the Council on an offer to purchase basis and tender basis as set out in clause 16.4.1.

4. THE FACILITY AGREEMENTS

4.1 The Developer will procure funding for the Project under Facility Agreements to enable the Developer to proceed with the construction of the Permanent Works by Developer for Otjomuise Extension 5.

4.2 The Terms and Conditions of the Facility Agreements will be finalised by the Developer and the Lenders and be submitted to the Council in line with the provisions of clause 5.1. As security for its obligations under the Facility Agreements, the Developer must pledge and cede to the Lenders, or the Lenders' nominee, as per the Protocol cession agreement attached to the Facility Agreements, the Developer's right, title and interest in and to –

4.2.1 its rights and obligations under this Agreement including without limitation,

4.2.2 its rights to be paid the Developer's profit share; and

4.2.3 its rights under the Revenue Account, and the Council hereby agrees to such intended Cession.

5. SUSPENSIVE CONDITIONS

5.1 This Agreement is subject to the fulfilment of the following Suspendive Conditions –

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- 5.1.1 that the Facility Agreements are concluded and that all suspensive conditions which are contained in the Facility Agreements (other than any such condition which requires that this Agreement must be concluded and must become unconditional) are fulfilled and the Lenders representatives in writing to both the Developer and the Council's representative confirmed the same; and
- 5.1.2 that the Developer certifies in writing to the Council that the Developer has obtained the following Required Approvals ~
- 5.1.2.1 approval for the registration of the subdivisions of the Portions for the registration and establishment of Otjomuise Extension 5 in accordance with the applicable General Plan;
- 5.1.2.2 approval by the Survey-General of the General Plan in respect of the Township (and that such general plan complies substantially with the applicable Township Layout);
- 5.1.3 that the Council's representative certifies in writing to the Developer and the Lenders that the Council has obtained the following Required Approvals ~
- 5.1.3.1 approval from the Minister to conclude this Agreement (under the Applicable Laws which govern the Council's internal governance and procurement procedures which must be observed by it).
- 5.1.3.2 Approval of the proclamation of Otjomuise Extension 5 as an Approved Township in the Government Gazette.
- 5.2 The Suspensive Conditions shall be fulfilled on the date that the Council's representative informed the Lenders and the Developer in writing that all the Conditions in clause 5.1 have been fulfilled.
- 5.3 The Suspensive Conditions have been inserted into this Agreement for the benefit of both the Parties and, in such circumstances; the Suspensive Conditions may not be waived.
- 5.4 If the Suspensive Conditions are not fulfilled by ~
- 5.4.1 Six months from the signature date of this Agreement; or

[Handwritten signatures and initials]

- 5.4.2 such a later date, as the one party may allow in a written notice delivered by it to the other party, this Agreement shall be of no force or effect and neither Party shall have any claim against the other arising herefrom.

6. THE TOWNSHIP DEVELOPMENT PROJECT

- 6.1 The Parties shall undertake the Township Development Project jointly on the basis that ~
- 6.1.1 Developer shall comply with the obligations in Sections 2 to 6 of this Agreement summarised in clause 6.2; and
- 6.1.2 Council shall comply with the obligations summarised in clause 6.3.
- 6.2 Subject to the Project Team's overall control and direction and subject further to all the applicable provisions of this Agreement, Developer shall:
- 6.2.1 obtain all the Required Approvals in clause 5.1.2;
- 6.2.2 cause the Permanent Works to be constructed in accordance with Sections 2 to 6 of this Agreement within the Project Programme, and
- 6.2.3 jointly market and in conjunction with the Project Team, to shortlist and recommend for approval to Council the sale of serviced erven in Otjomuise Extension 5 on the sales method as approved by the Minister under section 30(1)(t) of the Local Authorities Act 23 of 1992 and stipulated under clause 16.4.1.
- 6.3 Council and Developer shall ~
- 6.3.1 avail all lawful and commercially reasonable endeavours for the alienation of all the Serviced Erven in Otjomuise Extension 5 within 3 (three) months of the practical completion of each project Section within Otjomuise Extension 5 or within 12 (twelve) months of the practical completion of a project Section.
- 6.3.2 cause the Net Project Profit to be determined in the manner envisaged in this Agreement and cause the Developer's share to be withheld in the Revenue Account and to be distributed to the parties in the manners and at the times envisaged herein.
- 6.3.3 not sell the general residential block; instead a separate agreement will be negotiated in this regard between the Council and the Developer within 90 days after the signing of this agreement. The Developer will have to source the funding for the development. In the event that no agreement is reached, these erven will be sold on tender.

7. PROJECT TEAM AND PERMANENT WORKS-GENERAL OBLIGATION

- 7.1 The Parties agree to establish a Project Team consisting of two Council representatives (one of which must be from Council's Finance Department), two representatives from the Developer, one representatives of the Lenders/Financiers respectively and one Engineer from the Developer with equal voting powers in accordance with representation.
- 7.2 The Project Team may incorporate such representatives of the Departmental Heads of Council and Contractors of the Developer as may be needed to ensure the fulfilment of the Parties' obligations under this Agreement, but without voting powers.
- 7.3 The Project Team established will be responsible-
- 7.3.1 To supervise and take all decisions in respect of the administration of the Project,
- 7.3.2 To elect the chairperson and deputy chairperson and determine their meeting procedures,
- 7.3.3 To supervise all distributions from the Revenue Account and
- 7.3.4 For the successful completion of the Project and must make decisions for the benefit of the project.
- 7.3.5 Consider, at the advice of the Developer, the appointment of the Contractors, subcontractors and Consultants to be used within the Project and to evaluate the profiles and experience of Contractors, subcontractors and Consultants to be used within the Project.
- 7.3.6 Use commercially reasonable endeavours to ensure that the Project Costs and financial obligations in respect of the Facility Agreements and this Agreement are being met.
- 7.4 Subject to the overall direction and control of the Project Team and subject further to the applicable provisions of this Agreement, the Developer shall ~
- 7.4.1 cause the Permanent Works to be constructed and be installed in accordance with Sections 2 to 6 of this Agreement; and
- 7.4.2 generally supervise the construction of the Permanent Works by the Contractor in the manner envisaged in this Agreement; and

7.4.3 use commercially reasonable and lawful endeavours to ensure that the Permanent Works are constructed and installed and alienated in accordance with the Approved Programme.

7.5 The Parties ~

7.5.1 record that it is the Council's intention to alienate the Serviced Erven within the Property in conjunction with the Developer as set out in this Agreement;

7.5.2 confirm that the times at which the Serviced Erven are released for alienation must take into account the then prevailing market conditions in the Council's area of jurisdiction; and

7.5.3 accordingly agree that

7.5.3.1 the Project may be undertaken in Sections, and

7.5.3.2 the Project Team shall in its discretion determine the times at which each Section will be undertaken and the extent of each such Section (and by extent is meant the number of the erven which will be serviced as part of any Project Section and locational information incidental to those erven).

8. COUNCIL REPRESENTATIVE

8.1 To facilitate the administrative arrangements which will be required in connection with the implementation of this Agreement, the Council shall from time to time appoint a Council Representative.

8.2 The functions of the Council Representative shall be as set out in clause 3 of the General Conditions and Clause 2.3 of Section 2 and to ~

8.2.1 receive and to submit to the Council all requests for approvals and all recommendations which Developer requests from/makes to the Council under this Agreement; and

8.2.2 advise Developer from time to time in connection with any decisions which the Council has made in terms of this Agreement.

9. DESIGN AND SPECIFICATIONS

The Parties confirm that Developer will prepare the initial Design and Specification of the Permanent Works and that it shall be in accordance with the General and Particular Conditions in Sections 2 to 6 of this Agreement. Tulipamwe Consulting Engineers are the Consulting Engineers for the development

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10. PROJECT SECTIONS

The Project Team shall from time to time be entitled to make recommendations to the Council Representative in relation to the Programme and Sections in which the Project may be implemented in line with clause 11 of Section 1 of this Agreement.

11. PROGRAMME

The Project Team shall, from time to time and as may be reasonably necessary, draft a Program as set out in clause 8.3 of the General and Particular Conditions in Section 2 and clauses 2.8.2 and 2.8.3 of Section 2.

12. CONSTRUCTION: DEVELOPER'S RESPONSIBILITIES – DESIGNS

12.1 The Parties confirm that Developer is obliged to instruct the Consultant and Contractors to design the installation of the Permanent Works as set out in Sections 2 to 6.

12.2 Intellectual property rights in and to any designs in respect of any Permanent Works in respect of any Project Section shall at all times remain vested in the Council.

12.3 Developer shall ~

12.3.1 not use any such designs for any purpose other than to procure the construction of the applicable Permanent Works; and

12.3.2 within a reasonable period after the occurrence of a Termination Event, return all the documents which contain any such designs to the Council.

13. AVAILABILITY OF SITE

13.1 The Council shall take all such steps as may be required in order to ensure that the Townships are not occupied by unauthorised persons;

13.2 The Council shall give vacant possession of the portion of either Township in respect of which a Project Section will be undertaken available to Developer, the applicable Engineer and the applicable Construction Contractor(s) in sufficient time to allow for the construction of the applicable Permanent Works in accordance with the applicable Section Programme.

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14. REQUIRED APPROVALS

- 14.1 The Council (with the assistance of the Developer as and where necessary) shall obtain all the Required Approvals from the Council and/or the Minister which are necessary in connection with the construction of the Permanent Works for each Project Section.
- 14.2 Council shall, between five (5) and ten (10) Business Days after receipt of a written request from Developer, make copies of all those Required Approvals available to Developer.
- 14.3 The Parties shall take all such steps and do all such things as may be necessary to ensure that they comply with the conditions of any Required Approval which Council has obtained in connection with any Project Section and, if necessary, Council shall amend the Design and Specifications in respect of that Project Section in order to ensure such compliance.

15. ANCILLARY COSTS

If it becomes necessary for Developer incur any costs (the "Ancillary Costs") other than any Project Costs, Engineer/Consultant's Fees, Value Added Tax (VAT); any Construction Price and the Lender's Charges in complying with its obligations under this Agreement ~

- 15.1 The Developer shall advise the Council Representative in writing, such advice to set out details of the ancillary costs in question and the reason for the incurred costs;
- 15.2 The Council shall, within 10 (ten) Business Days after receipt of the applicable notice by the Council Representative, cause the Council Representative to advise the Developer whether the Council approves of the incurred ancillary costs or not and the Council shall not unreasonably withhold its consent to allow such expense; and
- 15.2.1 if the applicable Ancillary Costs have been approved by the Council in accordance with this clause 15 those Ancillary Costs shall constitute Project Costs.

16. ALIENATION

16.1 Transfers

The Council shall take all such steps and do all such things as are necessary to ensure that the Serviced Erven contained in any Project Section become transferable as soon as may be reasonably possible after the date on which the

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applicable Permanent Works are –taken over by the Council (in terms of the provisions of clause 10 of the General Conditions) in section 2. Council shall, through the Council Representative ~

16.1.1 from time to time and as may be reasonably necessary, report to Developer in connection with the progress which the Council has made in securing the transferability of the Serviced Erven contained in any Project Section; and

16.1.2 advise the Developer once those erven have become transferable.

16.2 Conveyancer

The parties hereby appoint SHIKONGO LAW CHAMBERS, ELLIS SHILENGUDWA INC or any other Law firm that the Parties may appoint as conveyancers to attend to the transfer and registration of all Serviced Erven alienated.

16.3 Alienations

Once the Permanent Works have been taken over in terms of clause 10 of the General Conditions in Section 2 and installed in respect of any Project Section ~

16.3.1 Council shall (upon recommendation of the Project Team who will in their opinion determine if it is contractually reasonable to do so) obtain all the Required Approvals or follow the procedures required by law to alienate the Serviced Erven; and

16.3.2 Council shall (if it has obtained those approvals) inform the Project Team and the Developer in writing to arrange the alienation process on its behalf.

16.3.3 The Developer will appoint Hameva Ricky Properties & Ino Real Estate as their principal marketing and real estate companies who will be in charge of all sales and adjudication reports for the offer to purchase process under the auspices and direction of the Project Team.

16.3.4 The Developer will reserve 20% of all single residential located in Otjomuise Extension 5 for staff of the City of Windhoek to meet Council Resolution 57/02/2012 (separate cover item).

16.3.5 The Parties agree that the Council shall be entitled to decide on the qualifying staff member to purchase erven at the determined upset price and administration or profit mark-up (if any) and finalise such allocations within 3 months from the date of the upset prices having been determined.

16.3.6 Should staff members not be interested to acquire erven under this Agreement, the Council may elect to reserve the 20% of single residential erven for its other housing

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projects and inform the Developer of its decision in this regard within 3 months from the last date of land having been reserved for staff members in terms of sub clause 16.3.4 and for that purpose pay into the Revenue Account an amount equal to the predetermined upset price for the erven to remain in Council ownership.

- 16.3.7 Should staff members not be interested to acquire erven under this Agreement and Council does not elect to reserve the single residential erven for its other housing projects as provided for in clause 16.3.5, then these erven will be sold by the Developer on the same basis as the other single residential erven.

16.4 **Ministerial Approval**

- 16.4.1 Subject to approval by the Minister, the sale of the Serviced Erven shall be by OFFER TO PURCHASE for residential erven and by TENDER on non-residential erven. The Project Team will determine the upset price, and in determining the upset price the Project Team shall take into consideration the factors outlined under clause 18.

17. **REVENUE ACCOUNT AND THE NET PROJECT PROFIT**

- 17.1 For the management of this Agreement the Parties agree that the Developer will open the Revenue Account at the Bank in the name of the Developer for the benefit of the Project as set out hereinafter as soon as possible after the Effective Date.
- 17.2 Subject to the provisions of clause 4 and any requirements in the Facility Agreements, if any, the Developer will draw up financial operating procedures for approval by the Project Team in respect of the manner in which the Revenue Account is to be administered and managed under the Project on a day to day basis, with the object to address risks, adhere to International bookkeeping standards and to curtail delays in Project Costs payments.
- 17.3 The Revenue Account will be audited by CR van Wyk Auditors on a quarterly basis.
- 17.4 The Lenders will make the Facility Agreement available to Developer on the basis that Developer will be entitled to draw down principal Project costs against the Loan Facility with proof of Invoices and any additional document as required by the Lender which draw down amounts are to be paid into the Revenue Account for a period of 15 (Fifteen) Months commencing on the Effective Date or such extended period as the Parties may agree;
- 17.5 Proceeds from sales of serviced erven will be made into this Revenue Account as Interim Sales Payments when the erven serviced under the Project have been sold as set out in clauses 6 and 18 until all erven have been sold.
- 17.6 Distributions, Withdrawals and Payments

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 - Initials "MH/11".
 - Initials "UT" and "ZH".
 - Initials "TH" and "2".

Funds will be distributed out of the Revenue Account in the following priority:

- 17.6.1 Draw down Project Costs paid from the Loan Facility during the implementation and provision of the Permanent Works during the running of the Project.
- 17.6.2 Any Lender's charges payable under the Facility Agreement other than interest and the lenders profit share.
- 17.6.3 Interest under the Facility Agreement towards the Lenders in the priority as stated in the Facility Agreements
- 17.6.4 The Lenders' profit share will be as per clause 1.1.4.23 of Section 2.
- 17.6.5 Council and Developers net profit share.
- 17.7 As is envisaged in the Facility Agreement, the Developer shall not withdraw or instruct the withdrawal of any amounts from the Revenue Account other than ~
 - 17.7.1 to make the payments envisaged in clause 17.6 strictly in the order of priority set out in that clause; or
 - 17.7.2 in the circumstances envisaged in clause 17.9.
- 17.8 If the Developer under clause 16.3. detects, after the closing dates of the Offer to Purchase method of sale, that the Developer is unable to sell any or only part of the Serviced Erven the Developer shall, within 5 (five) Business Days after that date, in writing advise the Project Team and Council of ~
 - 17.8.1 the details of the Serviced Erven alienated;
 - 17.8.2 the gross selling prices obtained by it in respect of those Serviced Erven;
- the details of the Project costs and charges incurred by it in connection with the alienation of those Serviced Erven; and the Net Proceeds obtained by it for those Serviced Erven; whereafter the Project Team will proceed to determine if a further round of Offer to Purchase shall be proceeded with or determine another method of sale or proceed with the determinations as set out in clause 17.9.
- 17.9 Once all the principal amounts which Developer have drawn down against the Loan Facility and disbursed in line with sub clauses 17.6.1 to 17.6.3 and payments in respect of the sales prices have been generated- ~
 - 17.9.1 The Project Team shall be entitled, but not obliged, before funds are finally disbursed as per clause 17.6, to appoint the Auditors to calculate the Costs (plus VAT thereon if applicable) disbursed under clause 17.6.1 to 17.6.3 and the Lenders' Profit Share in sub clause 17.6.4 and Net Project Profit;
 - 17.9.2 The Auditors shall make that determination acting as experts and not as arbitrators, and shall be entitled to adopt such a procedure as they may deem appropriate and to rely on such evidence of such persons as they may deem appropriate and their decision shall, in the absence of manifest error, be final and binding;

17.9.3 If the aggregate of the Proceeds received under clause 17.5 exceeds the Costs (plus VAT thereon) distributed under clause 17.6.1 to clause 17.6.3 as determined by the Auditors in terms of clause 17.9.2, the Project Team shall be entitled to distribute the excess to the parties in accordance with the order envisaged in clauses 17.6.4 and 17.6.5. out of the Revenue Account;

17.9.4 If the estimated Project Net Profit (plus VAT thereon) as determined by the Auditors reflects a shortfall and is less than the aggregate of the Proceeds received under clause 17.5-

17.9.4.1 the Project Team and Developer shall continue to market the unsold erven and pay Proceeds into the Revenue Account as set out in clause 17.5 and distribute the Proceeds as set out in sub clause 17.6: Provided that if on the fulfilment date or on a date of a termination event or default date, erven remain unsold or the Project costs cannot be recovered from sales, after an application of clause 19.2, then Council must make good the short fall into the Revenue Account for costs incurred under sub clauses 17.6.1. to 17.6.3 together with VAT thereon, and

17.9.4.2 once the aggregate of the Proceeds received under clause 17.5 reach _____ the aforesaid total, the provisions of clause 17.9.3 shall come into effect or the Auditors may declare that no profit is to be declared, and the Facility Agreement shall contain provisions in terms of which the Lender agrees to the arrangements contained in clause.

17.10 Net Profit sharing

The net Profits of the project (if any) will be shared equally (50:50) by the Developer and Council.

17.11 The Revenue Account will be reconciled and closed 3 (three) Months after the Termination Date, unless unforeseen circumstances prohibit this, subject to the approval of the Project Team; and

17.12 The Developer and Council shall not give any instructions to the Lenders to withdraw any proceeds out of the Revenue Account other than in order to make the payments envisaged in clause 17.6 in the order of priority set out above, or in order to make payment to the Council to the extent and in the circumstances envisaged in clause 17.9.3 and/or clause 17.9.4.

17.13 In Event of a Sectional Development as approved under clause 10 and 11 of Section 1 and clause 10 of Section 2, any profit sharing will only be calculated upon termination of the Agreement.

18. Determination of Upset Prices and Collection of Sales Prices

- 18.1 If the Developer on behalf of Council alienate any Serviced Erven the Developer and Project Team shall ~
- 18.1.1 determine the upset prices of Serviced Erven on the actual project costs which will include Council's costs (administration and quality monitoring) and which will be determined by Council and included in the project cost to determine the eventual upset price considering the market conditions at that time; and
- 18.1.2 use reasonable endeavours to ensure the finalisation of the Deeds of Sales, collect the selling prices from the identified purchasers which will become payable for the Serviced Erven and ensure compliance with the sales conditions; and
- 18.2 Once the Developer has collected the selling prices the Developer must deliver to the Council (through the Council Representative) a notice which confirms the Net Proceeds to be paid into the Revenue account under clause 17.5 or has actually received on account of the alienation of the Serviced Erven; and
- 18.3 Subject to clause 17.6 instruct the conveyancers / transferring attorneys to pay -
- 18.3.1 those Net Proceeds into the Revenue Account managed by the Lender,
- 18.3.2 the VAT paid for non residential erven for payment in accordance with the Value Added Tax Act and
- 18.3.3 Agent commission over to the appointed agents; and

The Developer shall forthwith deliver, to the Council Representative, a statement and / or a VAT invoice in respect of the amounts thus paid into the Revenue and VAT Accounts for the benefit of the Parties.

19. TERMINATION

- 19.1 A Termination Event shall occur on the earliest of ~
- 19.1.1 the date on which all the Serviced Erven have been alienated and the Net Proceeds have been received on all sales;
- 19.1.2 the Cut Off Date for performance compliance by the Developer has been reached without services having been taken over being 48 months from the commencement date;
- 19.1.3 any other date on which this Agreement terminates for any relevant and legal reason; or

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19.1.4 if

19.1.4.1 Developer fails to comply with its obligations under the Facility Agreement, and

19.1.4.2 as a result of such failure the Lenders becomes entitled to call up the Facility Agreement (i.e. to demand immediate payment of all amounts which have become payable by Developer under the Facility Agreement), and

19.1.4.3 the Lenders calls up the Facility Agreement, the date on which the Facility Agreement is called up by the Lenders.

19.2 If, on the Termination Date or Fulfilment date, the Council and Developer have not sold all the Serviced Erven ~

19.2.1 The Developer (within the framework of the Project Team) shall cause the Serviced Erven (whether they are Residential Erven or Non-Residential Erven or which have been partly serviced and have not been taken over) which have not been sold (the "**Unsold Erven**") to be valued by a valuer appointed by it in consultation with the Lender;

19.2.2 The Developer (within the framework of the Project Team) shall, once it has obtained such a valuation, in writing (a "**Developer Valuation**") advise the Council of the valuation which it has thus obtained;

19.2.3 the Council Representative shall, within 20 (twenty) Business Days, advise the Developer in writing whether the Council accepts the Developer Valuation or not, failing which the Council shall be deemed to have accepted the Developer Valuation;

19.2.4 if Council disputes the Developer Valuation, the matter shall be referred to an independent valuer appointed by the Auditors;

19.2.5 the independent valuer shall

19.2.5.1 determine the market value of the Unsold Erven, and

19.2.5.2 in doing so take into account the basis on which the Developer Valuation has been obtained and any comments which the Council may make in relation thereto, and

19.2.5.3 be entitled to adopt such a procedure as he may deem appropriate and to rely on such evidence of such persons as he may deem appropriate, and

19.2.5.4 be entitled to make a ruling in relation to the payment of his costs, failing which those costs shall be paid by the unsuccessful party; and.

19.2.6 the independent valuer's determination of the market value of the Unsold Erven shall be final and binding and shall constitute the Deemed Proceeds of the Unsold Erven.

19.2.7 the cost of the independent valuer's determination of the market value of the Unsold Erven shall be part of the project costs.

19.3 As soon as may be reasonably possible after

19.3.1 all the Serviced Erven have been alienated (if the Termination Date occurs as a result of the Termination Event envisaged in clause 19.1.1), or

19.3.2 the Deemed Proceeds of the Unsold Erven have been determined (if the Termination Date occurs as a result of the occurrence of the Termination Events envisaged in clauses 19.1.2 to 19.1.4) ~

19.3.3 the Council shall appoint the Auditors to determine the Net Project Profit (if any) and the provisions of sub-clauses 17.9.3 to 17.12 shall similarly be applied..

20. **DEFAULT**

20.1 **Council**

If the Council fails to comply with any of its obligations in terms of this Agreement ~

20.1.1 Developer shall be entitled to deliver written notice (a "Demand") to the Council in terms of which Developer calls on the Council to remedy its breach within such a period as is reasonable in the circumstances provided that if the Council's breach consists of any failure to pay any amount which has become payable under this Agreement, a remedy period of **14 (fourteen) Business Days** shall be reasonable; and

20.1.2 if the Council fails to remedy its breach within a period of **14 (fourteen) Business Days**, the Developer shall be entitled to terminate this Agreement.

20.2 **Developer**

If Developer fails to comply with any material obligation imposed on it in terms of this Agreement ~

20.2.1 The Council shall be entitled to deliver written notice (a "Demand") to Developer in which the Council requires Developer to remedy its breach within such a period as is reasonable in the circumstances provided that if the Council's breach consists of any

failure to pay any amount which has become payable under this Agreement, a remedy period of 14 (fourteen) Business Days shall be reasonable; and 20.2.2 if Developer fails to remedy its breach within a period of 14 (fourteen) Business Days, the Council shall be entitled to terminate this Agreement, apply the Performance Guarantee for completion of the Permanent Works and the provisions of sub clause 17.9.3 to 17.12 shall apply: Provided that the Council shall retain its right to claim damages from the Developer under clause 20.3.

20.3 Damages

Each Party shall be entitled to recover any damages for any breach of this Agreement from the other Party and the Parties confirm that it is their intention that if a default Event occurs ~

20.3.1 the Project Profit shall be determined in accordance with the applicable provisions of this Agreement and the Council shall pay the Developer's share to Developer (if any) on the basis of such determination;

20.3.2 Developer shall, if the Council requires it to do so, cede all the rights of any nature whatsoever which it may have against any Engineer, Professional Consultant under the applicable Engineer/Consultant's Appointment and/or against any Construction Contractor under the applicable Construction Contract to the Council;

20.3.3 the Council shall indemnify Developer and hold Developer harmless against any claim which any Professional Consultant and/or any Construction Contractor lawfully makes against Developer as a result of any breach of this Agreement by the Council, and but the right to claim cession of the right of actions envisaged in clause 20.3.2, and the indemnity contained in clause 20.3.3 shall be the only remedies available for breach of this Agreement but not excluding recourse to a court of law.

20.3.4 the Developer shall indemnify Council and hold Council harmless against any claim which any Professional Consultant and/or any Construction Contractor lawfully makes against Developer as a result of any breach of this Agreement by the Developer, but for the right to claim cession of the right of actions envisaged in clause 20.3.2, and the indemnity contained in clause 20.3.3 shall be the only remedies available for breach of this Agreement but not excluding recourse to a court of law.

20.4 Interest

If either Party fails to pay any amount (an "Unpaid Sum") which becomes payable by it under this Agreement strictly on due date, the Unpaid Sum shall accrue interest at the Prime Rate with effect from the date on which it should have been paid up to and including the date on which it is paid (both days inclusive).

21. NOTICES AND DOMICILIA

- 21.1 The Parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the following telefax numbers -

<u>Name</u>	<u>Physical Address</u>	<u>Telefax</u>
Council	No. 80, Independence Avenue Windhoek Namibia	061-290 2344

Marked for the attention of: Mr L. Narib: Strategic Executive-Urban Planning and Property Management. Alternatively marked for the attention of the Council Representative on the Project Team (appointed as per Clause 8 of Section 1 of this agreement).

<u>Name</u>	<u>Physical Address</u>	<u>Telefax</u>
INO INVESTMENT (PTY) LTD	No. 126, John Meinert Street Windhoek Namibia	0886 13104

Marked for the attention of: Ferdinand Nghiyolwa (Director)

provided that a Party may change its *domicilium* or its address for the purposes of notices to any other physical address or telefax number by written notice to the other Party to that effect. Such change of address will be effective 5 (five) business days after receipt of the notice of the change.

21.2 All notices to be given in terms of this Agreement will be given in writing and will –

21.2.1 be delivered by hand or sent by telefax;

21.2.2 if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a business day will be presumed to have been received on the following business day; and

21.2.3 if sent by telefax during business hours, be presumed to have been received on the date of successful transmission of the telefax. Any telefax sent after business hours or on a day which is not a business day will be presumed to have been received on the following business day.

21.3 Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause 20.

22. APPLICABLE LAW AND JURISDICTION

22.1 This Agreement will in all respects be governed by and construed under the laws of the Republic of Namibia.

22.2 The Parties hereby consent and submit to the non-exclusive jurisdiction of the High Court in any dispute arising from or in connection with this Agreement.

23. GENERAL

23.1 Whole Agreement

23.1.1 This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.

23.1.2 This Agreement supersedes and replaces any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.

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23.2 **Variations to be in writing**

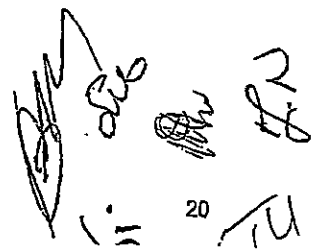
No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.

23.3 **No indulgences**

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 and 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. Failure or delay on the part of any Party in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

23.4 **No waiver or suspension of rights**

No waiver, suspension or postponement by any Party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by such Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

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23.5 Provisions severable

All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

23.6 Continuing effectiveness of certain provisions

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.

23.7 Assignment

Subject to clauses 4.3 and 19.3.2 of this Section 1, the Parties agree that the Developer shall have the right to cede and assign its rights to the Lenders as per the Cession Agreement as security in favour of the Lenders, but this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by either Party to any other third Party without the prior written consent of the other Party, save as otherwise provided herein.

24. COSTS

Except as otherwise specifically provided herein, each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

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25. SIGNATURE

- 25.1 This Agreement is signed by the Parties on the dates and at the places indicated below.
- 25.2 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.
- 25.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.
- 25.4 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

IN WITNESS whereof the parties hereto have set their signatures in the presence of subscribing witnesses:

FOR AND ON BEHALF OF THE COUNCIL, BEING DULY AUTHORISED TO DO SO:

AT NINDHODEL on this 22nd AUGUST day of 2013

NAME : NILD K. TAAPOLI (CEO)

SIGNATURE : [Signature]

CAPACITY : CEO

NAME : Moses Shukusa (Chair: MC)

SIGNATURE : [Signature]

CAPACITY : Chairperson

AS WITNESSES (for the Council)

S. Hachobeb [Signature]
NAME SIGNATURE

[Handwritten notes and signatures in the bottom right corner, including "22" and "WIT"]

<u>BROWN MATRIFA</u>	<u>[Signature]</u>
NAME	SIGNATURE

FOR AND ON BEHALF OF THE DEVELOPER, BEING DULY AUTHORISED TO DO SO:
 AT WINDHOLE on this 23rd AUGUST day of 2013

NAME : FERDINAND NGHIYOUNA

SIGNATURE : [Signature]

CAPACITY : DIRECTOR

AS WITNESSES (for the Developer)

<u>TOINI UUSIKU</u>	<u>[Signature]</u>
NAME	SIGNATURE
<u>Selma N Haludilo</u>	<u>[Signature]</u>
NAME	SIGNATURE

SECTION 2GENERAL AND PARTICULAR CONDITIONS OF AGREEMENT

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1. GENERAL CONDITIONS

The Conditions of Agreement comprise the "General Conditions", which are the "Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Works and for Building and Engineering Works", First Edition 1999 published by the *Fédération Internationale de Ingénieurs-Conseils* (FIDIC), and the following "Particular Conditions" in clause 2 which include amendments and additions to such General Conditions. . The Parties acknowledge that they have acquired and are in possession of the Original General Conditions. The original General Conditions shall be open to inspection, free of charge, at the office of the Council during official office hours.

2. PARTICULAR CONDITIONS [AMENDMENT TO GENERAL CONDITIONS IN CLAUSE 1]

2.1. AMENDMENTS TO GENERAL PROVISIONS

2.1.1. Definitions

The provisions of the Agreement Data as referred to in the General Conditions and as contained in Section 6 hereof shall be deemed to form part of and be read and applied together with and as part of the Particular Conditions.

The following changes are to be made to the General Conditions. The Clause numbers referred to hereafter are the Clause numbers of the General Conditions.

The word "Contract" and its derivatives is deleted in all its occurrences throughout the General Conditions and replaced in all such occurrences with the word "Agreement".

The word "Employer" and its derivatives is deleted in all its occurrences throughout the General Conditions and replaced in all such occurrences with the word "Council".

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The word "Contractor" and its derivatives is deleted in all its occurrences throughout the General Conditions and replaced in all such occurrences with the word "Developer".

The word "Engineer" and its derivatives is deleted in all its occurrences throughout the General Conditions and replaced with the words "Council's Representative"

The word "Subcontractor" and its derivatives is deleted in all its occurrences throughout the General Conditions and replaced with the word "Contractor"

The term "Appendix to Tender" is deleted in all its occurrences throughout the General Conditions and replaced with the term "Agreement Data"

The term "subcontract" and all its derivatives is deleted in all its occurrences throughout the General Conditions and replaced with the term "Contract"

2.1.2.- Clause 1.1.1 The Contract

2.1.2.1. Delete Sub-Clause 1.1.1.1 and replace it with the following:

"Agreement" means this contract and other documents hereby listed:

Section 1 -	Memorandum of Development Agreement;
Section 2 -	General and Particular Conditions of Agreement;
Section 3 -	Specific Particular Conditions
Section 4 -	Council's Standard Technical Requirements
Section 5 -	Project Specific Technical Requirements
Section 6 -	Agreement Data, Drawings and Pro Forma Documents
Schedules	

2.1.2.2. In line 1 of Sub-Clause 1.1.1.2 delete the words "Contract Agreement" and replace them with the words "Memorandum of Development Agreement"

2.1.2.3. Delete Sub-Clause 1.1.1.3 in its entirety.

2.1.2.4. Delete Sub-Clause 1.1.1.4 in its entirety.

2.1.2.5. In line 1 of Sub-Clause 1.1.1.5 delete the words "and submitted with the Letter of Tender" in line 2 and delete the last sentence of the sub-clause.

2.1.2.6. Delete Sub-Clause 1.1.1.7 in its entirety.

2.1.2.7. Delete Sub-Clause 1.1.1.8 in its entirety.

2.1.2.8. Delete Sub-Clause 1.1.1.9 in its entirety.

2.1.2.9. Delete Sub-Clause 1.1.1.10 in its entirety.

2.1.3. Parties and Persons

2.1.3.1. In Sub-Clause 1.1.2.1 delete the word "Employer" and replace it with the word "Council" and delete the word "Contractor" and replace it with the word "Developer".

2.1.3.2. Delete Sub-Clause 1.1.2.2 and replace it with the following:

"Council" means the legal entity named as such in the Preamble in Section 1 and the legal successors in title to this entity.

2.1.3.3. Delete Sub-Clause 1.1.2.3 and replace it with the following:

"Developer" means the person named as such in the Preamble in Section 1 and the legal successors in title to this person Ino Investment (PTY) Ltd, registration number 2012/1041, a company incorporated under the Applicable Laws acting as Developer;

2.1.3.4. Delete Sub-Clause 1.1.2.4 and replace it with the following:

"Council's Representative" means a member of the Council's Staff appointed to act as the representative of the Council for the purposes of the Agreement and named in the Agreement Data, or other person appointed from time to time by the Council and notified to the Developer under Sub-Clause 3.4 [Replacement of the Council's Representative].

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2.1.3.5. In line 3 of Sub-Clause 1.1.2.6, delete the words "of the Engineer and" from after the words "other employees"

2.1.3.6. In line 3 of Sub-Clause 1.1.2.7, delete the word "Subcontractor" and replace it with the word "Contractor"

2.1.3.7. Delete Sub-Clause 1.1.2.8 and replace it with the following:

"Contractor" means any person named as a contractor in the Agreement or appointed as a contractor by or on behalf of the Developer for the fulfilment of all or part of the Works; and the legal successors in title to each of these persons.

2.1.3.8. Add a new sub-clause, Sub-Clause 1.1.2.11, as follows:

"Departmental Head" means a departmental head appointed and referred to under Section 28 of the Local Authorities Act 1992 (Act 23 of 1992).

2.1.3.9. Add a new sub-clause, Sub-Clause 1.1.2.12, as follows:

"Third Party Transferee" means any person or persons to whom the Parties seeks to transfer ownership of any given erf or erven contained within the Township Development.

2.1.3.10 Add new sub-clause, Sub-Clause 1.1.2.13, 1.1.2.14, 1.1.2.15 and 1.1.2.16, as follows:

1.1.2.13 **"Auditors"** means CRVW & Co, as appointed by the Developer;

1.1.2.14 **"Bank"** means First National Bank of Namibia Limited;

1.1.2.15 **"Lenders"** means a consortium of financiers arranged by Königstein Capital (Pty) Ltd, registration number 2009/0081, a company incorporated under the Applicable Laws consisting out of The Königstein Capital Property Investment Fund ("KCPIF"), a trust registered under the Applicable Laws of Namibia with a trust certificate no T244/11, as lead financiers and any other financier which will form part of this consortium as will be determined from time to time.

1.1.2.16 **"Minister"** means the Minister of Regional and Local Government, Housing and Rural Development

2.1.4. Dates, Tests, Periods and Completion

2.1.4.1. Delete Sub-Clause 1.1.3.1 in its entirety.

2.1.4.2. Delete Sub-Clause 1.1.3.2 and replace it with the following:

"Commencement Date" means the date on which the Developer will commence with the Permanent Works as detailed in the Agreement Data.

2.1.4.3. In line 4 of Sub-Clause 1.1.3.3, after the words "[*Extension of Time for Completion*]", insert the words "or as otherwise agreed between the Parties"

2.1.4.4. Delete Sub-Clause 1.1.3.6 in its entirety.

2.1.4.5. In lines 4 and 5 of Sub-Clause 1.1.3.7, delete the words "(with any extension under Sub-Clause 11.3 [*Extension of Defects Notification Period*])"

2.1.4.6. Add a new sub-clause, Sub-Clause 1.1.3.10, as follows:

"Completion Certificate" means the Completion Certificate or Certificates referred to in Sub-Clause 10(c) [*Council's Taking-Over*].

2.1.4.7. Add new sub-clauses, Sub-Clause 1.1.3.11, as follows:

"1.1.3.11 Cut Off Date" means the date before which the Developer must comply with the conditions of the Agreement and have all services taken over being 48 (forty eight) Months after the Effective Date;

"1.1.3.12 Effective Date" means the first Business Day after the date on which the Suspensive Conditions contained in clause 5 of Section 1 have been fulfilled and the Council's representative has given notice under clause 5.2 of Section 1;

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1.1.3.13 **"Fulfilment Date"** means the date on which a performance Certificate is issued under clause 11.9 of the General Conditions in Section 2;

1.1.3.14 **"Signature Date"** means the date on which the Agreement is signed by the last Party to sign.

2.1.5. Clause 1.1.4 [*Money and Payments*]

2.1.5.1. Add the following definitions after sub clause 1.1.4.12:

1.1.4.13 **"Developer's Profit Share"** means an amount equal to 50% (fifty per centum) of the Project Net Profit;

1.1.4.14 **"Ancillary Costs"** means any costs, other than the Engineering/Consultant's Fees, the Construction Prices and the Lender's Charges which The Developer incurs in order to comply with its obligations under this Agreement, provided that the incurral of those ancillary costs have been approved by the Council in accordance with the applicable provisions of this Agreement;

1.1.4.15 **"Construction Price"** means, in relation to each Construction Contract, the contract price (together with VAT thereon) which becomes payable by the Developer to the applicable Construction Contractor under that Construction Contract;

1.1.4.16 **"Engineer/Consultant's Fees"** means any fees and charges which become payable by the Developer to the Engineer or any Professional Consultant, Auditor or Legal Practitioner under the applicable Consultant's Appointment;

1.1.4.18 **"Facility Agreements"** means an agreement/s concluded between the Lenders and the Developer in terms of which the Lenders undertake to jointly make available the Loan Facility to the Developer sufficient for purposes of enabling the Developer to fund the Project Costs as is required in terms of the Project Program as it may be amended; and which must comply with at least the requirements set out in clause 4.1 in Section 1;

- 1.1.4.19 **"IFRS"** means International Financial Reporting Standards;
- 1.1.4.20 **"Interim Sales Payments"** means any payments made into the Revenue Account (on account of the Net Proceeds) in terms of clause 17.5 and 18 in Section 1;
- 1.1.4.21 **"Lender's Charges"** means any amounts of any nature whatsoever which become payable by Developer to the Lender under the Facility Agreement, other than (1) the repayment of any principal amounts which the Lender has advanced to Developer under the Facility Agreement, and (2) the Lenders' Profit Share, but including ~
- 1.1.4.21.1 any interest which becomes payable by the Developer to the Lender on any outstanding principal amounts advanced by the Lender to the Developer under the Facility Agreement;
- 1.1.4.21.2 the Lenders charges envisaged in clause 17.6.2 of Section 1; and.
- 1.1.4.22 **"Loan Facility"** means the undertaking provided by the Lenders in the Facility Agreements to advance capital to the Developer;
- 1.1.4.23 **"Lenders' Profit Share"** means an amount equal to 12% (twelve *per centum*) of the Project Profit (which, as envisaged in clause 17.6.4 in Section 1, the Parties will become obliged to pay to the KCPIF in terms of the Facility Agreement between the Developer and KCPIF);
- 1.1.4.24 **"Net Proceeds"** means, in relation to a Serviced Erf, the total selling price obtained from the alienation of that Served Erf less ~
- 1.1.4.24.1 any VAT paid in respect of that selling price for any non-residential erf (if any). ; and
- 1.1.4.24.2 any agent's commission added to the sales price and paid

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1.1.4.25 **"Prime Rate"** means in Section 1 the publicly quoted basic rate of interest, compounded monthly in arrears and calculated on a 365 (three hundred and sixty five) day year irrespective of whether or not the year is a leap year, from time to time published by First National Bank of Namibia Limited as being its prime overdraft rate, as certified by any representative of that Bank whose appointment and designation it will not be necessary to prove;

1.1.4.26 **"Project Costs"** means all costs of any nature whatsoever which the Developer incurs in complying with its obligations (under this Agreement) in respect of the Project payable by the under the revenue account to the Developer for the installation of the Permanent Works and financial obligations under clause 17, as determined in accordance with sub clauses 17.6 and 17.9 in section 1, including, without limitation, the Professional Engineer/Consultant's Fees, Bank-, Auditor- and Legal fees, the Construction Costs, the Lender's and bank Charges and Interest, Value Added tax costs, marketing and tendering costs and the Ancillary Costs (provided always that the incurral of any such Ancillary Costs has been approved by the Council in accordance with the applicable provisions of Section 1 of this Agreement);

1.1.4.27 **"Project Profit"** in Section 1 means the profit which is realized in undertaking the Project which will consist of ~

1.1.4.27.1 the Net Proceeds obtained in respect of any Serviced Erven which are alienated; plus

1.1.4.27.2 the Deemed Proceeds of the Unsold Erven; minus

1.1.4.27.3 the Project Costs and funds distributed under sub clause 17.6 in Section 1 actually incurred by the Developer in undertaking the Project, as determined by the Auditors in accordance with IFRS;

- 1.1.4.28 **"Project Net Profit"** in Section 1 means the Project Profit in sub clause 1.1.4.27 less the Lenders' Profit Share which Net Profit is to be shared by the Developer and the Council on a 50/50 basis.
- 1.1.4.29 **"Revenue Account"** in Section 1 means the bank account envisaged in clause 4.3 in Section 1, which the will be opened in the name of the Developer at the Bank and be jointly operated by the Lenders and the Developer in terms of the Facility Agreement on the basis envisaged in clauses 17 and 18 of Section 1.);
- 1.1.4.30 **"VAT"** means Value Added Tax levied under the Value Added Tax Act;
- 1.1.4.31 **"Council's profit share"** means an amount equal to 50% (fifty per centum) of the Project Net Profit; as set out in section 1 of this Agreement

2.1.6. Clause 1.1.5 Works and Goods

2.1.6.1. In line 4 of Sub-Clause 1.1.5.1, delete the words "Employer's Equipment (if any)," from after the words "Temporary Works,"

2.1.6.2. In line 2 of Sub-Clause 1.1.5.4, after the word "Contract", insert the words "including all servitudes and public spaces specified in the Council's Requirements."

2.1.6.3. Add a new sub-clause, Sub-Clause 1.1.5.9 to 1.1.5.11, as follows:

- 1.1.5.9 **"Construction Works"** means the installation of all Permanent Works, in accordance with the requirements, stipulations and specifications of the Council in Sections 2 to 6 of this Agreement, such as but not limited to, the provision of bulk water and electricity, sewerage, and storm water disposal, roads and related infrastructure in Otjomuise Extension 5 by a Construction Contractor under a Construction Contract;

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1.1.5.10 "Designs and Specifications" means ~

1.1.5.10.1 the designs in respect of the Works; and

1.1.5.10.2 the specification with which the Works must comply, all as set out in Sections 2 to 6, and as amended from time to time in accordance with the applicable provisions of this Agreement;

1.1.5.11 "Serviced Erven" means erven within Otiomuse 5 that become transferrable to third party transfers and for which the Permanent Works have been taken over by the Council

2.1.7. Sub clause 1.1.6 Other Definitions

2.1.7.1. In Sub clause 1.1.6.1 in line 2, after the word "drawings", insert the words "plans, approved diagrams"

2.1.7.2. Delete Sub-Clause 1.1.6.3 in its entirety.

2.1.7.3. Delete Sub-Clause 1.1.6.4 in its entirety.

2.1.7.4. Delete Sub-Clause 1.1.6.8 in its entirety.

2.1.7.5. Add a new sub-clause, Sub-Clause 1.1.6.10, as follows:

"Contract" means the agreement under which the Developer shall appoint or has appointed any given Contractor for the provision of all or part of the Works.

2.1.7.6. Add a new sub-clause, Sub-Clause 1.1.6.11, as follows:

"Good Industry Practice" means the exercise of that degree of skill, diligence, prudence and foresight as would reasonably and ordinarily be expected from a skilled and experienced contractor (internationally engaged in the same type of undertaking and under the same or similar circumstances and conditions as that in which the relevant matter arises) seeking in good faith to comply with its contractual obligations and to discharge any liability arising under any duty of care that might be owed by that contractor.

2.1.7.7. Add a new sub-clause, Sub-Clause 1.1.6.12, as follows:

"Township Development" means the establishment of an approved township called Ojjomuise Extension 5 as described in the Memorandum of Development Agreement.

2.1.7.8. Add new sub-clause, Sub-Clause 1.1.6.13 to 1.1.6.25., as follows:

1.1.6.13 **"Infrastructure"** means the Works or engineering services which, by virtue of its conclusion of this Agreement, The Developer will become obliged to construct in respect of the Township ~

1.1.6.13.1 as detailed in Sections 2 to 6; and

1.1.6.13.2 which must comply with the Designs and Specifications;

1.1.6.14 **"Non-Residential Erf"** means any erf which is situated in either one of the Townships and which is zoned (under the Applicable Laws) primarily for use for purposes other than residential purposes;

1.1.6.15 **"Project Team"** shall mean a task team established in clause 7 of Section 1;

1.1.6.16 **"Offer to Purchase"** means sale of Serviced Erven by the Developer on behalf of the Council at the Purchase Price offered and agreed to between the Project Team in conjunction with the Developer and the Purchaser and used as a verb means the sales method as approved by the Minister;

1.1.6.17 **"Transferable"** means, in relation to any Serviced Erf, that all steps which are necessary to ensure that such Serviced Erf is capable of being transferred in the office of the applicable Registrar of Deeds under a separate title deed, have been taken;

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- 1.1.6.18 **"Required Approvals"** means all approvals which are required for the implementation of the Project under the Applicable Laws including, without limitation ~
- 1.1.6.18.1 all approvals required for the establishment and proclamation of each Township in accordance with the applicable Township Layout;
- 1.1.6.18.2 all approvals required in terms of the provisions governing private public partnership between the Developer and the Council;
- 1.1.6.18.3 all approvals required by the Council of the Council for the sale of Serviced Erven; and
- 1.1.6.18.4 all approvals required in order to ensure that Serviced Erven become Transferable;
- 1.1.6.19 **"Residential Erf"** means any erf which is situated in any Township and which is zoned (under the Applicable Laws) primarily for use primarily for residential purposes;
- 1.1.6.20 **"Suspensive Conditions"** means the suspensive conditions contained in clause 5.1;
- 1.1.6.21 **"Termination Date"** means the date on which a Termination Event occurs;
- 1.1.6.22 **"Termination Event"** means any event envisaged in clause 19.1 of Section 1;
- 1.1.6.23 **"Township Layout"** means the layouts of the Townships as reflected in the diagrams annexed hereto respectively as Schedules B and C;
- 1.1.6.24 **"Townships"** means the township known as Otjomuise Extension 5;

- 1.1.6.25 "Unsold Erven" means all the Serviced Erven (whether they are Residential Erven or Non-Residential Erven) which have not been alienated by the Termination Date, ;

2.1.8. Sub-Clause 1.3 Communications

Amend this Sub-Clause as follows:

In line 2, insert the word "instructions," before the word "notices"

Delete the words ", transmitted using any of the agreed systems of electronic transmission as stated in the Appendix" in sub-paragraph (a).

Delete the words "as stated in the Appendix to Tender" and replace them with the words "as stated in the Memorandum of Agreement".

Add the following sub-paragraphs:

- "(d) by telefacsimile, in which case the date of receipt is defined as the date and time on which such telefacsimile was transmitted;
- (e) by electronic ("e") mail in which case the date and time of receipt is defined as the date and time which the email was received by the recipient as proved by a read confirmation. However, no notices shall be sent by e-mail."

2.1.9. Sub-Clause 1.4 Law and Language

Delete this Sub-Clause and replace it with the following:

"The Contract shall be governed by the laws of Namibia and the language for communication shall be English. Accordingly all communications, documentation and manuals (if any) will be in the English language."

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2.1.10. Sub-Clause 1.5 Priority of Documents

Delete the second sentence of the first paragraph and replace it with the following:

"The Contract consists of the following documents which shall be interpreted in the following order of precedence:

- (a) Section 1 - Memorandum of Development Agreement;
- (b) Section 2 - General and Particular Conditions of Agreement,;
- (c) Section 3 - Specific Particular Conditions
- (d) Section 4 - Council's Standard Technical Requirements
- (e) Section 5 - Project Specific Technical Requirements
- (f) Section 6 - Agreement Data, Drawings and Pro Forma Documents
- g) Schedules

2.1.11. Sub-Clause 1.6 Contract Agreement

Delete this Sub-Clause in its entirety.

2.1.12. Sub-Clause 1.9 Errors in the Council's Requirements

Delete this Sub-Clause in its entirety.

2.1.13. Sub-Clause 1.13 Compliance with Laws

In lines 1 and 4 of paragraph (a), replace the word "Employer" with the word "Developer"

The following is added at the end of Sub-Clause 1.13:

"The Developer shall at all times conform in all respects with the provisions of all Laws which may be applicable to the performance of its obligations under the Agreement and shall indemnify, and keep indemnified the Council, against damages that it may suffer as a result of any breach by the Developer, its contractors, agents or employees, including any hired labour, of any such Laws, including all legal costs on the attorney and client scale which may be payable as a result of any claims or proceedings in respect of the Agreement."

2.2. THE COUNCIL

2.2.1. Sub-Clause 2.2 Permits, Licences or Approvals

Delete this Sub-Clause in its entirety and replace it with the following:

"Subject to Clause 2.2.5 of these Particular Conditions, and where it is in a position to do so, the Council will take all reasonable and lawful steps to assist the Developer in applying for permits, licences or approvals which are required for the execution of the Works. Any costs incurred by the Council in taking such steps shall be included in the Project Costs."

2.2.2. Sub-Clause 2.3 Council's Personnel

Delete this Sub-Clause in its entirety and replace it with the following:

"The Council shall be responsible for ensuring that the Council's Personnel take actions similar to those which the Developer is required to take under subparagraphs (a), (b) and (c) of Sub-Clause 4.8 [*Safety Procedures*]."

2.2.3. Sub-Clause 2.4 The Council's Financial Arrangements

Delete this Sub-Clause in its entirety.

2.2.4. Sub-Clause 2.5 Council's Claims is amended as follows:

If the Council considers himself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Agreement, and/or to any extension of the Defects Notification Period, the Council or the Council's Representative shall give notice and particulars to the Developer.

The notice shall be given as soon as practicable after the Council became aware of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.

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The particulars shall specify the Clause or other basis of the claim, and shall include substantiation of the amount and/or extension to which the Council considers himself to be entitled in connection with the Agreement. The Council's Representative shall then proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the amount (if any) which the Council is entitled to be paid by the Developer, and/or (ii) the extension (if any) of the Defects Notification Period in accordance with Sub-Clause 11.3 [Extension of Defects Notification Period].

2.2.5. Add the following Sub-Clause 2.6

"Council's Approval of Registration of Erven

"Subject to the remainder of this Clause the Council shall take all necessary steps within the ambit of the powers conferred upon it by the applicable Laws, and shall act in accordance with such Laws, to permit the registration of the General Plan of Ojomwise Extension 5 and if need be, the opening of a township register and the proclamation thereof; and upon marketing and sale of the individual erven as envisaged in clause 16 of Section 1 of this Agreement, the transfer to the relevant Third Party Transferee, and registration in the name thereof, to the extent that relevant Third Party Transferee has made proper application for such transfer and registration pursuant to the said Laws.

Notwithstanding any other statement to the contrary contained in this Clause or elsewhere in this Agreement, the Council shall be entitled to reject any application by the Developer to proceed with the implementation of clause 16 of section 1 unless and until the Developer complies with all his obligations under this Agreement (including, but not limited to, full compliance with any warranties set out elsewhere in this Clause) and a Take-Over Certificate for the Section or Sections of the Works relevant to the aforesaid section is issued or deemed to have been issued in accordance with Clause 10 [Council's Taking-Over]."

2.3. COUNCIL'S REPRESENTATIVE.

2.3.1. Sub-Clause 3.1 Council's Representative's Duties and Authority

"The Council shall appoint the Council's Representative who shall carry out the duties assigned to him in the Agreement. The Council's representative shall have no authority to amend the Agreement.

The Council's representative shall act as Project Manager on behalf of the Council and shall act in co-operation with, under the directives of and where required, approval of the different Departmental heads administering the departments of the Council relating to the powers, duties and functions required for the administration of this Agreement.

However, whenever the Council's Representative exercises a specified authority for which the Council's approval is required, then (for the purpose of the Agreement) the Council shall be deemed to have given approval, if the departmental head or his delegated representative has in writing given such requested prior approval and the Council's representative has thereafter co-signed the approval given or the certificate issued.

Except as otherwise stated in these Conditions:

- (a) whenever carrying out duties or exercising authority, specified in or implied by the Agreement, the Council's representative shall be deemed to have acted on behalf of the Council;
- (b) The Council's representative has no authority to relieve either Party of any duties, obligations or responsibilities under the Agreement; and
- (c) Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test or similar act by the Council's representative (including absence of disapproval) shall not relieve the Developer from any responsibility he has under the Agreement, including responsibility for errors, omissions, discrepancies and non-compliance.

2.3.2. Sub-Clause 3.2 Delegation by the Council's Representative is amended to read:

The Council Representative may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation.

These assistants may include a departmental head or his delegated representative, a resident engineer, and/or independent inspectors appointed to inspect and/or test items of Plants and/or Materials. The assignment delegation or revocation shall be in writing and shall not take effect until a copy of such assignment, delegation or revocation has been received by the Developer. However, unless otherwise agreed by both Parties, the Council Representative shall not delegate the authority to determine any matter in accordance with Sub-Clause 3.5 [*Determinations*].

Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Developer to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Council Representative. However:

- (a) any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Council Representative to reject the work, Plant or Materials;
- (b) if the Developer questions any determination or instruction of an assistant, the Developer may refer the matter to the Council Representative, who shall promptly confirm, reverse or vary the determination or instruction.

2.3.3. Sub-Clause 3.3 Instructions of the Council's Representative remains to read:

The Council Representative may issue to the Developer (at any time) instructions which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Agreement. The Developer shall only take instructions from the Council Representative, departmental head or from an assistant to whom the appropriate authority has been delegated under this Clause. If an instruction constitutes a Variation, Clause 13 [*Variations and Adjustments*] shall apply.

The Developer shall comply with the instructions given by the Council Representative, departmental head or delegated assistant, on any matter related to the Agreement. These instructions shall be given in writing.

2.3.4. Sub-Clause 3.4 Replacement of the Council's Representative remains to read:

If the Council intends to replace the Council Representative, the Council shall, not less than 28 days before the intended date of replacement, give notice to the Developer of the names, address and relevant experience of the intended replacement Council Representative. The Council shall not replace the Council Representative with a person against whom the Developer raises reasonable objection by notice to the Council, with supporting particulars.

2.3.5. Sub-Clause 3.5 Determinations remains to read:

Whenever these Conditions provide that the Council's Representative shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Council's Representative shall consult with each Party in an endeavour to reach agreement. If agreement is not achieved, the Council's Representative shall make a fair determination in accordance with the Agreement, taking due regard of all relevant circumstances.

The Council's Representative shall give notice to both Parties of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [*Claims, Disputes and Arbitration*].

2.4. THE DEVELOPER [Clause 4 in the General Conditions]

2.4.1. Sub-Clause 4.1 The Developer's General Obligations is amended as follows:

Add the following subparagraph after the first paragraph:

"The Developer shall at his sole cost and risk except as otherwise stated in the Agreement, execute and complete the Works in accordance with the Agreement, and shall remedy any defects in the Works. When completed, the Works shall be fit for the purposes for which the Works are intended as defined in the Agreement. In planning, designing and executing the Permanent Works, the Developer shall comply with Good Industry Practice".

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The Developer shall at his sole cost and risk except as otherwise stated in the Agreement, provide the Plant and Developer's Documents specified in the Agreement, and all Developer's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.

The Works shall include any work which is necessary to satisfy the Council's Requirements, Developer's Proposal and Schedules, or is implied by the Agreement and all works which (although not mentioned in the Agreement) are necessary for stability or for the completion, or safe and proper operation, of the Works.

The Developer shall be responsible for the adequacy, stability and safety of all Site operations, of all methods of construction and of all the Works.

The Developer shall, whenever required by the Council's Representative, submit details of the arrangements and methods which the Developer proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Council's Representative.

2.4.2. Sub-Clause 4.2 Performance Security is amended to read:

Parties agree that the Developer will in lieu of its obligations under the Conditions of Agreement issue a Performance security in favour of Council within 28 days from the effective date and the amount of the Performance Security shall be the amount as stated in the Agreement Data for each Section of Work. The Performance Security shall be issued by a financial institution approved by the Council, shall conform strictly to the template contained in Section 6 hereof and no registration of any erf contained within the Township Development shall be approved by the Council and no Completion Certificate shall be issued in respect of the Works or any Section thereof until the Council is in receipt of a Performance Security compliant with the aforesaid.

The Developer shall ensure that the Performance Security is valid and enforceable until the Developer has executed and Completed the Works and remedied any defects. If the terms of the Performance Security specify their expiry date, and the Developer has not become entitled to receive the Completion Certificate by the

date 28 days prior to the expiry date, the Developer shall extend the validity of the Performance Security until the Works have been completed and any defects have been remedied.

The Council shall return the Performance Security to the Developer within 21 days after receiving a copy of the Performance Certificate.

2.4.3. Sub-Clause 4.3 Developer's Representative is amended to read:

The Developer shall appoint the Developer's Representative and shall give him all authority necessary to act on the Developer's behalf under the Agreement.

Unless the Developer's Representative is named in the Agreement, the Developer shall, prior to the Commencement Date, submit the Council Representative for consent the name and particulars of the person Developer proposes to appoint as Developer's Representative. If consent is withheld or subsequently revoked, or if the appointed person fails to act as Developer's Representative, the Developer shall similarly submit the name and particulars of another suitable person for such appointment.

The Developer shall not, without the prior consent of the Council Representative, revoke the appointment of the Developer's Representative or appoint a replacement.

The whole time of the Developer's Representative shall be given to directing the Developer's performance of the Agreement. If the Developer's Representative is to be temporarily absent from the Site during the execution of the Works, a suitable replacement person shall be appointed, subject to the Council's Representative prior consent, and the Council Representative shall be notified accordingly.

The Developer's Representative shall, on behalf of the Developer, receive instructions under Sub-Clause 3.3 [*Instructions of the Council's Representative*].

The Developer's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Council's Representative has received prior notice signed by the Developer's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

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The Developer's Representative and all these persons shall be fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language]. Without derogating from the generality of the foregoing, the Developer's Representative shall implement forthwith and at the project cost any additional safety precautions which the Council may consider necessary for the proper protection of the Developer's Personnel engaged in the Works. Work to which such additional precautions will apply shall be suspended pending the implementation of such precautions.

2.4.4. Sub-Clause 4.4 Contractors is amended as follows:

The Developer shall be responsible for the acts or defaults of any Contractor, his agents or employees, as if they were the acts or defaults of the Developer. Unless otherwise stated in the Particular Conditions:

- (a) the Developer shall not be required to obtain consent to suppliers of Materials, or to a Contractor for which the Contractor is named in the Agreement;
- (b) the prior consent of the Council's Representative shall be obtained to other proposed Contractors; and
- (c) the Developer shall give the Council's Representative not less than 28 days' notice of the intended date of the commencement of each Contractor's work, and of the commencement of such work on the Site.

2.4.5. Sub-Clause 4.5 Nominated Contractors is deleted in its entirety.

2.4.6. Sub-Clause 4.6 Co-operation is deleted in its entirety and replaced with the following:

The Developer shall at all times co-operate fully with the Council's staff members in the performance of their duties relevant to the Agreement or under any relevant legislation. The Developer shall equally ensure that the same degree of co-operation is extended to the Council's staff members by the Developer's Personnel.

2.4.7. Sub-Clause 4.7 Setting Out is deleted in its entirety and replaced with the following:

The Developer shall appoint a registered land surveyor to select the location, in consultation with the Council's Representative, of all reference marks relevant to the Works to be executed on the Property. The aforesaid reference marks shall then be placed and surveyed to the satisfaction of the Council after the Works

have been executed. The Developer shall notify the Council of the name and address of the appointed land surveyor immediately upon his appointment and ensure that the said land surveyor consults with the Council's Representative prior to the commencement of the survey.

The Developer shall set out the Works in accordance with the aforesaid selected reference marks and any other original points, lines and levels of reference specified in this Agreement. The Developer shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.

For purposes of this sub-clause the definition of "Works" also include any servitude areas and locations as may be required by or to be registered in favour of the Council.

2.4.8. Sub-Clause 4.8 Safety Procedures is amended to read as follows:

The Developer acknowledges that it is aware that safety is of the utmost importance to the Council and undertakes to comply strictly with all safety procedures both as contained in the Agreement and as specified by the Council, as well as within Good Industry Practice.

The Developer shall:

- (a) comply with all applicable safety regulations,
- (b) take care for the safety of all persons entitled to be on the Site,
- (c) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons,
- (d) provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause 10 [*Council's Taking Over*], and
- (e) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

2.4.9. Sub-Clause 4.9 Quality Assurance remains to read:

The Developer shall institute a quality assurance system to demonstrate compliance with the requirements of the Agreement. The system shall be in

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accordance with the details stated in the Agreement in Appendix 2. The Council's Representative shall be entitled to audit any aspect of the system.

Details of all procedures and compliance documents shall be submitted to the Council's Representative for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Council's Representative, evidence of the prior approval by the Developer himself shall be apparent on the document itself.

Compliance with the quality assurance system shall not relieve the Developer of any of his duties, obligations or responsibilities under the Agreement.

2.4.10. Sub-Clause 4.10 Site Data is deleted in its entirety and replaced with the following:

"The Developer shall bear sole responsibility for all relevant physical conditions at the Site including, but not limited to, climatic, hydrological, hydro-geological, ecological, environmental, seismic, geotechnical, geological, paleontological and archaeological conditions and sub-surface, ground water, load-bearing and other properties (the Site Conditions). The Developer shall also bear full responsibility for the adaptation of the Works to the Site Conditions, and shall be deemed to have carried out all investigations necessary to enable the Works to be carried out with due regard to the Site Conditions".

2.4.11. Sub-Clause 4.11 Sufficiency of the Accepted Contract Amount is deleted in its entirety.

2.4.12. Sub-Clause 4.12 Unforeseeable Physical Conditions is deleted in its entirety.

2.4.13. Sub-Clause 4.13 Rights of Way and Facilities is deleted in its entirety.

2.4.14. Sub-Clause 4.14 Avoidance of Interference is deleted in its entirety.

2.4.15. Sub-Clause 4.17 Developer's Equipment remains to read:

The Developer shall be responsible for all Developer's Equipment. When brought on to the Site, Developer's Equipment shall be deemed to be exclusively intended for the execution of the Works. The Developer shall not remove from the Site any major items of Developer's Equipment without the consent of the Council's

Representative. However, consent shall not be required for vehicles transporting Goods or Developer's Personnel off Site.

2.4.16. Sub-Clause 4.18 Protection of the Environment is amended to read:

The Developer shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations. The Developer shall ensure that emissions, surface discharges and effluent from the Developer's activities shall not exceed the value indicated in the Council's Requirements, and shall not exceed the values prescribed by applicable Laws.

Without derogating from the generality of the foregoing the Developer shall at all times and at the project's cost comply with the Council's Environmental Standards as per Environmental Management Act, No.7 of 2007 of the Ministry of Environment and Tourism, and with all Laws applicable to environmental management. In addition the Developer shall at all times comply with any reasonable instructions given by an environmental officer from the City of Windhoek having jurisdiction in or around the Site.

2.4.17. Sub-Clause 4.19 Electricity, Water and Gas

Delete this Sub-Clause in its entirety and replace it with the following:

"The Developer shall be entirely responsible for the provision of all power, water and other services he may require and the Council shall take no responsibility whatsoever for the provision of such services."

2.4.18. Sub-Clause 4.20 Council's Equipment and Free Issue Material

Delete this Sub-Clause in its entirety.

2.4.19. Sub-Clause 4.21 Progress Reports is amended to read:

Unless otherwise stated in the Particular Conditions, monthly progress reports shall be prepared by the Developer and submitted to the Council's Representative in six copies. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted

monthly thereafter, each within 7 days after the last day of the period to which it relates.

Reporting shall continue until the Developer has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

Each report shall include:

- (a) charts and detailed descriptions of progress, including each stage of design, Developer's Documents, procurement, manufacture, delivery to Site, construction, erection, testing, commissioning and trial operation;
- (b) photographs showing the status of manufacture and of progress on the Site;
- (c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
 - (i) commencement of manufacture,
 - (ii) Developer's inspections,
 - (iii) tests, and
 - (iv) shipment and arrival at the Site.
- (d) the details described in Sub-Clause 6.10 [*Records of Developer's Personnel and Equipment*];
- (e) copies of quality assurance documents, test results and certificates of Materials;
- (f) list of Variations, notices given under Sub-Clause 2.5 [*Council's Claims*];
- (g) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
- (h) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardise the completion in accordance with the Agreement, and the measures being (or to be) adopted to overcome delays.

2.4.20. Sub-Clause 4.22 Security of the Site remains to read:

Unless otherwise stated in the Particular Conditions:

- (a) the Developer shall be responsible for keeping unauthorised persons off the Site, and
- (b) authorised persons shall be limited to the Developer's Personnel and the Council's Personnel.

2.4.21. Add the following Sub-Clause 4.25

"Developer's Warranties

The Developer warrants as at the Signature Date, that

- he has taken all necessary actions to authorise its execution of and to fulfil his obligations under the Agreement;
- his obligations under this Agreement are legal, valid and binding and enforceable against it, in accordance with the terms of this Agreement;
- the execution and performance of his obligations in terms of this Agreement does not and will not contravene any provision of the memorandum of association or articles of association of the Developer as at the Signature Date, or any order or other decision of any public authority or arbitrator that is binding on the Developer as at the Signature Date;
- no litigation, arbitration, investigation or administrative proceeding is in progress as at the Signature Date or, to the best of the knowledge of the Developer as at the Signature Date, having made all reasonable enquiries, threatened against it or any of the Contractors, which is likely to have a materially adverse effect on the ability of the Developer to perform his obligations under the Agreement;
- the Developer is not subject to any obligation, non-compliance with which is likely to have a materially adverse effect on his ability to perform his obligations under the Agreement;
- no proceedings or any other steps have been taken or, to the best of the knowledge of the Developer having made all reasonable enquiries, threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final) or deregistration of the Developer or any of the Contractors, or for the appointment of a liquidator, judicial manager or similar office over the Developer, any of the Contractors or any of their assets;

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- he will always apply Good Industry Practice in carrying out his obligations under the Agreement and ensure that the Contractors apply the same in all their activities related to the Works;
- no material information known to any of the authorised representatives of the Developer or any of the Contractors engaged in interactions with representatives of the Council concerning the Works has been withheld from the Council;
- he shall obtain and maintain for the period of the Agreement all necessary governmental and other permits and comply with all conditions relating thereto;
- he has not and shall not make any representations to any person or persons either that building approval for the Township Development or any part thereof shall be granted or that title to all or any erven within the Township Development or any part thereof can and will be transferred except in the circumstances set out in the Agreement;
- he shall fully to defend, hold harmless and indemnify the Council in respect of all and any claims, actions and/or suits that may be brought against the Council by any third party in connection with the consequences of all and any representations made by the Developer to any person or persons to the effect that building approval for the Township Development or any part thereof shall be granted or that title to all or any erven within the Township Development or any part thereof can and will be transferred except in the circumstances set out in the Agreement;
- he shall, upon issue of the Taking-Over Certificate for each Section, of Works, transfer to the Council at no cost thereto full and free title to the portion of the Site upon which the relevant Section is located, and shall extend to the Council in perpetuity such necessary access rights to the said portion of the Site as it shall have within his power to grant;

- in the event that he assigns to any third party or parties all or any of his development rights in respect of the Township Development or any part thereof, he shall require as a condition precedent of such assignment that the said third party assignee or assignees agree to be bound fully by the terms of the Agreement, and he shall fully defend, hold harmless and indemnify the Council in respect of all and any claims, actions and/or suits that may be brought against the Council by any person whomsoever as a result of or in connection with any failure of such third party assignee or assignees to implement and/or abide by the terms of the Agreement.

2.5. DESIGN [Clause 5 in General Conditions]

2.5.1. Sub-Clause 5.1 General Design Obligations is amended to read:

The Developer shall at project's sole cost and risk except as otherwise stated in the Agreement carry out, and be responsible for, the design of the Works. Design shall be prepared by qualified designers who are engineers or other professionals who comply with the criteria (if any) stated in the Council's Requirements. Unless otherwise stated in the Agreement, the Developer shall submit to the Council's Representative for consent the name and particulars of each proposed designer and design Contractor.

The Developer warrants that he, his designers and design Contractors have the experience and capability necessary for the design. The Developer undertakes that the designers shall be available to attend discussions with the Council's Representative at all reasonable times, until the expiry date of the relevant Defects Notification Period.

The Developer shall be deemed to have scrutinised, prior to the Commencement Date, the Council's Requirements (including design criteria and calculations, if any). The Developer shall be responsible for the accuracy of the Council's Requirements (including design criteria and calculations except as stated below).

The Council shall not be responsible for any error, inaccuracy or omission of any kind in the Council's Requirements as originally included in the Agreement and shall not be deemed to have given any representation of accuracy or completeness of any data or information, except as stated below. Any data or information received by the Developer from his responsibility for the design and execution of the Works.

However, the Council shall be responsible for the following portions of the Council's Requirements and of the following data and information provided by (or on behalf of) the Council:

- (a) portions, data and information which are stated in the Agreement as being the responsibility of the Council,
- (b) criteria for the testing and performance of the completed Works, and
- (c) portions, data and information which cannot be verified by the Developer, except as otherwise stated in the Agreement.

2.5.2. Sub-Clause 5.2 Developers Documents remains to read:

The Developer's Documents shall comprise the technical documents specified in the Council's Requirements, documents required to satisfy all regulatory approvals, and the documents described in Sub-Clause 5.6 [*As-Built Documents*] and Sub-Clause 5.7 [*Operation and Maintenance Manuals*]. Unless otherwise stated in the Council's Requirements, the Developer's Documents shall be written in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

The Developer shall prepare all Developer's Documents, and shall also prepare any other documents necessary to instruct the Developer's Personnel. The Council's Personnel shall have the right to inspect the preparation of all these documents, wherever they are being prepared.

If the Council's Requirements describe the Developer's Documents which are to be submitted by the Council's Representative for review and/or for approval, they shall be submitted accordingly, together with a notice as described below. In the following provisions of this Sub-Clause, (i) "review period" means the period required by the Council's Representative for review and (if so specified) for approval, and (ii) "Developer's Documents" exclude any documents which are not specified as being required to be submitted for review and/or for approval.

Unless otherwise stated in the Council's Requirements, each review period shall not exceed 21 days, calculated from the date on which the Council's Representative receives a Developer's Document and the Developer's notice. This notice shall state that the Developer's Document is considered ready, both for review (and approval, if so specified) in accordance with this Sub-Clause and for

use. The notice shall also state that the Developer's Document complies with the Agreement, or the extent to which it does not comply.

The Council's Representative may, within the review period, give notice to the Developer that a Developer's Document fails (to the extent stated) to comply with the Agreement. If a Developer's Document so fails to comply, it shall be rectified, resubmitted and reviewed (and, if specified, approved) in accordance with this Sub-Clause, at the Developer's cost.

For each part of the Works, and except to the extent that the prior approval or consent of the Council's Representative shall have been obtained:

- (a) in the case of a Developer's Document which has (as specified) been submitted for the Council's Representative approval:
 - (i) the Council's Representative shall give notice to the Developer that the Developer's Document is approved, with or without comments, or that it fails (to the extent stated) to comply with the Agreement;
 - (ii) execution of such part of the Works shall not commence until the Council's Representative has approved the Developer's Document; and
 - (iii) the Council's Representative shall be deemed to have approved the Developer's Document upon the expiry of the review periods for all the Developer's Documents which are relevant to the design and execution of such part, unless the Council's Representative has previously notified otherwise in accordance with sub-paragraph (i);
- (b) execution of such part of the Works shall not commence prior to the expiry of the review periods for all the Developer's Documents which are relevant to its design and execution;
- (c) Execution of such part of the Works shall be in accordance with these reviewed (and, if specified, approved) Developer's Documents; and
- (d) If the Developer wishes to modify any design or document which has previously been submitted for review (and, if specified, approval), the Developer shall immediately give notice to the Council's Representative. Thereafter, the Developer shall submit revised documents to the Council's Representative in accordance with the above procedure.

If the Council's Representative instructs that further Developer's Documents are required, the Developer shall prepare them promptly. Any such approval or

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consent, or any review (under this Sub-Clause or otherwise), shall not relieve the Developer from any obligation or responsibility.

2.5.3. Sub-Clause 5.3 Developer's Undertaking remains to read:

The Developer undertakes that the design, the Developer's Documents, the execution and the completed Works will be in accordance with:

- (a) the Laws in the Country, and
- (b) the documents forming the Agreement, as altered or modified by Variations.

2.5.4. Sub-Clause 5.4 Technical Standards and Regulations remains to read:

The design, the Developer's Documents, the execution and the completed Works shall comply with the Country's technical standards, building, construction and environmental Laws, Laws applicable to the product being produced from the Works, and other standards specified in the Council's Requirements, applicable to the Works, or defined by the applicable Laws.

All these Laws shall, in respect of the Works and each Section, be those prevailing when the Works or Section are taken over by the Council under Clause 10 [Council's Taking Over]. References in the Agreement to publish standards shall be understood to be references to the edition applicable on the Commencement Date, unless stated otherwise.

If changed or new applicable standards come into force in the Country after the Base Date, the Developer shall give notice to the Council's Representative and (if appropriate) submit proposals for compliance. In the event that:

- (a) Council's Representative determines that compliance is required; and
 - (b) The proposals for compliance constitute a variation
- then the Council's Representative shall initiate a Variation in accordance with Clause 13 [Variations and Adjustments].

2.5.5. Sub-Clause 5.5 Training remains to read:

The Developer shall carry out the training of Council's Personnel in the operation and maintenance of the Works to the extent specified in the Council's Requirements. If the Agreement specifies training which is to be carried out before taking-over, the Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections] until this training has been completed.

2.5.6. Sub-Clause 5.6 As-Built Documents remains to read:

The Developer shall prepare, and keep up-to-date, a complete set of "as-built" records of the execution of the Works, showing the exact as-built locations, sizes and details of the work as executed. These records shall be kept on the Site and shall be used exclusively for the purposes of this Sub-Clause. Two copies shall be supplied to the Council's Representative prior to the commencement of the Tests on Completion.

In addition, the Developer shall supply to the Council's Representative as-built drawings of the Works, showing all Works as executed, and submit them to the Council's Representative for review under Sub-Clause 5.2 [*Developer's Documents*]. The Developer shall obtain the consent of the Council's Representative as to their size, the referencing system, and other relevant details.

Prior to the issue of any Taking-Over Certificate, the Developer shall supply to the Council's Representative the specified numbers and types of copies of the relevant as-built drawings, in accordance with the Council's Requirements. The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [*Taking Over of the Works and Sections*] until the Council's Representative has received these documents.

2.5.7. Sub-Clause 5.7 Operation and Maintenance Manuals remains to read:

Prior to commencement of the Tests on Completion, the Developer shall supply to the Council's Representative provisional operation and maintenance manuals in sufficient detail for the Council to operate, maintain, dismantle, reassemble, adjust and repair the Plant.

The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [*Taking Over of the Works and Sections*] until the Council's Representative has received final operation and maintenance manuals in such detail, and any other manuals specified in the Council's Requirements for these purposes.

2.5.8. Sub-Clause 5.8 Design Error remains to read:

If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Developer's Documents, they and the Works shall be corrected at the Developer's cost, notwithstanding any consent or approval under this Clause.

2.6. STAFF AND LABOUR

2.6.1. Sub-Clause 6.1 Engagement of Staff and Labour is amended to read:

Except as otherwise stated in the Council's Requirements, the Developer shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport.

The Developer declares itself to be fully conversant with any project labour agreement in place covering the Works and shall comply therewith as well as to all amendments thereto and the site industrial relations policy, at all its own cost.

2.6.2. Sub-Clause 6.2 Rates of Wages and Conditions of Labour is deleted in its entirety and replaced with the following:

The Developer shall ensure that the rates of wages paid and conditions of labour observed with regard to the Developer's Personnel are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Developer shall ensure that the rates of wages paid and the conditions observed are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Developer and/or the relevant Contractor.

2.6.3. Sub-Clause 6.3 Persons in the Service of the Council remains to read:

The Developer shall not recruit, or attempt to recruit, staff and labour from amongst the Council's Personnel.

2.6.4. Sub-Clause 6.4 Labour Laws remains to read:

The Developer shall comply with all the relevant labour Laws applicable to the Developer's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

The Developer shall require his employees and Contractors to obey all applicable Laws, including those concerning safety at work.

2.6.5. Sub-Clause 6.5 Working Hours remains to read:

No works shall be carried out on the Site on locally recognised days or rest, or outside the normal working hours stated in the Agreement Data, unless:

- (a) otherwise stated in the Agreement;
- (b) the Council's Representative gives consent, or
- (c) the works is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Developer shall immediately advise the Council's Representative.

2.6.6. Sub-Clause 6.6 Facilities for Staff and Labour remains to read:

Except as otherwise stated in the Council's Requirements, the Developer shall provide and maintain all necessary accommodation and welfare facilities for the Developer's Personnel. The Developer shall also provide facilities for the Council's Personnel as stated in the Council's Requirements.

The Developer shall not permit any of the Developer's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

Hours is amended to read: The Developer shall at all times take all reasonable precautions to maintain the health and safety of the Developer's Personnel. In collaboration with local health authorities, the Developer shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Developer's and Council's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Developer shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Developer shall provide whatever is required by this person to exercise this responsibility and authority.

2.6.7. Sub-Clause 6.8 Developer's Superintendence ours remains to read:

Throughout the design and execution of the Works, and as long thereafter as is necessary to fulfil the Developer's obligations, the Developer shall provide all

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necessary superintendence to plan, arrange, direct, manage, inspect and test the work.

Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in Sub-Clause 1.4 [*Law and Language*] and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

2.6.8. Sub-Clause 6.9 Developer's Personnel is deleted in its entirety and replaced with the following:

The Developer's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations.

2.6.9. Sub-Clause 6.10 Records of Developer's Personnel and Equipment remains to read:

The Developer shall submit, to the Council's Representative, details showing the number of each class of Developer's Personnel and of each type of Developer's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Council's Representative, until the Developer has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

2.6.10. Sub-Clause 6.11 Disorderly Conduct remains to read:

The Developer shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Developer's Personnel, and to preserve peace and protection of persons and property on and near the Site.

2.6.11. Add the following sub-clauses 6.12 and 6.13:

"6.12 Key Personnel

The Developer shall furnish the Council with a list of addresses and telephone numbers of key personnel in the Developer's organisation (hereinafter referred to as "the Key Personnel") who may be contacted in any emergency both during and outside normal working hours. The Developer shall not be entitled to replace any Key Personnel during the period of the Agreement without the approval in advance of the Council. In the event of any of the Key Personnel resigning from the Developer's employment during the period of the Agreement, the Developer shall

replace such Key Personnel with personnel of similar qualifications and experience, without delay, and shall promptly advise the Council of the required information as stipulated above.

6.13 Foreign Personnel

To the extent permitted by the applicable Laws, the Developer may bring in to the Country any foreign personnel ordinarily resident outside of the Country (hereinafter referred to as "the Foreign Personnel"), who are necessary for the execution of the Works. The Developer shall ensure that the Foreign Personnel are provided with the required residence visas and work permits. Subject to the provisions of Sub-Clause 2.2 [*Permits, Licences or Approvals*], the Council will, if requested by the Developer, take all reasonable and lawful steps to assist the Developer in obtaining any local, state, or government permission required for the employment of the Foreign Personnel in respect of the Works. Any costs incurred by the Council in taking such steps shall be borne by the Developer.

The Developer shall be responsible for the return of the Foreign Personnel to the place where they were recruited or to their domicile. In the event of the death in the Country of any of these personnel or members of their families, the Developer shall similarly be responsible for making the appropriate arrangements for the return of the remains, or where appropriate, for burial.

2.7. PLANT, MATERIALS AND WORKMANSHIP (Clause 7 in General Conditions)

2.7.1. Sub-Clause 7.1 Manner of Execution remains to read

The Developer shall carry out the manufacture of Plant, the production and manufacture of Materials, and all other execution of the Works:

- (a) in the manner (if any) specified in the Agreement,
- (b) in a proper workmanlike and careful manner, in accordance with recognised good practice, and
- (c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Agreement.

2.7.2. Sub-Clause 7.2 Samples remains to read

The Developer shall submit the following samples of Materials, and relevant information, to the Council's Representative for review in accordance with the procedures for Developer's Documents described in Sub-Clause 5.2 [*Developer's Documents*]:

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- (a) manufacturer's standard samples of Materials and samples specified in the Agreement, all at the Developer's cost, and
- (b) additional samples instructed by the Council's Representative as a Variation.

Each sample shall be labelled as to origin and intended use in the Works.

2.7.3. Sub-Clause 7.3 Inspection remains to read:

The Council's Personnel shall at all reasonable times:

- (a) have full access to all parts of the Site and to all places from which natural Materials are being obtained, and
- (b) during production, manufacture and construction (at the Site and elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.

The Developer shall give the Council's Personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Developer from any obligation or responsibility.

The Developer shall give notice to the Council's Representative whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Council's Representative shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Developer that the Council's Representative does not require doing so. If the Developer fails to give the notice, he shall, if and when required by the Council's Representative, uncover the work and thereafter reinstate and make good, all at the Developer's cost.

2.7.4. Sub-clause 7.4 Testing is amended to read:

This Sub-Clause shall apply to all tests specified in the Agreement, other than the Tests after Completion (if any). All such tests shall be carried out at the Developer's sole cost and risk.

The Developer shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Developer shall agree, with the Council's

Representative, the time and place for the specified tests efficiently. The Developer shall agree, with the Council's Representative, the time and place for the specified testing of any Plant, Materials and other parts of the Works.

The Council's Representative may, under clause 13 [*Variations and Adjustments*], vary the location or details of specified tests, or instruct the Developer to carry out additional tests.

The Council's Representative shall give the Developer not less than 24 hours' notice of the Council's Representative intention to attend the tests. If the Council's Representative does not attend at the time and place agreed, the Developer may proceed with the tests, unless otherwise instructed by the Council's Representative and the tests shall then be deemed to have been made in the Council's Representative presence.

The Developer shall promptly forward to the Council's Representative duly certified reports of the tests. When the specified tests have been passed, the Council's Representative shall endorse the Developer's tests certificate, or issue a certificate to him, to that effect. If the Council's Representative has not attended to the tests, he shall be deemed to have accepted the readings as accurate.

2.7.5. Sub-clause 7.5 Rejection remains to read

If, as a result of an examination, inspection, measurement or testing, any Plant, Materials, design or workmanship is found to be defective or otherwise not in accordance with the Agreement, the Council's Representative may reject the Plant, Materials, design or workmanship by giving notice to the Developer, with reasons. The Developer shall then promptly make good the defect and ensure that the rejected item complies with the Agreement.

If the Council's Representative requires this Plant, Materials, design or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Council to incur additional costs, the Developer shall subject to Sub-Clause 2.5[*Council's Claims*] pay these costs to the Council.

2.7.6. Sub clause "7.6" is deleted

2.7.7. Sub-clause "7.7" is deleted in its entirety.

2.7.8. clause 7.8 Royalties remains to read:

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Unless otherwise stated the Council's Requirements, the Developer shall pay all royalties, rents and other payments for:

- (a) natural Materials obtained from outside the Site, and
- (b) the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Agreement

2.8. COMMENCEMENT, DELAYS AND SUSPENSION (CLAUSE 8)

2.8.1. Sub-Clause 8.1 Commencement of Work is deleted in its entirety

2.8.2. Delete Sub-Clause 8.2 and replace with 8.2 Time for Completion remain to read:

The Developer shall complete the following:

"In line with whole of the provisions of clause 10 Works, and 11 of each Section 1 (if any), within the Project Team will agree on a commencement date to be added to Time for Completion for the Works or Section (as the case may be), including:

- (a) achieving the passing of the Tests on Completion, and
- (b) completing all work which is stated in the Agreement Data in Section 6 as being required for the Works or Section to be considered to be completed for the purposes of the Agreement. "Taking-over" under Sub-Clause 10.1 [Taking Over of the Works and Sections].

2.8.3. Sub-Clause 8.3 Programme

The Developer shall submit for each Township Development section to be approved from time to time a detailed time programme to the Council's Representative within 28 days after the Commencement Date. The Developer shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Developer's obligations, or whenever the Council's Representative instructs him to do so. Each programme shall include:

- (a) the order in which the Developer intends to carry out the Works, including the anticipated timing of each stage of design, Developer's Documents, procurement, manufacture, inspection, delivery to Site, construction, erection, testing, commissioning and trial operation;

- (b) the periods for reviews under Sub-Clause 5.2 [*Developer's Documents*] and for any other submissions, approvals and consents specified in the Council's Requirements;
- (c) the sequence and timing of inspections and tests specified in the Agreement, and
- (d) a supporting report which includes:
 - (i) a general description of the methods which the Developer intends to adopt, and of the major stages, in the execution of the Works, and
 - (ii) details showing the Developer's reasonable estimate of the number of each class of Developer's Personnel and each type of Developer's Equipment, required on the Site for each major stage.

Unless the Council's Representative, within 21 days after receiving a programme, gives notice to the Developer stating the extent to which it does not comply with the Agreement, the Developer shall proceed in accordance with the programme, subject to his other obligations under the Agreement. The Council's Personnel shall be entitled to rely upon the programme when planning their activities

The Developer shall notify the Council in writing of any event, circumstance or factor which may adversely affect the Works or the progress thereof, delay the execution of the Works, constitute an environmental or safety risk or impair the performance or use of the Works or any part thereof ("notified event"). Such notice shall be given as soon as possible, but in any event within not more than 7 days after the event, circumstance or factor in question was known or should reasonably have been known to the Developer. In such notice the Developer shall provide:

- (a) detailed particulars of the notified event and the potential adverse effects;
- (b) proposals for the steps to be taken by the Developer to mitigate the potential adverse effects and meet the Time for Completion.

A notification in terms of this Sub-Clause 8.3 shall not constitute a notification of a claim for extension of time to Clause 20 [*Claims, Disputes and Arbitration*] or otherwise under the Contract.

In the event of the Developer making a claim for an extension of time under Clause 20 [*Claims, Disputes and Arbitration*] in respect of any event for which no such

notice as envisaged above has been given, then such claim shall be assessed as if the Developer had complied above requirement within the said 7 day notice period referred to above.

If, at any time, the Council's Representative gives notice to the Developer that a programme fails (to the extent stated) to comply with the Agreement or to be consistent with actual progress and the Developer's stated intentions, the Developer shall submit a revised programme to the Council's Representative in accordance with this Sub-Clause.

2.8.4. Sub-clause 8.4 Extension of time for Completion is amended to read as follows:

The Developer shall be entitled subject to Sub-Clause 20.1. [*Developer's Claims*] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [*Taking Over of the Works and Sections*] is or will be delayed by any of the following causes:

- (a) a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [*Variation Procedure*],
- (b) reasons beyond the control of the Developer, whether economic or otherwise, which render it impossible or commercially non-viable for the Developer to release for sale all or any even within all the sections of the Township Development to which the relevant Section of the Works relates,
- (c) exceptionally adverse climatic conditions,
- (d) unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or
- (e) any delay, impediment or prevention caused by or attributable to the Council, the Council's Personnel, or subject to Clause 8.5 [*Delays caused by Authorities*], any legally constituted public authorities in the Country.

If the Developer considers himself to be entitled to an extension of the Time for Completion, the Developer shall give notice to the Council's Representative in accordance with Sub-Clause 20.1 [*Developer's Claims*]. When determining each extension of time under Sub-clause 20.1, the Council's Representative shall review previous determinations and may increase, but shall not decrease, the total extension of time.

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The Developer shall not however, be entitled to an extension of the Time for Completion to the extent that completion would, in the circumstances, in any event have been delayed by a cause not listed in (a) (b) (c) (d) and (e) above.

2.8.5. Sub clause 8.5 Delays caused by Authorities remains to read as follows:

If the following conditions apply, namely:

- (a) the Developer has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country,
- (b) these authorities delay or disrupt the Developer's work, and
- (c) the delay or disruption was Unforeseeable,

then his delay or disruption will be considered as a cause of delay under subparagraph (e) of Sub-Clause 8.4 [*Extension of Time for Completion*].

2.8.6. Sub-clause 8.6 Rate of Progress remains to read as follows:

If, at any time:

- (a) actual progress is too slow to complete within the Time for Completion, and/or
- (b) progress has fallen (or will fall) behind the current programme under Sub-Clause 8.3 [*Programme*],

other than as a result of a cause listed in Sub-Clause 8.4 [*Extension of Time for Completion*], then the Council's Representative may instruct the Developer to submit, under Sub-Clause 8.3 [*Programme*], a revised programme and supporting report describing the revised methods which the Developer proposes to adopt in order to expedite progress and complete within the Time for Completion.

Unless the Council's Representative notifies otherwise, the Developer shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Developer's Personnel and/or Goods, at the risk and cost of the Developer. If these revised methods cause the Council to incur additional costs, the Developer shall subject to Sub-Clause 2.5 [*Council's Claims*] pay these costs to the Council, in addition to delay damages (if any) under Sub-Clause 8.7 below.

2.8.7. Sub-clause 8.7 Delay Damages is deleted in its entirety and replaced as follows:

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The delay damages payable by the Developer for failure to achieve completion of the Works within the Time for Completion shall be as detailed in the Agreement Data contained in Section 4 hereof. The Council will only be entitled to recover delay damages as aforesaid to the extent that it suffers proven loss as a consequence of the Developer's delay.

2.8.8 Sub- Clause 8.8 Suspension of Work

Delete this Sub-Clause in its entirety.

2.8.9 Sub-clause 8.9 Consequences of suspension

Delete this Sub-Clause in its entirety.

2.8.10 Sub-Clause 8.10 Payment for Plant and Materials

Delete this Sub-Clause in its entirety.

2.8.11 Sub-clause 8.11 Prolonged suspension

Delete this Sub-Clause in its entirety.

2.8.12 Sub-clause 8.12 Resumption of Work

Delete this Sub-Clause in its entirety.

2.9 TESTS ON COMPLETION

2.9.1 Sub-clause 9.1 Developer's obligation is amended to read as follows:

The Developer shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4 [Testing], after providing the documents in accordance with Sub-Clause 5.6 [As-Built Documents] and Sub-Clause 5.7 [Operation and Maintenance Manuals].

The Developer shall give to the Council's Representative not less than 21 days' notice of the date after which the Developer will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within 14 days after this date, on such day or days as the Council's Representative shall instruct.

Unless otherwise stated in the Particular Conditions, the Tests on Completion shall be carried out in the following sequence:

- (a) pre-commissioning tests, which shall include the appropriate inspections and ("dry" or "cold") functional tests to demonstrate that each item of Plant can safely undertake the next stage, (b);
- (b) commissioning tests, which shall include the specified operational tests to demonstrate that the Works or Section can be operated safely and as specified, under all available operating conditions; and
- (c) trial operation, which shall demonstrate that the Works or Section perform reliably and in accordance with the Agreement.

During trial operation, when the Works are operating under stable conditions, the Developer shall give notice to the Council's Representative that the Works are ready for any other Tests on Completion, including performance tests to demonstrate whether the Works conform to criteria specified in the Council's Requirements.

Trial operation shall not constitute a taking-over under Clause 10 [Council's Taking Over].

As soon as the Works, or a Section, have passed each of the Tests on Completion described in sub-paragraph (a), (b), or (c), the Developer shall submit a certified report of the results of these Tests to the Council's Representative.

2.9.2 Sub-clause 9.2 Delayed Test remains to read as follows:

If the Tests on Completion are being unduly delayed by the Council, Sub-Clause 7.4 [Testing] (fifth paragraph) and/or Sub-Clause 10.3 [Interference with Tests on Completion] shall be applicable.

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If the Tests on Completion are being unduly delayed by the Developer, the Council's Representative may by notice require the Developer to carry out the Tests within 21 days after receiving the notice. The Developer shall carry out the Tests on such day or days within that period as the Developer may fix and of which he shall give notice to the Council's Representative.

If the Developer fails to carry out the Tests on Completion within the period of 21 days, the Council's Personnel may proceed with the Tests at the risk and cost of the Developer. The Tests on Completion shall then be deemed to have been carried out in the presence of the Developer and the results of the Tests shall be accepted as accurate.

2.9.3 Sub-clause 9.3 Retesting remains to read:

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [Rejection] shall apply, and the Council's Representative or the Developer may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

2.9.4. Sub-clause 9.4 is Failure to Pass Tests on Completion is amended to read as follows:

If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3, [Retesting] the Council's Representative shall be entitled to:

- (a) order further repetition of Tests on Completion under Sub-Clause 9.3;
- (b) if the failure deprives the Council of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Council shall have the same remedies as are provided in subparagraph (c) of Sub-Clause 11.4 [Failure to Remedy Defects].

2.10 COUNCIL'S TAKE OVER

2.10.1 Sub-clause 10.1 Taking Over of the Works and Sections is deleted and replaced with the following:

Each Section of the Works will be taken over by the Council when:

- (a) the Section has been completed in accordance with the Agreement; and
- (b) the Section has passed the relevant Tests on Completion in accordance with the Agreement; and

- (c) a Completion Certificate has been completed and signed in relation to the Section by the relevant Departmental Head of the Council;
- (d) a Taking-Over Certificate for the Section has been issued, or is deemed to have been issued in accordance with this Sub-clause.

The Developer shall make application to the Council's Representative for a Taking-Over Certificate (i) when he considers the relevant Section of the Works to be complete and ready for taking over; and (ii) when the respective taking-over certificates provided for in the respective Contract(s) have been duly issued by or on behalf of the Developer to the respective Contractor(s); and (iii) when copies of all such taking-over certificates have been given by the Developer to the Council's Representative.

Within 28 days after receiving the aforesaid application, the Council's Representative shall:

- a) issue a Taking-Over Certificate to the Developer, stating the date on which the Section was completed in accordance with the Agreement, except for any minor outstanding work and defects which will not substantially affect the use of the Section for its intended purpose (either until or whilst this work is completed and these defects are remedied); or
- b) reject the application, giving reasons and specifying the work required to be done by the Developer to enable the Taking-Over Certificate to be issued. The Developer shall then ensure that this work is complete before issuing a further notification under this Sub-Clause.

If the Council's Representative fails either to issue the Taking-Over Certificate or to reject the Developer's application within the period of 28 days, and if the Section is substantially in accordance with the Agreement, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

The mere fact that a taking over certificate has been issued by or on behalf of the Developer to any or all of the Contractors in respect of all or part of the Works shall not in any way be taken to mean that the Works or any part thereof shall not be in any way taken to mean that the Works are complete and ready for taking over in accordance with the criteria set down in this Sub-Clause; neither shall such fact

deprive the Council's Representative of his right to reject an application by the developer for a Taking-Over Certificate as described in this Sub-Clause.

2.10.2 Sub-clause 10.2 Taking Over of Parts of the Works

Delete the Sub-Clause in its entirety.

2.10.3 Sub-clause 10.3 Interference with Tests on Completion is amended to read as follows:

If the Developer is prevented, for more than 14 days, from carrying out the Tests on Completion by a cause for which the Council is responsible, the Works shall be regarded as suspended.

The Council's Representative shall require the Tests on Completion to be carried out by giving 14 days' notice and in accordance with the relevant provisions of the Agreement.

2.10.4 Sub-clause 10.4 Surfaces Requiring Reinstatement remains to read as follows:

Except as otherwise stated in a Taking-Over Certificate, a certificate for a Section or part of the Works shall not be deemed to certify completion of any ground or other surfaces requiring reinstatement.

2.11 DEFECTS LIABILITY (Clause 11 in the General Conditions)

2.11.1 Sub-clause 11.1 Completion of Outstanding Work and Remedying Defects remains to read as follows:

In order that the Works and Developer's Documents, and each Section, shall be in the condition required by the Agreement (fair wear and tear excepted) by the expiry date of the relevant Defects Notification Period or as soon as practicable thereafter, the Developer shall:

- (a) complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Developer, and
- (b) execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Council on or before the expiry date of the Defects Notification Period for the Works or Section (as the case may be).

If a defect appears or damage occurs, the Developer shall be notified accordingly, by (or on behalf of) the Council.

2.11.2 Sub-clause 11.2 is amended to read as follows:

All work referred to in sub-paragraph (b) of Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*] shall be executed at the risk and cost of the Developer, if and to the extent that the work is attributable to:

- (a) the design of the Works, other than a part of the design for which the Council is responsible (if any),
- (b) Plant, Materials or workmanship not being in accordance with the Agreement,
- (c) Improper operation or maintenance which was attributable to matters for which the Developer is responsible (under Sub-Clauses 5.5 to 5.7 or otherwise), or
- (d) Failure by the Developer to comply with any other obligation.

If and to the extent to that such work is attributed to any other cause, the Council will bear the risk and cost of carrying it out.

2.11.3 Sub-clause 11.3 Extensions of Defects Notification Period is amended to read as follows:

The Council shall be entitled subject to Sub-Clause 2.5 [*Council's Claims*] to an extension of the Defects Notification Period for the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or damage. However, a Defects Notification Period shall not be extended by more than two years.

2.11.4 Sub-clause 11.4 Failure to Remedy Defects is amended to read as follows:

If the Developer fails to remedy any defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the Council, on or by which the defect or damage is to be remedied. The Developer shall be given reasonable notice of this date.

If the Developer fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Developer under Sub-Clause 11.2 [*Cost of Remedying Defects*], the Council may (at his option):

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Carry out the work himself or by others, in a reasonable manner and add the following words at the end of subparagraph (c) "at the Developer's cost, but the Developer shall have no responsibility for this work; and such the Developer shall subject to Sub-Clause 2.5[Council's Claims] pay to the Council the costs may be recovered or reasonably incurred by the Council in remedying the defect or damage.

2.11.5 Sub-clause 11.5 Removal of Defective Work remains to read:

If the defect or damage cannot be remedied expeditiously on the Site and the Council gives consent, the Developer may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Developer to increase the amount of the Performance Security in sub clause 4.2 of the General Conditions by the full replacement cost of these items, or to provide other appropriate security.

2.11.6 Sub-clause 11.6 Further Tests remain to read:

If the work of remedying of any defect or damage may affect the performance of the Works, the Council's Representative may require the repetition of any of the tests described in the Agreement, including Tests on Completion and/or Tests after Completion. The requirement shall be made by notice within 28 days after the defect or damage is remedied.

These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Sub-Clause 11.2 [Cost of Remedying Defects], for the cost of the remedial work.

2.11.7 Sub-clause 11.7 Right of Access remain to read:

Until the Performance Certificate has been issued, the Developer shall have the right of access to all parts of the Works and to records of the operation and performance of the Works, except as may be inconsistent with the Council's reasonable security restrictions.

2.11.8 Sub-clause 11.8 Developer to Search is amended to read:

The Developer shall, if required by the Council's Representative, search for the cause of any defect, under the direction of the Council's Representative.

2.11.9 Sub-clause 11.9 Performance Certificate remains to read:

Performance of the Developer's obligations shall not be considered to have been completed until the Council's Representative has issued the Performance Certificate to the Developer, stating the date on which the Developer completed his obligations under the Agreement.

The Council's Representative shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Developer has supplied all the Developer's Documents and completed and tested all the Works, including remedying any defects. A copy of the Performance Certificate shall be issued to the Council.

Only the Performance Certificate shall be deemed to constitute acceptance of the Works.

2.11.10 Sub-clause 11.10 Unfulfilled Obligations remains to read:

After the Performance Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Agreement shall be deemed to remain in force.

2.11.11 Sub-clause 11.11 Clearance of Site remains to read:

Upon receiving the Performance Certificate, the Developer shall remove any remaining Developer's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.

If all these items have not been removed within 28 days after the Council receives a copy of the Performance Certificate, the Council may sell or otherwise dispose of any remaining items. The Council shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

Any balance of the money from the sale shall be paid to the Developer. If these moneys are less than the Council's costs, the Developer shall pay the outstanding balance to the Council.

2.11.12 Sub-clause 11.12 Add Sub-clause 11.12:

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"11.12 Latent Defects

Nothing contained in this Contract shall be in any manner be construed as limiting the Council's rights in the event of a latent defect manifesting itself in the Works."

2.12 TEST AFTER COMPLETION (Clause 12 of the General Conditions)

2.12.1 Sub-clause 12.1 Procedure for Tests after Completion remains to read:

If Tests after Completion are specified in the Agreement, this Clause shall apply. Unless otherwise stated in the Particular Conditions, the Council shall:

- (a) provide all electricity, equipment, fuel, instruments, labour, materials and suitably qualified and experienced staff, as are necessary to carry out the Tests after Completion efficiently, and
- (b) carry out the Tests after Completion in accordance with the manuals supplied by the Developer under Sub-Clause 5.7 [*Operation and Maintenance Manuals*] and such guidance as the Developer may be required to give during the course of these Tests; and in the presence of such Developer's Personnel as either Party may reasonably request.

The Tests after Completion shall be carried out as soon as is reasonably practicable after the Works or Section have been taken over by the Council. The Council shall give to the Developer 21 days' notice of the date after which the Tests after Completion will be carried out. Unless otherwise agreed, these Tests shall be carried out within 14 days after this date, on the day or days determined by the Council.

If the Developer does not attend at the time and place agreed, the Council may proceed with the Tests after Completion, which shall be deemed to have been made in the Developer's presence, and the Developer shall accept the readings as accurate.

The results of the Tests after Completion shall be compiled and evaluated by both Parties. Appropriate account shall be taken of the effect of the Council's prior use of the Works.

2.12.2 Sub-clause 12.2 Delayed Tests remains to read:

If the Developer incurs Cost as a result of any unreasonable delay by the Council to the Tests after Completion, the Developer shall (i) give notice to the Council's Representative and (ii) be entitled subject to Sub-Clause 20.1 [*Developer's Claims*] to payment of any such Cost plus reasonable profit, which shall be included in the Agreement Price.

After receiving this notice, the Council's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine this Cost and profit.

If, for reasons not attributable to the Developer, a Test after Completion on the Works or any Section cannot be completed during the Defects Notification Period (or any other period agreed upon by both Parties), then the Works or Section shall be deemed to have passed this Test after Completion.

2.12.3 Sub-clause 12.3 Retesting remains to read:

If the Works, or a Section, fail to pass the Tests after Completion:

- (a) sub-paragraph (b) of Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*] shall apply, and
- (b) either Party may then require the failed Tests, and the Tests after Completion on any related work, to be repeated under the same terms and conditions.

If and to the extent that this failure and retesting are attributable to any of the matters listed in sub-paragraphs (a) to (d) of Sub-Clause 11.2 [*Cost of Remedying Defects*] and cause the Council to incur additional costs, the Developer shall subject to Sub-Clause 2.5 [*Council's Claims*] pay these costs of the Council.

2.12.4 Sub-clause 12.4 Failure to Pass Tests after Completion remains to read:

If the following conditions apply, namely:

- (a) the Works, or a Section, fail to pass any or all of the Tests after Completion,
- (b) the relevant sum payable as non-performance damages for this failure is stated (or its method of calculation is defined) in the Agreement, and
- (c) the Developer pays this relevant sum to the Council during the Defects Notification Period,

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then the Works or Section shall be deemed to have passed these Tests after Completion.

If the Works, or a Section, fail to pass a Test after Completion and the Developer proposes to make adjustments or modifications to the Works or such Section, the Developer may be instructed by (or on behalf of) the Council that right of access to the Works or Section cannot be given until a time that is convenient to the Council. The Developer shall then remain liable to carry out the adjustments or modifications and to satisfy this Test, within a reasonable period of receiving notice by (or on behalf of) the Council of the time that is convenient to the Council. However, if the Developer does not receive this notice during the relevant Defects Notification Period, the Developer shall be relieved of this obligation and the Works or Section (as the case may be) shall be deemed to have passed this Test after Completion. (0)

If the Developer incurs additional Cost as a result of any unreasonable delay by the Council in permitting access to the Works or Plant by the Developer, either to investigate the causes of a failure to pass a Test after Completion or to carry out any adjustments or modifications, the Developer shall (i) give notice to the Council's Representative and (ii) be entitled subject to Sub-Clause 20.1 [*Developer's Claims*] to payment of any such Cost plus reasonable profit, which shall be included in the Agreement Price.

After receiving this notice, the Council's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine this Cost and profit. (0)

2.13 VARIATIONS AND ADJUSTMENTS (Clause 13 of the General Conditions)

Delete this Clause in its entirety and replace it with the following:

"No agreement to vary, add to or cancel the Agreement or any portion thereof including, but not limited to, the Council's Standards in Sections 3 to 6, shall be of any force or effect unless reduced into writing and signed by the authorised representatives of both Parties."

2.14 PRICE AND PAYMENT (Clause 14 of the General Conditions)

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Delete this Clause in its entirety.

2.15 TERMINATION BY EMPLOYER (Clause 15 of the General Conditions)

Delete this Clause in its entirety and replace with the following:

"TERMINATION BY THE COUNCIL

15.1 Notice to correct

If the Developer fails to carry out any obligation under the Agreement, the Council's representative shall by notice require the Developer to make good the failures and to remedy it within the time specified in the said notice.

15.2 Notice to correct

The Council shall be entitled to terminate the Agreement if the Developer:

- a) Fails to comply with Sub-clause 4.2 [Performance Security] or with a notice under sub-clause 15.1 [Notice to correct],
- b) Abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the agreement,
- c) Without reasonable excuse fails:
 - (i) To proceed with the Works in accordance with sub-clause 9.1 [Commencement of Design-Build] or sub-clause 10.2], [Commencement of Operation Service] or
 - (ii) To comply with a notice issued under sub-clause 7.5 [Rejection] or sub-clause 7.6 [Remedial Work], within 28 days after receiving it,
- d) Subcontracts or assigns the whole of the Works or assigns the Agreement without the required agreement,
- e) Becomes bankrupt or insolvent, or goes into liquidation, has receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, or
- f) Gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value as an inducement or reward,
 - (i) For doing or forbearing to do any action in relation to the Agreement,
 - or

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- (ii) for showing or forbearing to show favour or disfavour to any person in relation to the Agreement, or if any of the Developer's personnel gives or offers to give (directly or indirectly) to any person any such inducement or rewards as described in this sub-paragraph (f). However, lawful inducement and reward to Developer's personnel shall not entitle termination.

- g) Fails to complete the Works by the Cut Off Dated stated in the Agreement Data or, if no such date is given, then a period of 182 days after the Time for Completion of Works,

If any of these events or circumstances, the Council may, upon giving 14 days' notice to the Developer, terminate the Agreement and expel the Developer from Site. However, in the case of sub-paragraph (e) or (f), the Council may by notice terminate the Agreement immediately.

The Developer shall then leave the Site and deliver any required goods, all Developer's documents, and other design documents made by or for him, to the Council's representative. However, the Developer shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of works.

After termination, the Council may complete the works and/or arrange for any other entities to do so. The Council and these entities may then use any Goods, Developer's Documents and other Design documents made by or on behalf of the Developer.

The Council shall then give notice that the Developer's Equipment and Temporary Works will be released to the Developer at or near the Site. The Developer shall promptly arrange their removal, at the risk and cost of the Developer. However, if by this time the Developer has failed to make any payment due to Council, these items may be sold by Council in order to recover these payments. Any balance of the proceeds shall then be paid to the Developer.

15.3 Valuation at Date of Termination for Developer's Default

As soon as practical after a notice of termination under sub-clause 15.2 [Termination for Developer's Default] has taken effect, the Council's representative shall proceed in accordance with sub-clause 3.5 [Determinations] to agree or determine the value of Works, Goods and Developer's Documents, and any other sums due to the Developer for work executed in accordance with the Agreement.

15.4 Payment after Termination for Developer Default

After a notice of termination under sub-clause 15.2 [Termination for Developer's Default] has taken effect, the Council may

- (a) Proceed in accordance with sub-clause 2.5 [Council's Claims],
- (b) Withhold further payments to the Developer until the costs of design, execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by Council, have been established, and/or
- (c) Recover from the Developer any losses and damages incurred by the Council and any extra costs of completing the Works, after allowing for any sum due to the Developer under sub-clause 15.3 [Valuation at date of Termination of Developer's Default]. After recovering any such losses, damages and extra costs, the Council shall pay any balance to the Developer.

15.5 Termination for Council's Convenience

If at any time the Council wishes to terminate the Agreement for reasons other than those covered under sub-clause 15.2 [Termination for Developer's Default], and subject to the applicable Law of the Agreement, he shall notify the Developer in writing, with a copy to the Council's representative. Such termination shall be deemed to be termination for the convenience of the Council.

Upon issuing such a notice to terminate under this sub-clause, the Council shall immediately make arrangements to return the Performance Security to the Developer, and the termination shall take effect 14 days after the date the Developer receives the notice, or 14 days after he receives the Performance Security, whichever is the later. Upon issuing the notice, the Council shall immediately cease to have any right of use of any of the Developer's Documents, and shall forthwith return all and any such Developer's Documents to the Developer.

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The Council shall not terminate the Agreement under this sub-clause in order to execute or operate the Works (or any part thereof) himself, or arrange for the Works (or any part thereof) to be executed by the Developer.

15.6 Valuation at Date of Termination for Council's Convenience

As soon as practicable after a notice of termination under sub-clause 15.5 [Termination for Council's Convenience] has taken effect, the Council's representative shall proceed in accordance with sub-clause 3.5 [Determinations] to agree or determine the value of the Works, Goods and Developer's Documents, and any other sums due to the Developer for work executed in accordance with the Agreement.

15.7 Payment after Termination for Council's Convenience

After termination for Council's convenience under sub-clause 15.5 [Termination for Council's Convenience], the Developer shall proceed in accordance with sub-clause 16.3 [Cessation of Work and Removal of developer's Equipment] and shall be paid in accordance with sub-clause 16.4 [Payment on Termination].

2.16 SUSPENSION AND TERMINATION BY CONTRACTOR (Clause 16 of the General Conditions) is deleted in its entirety and replaced with the following:

16 Suspension and Termination by the Developer

16.1 Developer's Entitlement to Suspend Work

16.1.1 If the Council's representative fails to certify payments under the Project Teams operational financial guidelines, the Developer may, after giving not less than 7 days' notice to the Council, suspend work (or reduce the rate of work) unless and until the Developer has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

16.1.2 The Developer's action shall not prejudice his entitlements to Projects costs approved and expended under this Agreement and to termination under sub-clause 16.2 [Termination by Developer].

16.1.3 If the Developer subsequently receives such Payment Certificate, evidence or payment (as described in the relevant sub-clause and in the

above notice) before giving a notice of termination, the Developer shall resume normal working as soon as reasonably practicable.

16.1.4 If the Developer suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this sub-clause, the Developer shall give notice to the Council's representative and shall be entitled, subject to sub-clause 20.1 [Developer's Claim], and

- (a) an extension of time for any such delay, if completion is or will be delayed, under sub-clause 9.3 [Extension of Time for completion of Design-Build], and
- (b) payments of any such costs plus profit, which shall be included in the Agreement price.

16.1.5 After receiving this notice, Council's representative shall proceed in accordance with sub-clause 3.5 [Determinations] to agree or determine these matters

16.2 Termination by the Developer

16.2.1 The Developer shall be entitled to terminate the agreement if:

- (a) the Developer does not receive the reasonable evidence within 7 days after giving notice under sub-clause 16.1 [Developer's Entitlement to Suspend Work] in respect of failure to comply with sub-clause 2.4 [Council's Financial Arrangements].
- (b) The Council's representative fails, within 14 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,
- (c) If the Developer does not receive the amount due under an Interim Payment Certificate within 14 days after the expiry of the time within which payment is to be made (except for deductions in accordance with sub-clause 2.5 [Council's Claims],
- (d) The Council substantially fails to perform its obligations under the Agreement,
- (e) The Council fails to comply with sub-clause 1.6 [Agreement] or sub-clause 1.8 [Assignment],
- (f) a prolonged suspension, or
- (g) The Council becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him,

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compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

16.2.2 In any of these events or circumstances, the Developer may, upon giving 14 days' notice to the Council, terminate the Agreement. However, in the case of sub-paragraph (e) or (fF0, the Developer may by notice terminate the Agreement immediately.

16.2.3 The Developer's election to terminate the Agreement shall not prejudice any other rights of the Developer, under the Agreement or otherwise.

16.3 Cessation of Work and Removal of the Developer's Equipment

16.3.1 After a notice of termination under sub-clause 16.2 [Termination by Developer], the Developer shall promptly;

- (a) Cease all further work, except for such work as may have been instructed by the Council's representative for the protection of life or property of for the safety of the Works or protection of the environment. For all such instructed work, the Developer shall be entitled to be paid cost plus profit and shall be relieved of further liabilities under sub-clauses 4.8 [Safety Procedures] and 4.18 [Protection of the Environment];
- (b) hand over Developer's Documents, Plant, Materials and other work, for which the Developer has received payment, and
- (c) remove all other Goods from the Site, except as necessary for safety, and leave the Site.

16.4 Payment on Termination

16.4.1 After a notice of termination under sub-clause 16.2 [Termination by Developer] has taken effect, the Council shall promptly;

- (a) return the Performance Security to the Developer,
- (b) pay the Developer in accordance with clause 4.3 of Section 1; and
- (c) pay to the Developer the amount of any loss of profit or other loss or damage sustained by the Developer as a result of this termination.

2.17 RISK AND RESPONSIBILITIES (Clause 17 of the General Conditions)**2.17.1 Sub-Clause 17.1 Indemnities is amended to read as follows:**

The Developer shall indemnify and hold harmless the Council, the Council's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

- (a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the design, execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, wilful act or breach of the Agreement by the Council, the Council's Personnel, or any of their respective agents, and
- (b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss:
 - (i) arises out of or in the course of or by reason of the design, execution and completion of the Works and the remedying of any defects, and
 - (ii) is attributable to any negligence, wilful act or breach of the Agreement by the Developer, the Developer's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

The Council shall indemnify and hold harmless the Developer, the Developer's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, wilful act or breach of the Agreement by the Council, the Council's Personnel, or any of their respective agents.

2.17.2 Sub-Clause 17.2 Developer's Care of the Works is amended to read as follows:

The Developer shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under Sub-Clause 101.1 [*Taking Over of the Works and Sections*] for the Works, when responsibility for the care of the Works shall pass to the Council. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any Section or part of the Works, responsibility for the care of the Section or part shall then pass to the Council.

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After responsibility has according passed to the Council, the Developer shall take responsibility for the care of any work which is outstanding on the date stated in a

Taking-Over Certificate, until this outstanding work has been completed.

If any loss or damage happens to the Works, Goods or Developer's Documents during the period when the Developer is responsible for their care, the Developer shall rectify the loss or damage at the Developer's risk and cost, so that the Works, Goods and Developer's Documents conform to the Agreement.

The Developer shall be liable for any loss or damage caused by any actions performed by the Developer after a Taking-Over Certificate has been issued. The Developer shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous event for which the Developer was liable.

2.17.3 Sub-Clause 17.3 "Council's Risks" is deleted in its entirety

2.17.4 Sub-Clause 17.4 "Consequences of Council's Risks" is deleted in its entirety

2.17.5 Sub-Clause 17.5 "Intellectual and Industrial Property Rights" is deleted in its entirety and replaced with the following

The Developer shall fully indemnify the Council against all claims and proceedings for on or account of infringement of any letters patent, registered design, copyright, trade mark or trade name or industrial property right protected at the Commencement Date in the Country, arising by reason of the Developer's design and/or the execution of the Works, but such indemnity shall not cover any use of the Works other than for the purpose indicated by or reasonably to be inferred from the Council's Requirements.

In the event of any claim being made or action brought against the Council arising out of the matters referred to in this Sub-Clause, the Developer shall be promptly notified thereof and may at his own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. The Council shall not, unless and until the Developer shall have failed to take over the negotiations or litigation, make any admission which might be prejudicial thereto.

The conduct by the Developer of such negotiations or litigation shall be conditional

upon the Developer having first given to the Council such reasonable security as shall from time to time be required by the Council to cover the amount ascertained or agreed or estimated, as the case may be, of any compensation, damages, expenses and costs for which the Council may become liable. The Council shall, at the request of the Developer, afford all available assistance for the purpose of contesting any such claim or action, and shall be repaid all reasonable expenses incurred in so doing.

2.17.5 Sub-Clause 17.5 Limitation of Liability is amended to read as follows:

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any agreement or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Agreement, other than under and Sub-Clause 17.1[*Indemnities*].

2.18 INSURANCE (Clause 18 of the General Conditions)

Delete the Clause in its entirety and replace it with the following:

2.18.1 Sub-clause 18.1 General Requirements for Insurance remains to read:

In this Clause, "Insuring Party" means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant sub clause.

Wherever the Developer is the insuring Party, each insurance shall be effected with insurers and in the terms approved by the Council. These terms shall be consistent with any terms agreed by both parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this clause.

Wherever, the Council is the insuring party, each insurance shall be effected with insurers and in terms consistent with the details annexed to the Particular Conditions. If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in clause (i) the Developer shall act under the policy on behalf of these additional insured except that the Council shall act for the Council's personnel (ii) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer, and (iii)

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the issuing Party shall require that all additional joint insured to comply with the conditions stipulated in the policy.

Each policy insuring against the loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

The relevant issuing party shall, within the respective periods stated in the Agreement Data (calculated from the Commence Date), submit to the other party:

- (a) evidence that the insurances described in this clause have been effected, and
- (b) copies of the policies for the insurances described in sub-clause 18.2 [Insurance for Works and Contractor's Equipment] and sub-clause 18.3 [Insurance against Injury to Person and Damage to Property].

When each premium is paid, the insuring party shall submit evidence of payment to the other party. Whenever evidence or policies are submitted, the insuring Party shall also give notice to the Council's representative.

Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurer's informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this clause.

Neither party shall make any material alteration to the terms of any insurance without the prior approval of the other party. If an insurer makes or attempts to make any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.

If the insuring Party fails to effect and keep in force any of the insurance it is required to effect and maintain under the Agreement, or fails to provide satisfactory evidence and copies of policies in accordance with this sub-clause, the other party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premium due. The insuring Party shall pay the amount of these premiums to the other Party, and the contract price shall be adjusted accordingly.

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Nothing in this clause limits the obligations, liabilities, or responsibilities of the Developer or the Council, under the terms of the Agreement or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Developer and/or the Council in accordance with these obligations, liabilities, or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which is required to effect and maintain under the agreement, and the other Party neither approves the omissions nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.

Payments by one Party to the other Party shall be subject to sub-clause 2.5 [Council's Claims] or sub-clause 20.1 [Developer's Claims], as applicable.

2.18.2 Sub-clause 18.2 Insurance for Work and Developer's Equipment

"The Developer shall at his sole costs take out and maintain from the Signature Date until the issuance of the Performance Certificate the following insurances as a minimum, covering the Works, and shall add the Council as a co-insured on such policies.

The Developer shall, on or before the appointment of any contractor, submit to the Project Team evidence that the insurances for the Works, Plant, Material and contractor's Document and equipment have been effected and submit copies of the policies for the insurances described in this clause. When each premium is paid, the Developer shall submit evidence of such payment to the Project Team.

The Developer shall arrange for a Construction All Risks policy ("CAR policy") to be taken out, which shall cover the Works, Plant, Materials, documents and Contractor's equipment to the full estimated value thereof inclusive of escalation. The policy shall be in the joint names, and in favour, of the Council, the Developer and all Contractors ("the insured") engaged in the execution of the Work. The CAR policy shall cover the Insured against the full reinstatement costs and physical loss or damage to the Works Plant, Materials, documents and Contractor's equipment throughout the period from the Commencement Date to the issuance of the Performance Certificate.

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The Developer shall arrange at its sole costs a Public Liability (Third Party) insurance policy against injury to Persons and Damage to Property, in the joint names of the Council, the Developer and all the Contractors.

It is recorded that the policies of insurance referred to above may contain certain uninsurable risks for which the Developer shall remain liable.

The Developer shall also at its sole costs arrange, maintain and provide proof for the duration of the Agreement, the following additional insurances:

- *insurance in respect of liability for any damages or compensation payable under the applicable Laws in respect or in consequence of accident or injury to any member of the Developer's Personnel;*
- *Third party motor liability insurance;*
- *Workmen's compensation insurance as required by the applicable Laws;*
- *Product liability insurance in respect of the Works and any Materials and/or Plant incorporated therein.*
- *Professional liability insurance.*

- a) The Developer shall be responsible for the costs of the insurance which the Developer is to arrange and shall bear the costs of arranging and maintaining such insurance.
- b) The Developer shall, on or before the Signature Date, submit to the Council evidence that the insurances described in this Clause have been effected and copies of the policies for the insurances described in this Clause. When each premium is paid, the Developer shall submit evidence of such payment to the Council.
- c) The Developer shall comply with the terms, conditions and exclusions stated in each of the insurance policies, failing which the Developer shall be responsible for all expenses and losses incurred by the Council as a result thereof. Further, the Developer shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.
- d) Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes

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(or attempts to make) any alteration the Party first notified by the insurer shall promptly give notice to the other Party.

- e) If the Developer fails to effect and keep in force any of the insurances it is required to effect and maintain under this Clause, or fails to provide satisfactory evidence and copies of policies in accordance with this Clause, the Council may (in its sole and absolute discretion and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The Developer shall then indemnify and reimburse the Council in the amount of the aforesaid premiums.
- f) Nothing in this Clause limits the obligations, liabilities or responsibilities of the Developer or the Council under the terms of the Agreement or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Developer and/or the Council in accordance with the aforesaid obligations, liabilities or responsibilities. However, if the Developer fails to effect and to keep in force an insurance which is available and which it is required to effect and maintain under this Clause, and the Council neither approves the omission nor effects insurance for the coverage relevant to this default, any monies which should have been recoverable under this insurance shall be paid by the Developer.
- g) Payments by one Party to the other Party shall be subject to Sub-Clause 2.5. [Council's Claims] or Sub-Clause 201.1 [Developer's Claims] respectively.

2.18.3 Sub-clause 18.3 Insurance against injury to Persons and Damage to Property is amended to read:

The developer shall arrange a Public Liability Insurance Policy in the joint names of the Council, the Developer and all contractors and subcontractors of the developer involved in the construction of the Works as well as operations of the Works.

The issuing Party shall insure against each Party's liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under sub-clause 18.2 [Insurance for Works and Developer's Equipment] or to any person (except persons insured under sub-clause [Insurance for Developer's

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Personnel], which may arise out of the Developer's performance Agreement and occurring before the issue of the Performance Certificate.

This insurance shall be for a limit per occurrence of not less than the amount stated in the Agreement Data, with no limit on the number of occurrences. If an amount is not stated in the Agreement Data, this sub-clause shall not apply. Unless otherwise stated in the Particular Conditions, the insurances specified in this sub-clause:

- (a) Shall be effected and maintained by the Developer as insuring Party,
- (b) Shall be in the joint names of the Parties,
- (c) Shall be extended to cover liability for all loss and damage to the Council's property (except things insured under sub-clause 18.2) arising out of the Developer's performance of the Agreement, and
- (d) May however exclude liability to the extent that it arises from:
 - i) The Council's right to have the Permanent Works executed on, over, under, in or through any land, and to occupy this land for the Permanent Works,
 - ii) Damage which is an unavoidable result of the Developer's obligations to execute the Permanent Works and remedy any defects,

2.18.4 Sub-clause 18.4 Insurance Developer's Personnel is to be deleted in its entirety and be replaced with the following:

The Developer shall, on or before the appointment of a contractor, submit to the Project Team evidence that the insurances for the Contractor's personnel have been effected and submit copies of the policies for the insurance described in this clause to the Project Team. When each premium is paid, the Developer shall submit evidence of such payment to the Project Team.

2.19 FOCE MAJEURE (Clause 19 in the General Conditions)

Delete this Clause in its entirety.

2.20 CLAIMS DISPUTES AND ARBITRATION (CLAUSE 20 in the General Conditions)

2.20.1 Sub-clause 20.1 Developer's Claims is amended to read as follows:

If the Developer considers himself to be entitled to any extension of the Time for Completion payment, under any Clause of these Conditions or otherwise in

connection with the Agreement, the Developer shall give notice to the Council's Representative, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Developer became aware, or should have become aware, of the event or circumstance.

If the Developer fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended except as agreed between the Developer shall not be entitled to any payment, and the Council shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Developer shall also submit any other notices which are required by the Agreement, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Developer shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Council's Representative. Without admitting the Council's liability, the Council's Representative may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Developer to keep further contemporary records.

The Developer shall permit the Council's Representative to keep further contemporary records. The Developer shall permit the Council's Representative to inspect all these records, and shall (if instructed) submit copies to the Council's Representative.

Within 28 days after the Developer became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Developer and approved by the Council's Representative, the Developer shall send to the Council's Representative a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) This fully detailed claim shall be considered as interim;

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- (b) The Developer shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Council's Representative may reasonably require; and
- (c) The Developer shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Developer and approved by the Council's Representative.

Within 28 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Council's Representative and approved by the Developer, the Council's Representative shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

The Developer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [*Extension of time for Completion*].

2.20.2 Insert a new clause 20.2 and renumber clause 20.2 to 20.3 and the new clause 20.2 to read as follows:

20.2 AMICABLE SETTLEMENT OF DISPUTES

20.2.1 Intent to resolve claims or disputes expeditiously

The Parties herewith record their intent to have any claim or dispute under sub-clause 20.1 that may arise in respect of any matter in terms of this agreement or the interpretation of this Agreement or in the interpretation of this agreement resolved expeditiously. In particular, disputes pertaining to the Parties' on-going relationship shall be dealt with by the Parties constructively and with the aim of settling such disputes expeditiously, as provided below.

20.2.2 Settlement procedure

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Any dispute by any of the Parties, shall be made in writing by the aggrieved Party and be addressed to the representative of the other Party (herein referred to as the "responding party").

- (a) The Party against whom the claim or dispute is made (the "responding Party") shall have the right and the duty to respond thereto within 7 (seven) business days of the receipt of the claim or dispute. Such response may either be in person or in writing, at the discretion of the representative.
- (b) The respective representative shall deal with the claim or dispute and actively pursue the amicable settlement thereof between the complainant and the responding party and engage each other by correspondence, as may be appropriate under the circumstances. The representatives shall not elevate the claim or dispute to the next level until the claim or dispute is declared in writing as unresolved by the representatives. The claim or dispute shall be regarded as unresolved by the representatives where they have either concluded that the resolution of the claim or dispute at their level is not likely to occur, until they have agreed in writing that the claim or dispute is unresolved or until one of the Parties has failed actively to partake or give a response to the opposing Party within 7 (seven) business days.
- (c) If the claim or dispute is unresolved by the representatives, they shall elevate the claim or dispute to the member(s) of the Parties' respective Executive(s) or Chief Executive Officer(s) who, from time to time, are tasked to deal with matters of such a nature (aka "top management").
- (d) The top management shall actively engage each other by correspondence, the exchange of relevant information and data, meetings and the like, as may be appropriate under the circumstance, with the aim to resolving the claim or dispute within a further 7 (seven) business days. In circumstances where the top management either fail to resolve the claim or dispute within the set time or, jointly conclude that the claim or dispute is not likely to be resolved, agree in writing that the claim or dispute is unresolved or where the other Party's top management fails to actively partake or give a response to the opposing party within a set time, the claim or dispute shall be regarded as unresolved by the top management and shall constitute a claim or dispute which may be referred for adjudication in terms of the remainder of clause 20.3.

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20.2.3 Sub-clause 20.2 "Appointment of Dispute Adjudication Board (DAB)" is renumbered to 20.3 and amended to read as follows:

20.3 Appointment of Dispute Adjudication Board (DAB)

"Claims or disputes not resolved by amicable settlement under sub-clause 20.2 shall be adjudicated by a DAB in accordance with sub-clause 20.5. The Parties shall jointly appoint either a sole member DAB as stated in the Agreement Data and within the period stated in the Agreement Data.

The Parties shall make use of the nominating authority stated in the Agreement Data and within the period stated in the Agreement Data, which the Council shall accordingly request to nominate an adjudicator within 7 (seven) days of the letter of acceptance. Both Parties shall accept the nominated adjudicator, subject to such an adjudicator being impartial. Such adjudicator shall have indicated, or shall indicate on request by either Party to do so, in writing, to be impartial, i.e. that he is at the time of nomination not engaged in any activity as consultant or agent (e.g. as named personnel on a project) or otherwise on behalf of Council or Developer. Should the nominating authority require a nomination fee, each Party shall be responsible for paying half (50%) of such nomination fee. The procedural rules of the nominating authority shall apply during the nomination process, which shall lead to a joint appointment of the single DAB, upon which such procedural rules shall become void.

20.2.4 Sub-clause 20.3 "Failure to Agree on Dispute Adjudication Board" is renumbered to 20.4 and amended to read as follows:

20.4 Failure to Agree Dispute Adjudication Board

If the Parties fail to accept the nominated DAB or on the replacement with 7 (seven) business days or if the DA becomes unable to act as a result of death, disability, resignation or termination of an appointment, the appointing authority may appoint an alternative DAB, which appointment shall be final and conclusive.

20.2.5 Sub-clause 20.4 "Obtaining Dispute Adjudication Board's Decision" is renumbered to 20.5 and amended to read as follows:

20.5 Obtaining Dispute Adjudication Board's Decision

If a claim or dispute (of any kind whatsoever) arise between the Parties in connection with, or arising out of the Agreement, or the execution of the Works, including any dispute as to the certificate, determination, instruction, opinion or valuation of the Council's representative, then after a DAB has been appointed pursuant to sub-clauses 20.3 [Appointment of DAB] and 20.4 [Failure to Agree on DAB] either Party may refer the dispute in writing to the DAB for its decision, with copies to the other Party and the Council's representative. Such reference shall state that it is given under this sub-clause.

Both Parties shall promptly make available to the DAB all information, access to the Site, and appropriate facilities, as the DAB may require for the purposes of making a decision on the claim or dispute. The DAB shall be deemed to be not acting as an arbitrator(s).

Within 30 (thirty) days after receiving such reference, or the advanced payment referred to in clause 6 of the Agreement (General Conditions of the Dispute Adjudication Agreement, whichever date is later, or within such other period as may be proposed by the DAB and approved by both Parties, the DAB shall give its decision, which shall be reasoned and shall state that it is given under this sub-clause. However, if neither the Parties paid in full the invoices submitted to each member pursuant, the DAB shall not be obliged to give its decision until such invoices are paid in full. The decision of the DAB shall be binding on both Parties, who shall promptly give effect to it unless it shall be revised in an arbitral award as described below. Unless the agreement has already been abandoned, repudiated or terminated, the Developer shall continue to proceed with the Works in accordance with the Agreement.

If either Party is dissatisfied with the DAB's decision, then either Party may, within 7 (seven) days after receiving the decision, give notice to the other Party of its dissatisfaction. If the DAB fails to give its decision within the period of 30 (thirty) days (or as otherwise approved) after receiving such reference with the accompanying documentation and information or such payment, then either party may, after 7 (seven) days after this period has expired, give notice to the other Party of its dissatisfaction.

In either event, this notice of dissatisfaction shall state that it is given under this sub-clause, and shall set out the matter in dispute and the reason(s) for

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dissatisfaction, except as stated in sub-clause 20.7 [Failure to Comply with DAB Decision] and sub-clause 20.8 [Expiry of DAB Appointment], neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this sub-clause.

20.2.6 Sub-Clause 20.5 Amicable Settlement is deleted in its entirety

20.2.7 Sub-Clause 20.6 Arbitration is deleted in its entirety and replaced with the following:

"20.6.1 Arbitration

Unless settled amicably, any claim or dispute which arises between the Parties out of, or in connection with the Agreement shall be settled by a single arbitrator under the Rules for the Professional Arbitration and Mediation Association of Namibia (PAMAN) on the following basis:

20.6.1.1 The Parties shall use their best endeavors to ensure that the arbitration is held and concluded and a decision handed down within 30 (thirty) days after the arbitration has been demanded.

20.6.1.2 The arbitrator shall be a person nominated by the Parties or, failing agreement between them within 7 (seven) days after the arbitration has been demanded, shall be a legal practitioner of at least 10 (ten) years' experience appointed by Law Society of Namibia in respect of any interpretation or legal aspects or be a professional engineer of at least 10 (ten) years' experience appointed by EPA in respect of any dispute relating to engineering works under this agreement.

20.6.2 The arbitrator shall full and free discretion with regard to the proceedings.

20.6.3 The arbitrator's decision shall be final and binding on the Parties unless it is patently wrong in law or fact. The arbitrator may make an award as to his costs.

20.6.4 The provisions of this clause 20.6 shall not debar any party from applying for or obtaining urgent interim relief from any competent court.

20.6.5 Any hearing shall be conducted in Windhoek in the English language.

20.2.8 Sub-clause 20.7 "Failure to Comply with Dispute Adjudication Boar's appointment" is deleted in its entirety.

20.2.9 Sub-clause 20.8 "Expiry of Dispute Adjudication Boar's appointment" is deleted in its entirety.

2.3 Add sub-clause 21 Non-Waiver

"21 Failure by either Party to enforce any provision of the Agreement shall not constitute a waiver of such provision or affect in any way that Party's right to require performance of any such provision at any time in the future, and the waiver of any subsequent breach shall not nullify the effectiveness of the provision itself."

2.4 Add sub-clause 22 Early Warning

"22 In order to mitigate risk, the Council and the Developer require open and effective communication and co-operation to deal with events, circumstances or factors which may adversely affect the Works or the progress thereof, including events, circumstances or factors which may delay the execution of the Works ("Early Warning Event").

With a view to facilitating this, the Developer shall give written notice to the Council's Representative of an Early Warning Event as soon as reasonably possible, but in any event within 7 days, after it has come to his attention. In such notice the Developer shall provide:

- (a) particulars of the Early Warning Event and the potential adverse effects; and
- (b) proposals for the steps to be taken to mitigate the potential adverse effects thereof.

Either the Council's Representative or the Developer shall be entitled, by written notice, to require the other of them to attend an early warning meeting in respect of any Early Warning Event (whether or not notified by the Developer). The purpose of the early warning meeting is to raise and discuss Early Warning Events in a cooperative manner and to jointly make and consider proposals and seek solutions to mitigate the potential adverse effects thereof.

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The early warning notice and meetings contemplated in this Sub-Clause 21 are intended as a risk management tool and open discussion is of paramount importance. To this end:

- a) unless otherwise expressly stated in the notice, notification in terms of this Sub-Clause 21 shall not constitute notification of a claim for extension of time or additional cost pursuant to Clause 20 [*Claims, Disputes and Arbitration*];
- b) unless otherwise specifically agreed in writing by the Council and the Developer from time to time nothing raised or agreed at any early warning meeting shall limit or derogate from the rights and obligations of the Parties under the Agreement.

If the Developer does not deliver an early warning notice within the time allowed the Contractor shall not be entitled to claim any extension to the Time for Completion in connection with the work, activity or other matter in question."

2.5 Add sub-clause 23 Industrial Relations

- "23.1 The Developer shall be responsible for and shall include all costs in connection with the recruitment, employment and development of suitable personnel required to comply with the Developer's obligations in terms of the Agreement as project costs, and shall be solely responsible for their conduct in the execution of their duties.
- 23.2 The Developer shall ensure that it and its employees, representatives, Contractors and their employees observe sound employment and industrial relations policies and prevent industrial action.
- 23.3 The Developer shall liaise with the Council on a regular basis to discuss matters of mutual interest which shall have or could potentially have an impact on industrial relations, in order to agree upon contingency plans to counter possible or actual industrial action.
- 23.4 The Developer shall furnish the Council with all relevant information the Council requests, regarding the composition of its workforce, trade union activities and all matters which in the opinion of the Council are relevant to the avoidance of industrial action, within 7 days of the request by the Council.

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- 23.5 The Developer shall notify the Council within a reasonable time of any anticipated industrial action.

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SPECIFIC PARTICULAR CONDITIONS OF AGREEMENT

1 DEFINITIONS

Words and phrases used in the SPECIFIC PARTICULAR CONDITIONS shall have the same meaning as are assigned to them in Section 2.

2. SCOPE OF WORK: SPECIFIC PARTICULAR CONDITIONS

2.1. PLANNING AND TOWNSHIP ESTABLISHMENT

2.1.1. The Parties note that Otjomuise Extension 5 has been proclaimed as an approved township. The Developer has to undertake township development on the Property, and has accordingly to obtain from the Minister of Regional and Local Government, Housing and Rural Development the necessary necessity and desirability certificates and approvals for the establishment of a township called Otjomuise Extension 5 (hereinafter referred to as "the Township Development"), a copy of which approvals and the accompanying approved General Plans/ layout plans are to be attached hereto as **Schedules B and C** to be numbered in sequence, respectively;

2.1.2. It is agreed by the PARTIES that:

2.1.2.1. All erven in each of the respective extensions and zoned public open space and for municipal purposes must remain in the ownership of the Council free of consideration and charges, upon opening of the respective Township Register and registration of the General Plan of such particular extension or section in which such erven are situated and submit the Title Deeds to the Council as soon as these are availed by the Registrar of Deeds.

2.1.2.2. The Remainders of each of the respective extensions (streets), once the Township Register is opened and the General Plan registered in respect thereof to Council free of consideration and charges and submit the Title Deeds in the name of Council to the Council as soon as these are availed by the Registrar of Deeds.

2.1.2.3. All General Plans in respect of the proposed Extensions or any such amended General Plans shall, once approved by the Surveyor General be part of this Memorandum of Agreement as and when they become available, be incorporated as the relevant sequenced numbered **Schedule A**.

2.1.2.4. All extensions and any amendments to the layout shall be subject to the Windhoek Town Planning Scheme.

2.1.2.6 The zoning of the subdivided erven in a particular section or extension shall as far as possible remain as per the approved layout or General Plan of the particular extension of the PROPERTY (as the case may be) unless amended as hereinafter provided for.

2.2 TITLE DEED CONDITIONS

2.2.1 The Developer hereby agrees that the existing conditions of establishment registered against Otjomuise Extension 5 must be adhered to as provided for in the Government Gazette No. 1576 dated 14 June 1997 attached as Schedule B,

2.2.2 The Developer hereby agrees that any Servitudes to protect any Permanent Works consisting of public services on the Property or its subdivisions and as indicated on the approved General Plans or designs must be surveyed and be registered in favour of the Council.

2.2.3 The Developer undertakes to provide the Permanent Works as per Council Resolution ~~407/11/2012~~ attached hereto as Annexure 1 which Council Resolution shall be an integral part of this Agreement.

2.2.4 The Developer will provide Township Development in sections as approved by the Council and Permanent Works will only be taken over by Council once completed and a taking over certificate has been issued for the respective approved section and Works.

2.3 LAND SURVEYING AND SETTING OUT OF THE WORKS

2.3.1 The Developer shall be entitled, in its sole discretion and at any time prior to the registration of the General Plan of a particular section or extension of the Development to change, amend or to vary such plan or the layout thereof in order to provide for a more acceptable user and environmentally friendly layout provided however any such change, amendment or variation shall at all times conform with accepted Town Planning standards and criteria and be approved by the Council.

2.3.2 Should any changes be made to any such layout or preliminary General Plan, the Developer shall notify the Council's Representative in writing of such changes for

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approval. The setting out of the Works must be done as set out in clause 4.7 of the general conditions in Section 2.

2.4 ENVIRONMENTAL IMPACT ASSESSMENT AND ENVIRONMENTAL MANAGEMENT PLAN

2.4.1 The prescribed requirements in the Environmental Management Act of 2007, of the Government of Namibia shall apply in cases where an Environmental Clearance Permit was required.

2.4.2 The environmental management plan should be managed by a qualified environmental officer appointed by the contractor, whose duties will include the design of a health and safety plan.

2.5 CONTOUR PLANS

The Developer must note that contours on erf plans available from the Strategic Executive: Urban Planning and Property Management's office of the Council cannot be guaranteed due to accuracy tolerances in assembling these plans.

2.6 CESSION AND ASSIGNMENT

2.6.1 Subject to the provisions of this Agreement, the Developer notes that the Developer shall not be entitled to cede, assign or in any other manner make over its rights, title and interest in this Agreement or any of its liabilities, responsibilities, duties or obligations hereunder, to any other third party, without the prior written consent of the Council, which consent shall not be unreasonably withheld: Provided that the Developer or its successor-in-title or successors-in-name or in shareholding or membership or its assigns (whichever may be applicable), duly complied or guaranteed compliance with all conditions under this Agreement as well as with the conditions to be registered notarially in favour of the Council.

2.7 PRE-CONDITIONS

2.7.1 It is a condition of this Agreement that the Parties and/or its approved successors-in-title and/or successor-in-name and/or successor shareholders and/or successor member(s) and/or its assigns, whichever are applicable, shall not be entitled to transfer any individual erven within any extension or section of the Development to a third party transferee or to any subsequent Successor/s in Title or to register a sectional title scheme without the prior consent of the Council thereto having been had and been obtained.

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2.7.2 This permission under clause 2.7.1 will not be granted by the Council until such time as Council has issued a Take-over Certificate to the Developer to the effect that the Permanent Works required for such particular section or extension and as set out under this Agreement have been completed by the Developer in accordance with the approved drawings and specifications to the satisfaction of the Council.

2.7.3 Subject to the provisions of clause 2.7.1, where circumstances, which are reasonably beyond the control of the Developer and/or its approved successors-in-title and/or successor-in-name and/or successor shareholders and/or successor member(s) and/or its assigns, whichever are applicable, prevent or delay the Developer and/or its approved successors-in-title and/or successor-in-name and/or successor shareholders and/or successor member(s) and/or its assigns, whichever are applicable from materially completing the Permanent Works in respect of a particular section or extension within the development period referred to in the Programme the parties shall in good faith negotiate a reasonable extension of the time period within which the Developer and/or its approved successors-in-title and/or successor-in-name and/or successor shareholders and/or successor member(s) and/or its assigns, whichever are applicable, must complete the development of such Permanent Works.

2.8 STREETS PUBLIC PLACES AND MUNICIPAL LAND

2.8.1 The Parties agree to exclude from the Consideration the value of land:

2.8.1.1 zoned 'institutional', 'municipal' and 'public open spaces' usable for parks and landfill sites (excluding water courses and land steeper than a slope of 1 in 4.

2.8.1.2 subdivided and used for roads, bridges and other services external to the approved layout and which will in the future serve a greater community.

2.8.2 The Parties agree that Permanent Works to be provided according to specifications and standards as set out in Sections 2 to 6.

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SECTION 4**COUNCIL'S STANDARD TECHNICAL REQUIREMENTS****1. DEFINITIONS**

Words and phrases used in the STANDARD TECHNICAL REQUIREMENTS shall have the same meaning as are assigned to them in Section 2.

2. APPOINTMENT OF THE ENGINEER**2.1. ACEN**

The Developer shall appoint a Consulting Firm registered with ACEN as defined herein to provide an Engineer for the Development which appointment shall be based on the following:

2.1.1. The ACEN Client / Consultant Model Form 1, 2 and 3 Agreement, provided that a suitably qualified Resident Engineer is available to represent the Engineer on Site on a fulltime basis. Should a Resident Engineer as defined above not be available on Site fulltime, the appointment between the Developer and the Engineer shall be in terms of the latest FIDIC Client/Consultant Service Agreement;

2.1.2. The provisions contained herein;

2.1.3. The provisions of the ACEN Model Form 1, 2 and 3 Sections pertaining to 'Normal Services' and 'Fees' and any other Section that may become relevant in the execution of the Consultant's Services, provided that the conditions specified in are met.

2.2. FEES

The Developer will be responsible for all the fees of the Consulting Firm and Contractors.

2.3. COUNCIL REPRESENTATIVE

Prior to the appointment of the Engineer, the Developer shall request the approval of the Council's Representative, which approval shall not be withheld without a fair reason.

2.4. **ENGINEER**

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The Consultant (the Engineer) shall be responsible for the execution of all Sections of the Development, and shall be required to act as Counterpart to the Council's Representative, to whom he shall report as defined herein.

2.5. **PROFESSIONAL INDEMNITY INSURANCE**

The Engineer shall be a registered professional or incorporated Engineer registered with the Engineering Council of Namibia, and have valid Professional Indemnity Insurance cover (insured value: as per Section 6);

2.6. **QUALITY ASSURANCE**

The Engineer shall note and accommodate the "Quality Assurance Procedures on Infrastructure Development Projects" as attached in Appendix 2 and performed by officials from Council under the direction of Council's Representative.

3. **PLANNING STAGE**

Prior to completion of the design phase, the duly appointed Engineer of the Developer shall arrange a meeting with the Council's Representative and the Developer, to explain and obtain agreement on the proposed designs of the Permanent works, electricity, water and sewer services and roads and stormwater structures. Minutes of such meeting shall be prepared by the Engineer, and submitted within 7 days of such meeting to the other Parties.

4. **DESIGN STAGE**

In addition to clause 5 of the General and Particular Conditions contained in Section 2, the Developer shall submit Final Designs of all Permanent Works for approval to the Council Representative prior to the commencement of construction.

4.1 **DESIGN CONDITIONS**

The Developer shall design of all civil work (including detailed geometric and pavement design of and streets) in compliance with the following conditions:

4.1.1 The Council's requirements as per Sections 2 to 6. The Council's approvals of the said designs shall be obtained in writing before any work is started, a copy of which approval shall be submitted to the Council's Representative.

4.1.2 All provisions and requirements contained herein.

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- 4.1.3 The provisions of the relevant ACEN Client / Consultant Model 1, 2 and 3 Agreement.
- 4.1.4. The Standard Municipal Design Criteria, as contained in this agreement.
- 4.1.5. The Design shall be done on a CAD system in line with the Council's current CAD policy (current AutoCAD 2008, dwg file format, no dxf files will be accepted) and the information must be made available to the Council, electronically and on hard-copy;

4.2. PRE-CONSTRUCTION STAGE

- 4.2.1. Prior to starting with the construction phase, the duly appointed Engineer of the Developer must arrange a further meeting with the Council representative, to discuss the Programme submitted under clause 8 of the General and Particular Conditions in Section 2 and the proposed quality management system to be used during testing under clauses 7 and 10 of the General and Particular Conditions (allowance to be made for the Council to do its own quality checks and testing, apart from those carried out by the said Engineer but Council shall not be responsible for the quality of workmanship delivered under the construction contract, which responsibility shall rest with the Developer and the said Engineer).
- 4.2.2. Should workmanship standards prove to be inadequate during such quality checks, all consequent checks performed by Council shall be at the cost of the Developer. Minutes of the said meeting shall be prepared by the Engineer of the Developer, and submitted within 7 days of such meeting to the Parties.

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4.3. EXECUTION AND CONSTRUCTION STAGE

4.3.1. During the construction phase, the Council's representative and any other delegated staff member of COUNCIL who may be deemed necessary to attend site meetings shall be invited to attend site meetings between the Developer's Engineer and the Developer's Contractor. Minutes of such meetings shall be prepared by the said Engineer, and submitted within 7 days of such meeting to all the other Parties. In addition, the Council's representative shall be entitled to request any tests results specified in the relevant SANS specification from the Engineer, which shall be submitted within seven days of the request. The Council's Representative shall further be permitted full access to the site to perform inspections at any time during the Construction Phase together with relevant staff members from Council as may be required.

4.3.2. The Engineer of the Developer shall supervise the construction of all permanent works and shall ensure that the construction is done according to the approved construction drawings and the laid down rules, regulations and standards of Council. Should the Engineer, in the opinion of the Council's Representative, not adhere to these requirements, Council shall have the right to submit a notice with reasonable objections to have the Engineer replaced with a more competent Engineer.

4.3.3. The Developer shall undertake construction of all civil work in accordance with the requirements of this Agreement as well as;

4.3.3.1. The relevant sections of the Standard Specifications: SANS1200, and

4.3.3.2. The requirements of the Council, and

4.3.3.3. The requirements stated in the Project Specifications as drafted by the duly appointed Engineer of the Developer as accepted in writing by the Council's Representative,

4.3.3.4. The provisions of the relevant General and Particular FIDIC conditions of Agreement as per Section 2, and

4.3.3.5. The directives of the duly appointed Engineer of the Developer.

4.3.4. Upon completion of construction and prior to the issue of the take-over certificate as per clause 5.6 of the General and Particular Conditions in Section 2, the Engineer of the

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Developer shall submit to Council a complete set of as-built drawings (current AutoCAD 2008, dwg file format, no dxf files will be accepted.) electronically and on hard-copy which shall be submitted to the Council's Representative. This information shall be submitted before the final takeover of the services and the start of the 12 month retention period.

4.4. COMPLETION (THE TAKING OVER OF COMPLETED PERMANENT WORKS BY THE COUNCIL)

4.4.1. Upon completion, the Engineer of the Developer shall certify that the services have been constructed according to the approved drawings and specifications, have been tested and are in accordance with all provisions and requirements hereof and apply for take over as set out in clause 10 of the General and Particular Conditions in Section 2.

4.4.2. The Engineer of the Developer shall be responsible for the submission of the as-built drawings to the Council.

4.4.3. The take-over procedure shall be as provided in clause 10 of the General and Particular Conditions of Section 2 after a completion certificate has been issued by the relevant departmental heads and following that a take-over certificate has been issued by Council's representative.

4.4.4. A refundable retention amount of 5% of the total value of the works in respect of a particular section or extension including Preliminary and General items and VAT, as determined, and certified by the Engineer of the Developer must be paid by the Developer to the Council or the payment of such amount shall be secured by way of a Demand Guarantee, which will be used in respect of a default by the Developer under this Agreement or if the Developer fails to do any maintenance repairs. This Guarantee shall be governed by the law of the Republic of Namibia, and shall be subject to the Uniform Rules for Demand Guarantees, published as 758 by the International Chamber of Commerce. This retention amount together with any interest (define interest) accrued thereon, minus any monies expended in line with this clause will be paid back after the one year retention (defects liability) period.

4.4.5. During the defects liability period the Developer shall only be allowed to access and to repair or install further permanent works taken over by the Council with the prior written consent of the Council and then only against payment of deposits or provision of security as required by Council. In such event the conditions of this Agreement relating

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to takeover of works and maintenance and compliance defects liability period shall apply.

4.5. DEFECTS LIABILITY PERIOD

4.5.1. The Developer shall be responsible for a defects liability period of 12 months on all Permanent Works after completion and take-over of the works by the Council. The Developer or its Engineer is responsible to arrange the site inspection for the take over and for the start of the defects liability period. The Developer shall remain responsible for the maintenance of the permanent works and / or the remedy of defects for such period.

4.5.2. The defects liability period for a section or extension of the development will start and end for the entire section or extension and not for portions thereof only unless otherwise agreed upon.

4.6. BUILDING PLANS OR SECTIONAL TITLE PLANS

4.6.1. The Developer must note that no building plans or Sectional Title Plans in respect of buildings to be constructed within a particular section or extension will be approved until the Developer's Engineer has issued a Take Over Certificate to the Civil Engineering Contractor(s) as all permanent works constructed by the Developer within this particular section or extension remains the responsibility of the Civil Engineering Contractor(s).

4.6.2. The Developer must further note that no building plans in respect of a particular erf within a section or extension will be approved unless the following has been provided:

4.6.2.1. access to a public street constructed and surfaced in accordance with Council standards;

4.6.2.2. a water connection or access to a water supply point or supply pipeline which has been approved by the Council in terms of the provisions hereof for use by that erf;

4.6.2.3. a sewer connection or access to a sewage disposal system or sewer which has been approved by the Council in terms of the provisions hereof for use by that erf;

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4.6.2.4. unless the beacons have been replaced according to the co-ordinates of the General Plan approved by the Surveyor General of that particular section or extension except with the prior written consent of Council.

4.6.3. The Developer shall install Fire Water supply points as stipulated in SANS 10090.

4.6.4. The Developer must note that building line relaxation will only be considered once the street design plans are approved.

5 DESIGN CRITERIA, MATERIALS AND CONSTRUCTION STANDARDS FOR WATER AND SEWER RETICULATION

GENERAL

5.1.1 The Developer hereby notes and undertakes to comply with the Design criteria (unless otherwise specified herein) which are to be in accordance with the "The Guidelines for human settlement, planning and design" as published by the Council of Scientific and Industrial Research (CSIR) and is available on-line at http://www.csir.co.za/Built_environment/RedBook. (This document is hereinafter referred to as the "Red Book") and in addition be in accordance with the "Guidelines for the Provision of Engineering Services for Residential Townships" as published by the Department of Community Development in 1983. (This document is hereinafter referred to as the "Blue Book").

5.1.2 The Developer hereby notes that Materials and construction standards (unless otherwise specified herein) must comply with the latest edition of SANS 1200.

5.1.3 The Developer hereby notes that the information contained herein applies to normal developments and is of a general nature. Increased and/or reduced standards might be applicable where appropriate.

5.1.4 The Developer hereby notes that the following Council of Windhoek Standard Drawings shall be used for designs and during construction:

- a) Typical Details of Manholes, Service Connections, Markers and Rodding Eyes – Drawing. No. SDG 52
- b) Typical Details of Thrust Blocks, Valve Chambers, Trench Excavation, Valves and Hydrants – Drawing. No. SDG 53

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6.1 BEDDING

The Developer hereby notes that sand bedding shall be in accordance with SANS 1200 LB.

6.2 INITIAL BACKFILL

The Developer hereby notes that initial backfill (selected granular material used for bedding) shall consist of clean sand or gravel material passing through a 19 mm screen, hand compacted around and above the pipes to the levels shown on the contract drawings. Road-crossings, where so instructed in writing by the Engineer, must be compacted by the addition of water, i.e. the compaction must be moist. All initial backfill shall be in accordance with SANS 1200 LB.

6.3 NORMAL BACKFILL

The Developer hereby notes that Normal backfill (selected fill) shall consist of selected excavated material with no stones larger than 30mm. Normal backfill shall be placed in 300 mm thick layers and compacted with a vibrating plate type compactor. SANS 1200L is applicable in this case.

6.4 CONCRETE SURROUND (ENCASING)

The Developer hereby notes that Class 20 concrete shall be placed as pipe encasement as and when required in places indicated on the drawings or alternatively as directed by the Engineer.

7 SEWERAGE**7.1 INVESTIGATIONS**

The Developer hereby notes that Preliminary examination of existing systems is required for the purpose of determining subdivision layouts. This must include investigation of existing and future flows as well as pipe and pump station conditions and capacities.

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7.2 HYDRAULIC DESIGN

The Developer hereby notes that Flow charts which are based on unrealistically low friction factors such as those provided by some PVC pipe manufacturers may not be used in design. Flow formulae and coefficients as listed in the Blue Book are to be adopted.

Minimum gradients shall be as follows:

DIAMETER (mm)	NO OF DWELLINGS	MINIMUM GRADIENT
110	1 (house connection)/erf	1:60
110	1 to 100	1:105
160	101 to 400	1:160
200	401 to 700	1:200
250	701 to 1100	1:250
300	1101 to 2300	1:300
350		1:350
400		1:400
450		1:450
500		1:500
550		1:550
600		1:600

7.3 PIPES

The Developer hereby notes that Minimum cover is to be determined according to available falls, strength of pipe and loading. The depth of house connections shall generally be 1.0 m (invert level to ground level) but this must be increased to allow for slope and size of plots where necessary.

The following types of pipes are acceptable (for township gravity reticulation up to and including 250 mm diameter):

Vitreous clay (SANS 559 Class 2)

uPVC (SANS 791 Heavy Duty)

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Wherever possible materials used in extensions to existing systems must match those already installed. Structured Wall uPVC (SANS 1601 Class 400) pipes are not acceptable at present due to suspected vulnerability of walls to erosion by jet cleaning equipment in situations where sand has entered system.

Minimum pipe internal diameter 100 mm (100 mm for individual house connections). For uPVC pipes, 110mm diameter pipe size minimum.

Anchor blocks must be provided for each pipe for slopes exceeding 1:10.

All pipes and fittings must comply with the relevant SABS specifications.

The Corflo pipes SHALL NOT be used.

7.4 RIGID PIPES WITH FLEXIBLE JOINTS

The Developer hereby notes that Pipes in this category include clay pipes, asbestos cement pipes, concrete pipes (*), cast-iron (*) and similar pipes. The pipes should have factory applied moulded compression plastic joints, field applied couplings and similar jointing arrangements. All such pipes and fittings shall be to the approval of the COW and such material and jointing shall comply with the latest SANS specifications and the Contract Drawings. Pipes marked (*) shall have inner protective coatings.

7.5 FLEXIBLE PIPES

The Developer hereby notes that Pipes in this category include uPVC pipes and HDPE pipes. uPVC pipes and fittings shall be fitted with spigot and socket rubber ring joints and shall comply with the relevant requirements of SANS 966, SANS 791 and SANS 1601. Polyethylene (HDPE) pipes and fittings shall comply with the relevant requirements of SANS 533. **Corflo pipes SHALL NOT be used.**

8 MANHOLES

- a. The Developer hereby notes that all pipes and fittings must comply with the relevant SANS specifications.
- b. Manhole to manhole maximum length 80 m.
- c. Manholes in roads are to be located in the middle of the lanes. Manholes located elsewhere are to be accessible by maintenance vehicles wherever possible.
- d. Only in-situ concrete manholes according to standard drawings (SDG52) will be allowed subject to further requirements as follows:
- e. Maximum depth 4 m (deeper to be specially motivated).

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- f. In the case of large diameter (over 200mm) pipelines manhole covers are to be located directly above point of intersection of main pipe runs (for bucket cleaning).
- g. Benching to be vertical up to full height of pipe then 1:6 to wall of manhole. Benching to consist of Grade 20 mass concrete with no voids or sand fill.
- h. External back drops are favoured. The base of backdrops must be cast monolithically with the manhole base slab. Internal backdrops may only be used in the case of new connections to existing deep trunk sewers. Details are to comply with those indicated on the attached standard drawing.

8.1 MANHOLE COVERS AND FRAMES

The Developer hereby notes that all manhole covers shall be of type SECUREX Y 560 C or SECUREX Z 600 D in roads, made from ductile iron with secure non removable hinges. Alternatively, manhole covers and frames conforming in all respects to SANS 558 may be used. Approval by Council of Windhoek to be obtained first. (NB: All hinges shall face upstream when manholes are constructed in riverbeds).

8.2 STEP IRONS

The Developer hereby notes that Galvanised malleable cast iron step irons shall conform in all respects to SANS 1247, each having a weight of not less than 1.59 kg. After installation, the step irons are to be painted with two coats of epoxy tar paint. Step irons to be provided where manhole depths exceed 1.2 m.

8.3 MANHOLE CHANNELLING

The Developer hereby notes that only vitrified clay (VC) channels shall be used. For larger diameter sewers, where VC channeling is not available, industrial tiles cut in to 50mm strips, shall be used together with sewer resistant joint filler.

8.4 AGGREGATES

The Developer hereby notes that Dolomitic Aggregate shall be used instead of normal aggregate for all waste water treatment concrete works.

8.5 GENERAL

The Developer hereby notes that midblock sewers are to be avoided as far as possible but where used these must be accessible and the depth may not exceed 2.0 m.

Pipes and manholes shall be subjected to visual inspection. Pipes shall also be air tested before and after backfill.

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Saddles for erf connections are not permitted. Y-junctions shall be used.

Erf connections are to be provided with end caps and marked by means of marker pipes that shall be laid vertically from the end cap up to 100mm above the natural ground level (SDG 52).

DPC cut into strips (200 mm wide; 375 micron) shall be tied to the end caps and these strips must protrude 200 mm above ground level. The position of erf connections must also be dimensioned on "As built" drawings.

Electrical connections to sewage pump stations and waste water treatment plants are to be arranged by Developer on Council's behalf. All costs of connections and consumption up to the time of handover are to be borne by the Developer.

9 WATER SUPPLY

- a) The Developer hereby notes that design criteria are to follow the recommendations of the Blue Book except as follows:
 - i) Where flexible pipes are used the minimum size shall be determined according to hydraulic requirements.
 - ii) Minimum pipe class shall be Class 9 (SANS 966) in the case of uPVC pipes. System pressures are to be determined and higher classes used where necessary.
- b) Materials and construction methods are to be in accordance with the COW Standard Specification and standard drawings (SDG 53) and SANS 1200L. Fibre Cement pipes shall not be used.
- c) The location of water meters (inside or outside of erf boundaries) is subject to local practice. Infrastructure - Bulk and Waste Water must be consulted in this regard.
- d) Where the requirements of the various documents are in conflict the requirements of this document shall prevail.

9.1 MEDIUM-PRESSURE PIPELINES

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9.2 STEEL PIPES, FITTINGS AND SPECIALS

9.2.1 General

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The Developer hereby notes that all steel pipes and fittings shall be manufactured from Grade B mild steel welded and manufactured in accordance with the latest edition of SANS 719. All flanges to match existing (i.e. SANS 1123, table 1000-3, 1600-3, etc.). All flanges shall be complete with bolts, nuts, washers and gaskets.

Steel pipes and fittings shall be protected as specified, and where buried, shall be protected with a petrolatum mastic and tape such as Denso or similar. The application shall be carried out strictly in accordance with the manufacturer's instructions.

9.3 CORROSION PROTECTION

9.3.1 MS Pipes

The Developer hereby notes that all steel pipes and specials to be hot dip galvanised in accordance with SANS 763 (1988).

9.4 VALVES

9.4.1 Gate valves

The Developer hereby notes that all gate valves shall be AVK or similarly approved by the Engineer and shall conform to the following specifications:

Body and bonnet:	Ductile iron.
Wedge:	Ductile iron, fully encapsulated with rubber internally and externally so as to prevent corrosion and rubber failure.
Wedge Nut:	Must be of the fixed nut concept.
Coating:	Electrostatically applied fusion bonded epoxy resin (± 250 micron) – internally and externally prior to assembly.
Approvals:	The valve shall conform to the dimensional and Performance specifications of SANS 664.
Warranty:	The valve shall be backed by a written 10 (ten) year replacement warranty under normal working conditions.
Visual inspection:	Should the quality of the valve be suspect, the Engineer be approached for approval.

Other Valves used shall comply with the following:

9.4.2 Resilient Seal Gate Valves

The Developer hereby notes that-

- AVK valves or similar are to be approved by Engineer to suit specifications;
- Shall close clockwise;
- Have a non-rising spindle, and fitted with a cap top or hand wheel as applicable;
- Has to be Class 16 and comply with the requirements of SANS 664:1974
- Must be Highly resistant to corrosion and abrasion;
- Must have parts manufactured from the following materials:
 - * Spheroidal graphic iron: Body gate, bonnet and hand wheel
 - * Stainless steel: Spindle
 - * Plastic: Bush, Friction rings
 - * Nitrite rubber: All "O"-rings, profile ring, scraper ring and sealing ring
 - * Bronze: Spindle nut
- Must all receive an electrostatic epoxy powder coating as surface protection – internal and external.

9.4.3 Butterfly Valves

Butterfly valves shall be of the wafer type suitable for installation between two flanges and shall close clockwise.

The materials shall be:

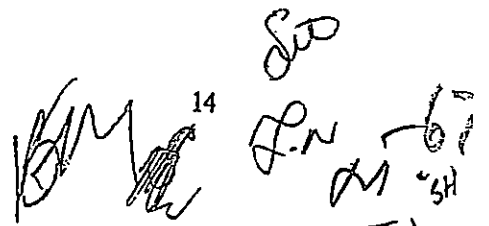
Make: COMPACT or similar and approved by the Engineer
 Body: Cast Iron with nitrile rubber liner
 Disc: Spheroidal graphite with nylon coating
 Shaft: Stainless steel with shaft mounted replaceable O – rings
 Gearbox: Weatherproof with spoked hand wheel. Gear ratio 30:1 minimum.

All valves to be suitable for water of a corrosive nature.

10 HYDRANTS

The Developer hereby notes that Fire hydrants must comply with the following:

- (a) They will be suitable for working pressure of 16 kPa (16 Bar)

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- (b) Flanges will be raised face and drilled to SANS 1123, table 1000-3 or BS 4504, table 10.
- (c) Inside diameters will be either 65 mm or 80 mm.
- (d) Stopper mechanism will be of mushroom type encapsulated with EPDM rubber (Flat type stopper fitted with a nylon or flat rubber washer is not acceptable).
- (e) Spindles will be right hand closing, non-rising type and fitted with cap tops.
- (f) An electronic epoxy coating to DIN 30677 internally and externally as surface protection will be applied.
- (g) Bayonets will be fitted with a dust cap, which will be attached to the body by means of a cable, chain or strap.
- (h) Material utilized in the manufacturing of hydrants will be as follows:

*Ductile iron (BS 2789, grade 500 – 7):	Body and bonnet
*Cast iron (BS 1452, grade 220:225):	Cap and bayonet
*Stainless steel (DIN x 20 Cr 13):	Stem
*NBR rubber:	All "O" rings
*EPDM rubber:	Stopper rubber
*Gun metal (BS 1400, LG 2-C):	or dezintified resistant brass Spindle and nut
*Stainless Steel:	All washers, clamps, circlips and seat screws

11 FITTINGS AND ANCILLARY ITEMS

11.1 VIKING-JOHNSON FLANGE ADAPTERS

The Developer hereby notes that Viking Johnson type flange adapters are to be equal to Klamflex or similar and approved by the Engineer and are to be provided as shown. The tie rods are to be secured to weld on restraining flanges being part of the pipe work. Four nuts per tie rod shall be provided one at each side of the flange and one at each side of the restraining flange. The number and size of the tie rods to be based on the design water pressure and approved by the Engineer.

11.2 NUTS, BOLTS AND GASKETS

The Developer hereby notes that all nuts shall receive a washer.
The bolt assembly material shall be hot dipped galvanised (zinc).

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AIR RELEASE AND VACUUM BREAKER VALVES

The Developer hereby notes that Air release valves shall be installed at the points as indicated on the drawings unless otherwise specified by the Engineer. The make of air release valves shall be "VENTOMAT" series RBX unless otherwise approved by the Engineer.

11.4

ACTUATOR

The Developer hereby notes that all actuators to be of type EI-O-Matic ELQ Series or equivalent with the specifications as follows:

- Power supply: 24V DC
- Communication Input/Output: 4 – 20 mA
- Protection: IP 68 or better

11.5

FLOW METERS

- Type: Electromagnetic Flowmeter
- Flanges: 16 Bar (BS5404)
- Lining: Must be suitable for potable water
- Water temp (max): 60°C
- Enclosure: IP 67
- Electrodes: Stainless steel
- Meter uncertainty: $\pm 0.25\%$ from 0.5m/s up to 10m/s or better

11.6

SIGNAL CONVERTER

- Transmitter: Remote mounted
- Enclosure: IP 67 to ICE 529 and DIN 40050
- Power supply: 11- 40 VDC
- Display: 3 Line display
- Output: Current output 4-20 mA for forward and reverse flow
Pulse output on potential free contact 24V DC/0.5A max for forward and reverse flow
Pulse width 50ms
Pulse adjustable 1pulse = 1 m3 and 1 pulse = 0.1 m3
All outputs must be separately for forward and reverse flow

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11.7

CABLE

50m Control cable to be supplied with each flowmeter.

Basic Settings

Q max	m3/h
Totalizer units	m3
Low flow cut off	0 - 10%
Empty pipe detection	on/off

Ambient Temperature: During Operation -20 to + 50 0 C

12

DESIGN CRITERIA AND SPECIFICATIONS FOR ELECTRICAL RETICULATION

The Developer hereby notes that the provision of all electrical services shall comply to the National Rationalised standard (NRS) and all the SANS standards made reference to in the following:

- **SANS 507-1 (ED-1)/NRS 034-1(ED-4): 2007, Electricity distribution - Guidelines for the provision of electrical distribution networks in residential areas Part 1: Planning and Design of distribution systems.** (This standard covers the planning and design of economical residential electrical distribution systems that are capable of meeting probable demands with safety and reliability, whilst maintaining the voltage within the prescribed limits. A general guide to good technical practice for economical overhead and underground systems.)

NOTE:the above standard does not make use of the load modeling statistical parameters of the Gaussian probability density function (pdf) but rather the Beta pdf parameters *a*, *b* and *C*. These parameters essential for design can be obtained from the NRS Load Survey project. The Council of Windhoek, Electricity Department has obtained load data for the Namibian context and can provide design parameters based on the Namibian context.

- **NRS 034-2-3: 1997, Electricity distribution - Guidelines for the provision of electrical distribution networks in residential areas Part 2-3: Preferred methods and materials for the installation of overhead power lines.** (This standard covers preferred methods and materials used for the installation of low-

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voltage and medium-voltage overhead power lines in residential areas, and should be read in conjunction with NRS 033.)

The following section of Part 2 of NRS 034 -2 shall also be considered

- o Section 1: Preferred Methods and Material for Substations
- o Section 4: Preferred Methods and Material for Area Lighting
- o **NRS 033-2-3:1996 Electricity distribution - Guidelines for the application design, planning and construction of medium voltage overhead power lines up to and including 22 kV, using wooden pole structures and bare conductors.** (This standard Guidelines for the application design and construction of medium voltage overhead power lines up to and including 22 kV, using wooden pole structures. Provides an example of overhead line design that complies with professionally accepted practices and the OHS Act, 1993, as amended.)
- o **SANS 10142-1:2006 The wiring of premises Part 1: Low-voltage installations.** (Applies to electrical installations of residential premises, commercial premises, public premises, industrial premises, prefabricated buildings, fixed surface installations on mining properties, construction and demolition site installations, agricultural and horticultural premises, caravan sites and similar sites, marinas, pleasure craft and house boats, medical locations, exhibitions, fairs and other temporary installations, extra low voltage Lighting installations, electrical installations for street lighting and street furniture, and equipment enclosures (structures that provide physical and environmental protection for telecommunication equipment). Covers circuits supplied at nominal voltages up to and including 1,000 V A.C. or 1,500)
- o **SANS 10098-1:2007 Public lighting Part 1: The lighting of public thoroughfares.** (Lays down the fundamental principles that govern the lighting of public thoroughfares including motorways, arterial routes, residential roads, town and city centre's and pedestrian-oriented areas. Has been limited to methods of providing adequate public lighting that give good results within acceptable economic limits.)
- o **SANS 10098-2:2005 Public lighting Part 2: The lighting of certain specific areas of streets and highways** (Lays down recommendations for the lighting of

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 NT-1 SH 70

road areas of special importance and where normal conventional street lighting techniques in accordance with SANS 10098-1 might not apply.)

- Electricity Supply Regulation (Section 94(1)) of the Local Authorities Act, 1992 (Act No. 23 of 1992)
- Municipal Council of Windhoek Electricity Distribution and Protection Philosophies

13 DESIGN CRITERIA AND SPECIFICATIONS FOR ROADS AND STORMWATER STRUCTURES

13.1 GENERAL

13.1.1 The Developer hereby notes that Design criteria (unless otherwise specified herein) are to be in accordance with the "The Guidelines for human settlement, planning and design" as published by the Council of Scientific and Industrial Research (CSIR) and is available on-line at http://www.csir.co.za/Built_environment/RedBook/. This document is hereinafter referred to as the "Red Book".

13.1.2 The Developer hereby notes that Materials and construction standards (unless otherwise specified herein) are to comply with the latest edition of SANS 1200.

13.1.3 The information contained herein applies to normal developments and is of a general nature. Increased and/or reduced standards might be applicable where appropriate.

13.2 STANDARD DRAWINGS

The following Council Standard Drawings shall be used for designs and during construction:

13.2.1 Flood line information that is enforced by legislation from Government;

13.2.2 The Red Book as detailed above;

13.2.3 The SANS set of documents;

Section 4
Council's Standard Technical Requirements

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13.2.4 Set of TRH documents;

13.2.5 Service development guidelines;

13.2.6 Specific requirements as communicated and agreed to in consultation meetings with Developer's Engineer

SECTION 5**PROJECT SPECIFIC TECHNICAL REQUIREMENTS****1 DEFINITIONS**

Words and phrases used in the PROJECT SPECIFIC TECHNICAL REQUIREMENTS shall have the same meaning as are assigned to them in Section 2

2 MAIN SERVICE CONNECTIONS

- 2.1 The Developer must provide all bulk and main services at his own risk and costs accordance to the specifications and standards as set out in Sections 4 and 5, and must provide all reticulation network connection points to the main services, at the nearest point where sufficient network capacity exists, to the boundary of the Township Development, and that the costs to connect from existing Council distribution points up to the boundary of the Property or the separate Township Developments shall be paid by the Developer.
- 2.2 The location of these service distribution points shall be ascertained with the Council before planning or construction starts.
- 2.3 All connection points are to be approved in writing by the Council representative at the planning stage.
- 2.4 Should the Developer wish to cross a neighbouring development to reach main water or sewer services, the Developer itself would negotiate any servitudes and or agreements with the owner of the area concerned and submit such proposed written servitude agreement for approval of the Council's Representative.
- 2.5 The Developer shall construct the bulk water infrastructure required for the water supply of the whole development to the satisfaction of the Council Representative as per the specifications and standards of Council.

- 2.6 Such Bulk Infrastructure will be considered for taking over by the Council upon completion of successful testing and commissioning, and the pump stations shall be subject to a defects liability period of two years after date of take-over. The Developer shall maintain the pump stations according to an approved maintenance plan to ensure that the pump stations are in a good state at handover.
- 2.7 Water meter applications for individual erven should be applied for directly with the Council.
- 2.8 Such applications can only be done once the water reticulation infrastructure has been taken over by the Council.
- 2.9 The water reticulation infrastructure within the Township Development can only be taken over once the Bulk Water infrastructure has been taken over by the Council.
- 2.10 Bulk supply of electricity must be arranged with the Council on account of the Developer to the satisfaction of the Council Representative as per the specifications and standards of the Electricity Department of Council.
- 2.11 All Electricity meter applications for individual erven should be applied for directly with the Electricity Department of Council.
- 2.12 As the license holder for supply and distribution of electricity the Council shall remain responsible for the sale of electricity to the Township Development and the third party transferee.
- 2.13 Electricity meter applications can only be done once the electrical reticulation infrastructure has been taken over by the Council.
- 2.14 Any electrical supply required prior to the completion of construction and prior to the takeover, shall be metered at the main supply point at the cost of the Developer
- 2.15 All services installed over private land, which have to be taken over by Council, shall be protected by servitudes registered in favour of Council. Such costs shall be for the Developer's account.

3 ELECTRICAL SERVICES

- 3.1 The Developer will be responsible for the provision of all internal electricity distribution and street lights (electrical services) at own cost as per the specifications and standards and the satisfaction of the Council Representative and/or the Electricity Department.
- 3.2 The design and construction of all electrical services are to be done according to the Council's requirements and standard specifications as per the Electricity Supply Regulations and laws and all designs must be approved by the Developer's Engineer and accepted by the Council in writing before any work is started.
- 3.3 The design and construction of electrical services for each of the respective extensions or sections must adhere to the following:
 - 3.3.1 Compliance to Council's standards, regarding the establishment of Distribution Substations, primary and secondary 11kV Ring networks, Local Substations/ Miniature Substations, LV distribution networks, service connections to main DB and street lightning.
 - 3.3.2 Compliance with Council's Distribution philosophy, Protection and Automation scheme philosophy, SCADA & Telemetry, Metering and Street lighting standards.
 - 3.3.3 All procured electrical equipment shall comply with Council's standardised electrical equipment requirements, as per the specifications and standards as prescribed by the Electricity Department of Council.
 - 3.3.4 The electrical installation shall comply with the Electricity Supply Regulations No.19 of 1999 of the Local Authorities Act No. 23 of 1992 and applicable section of the Electricity Act No. 4 2007.
 - 3.3.5 All electrical related construction work is to be done under the supervision of a professional engineer (electrical) to be appointed by the Developer to the reasonable satisfaction of the Council's representative.
- 3.4 Prior to completion of the design phase, the duly appointed Engineer of the Developer shall arrange a meeting with the Council's representative and the Developer, to explain and obtain agreement on the proposed designs of the internal electrical services and their compliance to Council's standards to be agreed on between the Developer and the Electricity Department of Council. Minutes of such meeting shall be prepared by the Developer's Engineer, and submitted within 7 days of such meeting to the other Party:

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3.5 Final Designs shall be submitted for approval to the Council prior to construction. Workmanship standards shall be specified to be in accordance with Council's standards and the approved final designs will be submitted to the Electricity Department of Council for approval.

3.6 During the construction phase, the Council's representative or his delegate within the Council's Electricity Department who may deem necessary to attend site meetings shall be invited to attend site meetings between the Developer's Engineer and the Developer's Contractor. Minutes of such meetings must be prepared by the said Engineer, and submitted within 7 days of such meeting to all the other Parties. The take-over procedure shall be as provided in Chapter 10 of the General Conditions and Particular Conditions in Section 2.

3.7 All electrical designs are to be done on a CAD system in line with the Council's current CAD policy (current AutoCAD 2008, dwg file format, no dxf files will be accepted) and the information be made available to the Council's representative, and

3.8 A complete set of as-built drawings (current AutoCAD 2010, dwg file format, no dxf files will be accepted.) shall be submitted to the Council prior to the final takeover.

3.9 Ducts and Electrical cables shall be installed before any street is tarred.

3.10 All street lighting installations must be completed before the sidewalks are finished off.

4 CIVIL ENGINEERING WORKS

4.1 The DEVELOPER will be responsible for the provision, including design and construction, of all civil work, surfaced streets, storm water drainage systems, internal water and sewerage networks, main water supply, waste water treatment works, sewer and water pump stations, street lights, traffic signs, street name boards and road markings including all costs thereof and professional fees.

4.2 The DEVELOPER shall be responsible for:

4.2.1 The design and to construct to the satisfaction of the Council all roads, including all costs thereof and professional fees, necessary to ensure the reasonable access to the entirety of each approved Township Development section of all future residents and occupants assuming maximum permitted development and sale of all erven within each approved

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Township Development section.

- 4.3 The Developer shall provide services (electricity, water and sewerage) sufficient to supply the maximum needs of all future residents and occupants of each approved Township Development section assuming maximum permitted development and sale of all erven within each approved Township Development section. Such services shall be provided to the satisfaction of Council representative in accordance with municipal specifications and standards in Sections 2 to 6.
- 4.4 The Developer shall ensure that all stormwater from the streets shall be accommodated in a stormwater system approved by the Council for the purpose of carrying stormwater through the erven to the river, all to the satisfaction of the Council Representative.
- 4.5 The Developer shall ensure that access to the new township is maintained at all times for emergency purposes.
- 4.6 The Engineer of the Developer shall evaluate the road network and advise on access control measures at intersections together with plans submitted for any new extension, to accommodate traffic growth experienced with the sectional development of the new township.
- 4.7 The Developer shall be responsible for corresponding proposed changes including the installation of traffic lights (if any).
- 4.8 Further requirements and standards regarding civil engineering works:
- 4.8.1 Streets are to be surfaced with Bitumen or paving blocks (interlocks) or as specified by the Council's Representative. All roads in excess of 15% slope shall be paved.
- 4.8.2 The street name posts, road signs and road markings are to be done according to the design plan approved by the Council.
- 4.8.3 Road gradients and cul-de-sac-street-reserve widths shall be in accordance with the Standard Municipal Design Criteria, as specified in Section 4 or alternatively as approved by the Strategic Executive: Infrastructure, Water and Technical Services.
- 4.8.4 The Developer must ensure that the width of the streets/roads should be sufficient to accommodate refuse trucks and turning circles in cul-de-sacs should be designed in

such a way that such trucks can turn easily. 156

- 4.9 The Parties agree that the designs of all permanent works in respect of civil engineering works shall be in conformity as per the specifications and standards of Council.
- 4.10 The Developer shall provide for the installation of all future extensions of Telecom services sufficient to satisfy the telecommunications requirements of all future residents and occupants of the Township Development, assuming maximum permitted development and sale of all erven within the Township Development, in which regard the Developer shall consult directly with Telecom Namibia on the possible location of the aforesaid.

5 PLANNING, DESIGN AND EXECUTION SECTIONS

- 5.1 The Parties agree that:
- 5.1.1 The development shall be executed in sections in the sole discretion of the Developer which sections shall be specified and detailed in accordance with the requirements of the Programme and this Agreement and subject to the marketing and sale of all erven.
- 5.1.2 A draft Programme plan shall be prepared by the Developer as stated in the General and Particular Conditions clause 8.3 showing the respective sections and all bulk service requirements as per the specific section and related thereto.
- 5.1.3 Progressive upgrading of bulk services shall be linked to the development of the respective sections and shall be dependent on the number of erven sold in each section and size of the Township Development.
- 5.1.4 Upgrading of all arterial roads or main collector roads to dual carriage way capacity shall be indicated and upgrading shall be linked to development of the respective sections.

6 APPROVAL OF STAGES (PER EACH SECTION OF THE DEVELOPMENT)

In addition to the requirements set out in sections 4 and 6, the Developer agrees to the following:

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6.1 COMPLETION (THE TAKING OVER OF COMPLETED PERMANENT WORKS BY THE COUNCIL):

- 6.1.1 Water and sewer networks will not be taken over in a line-by-line fashion, but as a whole for the relevant Township Development section. The date of take over and the end of the defects liability will therefore be two specific dates for the whole section.
- 6.1.2 All permanent infrastructures, other than bulk and main services and pump stations and the Waste Water Treatment Plant, shall be subject to a 12 months defects liability period as state in the Agreement Data in Section 6.
- 6.1.3 The Developer will only apply for the taking over of roads once they are completely constructed and surfaced. The Council shall only take over complete streets once they have been surfaced.
- 6.1.4 Prior to take over of streets, the Developer shall remain responsible for the maintenance of all roads and maintaining access to erven to the satisfaction of the Council's representative in accordance with the standards and specifications of Council.
- 6.1.5 Temporary infrastructure, which might be required to accommodate the sectional development, will not be taken over by the Council and must be removed by the Developer, when this is replaced by permanent Works. Waste Water Treatment package (modular) plants are regarded as temporary.
- 6.1.6 Bulk and reticulation services will only be considered to be taken over once an entire section or extension has been completed.
- 6.1.7 No partial takeover of a section or extension will be allowed unless the parties have agreed thereto.

7 ADDITIONAL PROFESSIONAL INDEMNITY INSURANCE

- 7.1 In addition to the requirements set out in clause 18 of the General Conditions and clause 2.5 of section 4, the Developer agrees to the following:

- 7.1.1 The Engineer shall be a registered professional or incorporated Engineer registered with the Engineering Council of Namibia, and have valid Professional Indemnity Insurance cover (insured value: minimum N\$10 Million for each and

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every claim which the Council might have against the Developer);

8 DEFECTS LIABILITY PERIOD

In addition to the requirements set out in section 4, the Developer agrees to the following:

8.1 The sewer pump stations shall be subject to a defects liability period of two years after date of take-over.

8.2 The Developer shall maintain the sewerage treatment plant(s) and sewerage pump stations according to a maintenance plan (approved by Council) to ensure that the treatment plant(s) and pump stations are in a good state at handover.

8.3 Pump stations, which are part of the permanent infrastructure of this development, shall be subjected to a two year (24 months) defects liability period. The Developer shall maintain the pump stations according to an approved maintenance plan to ensure that the pump stations are in a good state at handover.

9 STREET NAMES

Council will decide on the street names through a submission by the Street Names Committee.

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SECTION 6 A

AGREEMENT DATA AND SCHEDULES

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1. AGREEMENT DATA

This Agreement Data forms part of the Agreement.

With the exception of the items for which the Sections 2 to 6 have been inserted, the Developer shall complete the following information. Wherever the letters "PC" are used in this Agreement Data, same shall refer to the Particular Conditions in Section 2 of the Agreement.

<u>Item</u>	<u>Sub-Clause</u>	<u>Data</u>
Council's name and address	1.1.2.2 & 1.3	See Agreement
Contractor's name and address	1.1.2.3 & 1.3	See Agreement
Council's Representative's name and address	1.1.2.4 & 1.3	
Commencement Date	1.1.3.2	[insert date]
Time for Completion of the Works	1.1.3.3	[State period]
Defects Notification Period Agreement	1.1.3.7	As specified in the
Governing Law	1.4	Namibia
Ruling language	1.4	English
Language for communications	1.4	English
Time for access to the Site	2.1	N/A
Amount of Performance Security or Land	4.2	[Insert]% or add Land To be transferred

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Fuel Rate	4.19	N/A
Normal working hours	6.5	[Insert]
Delay damages for the Works	8.7 & 14.15(b)	[Insert]
Maximum amount of delay damages	8.7	[Insert]%

If there are Provisional Sums:

Percentage for adjustment of

Provisional Sums 13.5(b) N/A

Initials of signatory of Agreement _____

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 [Signature]
 [Signature]
 [Signature]
 [Signature]

Item _____ Sub-Clause _____ Data _____

If Sub-Clause 13.8 applies:

Adjustments for Changes in Cost;

Table(s) of adjustment data

13.8

for payments each
Month/[YEAR] in (currency)

Coefficient	Country of origin	Source of index	Value on stated date(s)*	
Scope of index	Currency of index	Title/definition	Value	Date
a= 0.10				
Fixed				
b= Labour				
c=				
d=				
e=				

* These values and dates confirm the definition of each index, but do not define Base Date indices

Total advance payment	14.2	N/A
Number and timing of instalments	14.2	N/A
Currencies and proportions	14.2	N/A
Start repayment of advance payment	14.2(a)	N/A
Percentage of retention	14.3	N/A
Limit of Retention Money	14.3	N/A
Minimum amount of Interim Payment		
Certificates	14.6	N/A

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[Signature]

If payments are only to be made in currency/currencies named on the first page of the Letter of Tender.

Currency/currencies of payment

14.15

N/A

Limitation of Liability

17.6

N/A

Initials of signatory of Agreement

Item

Sub-Clause

Data

If some payments are to be made in a currency/currencies not named on the first page of the Letter of Tender.

Currencies of payment

14.15

Currency Unit

Percentage payable in the
Currency

Rate of exchange: number
of Local per unit of Foreign

Local: [name]

Foreign: [name]

[name]

1.000

Insurance

18

See Agreement

The DAB shall be

20.2

N/A

Appointment (if not agreed) to be
Made by

20.3

N/A

If there are Sections:

Definition of Section:

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S. H. N. [Signature]
T. [Signature]

Description Time for Completion

Delay Damages

(Sub-Clause 1.1.5.6)

(Sub-Clause

1.1.3.3)(Sub-Clause 8.7)

Initials of signatory of Agreement

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2. SCHEDULE OF CONTRACTORS

The Developer shall list below the portions of the work which it intends to be performed by a third party contractor or contractors, as well as full details of the contractor or contractors proposed.

DESCRIPTION OF WORK

CONTRACTOR

SIGNED ON BEHALF OF DEVELOPER:

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3. THE DRAWING REGISTER

The drawings listed hereunder are issued separately from this document but form part of this Agreement

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SECTION 6 B**PRO-FORMA DOCUMENTS****CERTIFICATE IN RESPECT OF COMPLIANCE WITH QUALITY ASSURANCE**

DEVELOPMENT NAME:

SECTION OF WORKS:

It is herewith certified that the QUALITY ASSURANCE MANUAL / FILE has been received and found to be compliant in respect of:

1. Final Quality Assurance Manual / File received on

Date:/...../.....

2. Contractor's Process Control test results included?

Yes / no

3. Engineer's Acceptance Control test results included?

Yes / no

4. Engineer's Acceptance Sheets signed?

Yes / no

Remarks: (if any)

Certificate prepared by:

Name (Quality Monitoring Official)

Signature

Date

Final Quality Assurance Manual / File Audited and found in order:

Name (Quality Auditor)

Signature

Date

Quality Assurance Approved for purposes of Taking Over:

Name (Section Eng:
Contract Management)

Signature

Date

[Handwritten signatures and initials]

CERTIFICATE OF APPROVAL AS ISSUED BY THE AFFECTED SERVICES
DEPARTMENTS OF THE COUNCIL IN TERMS OF THE DEVELOPMENT AGREEMENT
ENTERED INTO BETWEEN THE COUNCIL AND THE DEVELOPER FOR THE
PURPOSE OF TOWNSHIP DEVELOPMENT

TOWNSHIP & ERF NUMBERS: [Insert name of development]

COUNCIL RESOLUTION NUMBER: 407/11/2012]

TOWNSHIPS BOARD ITEM NUMBERS: [Insert]

PART A:

**STRATEGIC EXECUTIVE: URBAN PLANNING & PROPERTY MANAGEMENT'S CHECK
LIST FOR OBTAINING MUNICIPAL SERVICES' CERTIFICATE**

- 1 Has a copy of each diagram or general plan been received?
- 2 Have erf dimensional requirements been met?
- 3 Have building regulation requirements been met?
- 4 Have any closures been completed?
- 5 Have any other imposed conditions been met?
- 6 Have servitudes been accommodated?
- 7 Have retention monies been paid?
- 8 Survey requirements. (To be done by a Professional Land Surveyor)
- 8.1 Have all erf beacons been identified? (Done upon completion of
buildings and where OWNER/DEVELOPERS took delivery)
- 8.2 Has any encroachment by completed structures been detected?
- 8.3 Have the Reference Marks been certified?
- 9 Have Environmental Impact Assessment requirements been met?

Comments:

.....
Urban Planner

.....
Date

.....
Strategic Executive

Urban Planning & Property Management

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Date

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CERTIFICATE OF APPROVAL AS ISSUED BY THE AFFECTED SERVICES
DEPARTMENTS OF THE COUNCIL IN TERMS OF THE DEVELOPMENT AGREEMENT
ENTERED INTO BETWEEN THE COUNCIL AND THE DEVELOPER FOR THE
PURPOSE OF TOWNSHIP DEVELOPMENT
TOWNSHIP & ERF NUMBERS: [Insert name of development]
COUNCIL RESOLUTION NUMBER: 407/11/2012
TOWNSHIPS BOARD ITEM NUMBERS: [Insert]

PART B-I

STRATEGIC EXECUTIVE: INFRASTRUCTURE, WATER & TECHNICAL SERVICES'S
CHECK LIST FOR OBTAINING MUNICIPAL SERVICES' CERTIFICATE.

BULK & WASTE WATER

- 1 Have design drawings and specifications of infrastructure been approved?
- 1.1 Have pipes, valves and hydrants been installed according to the approved specifications?
- 1.2 Have valve and hydrant markers been installed?
- 1.3 Have manholes, rodding eyes, benching, covers and step irons been installed to specification?
- 1.4 Have house connection markers been installed?
- 2 Has all quality assurance data been submitted (Quality Assurance Manuals)?
- 2.1 Has the quality assurance data been evaluated and found to be compliant with the requirements of the Agreement?
- 2.2 Have as-built drawings been received?
- 3 Has as-built electronic/CAD data been received?
- 4 Have all other imposed conditions pertaining to water and sewer been met?
- 4 Has any required deposit been provided?
- 5 Have servitudes been accommodated?
- 6 Have retention monies been paid?
- 8 Has all refuse and rubble been satisfactorily removed from site, to an approved landfill site?

Comments:

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Chief Engineer

.....
Date

.....
Strategic Executive

.....
Date

Infrastructure, Water & Technical Services

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inc. investment

Together we can

inc. investment

Financing

- No investment has approached DBN for financing the project
- To support Government efforts and also keep money circulating in the county
- Other infrastructure funds can be used in conjunction with DBN

inc. investment

Why No Investment?

- No investment will not own the land
- Provide affordable land and housing
- We will source our own funds for projects - no fund will come from CoW
- No investment will not use land auction system
- No investment will use government money
- We promise no investments with CoW for updates and to ensure success of the projects

inc. investment

Financing

inc. investment

Benefits to City of Windhoek (CoW)

- Speed up land delivery in Windhoek
- Reduce costs - no capital expenditure expected from CoW
- Increase earnings of CoW without committing capital
- No investment will use local contractors
- Provision of better living condition and increase quality of life for inhabitants
- Job creation - a unskilled laborer per even a professional
- With this partnership, CoW can focus on providing other essential services
- CoW will receive profit from land sales
- CoW will be compensated for service rendered

inc. investment

Proposal 2 - TTPBEG

- Municipality can use TTPBEG money to purchase serviced land
- Serviced land will be sold at cost recovery
- Land prices will be subsidised by our special fund

SECTION 1**MEMORANDUM OF DEVELOPMENT AGREEMENT**

made and entered into by and between

THE MUNICIPAL COUNCIL OF WINDHOEK

As per Council Resolution 143/06/2014 and 290/12/2016 attached as Annexure 1

of

80 Independence Avenue, Windhoek, Namibia

Herein represented by **ROBERT KAHIMISE** and **M AMADHILA** in their respective capacities as Chief Executive Officer and Chairperson of the Management Committee of the said Municipal Council acting as such in terms of Section 31A.(a) of the Local Authorities Act, No. 23 of 1992

(hereinafter referred to as the "Council")

And

HEIKKY PROPERTY DEVELOPERS

Registration number (2013/0441)

Herein represented by **Heikky Amwele** in his capacity as director of the Developer duly authorised thereto by a signed resolution taken by the Developer, a copy of which is attached.

(hereinafter referred to as the "Developer")

H.A. [Signature]
N.G. [Signature]
M.F.A. [Signature]

WHEREAS:

- A The Council is the owner of certain immovable Property known as:
- | | |
|------------------|--|
| CERTAIN | Erven 6219 to 6250 |
| SITUATE | Khomasdal Extension 4 |
| MEASURING | 1.9608 Hectares as per General Plan SG No. A446/2000 filed as K356 |
- B In order to speed up land delivery in its area of jurisdiction, the Council has: generally resolved to conclude development agreements with the private sector in terms of which funding is to be sourced, Infrastructure services will be installed to the Property owned by the Council and the sale of the Property to be jointly marketed / developed and sold as set out hereinafter; and specifically resolved to conclude an agreement with the Developer in terms of which the Developer will finalise Planning approval, procure funding, and provide Permanent Works to the Property.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**1. PARTIES**

The Parties to this Agreement are the Municipal Council of Windhoek; and Heikky Property Developers (Pty) Ltd.

2. INTERPRETATION

- 2.1 In this Agreement, unless the context indicates a contrary intention, the words and expressions used in this Section 1 and not defined below, shall have the same meaning as are assigned to them in Section 2 read with FIDIC (as defined in clause 1 ("General Conditions") of Section 2 hereof.
- 2.2 Words and expressions set forth below, shall bear the following meanings and cognate expressions shall bear corresponding meanings:
- 2.2.1 **"Applicable Laws"** means all national, regional and local legislation, regulations, statutes, by-laws, consents and/or other laws of any relevant governmental authority and any other instrument having the force of law as may be issued and in force from time to time relating to or connected with the activities contemplated under this Agreement;

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H. E.

- 2.2.2 **"Business Days"** means any day other than a Saturday, Sunday or official public holiday in terms of the Public Holidays Act, 1990 (Act No. 26 of 1990);
- 2.2.3 **"General Plan"** means the general plan depicting the subdivided portions of the Township;
- 2.2.4 **"Project"** means the development of unserviced land with the construction of Permanent Works and installation of infrastructure services on the Property, Construction of houses, Construction of other Residential units and thereafter the sale of thereof in accordance with the provisions of this Agreement.

3. THE PROJECT

- 3.1 The Project consists of the Council making available to the Developer the Property as unserviced land and for which the Developer must finalize the planning and approval process as well as cadastral procedures:
 - 3.1.1 for the construction of the Permanent Works by Developer for the Township in accordance with Sections 2 to 6 of this Agreement within the time frames to be set out in the Project Programme; and
 - 3.1.2 the alienation of the serviced erven (arising from the subdivision of the Property) [hereinafter referred to as the **"Serviced Erven"**] by Developer in conjunction with the Project Team on an offer to purchase basis and/or tender basis.
- 3.2 The Developer will acquire finance to enable it to procure Permanent Works, construction of houses, construction of residential units and pay service providers.

4. PROJECT TEAM AND PERMANENT WORKS-GENERAL OBLIGATION

- 4.1 The Parties agree to establish a Project Team to be composed as follows:
 - 4.1.1 2 (two) representatives appointed by the Council (of which 1 (one) shall be from Council's Finance Department);
 - 4.1.2 2 (two) representatives appointed by the Developer (of which 1 (one) shall be an Engineer);
 - 4.1.3 the Lender may appoint 1 (one) representative.

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Each member of the Project Team will have equal voting powers.

- 4.2 The Project Team may incorporate such representatives of the Departmental Heads of Council and Contractors of the Developer as may be needed to ensure the fulfilment of the Parties' obligations under this Agreement, but without voting powers.
- 4.3 The Project Team established will be responsible:
- 4.3.1 to supervise and take all decisions in respect of the administration of the Project;
 - 4.3.2 to elect the chairperson and deputy chairperson and determine their meeting procedures;
 - * 4.3.3 to supervise all the transactions in and out of the Revenue Account; and
 - 4.3.4 for the successful completion of the Project must make decisions and may give directives for the benefit of the Project;
 - 4.3.5 for considering, at the advice of the Developer, the appointment of the Contractors, subcontractors and Consultants to be used within the Project and to evaluate the profiles and experience of Contractors, subcontractors and Consultants to be used within the Project;
 - 4.3.6 for using commercially reasonable endeavours to ensure that the Project Costs and financial obligations in respect of the Facility Agreement and this Agreement are being met;
 - 4.3.7 for the alienation/sales of the serviced erven (arising from the subdivision of the Property) [hereinafter referred to as the "Serviced Erven"] in conjunction with the Property Management Division and subject to any conditions as may be imposed by Council.
- 4.4 Subject to the overall direction and control of the Project Team and subject further to the applicable provisions of this Agreement, the Developer shall:
- 4.4.1 cause the Permanent Works to be constructed and be installed in accordance with Sections 2 to 6 of this Agreement; and
 - 4.4.2 supervise the construction of the Permanent Works by the Contractor in the manner envisaged in this Agreement; and
 - 4.4.3 use commercially reasonable and lawful endeavours to ensure that the Permanent Works are constructed and installed and the Serviced Erven delivered in accordance with the Project Programme.

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4.5 The Parties:

- 4.5.1 record that the Council undertakes to alienate the Serviced Erven within the Property in conjunction with the Developer as set out in this Agreement;
- 4.5.2 confirm that the times at which the Serviced Erven are released for alienation must take into account the then prevailing market conditions in the Council's area of jurisdiction; and
- 4.5.3 accordingly agree that:
 - 4.5.3.1 the Project may be undertaken in Sections/phases, and
 - 4.5.3.2 the Project Team shall in its discretion determine the times at which each Section/phase will be undertaken and the extent of each such Section/phase (and by extent is meant the number of the erven which will be serviced as part of any Project Section/Phase and locational information incidental to those erven).

5. NET PROFIT SHARING

The Net Profits of the Project (if any) will be shared as follows: 50% (fifty percent) to the Developer and 50% (fifty percent) to Council.

6. THE FACILITY AGREEMENT

- 6.1 The Developer will within sixty (60) days of the signing of this Agreement procure funding for the Project under a Facility Agreement to enable the Developer to proceed with the construction of the Permanent Works by the Developer for the Township.
- 6.2 The terms and conditions of the Facility Agreement will be negotiated and finalised by the Developer and the Lender and a copy thereof submitted to the Council in line with the provisions of clause 7.1. As security for its obligations under the Facility Agreement, the Developer may pledge and/or cede to the Lender (or the Lender's nominee) the Developer's rights and/or obligations under this Agreement including without limitation:
 - 6.2.1 its rights to be paid the Developer's profit share; and
 - 6.2.2 its rights under the Revenue Account,
 and the Council hereby agrees to such intended Cession.

7. SUSPENSIVE CONDITIONS

- 7.1 Save for clause 9 which shall be immediately effective, this Agreement is subject to the fulfilment of the following Suspensive Conditions:

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- 7.1.1 that the Facility Agreement is concluded and that all suspensive conditions which are contained in the Facility Agreement (other than any such condition which requires that this Agreement must be concluded and must become unconditional) are fulfilled and the Lender's representative confirms same in writing to both the Developer and the Council's representative; and
- 7.1.2 that the Developer certifies in writing to the Council that the Developer has obtained the following Required Approvals:
 - 7.1.2.1 approval(s) for the registration of the subdivisions of the portions for the registration and establishment of the Township in accordance with the applicable General Plan;
 - 7.1.2.2 approval by the Survey-General of the General Plan in respect of the Township (and that such general plan complies substantially with the applicable Township Layout);
 - 7.1.2.3 approval of the proclamation of the Township as an approved Township in the Government Gazette;
- 7.1.3 that the Council's representative certifies in writing to the Developer and the Lender that the Council has obtained the following Required Approvals:
 - 7.1.3.1 that Council has the authority to conclude this Agreement (under the Applicable Laws which govern the Council's internal governance and procurement procedures which must be observed by it).
- 7.2 The Suspensive Conditions shall be fulfilled on the date that the Council's representative informs the Lender and the Developer in writing that all the conditions in clause 7.1 have been fulfilled.
- 7.3 The Suspensive Conditions have been inserted into this Agreement for the benefit of both Parties and, in such circumstances, the Suspensive Conditions may not be waived.
- 7.4 If the Suspensive Conditions are not fulfilled by:
 - 7.4.1 24 (twenty four) months from the signature date of this Agreement; or
 - 7.4.2 such later date, as the 1 (one) Party may allow in a written notice delivered by it to the other Party, this Agreement shall be of no force or effect and neither Party shall have any claim against the other arising herefrom.


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8. THE TOWNSHIP DEVELOPMENT PROJECT

8.1 The Parties shall undertake the Township Development Project jointly on the basis that:

8.1.1 the Developer shall comply with the obligations in Sections 2 to 6 of this Agreement summarised in clause 8.2 of Section 1; and

8.1.2 the Council shall comply with the obligations summarised in clause 8.3 of Section 1.

8.2 Subject to the Project Team's overall control and direction and subject further to all the applicable provisions of this Agreement, the Developer shall:

8.2.1 obtain all the Required Approvals in clause 7.1.2;

8.2.2 cause the Permanent Works to be constructed in accordance with Sections 2 to 6 of this Agreement within the Project Programme, and

8.2.3 market, and in conjunction with the Project Team, shortlist and recommend for approval to Council the sale of Serviced Erven in the Township, on the sales method.

8.3 The Council and the Developer shall:

8.3.1 expeditiously avail all lawful and commercially reasonable endeavours to implement the alienation of all the Serviced Erven in the Township within 3 (three) months of the mutually agreed completion of each Project section/phase within the Township or within 12 (twelve) months of the practical completion of the Project;

8.3.2 cause the Net Project Profit to be determined in the manner envisaged in this Agreement and cause the Net Project Profit to be held in the Revenue Account and to be distributed to the parties in the manners and at the times envisaged herein;

8.3.3 not sell any general residential block but co-develop with the Council; a separate agreement will be negotiated in this regard between the Council and the Developer within 90 days after the signing of this agreement. The Developer will have to source the funding for the development. In the event that no agreement is reached, these erven will be sold on tender.

9. COUNCIL'S REPRESENTATIVE

9.1 The Council shall within 7 (seven) days of the signature date appoint Council's Representative which person Council may replace with another person from time to


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time, provided that Council shall ensure that at all times relevant hereto, there shall be duly appointed Council's Representative.

9.2 The functions of the Council's Representative shall be as set out in clause 3 of the General Conditions and Clause 2.3 of Section 2 and to:

9.2.1 receive and to submit to the Council all requests for approvals and all recommendations which the Developer requests from or makes to the Council under this Agreement; and

9.2.2 advise the Developer, within not more than 7 (seven) days, [unless, in a specific instance, a longer period is agreed] from the date upon which the request or recommendation was given to the Council's Representative, in connection with any decisions which the Council has made in terms of this Agreement.

10. DESIGN AND SPECIFICATIONS

The Parties confirm that the Developer will prepare the initial Design and Specification of the Permanent Works and that it shall be in accordance with the General and Particular Conditions in Sections 2 to 6 of this Agreement.

11. PROJECT SECTIONS/PHASES

The Project Team shall from time to time be entitled to make recommendations to the Council's Representative in relation to the Project Programme and Sections/Phases in which the Project may be implemented in line with clause 12 of Section 1 of this Agreement.

12. PROJECT PROGRAMME

The Project Team shall, from time to time and as may be reasonably necessary, draft a Project Programme as set out in clause 8.3 of the General and Particular Conditions in Section 2 and clauses 2.8.2 and 2.8.3 of Section 2.

13. CONSTRUCTION: DEVELOPER'S RESPONSIBILITIES – DESIGNS

13.1 The Parties confirm that the Developer is obliged to instruct the Consultant and Contractors to design the installation of the Permanent Works as set out in Sections 2 to 6.

13.2 Intellectual property rights in and to any Council approved designs in respect of any Permanent Works pertaining to any Project Section/Phase shall at all times remain vested in the Council.

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13.3 The Developer shall:

- 13.3.1 not use any such designs for any purpose other than to procure the construction of the applicable Permanent Works; and
- 13.3.2 within a reasonable period after the occurrence of a Termination Event, return all the documents which contain any such Council approved designs to the Council.

14. **AVAILABILITY OF SITE**

- 14.1 The Council shall take all such steps as may be required in order to ensure that the Townships are not occupied by unauthorised persons prior to handing over of the Township to the Developer.

- 14.2 The Council shall give vacant possession of the portion of the Township in respect of which a Project Section/Phase will be undertaken available to the Developer, the applicable Engineer and the applicable Construction Contractor(s) in sufficient time to allow for the construction of the applicable Permanent Works in accordance with the applicable Section of the Project Programme.

15. **REQUIRED APPROVALS**

- 15.1 The Council and/or the Developer shall obtain all the Required Approvals necessary in connection with the construction of the Permanent Works for each Project Section/Phase.

- 15.2 The Council shall, between five (5) and ten (10) Business Days after receipt of a written request from the Developer, make copies of all those Required Approvals available to the Developer.

- 15.3 The Parties shall take all such steps and do all such things as may be necessary to ensure that they comply with the conditions of any Required Approval which the Council has obtained in connection with any Project Section/Phase and, if necessary, the Council shall amend the Design and Specifications in respect of that Project Section/Phase in order to ensure such compliance.

16. **ANCILLARY COSTS**

If it becomes necessary for the Developer to incur any costs (the "Ancillary Costs") other than any Project Costs, Engineer/Consultant's Fees, Value Added Tax (VAT); any

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Construction Price and the Lender's charges in complying with its obligations under this Agreement:

- 16.1 the Developer shall submit such Ancillary Costs to the Project Team for approval. The Project Team, after approval will advise the Council's Representative, in writing, such advice to set out details of the Ancillary Costs in question and the reason for the incurred costs;
- 16.2 the Council shall, within 10 (ten) Business Days after receipt of the applicable notice by the Council's Representative, cause the Council's Representative to advise the Project Team whether the Council approves of the incurred Ancillary Costs or not and the Council shall not unreasonably withhold its consent to allow such expense, and if the applicable Ancillary Costs have been approved by the Council in accordance with this clause 16 those Ancillary Costs shall constitute Project Costs.

17. ALIENATION

17.1 Transfers

The Council shall take all such steps and do all such things as are necessary to ensure that the Serviced Erven contained in any Project Section/Phase become transferable as soon as may be reasonably possible after the date on which the applicable Permanent Works (or part thereof) are taken over by the Council (in terms of the provisions of clause 10 of the General Conditions) in section 2. The Council shall, through the Council's Representative:

- 17.1.1 from time to time and as may be reasonably necessary, report to the Developer in connection with the progress which the Council has made in securing the transferability of the Serviced Erven contained in any Project Section/Phase; and
- 17.1.2 advise the Developer once those erven have become transferable.

17.2 Conveyancer

The Project Team may appoint any law firm that the Developer, after consultation with the Project Team, may appoint as conveyancers to attend to the transfer and registration of all Serviced Erven alienated.

17.3 Alienations

Once the Permanent Works have been taken over in terms of clause 10 of the General Conditions in Section 2 and installed in respect of any Project Section/Phase:

- 17.3.1 the Council shall (upon recommendation of the Project Team who will in their opinion determine if it is contractually reasonable to do so) obtain all the

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Required Approvals or follow the procedures required by law to alienate the Serviced Erven; and

- 17.3.2 the Council shall (if it has obtained those approvals) inform the Project Team and the Developer, in writing, to arrange the alienation process on its behalf;
- 17.3.3 the Developer may appoint a principal marketing and real estate company who will be in charge of all sales and adjudication reports for the offer to purchase process under the auspices and direction of the Project Team.
- 17.3.4 notwithstanding anything to the contrary contained in this Agreement, but subject always to any approval required by Applicable Laws, the Developer may market and do conditional pre-sales (subject to the applicable terms and conditions of this Agreement) in respect of the prospective Serviced Erven.

17.4 Method of sale

- 17.4.1 The sale of the Serviced Erven shall be by either Offer to Purchase or by Tender. The Project Team will determine the upset price, and in determining the upset price the Project Team shall take into consideration the factors outlined under clause 19.

- 17.4.2 For purposes of this clause 17.4, Tender shall mean a pre-allocation process in which the Council and the Project Team, after the approval of the Township Layout, allocate individual erven before Take-Over of Serviced Erven to individuals or entities.

? Fin ops procedures

18. REVENUE ACCOUNT AND THE NET PROJECT PROFIT

- 18.1 For the management of this Agreement the Parties agree to c for the benefit of the Project as set out hereinafter as so Effective Date.

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- 18.2 Subject to the provisions of clause 6 and any requirements in the Facility Agreement, if any, the Developer will draw up financial operating procedures for approval by the Project Team in respect of the manner in which the Revenue Account is to be administered and managed under the Project on a day to day basis, with the object to address risks, adhere to international bookkeeping standards and to curtail delays in Project Costs' payments.

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18.3 The Revenue Account will be audited by the Auditors appointed by the Developer on a quarterly basis.

18.4 The Lender will make the facility in the Facility Agreement available to the Developer on the basis that the Developer will be entitled to draw down principal Project Costs against the facility with proof of invoices and any additional document(s) as required by the Lender which draw down amounts are to be paid into the Revenue Account over the period of the Project Programme commencing on the Effective Date or such extended period as the Parties may agree;

18.5 Proceeds from sales of the Serviced Erven will be made into the Revenue Account as interim sales payments when the Serviced Erven have been sold as set out in clauses 8 and 19 until all erven have been sold subject to interim payments provided for in this Agreement.

18.6 Distributions, Withdrawals and Payments

Funds will be distributed out of the Revenue Account in the following priority:

- 18.6.1 draw down Project Costs paid from the Loan Facility during the implementation and provision of the Permanent Works during the running of the Project or applicable section/phase;
- 18.6.2 any Lender's charges payable under the Facility Agreement other than interest and the Lender's financing fee;
- 18.6.3 interest under the Facility Agreement towards the Lender in the priority as stated in the Facility Agreement;
- 18.6.4 the Lender's financing fee will be as per clause 1.1.4.23 of Section 2.
- 18.6.5 the Council and the Developer's net profit share;
- 18.6.6 notwithstanding clauses 18.6.1 to 18.6.5, all statutory payments including but not limited to VAT and income taxes, as applicable, will be paid out of the Revenue Account as and when they become due.

18.7 As is envisaged in the Facility Agreement, the Developer shall not withdraw or instruct the withdrawal of any amounts from the Revenue Account other than:

- 18.7.1 to make the payments envisaged in clause 18.6 strictly in the order of priority set out in that clause; or
- 18.7.2 in the circumstances envisaged in clause 18.9.

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18.8 If the Developer under clause 17.3. detects, after the closing dates of the Offer to Purchase method of sale, that the Developer is unable to sell any or only part of the Serviced Erven the Developer shall, within 5 (five) Business Days after the applicable closing date, in writing advise the Project Team and the Council of the:

18.8.1 details of the Serviced Erven alienated; and

18.8.2 gross selling prices obtained by it in respect of those Serviced Erven;

18.8.3 details of the Project Costs and charges incurred by it in connection with the alienation of those Serviced Erven; and

18.8.4 Net Proceeds obtained by it for those Serviced Erven,

whereafter the Project Team will proceed to determine if a further round of Offer to Purchase shall be proceeded with or determine another method of sale or proceed with the determinations as set out in clause 18.9.

18.9 Once all the principal amounts which the Developer has drawn down against the Loan Facility and disbursed in line with sub-clauses 18.6.1 to 18.6.6 and payments in respect of the sales' prices have been generated:

18.9.1 the Project Team shall be entitled, but not obliged, before funds are finally disbursed as per clause 18.6, to appoint an Accounting Officer to calculate the costs (plus VAT thereon if applicable) disbursed under clause 18.6.1 to 18.6.3 and the Lender's financing fee in sub clause 18.6.4 and Net Project Profit. Prior to profit pay-out, the Developer and the Council shall appoint the Auditor to provide the assurance in respect of the accounting work.

18.9.2 the Auditors shall make that determination, acting as experts and not as arbitrators, and shall be entitled to adopt such a procedure as they may deem appropriate and to rely on such evidence of such persons as they may deem appropriate and their decision shall, in the absence of manifest error, be final and binding;

18.9.3 if the aggregate of the Proceeds received under clause 18.5 exceeds the costs (plus VAT thereon) distributed under clause 18.6.1 to clause 18.6.3 as determined by the Auditors in terms of clause 18.9.2, the Project Team shall be entitled to distribute the excess to the Parties in accordance with the order envisaged in clauses 18.6.4 and 18.6.5 out of the Revenue Account;

18.9.4 if the estimated Project Net Profit (plus VAT thereon), as determined by the Auditors, reflects a shortfall and is less than the aggregate of the Proceeds received under clause 18.5:

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18.9.4.1 the Project Team and the Developer shall continue to market the unsold erven and pay Proceeds into the Revenue Account as set out in clause 18.5 and distribute the Proceeds as set out in sub-clause 18.6: Provided that if on the Fulfilment Date or on a date of a Termination Event or Default Date, erven remain unsold or the Project Costs cannot be recovered from sales, after an application of clause 20.2, then the Council must make good the short fall into the Revenue Account for costs incurred under sub-clauses 18.6.1 to 18.6.3 together with VAT thereon, and

18.9.4.2 once the aggregate of the Proceeds received under clause 18.5 reach the aforesaid total, the provisions of clause 18.9.3 shall come into effect or the Auditors may declare that no profit is to be declared, and the Facility Agreement shall contain provisions in terms of which the Lender agrees.

18.10 The Revenue Account will be reconciled and closed 3 (three) months after the Termination Date, unless unforeseen circumstances prohibit this, subject to the approval of the Project Team; and

18.11 The Developer and the Council shall not give any instructions to the Lender to withdraw any Proceeds out of the Revenue Account other than in order to make the payments envisaged in clause 18.6 in the order of priority set out above, or in order to make payment to the Council to the extent and in the circumstances envisaged in clause 18.9.3 and/or clause 18.9.4.

18.12 In Event of a Sectional/Phased Development as approved under clause 11 and 12 of Section 1 and clause 10 of Section 2, any profit sharing may, if the Project Team so determines, be calculated upon termination of each Section/Phase. The provisions of clauses 18.6, 18.7, 18.8, 18.9 and 5 shall apply *mutatis mutandis*.

19. DETERMINATION OF UPSET PRICES AND COLLECTION OF SALES PRICES

19.1 If the Developer on behalf of Council alienates any Serviced Erven the Developer and Project Team shall:

19.1.1 determine the upset prices of Serviced Erven on actual Project Costs considering the market conditions at that time; and

19.1.2 use reasonable endeavours to ensure the finalisation of the Deeds of Sales, collect the selling prices from the identified purchasers which will become


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payable for the Serviced Erven and ensure compliance with the sales conditions.

19.2 Once the Developer has collected the selling prices the Developer must deliver to the Council (through the Council's Representative) a notice which confirms the Net Proceeds to be paid into the Revenue account under clause 18.5 or has actually received on account of the alienation of the Serviced Erven; and

19.3 Subject to clause 18.6 instruct the conveyancers / transferring attorneys to pay:

19.3.1 those Net Proceeds into the Revenue Account;

19.3.2 the VAT paid for non-residential erven for payment in accordance with the Value Added Tax Act; and

19.3.3 Agent commission over to the appointed agents.

19.4 The Developer shall forthwith deliver, to the Council's Representative, a statement and / or a VAT invoice in respect of the amounts thus paid into the Revenue and VAT Accounts for the benefit of the Parties.

20. TERMINATION

20.1 A Termination Event shall occur on the earliest of:

20.1.1 the date on which all the Serviced Erven have been alienated and the Net Proceeds have been received on all sales;

20.1.2 the Cut Off Date;

20.1.3 any other date on which this Agreement terminates for any relevant and legal reason; or

20.1.4 if

20.1.4.1 the Developer fails to comply with its obligations under the Facility Agreement; and

20.1.4.2 as a result of such failure the Lender becomes entitled to call up the Facility Agreement (i.e. to demand immediate payment of all amounts which have become payable by the Developer under the Facility Agreement); and

20.1.4.3 the Lender calls up the Facility Agreement, the date on which the Facility Agreement is called up by the Lender.

20.2 If, on the Termination Date or Fulfilment Date, the Council and the Developer have not sold all the Serviced Erven:


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- 20.2.1 the Developer (within the framework of the Project Team) shall cause the Serviced Erven (whether they are Residential Erven or Non-Residential Erven or which have been partly serviced and have not been taken over) which have not been sold (the "**Unsold Erven**") to be valued by a valuator appointed by it in consultation with the Lender;
- 20.2.2 the Developer (within the framework of the Project Team) shall, once it has obtained such a valuation, in writing (a "**Developer Valuation**") advise the Council of the valuation which it has thus obtained;
- 20.2.3 the Council's Representative shall, within 60 (sixty) Business Days, advise the Developer in writing whether the Council accepts the Developer Valuation or not, failing which the Council shall be deemed to have accepted the Developer Valuation;
- 20.2.4 if Council disputes the Developer Valuation, the matter shall be referred to an independent valuator appointed by the Auditors;
- 20.2.5 the independent valuator shall:
 - 20.2.5.1 determine the market value of the Unsold Erven; and
 - 20.2.5.2 in doing so take into account the basis on which the Developer Valuation has been obtained and any comments which the Council may make in relation thereto; and
 - 20.2.5.3 be entitled to adopt such a procedure as he may deem appropriate and to rely on such evidence of such persons as he may deem appropriate; and
 - 20.2.5.4 be entitled to make a ruling in relation to the payment of his costs, failing which those costs shall be paid by the unsuccessful party;
- 20.2.6 the independent valuator's determination of the market value of the Unsold Erven shall be final and binding and shall constitute the Deemed Proceeds of the Unsold Erven;
- 20.2.7 the cost of the independent valuator's determination of the market value of the Unsold Erven shall be part of the Project Costs.
- 20.3 As soon as may be reasonably possible after:
 - 20.3.1 all the Serviced Erven have been alienated (if the Termination Date occurs as a result of the Termination Event envisaged in clause 20.1.1), or
 - 20.3.2 the Deemed Proceeds of the Unsold Erven have been determined (if the Termination Date occurs as a result of the occurrence of the Termination Events envisaged in clauses 20.1.2 to 20.1.4);

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- 20.3.3 the Project Team shall appoint the Auditors to determine the Net Project Profit (if any) and the provisions of sub-clauses 18.9.3 to 18.11 shall similarly be applied.

21. DEFAULT

21.1 Council

If the Council fails to comply with any of its obligations in terms of this Agreement:

- 21.1.1 the Developer shall be entitled to deliver written notice (a "Demand") to the Council in terms of which Developer calls on the Council to remedy its breach within such a period as is reasonable in the circumstances provided that if the Council's breach consists of any failure to pay any amount which has become payable under this Agreement, a remedy period of 14 (fourteen) Business Days shall be reasonable; and
- 21.1.2 if the Council fails to remedy its breach within a period of 14 (fourteen) Business Days, the Developer shall be entitled to terminate this Agreement.

21.2 Developer

If Developer fails to comply with any material obligation imposed on it in terms of this Agreement:

- 21.2.1 the Council shall be entitled to deliver written notice (a "Demand") to Developer in which the Council requires Developer to remedy its breach within a reasonable period as stated in the demand; and
- 21.2.2 if the Developer fails to remedy its breach within a period of 14 (fourteen) Business Days, the Council shall be entitled to terminate this Agreement, apply the Performance Guarantee for completion of the Permanent Works and the provisions of sub clause 18.9.3 to 18.11 shall apply: Provided that the Council shall retain its right to claim damages from the Developer under clause 21.3.

21.3 Damages

Each Party shall be entitled to recover any damages for any breach of this Agreement from the other Party and the Parties confirm that it is their intention that if a default Event occurs:

- 21.3.1 the Project Profit shall be determined in accordance with the applicable provisions of this Agreement and the Council shall pay the Developer's share to Developer (if any) on the basis of such determination;

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- 21.3.2 the Developer shall, if the Council requires it to do so, cede all the rights of any nature whatsoever which it may have against any Engineer, Professional Consultant under the applicable Engineer/Consultant's Appointment and/or against any Construction Contractor under the applicable Construction Contract to the Council;
- 21.3.3 the Council shall indemnify the Developer and hold the Developer harmless against any claim which any Professional Consultant and/or any Construction Contractor lawfully makes against the Developer as a result of any breach of this Agreement by the Council, and but the right to claim cession of the right of actions envisaged in clause 21.3.2, and the indemnity contained in clause 21.3.3 shall be the only remedies available for breach of this Agreement but not excluding recourse to a court of law.
- 21.3.4 the Developer shall indemnify the Council and hold the Council harmless against any claim which any Professional Consultant and/or any Construction Contractor lawfully makes against the Developer as a result of any breach of this Agreement by the Developer, but for the right to claim cession of the right of actions envisaged in clause 21.3.2, and the indemnity contained in clause 21.3.3 shall be the only remedies available for breach of this Agreement but not excluding recourse to a court of law.

21.4 Interest

If either Party fails to pay any amount (an "**Unpaid Sum**") which becomes payable by it under this Agreement strictly on due date, the Unpaid Sum shall accrue interest at the Prime Rate with effect from the date on which it should have been paid up to and including the date on which it is paid (both days inclusive).

22. **NOTICES AND DOMICILIA**

- 22.1 The Parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the following telefax numbers:

<u>Name</u>	<u>Physical Address</u>	<u>Telefax</u>
Council	No. 80, Independence Avenue Windhoek Namibia	061-290 2344

Marked for the attention of: Mr L Narib: Strategic Executive-Urban Planning and Property Management. Alternatively marked for the attention of the Council's Representative on the Project Team (appointed as per Clause 9 of Section 1 of this agreement).

<u>Name</u>	<u>Physical Address</u>	<u>Telefax</u>
Heikky Property Developer (Pty) Ltd	Kingland Park Unit 1 Nickel Street Prosperita	061-215 284

provided that a Party may change its *domicilium* or its address for the purposes of notices to any other physical address or telefax number by written notice to the other Party to that effect. Such change of address will be effective 5 (five) Business Days after receipt of the notice of the change.

22.2 All notices to be given in terms of this Agreement will be given in writing and will:

- 22.2.1 be delivered by hand or sent by telefax;
- 22.2.2 if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a Business Day will be presumed to have been received on the following Business Day; and
- 22.2.3 if sent by telefax during business hours, be presumed to have been received on the date of successful transmission of the telefax. Any telefax sent after business hours or on a day which is not a Business Day will be presumed to have been received on the following Business Day.

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22.3 Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause 22.

23. APPLICABLE LAW AND JURISDICTION

23.1 This Agreement will in all respects be governed by and construed under the laws of the Republic of Namibia.

23.2 The Parties hereby consent and submit to the non-exclusive jurisdiction of the High Court in any dispute arising from or in connection with this Agreement.

24. GENERAL

24.1 Whole Agreement

24.1.1 This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.

24.1.2 This Agreement supersedes and replaces any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.

24.2 Variations to be in writing

No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.

24.3 No indulgences

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 and 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

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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. Failure or delay on the part of any Party in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

24.4 No waiver or suspension of rights

No waiver, suspension or postponement by any Party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by such Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

24.5 Provisions severable

All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

24.6 Continuing effectiveness of certain provisions

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.

24.7 No Assignment

Neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by either Party without the prior written consent of the other Party, save as otherwise provided herein.

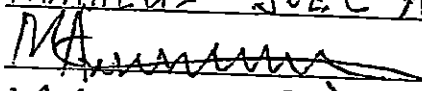
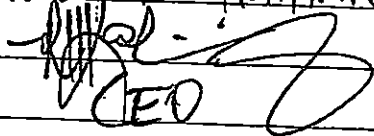
25. COSTS

Except as otherwise specifically provided herein, each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

26. SIGNATURE

- 26.1 This Agreement is signed by the Parties on the dates and at the places indicated below.
- 26.2 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.
- 26.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.
- 26.4 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

IN WITNESS whereof the parties hereto have set their signatures in the presence of subscribing witnesses:

FOR AND ON BEHALF OF THE COUNCIL, BEING DULY AUTHORISED TO DO SO:	
AT.....	WINDHOEK on this 31 st day of MAY 2017
NAME :	MATHEUS JOEL AMADEILA
SIGNATURE :	
CAPACITY :	MC CHAIRPERSON
NAME :	ROBERT KAHIMBE
SIGNATURE :	
CAPACITY :	CEO
AS WITNESSES (for Council)	
NAME	SIGNATURE
Martha Ekandjo	

NAME	SIGNATURE
FOR AND ON BEHALF OF THE DEVELOPER, BEING DULY AUTHORISED TO DO SO: AT..... <u>WINDHOEK</u> on this <u>31</u> day of <u>MARCH 2017</u>	
NAME : <u>AMWELE Heileky NDJUNDODHIGU</u>	
SIGNATURE : <u>[Signature]</u>	
CAPACITY : <u>DIRECTOR</u>	
AS WITNESSES (for Developer)	
<u>Selma Halodilo</u> NAME	<u>[Signature]</u> SIGNATURE
<u>Nathan Goliath</u> NAME	<u>[Signature]</u> SIGNATURE


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SECTION 2**GENERAL AND PARTICULAR CONDITIONS OF AGREEMENT****1. GENERAL CONDITIONS**

The Conditions of Agreement comprise the "General Conditions", which are the "Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Works and for Building and Engineering Works", First Edition 1999 published by the *Fédération Internationale de Ingénieurs-Conseils* (FIDIC), and the following "Particular Conditions" in clause 2 which include amendments and additions to such General Conditions. The Parties acknowledge that they have acquired and are in possession of the Original General Conditions. The original General Conditions shall be open to inspection, free of charge, at the office of the Council during official office hours.

2. PARTICULAR CONDITIONS [AMENDMENT TO GENERAL CONDITIONS IN CLAUSE 1]**2.1. AMENDMENTS TO GENERAL PROVISIONS****2.1.1. Definitions**

The provisions of the Agreement Data as referred to in the General Conditions and as contained in Section 6 hereof shall be deemed to form part of and be read and applied together with and as part of the Particular Conditions;

The following changes are to be made to the General Conditions. The Clause numbers referred to hereafter are the Clause numbers of the General Conditions;

The word "Contract" and its derivatives is deleted in all its occurrences throughout the General Conditions and replaced in all such occurrences with the word "Agreement";

The word "Employer" and its derivatives is deleted in all its occurrences throughout the General Conditions and replaced in all such occurrences with the word "Council";

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The word "Contractor" and its derivatives is deleted in all its occurrences throughout the General Conditions and replaced in all such occurrences with the word "Developer";

The word "Engineer" and its derivatives is deleted in all its occurrences throughout the General Conditions and replaced with the words "Council's Representative";

The word "Subcontractor" and its derivatives is deleted in all its occurrences throughout the General Conditions and replaced with the word "Contractor";

The term "Appendix to Tender" is deleted in all its occurrences throughout the General Conditions and replaced with the term "Agreement Data";

The term "subcontract" and all its derivatives is deleted in all its occurrences throughout the General Conditions and replaced with the term "Contract".

2.1.2. **Clause 1.1.1 The Contract**

2.1.2.1. Delete Sub-Clause 1.1.1.1 and replace it with the following:

"Agreement" means this contract and other documents hereby listed:

Section 1 - Memorandum of Development Agreement;

Section 2 - General and Particular Conditions of Agreement;

Section 3 - Specific Particular Conditions

Section 4 - Council's Standard Technical Requirements

Section 5 - Project Specific Technical Requirements

Section 6 - Agreement Data, Drawings and Pro Forma Documents

2.1.2.2. In line 1 of Sub-Clause 1.1.1.2 delete the words **"Contract Agreement"** and replace them with the words **"Memorandum of Development Agreement"**

2.1.2.3. Delete Sub-Clause 1.1.1.3 in its entirety.

2.1.2.4. Delete Sub-Clause 1.1.1.4 in its entirety.

2.1.2.5. In line 1 of Sub-Clause 1.1.1.6 delete the words "and submitted with the Letter of Tender" in line 2 and delete the last sentence of the sub-clause.

2.1.2.6. Delete Sub-Clause 1.1.1.7 in its entirety.

2.1.2.7. Delete Sub-Clause 1.1.1.8 in its entirety.

2.1.2.8. Delete Sub-Clause 1.1.1.9 in its entirety.

2.1.2.9. Delete Sub-Clause 1.1.1.10 in its entirety.

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2.1.3. Parties and Persons

- 2.1.3.1. In Sub-Clause 1.1.2.1 delete the word "Employer" and replace it with the word "Council" and delete the word "Contractor" and replace it with the word "Developer".
- 2.1.3.2. Delete Sub-Clause 1.1.2.2 and replace it with the following:
"Council" means the legal entity named as such in the Preamble in Section 1 and the legal successors in title to this entity.
- 2.1.3.3. Delete Sub-Clause 1.1.2.3 and replace it with the following:
"Developer" means the person named as such in the Preamble in Section 1 and the legal successors in title to this person XXX, registration number 2005/0116, a company incorporated under the Applicable Laws acting as Developer;
- 2.1.3.4. Delete Sub-Clause 1.1.2.4 and replace it with the following:
"Council's Representative" means a member of the Council's Staff appointed to act as the representative of the Council for the purposes of the Agreement and named in the Agreement Data, or other person appointed from time to time by the Council and notified to the Developer under Sub-Clause 3.4 [*Replacement of the Council's Representative*].
- 2.1.3.5. In line 3 of Sub-Clause 1.1.2.6, delete the words "of the Engineer and" from after the words "other employees".
- 2.1.3.6. In line 3 of Sub-Clause 1.1.2.7, delete the word "Subcontractor" and replace it with the word "Contractor".
- 2.1.3.7. Delete Sub-Clause 1.1.2.8 and replace it with the following:
"Contractor" means any person named as a contractor in the Agreement or appointed as a contractor by or on behalf of the Developer for the fulfilment of all or part of the Works; and the legal successors in title to each of these persons.
- 2.1.3.8. Add a new sub-clause, Sub-Clause 1.1.2.11, as follows:
"Departmental Head" means a departmental head appointed and referred to under Section 28 of the Local Authorities Act 1992 (Act 23 of 1992).
- 2.1.3.9. Add a new sub-clause, Sub-Clause 1.1.2.12, as follows:
"Third Party Transferee" means any person or persons to whom the Parties seeks to transfer ownership of any given erf or erven contained within the Township Development.
- 2.1.3.10 Add new sub-clause, Sub-Clause 1.1.2.13, 1.1.2.14, 1.1.2.15 and 1.1.2.16, as follows:
- 1.1.2.13 **"Auditors"** mean the Auditors as defined in the Facility Agreement
- 1.1.2.14 **"Bank"** means the Bankers as defined in the Facility Agreement

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- 1.1.2.15 "Lender means the Lender as defined in the Facility Agreement
 1.1.2.16 "Project Team" means the project team appointed under clause 4.1 of section 1

2.1.4. Dates, Tests, Periods and Completion

- 2.1.4.1. Delete Sub-Clause 1.1.3.1 in its entirety.
 2.1.4.2. Delete Sub-Clause 1.1.3.2 and replace it with the following:
 "Commencement Date" means the date on which the Developer will commence with the Permanent Works as detailed in the Agreement Data.
 2.1.4.3. In line 4 of Sub-Clause 1.1.3.3, after the words "[Extension of Time for Completion]", insert the words "or as otherwise agreed between the Parties"
 2.1.4.4. Delete Sub-Clause 1.1.3.6 in its entirety.
 2.1.4.5. In lines 4 and 5 of Sub-Clause 1.1.3.7, delete the words "(with any extension under Sub-Clause 11.3 [Extension of Defects Notification Period])"
 2.1.4.6. Add a new sub-clause, Sub-Clause 1.1.3.10, as follows:
 "Completion Certificate" means the Completion Certificate or Certificates referred to in Sub-Clause 10(c) [Council's Taking-Over].
 2.1.4.7. Add new sub-clauses, Sub-Clause 1.1.3.11, as follows:
 "1.1.3.11 "Cut Off Date" means the date before which the Developer must comply with the conditions of the Agreement and have all services taken over being 48 (forty eight) Months after the Effective Date;
 "1.1.3.12 "Effective Date" means the first Business Day after the date on which the Suspensive Conditions contained in clause 7 of Section 1 have been fulfilled and the Council's representative has given written notice under clause 7.2 of Section 1;
 1.1.3.13 "Fulfilment Date" means the date on which a performance Certificate is issued under clause 11.9 of the General Conditions in Section 2;
 1.1.3.14 "Signature Date" means the date on which the Agreement is signed by the last Party to sign.

2.1.5. Clause 1.1.4 [Money and Payments]

- 2.1.5.1. Add the following definitions after sub clause 1.1.4.12:
 1.1.4.13 "Developer's Profit Share" means an amount equal to 50% (Fifty per centum) of the Project Net Profit;
 1.1.4.14 "Ancillary Costs" means any costs, other than the Engineering/Consultant's Fees, the Construction Prices and the Lender's Charges which the Developer incurs in order to comply with

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its obligations under this Agreement, provided that the incurral of those ancillary costs have been approved by the Council in accordance with the applicable provisions of this Agreement;

- 1.1.4.15 **"Construction Price"** means, in relation to each Construction Contract, the contract price (together with VAT thereon) which becomes payable by the Developer to the applicable Construction Contractor under that Construction Contract;
- 1.1.4.16 **"Engineer/Consultant's Fees"** means any fees and charges which become payable by the Developer to the Engineer or any Professional Consultant, Auditor or Legal Practitioner under the applicable Consultant's Appointment;
- 1.1.4.18 **"Facility Agreement"** means an agreement concluded between the Lender and the Developer in terms of which the Lenders undertake to jointly make available the Loan Facility to the Developer sufficient for purposes of enabling the Developer to fund the Project Costs as is required in terms of the Project Program as it may be amended; and which must comply with at least the requirements set out in clause 6.1 in Section 1;
- 1.1.4.19 **"IFRS"** means International Financial Reporting Standards;
- 1.1.4.20 **"Interim Sales Payments"** means any payments made into the Revenue Account (on account of the Net Proceeds) in terms of clause 18.5 and 19 in Section 1;
- 1.1.4.21 **"Lender's Charges"** means any amounts of any nature whatsoever which become payable by Developer to the Lender under the Facility Agreement, other than (1) the repayment of any principal amounts which the Lender has advanced to Developer under the Facility Agreement, and (2) the Lenders' financing fee, but including ~
 - 1.1.4.21.1 any interest which becomes payable by the Developer to the Lender on any outstanding principal amounts advanced by the Lender to the Developer under the Facility Agreement;
 - 1.1.4.21.2 the Lenders charges envisaged in clause 18.6.2 of Section 1; and.
- 1.1.4.22 **"Loan Facility"** means the undertaking provided by the Lenders in the Facility Agreements to advance capital to the Developer;

- 1.1.4.23 **"Lenders' Financing Fee"** means an amount equal to 12.5% (twelve point five *per centum*) of the Project Profit (which, as envisaged in clause 18.6.4 in Section 1, the Parties will become obliged to pay to the Lender in terms of the Facility Agreement between the Developer and Lender);
- 1.1.4.24 **"Net Proceeds"** means, in relation to a Serviced Erf, the total selling price obtained from the alienation of that Served Erf less:
- 1.1.4.24.1 any VAT paid in respect of that selling price for any non-residential erf (if any); and
- 1.1.4.24.2 any agent's commission added to the sales price and paid
- 1.1.4.25 **"Prime Rate"** means in Section 1 the publicly quoted basic rate of interest, compounded monthly in arrears and calculated on a 365 (three hundred and sixty five) day year irrespective of whether or not the year is a leap year, from time to time published by Bank Windhoek as being its prime overdraft rate, as certified by any representative of that Bank whose appointment and designation it will not be necessary to prove;
- 1.1.4.26 **"Project Costs"** means all costs of any nature whatsoever which the Developer incurs in complying with its obligations (under this Agreement) in respect of the Project payable for the installation of the Permanent Works and financial obligations under clause 18, as determined in accordance with sub clauses 18.6 and 18.9 in section 1, including, without limitation, the Professional Engineer/Consultant's Fees, Bank-, Auditor- and Legal fees, the Construction Costs, the Lender's and bank Charges and Interest, Value Added tax costs, marketing and tendering costs and the Ancillary Costs (provided always that the incurrence of any such Ancillary Costs has been approved by the Project Team in accordance with the applicable provisions of Section 1 of this Agreement);
- 1.1.4.27 **"Project Profit"** in Section 1 means the profit which is realized in undertaking the Project which will consist of:
- 1.1.4.27.1 the Net Proceeds obtained in respect of any Serviced Erven which are alienated; plus
- 1.1.4.27.2 the Deemed Proceeds of the Unsold Erven; minus

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- 1.1.4.27.3 the Project Costs and funds distributed under sub clause 18.6 in Section 1 actually incurred by the Developer in undertaking the Project, as determined by the Auditors in accordance with IFRS;
- 1.1.4.28 **"Project Net Profit"** in Section 1 means the Project Profit in sub clause 1.1.4.27 less the Lenders' financing fee which Net Profit is to be shared by the Developer and the Council on a 50/50 (Developer/Council) basis.
- 1.1.4.29 **"Revenue Account"** in Section 1 means the bank account envisaged in clause 18.1 in Section 1, which the will be opened in the name of the Partnership JV at the Bank and be jointly operated by the Lenders and the Developer in terms of the Facility Agreement on the basis envisaged in clauses 18 and 19 of Section 1.);
- 1.1.4.30 **"VAT"** means Value Added Tax levied under the **Value Added Tax Act**;
- 1.1.4.31 **"Council's profit share"** means an amount equal to 50% (fifty per centum) of the Project Net Profit; as set out in section 1 of this Agreement
- 2.1.6. Clause 1.1.5 Works and Goods**
- 2.1.6.1. In line 4 of Sub-Clause 1.1.5.1, delete the words "Employer's Equipment (if any)," from after the words "Temporary Works,"
- 2.1.6.2. In line 2 of Sub-Clause 1.1.5.4, after the word "Contract", insert the words "including all servitudes and public spaces specified in the Council's Requirements."
- 2.1.6.3. Add a new sub-clause, Sub-Clause 1.1.5.9 to 1.1.5.11, as follows:
- 1.1.5.9 **"Construction Works"** means the installation of all Permanent Works, in accordance with the requirements, stipulations and specifications of the Council in Sections 2 to 6 of this Agreement, such as but not limited to, the provision of bulk water and electricity, sewerage, and storm water disposal, roads and related infrastructure in the Township by a Construction Contractor under a Construction Contract;
- 1.1.5.10 **"Designs and Specifications"** means:
- 1.1.5.10.1 the designs in respect of the Works; and
- 1.1.5.10.2 the specification with which the Works must comply, all as set out in Sections 2 to 6, and as amended

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from time to time in accordance with the applicable provisions of this Agreement;

- 1.1.5.11 "Serviced Erven" means erven within the Township that become transferrable to third party transferees and for which the Permanent Works have been taken over by the Council

2.1.7. Sub clause 1.1.6 Other Definitions

- 2.1.7.1. In Sub clause 1.1.6.1 in line 2, after the word "drawings", insert the words "plans, approved diagrams"
- 2.1.7.2. Delete Sub-Clause 1.1.6.3 in its entirety.
- 2.1.7.3. Delete Sub-Clause 1.1.6.4 in its entirety.
- 2.1.7.4. Delete Sub-Clause 1.1.6.8 in its entirety.
- 2.1.7.5. Add a new sub-clause, Sub-Clause 1.1.6.10, as follows:
"Contract" means the agreement under which the Developer shall appoint or has appointed any given Contractor for the provision of all or part of the Works.
- 2.1.7.6. Add a new sub-clause, Sub-Clause 1.1.6.11, as follows:
"Good Industry Practice" means the exercise of that degree of skill, diligence, prudence and foresight as would reasonably and ordinarily be expected from a skilled and experienced contractor (internationally engaged in the same type of undertaking and under the same or similar circumstances and conditions as that in which the relevant matter arises) seeking in good faith to comply with its contractual obligations and to discharge any liability arising under any duty of care that might be owed by that contractor.
- 2.1.7.7. Add a new sub-clause, Sub-Clause 1.1.6.12, as follows:
"Township Development" means the development of Infrastructure in the Township as described in the Memorandum of Development Agreement.
- 2.1.7.8. Add new sub-clause, Sub-Clause 1.1.6.13 to 1.1.6.25., as follows:
 1.1.6.13 **"Infrastructure"** means the Works or engineering services which, by virtue of its conclusion of this Agreement, The Developer will become obliged to construct in respect of the Township:
 1.1.6.13.1 as detailed in Sections 2 to 6; and
 1.1.6.13.2 which must comply with the Designs and Specifications;
- 1.1.6.14 **"Non-Residential Erf"** means any erf which is situated in the Township and which is zoned (under the Applicable Laws) primarily for use for purposes other than residential purposes;

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- 1.1.6.15 **"Project Team"** shall mean a project team established in clause 4 of Section 1;
- 1.1.6.16 **"Offer to Purchase"** means sale of Serviced Erven by the Council with the Project Team at the Purchase Price offered and agreed to between the Project Team, the Developer and the purchaser;
- 1.1.6.17 **"Transferable"** means, in relation to any Serviced Erf, that all steps which are necessary to ensure that such Serviced Erf is capable of being transferred in the office of the applicable Registrar of Deeds under a separate title deed, have been taken;
- 1.1.6.18 **"Required Approvals"** means all approvals which are required for the implementation of the Project under the Applicable Laws including, without limitation:
 - 1.1.6.18.1 all approvals required for the establishment and proclamation of each Township in accordance with the applicable Township Layout;
 - 1.1.6.18.2 all approvals required in terms of the provisions governing private public partnership between the Developer and the Council;
 - 1.1.6.18.3 all approvals required by the Council of the Council for the sale of Serviced Erven; and
 - 1.1.6.18.4 all approvals required in order to ensure that Serviced Erven become Transferable;
- 1.1.6.19 **"Residential Erf"** means any erf which is situated in any Township and which is zoned (under the Applicable Laws) primarily for use primarily for residential purposes;
- 1.1.6.20 **"Suspensive Conditions"** means the suspensive conditions contained in clause 7;
- 1.1.6.21 **"Termination Date"** means the date on which a Termination Event occurs;
- 1.1.6.22 **"Termination Event"** means any event envisaged in clause 20.1 of Section 1;
- 1.1.6.23 **"Township Layout"** means the layouts of the Townships as reflected in the diagrams annexed hereto respectively as Schedules B and C;
- 1.1.6.24 **"Township"** means the township known as Khomasdal Erf 6219 to Erf 6250, as approved and gazetted;

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- 1.1.6.25 "Unsold Erven" means all the Serviced Erven (whether they are Residential Erven or Non-Residential Erven) which have not been alienated by the Termination Date;

2.1.8. Sub-Clause 1.3 Communications

Amend this Sub-Clause as follows:

In line 2, insert the word "instructions," before the word "notices"

Delete the words "transmitted using any of the agreed systems of electronic transmission as stated in the Appendix" in sub-paragraph (a).

Delete the words "as stated in the Appendix to Tender" and replace them with the words "as stated in the Memorandum of Agreement".

Add the following sub-paragraphs:

- "(d) by telefacsimile, in which case the date of receipt is defined as the date and time on which such telefacsimile was transmitted;
- (e) by electronic ("e") mail in which case the date and time of receipt is defined as the date and time which the email was received by the recipient as proved by a read confirmation. However, no notices shall be sent by e-mail."

2.1.9. Sub-Clause 1.4 Law and Language

Delete this Sub-Clause and replace it with the following:

"The Contract shall be governed by the laws of Namibia and the language for communication shall be English. Accordingly all communications, documentation and manuals (if any) will be in the English language."

2.1.10. Sub-Clause 1.5 Priority of Documents

Delete the second sentence of the first paragraph and replace it with the following:

"The Contract consists of the following documents which shall be interpreted in the following order of precedence:

- (a) Section 1 - Memorandum of Development Agreement;
- (b) Section 2 - General and Particular Conditions of Agreement;
- (c) Section 3 - Specific Particular Conditions
- (d) Section 4 - Council's Standard Technical Requirements
- (e) Section 5 - Project Specific Technical Requirements
- (f) Section 6 - Agreement Data, Drawings and Pro Forma Documents
- g) Schedules

2.1.11. Sub-Clause 1.6 Contract Agreement

Delete this Sub-Clause in its entirety.

2.1.12. Sub-Clause 1.9 Errors in the Council's Requirements

Delete this Sub-Clause in its entirety.

2.1.13. Sub-Clause 1.13 Compliance with Laws

In lines 1 and 4 of paragraph (a), replace the word "Employer" with the word "Developer"

The following is added at the end of Sub-Clause 1.13:

"The Developer shall at all times conform in all respects with the provisions of all Laws which may be applicable to the performance of its obligations under the Agreement and shall indemnify, and keep indemnified the Council, against damages that it may suffer as a result of any breach by the Developer, its contractors, agents or employees, including any hired labour, of any such Laws, including all legal costs on the attorney and client scale which may be payable as a result of any claims or proceedings in respect of the Agreement."

2.2. THE COUNCIL**2.2.1. Sub-Clause 2.2 Permits, Licences or Approvals**

Delete this Sub-Clause in its entirety and replace it with the following:

"Subject to Clause 2.2.5 of these Particular Conditions, and where it is in a position to do so, the Council will take all reasonable and lawful steps to assist the Developer in applying for permits, licences or approvals which are required for the execution of the Works. Any costs incurred by the Council in taking such steps shall be included in the Project Costs."

2.2.2. Sub-Clause 2.3 Council's Personnel

Delete this Sub-Clause in its entirety and replace it with the following:

"The Council shall be responsible for ensuring that the Council's Personnel take actions similar to those which the Developer is required to take under subparagraphs (a), (b) and (c) of Sub-Clause 4.8 [Safety Procedures]."

2.2.3. Sub-Clause 2.4 The Council's Financial Arrangements

Delete this Sub-Clause in its entirety.

2.2.4. Sub-Clause 2.5 Council's Claims is amended as follows:

If the Council considers himself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Agreement, and/or to any extension of the Defects Notification Period, the Council or the Council's Representative shall give notice and particulars to the Developer.

The notice shall be given as soon as practicable after the Council became aware of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.

The particulars shall specify the Clause or other basis of the claim, and shall include substantiation of the amount and/or extension to which the Council considers himself to be entitled in connection with the Agreement. The Council's Representative shall then proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine (i) the amount (if any) which the Council is entitled to be paid by the Developer, and/or (ii) the extension (if any) of the Defects Notification Period in accordance with Sub-Clause 11.3 [*Extension of Defects Notification Period*].

2.2.5. Add the following Sub-Clause 2.6

"Council's Approval of Registration of Erven

"Subject to the remainder of this Clause the Council shall take all necessary steps within the ambit of the powers conferred upon it by the Applicable Laws, and shall act in accordance with such Applicable Laws, to permit the registration of the General Plan of the Township and if need be, the opening of a township register and the proclamation thereof; and upon marketing and sale of the individual erven as envisaged in clause 17 of Section 1 of this Agreement, the transfer to the relevant Third Party Transferee, and registration in the name thereof, to the extent that relevant Third Party Transferee has made proper application for such transfer and registration pursuant to the said Applicable Laws.

2.3. COUNCIL'S REPRESENTATIVE

2.3.1. Sub-Clause 3.1 Council's Representative's Duties and Authority

"The Council shall appoint the Council's Representative who shall carry out the duties assigned to him in the Agreement. The Council's Representative shall have no authority to amend the Agreement.

The Council's Representative shall act as Project Manager on behalf of the Council and shall act in co-operation with, under the directives of-and where required, approval of the different Departmental heads administering the departments of the Council relating to the powers, duties and functions required for the administration of this Agreement.

However, whenever the Council's Representative exercises a specified authority for which the Council's approval is required, then (for the purpose of the Agreement) the Council shall be deemed to have given approval, if the departmental head or his delegated representative has in writing given such requested prior approval and the Council's representative has thereafter co-signed the approval given or the certificate issued.

Except as otherwise stated in these Conditions:

- (a) whenever carrying out duties or exercising authority, specified in or implied by the Agreement, the Council's Representative shall be deemed to have acted on behalf of the Council;
- (b) The Council's Representative has no authority to relieve either Party of any duties, obligations or responsibilities under the Agreement; and
- (c) Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test or similar act by the Council's representative (including absence of disapproval) shall not relieve the Developer from any responsibility he has under the Agreement, including responsibility for errors, omissions, discrepancies and non-compliance.

2.3.2. Sub-Clause 3.2 Delegation by the Council's Representative is amended to read:

The Council's Representative may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a departmental head or his delegated representative, a resident engineer, and/or independent inspectors appointed to inspect and/or test

items of Plants and/or Materials. The assignment delegation or revocation shall be in writing and shall not take effect until a copy of such assignment, delegation or revocation has been received by the Developer. However, unless otherwise agreed by both Parties, the Council's Representative shall not delegate the authority to determine any matter in accordance with Sub-Clause 3.5 [*Determinations*].

Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Developer to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Council's Representative. However:

- (a) any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Council's Representative to reject the work, Plant or Materials;
- (b) if the Developer questions any determination or instruction of an assistant, the Developer may refer the matter to the Council's Representative, who shall promptly confirm, reverse or vary the determination or instruction.

2.3.3. Sub-Clause 3.3 Instructions of the Council's Representative remains to read:

The Council's Representative may issue to the Developer (at any time) instructions which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Agreement. The Developer shall only take instructions from the Council's Representative, departmental head or from an assistant to whom the appropriate authority has been delegated under this Clause. If an instruction constitutes a Variation, Clause 13 [*Variations and Adjustments*] shall apply.

The Developer shall comply with the instructions given by the Council's Representative, departmental head or delegated assistant, on any matter related to the Agreement. These instructions shall be given in writing.

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2.3.4. Sub-Clause 3.4 Replacement of the Council's Representative remains to read:

If the Council intends to replace the Council's Representative, the Council shall, not less than 28 days before the intended date of replacement, give notice to the Developer of the names, address and relevant experience of the intended replacement Council's Representative. The Council shall not replace the Council's Representative with a person against whom the Developer raises reasonable objection by notice to the Council, with supporting particulars.

2.3.5. Sub-Clause 3.5 Determinations remains to read:

Whenever these Conditions provide that the Council's Representative shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Council's Representative shall consult with each Party in an endeavour to reach agreement. If agreement is not achieved, the Council's Representative shall make a fair determination in accordance with the Agreement, taking due regard of all relevant circumstances.

The Council's Representative shall give notice to both Parties of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [*Claims, Disputes and Arbitration*].

2.4. THE DEVELOPER [Clause 4 in the General Conditions]

2.4.1. Sub-Clause 4.1 The Developer's General Obligations is amended as follows:
Add the following subparagraph after the first paragraph:

"The Developer shall at his sole cost and risk except as otherwise stated in the Agreement, execute and complete the Works in accordance with the Agreement, and shall remedy any defects in the Works. When completed, the Works shall be fit for the purposes for which the Works are intended as defined in the Agreement. In planning, designing and executing the Permanent Works, the Developer shall comply with Good Industry Practice".

The Developer shall at his sole cost and risk except as otherwise stated in the Agreement, provide the Plant and Developer's Documents specified in the Agreement, and all Developer's Personnel, Goods, consumables and other things

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and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.

The Works shall include any work which is necessary to satisfy the Council's Requirements, Developer's Proposal and Schedules, or is implied by the Agreement and all works which (although not mentioned in the Agreement) are necessary for stability or for the completion, or safe and proper operation, of the Works.

The Developer shall be responsible for the adequacy, stability and safety of all Site operations, of all methods of construction and of all the Works.

The Developer shall, whenever required by the Council's Representative, submit details of the arrangements and methods which the Developer proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Council's Representative.

2.4.2. Sub-Clause 4.2 Performance Security is amended to read:

Parties agree that the Developer will in lieu of its obligations under the Conditions of Agreement issue a Performance security in favour of Council within 28 days from the Effective Date and the amount of the Performance Security shall be the amount as stated in the Agreement Data for each Section of Work. The Performance Security shall be issued by a financial institution approved by the Council, shall conform strictly to the template contained in Section 6 hereof and no registration of any erf contained within the Township Development shall be approved by the Council and no Completion Certificate shall be issued in respect of the Works or any Section thereof until the Council is in receipt of a Performance Security compliant with the aforesaid.

The Developer shall ensure that the Performance Security is valid and enforceable until the Developer has executed and Completed the Works and remedied any defects. If the terms of the Performance Security specify their expiry date, and the Developer has not become entitled to receive the Completion Certificate by the date 28 days prior to the expiry date, the Developer shall extend the validity of the Performance Security until the Works have been completed and any defects have been remedied.

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The Council shall return the Performance Security to the Developer within 21 days after receiving a copy of the Performance Certificate.

2.4.3. Sub-Clause 4.3 Developer's Representative is amended to read:

The Developer shall appoint the Developer's Representative and shall give him all authority necessary to act on the Developer's behalf under the Agreement.

Unless the Developer's Representative is named in the Agreement, the Developer shall, prior to the Commencement Date, submit to the Council's Representative for consent to the name and particulars of the person Developer proposes to appoint as Developer's Representative. If consent is withheld or subsequently revoked, or if the appointed person fails to act as Developer's Representative, the Developer shall similarly submit the name and particulars of another suitable person for such appointment.

The Developer shall not, without the prior consent of the Council's Representative, revoke the appointment of the Developer's Representative or appoint a replacement.

The whole time of the Developer's Representative shall be given to directing the Developer's performance of the Agreement. If the Developer's Representative is to be temporarily absent from the Site during the execution of the Works, a suitable replacement person shall be appointed, subject to the Council's Representative prior consent, and the Council's Representative shall be notified accordingly.

The Developer's Representative shall, on behalf of the Developer, receive instructions under Sub-Clause 3.3 [*Instructions of the Council's Representative*].

The Developer's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Council's Representative has received prior notice signed by the Developer's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

The Developer's Representative and all these persons shall be fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

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Without derogating from the generality of the foregoing, the Developer's Representative shall implement forthwith and at the Project's cost any additional safety precautions which the Council may consider necessary for the proper protection of the Developer's Personnel engaged in the Works. Work to which such additional precautions will apply shall be suspended pending the implementation of such precautions.

2.4.4. Sub-Clause 4.4 Contractors is amended as follows:

The Developer shall be responsible for the acts or defaults of any Contractor, his agents or employees, as if they were the acts or defaults of the Developer. Unless otherwise stated in the Particular Conditions:

- (a) the Developer shall not be required to obtain consent to suppliers of Materials, or to a Contractor for which the Contractor is named in the Agreement;
- (b) the prior consent of the Council's Representative shall be obtained to other proposed Contractors; and
- (c) the Developer shall give the Council's Representative not less than 28 days' notice of the intended date of the commencement of each Contractor's work, and of the commencement of such work on the Site.

2.4.5. Sub-Clause 4.5 Nominated Contractors is deleted in its entirety.

2.4.6. Sub-Clause 4.6 Co-operation is deleted this in its entirety and replaced it with the following:

The Developer shall at all times co-operate fully with the Council's staff members in the performance of their duties relevant to the Agreement or under any relevant legislation. The Developer shall equally ensure that the same degree of co-operation is extended to the Council's staff members by the Developer's Personnel.

2.4.7. Sub-Clause 4.7 Setting Out is deleted in its entirety and replaced with the following:

The Developer shall appoint a registered land surveyor to select the location, in consultation with the Council's Representative, of all reference marks relevant to the Works to be executed on the Property. The aforesaid reference marks shall then be placed and surveyed to the satisfaction of the Council after the Works have been executed. The Developer shall notify the Council of the name and

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address of the appointed land surveyor immediately upon his appointment and ensure that the said land surveyor consults with the Council's Representative prior to the commencement of the survey.

The Developer shall set out the Works in accordance with the aforesaid selected reference marks and any other original points, lines and levels of reference specified in this Agreement. The Developer shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.

For purposes of this sub-clause the definition of "Works" also include any servitude areas and locations as may be required by or to be registered in favour of the Council.

2.4.8. Sub-Clause 4.8 Safety Procedures is amended to read as follows:

The Developer acknowledges that it is aware that safety is of the utmost importance to the Council and undertakes to comply strictly with all safety procedures both as contained in the Agreement and as specified by the Council, as well as within Good Industry Practice.

The Developer shall:

- (a) comply with all applicable safety regulations,
- (b) take care for the safety of all persons entitled to be on the Site,
- (c) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons,
- (d) provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause 10 [*Council's Taking Over*], and
- (e) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

2.4.9. Sub-Clause 4.9 Quality Assurance remains to read:

The Developer shall institute a quality assurance system to demonstrate compliance with the requirements of the Agreement. The system shall be in accordance with the details stated in the Agreement in Appendix 2. The Council's Representative shall be entitled to audit any aspect of the system.

Details of all procedures and compliance documents shall be submitted to the Council's Representative for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Council's Representative, evidence of the prior approval by the Developer himself shall be apparent on the document itself.

Compliance with the quality assurance system shall not relieve the Developer of any of his duties, obligations or responsibilities under the Agreement.

2.4.10. Sub-Clause 4.10 Site Data is deleted in its entirety and replaced with the following:

"The Developer shall bear sole responsibility for all relevant physical conditions at the Site including, but not limited to, climatic, hydrological, hydro-geological, ecological, environmental, seismic, geotechnical, geological, paleontological and archaeological conditions and sub-surface, ground water, load-bearing and other properties (the Site Conditions). The Developer shall also bear full responsibility for the adaptation of the Works to the Site Conditions, and shall be deemed to have carried out all investigations necessary to enable the Works to be carried out with due regard to the Site Conditions".

2.4.11. Sub-Clause 4.11 Sufficiency of the Accepted Contract Amount is deleted in its entirety.

2.4.12. Sub-Clause 4.12 Unforeseeable Physical Conditions is deleted in its entirety.

2.4.13. Sub-Clause 4.13 Rights of Way and Facilities is deleted in its entirety.

2.4.14. Sub-Clause 4.14 Avoidance of Interference is deleted in its entirety.

2.4.15. Sub-Clause 4.17 Developer's Equipment remains to read:

The Developer shall be responsible for all Developer's Equipment. When brought on to the Site, Developer's Equipment shall be deemed to be exclusively intended for the execution of the Works. The Developer shall not remove from the Site any major items of Developer's Equipment without the consent of the Council's Representative. However, consent shall not be required for vehicles transporting Goods or Developer's Personnel off Site.

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2.4.16. Sub-Clause 4.18 Protection of the Environment is amended to read:

The Developer shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations. The Developer shall ensure that emissions, surface discharges and effluent from the Developer's activities shall not exceed the value indicated in the Council's Requirements, and shall not exceed the values prescribed by applicable Laws.

Without derogating from the generality of the foregoing the Developer shall at all times and at the Project's cost comply with the Council's Environmental Standards as per Environmental Management Act, 2007 (Act No.7 of 2007) of the Ministry of Environment and Tourism, and with all Laws applicable to environmental management. In addition, the Developer shall at all times comply with any reasonable instructions given by an environmental officer from the City of Windhoek having jurisdiction in or around the Site.

2.4.17. Sub-Clause 4.19 Electricity, Water and Gas

Delete this Sub-Clause in its entirety and replace it with the following:

"The Developer shall be entirely responsible for the provision of all power, water and other services he may require and the Council shall take no responsibility whatsoever for the provision of such services."

2.4.18. Sub-Clause 4.20 Council's Equipment and Free Issue Material

Delete this Sub-Clause in its entirety.

2.4.19. Sub-Clause 4.21 Progress Reports is amended to read:

Unless otherwise stated in the Particular Conditions, monthly progress reports shall be prepared by the Developer and submitted to the Council's Representative in 6 (six) copies. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.

Reporting shall continue until the Developer has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

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Each report shall include:

- (a) charts and detailed descriptions of progress, including each stage of design, Developer's Documents, procurement, manufacture, delivery to Site, construction, erection, testing, commissioning and trial operation;
- (b) photographs showing the status of manufacture and of progress on the Site;
- (c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
 - (i) commencement of manufacture,
 - (ii) Developer's inspections,
 - (iii) tests, and
 - (iv) shipment and arrival at the Site.
- (d) the details described in Sub-Clause 6.10 [*Records of Developer's Personnel and Equipment*];
- (e) copies of quality assurance documents, test results and certificates of Materials;
- (f) list of Variations, notices given under Sub-Clause 2.5 [*Council's Claims*];
- (g) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
- (h) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardise the completion in accordance with the Agreement, and the measures being (or to be) adopted to overcome delays.

2.4.20. Sub-Clause 4.22 Security of the Site remains to read:

Unless otherwise stated in the Particular Conditions:

- (a) the Developer shall be responsible for keeping unauthorised persons off the Site, and
- (b) authorised persons shall be limited to the Developer's Personnel and the Council's Personnel.

2.4.21. Add the following Sub-Clause 4.25

"Developer's Warranties

The Developer warrants as at the Signature Date, that

- he has taken all necessary actions to authorise its execution of and to fulfil his obligations under the Agreement;

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- his obligations under this Agreement are legal, valid and binding and enforceable against it, in accordance with the terms of this Agreement;
- the execution and performance of his obligations in terms of this Agreement does not and will not contravene any provision of the memorandum of association or articles of association of the Developer as at the Signature Date, or any order or other decision of any public authority or arbitrator that is binding on the Developer as at the Signature Date;
- no litigation, arbitration, investigation or administrative proceeding is in progress as at the Signature Date or, to the best of the knowledge of the Developer as at the Signature Date, having made all reasonable enquiries, threatened against it, which is likely to have a materially adverse effect on the ability of the Developer to perform his obligations under the Agreement;
- the Developer is not subject to any obligation, non-compliance with which is likely to have a materially adverse effect on his ability to perform his obligations under the Agreement;
- no proceedings or any other steps have been taken or, to the best of the knowledge of the Developer having made all reasonable enquiries, threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final) or deregistration of the Developer or for the appointment of a liquidator, judicial manager or similar office over the Developer or any of their assets;
- he will always apply Good Industry Practice in carrying out his obligations under the Agreement and ensure that the Contractors apply the same in all their activities related to the Works;
- no material information known to any of the authorised representatives of the Developer engaged in interactions with representatives of the Council concerning the Works has been withheld from the Council;
- he shall obtain and maintain for the period of the Agreement all necessary governmental and other permits and comply with all conditions relating thereto;
- he has not and shall not make any representations to any person or persons either that building approval for the Township Development or any part thereof shall be granted or that title to all or any even within the Township Development or any part thereof can and will be transferred except in the circumstances set out in the Agreement;

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- he shall fully to defend, hold harmless and indemnify the Council in respect of all and any claims, actions and/or suits that may be brought against the Council by any third party in connection with the consequences of all and any representations made by the Developer to any person or persons to the effect that building approval for the Township Development or any part thereof shall be granted or that title to all or any even within the Township Development or any part thereof can and will be transferred except in the circumstances set out in the Agreement;
- he shall, upon issue of the Taking-Over Certificate for each Section, of Works, transfer to the Council at no cost thereto full and free title to the portion of the Site upon which the relevant Section is located, and shall extend to the Council in perpetuity such necessary access rights to the said portion of the Site as it shall have within his power to grant;
- in the event that he assigns to any third party or parties all or any of his development rights in respect of the Township Development or any part thereof, he shall require as a condition precedent of such assignment that the said third party assignee or assignees agree to be bound fully by the terms of the Agreement, and he shall fully defend, hold harmless and indemnify the Council in respect of all and any claims, actions and/or suits that may be brought against the Council by any person whomsoever as a result of or in connection with any failure of such third party assignee or assignees to implement and/or abide by the terms of the Agreement.

2.5. DESIGN [Clause 5 in General Conditions]

2.5.1. Sub-Clause 5.1 General Design Obligations is amended to read:

The Developer shall at the Project's sole cost and risk except as otherwise stated in the Agreement carry out, and be responsible for, the design of the Works. Design shall be prepared by qualified designers who are engineers or other professionals who comply with the criteria (if any) stated in the Council's Requirements. Unless otherwise stated in the Agreement, the Developer shall submit to the Council's Representative for consent the name and particulars of each proposed designer and design Contractor.

The Developer warrants that he, his designers and design Contractors have the experience and capability necessary for the design. The Developer undertakes that the designers shall be available to attend discussions with the Council's

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Representative at all reasonable times, until the expiry date of the relevant Defects Notification Period.

The Developer shall be deemed to have scrutinised, prior to the Commencement Date, the Council's Requirements (including design criteria and calculations, if any). The Developer shall be responsible for the accuracy of the Council's Requirements (including design criteria and calculations except as stated below).

The Council shall not be responsible for any error, inaccuracy or omission of any kind in the Council's Requirements as originally included in the Agreement and shall not be deemed to have given any representation of accuracy or completeness of any data or information, except as stated below. Any data or information received by the Developer from his responsibility for the design and execution of the Works.

However, the Council shall be responsible for the following portions of the Council's Requirements and of the following data and information provided by (or on behalf of) the Council:

- (a) portions, data and information which are stated in the Agreement as being the responsibility of the Council,
- (b) criteria for the testing and performance of the completed Works, and
- (c) portions, data and information which cannot be verified by the Developer, except as otherwise stated in the Agreement.

2.5.2. Sub-Clause 5.2 Developers Documents remains to read:

The Developer's Documents shall comprise the technical documents specified in the Council's Requirements, documents required to satisfy all regulatory approvals, and the documents described in Sub-Clause 5.6 [*As-Built Documents*] and Sub-Clause 5.7 [*Operation and Maintenance Manuals*]. Unless otherwise stated in the Council's Requirements, the Developer's Documents shall be written in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

The Developer shall prepare all Developer's Documents, and shall also prepare any other documents necessary to instruct the Developer's Personnel. The Council's Personnel shall have the right to inspect the preparation of all these documents, wherever they are being prepared.

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If the Council's Requirements describe the Developer's Documents which are to be submitted by the Council's Representative for review and/or for approval, they shall be submitted accordingly, together with a notice as described below. In the following provisions of this Sub-Clause, (i) "review period" means the period required by the Council's Representative for review and (if so specified) for approval, and (ii) "Developer's Documents" exclude any documents which are not specified as being required to be submitted for review and/or for approval.

Unless otherwise stated in the Council's Requirements, each review period shall not exceed 21 days, calculated from the date on which the Council's Representative receives a Developer's Document and the Developer's notice. This notice shall state that the Developer's Document is considered ready, both for review (and approval, if so specified) in accordance with this Sub-Clause and for use. The notice shall also state that the Developer's Document complies with the Agreement, or the extent to which it does not comply.

The Council's Representative may, within the review period, give notice to the Developer that a Developer's Document fails (to the extent stated) to comply with the Agreement. If a Developer's Document so fails to comply, it shall be rectified, resubmitted and reviewed (and, if specified, approved) in accordance with this Sub-Clause, at the Developer's cost.

For each part of the Works, and except to the extent that the prior approval or consent of the Council's Representative shall have been obtained:

- (a) in the case of a Developer's Document which has (as specified) been submitted for the Council's Representative approval:
 - (i) the Council's Representative shall give notice to the Developer that the Developer's Document is approved, with or without comments, or that it fails (to the extent stated) to comply with the Agreement;
 - (ii) execution of such part of the Works shall not commence until the Council's Representative has approved the Developer's Document; and
 - (iii) the Council's Representative shall be deemed to have approved the Developer's Document upon the expiry of the review periods for all the Developer's Documents which are relevant to the design and execution of such part, unless the Council's Representative has previously notified otherwise in accordance with sub-paragraph (i);

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- (b) execution of such part of the Works shall not commence prior to the expiry of the review periods for all the Developer's Documents which are relevant to its design and execution;
- (c) Execution of such part of the Works shall be in accordance with these reviewed (and, if specified, approved) Developer's Documents; and
- (d) If the Developer wishes to modify any design or document which has previously been submitted for review (and, if specified, approval), the Developer shall immediately give notice to the Council's Representative. Thereafter, the Developer shall submit revised documents to the Council's Representative in accordance with the above procedure.

If the Council's Representative instructs that further Developer's Documents are required, the Developer shall prepare them promptly. Any such approval or consent, or any review (under this Sub-Clause or otherwise), shall not relieve the Developer from any obligation or responsibility.

2.5.3. Sub-Clause 5.3 Developer's Undertaking remains to read:

The Developer undertakes that the design, the Developer's Documents, the execution and the completed Works will be in accordance with:

- (a) the Laws in the Country, and
- (b) the documents forming the Agreement, as altered or modified by Variations.

2.5.4. Sub-Clause 5.4 Technical Standards and Regulations remains to read:

The design, the Developer's Documents, the execution and the completed Works shall comply with the Country's technical standards, building, construction and environmental Laws, Laws applicable to the product being produced from the Works, and other standards specified in the Council's Requirements, applicable to the Works, or defined by the applicable Laws.

All these Laws shall, in respect of the Works and each Section, be those prevailing when the Works or Section are taken over by the Council under Clause 10 [*Council's Taking Over*]. References in the Agreement to publish standards shall be understood to be references to the edition applicable on the Commencement Date, unless stated otherwise.

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If changed or new applicable standards come into force in the Country after the Base Date, the Developer shall give notice to the Council's Representative and (if appropriate) submit proposals for compliance. In the event that:

- (a) Council's Representative determines that compliance is required; and
- (b) The proposals for compliance constitute a variation

then the Council's Representative shall initiate a Variation in accordance with Clause 13 [*Variations and Adjustments*].

2.5.5. Sub-Clause 5.5 Training remains to read:

The Developer shall carry out the training of Council's Personnel in the operation and maintenance of the Works to the extent specified in the Council's Requirements. If the Agreement specifies training which is to be carried out before taking-over, the Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [*Taking Over of the Works and Sections*] until this training has been completed.

2.5.6. Sub-Clause 5.6 As-Built Documents remains to read:

The Developer shall prepare, and keep up-to-date, a complete set of "as-built" records of the execution of the Works, showing the exact as-built locations, sizes and details of the work as executed. These records shall be kept on the Site and shall be used exclusively for the purposes of this Sub-Clause. Two copies shall be supplied to the Council's Representative prior to the commencement of the Tests on Completion.

In addition, the Developer shall supply to the Council's Representative as-built drawings of the Works, showing all Works as executed, and submit them to the Council's Representative for review under Sub-Clause 5.2 [*Developer's Documents*]. The Developer shall obtain the consent of the Council's Representative as to their size, the referencing system, and other relevant details.

Prior to the issue of any Taking-Over Certificate, the Developer shall supply to the Council's Representative the specified numbers and types of copies of the relevant as-built drawings, in accordance with the Council's Requirements. The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [*Taking Over of the Works and Sections*] until the Council's Representative has received these documents.

2.5.7. Sub-Clause 5.7 Operation and Maintenance Manuals remains to read:

Prior to commencement of the Tests on Completion, the Developer shall supply to the Council's Representative provisional operation and maintenance manuals in sufficient detail for the Council to operate, maintain, dismantle, reassemble, adjust and repair the Plant.

The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [*Taking Over of the Works and Sections*] until the Council's Representative has received final operation and maintenance manuals in such detail, and any other manuals specified in the Council's Requirements for these purposes.

2.5.8. Sub-Clause 5.8 Design Error remains to read:

If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Developer's Documents, they and the Works shall be corrected at the Developer's cost, notwithstanding any consent or approval under this Clause.

2.6. STAFF AND LABOUR

2.6.1. Sub-Clause 6.1 Engagement of Staff and Labour is amended to read:

Except as otherwise stated in the Council's Requirements, the Developer shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment and, if applicable housing, feeding and transport.

The Developer declares itself to be fully conversant with any project labour agreement in place covering the Works and shall comply therewith as well as to all amendments thereto and the site industrial relations policy, at all its own cost.

2.6.2. Sub-Clause 6.2 Rates of Wages and Conditions of Labour is deleted in its entirety and replaced with the following:

The Developer shall ensure that the rates of wages paid and conditions of labour observed with regard to the Developer's Personnel are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Developer shall ensure that the rates of wages paid and the conditions observed are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Developer and/or the relevant Contractor.

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2.6.3. Sub-Clause 6.3 Persons in the Service of the Council remains to read:

The Developer shall not recruit, or attempt to recruit, staff and labour from amongst the Council's Personnel.

2.6.4. Sub-Clause 6.4 Labour Laws remains to read:

The Developer shall comply with all the relevant labour Laws applicable to the Developer's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

The Developer shall require his employees and Contractors to obey all applicable Laws, including those concerning safety at work.

2.6.5. Sub-Clause 6.5 Working Hours remains to read:

No works shall be carried out on the Site on locally recognised days or rest, or outside the normal working hours stated in the Agreement Data, unless:

- (a) otherwise stated in the Agreement;
- (b) the Council's Representative gives consent, or
- (c) the works is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Developer shall immediately advise the Council's Representative.

2.6.6. Sub-Clause 6.6 Facilities for Staff and Labour remains to read:

Except as otherwise stated in the Council's Requirements, the Developer shall provide and maintain all necessary accommodation and welfare facilities for the Developer's Personnel. The Developer shall also provide facilities for the Council's Personnel as stated in the Council's Requirements.

The Developer shall not permit any of the Developer's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

Hours is amended to read: The Developer shall at all times take all reasonable precautions to maintain the health and safety of the Developer's Personnel. In collaboration with local health authorities, the Developer shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Developer's and Council's Personnel, and

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that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Developer shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Developer shall provide whatever is required by this person to exercise this responsibility and authority.

2.6.7. Sub-Clause 6.8 Developer's Superintendence ours remains to read:

Throughout the design and execution of the Works, and as long thereafter as is necessary to fulfil the Developer's obligations, the Developer shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the work.

Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in Sub-Clause 1.4 [*Law and Language*] and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

2.6.8. Sub-Clause 6.9 Developer's Personnel is deleted in its entirety and replaced with the following:

The Developer's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations.

2.6.9. Sub-Clause 6.10 Records of Developer's Personnel and Equipment remains to read:

The Developer shall submit, to the Council's Representative, details showing the number of each class of Developer's Personnel and of each type of Developer's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Council's Representative, until the Developer has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

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2.6.10. Sub-Clause 6.11 Disorderly Conduct remains to read:

The Developer shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Developer's Personnel, and to preserve peace and protection of persons and property on and near the Site.

2.6.11. Add the following sub-clauses 6.12 and 6.13:

"6.12 Key Personnel

The Developer shall furnish the Council with a list of addresses and telephone numbers of key personnel in the Developer's organisation (hereinafter referred to as 'the Key Personnel') who may be contacted in any emergency both during and outside normal working hours. The Developer shall not be entitled to replace any Key Personnel during the period of the Agreement without the approval in advance of the Council. In the event of any of the Key Personnel resigning from the Developer's employment during the period of the Agreement, the Developer shall replace such Key Personnel with personnel of similar qualifications and experience, without delay, and shall promptly advise the Council of the required information as stipulated above.

6.13 Foreign Personnel

To the extent permitted by the applicable Laws, the Developer may bring in to the Country any foreign personnel ordinarily resident outside of the Country (hereinafter referred to as "the Foreign Personnel"), who are necessary for the execution of the Works. The Developer shall ensure that the Foreign Personnel are provided with the required residence visas and work permits. Subject to the provisions of Sub-Clause 2.2 [*Permits, Licences or Approvals*], the Council will, if requested by the Developer, take all reasonable and lawful steps to assist the Developer in obtaining any local, state, or government permission required for the employment of the Foreign Personnel in respect of the Works. Any costs incurred by the Council in taking such steps shall be borne by the Developer.

The Developer shall be responsible for the return of the Foreign Personnel to the place where they were recruited or to their domicile. In the event of the death in the Country of any of these personnel or members of their families, the Developer shall similarly be responsible for making the appropriate arrangements for the return of the remains, or where appropriate, for burial.

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2.7. PLANT, MATERIALS AND WORKMANSHIP (Clause 7 in General Conditions)

2.7.1. Sub-Clause 7.1 Manner of Execution remains to read

The Developer shall carry out the manufacture of Plant, the production and manufacture of Materials, and all other execution of the Works:

- (a) in the manner (if any) specified in the Agreement,
- (b) in a proper workmanlike and careful manner, in accordance with recognised good practice, and
- (c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Agreement.

2.7.2. Sub-Clause 7.2 Samples remains to read

The Developer shall submit the following samples of Materials, and relevant information, to the Council's Representative for review in accordance with the procedures for Developer's Documents described in Sub-Clause 5.2 [*Developer's Documents*]:

- (a) manufacturer's standard samples of Materials and samples specified in the Agreement, all at the Developer's cost, and
- (b) additional samples instructed by the Council's Representative as a Variation.

Each sample shall be labelled as to origin and intended use in the Works.

2.7.3. Sub-Clause 7.3 Inspection remains to read:

The Council's Personnel shall at all reasonable times:

- (a) have full access to all parts of the Site and to all places from which natural Materials are being obtained, and
- (b) during production, manufacture and construction (at the Site and elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.

The Developer shall give the Council's Personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Developer from any obligation or responsibility.

The Developer shall give notice to the Council's Representative whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or

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transport. The Council's Representative shall then either carry out the examination, inspection, measurement or testing within 7 (seven) Business Days, or promptly give notice to the Developer that the Council's Representative does not require doing so. If the Developer fails to give the notice, he shall, if and when required by the Council's Representative, uncover the work and thereafter reinstate and make good, all at the Developer's cost. In the event that the Council's Representative, after having been notified by the Developer, fails to carry out the examination, inspection, measurement or testing within the permitted period, it shall be deemed that the Council's Representative does not require doing so.

2.7.4. Sub-clause 7.4 Testing is amended to read:

This Sub-Clause shall apply to all tests specified in the Agreement, other than the Tests after Completion (if any). All such tests shall be carried out at the Developer's sole cost and risk.

The Developer shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Developer shall agree, with the Council's Representative, the time and place for the specified tests efficiently. The Developer shall agree, with the Council's Representative, the time and place for the specified testing of any Plant, Materials and other parts of the Works.

The Council's Representative may, under clause 13 [*Variations and Adjustments*], vary the location or details of specified tests, or instruct the Developer to carry out additional tests.

The Council's Representative shall give the Developer not less than 24 hours' notice of the Council's Representative intention to attend the tests. If the Council's Representative does not attend at the time and place agreed, the Developer may proceed with the tests, unless otherwise instructed by the Council's Representative and the tests shall then be deemed to have been made in the Council's Representative presence.

The Developer shall promptly forward to the Council's Representative duly certified reports of the tests. When the specified tests have been passed, the Council's Representative shall endorse the Developer's tests certificate, or issue a certificate

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to him, to that effect. If the Council's Representative has not attended to the tests, he shall be deemed to have accepted the readings as accurate.

2.7.5. Sub-clause 7.5 Rejection remains to read

If, as a result of an examination, inspection, measurement or testing, any Plant, Materials, design or workmanship is found to be defective or otherwise not in accordance with the Agreement, the Council's Representative may reject the Plant, Materials, design or workmanship by giving notice to the Developer, with reasons. The Developer shall then promptly make good the defect and ensure that the rejected item complies with the Agreement.

If the Council's Representative requires this Plant, Materials, design or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Council to incur additional costs, the Developer shall subject to Sub-Clause 2.5[*Council's Claims*] pay these costs to the Council.

2.7.6. Sub clause "7.6" is deleted

2.7.7. Sub-clause "7.7" is deleted in its entirety.

2.7.8. clause 7.8 Royalties remains to read:

Unless otherwise stated the Council's Requirements, the Developer shall pay all royalties, rents and other payments for:

- (a) natural Materials obtained from outside the Site, and
- (b) the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Agreement

2.8. COMMENCEMENT, DELAYS AND SUSPENSION (CLAUSE 8)

2.8.1. Sub-Clause 8.1 Commencement of Work is deleted in its entirety

2.8.2. Delete Sub-Clause 8.2 and replace with 8.2 Time for Completion remain to read:

The Developer shall complete the following:

"in line with the whole of the provisions of clause 11 Works, and 12 of each Section 1 (if any), the Project Team will agree on a commencement date to be added to Time for Completion for the Works or Section (as the case may be), including:

- (a) achieving the passing of the Tests on Completion, and

- (b) completing all work which is stated in the Agreement Data in Section 6 as being required for the Works or Section to be considered to be completed for the purposes of the Agreement. "Taking-Over" under Sub-Clause 10.1 [Taking Over of the Works and Sections].

2.8.3. Sub-Clause 8.3 Project Programme

The Developer shall submit for each Township Development section/phase to be approved from time to time a detailed time programme to the Council's Representative within 28 days after the Commencement Date. The Developer shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Developer's obligations, or whenever the Council's Representative instructs him to do so. Each programme shall include:

- (a) the order in which the Developer intends to carry out the Works, including the anticipated timing of each stage of design, Developer's Documents, procurement, manufacture, inspection, delivery to Site, construction, erection, testing, commissioning and trial operation;
- (b) the periods for reviews under Sub-Clause 5.2 [Developer's Documents] and for any other submissions, approvals and consents specified in the Council's Requirements;
- (c) the sequence and timing of inspections and tests specified in the Agreement, and
- (d) a supporting report which includes:
 - (i) a general description of the methods which the Developer intends to adopt, and of the major stages, in the execution of the Works, and
 - (ii) details showing the Developer's reasonable estimate of the number of each class of Developer's Personnel and each type of Developer's Equipment, required on the Site for each major stage.

Unless the Council's Representative, within 21 days after receiving a programme, gives notice to the Developer stating the extent to which it does not comply with the Agreement, the Developer shall proceed in accordance with the programme, subject to his other obligations under the Agreement. The Council's Personnel shall be entitled to rely upon the programme when planning their activities

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The Developer shall notify the Council in writing of any event, circumstance or factor which may adversely affect the Works or the progress thereof, delay the execution of the Works, constitute an environmental or safety risk or impair the performance or use of the Works or any part thereof ("notified event"). Such notice shall be given as soon as possible, but in any event within not more than 7 days after the event, circumstance or factor in question was known or should reasonably have been known to the Developer. In such notice the Developer shall provide:

- (a) detailed particulars of the notified event and the potential adverse effects;
- (b) proposals for the steps to be taken by the Developer to mitigate the potential adverse effects and meet the Time for Completion.

A notification in terms of this Sub-Clause 8.3 shall not constitute a notification of a claim for extension of time to Clause 20 [*Claims, Disputes and Arbitration*] or otherwise under the Contract.

In the event of the Developer making a claim for an extension of time under Clause 20 [*Claims, Disputes and Arbitration*] in respect of any event for which no such notice as envisaged above has been given, then such claim shall be assessed as if the Developer had complied above requirement within the said 7 (seven) day notice period referred to above.

If, at any time, the Council's Representative gives notice to the Developer that a programme fails (to the extent stated) to comply with the Agreement or to be consistent with actual progress and the Developer's stated intentions, the Developer shall submit a revised programme to the Council's Representative in accordance with this Sub-Clause.

2.8.4. Sub-clause 8.4 Extension of time for Completion is amended to read as follows:

The Developer shall be entitled subject to Sub-Clause 20.1. [*Developer's Claims*] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [*Taking Over of the Works and Sections*] is or will be delayed by any of the following causes:

- (a) a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [*Variation Procedure*],
- (b) reasons beyond the control of the Developer, whether economic or otherwise, which render it impossible or commercially non-viable for the

Developer to release for sale all or any even within all the sections of the Township Development to which the relevant Section of the Works relates,

- (c) exceptionally adverse climatic conditions,
- (d) unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or
- (e) any delay, impediment or prevention caused by or attributable to the Council, the Council's Personnel, or subject to Clause 8.5 [*Delays caused by Authorities*], any legally constituted public authorities in the Country.

If the Developer considers himself to be entitled to an extension of the Time for Completion, the Developer shall give notice to the Council's Representative in accordance with Sub-Clause 20.1 [*Developer's Claims*]. When determining each extension of time under Sub-clause 20.1, the Council's Representative shall review previous determinations and may increase, but shall not decrease, the total extension of time.

The Developer shall not however, be entitled to an extension of the Time for Completion to the extent that completion would, in the circumstances, in any event have been delayed by a cause not listed in (a) (b) (c) (d) and (e) above.

2.8.5. Sub clause 8.5 Delays caused by Authorities remains to read as follows:

If the following conditions apply, namely:

- (a) the Developer has diligently followed the procedures laid down by the relevant legally constituted public authorities (including the Council) in the Country,
- (b) these authorities delay or disrupt the Developer's work, and
- (c) the delay or disruption was Unforeseeable,

then his delay or disruption will be considered as a cause of delay under subparagraph (e) of Sub-Clause 8.4 [*Extension of Time for Completion*].

2.8.6. Sub-clause 8.6 Rate of Progress remains to read as follows:

If, at any time:

- (a) actual progress is too slow to complete within the Time for Completion, and/or
- (b) progress has fallen (or will fall) behind the current programme under Sub-Clause 8.3 [*Programme*],

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other than as a result of a cause listed in Sub-Clause 8.4 [*Extension of Time for Completion*], then the Council's Representative may instruct the Developer to submit, under Sub-Clause 8.3 [*Programme*], a revised programme and supporting report describing the revised methods which the Developer proposes to adopt in order to expedite progress and complete within the Time for Completion.

Unless the Council's Representative notifies otherwise, the Developer shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Developer's Personnel and/or Goods, at the risk and cost of the Developer. If these revised methods cause the Council to incur additional costs, the Developer shall subject to Sub-Clause 2.5 [*Council's Claims*] pay these costs to the Council, in addition to delay damages (if any) under Sub-Clause 8.7 below.

2.8.7. Sub-clause 8.7 Delay Damages is deleted in its entirety and replaced as follows:

The delay damages payable by the Developer for failure to achieve completion of the Works within the Time for Completion shall be as detailed in the Agreement Data contained in Section 4 hereof. The Council will only be entitled to recover delay damages as aforesaid to the extent that it suffers proven loss as a consequence of the Developer's delay and the Council's commission or omission was not the cause of or contributed to the delay.

2.8.8 Sub- Clause 8.8 Suspension of Work

Delete this Sub-Clause in its entirety.

2.8.9 Sub-clause 8.9 Consequences of suspension

Delete this Sub-Clause in its entirety.

2.8.10 Sub-Clause 8.10 Payment for Plant and Materials

Delete this Sub-Clause in its entirety.

2.8.11 Sub-clause 8.11 Prolonged suspension

Delete this Sub-Clause in its entirety.

2.8.12 Sub-clause 8.12 Resumption of Work

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Delete this Sub-Clause in its entirety.

2.9 TESTS ON COMPLETION

2.9.1 Sub-clause 9.1 Developer's obligation is amended to read as follows:

The Developer shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4 [*Testing*], after providing the documents in accordance with Sub-Clause 5.6 [*As-Built Documents*] and Sub-Clause 5.7 [*Operation and Maintenance Manuals*].

The Developer shall give to the Council's Representative not less than 21 days' notice of the date after which the Developer will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within 14 days after this date, on such day or days as the Council's Representative shall instruct.

Unless otherwise stated in the Particular Conditions, the Tests on Completion shall be carried out in the following sequence:

- (a) pre-commissioning tests, which shall include the appropriate inspections and ("dry" or "cold") functional tests to demonstrate that each item of Plant can safely undertake the next stage, (b);
- (b) commissioning tests, which shall include the specified operational tests to demonstrate that the Works or Section can be operated safely and as specified, under all available operating conditions; and
- (c) trial operation, which shall demonstrate that the Works or Section perform reliably and in accordance with the Agreement.

During trial operation, when the Works are operating under stable conditions, the Developer shall give notice to the Council's Representative that the Works are ready for any other Tests on Completion, including performance tests to demonstrate whether the Works conform to criteria specified in the Council's Requirements.

Trial operation shall not constitute a taking-over under Clause 10 [*Council's Taking Over*].

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As soon as the Works, or a Section, have passed each of the Tests on Completion described in sub-paragraph (a), (b), or (c), the Developer shall submit a certified report of the results of these Tests to the Council's Representative.

2.9.2 Sub-clause 9.2 Delayed Test remains to read as follows:

If the Tests on Completion are being unduly delayed by the Council, Sub-Clause 7.4 [Testing] (fifth paragraph) and/or Sub-Clause 10.3 [Interference with Tests on Completion] shall be applicable.

If the Tests on Completion are being unduly delayed by the Developer, the Council's Representative may by notice require the Developer to carry out the Tests within 21 days after receiving the notice. The Developer shall carry out the Tests on such day or days within that period as the Developer may fix and of which he shall give notice to the Council's Representative.

If the Developer fails to carry out the Tests on Completion within the period of 21 days, the Council's Personnel may proceed with the Tests at the risk and cost of the Developer. The Tests on Completion shall then be deemed to have been carried out in the presence of the Developer and the results of the Tests shall be accepted as accurate.

2.9.3 Sub-clause 9.3 Retesting remains to read:

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [Rejection] shall apply, and the Council's Representative or the Developer may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

2.9.4 Sub-clause 9.4 is Failure to Pass Tests on Completion is amended to read as follows:

If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3, [Retesting] the Council's Representative shall be entitled to:

- (a) order further repetition of Tests on Completion under Sub-Clause 9.3;
- (b) if the failure deprives the Council of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Council shall have the same remedies as are provided in sub-paragraph (c) of Sub-Clause 11.4 [Failure to Remedy Defects].

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2.10 COUNCIL'S TAKE OVER

2.10.1 Sub-clause 10.1 Taking Over of the Works and Sections is deleted and replaced with the following:

Each Section of the Works will be taken over by the Council when:

- (a) the Section has been completed in accordance with the Agreement; and
- (b) the Section has passed the relevant Tests on Completion in accordance with the Agreement; and
- (c) a Completion Certificate has been completed and signed in relation to the Section by the relevant Departmental Head of the Council;
- (d) a Taking-Over Certificate for the Section has been issued, or is deemed to have been issued in accordance with this Sub-clause.

The Developer shall make application to the Council's Representative for a Taking-Over Certificate (i) when he considers the relevant Section of the Works to be complete and ready for taking over; and (ii) when the respective taking-over certificates provided for in the respective Contract(s) have been duly issued by or on behalf of the Developer to the respective Contractor(s); and (iii) when copies of all such taking-over certificates have been given by the Developer to the Council's Representative.

Within 28 days after receiving the aforesaid application, the Council's Representative shall:

- a) issue a Taking-Over Certificate to the Developer, stating the date on which the Section was completed in accordance with the Agreement, except for any minor outstanding work and defects which will not substantially affect the use of the Section for its intended purpose (either until or whilst this work is completed and these defects are remedied); or
- b) reject the application, giving reasons and specifying the work required to be done by the Developer to enable the Taking-Over Certificate to be issued. The Developer shall then ensure that this work is complete before issuing a further notification under this Sub-Clause.

If the Council's Representative fails either to issue the Taking-Over Certificate or to reject the Developer's application within the period of 28 days, and if the Section is substantially in accordance with the Agreement, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

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The mere fact that a taking over certificate has been issued by or on behalf of the Developer to any or all of the Contractors in respect of all or part of the Works shall not in any way be taken to mean that the Works or any part thereof shall not be in any way taken to mean that the Works are complete and ready for taking over in accordance with the criteria set down in this Sub-Clause; neither shall such fact deprive the Council's Representative of his right to reject an application by the developer for a Taking-Over Certificate as described in this Sub-Clause.

2.10.2 Sub-clause 10.2 Taking Over of Parts of the Works

Delete the Sub-Clause in its entirety.

2.10.3 Sub-clause 10.3 Interference with Tests on Completion is amended to read as follows:

If the Developer is prevented, for more than 14 days, from carrying out the Tests on Completion by a cause for which the Council is responsible, the Works shall be regarded as suspended and Council shall be in breach of this Agreement.

The Council's Representative shall require the Tests on Completion to be carried out by giving 14 days' notice and in accordance with the relevant provisions of the Agreement.

2.10.4 Sub-clause 10.4 Surfaces Requiring Reinstatement remains to read as follows:

Except as otherwise stated in a Taking-Over Certificate, a certificate for a Section or part of the Works shall not be deemed to certify completion of any ground or other surfaces requiring reinstatement.

2.11 DEFECTS LIABILITY (Clause 11 in the General Conditions)

2.11.1 Sub-clause 11.1 Completion of Outstanding Work and Remedying Defects remains to read as follows:

In order that the Works and Developer's Documents, and each Section, shall be in the condition required by the Agreement (fair wear and tear excepted) by the expiry date of the relevant Defects Notification Period or as soon as practicable thereafter, the Developer shall:

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- (a) complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Developer, and
- (b) execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Council on or before the expiry date of the Defects Notification Period for the Works or Section (as the case may be).

If a defect appears or damage occurs, the Developer shall be notified accordingly, by (or on behalf of) the Council.

2.11.2 Sub-clause 11.2 is amended to read as follows:

All work referred to in sub-paragraph (b) of Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*] shall be executed at the risk and cost of the Developer, if and to the extent that the work is attributable to:

- (a) the design of the Works, other than a part of the design for which the Council is responsible (if any),
- (b) Plant, Materials or workmanship not being in accordance with the Agreement,
- (c) Improper operation or maintenance which was attributable to matters for which the Developer is responsible (under Sub-Clauses 5.5 to 5.7 or otherwise), or
- (d) Failure by the Developer to comply with any other obligation.

If and to the extent to that such work is attributed to any other cause, the Council will bear the risk and cost of carrying it out.

2.11.3 Sub-clause 11.3 Extensions of Defects Notification Period is amended to read as follows:

The Council shall be entitled subject to Sub-Clause 2.5 [*Council's Claims*] to an extension of the Defects Notification Period for the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or damage. However, a Defects Notification Period shall not be extended by more than two years.

2.11.4 Sub-clause 11.4 Failure to Remedy Defects is amended to read as follows:

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If the Developer fails to remedy any defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the Council, on or by which the defect or damage is to be remedied. The Developer shall be given reasonable notice of this date.

If the Developer fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Developer under Sub-Clause 11.2 [*Cost of Remedying Defects*], the Council may (at his option):

Carry out the work himself or by others, in a reasonable manner and add the following words at the end of subparagraph (c) "at the Developer's cost, but the Developer shall have no responsibility for this work; and such the Developer shall subject to Sub-Clause 2.5[*Council's Claims*] pay to the Council the costs may be recovered or reasonably incurred by the Council in remedying the defect or damage.

2.11.5 Sub-clause 11.5 Removal of Defective Work remains to read:

If the defect or damage cannot be remedied expeditiously on the Site and the Council gives consent, the Developer may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Developer to increase the amount of the Performance Security in sub clause 4.2 of the General Conditions by the full replacement cost of these items, or to provide other appropriate security.

2.11.6 Sub-clause 11.6 Further Tests remain to read:

If the work of remedying of any defect or damage may affect the performance of the Works, the Council's Representative may require the repetition of any of the tests described in the Agreement, including Tests on Completion and/or Tests after Completion. The requirement shall be made by notice within 28 days after the defect or damage is remedied.

These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Sub-Clause 11.2 [*Cost of Remedying Defects*], for the cost of the remedial work.

2.11.7 Sub-clause 11.7 Right of Access remain to read:

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Until the Performance Certificate has been issued, the Developer shall have the right of access to all parts of the Works and to records of the operation and performance of the Works, except as may be inconsistent with the Council's reasonable security restrictions.

2.11.8 Sub-clause 11.8 Developer to Search is amended to read:

The Developer shall, if required by the Council's Representative, search for the cause of any defect, under the direction of the Council's Representative.

2.11.9 Sub-clause 11.9 Performance Certificate remains to read:

Performance of the Developer's obligations shall not be considered to have been completed until the Council's Representative has issued the Performance Certificate to the Developer, stating the date on which the Developer completed his obligations under the Agreement.

The Council's Representative shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Developer has supplied all the Developer's Documents and completed and tested all the Works, including remedying any defects. A copy of the Performance Certificate shall be issued to the Council.

Only the Performance Certificate shall be deemed to constitute acceptance of the Works.

2.11.10 Sub-clause 11.10 Unfulfilled Obligations remains to read:

After the Performance Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Agreement shall be deemed to remain in force.

2.11.11 Sub-clause 11.11 Clearance of Site remains to read:

Upon receiving the Performance Certificate, the Developer shall remove any remaining Developer's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.

If all these items have not been removed within 28 days after the Council receives a copy of the Performance Certificate, the Council may sell or otherwise dispose of

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any remaining items. The Council shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

Any balance of the money from the sale shall be paid to the Developer. If these moneys are less than the Council's costs, the Developer shall pay the outstanding balance to the Council.

2.11.12 Sub-clause 11.12 Add Sub-clause 11.12:

"11.12 Latent Defects

Nothing contained in this Contract shall be in any manner be construed as limiting the Council's rights in the event of a latent defect manifesting itself in the Works."

2.12 TEST AFTER COMPLETION (Clause 12 of the General Conditions)

2.12.1 Sub-clause 12.1 Procedure for Tests after Completion remains to read:

If Tests after Completion are specified in the Agreement, this Clause shall apply. Unless otherwise stated in the Particular Conditions, the Council shall:

- (a) provide all electricity, equipment, fuel, instruments, labour, materials and suitably qualified and experienced staff, as are necessary to carry out the Tests after Completion efficiently, and
- (b) carry out the Tests after Completion in accordance with the manuals supplied by the Developer under Sub-Clause 5.7 [*Operation and Maintenance Manuals*] and such guidance as the Developer may be required to give during the course of these Tests; and in the presence of such Developer's Personnel as either Party may reasonably request.

The Tests after Completion shall be carried out as soon as is reasonably practicable after the Works or Section have been taken over by the Council. The Council shall give to the Developer 21 days' notice of the date after which the Tests after Completion will be carried out. Unless otherwise agreed, these Tests shall be carried out within 14 days after this date, on the day or days determined by the Council.

If the Developer does not attend at the time and place agreed, the Council may proceed with the Tests after Completion, which shall be deemed to have been made in the Developer's presence, and the Developer shall accept the readings as accurate.

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The results of the Tests after Completion shall be compiled and evaluated by both Parties. Appropriate account shall be taken of the effect of the Council's prior use of the Works.

2.12.2 Sub-clause 12.2 Delayed Tests remains to read:

If the Developer incurs Cost as a result of any unreasonable delay by the Council to the Tests after Completion, the Developer shall (i) give notice to the Council's Representative and (ii) be entitled subject to Sub-Clause 20.1 [*Developer's Claims*] to payment of any such Cost plus reasonable profit, which shall be included in the Agreement Price.

After receiving this notice, the Council's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine this Cost and profit.

If, for reasons not attributable to the Developer, a Test after Completion on the Works or any Section cannot be completed during the Defects Notification Period (or any other period agreed upon by both Parties), then the Works or Section shall be deemed to have passed this Test after Completion.

2.12.3 Sub-clause 12.3 Retesting remains to read:

If the Works, or a Section, fail to pass the Tests after Completion:

- (a) sub-paragraph (b) of Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*] shall apply, and
- (b) either Party may then require the failed Tests, and the Tests after Completion on any related work, to be repeated under the same terms and conditions.

If and to the extent that this failure and retesting are attributable to any of the matters listed in sub-paragraphs (a) to (d) of Sub-Clause 11.2 [*Cost of Remedying Defects*] and cause the Council to incur additional costs, the Developer shall subject to Sub-Clause 2.5 [*Council's Claims*] pay these costs of the Council.

2.12.4 Sub-clause 12.4 Failure to Pass Tests after Completion remains to read:

If the following conditions apply, namely:

- (a) the Works, or a Section, fail to pass any or all of the Tests after Completion,

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- (b) the relevant sum payable as non-performance damages for this failure is stated (or its method of calculation is defined) in the Agreement, and
- (c) the Developer pays this relevant sum to the Council during the Defects Notification Period,

then the Works or Section shall be deemed to have passed these Tests after Completion.

If the Works, or a Section, fail to pass a Test after Completion and the Developer proposes to make adjustments or modifications to the Works or such Section, the Developer may be instructed by (or on behalf of) the Council that right of access to the Works or Section cannot be given until a time that is convenient to the Council. The Developer shall then remain liable to carry out the adjustments or modifications and to satisfy this Test, within a reasonable period of receiving notice by (or on behalf of) the Council of the time that is convenient to the Council. However, if the Developer does not receive this notice during the relevant Defects Notification Period, the Developer shall be relieved of this obligation and the Works or Section (as the case may be) shall be deemed to have passed this Test after Completion.

If the Developer incurs additional Cost as a result of any unreasonable delay by the Council in permitting access to the Works or Plant by the Developer, either to investigate the causes of a failure to pass a Test after Completion or to carry out any adjustments or modifications, the Developer shall (i) give notice to the Council's Representative and (ii) be entitled subject to Sub-Clause 20.1 [*Developer's Claims*] to payment of any such Cost plus reasonable profit, which shall be included in the Agreement Price.

After receiving this notice, the Council's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine this Cost and profit.

2.13 VARIATIONS AND ADJUSTMENTS (Clause 13 of the General Conditions)

Delete this Clause in its entirety and replace it with the following:

"No agreement to vary, add to or cancel the Agreement or any portion thereof including, but not limited to, the Council's Standards in Sections 3 to 6, shall be of

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any force or effect unless reduced into writing and signed by the authorised representatives of both Parties."

2.14 PRICE AND PAYMENT (Clause 14 of the General Conditions)

Delete this Clause in its entirety.

2.15 TERMINATION BY EMPLOYER (Clause 15 of the General Conditions)

Delete this Clause in its entirety and replace with the following:

"TERMINATION BY THE COUNCIL

15.1 Notice to correct

If the Developer fails to carry out any obligation under the Agreement, the Council's representative shall by notice require the Developer to make good the failures and to remedy it within the time specified in the said notice.

15.2 Notice to correct

The Council shall be entitled to terminate the Agreement if the Developer:

- a) Fails to comply with Sub-clause 4.2 [Performance Security] or with a notice under sub-clause 15.1 [Notice to correct],
- b) Abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the agreement,
- c) Without reasonable excuse fails:
 - (i) To proceed with the Works in accordance with sub-clause 9.1 [Commencement of Design-Build] or sub-clause 10.2], [Commencement of Operation Service] or
 - (ii) To comply with a notice issued under sub-clause 7.5 [Rejection] or sub-clause 7.6 [Remedial Work], within 28 days after receiving it,
- d) Subcontracts or assigns the whole of the Works or assigns the Agreement without the required agreement,
- e) Becomes bankrupt or insolvent, or goes into liquidation, has receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, or
- f) Gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value as an inducement or reward,

- (i) For doing or forbearing to do any action in relation to the Agreement, or
 - (ii) for showing or forbearing to show favour or disfavour to any person in relation to the Agreement, or if any of the Developer's personnel (with the actual knowledge of the Developer) gives or offers to give (directly or indirectly) to any person any such inducement or rewards as described in this sub-paragraph (f). However, lawful inducement and reward to Developer's personnel shall not entitle termination.
- g) Fails to complete the Works by the Cut Off Dated stated in the Agreement Data or, if no such date is given, then a period of 182 days after the Time for Completion of Works,

If any of these events or circumstances, the Council may, upon giving 14 days' notice to the Developer, terminate the Agreement and expel the Developer from Site. However, in the case of sub-paragraph (e) or (f), the Council may by notice terminate the Agreement immediately.

The Developer shall then leave the Site and deliver any required goods, all Developer's documents, and other design documents made by or for him, to the Council's representative. However, the Developer shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of works.

After termination, the Council may complete the works and/or arrange for any other entities to do so. The Council and these entities may then use any Goods, Developer's Documents and other Design documents made by or on behalf of the Developer.

The Council shall then give notice that the Developer's Equipment and Temporary Works will be released to the Developer at or near the Site. The Developer shall promptly arrange their removal, at the risk and cost of the Developer. However, if by this time the Developer has failed to make any payment due to Council, these items may be sold by Council in order to recover these payments. Any balance of the Proceeds shall then be paid to the Developer.

15.3 Valuation at Date of Termination for Developer's Default

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As soon as practical after a notice of termination under sub-clause 15.2 [Termination for Developer's Default] has taken effect, the Council's representative shall proceed in accordance with sub-clause 3.5 [Determinations] to agree or determine the value of Works, Goods and Developer's Documents, and any other sums due to the Developer for work executed in accordance with the Agreement.

15.4 Payment after Termination for Developer Default

After a notice of termination under sub-clause 15.2 [Termination for Developer's Default] has taken effect, the Council may

- (a) Proceed in accordance with sub-clause 2.5 [Council's Claims],
- (b) Withhold further payments to the Developer until the costs of design, execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by Council, have been established, and/or
- (c) Recover from the Developer any losses and damages incurred by the Council and any extra costs of completing the Works, after allowing for any sum due to the Developer under sub-clause 15.3 [Valuation at date of Termination of Developer's Default]. After recovering any such losses, damages and extra costs, the Council shall pay any balance to the Developer.

2.16 SUSPENSION AND TERMINATION BY CONTRACTOR (Clause 16 of the General Conditions) is deleted in its entirety and replaced with the following:

16 Suspension and Termination by the Developer

16.1 Developer's Entitlement to Suspend Work

- 16.1.1 If the Council's representative fails to certify payments (if required) under the Project Team's operational financial guidelines, the Developer may, after giving not less than 7 days' notice to the Council, suspend work (or reduce the rate of work) unless and until the Developer has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.
- 16.1.2 The Developer's action shall not prejudice his entitlements to Projects costs approved and expended under this Agreement and to termination under sub-clause 16.2 [Termination by Developer].
- 16.1.3 If the Developer subsequently receives such Payment Certificate, evidence or payment (as described in the relevant sub-clause and in the

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above notice) before giving a notice of termination, the Developer shall resume normal working as soon as reasonably practicable.

16.1.4 If the Developer suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this sub-clause, the Developer shall give notice to the Council's representative and shall be entitled, subject to sub-clause 20.1 [Developer's Claim], and

- (a) an extension of time for any such delay, if completion is or will be delayed, under sub-clause 9.3 [Extension of Time for completion of Design-Build], and
- (b) payments of any such costs plus profit, which shall be included in the Agreement price.

16.1.5 After receiving this notice, Council's representative shall proceed in accordance with sub-clause 3.5 [Determinations] to agree or determine these matters

16.2 Termination by the Developer

16.2.1 The Developer shall be entitled to terminate the agreement if:

- (a) the Developer does not receive the reasonable evidence within 7 days after giving notice under sub-clause 16.1 [Developer's Entitlement to Suspend Work] in respect of failure to comply with sub-clause 2.4 [Council's Financial Arrangements].
- (b) The Council's representative fails, within 14 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,
- (c) If the Developer does not receive the amount due under an Interim Payment Certificate within 14 days after the expiry of the time within which payment is to be made (except for deductions in accordance with sub-clause 2.5 [Council's Claims],
- (d) The Council substantially fails to perform its obligations under the Agreement,
- (e) The Council fails to comply with sub-clause 1.6 [Agreement] or sub-clause 1.8 [Assignment],
- (f) a prolonged suspension, or
- (g) The Council becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any

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act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

16.2.2 In any of these events or circumstances, the Developer may, upon giving 14 days' notice to the Council, terminate the Agreement. However, in the case of sub-paragraph (e) or (f), the Developer may by notice terminate the Agreement immediately.

16.2.3 The Developer's election to terminate the Agreement shall not prejudice any other rights of the Developer, under the Agreement or otherwise.

16.3 Cessation of Work and Removal of the Developer's Equipment

16.3.1 After a notice of termination under sub-clause 16.2 [Termination by Developer], the Developer shall promptly;

- (a) Cease all further work, except for such work as may have been instructed by the Council's representative for the protection of life or property of for the safety of the Works or protection of the environment. For all such instructed work, the Developer shall be entitled to be paid cost plus profit and shall be relieved of further liabilities under sub-clauses 4.8 [Safety Procedures] and 4.18 [Protection of the Environment];
- (b) hand over Developer's Documents, Plant, Materials and other work, for which the Developer has received payment, and
- (c) remove all other Goods from the Site, except as necessary for safety, and leave the Site.

16.4 Payment on Termination

16.4.1 After a notice of termination under sub-clause 16.2 [Termination by Developer] has taken effect, the Council shall promptly;

- (a) return the Performance Security to the Developer,
- (b) pay the Developer in accordance with clause 21.3 of Section 1; and
- (c) pay to the Developer the amount of any loss of profit or other loss or damage sustained by the Developer as a result of this termination.

2.17 RISK AND RESPONSIBILITIES (Clause 17 of the General Conditions)

2.17.1 Sub-Clause 17.1 Indemnities is amended to read as follows:

The Developer shall indemnify and hold harmless the Council, the Council's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

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- (a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the design, execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, wilful act or breach of the Agreement by the Council, the Council's Personnel, or any of their respective agents, and
- (b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss:
 - (i) arises out of or in the course of or by reason of the design, execution and completion of the Works and the remedying of any defects, and
 - (ii) is attributable to any negligence, wilful act or breach of the Agreement by the Developer, the Developer's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

The Council shall indemnify and hold harmless the Developer, the Developer's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, wilful act or breach of the Agreement by the Council, the Council's Personnel, or any of their respective agents.

2.17.2 Sub-Clause 17.2 Developer's Care of the Works is amended to read as follows:

The Developer shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under Sub-Clause 101.1 [*Taking Over of the Works and Sections*] for the Works, when responsibility for the care of the Works shall pass to the Council. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any Section or part of the Works, responsibility for the care of the Section or part shall then pass to the Council.

After responsibility has according passed to the Council, the Developer shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

If any loss or damage happens to the Works, Goods or Developer's Documents during the period when the Developer is responsible for their care, the Developer

shall rectify the loss or damage at the Developer's risk and cost, so that the Works, Goods and Developer's Documents conform to the Agreement.

The Developer shall be liable for any loss or damage caused by any actions performed by the Developer after a Taking-Over Certificate has been issued. The Developer shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous event for which the Developer was liable.

2.17.3 Sub-Clause 17.3 "Council's Risks" is deleted in its entirety

2.17.4 Sub-Clause 17.4 "Consequences of Council's Risks" is deleted in its entirety

2.17.5 Sub-Clause 17.5 "Intellectual and Industrial Property Rights" is deleted in its entirety and replaced with the following

The Developer shall fully indemnify the Council against all claims and proceedings for on or account of infringement of any letters patent, registered design, copyright, trade mark or trade name or industrial property right protected at the Commencement Date in the Country, arising by reason of the Developer's design and/or the execution of the Works, but such indemnity shall not cover any use of the Works other than for the purpose indicated by or reasonably to be inferred from the Council's Requirements.

In the event of any claim being made or action brought against the Council arising out of the matters referred to in this Sub-Clause, the Developer shall be promptly notified thereof and may at his own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. The Council shall not, unless and until the Developer shall have failed to take over the negotiations or litigation, make any admission which might be prejudicial thereto. The conduct by the Developer of such negotiations or litigation shall be conditional upon the Developer having first given to the Council such reasonable security as shall from time to time be required by the Council to cover the amount ascertained or agreed or estimated, as the case may be, of any compensation, damages, expenses and costs for which the Council may become liable. The Council shall, at the request of the Developer, afford all available assistance for the purpose of contesting any such claim or action, and shall be repaid all reasonable expenses incurred in so doing.

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2.17.5 Sub-Clause 17.5 Limitation of Liability is amended to read as follows:

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any agreement or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Agreement, other than under and Sub-Clause 17.1[*Indemnities*].

2.18 INSURANCE (Clause 18 of the General Conditions)

Delete the Clause in its entirety and replace it with the following:

2.18.1 Sub-clause 18.1 General Requirements for Insurance remains to read:

In this Clause, "Insuring Party" means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant sub clause.

Wherever the Developer is the insuring Party, each insurance shall be effected with insurers and in the terms approved by the Council. These terms shall be consistent with any terms agreed by both parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this clause.

Wherever, the Council is the insuring party, each insurance shall be effected with insurers and in terms consistent with the details annexed to the Particular Conditions. If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in clause (i) the Developer shall act under the policy on behalf of these additional insured except that the Council shall act for the Council's personnel (ii) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer, and (iii) the issuing Party shall require that all additional joint insured to comply with the conditions stipulated in the policy.

Each policy insuring against the loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

The relevant issuing party shall, within the respective periods stated in the Agreement Data (calculated from the Commence Date), submit to the other party:

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- (a) evidence that the insurances described in this clause have been effected, and
- (b) copies of the policies for the insurances described in sub-clause 18.2 [Insurance for Works and Contractor's Equipment] and sub-clause 18.3 [Insurance against Injury to Person and Damage to Property].

When each premium is paid, the insuring party shall submit evidence of payment to the other party. Whenever evidence or policies are submitted, the insuring Party shall also give notice to the Council's representative.

Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurer's informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this clause.

Neither party shall make any material alteration to the terms of any insurance without the prior approval of the other party. If an insurer makes or attempts to make any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.

If the insuring Party fails to effect and keep in force any of the insurance it is required to effect and maintain under the Agreement, or fails to provide satisfactory evidence and copies of policies in accordance with this sub-clause, the other party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premium due. The insuring Party shall pay the amount of these premiums to the other Party, and the contract price shall be adjusted accordingly.

Nothing in this clause limits the obligations, liabilities, or responsibilities of the Developer or the Council, under the terms of the Agreement or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Developer and/or the Council in accordance with these obligations, liabilities, or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which is required to effect and maintain under the agreement, and the other Party neither approves the omissions nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.

Payments by one Party to the other Party shall be subject to sub-clause 2.5 [Council's Claims] or sub-clause 20.1 [Developer's Claims], as applicable.

2.18.2 Sub-clause 18.2 Insurance for Work and Developer's Equipment

"The Developer shall at his sole costs take out and maintain from the Signature Date until the issuance of the Performance Certificate the following insurances as a minimum, covering the Works, and shall add the Council as a co-insured on such policies.

The Developer shall, on or before the appointment of any contractor, submit to the Project Team evidence that the insurances for the Works, Plant, Material and contractor's Document and equipment have been effected and submit copies of the policies for the insurances described in this clause. When each premium is paid, the Developer shall submit evidence of such payment to the Project Team.

The Developer shall arrange for a Construction All Risks policy ("CAR policy") to be taken out, which shall cover the Works, Plant, Materials, documents and Contractor's equipment to the full estimated value thereof inclusive of escalation. The policy shall be in the joint names, and in favour, of the Council, the Developer and all Contractors ("the insured") engaged in the execution of the Work. The CAR policy shall cover the Insured against the full reinstatement costs and physical loss or damage to the Works Plant, Materials, documents and Contractor's equipment throughout the period from the Commencement Date to the issuance of the Performance Certificate.

The Developer shall arrange at its sole costs a Public Liability (Third Party) insurance policy against injury to Persons and Damage to Property, in the joint names of the Council, the Developer and all the Contractors.

It is recorded that the policies of insurance referred to above may contain certain uninsurable risks for which the Developer shall remain liable.

The Developer shall also at its sole costs arrange, maintain and provide proof for the duration of the Agreement, the following additional insurances:

- *insurance in respect of liability for any damages or compensation payable under the applicable Laws in respect or in consequence of accident or injury to any member of the Developer's Personnel;*

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- *Third party motor liability insurance;*
 - *Workmen's compensation insurance as required by the applicable Laws;*
 - *Product liability insurance in respect of the Works and any Materials and/or Plant incorporated therein.*
 - *Professional liability insurance.*
- a) The Developer shall be responsible for the costs of the insurance which the Developer is to arrange and shall bear the costs of arranging and maintaining such insurance.
 - b) The Developer shall, on or before the Signature Date, submit to the Council evidence that the insurances described in this Clause have been effected and copies of the policies for the insurances described in this Clause. When each premium is paid, the Developer shall submit evidence of such payment to the Council.
 - c) The Developer shall comply with the terms, conditions and exclusions stated in each of the insurance policies, failing which the Developer shall be responsible for all expenses and losses incurred by the Council as a result thereof. Further, the Developer shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.
 - d) Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration the Party first notified by the insurer shall promptly give notice to the other Party.
 - e) If the Developer fails to effect and keep in force any of the insurances it is required to effect and maintain under this Clause, or fails to provide satisfactory evidence and copies of policies in accordance with this Clause, the Council may (in its sole and absolute discretion and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The Developer shall then indemnify and reimburse the Council in the amount of the aforesaid premiums.
 - f) Nothing in this Clause limits the obligations, liabilities or responsibilities of the Developer or the Council under the terms of the Agreement or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Developer and/or the Council in accordance with the aforesaid obligations, liabilities or responsibilities. However, if the Developer fails to effect and to keep in force an insurance which is available and which it is required to effect and

maintain under this Clause, and the Council neither approves the omission nor effects insurance for the coverage relevant to this default, any monies which should have been recoverable under this insurance shall be paid by the Developer.

- g) Payments by one Party to the other Party shall be subject to Sub-Clause 2.5 [*Council's Claims*] or Sub-Clause 201.1 [*Developer's Claims*] respectively.

2.18.3 Sub-clause 18.3 Insurance against injury to Persons and Damage to Property is amended to read:

The developer shall arrange a Public Liability Insurance Policy in the joint names of the Council, the Developer and all contractors and subcontractors of the developer involved in the construction of the Works as well as operations of the Works.

The issuing Party shall insure against each Party's liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under sub-clause 18.2 [*Insurance for Works and Developer's Equipment*] or to any person (except persons insured under sub-clause [*Insurance for Developer's Personnel*]), which may arise out of the Developer's performance Agreement and occurring before the issue of the Performance Certificate.

This insurance shall be for a limit per occurrence of not less than the amount stated in the Agreement Data, with no limit on the number of occurrences. If an amount is not stated in the Agreement Data, this sub-clause shall not apply. Unless otherwise stated in the Particular Conditions, the insurances specified in this sub-clause:

- (a) Shall be effected and maintained by the Developer as insuring Party,
- (b) Shall be in the joint names of the Parties,
- (c) Shall be extended to cover liability for all loss and damage to the Council's property (except things insured under sub-clause 18.2) arising out of the Developer's performance of the Agreement, and
- (d) May however exclude liability to the extent that it arises from:
 - i) The Council's right to have the Permanent Works executed on, over, under, in or through any land, and to occupy this land for the Permanent Works,
 - ii) Damage which is an unavoidable result of the Developer's obligations to execute the Permanent Works and remedy any defects,

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2.18.4 Sub-clause 18.4 Insurance Developer's Personnel is to be deleted in its entirety and be replaced with the following:

The Developer shall, on or before the appointment of a contractor, submit to the Project Team evidence that the insurances for the Contractor's personnel have been effected and submit copies of the policies for the insurance described in this clause to the Project Team. When each premium is paid, the Developer shall submit evidence of such payment to the Project Team.

2.19 FORCE MAJEURE (Clause 19 in the General Conditions)

This clause remains as is.

2.20 CLAIMS DISPUTES AND ARBITRATION (CLAUSE 20 in the General Conditions)

2.20.1 Sub-clause 20.1 Developer's Claims is amended to read as follows:

If the Developer considers himself to be entitled to any extension of the Time for Completion payment, under any Clause of these Conditions or otherwise in connection with the Agreement, the Developer shall give notice to the Council's Representative, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Developer became aware, or should have become aware, of the event or circumstance.

If the Developer fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended except as agreed between the Developer shall not be entitled to any payment, and the Council shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Developer shall also submit any other notices which are required by the Agreement, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Developer shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Council's Representative. Without admitting the Council's liability, the Council's

Representative may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Developer to keep further contemporary records.

The Developer shall permit the Council's Representative to keep further contemporary records. The Developer shall permit the Council's Representative to inspect all these records, and shall (if instructed) submit copies to the Council's Representative.

Within 28 days after the Developer became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Developer and approved by the Council's Representative, the Developer shall send to the Council's Representative a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) This fully detailed claim shall be considered as interim;
- (b) The Developer shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Council's Representative may reasonably require; and
- (c) The Developer shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Developer and approved by the Council's Representative.

Within 28 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Council's Representative and approved by the Developer, the Council's Representative shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

The Developer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [*Extension of time for Completion*].

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- 2.20.2 Insert a new clause 20.2 and renumber clause 20.2 to 20.3 and the new clause 20.2 to read as follows:

20.2 AMICABLE SETTLEMENT OF DISPUTES

20.2.1 Intent to resolve claims or disputes expeditiously

The Parties herewith record their intent to have any claim or dispute under sub-clause 20.1 that may arise in respect of any matter in terms of this agreement or the interpretation of this Agreement or in the interpretation of this agreement resolved expeditiously. In particular, disputes pertaining to the Parties' on-going relationship shall be dealt with by the Parties constructively and with the aim of settling such disputes expeditiously, as provided below.

20.2.2 Settlement procedure

Any dispute by any of the Parties, shall be made in writing by the aggrieved Party and be addressed to the representative of the other Party (herein referred to as the "responding party").

- (a) The Party against whom the claim or dispute is made (the "responding Party") shall have the right and the duty to respond thereto within 7 (seven) Business Days of the receipt of the claim or dispute. Such response may either be in person or in writing, at the discretion of the representative.
- (b) The respective representative shall deal with the claim or dispute and actively pursue the amicable settlement thereof between the complainant and the responding party and engage each other by correspondence, as may be appropriate under the circumstances. The representatives shall not elevate the claim or dispute to the next level until the claim or dispute is declared in writing as unresolved by the representatives. The claim or dispute shall be regarded as unresolved by the representatives where they have either concluded that the resolution of the claim or dispute at their level is not likely to occur, until they have agreed in writing that the claim or dispute is unresolved or until one of the Parties has failed actively to partake or give a response to the opposing Party within 7 (seven) Business Days.
- (c) If the claim or dispute is unresolved by the representatives, they shall elevate the claim or dispute to the member(s) of the Parties' respective Executive(s) or Chief Executive Officer(s) who, from time to time, are tasked to deal with matters of such a nature (aka "top management").

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(d) The top management shall actively engage each other by correspondence, the exchange of relevant information and data, meetings and the like, as may be appropriate under the circumstance, with the aim to resolving the claim or dispute within a further 7 (seven) Business Days. In circumstances where the top management either fail to resolve the claim or dispute within the set time or, jointly conclude that the claim or dispute is not likely to be resolved, agree in writing that the claim or dispute is unresolved or where the other Party's top management fails to actively partake or give a response to the opposing party within a set time, the claim or dispute shall be regarded as unresolved by the top management and shall constitute a claim or dispute which may be referred for adjudication in terms of the remainder of clause 20.3.

20.2.3 Sub-clause 20.2 "Appointment of Dispute Adjudication Board (DAB)" is renumbered to 20.3 and amended to read as follows:

20.3 Appointment of Dispute Adjudication Board (DAB)

"Claims or disputes not resolved by amicable settlement under sub-clause 20.2 shall be adjudicated by a DAB in accordance with sub-clause 20.5. The Parties shall jointly appoint either a sole member DAB as stated in the Agreement Data and within the period stated in the Agreement Data.

The Parties shall make use of the nominating authority stated in the Agreement Data and within the period stated in the Agreement Data, which the Council shall accordingly request to nominate an adjudicator within 7 (seven) days of the letter of acceptance. Both Parties shall accept the nominated adjudicator, subject to such an adjudicator being impartial. Such adjudicator shall have indicated, or shall indicate on request by either Party to do so, in writing, to be impartial, i.e. that he is at the time of nomination not engaged in any activity as consultant or agent (e.g. as named personnel on a project) or otherwise on behalf of Council or Developer. Should the nominating authority require a nomination fee, each Party shall be responsible for paying half (50%) of such nomination fee. The procedural rules of the nominating authority shall apply during the nomination process, which shall lead to a joint appointment of the single DAB, upon which such procedural rules shall become void.

20.2.4 Sub-clause 20.3 "Failure to Agree on Dispute Adjudication Board" is renumbered to 20.4 and amended to read as follows:

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20.4 Failure to Agree Dispute Adjudication Board

If the Parties fail to accept the nominated DAB or on the replacement with 7 (seven) Business Days or if the DAB becomes unable to act as a result of death, disability, resignation or termination of an appointment, the appointing authority may appoint an alternative DAB, which appointment shall be final and conclusive.

20.2.5 Sub-clause 20.4 "Obtaining Dispute Adjudication Board's Decision" is renumbered to 20.5 and amended to read as follows:

20.5 Obtaining Dispute Adjudication Board's Decision

If a claim or dispute (of any kind whatsoever) arise between the Parties in connection with, or arising out of the Agreement, or the execution of the Works, including any dispute as to the certificate, determination, instruction, opinion or valuation of the Council's representative, then after a DAB has been appointed pursuant to sub-clauses 20.3 [Appointment of DAB] and 20.4 [Failure to Agree on DAB] either Party may refer the dispute in writing to the DAB for its decision, with copies to the other Party and the Council's representative. Such reference shall state that it is given under this sub-clause.

Both Parties shall promptly make available to the DAB all information, access to the Site, and appropriate facilities, as the DAB may require for the purposes of making a decision on the claim or dispute. The DAB shall be deemed to be not acting as an arbitrator(s).

Within 30 (thirty) days after receiving such reference, or the advanced payment referred to in clause 6 of the Agreement (General Conditions of the Dispute Adjudication Agreement, whichever date is later, or within such other period as may be proposed by the DAB and approved by both Parties, the DAB shall give its decision, which shall be reasoned and shall state that it is given under this sub-clause. However, if neither the Parties paid in full the invoices submitted to each member pursuant, the DAB shall not be obliged to give its decision until such invoices are paid in full. The decision of the DAB shall be binding on both Parties, who shall promptly give effect to it unless it shall be revised in an arbitral award as described below. Unless the agreement has already been abandoned, repudiated or terminated, the Developer shall continue to proceed with the Works in accordance with the Agreement.

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If either Party is dissatisfied with the DAB's decision, then either Party may, within 7 (seven) days after receiving the decision, give notice to the other Party of its dissatisfaction. If the DAB fails to give its decision within the period of 30 (thirty) days (or as otherwise approved) after receiving such reference with the accompanying documentation and information or such payment, then either party may, after 7 (seven) days after this period has expired, give notice to the other Party of its dissatisfaction.

In either event, this notice of dissatisfaction shall state that it is given under this sub-clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction, except as stated in sub-clause 20.7 [Failure to Comply with DAB Decision] and sub-clause 20.8 [Expiry of DAB Appointment], neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this sub-clause.

20.2.6 Sub-Clause 20.5 Amicable Settlement is deleted in its entirety

20.2.7 Sub-Clause 20.6 Arbitration is deleted in its entirety and replaced with the following:

"20.6.1 Arbitration

Unless settled amicably, any claim or dispute which arises between the Parties out of, or in connection with the Agreement shall be settled by a single arbitrator under the Rules of the Arbitration Foundation of Southern Africa ("AFSA") on the following basis:

20.6.1.1 The Parties shall use their best endeavors to ensure that the arbitration is held and concluded and a decision handed down within 30 (thirty) days after the arbitration has been demanded.

20.6.1.2 The arbitrator shall be a person nominated by the Parties or, failing agreement between them within 7 (seven) days after the arbitration has been demanded, shall be a legal practitioner of at least 10 (ten) years' experience appointed by Law Society of Namibia in respect of any interpretation or legal aspects or be a professional engineer of at least 10 (ten) years' experience appointed by EPA in respect of any dispute relating to engineering works under this agreement.

20.6.2 The arbitrator shall have full and free discretion with regard to the proceedings.

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written notice, to require the other of them to attend an early warning meeting in respect of any Early Warning Event (whether or not notified by the Developer). The purpose of the early warning meeting is to raise and discuss Early Warning Events in a cooperative manner and to jointly make and consider proposals and seek solutions to mitigate the potential adverse effects thereof.

The early warning notice and meetings contemplated in this Sub-Clause 21 are intended as a risk management tool and open discussion is of paramount importance. To this end:

- a) unless otherwise expressly stated in the notice, notification in terms of this Sub-Clause 21 shall not constitute notification of a claim for extension of time or additional cost pursuant to Clause 20 [*Claims, Disputes and Arbitration*];
- b) unless otherwise specifically agreed in writing by the Council and the Developer from time to time nothing raised or agreed at any early warning meeting shall limit or derogate from the rights and obligations of the Parties under the Agreement.

If the Developer does not deliver an early warning notice within the time allowed the Contractor shall not be entitled to claim any extension to the Time for Completion in connection with the work, activity or other matter in question."

2.5 Add sub-clause 23 Industrial Relations

- "23.1 The Developer shall be responsible for and shall include all costs in connection with the recruitment, employment and development of suitable personnel required to comply with the Developer's obligations in terms of the Agreement as Project Costs, and shall be solely responsible for their conduct in the execution of their duties.
- 23.2 The Developer shall ensure that it and its employees, representatives, Contractors and their employees observe sound employment and industrial relations policies and prevent industrial action.
- 23.3 The Developer shall liaise with the Council on a regular basis to discuss matters of mutual interest which shall have or could potentially have an impact on industrial relations, in order to agree upon contingency plans to counter possible or actual industrial action.

- 23.4 The Developer shall furnish the Council with all relevant information the Council requests, regarding the composition of its workforce, trade union activities and all matters which in the opinion of the Council are relevant to the avoidance of industrial action, within 7 days of the request by the Council.
- 23.5 The Developer shall notify the Council within a reasonable time of any anticipated industrial action.

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SECTION 3**SPECIFIC PARTICULAR CONDITIONS OF AGREEMENT****1. DEFINITIONS**

Words and phrases used in the Specific Particular Conditions shall have the same meaning as are assigned to them in Section 2.

2. SCOPE OF WORK: SPECIFIC PARTICULAR CONDITIONS**2.1. PLANNING AND TOWNSHIP ESTABLISHMENT**

- 2.1.1. The Parties note that Khomasdal Erf 6219 to Erf 6250 has been proclaimed as an approved township. The Developer has to undertake township development on the Property, and has (to the extent required) obtain from the Minister of Urban and Rural Development the necessary and desirability certificates and approvals for the establishment of a township called Khomasdal Erf 6219 to Erf 6250 (hereinafter referred to as "the Township Development"), a copy of which approvals and the accompanying approved General Plans/ layout plans are to be attached hereto as **Schedule B** to be numbered in sequence, respectively.
- 2.1.2. It is agreed by the Parties that:
- 2.1.2.1. All erven in each of the respective extensions and zoned public open space and for municipal purposes must remain in the ownership of the Council free of consideration and charges, upon opening of the respective Township Register and registration of the General Plan of such particular extension or section in which such erven are situated and submit the Title Deeds to the Council as soon as these are availed by the Registrar of Deeds.
- 2.1.2.2. The Remainders of each of the respective extensions (streets), once the Township Register is opened and the General Plan registered in respect thereof to Council free of consideration and charges and submit the Title Deeds in the name of Council to the Council as soon as these are availed by the Registrar of Deeds.
- 2.1.2.3. All General Plans in respect of the proposed Extensions or any such amended General Plans shall, once approved by the Surveyor General be part of this Memorandum of Agreement as and when they become available.
- 2.1.2.4. All extensions and any amendments to the layout shall be subject to the Windhoek Town Planning Scheme.
- 2.1.2.6 The zoning of the subdivided erven in a particular section or extension shall as far as possible remain as per the approved layout or General Plan of the particular

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extension of the Property (as the case may be) unless amended as hereinafter provided for.

2.2 TITLE DEED CONDITIONS

- 2.2.1 The Developer hereby agrees that the existing conditions of establishment registered against Khomasdal Extension 4 must be adhered to as provided for in the Government Gazette No. dated
- 2.2.2 The Developer hereby agrees that any Servitudes to protect any Permanent Works consisting of public services on the Property or its subdivisions and as indicated on the approved General Plans or designs must be surveyed and be registered in favour of the Council.
- 2.2.3 The Developer undertakes to provide the Permanent Works as per Council Resolution 290/12/2016 attached hereto as Annexure 1 which Council Resolution shall be an integral part of this Agreement.
- 2.2.4 The Developer will provide Township Development in sections as approved by the Council and Permanent Works will only be taken over by Council once completed and a taking over certificate has been issued for the respective approved section and Works.

2.3 LAND SURVEYING AND SETTING OUT OF THE WORKS

- 2.3.1 The Developer shall be entitled, in its sole discretion and at any time prior to the registration of the General Plan of a particular section or extension of the Development to change, amend or to vary such plan or the layout thereof in order to provide for a more acceptable user and environmentally friendly layout provided however any such change, amendment or variation shall at all times conform with accepted Town Planning standards and criteria and be approved by the Council.
- 2.3.2 Should any changes be made to any such layout or preliminary General Plan, the Developer shall notify the Council's Representative in writing of such changes for approval. The setting out of the Works must be done as set out in clause 4.7 of the general conditions in Section 2.

2.4 ENVIRONMENTAL IMPACT ASSESSMENT AND ENVIRONMENTAL MANAGEMENT PLAN

- 2.4.1 The prescribed requirements in the Environmental Management Act, 2007, shall apply in cases where an Environmental Clearance Permit was required.
- 2.4.2 The environmental management plan should be managed by a qualified environmental officer appointed by the contractor, whose duties will include the design of a health and safety plan.

2.5 CONTOUR PLANS

The Developer must note that contours on erf plans available from the Strategic Executive: Urban Planning and Property Management's office of the Council cannot be guaranteed due to accuracy tolerances in assembling these plans.

2.6 CESSION AND ASSIGNMENT

- 2.6.1 Subject to the provisions of this Agreement, the Developer notes that the Developer shall not be entitled to cede, assign or in any other manner make over its rights, title and interest in this Agreement or any of its liabilities, responsibilities, duties or obligations hereunder, to any other third party, without the prior written consent of the Council, which consent shall not be unreasonably withheld: Provided that the Developer or its successor-in-title or successors-in-name or in shareholding or membership or its assigns (whichever may be applicable), duly complied or guaranteed compliance with all conditions under this Agreement as well as with the conditions to be registered notarially in favour of the Council.

2.7 PRE-CONDITIONS

- 2.7.1 It is a condition of this Agreement that the Parties and/or its approved successors-in-title and/or successor-in-name and/or successor shareholders and/or successor member(s) and/or its assigns, whichever are applicable, shall not be entitled to transfer any individual erven within any extension or section of the Development to a third party transferee or to any subsequent Successor/s in Title or to register a sectional title scheme without the prior consent of the Council thereto having been had and been obtained.
- 2.7.2 This permission under clause 2.7.1 will not be granted by the Council until such time as Council has issued a Take-over Certificate to the Developer to the effect that the Permanent Works required for such particular section or extension and as set out under this Agreement have been completed by the Developer in accordance with the approved drawings and specifications to the satisfaction of the Council.

2.7.3 Subject to the provisions of clause 2.7.1, where circumstances, which are reasonably beyond the control of the Developer and/or its approved successors-in-title and/or successor-in-name and/or successor shareholders and/or successor member(s) and/or its assigns, whichever are applicable, prevent or delay the Developer and/or its approved successors-in-title and/or successor-in-name and/or successor shareholders and/or successor member(s) and/or its assigns, whichever are applicable from materially completing the Permanent Works in respect of a particular section or extension within the development period referred to in the Programme the parties shall in good faith negotiate a reasonable extension of the time period within which the Developer and/or its approved successors-in-title and/or successor-in-name and/or successor shareholders and/or successor member(s) and/or its assigns, whichever are applicable, must complete the development of such Permanent Works.

2.8 STREETS PUBLIC PLACES AND MUNICIPAL LAND

2.8.1 The Parties agree to exclude from the Consideration the value of land:

2.8.1.1 zoned 'institutional', 'municipal' and 'public open spaces' usable for parks and landfill sites (excluding water courses and land steeper than a slope of 1 in 4).

2.8.1.2 subdivided and used for roads, bridges and other services external to the approved layout and which will in the future serve a greater community.

2.8.2 The Parties agree that Permanent Works to be provided according to specifications and standards as set out in Sections 2 to 6.

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SECTION 4**PART A: COUNCIL'S STANDARD TECHNICAL REQUIREMENTS****1. DEFINITIONS**

Words and phrases used in the Standard Technical Requirement shall have the same meaning as are assigned to them in Section 2.

2. APPOINTMENT OF THE ENGINEER**2.1. ACEN**

The Developer shall appoint a Consulting Firm registered with ACEN as defined herein to provide an Engineer for the Development which appointment shall be based on the following:

2.1.1. The ACEN Client / Consultant Model Form 1, 2 and 3 Agreement, provided that a suitably qualified Resident Engineer is available to represent the Engineer on Site on a fulltime basis. Should a Resident Engineer as defined above not be available on Site fulltime, the appointment between the Developer and the Engineer shall be in terms of the latest FIDIC Client/Consultant Service Agreement;

2.1.2. The provisions contained herein;

2.1.3. The provisions of the ACEN Model Form 1, 2 and 3 Sections pertaining to "Normal Services" and "Fees" and any other Section that may become relevant in the execution of the Consultant's Services, provided that the conditions specified in are met.

2.2. FEES

The Developer will be responsible for all the fees of the Consulting Firm and Contractors.

2.3. COUNCIL'S REPRESENTATIVE

Prior to the appointment of the Engineer, the Developer shall request the approval of the Council's Representative, which approval shall not be withheld without a fair reason.

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2.4. ENGINEER

The Consultant (the Engineer) shall be responsible for the execution of all Sections of the Development, and shall be required to act as Counterpart to the Council's Representative, to whom he shall report as defined herein.

2.5. PROFESSIONAL INDEMNITY INSURANCE

The Engineer shall be a registered professional or incorporated Engineer registered with the Engineering Council of Namibia, and have valid Professional Indemnity Insurance cover (insured value: as per Section 6);

2.6. QUALITY ASSURANCE

The Engineer shall note and accommodate the "Quality Assurance Procedures on Infrastructure Development Projects" as attached in Appendix 2 and performed by officials from Council under the direction of Council's Representative.

3. PLANNING STAGE

Prior to completion of the design phase, the duly appointed Engineer of the Developer shall arrange a meeting with the Council's Representative and the Developer, to explain and obtain agreement on the proposed designs of the Permanent works, electricity, water and sewer services and roads and stormwater structures. Minutes of such meeting shall be prepared by the Engineer, and submitted within 7 days of such meeting to the other Parties.

4. DESIGN STAGE

In addition to clause 5 of the General and Particular Conditions contained in Section 2, the Developer shall submit Final Designs of all Permanent Works for approval to the Council's Representative prior to the commencement of construction.

4.1 Design Conditions

The Developer shall design of all civil work (including detailed geometric and pavement design of and streets) in compliance with the following conditions:

4.1.1 The Council's requirements as per Sections 2 to 6. The Council's approvals of the said designs shall be obtained in writing before any work is started, a copy of which approval shall be submitted to the Council's Representative.

4.1.2 All provisions and requirements contained herein.

- 4.1.3 The provisions of the relevant ACEN Client / Consultant Model 1, 2 and 3 Agreement.
- 4.1.4. The Standard Municipal Design Criteria, as contained in this Agreement.
- 4.1.5. The Design shall be done on a CAD system in line with the Council's current CAD policy (current AutoCAD 2008, dwg file format, no dxf files will be accepted) and the information must be made available to the Council, electronically and on hard-copy;

4.2. Pre-Construction Stage

- 4.2.1. Prior to starting with the construction phase, the duly appointed Engineer of the Developer must arrange a further meeting with the Council's Representative, to discuss the Programme submitted under clause 8 of the General and Particular Conditions in Section 2 and the proposed quality management system to be used during testing under clauses 7 and 10 of the General and Particular Conditions (allowance to be made for the Council to do its own quality checks and testing, apart from those carried out by the said Engineer but Council shall not be responsible for the quality of workmanship delivered under the construction contract, which responsibility shall rest with the Developer and the said Engineer).
- 4.2.2. Should workmanship standards prove to be inadequate during such quality checks, all consequent checks performed by Council shall be at the cost of the Developer. Minutes of the said meeting shall be prepared by the Engineer of the Developer, and submitted within 7 days of such meeting to the Parties.

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4.3. Execution and Construction Stage

- 4.3.1. During the construction phase, the Council's representative and any other delegated staff member of COUNCIL who may be deemed necessary to attend site meetings shall be invited to attend site meetings between the Developer's Engineer and the Developer's Contractor. Minutes of such meetings shall be prepared by the said Engineer, and submitted within 7 days of such meeting to all the other Parties. In addition, the Council's representative shall be entitled to request any tests results specified in the relevant SANS specification from the Engineer, which shall be submitted within seven days of the request. The Council's Representative shall further be permitted full access to the site to perform inspections at any time during the Construction Phase together with relevant staff members from Council as may be required.
- 4.3.2. The Engineer of the Developer shall supervise the construction of all permanent works and shall ensure that the construction is done according to the approved construction drawings and the laid down rules, regulations and standards of Council. Should the Engineer, in the opinion of the Council's Representative, not adhere to these requirements, Council shall have the right to submit a notice with reasonable objections to have the Engineer replaced with a more competent Engineer.
- 4.3.3. The Developer shall undertake construction of all civil work in accordance with the requirements of this Agreement as well as;
- 4.3.3.1. the relevant sections of the Standard Specifications: SANS1200; and
 - 4.3.3.2. the requirements of the Council; and
 - 4.3.3.3. the requirements stated in the Project Specifications as drafted by the duly appointed Engineer of the Developer as accepted in writing by the Council's Representative; and
 - 4.3.3.4. the provisions of the relevant General and Particular FIDIC conditions of Agreement as per Section 2, and
 - 4.3.3.5. the directives of the duly appointed Engineer of the Developer.

- 4.3.4. Upon completion of construction and prior to the issue of the take-over certificate as per clause 5.6 of the General and Particular Conditions in Section 2, the Engineer of the Developer shall submit to Council a complete set of as-built drawings (current AutoCAD 2008, dwg file format, no dxf files will be accepted.) electronically and on hard-copy which shall be submitted to the Council's Representative. This information shall be submitted before the final takeover of the services and the start of the 12 month retention period.
- 4.4. Completion (The taking over of Completed Permanent Works by the Council)**
- 4.4.1. Upon completion, the Engineer of the Developer shall certify that the services have been constructed according to the approved drawings and specifications, have been tested and are in accordance with all provisions and requirements hereof and apply for take over as set out in clause 10 of the General and Particular Conditions in Section 2.
- 4.4.2. The Engineer of the Developer shall be responsible for the submission of the as-built drawings to the Council.
- 4.4.3. The Take-Over procedure shall be as provided in clause 10 of the General and Particular Conditions of Section 2 after a completion certificate has been issued by the relevant departmental heads and following that a take-over certificate has been issued by Council's representative.
- 4.4.4. A refundable retention amount of 5% of the total value of the works in respect of a particular section or extension including Preliminary and General items and VAT, as determined and certified by the Engineer of the Developer must be paid by the Developer to the Council or the payment of such amount shall be secured by way of a Demand Guarantee, which will be used in respect of a default by the Developer under this Agreement or if the Developer fails to do any maintenance repairs. This Guarantee shall be governed by the law of the Republic of Namibia, and shall be subject to the Uniform Rules for Demand Guarantees, published as 758 by the International Chamber of Commerce. This retention amount together with any interest (define interest) accrued thereon, minus any monies expended in line with this clause will be paid back after the 1 (one) year retention (defects liability) period.
- 4.4.5. During the defects liability period the Developer shall only be allowed to access and to repair or install further permanent works taken over by the Council with the prior written consent of the Council and then only against payment of deposits or provision of security as required by Council. In such event the conditions of this Agreement relating

to takeover of works and maintenance and compliance defects liability period shall apply.

4.5. Defects Liability Period

- 4.5.1. The Developer shall be responsible for a defects liability period of 12 (twelve) months on all Permanent Works after completion and take-over of the works by the Council. The Developer or its Engineer is responsible to arrange the site inspection for the take over and for the start of the defects liability period. The Developer shall remain responsible for the maintenance of the permanent works and / or the remedy of defects for such period.
- 4.5.2. The defects liability period for a section or extension of the development will start and end for the entire section or extension and not for portions thereof only unless otherwise agreed upon.

4.6. Building Plans or Sectional Title Plans

- 4.6.1. The Developer must note that no building plans or Sectional Title Plans in respect of buildings to be constructed within a particular section or extension will be approved until the Developer's Engineer has issued a Take Over Certificate to the Civil Engineering Contractor(s) as all permanent works constructed by the Developer within this particular section or extension remains the responsibility of the Civil Engineering Contractor(s).
- 4.6.2. The Developer must further note that no building plans in respect of a particular erf within a section or extension will be approved unless the following has been provided:
- 4.6.2.1. access to a public street constructed and surfaced in accordance with Council standards;
- 4.6.2.2. a water connection or access to a water supply point or supply pipeline which has been approved by the Council in terms of the provisions hereof for use by that erf;
- 4.6.2.3. a sewer connection or access to a sewage disposal system or sewer which has been approved by the Council in terms of the provisions hereof for use by that erf;
- 4.6.2.4. unless the beacons have been replaced according to the co-ordinates of the General Plan approved by the Surveyor General of that particular section or extension except with the prior written consent of Council.

- 4.6.3. The Developer shall install Fire Water supply points as stipulated in SANS 10090.
- 4.6.4. The Developer must note that building line relaxation will only be considered once the street design plans are approved.

5. DESIGN CRITERIA, MATERIALS AND CONSTRUCTION STANDARDS FOR WATER AND SEWER RETICULATION

GENERAL

- 5.1.1 The Developer hereby notes and undertakes to comply with the Design criteria (unless otherwise specified herein) which are to be in accordance with the "The Guidelines for human settlement, planning and design" as published by the Council of Scientific and Industrial Research (CSIR) and is available on-line at http://www.csir.co.za/Built_environment/RedBook. (This document is hereinafter referred to as the "Red Book") and in addition be in accordance with the "Guidelines for the Provision of Engineering Services for Residential Townships" as published by the Department of Community Development in 1983. (This document is hereinafter referred to as the "Blue Book").
- 5.1.2 The Developer hereby notes that Materials and construction standards (unless otherwise specified herein) must comply with the latest edition of SANS 1200.
- 5.1.3 The Developer hereby notes that the information contained herein applies to normal developments and is of a general nature. Increased and/or reduced standards might be applicable where appropriate.
- 5.1.4 The Developer hereby notes that the following Council of Windhoek Standard Drawings shall be used for designs and during construction:
- Typical Details of Manholes, Service Connections, Markers and Rodding Eyes -- Drawing. No. SDG 52
 - Typical Details of Thrust Blocks, Valve Chambers, Trench Excavation, Valves and Hydrants – Drawing. No. SDG 53

6. BACKFILLING OF TRENCHES

6.1 Bedding

The Developer hereby notes that sand bedding shall be in accordance with SANS 1200 LB.

6.2 Initial Backfill

The Developer hereby notes that initial backfill (selected granular material used for bedding) shall consist of clean sand or gravel material passing through a 19 mm screen, hand compacted around and above the pipes to the levels shown on the contract drawings. Road-crossings, where so instructed in writing by the Engineer, must be compacted by the addition of water, i.e. the compaction must be moist. All initial backfill shall be in accordance with SANS 1200 LB.

6.3 Normal Backfill

The Developer hereby notes that Normal backfill (selected fill) shall consist of selected excavated material with no stones larger than 30mm. Normal backfill shall be placed in 300 mm thick layers and compacted with a vibrating plate type compactor. SANS 1200L is applicable in this case.

6.4 Concrete Surround (Encasing)

The Developer hereby notes that Class 20 concrete shall be placed as pipe encasement as and when required in places indicated on the drawings or alternatively as directed by the Engineer.

7. SEWERAGE

7.1 Investigations

The Developer hereby notes that Preliminary examination of existing systems is required for the purpose of determining subdivision layouts. This must include investigation of existing and future flows as well as pipe and pump station conditions and capacities.

7.2 Hydraulic Design

The Developer hereby notes that Flow charts which are based on unrealistically low friction factors such as those provided by some PVC pipe manufacturers may not be used in design. Flow formulae and coefficients as listed in the Blue Book are to be adopted.

Minimum gradients shall be as follows:

DIAMETER (mm)	NO OF DWELLINGS	MINIMUM GRADIENT
110	1 (house connection)/erf	1:60
110	1 to 100	1:105
160	101 to 400	1:160
200	401 to 700	1:200
250	701 to 1100	1:250
300	1101 to 2300	1:300
350		1:350
400		1:400
450		1:450

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DIAMETER (mm)	NO OF DWELLINGS	MINIMUM GRADIENT
500		1:500
550		1:550
600		1:600

7.3 Pipes

The Developer hereby notes that Minimum cover is to be determined according to available falls, strength of pipe and loading. The depth of house connections shall generally be 1.0 m (invert level to ground level) but this must be increased to allow for slope and size of plots where necessary.

The following types of pipes are acceptable (for township gravity reticulation up to and including 250 mm diameter):

Vitreous clay (SANS 559 Class 2)

uPVC (SANS 791 Heavy Duty)

Wherever possible materials used in extensions to existing systems must match those already installed. Structured Wall uPVC (SANS 1601 Class 400) pipes are not acceptable at present due to suspected vulnerability of walls to erosion by jet cleaning equipment in situations where sand has entered system.

Minimum pipe internal diameter 100 mm (100 mm for individual house connections). For uPVC pipes, 110mm diameter pipe size minimum.

Anchor blocks must be provided for each pipe for slopes exceeding 1:10.

All pipes and fittings must comply with the relevant SABS specifications.

The Corflo pipes SHALL NOT be used.

7.4 Rigid Pipes with Flexible Joints

The Developer hereby notes that Pipes in this category include clay pipes, asbestos cement pipes, concrete pipes (*), cast-iron (*) and similar pipes. The pipes should have factory applied moulded compression plastic joints, field applied couplings and similar jointing arrangements. All such pipes and fittings shall be to the approval of the COW and such material and jointing shall comply with the latest SANS specifications and the Contract Drawings. Pipes marked (*) shall have inner protective coatings.

7.5 Flexible Pipes

The Developer hereby notes that Pipes in this category include uPVC pipes and HDPE pipes. uPVC pipes and fittings shall be fitted with spigot and socket rubber ring joints and shall comply with the relevant requirements of SANS 966, SANS 791 and SANS 1601. Polyethylene (HDPE) pipes and fittings shall comply with the relevant requirements of SANS 533. **Corflo pipes SHALL NOT be used.**

8. MANHOLES

- a. The Developer hereby notes that all pipes and fittings must comply with the relevant SANS specifications.
- b. Manhole to manhole maximum length 80 m.
- c. Manholes in roads are to be located in the middle of the lanes. Manholes located elsewhere are to be accessible by maintenance vehicles wherever possible.
- d. Only in-situ concrete manholes according to standard drawings (SDG52) will be allowed subject to further requirements as follows:
- e. Maximum depth 4 m (deeper to be specially motivated).
- f. In the case of large diameter (over 200mm) pipelines manhole covers are to be located directly above point of intersection of main pipe runs (for bucket cleaning).
- g. Benching to be vertical up to full height of pipe then 1:6 to wall of manhole. Benching to consist of Grade 20 mass concrete with no voids or sand fill.
- h. External back drops are favoured. The base of backdrops must be cast monolithically with the manhole base slab. Internal backdrops may only be used in the case of new connections to existing deep trunk sewers. Details are to comply with those indicated on the attached standard drawing.

8.1 Manhole Covers and Frames

The Developer hereby notes that all manhole covers shall be of type SECUREX Y 560 C or SECUREX Z 600 D in roads, made from ductile iron with secure non removable hinges. Alternatively, manhole covers and frames conforming in all respects to SANS 558 may be used. Approval by Council of Windhoek to be obtained first. (NB: All hinges shall face upstream when manholes are constructed in riverbeds).

8.2 Step Irons

The Developer hereby notes that Galvanised malleable cast iron step irons shall conform in all respects to SANS 1247, each having a weight of not less than 1.59 kg. After installation, the step irons are to be painted with two coats of epoxy tar paint. Step irons to be provided where manhole depths exceed 1.2m.

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8.3 Manhole Channelling

The Developer hereby notes that only vitrified clay (VC) channels shall be used. For larger diameter sewers, where VC channeling is not available, industrial tiles cut in to 50mm strips, shall be used together with sewer resistant joint filler.

8.4 Aggregates

The Developer hereby notes that Dolomitic Aggregate shall be used instead of normal aggregate for all waste water treatment concrete works.

8.5 General

The Developer hereby notes that midblock sewers are to be avoided as far as possible but where used these must be accessible and the depth may not exceed 2.0 m.

Pipes and manholes shall be subjected to visual inspection. Pipes shall also be air tested before and after backfill.

Saddles for erf connections are not permitted. Y-junctions shall be used.

Erf connections are to be provided with end caps and marked by means of marker pipes that shall be laid vertically from the end cap up to 100mm above the natural ground level (SDG 52).

DPC cut into strips (200 mm wide; 375 micron) shall be tied to the end caps and these strips must protrude 200 mm above ground level. The position of erf connections must also be dimensioned on "As built" drawings.

Electrical connections to sewage pump stations and waste water treatment plants are to be arranged by Developer on Council's behalf. All costs of connections and consumption up to the time of handover are to be borne by the Developer.

9. WATER SUPPLY

- a) The Developer hereby notes that design criteria are to follow the recommendations of the Blue Book except as follows:
 - i) Where flexible pipes are use the minimum size shall be determined according to hydraulic requirements.
 - ii) Minimum pipe class shall be Class 9 (SANS 966) in the case of uPVC pipes. System pressures are to be determined and higher classes used where necessary.

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- b) Materials and construction methods are to be in accordance with the COW Standard Specification and standard drawings (SDG 53) and SANS 1200L. Fibre Cement pipes shall not be used.
- c) The location of water meters (inside or outside of erf boundaries) is subject to local practice. Infrastructure - Bulk and Waste Water must be consulted in this regard.
- d) Where the requirements of the various documents are in conflict the requirements of this document shall prevail.

9.1 Medium-Pressure Pipelines

Material

9.2 Steel Pipes, Fittings and Specials

9.2.1 General

The Developer hereby notes that all steel pipes and fittings shall be manufactured from Grade B mild steel welded and manufactured in accordance with the latest edition of SANS 719. All flanges to match existing (i.e. SANS 1123, table 1000-3, 1600-3, etc.). All flanges shall be complete with bolts, nuts, washers and gaskets.

Steel pipes and fittings shall be protected as specified, and where buried, shall be protected with a petrolatum mastic and tape such as Denso or similar. The application shall be carried out strictly in accordance with the manufacturer's instructions.

9.3 Corrosion Protection

9.3.1 MS Pipes

The Developer hereby notes that all steel pipes and specials to be hot dip galvanised in accordance with SANS 763 (1988).

9.4 Valves

9.4.1 Gate valves

The Developer hereby notes that all gate valves shall be **AVK** or similarly approved by the Engineer and shall conform to the following specifications:

Body and bonnet: Ductile iron.

Wedge: Ductile iron, fully encapsulated with rubber internally and externally so as to prevent corrosion and rubber failure.

Wedge Nut: Must be of the fixed nut concept.

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- Coating: Electrostatically applied fusion bonded epoxy resin (± 250 micron) – internally and externally prior to assembly.
- Approvals: The valve shall conform to the dimensional and Performance specifications of SANS 664.
- Warranty: The valve shall be backed by a written 10 (ten) year replacement warranty under normal working conditions.
- Visual inspection: Should the quality of the valve be suspect, the Engineer shall be approached for approval.

Other Valves used shall comply with the clauses 9.4.2 and 9.4.3 below.

9.4.2 Resilient Seal Gate Valves

The Developer hereby notes that:

- AVK valves or similar are to be approved by Engineer to suit specifications;
- Shall close clockwise;
- Have a non-rising spindle, and fitted with a cap top or hand wheel as applicable;
- Has to be Class 16 and comply with the requirements of SANS 664:1974
- Must be Highly resistant to corrosion and abrasion;
- Must have parts manufactured from the following materials:
 - * Spheroidal graphic iron: Body gate, bonnet and hand wheel
 - * Stainless steel: Spindle
 - * Plastic: Bush, Friction rings
 - * Nitrite rubber: All "O"-rings, profile ring, scraper ring and sealing ring
 - * Bronze: Spindle nut
- Must all receive an electrostatic epoxy powder coating as surface protection – internal and external.

9.4.3 Butterfly Valves

Butterfly valves shall be of the wafer type suitable for installation between two flanges and shall close clockwise.

The materials shall be:

- Make: COMPACT or similar and approved by the Engineer
- Body: Cast Iron with nitrile rubber liner
- Disc: Spheroidal graphite with nylon coating

Shaft: Stainless steel with shaft mounted replaceable O – rings
 Gearbox: Weatherproof with spoked hand wheel. Gear ration 30:1 minimum.

All valves to be suitable for water of a corrosive nature.

10. HYDRANTS

The Developer hereby notes that Fire hydrants must comply with the following:

- (a) They will be suitable for working pressure of 16 kPa (16 Bar)
- (b) Flanges will be raised face and drilled to SANS 1123, table 1000-3 or BS 4504, table 10.
- (c) Inside diameters will be either 65 mm or 80 mm.
- (d) Stopper mechanism will be of mushroom type encapsulated with EPDM rubber (Flat type stopper fitted with a nylon or flat rubber washer is not acceptable).
- (e) Spindles will be right hand closing, non-rising type and fitted with cap tops.
- (f) An electronic epoxy coating to DIN 30677 internally and externally as surface protection will be applied.
- (g) Bayonets will be fitted with a dust cap, which will be attached to the body by means of a cable, chain or strap.
- (h) Material utilized in the manufacturing of hydrants will be as follows:

*Ductile iron (BS 2789, grade 500 – 7):	Body and bonnet
*Cast iron (BS 1452, grade 220:225):	Cap and bayonet
*Stainless steel (DIN x 20 Cr 13):	Stem
*NBR rubber:	All "O" rings
*EPDM rubber:	Stopper rubber
*Gun metal (BS 1400, LG 2-C):	or dezintified resistant brass Spindle and nut
*Stainless Steel:	All washers, clamps, circlips and seat screws

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11. FITTINGS AND ANCILLARY ITEMS**11.1 Viking-Johnson Flange Adapters**

The Developer hereby notes that Viking Johnson type flange adapters are to be equal to Klamflex or similar and approved by the Engineer and are to be provided as shown. The tie rods are to be secured to weld on restraining flanges being part of the pipe work. Four nuts per tie rod shall be provided one at each side of the flange and one at each side of the restraining flange. The number and size of the tie rods to be based on the design water pressure and approved by the Engineer.

11.2 Nuts, Bolts and Gaskets

The Developer hereby notes that all nuts shall receive a washer.

The bolt assembly material shall be hot dipped galvanised (zinc).

11.3 Air Release and Vacuum Breaker Valves

The Developer hereby notes that Air release valves shall be installed at the points as indicated on the drawings unless otherwise specified by the Engineer. The make of air release valves shall be "VENTOMAT" series RBX unless otherwise approved by the Engineer.

11.4 Actuator

The Developer hereby notes that all actuators to be of type EI-O-Matic ELQ Series or equivalent with the specifications as follows:

- Power supply: 24V DC
- Communication Input/Output: 4 – 20 mA
- Protection: IP 68 or better

11.5 Flow Meters

Type: Electromagnetic Flowmeter
 Flanges: 16 Bar (BS5404)
 Lining: Must be suitable for potable water
 Water temp (max): 60°C
 Enclosure : IP 67
 Electrodes: Stainless steel
 Meter uncertainty: $\pm 0.25\%$ from 0.5m/s up to 10m/s or better

11.6 Signal Converter

Transmitter: Remote mounted
 Enclosure: IP 67 to ICE 529 and DIN 40050

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Power supply: 11- 40 VDC
 Display: 3 Line display
 Output: Current output 4-20 mA for forward and reverse flow
 Pulse output on potential free contact 24V DC/0.5A max for forward and reverse flow
 Pulse width 50ms
 Pulse adjustable 1pulse = 1 m3 and 1 pulse = 0.1 m3
 All outputs must be separately for forward and reverse flow

11.7 Cable (50m Control cable to be supplied with each flowmeter).

Basic Settings

Q max	m3/h
Totalizer units	m3
Low flow cut off	0 - 10%
Empty pipe detection	on/off

Ambient Temperature: During Operation -20 to + 50 0 C

12. DESIGN CRITERIA AND SPECIFICATIONS FOR ELECTRICAL RETICULATION

The Developer hereby notes that the provision of all electrical services shall comply to the National Rationalised standard (NRS) and all the SANS standards made reference to in the following:

- **SANS 507-1 (ED-1)/NRS 034-1(ED-4): 2007, Electricity distribution - Guidelines for the provision of electrical distribution networks in residential areas Part 1: Planning and Design of distribution systems.** (This standard covers the planning and design of economical residential electrical distribution systems that are capable of meeting probable demands with safety and reliability, whilst maintaining the voltage within the prescribed limits. A general guide to good technical practice for economical overhead and underground systems.)

NOTE: *the above standard does not make use of the load modeling statistical parameters of the Gaussian probability density function (pdf) but rather the Beta pdf parameters a, b and C. These parameters essential for design can be obtained from the NRS Load Survey project. The Council of Windhoek, Electricity Department has obtained load data for the Namibian context and can provide design parameters based on the Namibian context.*

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- **NRS 034-2-3: 1997, Electricity distribution - Guidelines for the provision of electrical distribution networks in residential areas Part 2-3: Preferred methods and materials for the installation of overhead power lines.** (This standard covers preferred methods and materials used for the installation of low-voltage and medium-voltage overhead power lines in residential areas, and should be read in conjunction with NRS 033.)

The following section of Part 2 of NRS 034 -2 shall also be considered

- Section 1: Preferred Methods and Material for Substations
 - Section 4: Preferred Methods and Material for Area Lighting
- **NRS 033-2-3:1996 Electricity distribution - Guidelines for the application design, planning and construction of medium voltage overhead power lines up to and including 22 kV, using wooden pole structures and bare conductors.** (This standard Guidelines for the application design and construction of medium voltage overhead power lines up to and including 22 kV, using wooden pole structures. Provides an example of overhead line design that complies with professionally accepted practices and the OHS Act, 1993, as amended.)
 - **SANS 10142-1:2006The wiring of premises Part 1: Low-voltage installations.** (Applies to electrical installations of residential premises, commercial premises, public premises, industrial premises, prefabricated buildings, fixed surface installations on mining properties, construction and demolition site installations, agricultural and horticultural premises, caravan sites and similar sites, marinas, pleasure craft and house boats, medical locations, exhibitions, fairs and other temporary installations, extra low voltage Lighting installations, electrical installations for street lighting and street furniture, and equipment enclosures (structures that provide physical and environmental protection for telecommunication equipment). Covers circuits supplied at nominal voltages up to and including 1,000 V A.C. or 1,500)
 - **SANS 10098-1:2007 Public lighting Part 1: The lighting of public thoroughfares.** (Lays down the fundamental principles that govern the lighting of public thoroughfares including motorways, arterial routes, residential roads, town and city centre's and pedestrian-oriented areas. Has been limited to

methods of providing adequate public lighting that give good results within acceptable economic limits.)

- **SANS 10098-2:2005 Public lighting Part 2: The lighting of certain specific areas of streets and highways** (Lays down recommendations for the lighting of road areas of special importance and where normal conventional street lighting techniques in accordance with SANS 10098-1 might not apply.)
- Electricity Supply Regulation (Section 94(1)) of the Local Authorities Act, 1992 (Act No. 23 of 1992)
- Municipal Council of Windhoek Electricity Distribution and Protection Philosophies

13. DESIGN CRITERIA AND SPECIFICATIONS FOR ROADS AND STORMWATER STRUCTURES

13.1 General

- 13.1.1 The Developer hereby notes that Design criteria (unless otherwise specified herein) are to be in accordance with the "The Guidelines for human settlement, planning and design" as published by the Council of Scientific and Industrial Research (CSIR) and is available on-line at http://www.csir.co.za/Built_environment/RedBook/. This document is hereinafter referred to as the "Red Book".
- 13.1.2 The Developer hereby notes that Materials and construction standards (unless otherwise specified herein) are to comply with the latest edition of SANS 1200.
- 13.1.3 The information contained herein applies to normal developments and is of a general nature. Increased and/or reduced standards might be applicable where appropriate.

13.2 Standard Drawings

The following Council Standard Drawings shall be used for designs and during construction:

- 13.2.1 Flood line information that is enforced by legislation from Government;
- 13.2.2 The Red Book as detailed above;
- 13.2.3 The SANS set of documents;
- 13.2.4 Set of TRH documents;

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- 13.2.5 Service development guidelines;
- 13.2.6 Specific requirements as communicated and agreed to in consultation meetings with Developer's Engineer

SECTION 5**PROJECT SPECIFIC TECHNICAL REQUIREMENTS****1. DEFINITIONS**

Words and phrases used in the PROJECT SPECIFIC TECHNICAL REQUIREMENTS shall have the same meaning as are assigned to them in Section 2

2. MAIN SERVICE CONNECTIONS

- 2.1 The Developer must provide all bulk and main services at his own risk and costs accordance to the specifications and standards as set out in Sections 4 and 5, and must provide all reticulation network connection points to the main services, at the nearest point where sufficient network capacity exists, to the boundary of the Township Development, and that the costs to connect from existing Council distribution points up to the boundary of the Property or the separate Township Developments shall be paid by the Developer.
- 2.2 The location of these service distribution points shall be ascertained with the Council before planning or construction starts.
- 2.3 All connection points are to be approved in writing by the Council's Representative at the planning stage.
- 2.4 Should the Developer wish to cross a neighbouring development to reach main water or sewer services, the Developer itself would negotiate any servitudes and or agreements with the owner of the area concerned and submit such proposed written servitude agreement for approval of the Council's Representative.
- 2.5 The Developer shall construct the bulk water infrastructure required for the water supply of the whole development to the satisfaction of the Council's Representative as per the specifications and standards of Council.
- 2.6 Such Bulk Infrastructure will be considered for taking over by the Council upon completion of successful testing and commissioning, and the pump stations shall be subject to a defects liability period of two years after date of take-over. The Developer shall maintain the pump stations according to an approved maintenance plan to ensure that the pump stations are in a good state at handover.

- 2.7 Water meter applications for individual erven should be applied for directly with the Council.
- 2.8 Such applications can only be done once the water reticulation infrastructure has been taken over by the Council.
- 2.9 The water reticulation infrastructure within the Township Development can only be taken over once the Bulk Water infrastructure has been taken over by the Council.
- 2.10 Bulk supply of electricity must be arranged with the Council on account of the Developer to the satisfaction of the Council's Representative as per the specifications and standards of the Electricity Department of Council.
- 2.11 All Electricity meter applications for individual erven should be applied for directly with the Electricity Department of Council.
- 2.12 As the license holder for supply and distribution of electricity the Council shall remain responsible for the sale of electricity to the Township Development and the third party transferee.
- 2.13 Electricity meter applications can only be done once the electrical reticulation infrastructure has been taken over by the Council.
- 2.14 Any electrical supply required prior to the completion of construction and prior to the takeover, shall be metered at the main supply point at the cost of the Developer
- 2.15 All services installed over private land, which have to be taken over by Council, shall be protected by servitudes registered in favour of Council. Such costs shall be for the Developer's account.

3 ELECTRICAL SERVICES

- 3.1 The Developer will be responsible for the provision of all internal electricity distribution and street lights (electrical services) at own cost as per the specifications and standards and the satisfaction of the Council's Representative and/or the Electricity Department.
- 3.2 The design and construction of all electrical services are to be done according to the Council's requirements and standard specifications as per the Electricity Supply Regulations and laws and all designs must be approved by the Developer's Engineer and

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accepted by the Council in writing before any work is started.

- 3.3 The design and construction of electrical services for each of the respective extensions or sections must adhere to the following:
 - 3.3.1 Compliance to Council's standards, regarding the establishment of Distribution Substations, primary and secondary 11kV Ring networks, Local Substations/ Miniature Substations, LV distribution networks, service connections to main DB and street lightning.
 - 3.3.2 Compliance with Council's Distribution philosophy, Protection and Automation scheme philosophy, SCADA & Telemetry, Metering and Street lighting standards.
 - 3.3.3 All procured electrical equipment shall comply with Council's standardised electrical equipment requirements, as per the specifications and standards as prescribed by the Electricity Department of Council.
 - 3.3.4 The electrical installation shall comply with the Electricity Supply Regulations No.19 of 1999 of the Local Authorities Act, 1992 (Act No. 23 of 1992) and applicable section of the Electricity Act, 2007 (Act No. 4 of 2007).
 - 3.3.5 All electrical related construction work is to be done under the supervision of a professional engineer (electrical) to be appointed by the Developer to the reasonable satisfaction of the Council's representative.
- 3.4 Prior to completion of the design phase, the duly appointed Engineer of the Developer shall arrange a meeting with the Council's representative and the Developer, to explain and obtain agreement on the proposed designs of the internal electrical services and their compliance to Council's standards to be agreed on between the Developer and the Electricity Department of Council. Minutes of such meeting shall be prepared by the Developer's Engineer, and submitted within 7 days of such meeting to the other Party.
- 3.5 Final Designs shall be submitted for approval to the Council prior to construction. Workmanship standards shall be specified to be in accordance with Council's standards and the approved final designs will be submitted to the Electricity Department of Council for approval.
- 3.6 During the construction phase, the Council's representative or his delegate within the Council's Electricity Department who may deem necessary to attend site meetings shall be invited to attend site meetings between the Developer's Engineer and the Developer's Contractor. Minutes of such meetings must be prepared by the said Engineer, and submitted within 7 days of such meeting to all the other Parties. The take-over procedure shall be as provided in Chapter 10 of the General Conditions and Particular Conditions in Section 2.

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- 3.7 All electrical designs are to be done on a CAD system in line with the Council's current CAD policy (current AutoCAD 2008, dwg file format, no dxf files will be accepted) and the information be made available to the Council's representative, and
- 3.8 A complete set of as-built drawings (current AutoCAD 2010, dwg file format, no dxf files will be accepted.) shall be submitted to the Council prior to the final takeover.
- 3.9 Ducts and Electrical cables shall be installed before any street is tarred.
- 3.10 All street lighting installations must be completed before the sidewalks are finished off.

4 CIVIL ENGINEERING WORKS

- 4.1 The Developer will be responsible for the provision, including design and construction, of all civil work, surfaced streets, storm water drainage systems, internal water and sewerage networks, main water supply, waste water treatment works, sewer and water pump stations, street lights, traffic signs, street name boards and road markings including all costs thereof and professional fees.
- 4.2 The Developer shall be responsible for:
 - 4.2.1 The design and to construct to the satisfaction of the Council all roads, including all costs thereof and professional fees, necessary to ensure the reasonable access to the entirety of each approved Township Development section of all future residents and occupants assuming maximum permitted development and sale of all erven within each approved Township Development section.
 - 4.3 The Developer shall provide services (electricity, water and sewerage) sufficient to supply the maximum needs of all future residents and occupants of each approved Township Development section assuming maximum permitted development and sale of all erven within each approved Township Development section. Such services shall be provided to the satisfaction of Council's Representative in accordance with municipal specifications and standards in Sections 2 to 6.
 - 4.4 The Developer shall ensure that all stormwater from the streets shall be accommodated in a stormwater system approved by the Council for the purpose of carrying stormwater through the erven to the river, all to the satisfaction of the Council's Representative.
 - 4.5 The Developer shall ensure that access to the new township is maintained at all times

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for emergency purposes.

- 4.6 The Engineer of the Developer shall evaluate the road network and advise on access control measures at intersections together with plans submitted for any new extension, to accommodate traffic growth experienced with the sectional development of the new township.
- 4.7 The Developer shall be responsible for corresponding proposed changes including the installation of traffic lights (if any).
- 4.8 Further requirements and standards regarding civil engineering works:
 - 4.8.1 Streets are to be surfaced with Bitumen or paving blocks (interlocks) or as specified by the Council's Representative. All roads in excess of 15% slope shall be paved.
 - 4.8.2 The street name posts, road signs and road markings are to be done according to the design plan approved by the Council.
 - 4.8.3 Road gradients and cul-de-sac-street-reserve widths shall be in accordance with the Standard Municipal Design Criteria, as specified in Section 4 or alternatively as approved by the Strategic Executive: Infrastructure, Water and Technical Services.
 - 4.8.4 The Developer must ensure that the width of the streets/roads should be sufficient to accommodate refuse trucks and turning circles in cul-de-sacs should be designed in such a way that such trucks can turn easily.
- 4.9 The Parties agree that the designs of all permanent works in respect of civil engineering works shall be in conformity as per the specifications and standards of Council.
- 4.10 The Developer shall provide for the installation of all future extensions of Telecom services sufficient to satisfy the telecommunications requirements of all future residents and occupants of the Township Development, assuming maximum permitted development and sale of all erven within the Township Development, in which regard the Developer shall consult directly with Telecom Namibia on the possible location of the aforesaid.

5 PLANNING, DESIGN AND EXECUTION SECTIONS

5.1 The Parties agree that:

Section 5
Project Specific Technical Requirements

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- 5.1.1 The development shall be executed in sections in the sole discretion of the Developer which sections shall be specified and detailed in accordance with the requirements of the Programme and this Agreement and subject to the marketing and sale of all erven.
- 5.1.2 A draft Programme plan shall be prepared by the Developer as stated in the General and Particular Conditions clause 8.3 showing the respective sections and all bulk service requirements as per the specific section and related thereto.
- 5.1.3 Progressive upgrading of bulk services shall be linked to the development of the respective sections and shall be dependent on the number of erven sold in each section and size of the Township Development.
- 5.1.4 Upgrading of all arterial roads or main collector roads to dual carriage way capacity shall be indicated and upgrading shall be linked to development of the respective sections.

6 APPROVAL OF STAGES (PER EACH SECTION OF THE DEVELOPMENT)

In addition to the requirements set out in sections 4 and 6, the Developer agrees to the following:

- 6.1 Completion (the taking over of completed permanent works by the Council)**
 - 6.1.1 Water and sewer networks will not be taken over in a line-by-line fashion, but as a whole for the relevant Township Development section. The date of take over and the end of the defects liability will therefore be two specific dates for the whole section.
 - 6.1.2 All permanent infrastructures, other than bulk and main services and pump stations and the Waste Water Treatment Plant, shall be subject to a 12 months' defects liability period as state in the Agreement Data in Section 6.
 - 6.1.3 The Developer will only apply for the taking over of roads once they are completely constructed and surfaced. The Council shall only take over complete streets once they have been surfaced.
 - 6.1.4 Prior to take over of streets, the Developer shall remain responsible for the maintenance of all roads and maintaining access to erven to the satisfaction of the Council's representative in accordance with the standards and specifications of Council.
 - 6.1.5 Temporary infrastructure, which might be required to accommodate the sectional development, will not be taken over by the Council and must be removed by the Developer, when this is replaced by permanent Works. Waste Water Treatment package (modular) plants are regarded as temporary.
 - 6.1.6 Bulk and reticulation services will only be considered to be taken over once an entire section or extension has been completed.
 - 6.1.7 No partial takeover of a section or extension will be allowed unless the parties have agreed thereto.

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7 ADDITIONAL PROFESSIONAL INDEMNITY INSURANCE

7.1 In addition to the requirements set out in clause 18 of the General Conditions and clause 2.5 of section 4, the Developer agrees to the following:

7.1.1 The Engineer shall be a registered professional or incorporated Engineer registered with the Engineering Council of Namibia, and have valid Professional Indemnity Insurance cover (insured value: minimum N\$10 Million for each and every claim which the Council might have against the Developer);

8 DEFECTS LIABILITY PERIOD

In addition to the requirements set out in section 4, the Developer agrees to the following:

8.1 The sewer pump stations shall be subject to a defects liability period of 2 (two) years after date of Take-Over.

8.2 The Developer shall maintain the sewerage treatment plant(s) and sewerage pump stations according to a maintenance plan (approved by the Council) to ensure that the treatment plant(s) and pump stations are in a good state at handover.

8.3 Pump stations, which are part of the permanent infrastructure of this development, shall be subjected to a 2 (two) year defects liability period. The Developer shall maintain the pump stations according to an approved maintenance plan to ensure that the pump stations are in a good state at handover.

9 STREET NAMES

Council will decide on the street names through a submission by the Street Names Committee.

SECTION 6**6.1 AGREEMENT DATA**

This Agreement Data forms part of the Agreement.

With the exception of the items for which the Sections 2 to 6 have been inserted, the Developer shall complete the following information. Wherever the letters "PC" are used in this Agreement Data, same shall refer to the Particular Conditions in Section 2 of the Agreement.

<u>Item</u>	<u>Sub-Clause</u>	<u>Data</u>
Council's name and address	1.1.2.2 & 1.3	See Agreement
Contractor's name and address	1.1.2.3 & 1.3	See Agreement
Council's Representative's name and address	1.1.2.4 & 1.3	_____
Commencement Date	1.1.3.2	[insert date]
Time for Completion of the Works	1.1.3.3	[State period]
Defects Notification Period	1.1.3.7	As specified in the Agreement
Governing Law	1.4	Namibia
Ruling language	1.4	English
Language for communications	1.4	English
Time for access to the Site	2.1	N/A
Amount of Performance Security or Land	4.2	[Insert]% or add Land to be transferred
Fuel Rate	4.19	N/A
Normal working hours	6.5	[Insert]
Delay damages for the Works	8.7 & 14.15(b)	[Insert]
Maximum amount of delay damages	8.7	[Insert]%
<i>If there are Provisional Sums:</i>		
Percentage for adjustment of Provisional Sums	13.5(b)	N/A

Initials of signatory of Agreement H.N

[Handwritten signature]

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Item Sub-Clause Data

If Sub-Clause 13.8 applies:

Adjustments for Changes in Cost;

Table(s) of adjustment data

13.8

for payments each

Month/[YEAR] in (currency)

Coefficient	Country of origin	Source of index	Value on stated date(s)*	
Scope of index	Currency of index	Title/definition	Value	Date

a= 0.10

Fixed

b= Labour

c=

d=

e=

*These values and dates confirm the definition of each index, but do not define Base Date indices

Total advance payment	14.2	N/A
Number and timing of instalments	14.2	N/A
Currencies and proportions	14.2	N/A
Start repayment of advance payment	14.2(a)	N/A
Percentage of retention	14.3	N/A
Limit of Retention Money	14.3	N/A
Minimum amount of Interim Payment		
Certificates	14.6	N/A

If payments are only to be made in currency/currencies named on the first page of the Letter of Tender.

Currency/currencies of payment	14.15	N/A
Limitation of Liability	17.6	N/A

Handwritten signatures and initials:
MFA, H, N.G., etc.

Initials of signatory of Agreement H.N

Item Sub-Clause Data

If some payments are to be made in a currency/currencies not named on the first page of the Letter of Tender.

Currencies of payment

14.15

Currency Unit	Percentage payable in the Currency	Rate of exchange: number of Local per unit of Foreign
Local: <u>[name]</u>	<u></u>	<u></u>
Foreign: <u>[name]</u>	<u></u>	1.000
<u>[name]</u>	<u></u>	<u></u>

Insurance	18	See Agreement
The DAB shall be	20.2	N/A
Appointment (if not agreed) to be		
Made by	20.3	N/A

If there are Sections:
Definition of Section:

Description Time for Completion	Delay Damages (Sub-Clause 1.1.5.6) 1.1.3.3) (Sub-Clause 8.7)	(Sub-Clause
<u></u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

Initials of signatory of Agreement H.N

6.2 SCHEDULE OF CONTRACTORS

The Developer shall list below the portions of the work which it intends to be performed by a third party contractor or contractors, as well as full details of the contractor or contractors proposed.

DESCRIPTION OF WORK	CONTRACTOR
THE PLANNING, DESIGN AND CONSTRUCTION OF INFRASTRUCTURE WORKS AND SERVICES WITHIN THE TOWNSHIP OF THE MUNICIPAL COUNCIL OF KINSHASA	

SIGNED ON BEHALF OF DEVELOPER:



6.3.1 THE DRAWING REGISTER

The drawings listed hereunder are issued separately from this document but form part of this Agreement

M. J. A. H. A. N. G. S. G. H. K.

SECTION 6 B**PRO-FORMA DOCUMENTS****CERTIFICATE IN RESPECT OF COMPLIANCE WITH QUALITY ASSURANCE**

DEVELOPMENT NAME:

SECTION OF WORKS:

It is herewith certified that the QUALITY ASSURANCE MANUAL / FILE has been received and found to be compliant in respect of:

1. Final Quality Assurance Manual / File received on Date:/...../.....

2. Contractor's Process Control test results included? Yes / no

3. Engineer's Acceptance Control test results included? Yes / no

4. Engineer's Acceptance Sheets signed? Yes / no

Remarks: (if any)

.....

.....

Certificate prepared by:

.....

Name (Quality Monitoring Official) **Signature** **Date**

Final Quality Assurance Manual / File Audited and found in order:

.....

Name (Quality Auditor) **Signature** **Date**

Quality Assurance Approved for purposes of Taking Over:

.....

Name (Section Eng: Contract Management) **Signature** **Date**

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CERTIFICATE OF APPROVAL AS ISSUED BY THE AFFECTED SERVICES
DEPARTMENTS OF THE COUNCIL IN TERMS OF THE DEVELOPMENT AGREEMENT
ENTERED INTO BETWEEN THE COUNCIL AND THE DEVELOPER FOR THE
PURPOSE OF TOWNSHIP DEVELOPMENT
TOWNSHIP & ERF NUMBERS: **Khomasdal Erf 6219 to 6250**
COUNCIL RESOLUTION NUMBERS: **CR143-06-2014 and CR290-12-2016**
TOWNSHIPS BOARD ITEM NUMBERS:

PART A:
**STRATEGIC EXECUTIVE: URBAN PLANNING & PROPERTY MANAGEMENT'S CHECK
LIST FOR OBTAINING MUNICIPAL SERVICES' CERTIFICATE**

- | | | |
|-----|--|-------|
| 1 | Has a copy of each diagram or general plan been received? | |
| 2 | Have erf dimensional requirements been met? | |
| 3 | Have building regulation requirements been met? | |
| 4 | Have any closures been completed? | |
| 5 | Have any other imposed conditions been met? | |
| 6 | Have servitudes been accommodated? | |
| 7 | Have retention monies been paid? | |
| 8 | Survey requirements. (To be done by a Professional Land Surveyor) | |
| 8.1 | Have all erf beacons been identified? (Done upon completion of buildings and where OWNER/DEVELOPERS took delivery) | |
| 8.2 | Has any encroachment by completed structures been detected? | |
| 8.3 | Have the Reference Marks been certified? | |
| 9 | Have Environmental Impact Assessment requirements been met? | |

Comments:

.....
.....

.....
Urban Planner

.....
Date

.....
Strategic Executive
Urban Planning & Property Management

.....
Date

H.N
M-JA N.Y
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CERTIFICATE OF APPROVAL AS ISSUED BY THE AFFECTED SERVICES
DEPARTMENTS OF THE COUNCIL IN TERMS OF THE DEVELOPMENT AGREEMENT
ENTERED INTO BETWEEN THE COUNCIL AND THE DEVELOPER FOR THE
PURPOSE OF TOWNSHIP DEVELOPMENT
TOWNSHIP & ERF NUMBERS: **Khomasdal Erf 6219 to Erf 6250**
COUNCIL RESOLUTION NUMBER: CR143-06-2014 and CR290-12-2016
TOWNSHIPS BOARD ITEM NUMBERS:

PART B-I

**STRATEGIC EXECUTIVE: INFRASTRUCTURE, WATER & TECHNICAL SERVICES'S
CHECK LIST FOR OBTAINING MUNICIPAL SERVICES' CERTIFICATE.**

- 1 Have design drawings and specifications of infrastructure been approved?
- 1.1 Have pipes, valves and hydrants been installed according to the approved specifications?
- 1.2 Have valve and hydrant markers been installed?
- 1.3 Have manholes, rodding eyes, benching, covers and step irons been installed to specification?
- 1.4 Have house connection markers been installed?
- 2 Has all quality assurance data been submitted (Quality Assurance Manuals)?
- 2.1 Has the quality assurance data been evaluated and found to be compliant with the requirements of the Agreement?
- 2.2 Have as-built drawings been received?
- 3 Has as-built electronic/CAD data been received?
- 4 Have all other imposed conditions pertaining to water and sewer been met?
- 4 Has any required deposit been provided?
- 5 Have servitudes been accommodated?
- 6 Have retention monies been paid?
- 8 Has all refuse and rubble been satisfactorily removed from site, to an approved landfill site?

Comments:

.....
Chief Engineer

.....
Date

.....
Strategic Executive
Infrastructure, Water & Technical Services

.....
Date

CERTIFICATE OF APPROVAL AS ISSUED BY THE AFFECTED SERVICES
DEPARTMENTS OF THE COUNCIL IN TERMS OF THE DEVELOPMENT AGREEMENT
ENTERED INTO BETWEEN THE COUNCIL AND THE DEVELOPER FOR THE
PURPOSE OF TOWNSHIP DEVELOPMENT
TOWNSHIP & ERF NUMBERS: **Khomasdal Erf 6219 to Erf 6250**
COUNCIL RESOLUTION NUMBER: CR143-06-2014 and CR290-12-2016
TOWNSHIPS BOARD ITEM NUMBERS:

PART B-II

STRATEGIC EXECUTIVE: INFRASTRUCTURE, WATER & TECHNICAL SERVICES'S CHECK LIST FOR OBTAINING MUNICIPAL SERVICES' CERTIFICATE.

- 1 Has an Engineer been appointed according to section 2, clause 10.6?
- 2 Have design drawings and specifications of infrastructure been approved?
- 3.1 Has the quality management system been approved?
- 3.1 Has the quality assurance manual (Part A and Part B) been received and found to be in order?
- 3.3 Has the Quality Assurance Compliance Certificate been signed and attached to this Certificate?
- 4 Have as-built drawings been received and found to be in order?
- 5 Has electronic/CAD data been received?
- 6 Have all requirements under Sections 4 and 5 of the Agreement pertaining to roads and stormwater been met by the Developer?
- 7 Has the Engineer issued its Taking Over Certificate under the Construction Contract?
- 8 Have servitudes been accommodated?
- 9 Have street signs and boards been erected?
- 10 Have traffic signs and road markings been provided?

Comments:

.....
Quality Monitoring Official Date

.....
Chief Engineer Date

.....
Strategic Executive Date
Infrastructure, Water & Technical Services

Handwritten notes and signatures:
H-N NG
M.S.A. Sec 14-1
[Signature]

CERTIFICATE OF APPROVAL AS ISSUED BY THE AFFECTED SERVICES
DEPARTMENTS OF THE COUNCIL IN TERMS OF THE DEVELOPMENT AGREEMENT
ENTERED INTO BETWEEN THE COUNCIL AND THE DEVELOPER FOR THE
PURPOSE OF TOWNSHIP DEVELOPMENT
TOWNSHIP & ERF NUMBERS: **Khomasdal Erf 6219 to Erf 6250**
COUNCIL RESOLUTION NUMBER: CR143-06-2014 and CR290-12-2016
TOWNSHIPS BOARD ITEM NUMBERS:

PART B-III

**STRATEGIC EXECUTIVE: INFRASTRUCTURE, WATER & TECHNICAL SERVICES'S
CHECK LIST FOR OBTAINING MUNICIPAL SERVICES' CERTIFICATE.**

PROJECT MANAGEMENT

- 1 Has an Engineer been appointed according to section 2, clause 10.6?
 - 2 Have Certificates of Approval been received from all technical
Departments?
 - 3 Have all obligations of the Developer in terms of the Agreement and
pertaining to the Taking Over of the Works been met?
 - 4 Have the required Performance Securities been submitted and found to
be compliant?
 - 5 Has the retention money, if required, been paid by the Developer?
 - 6 Have all other conditions under section 2, been met?
 - 7 Can the Taking Over Certificate under the Development be issued by
the Council's Representative?
- Yes/No (or comment
below)

Comments:	
..... Project Coordinator	 Date
..... Chief Engineer	 Date
..... Strategic Executive Infrastructure, Water & Technical Services	 Date

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 M-JA SD
 H.E.

CERTIFICATE OF APPROVAL AS ISSUED BY THE AFFECTED SERVICES
DEPARTMENTS OF THE COUNCIL IN TERMS OF THE DEVELOPMENT AGREEMENT
ENTERED INTO BETWEEN THE COUNCIL AND THE DEVELOPER FOR THE
PURPOSE OF TOWNSHIP DEVELOPMENT
TOWNSHIP & ERF NUMBERS: **Khomasdal Erf 6219 to Erf 6250**
COUNCIL RESOLUTION NUMBER: CR143-06-2014 and CR290-12-2016
TOWNSHIPS BOARD ITEM NUMBERS:

PART C
STRATEGIC EXECUTIVE: INELECTRICITY CHECK LIST FOR OBTAINING MUNICIPAL
SERVICES' CERTIFICATE.

- 1 Have the Electrical Reticulation Drawings been approved before construction started?
- 2 Have the special Electrical Conditions been met?
- 3 Is the installation standard on site and acceptable?
- 4 Have "as built" drawings been received of the Electrical installations, CAD and paper?
- 5 Have all monies due to the Electrical Department been paid?
- 6 Were servitudes violated?
- 7 Have servitudes been provided for as required?

Comments:

.....
Chief Engineer

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Date

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Strategic Executive
Electricity

.....
Date

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CITY OF WINDHOEK

BOX 59
WINDHOEK

TAKING-OVER CERTIFICATE

This certifies that the Works or Sections of the Works are taken over in terms of the Development Agreement. This Certificate is subject to the minor outstanding works and (list attached as **Appendix 2** of the Development Agreement) being completed and/or remedied by.....

Development Name:

Developer:

Heikly PROPERTY DEVELOPMENT (PTY) LTD

Description of Works:

All works to be transferred to the Municipal Council of Windhoek including but not limited to, Roads & Storm-water, Bulk & Waste Water and Electrical infrastructure.

Section/s:

Date of Retention Payment:

Date of Taking-Over:

Date of End of Defects Notification Period:

Certified:

COUNCIL'S REPRESENTATIVE

DATE

The Take Over will only be valid if the Developer **completes** the **minor outstanding work** and **remedies the defects listed on the attached sheet[s]** (Appendix 2) by the dates specified, failing which Take Over will be deemed not to have taken place.

Original DEVELOPER

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H.E.

CITY OF WINDHOEK

BOX 59
WINDHOEK**PERFORMANCE CERTIFICATE****Contract Name:****Developer:**

Heikly Property Development (Pty) Ltd

Description of Work

.....

 In terms of **clause 11.9 of the Conditions of Agreement**, we hereby certify that the Developer has achieved successful completion of the Works described above and that the Works have been accepted by _____ on _____ in terms of the Contract.



 DEVELOPER

31/03/2017

 DATE

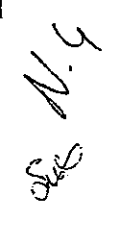
COUNCIL'S REPRESENTATIVE

 DATE

Original DEVELOPER

Copy COUNCIL

H.M.
 N.G.
 M-JA. ME





HEIKKY

Property Development (Pty) Ltd

P O BOX 2034 WINDHOEK C/O NELSON MANDEL & HUGO HAHN STREET 43 NELSON MANDELA
REG. NO.: 2013/0441

RESOLUTION OF THE DIRECTORS OF HEIKKY PROPERTY DEVELOPMENT (PROPRIETARY) LIMITED

At Heikky Property Development (PROPRIETARY) LIMITED board meeting held on 16 January 2017:

IT WAS RESOLVED THAT THAT MR. Heikky Amwele (ID 77101700101) in his capacity as a Director is hereby authorized to sign the "PRIVATE AND PUBLIC PARTNERSHIP DEVELOPMENT AGREEMENT FOR THE PLANNING, DESIGN AND CONSTRUCTION OF INFRASTRUCTURE WORKS AND SERVICES IN LITHOPS STREET, KHOMASDAL: Between THE MUNICIPAL COUNCIL OF WINDHOEK and HEIKKY PROPERTY DEVELOPMENT (PROPRIETARY) LIMITED and sign all necessary documents in order to effect the above agreement; on behalf of HEIKKY PROPERTY DEVELOPMENT (PROPRIETARY) LIMITED

Dated at WINDHOEK this 16th day of January 2017.

HEIKKY AMWELE
DIRECTOR

SABINA KATHENA
DIRECTOR

PAULUS NGHIFIKEPUNYE
DIRECTOR

Directors: S. Kathena, H. Amwele & P. Nghifikepunye

Handwritten signatures and initials:
M.D. Sog
N.G. N.G.



-311-

HEIKKY

Property Development (Pty) Ltd

P O BOX 2034 WINDHOEK C/O NELSON MANDEL & HUGO HAHN STREET 43 NELSON MANDELA

REG. NO.: 2013/0441

01 February 2017

The Chief Executive Officer
City of Windhoek
P. O. Box 59
Windhoek
Namibia

Attention: Mr. S. Hochobeb

SUBJECT: PUBLIC PRIVATE PARTNERSHIP (PPP) – NAME TO BE USED FOR THE DEVELOPMENT AGREEMENT

Reference is made from your request dated the 31st January 2017.

The name to be used in the PPP/JV Development Agreement is Heikky Property Development (Pty) Ltd

We hope the above is clear and to your understanding.

Kind Regards,

Mr. Heikky Amweele
Director
For: Heikky Property Development (Pty) Ltd

Handwritten signature and date: 27/1/17

[Municipal Council Minutes: 2014-06-04]

**7 UPG.1 [PLA] APPLICATION TO ENTER INTO
A PUBLIC PRIVATE PARTNERSHIP (PPP)
BETWEEN THE CITY OF WINDHOEK AND
HEIKKY TRADING ENTERPRISES CC FOR
ERVEN 6219 TO 6250, KHOMASDAL
(L/6219/Khd) (L/6250/Khd)**

On proposal by Councillor M Shiikwa, it was

RESOLVED

- 1 That the submission to enter into a Public Private Partnership (PPP) between the City of Windhoek and Heikky Trading Enterprises CC for Erven 6219 to 6250, Khomasdal, be noted.
- 2 That it be noted that the Public Private Partnership (PPP) pilot project (Academia Extension 1, with Otjomuise Extension 4) is still running.
- 3 That the comments from the various departments, be noted.
- 4 That the application for a Public Private Partnership (PPP) development by Heikky Trading Enterprises CC, for only one (1) extension, or the outright sale of the same portion of land to the applicant, be approved in principle.
- 5 That the Strategic Executive: Urban Planning and Property Management together with the Interdepartmental Committee, established as per Council Resolution 384/11/2013, attached as pages 199 - 200 to the agenda, negotiate the finer details of the proposed partnership, or outright sale, within a period of six (6) months.
- 6 That the eventual profit sharing of this Public Private Partnership (PPP) or outright sale, be subject to further negotiations between the parties as per paragraph 5 above, and be resubmitted to Council for approval.
- 7 That the Strategic Executive: Urban Planning and Property Management with the abovementioned committee, solicit information/ comments from internal and external stakeholders, which should be contained in the Development Agreement to be signed by the applicant.
- 8 That the Development Agreement be submitted to Council for approval, once completed.
- 9 That the resolution be implemented prior to confirmation of the minutes.

RESOLUTION 143/06/2014

H.N.
M.B.A.
N.G.
A.E.
N.G.

[Municipal Council Minutes: 2019-05-29]

9.1.6

**FNS.6 [HPH] APPROVAL OF OUTRIGHT SALE
OF OTJOMUISE EXTENSION 5 (PHASE 3)
(L/Otjomuise Ext. 5)**

On proposal by Councillor Ms AK Ashilelo, it was

RESOLVED

1. That Council prior to accepting the offer from Ino Investment Holding (Pty) Ltd for outright purchase of Otjomuise Extension 5 (Phase 3) at N\$17 million:
 - 1.1 Obtain approval in writing from the Minister in terms of section 30(1)(f) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended); and
 - 1.2 Advertise the sale in terms of section 63(2) of the Local Authorities Act, 1992 (Act 23 of 1992) (as amended).
- 2 That it be noted that the project is losing N\$1 437 758.70 per month and with the lengthy marketing and sales process, the monthly loss will further erode the profits due to each partner, if the offer is rejected.
- 3 That theerven in Phase 3 be transferred into the name of Ino Investment Holding (Pty) Ltd in order to ensure that all requirements of the sale and transfer processes are attributed to the owner of the properties.
- 4 That Ino Investment Holding (Pty) Ltd provide Council with a Bank Guarantee within thirty (30) days after the Ministerial approval and the payment of the amount of N\$17 million be made within thirty (30) days after signing the Addendum to the Development Agreement with the above terms, failing which the sale will be cancelled.
- 4.1 That the Strategic Executive: Housing, Property Management and Human Settlement, jointly with the Chief Executive Officer (Corporate Legal Adviser), negotiate with Ino Investment Holding (Pty) Ltd to add contingency fees to ensure that the City also share in any additional profit.
- 5 That the Chief Executive Officer (Corporate Legal Adviser) draft an Addendum to the Development Agreement for the sale of Otjomuise Extension 5 (Phase 3) and submit the negotiated Addendum to Council, for approval.
- 6 That the Strategic Executive: Housing, Property Management and Human Settlement be mandated to negotiate the terms of the Addendum to the Development Agreement and it be submitted to Council, for approval.

TH. [Signature]
ALC [Signature]
[Signature]

- 7 That in the interest of finalising the sales process, the resolution be implemented prior to confirmation of the minutes.

Financial implications

No applicable.

RESOLUTION 89/05/2019

T.H. - 
AHL  S.J. 

**URGENT MATTER ARISING FROM THE
MANAGEMENT COMMITTEE MEETING
HELD ON 6 AUGUST 2019
(3/1/1)**

[Special Municipal Council Minutes: 2019-08-21]

.1

**FNS.6 [HPH] APPROVAL OF FIRST ADDENDUM
TO DEVELOPMENT AGREEMENT BETWEEN THE
MUNICIPAL COUNCIL OF THE CITY OF WINDHOEK
AND INO INVESTMENT HOLDINGS (PTY) LTD
(L/Otjomuise Ext. 5)**

On proposal by Councillor Ms T Uwanga, it was

RESOLVED

- 1 That the Addendum to the Development Agreement, attached as pages 28 - 40 to the agenda, for the implementation in realising the sale of Otjomuise Extension 5, Phase 3, to Ino Investment Holding (Pty) Ltd, be approved.
- 2 That note be taken and the urgency for the approval of the First Addendum to the Development Agreement be considered due to the continued loss of funds at a rate of N\$1 437 758.70 per month in the form of penalty interest.
- 2.1 That Council put preventative measures in place with future developments to avoid scenarios indicated in paragraph 2 above.
- 3 That the Strategic Executive: Housing, Property Management and Human Settlement, in conjunction with the Chief Executive Officer (Manager: Mayoral and Council Affairs), arrange an urgent meeting to report on the status of all the Public Private Partnerships (PPPs) with the Affordable Housing and Land Delivery Councillors Sub Committee.
- 4 That the resolution be implemented prior to confirmation of the minutes.

RESOLUTION 177/08/2019

[Municipal Council Minutes: 2019-11-21]

2.14

**FNS.4 [HPH] PROPOSAL FOR A NEW METHOD
OF SALE OF ERVEN – CLOSED BID SALE
(L/Closed Bid Sale)**

On proposal by Councillor Ms AK Ashilelo, it was

RESOLVED

- 1 That the Closed Bid Sale process be approved as an alternative process for the sale of 'single' and 'general residential' zoned erven on Tender and Offer to Purchase.
- 2 That approval be granted to the Acting Strategic Executive: Housing, Property Management and Human Settlement, Ms S Simpson, to implement the Closed Bid Sale process for all available and future 'single' and 'general residential' zoned erven.
- 3 That the Closed Bid Sale Work Procedures 'single' and 'general residential', attached as pages 141 - 153 to the agenda, be approved as the standard operating procedure for the implementation of the Closed Bid Sale process.
- 4 That the Closed Bid Sale process be used in the place of the normal Tender and Offer to Purchase process for the sale of 'single' and 'general residential' zoned erven.
- 5 That the Closed Bid Sale process be used to complement the Tender method of sale process.
- 5.1 That the Closed Bid Sale Work Procedures, attached as pages 141 - 153 to the agenda, be used as the standard work procedure process for the Tender, and that the price consideration for the Tender remain the highest bid of the particular erf and as further explained in the Closed Bid Sale Work Procedures.
- 6 That the Closed Bid Sale process be used to compliment the Offer to Purchase method of sale process.
- 6.1 That the Closed Bid Sale Work Procedures, attached as pages 141 - 153 to the agenda, be used as the standard work procedure process for the Offer to Purchase, and that the price consideration for the Offer to Purchase remain the average which will be calculated on the excel sheet and displayed for the public.
- 7 That the Acting Strategic Executive: Housing, Property Management and Human Settlement, be mandated to sell all 'single' and 'general residential' zoned erven currently available and approved to be sold on Tender and Offer to Purchase by means of the Closed Bid Sale Work Procedures.
- 8 That all future 'single' and 'general residential' zoned erven that become available, be sold by means of the Closed Bid Sale Work Procedures.
- 9 That the resolution be implemented prior to confirmation of the minutes.

RESOLUTION 289/11/2019

[Municipal Council Minutes: 2019-06-27]

1.3 FNS.3 [HPH] – APPLICATION FOR THE SALE OF ‘GENERAL RESIDENTIAL’ AND ‘SINGLE RESIDENTIAL’ ZONED ERVEN BY MEANS OF THE TENDER AND OFFER TO PURCHASE METHODS OF SALE IN KHOMASDAL EXTENSION 4 – HEIKKY PROPERTY DEVELOPMENT (PTY) LTD (L/KD-Ext. 4)

On proposal by Councillor Ms AK. Ashilelo, it was

RESOLVED

- 1 That it be noted that the twenty seven (27) erven in Khomasdal Extension 4 are ready for alienation.
- 2 That the tender method of sale indicated as per clause 16.4.1 of the Development Agreement be approved as the method of sale for the subject erven, subject to the following preference criteria for allocation:
 - 2.1 That only one (1) erf be allocated to first time purchasers per Bidder or Offeror.
 - 2.2 That all offers below the upset price not be considered.
 - 2.3 That the following core criteria be employed in the allocation process when there is a tie in the bid prices for an erf, in order of preference:
 - 2.3.1 Preference will be given to (in order of preference);
 - 2.3.2 Previously disadvantaged disabled persons;
 - 2.3.3 Previously disadvantaged women; and
 - 2.3.4 Previously disadvantaged men.
- 3 That the sales conditions and upset prices as per the list, attached as pages 16 - 22 to the agenda, be approved.
- 4 That the two (2) methods of payment, being cash and payment through the provision of a Bank Guarantee or Letter of Undertaking as the preferred methods of payment for this alienation programme, be approved, and that the following clauses become part of the eventual Deed of Sale to be signed:
 - 4.1 That the total purchase price be paid in cash within **five (5) working days** from the acceptance of the following conditions of the allocation:
 - 4.1.1 That should payment be late the SELLER may grant extension of time automatically for ninety (90) days and if payment is made after five (5) working days from the acceptance of the conditions of the allocation, interest thereon, at the rate of 15 % per annum is payable as from the expiry of the five (5) working days; and

- 4.1.2 That should the BUYER fail to honour payments within the automatic extension that does not exceed ninety (90) days from the date of acceptance of the conditions of allocation, the transaction shall be cancelled and no further extensions shall be granted, and the property shall be allocated to the next qualifying Bidder.
- 5 That the standard restrictive resale condition and reverting clause be registered against the Title of the properties.
- 6 That the practice for the provision of Letters of Undertaking from Law Firms operating in terms of the applicable legislation and attendant regulations become part of the conditions, and that such Letters of Undertaking be tendered and accepted as forms of guarantees for purposes of concluding the Sales Agreements.
- 7 That, if for whatever reason(s) the first Bidder be disqualified or fail to pay the full purchase price, together with interest, where applicable, within ninety (90) days from the date of receipt of allocation letter, the allocation be cancelled and be extended to the next qualifying Bidder on the list by the Strategic Executive: Housing, Property Management and Human Settlement.
- 8 That, in the event of the second or alternative Bidder failing to conclude the Sales Agreements within ninety (90) working days from the date of receipt of allocation letter, that the same process in paragraph 7 above be repeated by the Strategic Executive: Housing, Property Management and Human Settlement , until the list of qualifying Bidder is exhausted.
- 9 That in the event where the list of qualifying Bidders is exhausted and there are available erven that new Bidders be invited and the same process as outlined in this Council Resolution be applicable.
- 10 That all the successful Bidders, who have arrear rates and services accounts, first settle their arrear accounts, prior to the conclusion of the Sales Agreements.
- 11 That, if a purchaser default in payment, no repurchase or substitution of the purchaser of property be allowed as long as the property is registered in the name of the City.
- 12 That approval be granted that 20 % of the twenty five (25) single residential erven, being five (5) erven, be accommodated for the City employees.
- 12.1 That the Strategic Executive: Housing, Property Management and Human Settlement engage all the departments and obtain the names of staff members who still doesn't have housing or land/plot and submit same to the Councillors Sub Committee on Affordable Housing and Land Delivery.
- 13 That approval be granted that 10 % of the twenty five (25) single residential erven, being three (3) erven, be accommodated for the youth.
- 14 That the sales of Erven 6219 to 6250, Khomasdal Extension 4 are subject to Ministerial Approval being obtained in terms of section 30(1)(t) of the Local Authorities Act, 1992 (Act 23 of 1992) as amended.
- 15 That it be noted that the sale of the properties is subject to plot and plan.

- 16 That the Strategic Executive: Housing, Property Management and Human Settlement verify the Construction Agreements of other Public Private Partnership (PPP) Agreements with specific reference to the plot and plan approach and same be reviewed for a possible amendment that will allow the buyer to construct his/her own structure.
- 17 That the Strategic Executive: Housing, Property Management and Human Settlement develop a policy on future land allocation to vulnerable groups, i.e. women, youth, etc., which will guide how land will be apportioned amongst these groups.
- 18 That the resolution be implemented prior to confirmation of the minutes.

RESOLUTION 139/06/2019

[Special Municipal Council Minutes: 2022-04-12]

8.1.2

ITEM 9.3.2 - GOV.3 [ELE] REVISION OF FIVE (5) YEAR ELECTRIFICATION PLAN (16/2/3/3/1)

On proposal by Councillor Ms N Larandja, it was

RESOLVED

- 1 That the request from the Department of Housing, Property Management and Human Settlement to include informal areas that are planned, listed as follows, be noted:

Informal settlement	Constituency	Location/Erf numbers	Number of households to be electrified
Havana Extensions 6 and 7	Samora Machel	Erven 1121, 1122, 1123, 1137, 1138 and 1118	162
Kilimanjaro	Tobias Hainyeko	Erf 3315	152
Okahandja Park B and C	Tobias Hainyeko	Okahandja Park B and C	118
Havana Extension 1	Moses Garoëb	Erven 411, 412, 413, 301 to 317, 318, 319 and 321	250
Havana Extension 1	Moses Garoëb	Walvis Bay, Aranos, Arandis and Ondangwa Streets	235
Okuryangava (block Erven 3216, 3192 and 3193)	Tobias Hainyeko	Block Erven 3216, 3192 and 3193	64
Otjomuise	Khomasdal	Lushoto and Cassamba Streets	40
Total			1 021

- 2 That the request to electrify and provide pre-payment meters to marketplaces from the Acting Strategic Executive: Economic Development and Community Services, be noted:

No.	Market/Location	Description of needs
1	Bonsmara Market, Erf 8219, Windhoek, Northern Industrial Area	Install pre-paid electricity meters in the eight (8) lockable stalls.
2	Windhoek Flea Market, Erf 6873, Mandume Ndemufayo Avenue	Install pre-paid meters in the seven (7) lockable stalls.
3	Herero Mall, Clemens Kapuuo Street	Provision for approximately seventy (70) traders and for external lighting.
4	Katutura Industrial Stalls, Erf 2127, Leonard Auala Street, Katutura	Fifty three (53) stalls need to be installed with pre-paid electricity meters and the conventional meters should be removed.
5	Otjomuise Market, Erf 153, Beijing Street, Otjomuise	Install pre-paid meters in the thirty one (31) lockable stalls.
6	Pionierspark Market, Portion of Erf R/1301, David Hosea Meroro Street, Pionierspark	Install pre-paid meters in the eight (8) lockable stalls.

- 3 That approval be granted to the Strategic Executive: Electricity to start implementing the revised five (5) year Electrification Plan with amendments as proposed (by the Department of Electricity), in consultation with the Strategic Executive: Housing, Property Management and Human Settlement in the 2021/2022 Financial Year.

- 4 That erven in Otjomuise Extension 8 (Erven 3374 to 3377) and Okuryangava Extension 6 (Erf 3908, Portions A, B and C) be included for electrification in the 2022/2023 Financial Year.
- 5 That the Strategic Executive: Electricity, in consultation with the Acting Chief Executive Officer (Acting Manager: Mayoral and Council Affairs), arrange groundbreaking ceremonies in the various locations before the execution of these projects in order for Councillors, to be kept abreast.
- 5.1 That during the abovementioned groundbreaking ceremonies, the Acting Chief Executive Officer (Manager: Corporate Communication, Marketing and Public Participation) make use of the opportunity to engage and educate community members on all issues concerning challenges of electricity, i.e. bypasses, illegal activities, etc., through aggressive communication means/ways, amongst others, pamphlets/brochures etc.
- 6 That it be noted that a separate item will be submitted on the installation of the high mast lights in various informal settlements, amongst others, Donkerhoek (Otjomuise), Sonderwater, etc. [This matter is dealing with individual electricity connections only.]
- 6.1 That the Strategic Executive: Electricity keep Councillors abreast of the subdivision layouts for the current electrification projects, and the same be presented to the Councillors Advisory Committee on Provision of Basic Services, for a better understanding, whereafter the said Committee will present it to Council, for consideration.
- 7 That the resolution be implemented prior to confirmation of the minutes.

RESOLUTION 91/04/2022

[Special Municipal Council Agenda: 2022-04-12]

8.1.2

ITEM 9.3.2 - GOV.3 [ELE] REVISION OF FIVE (5) YEAR ELECTRIFICATION PLAN (16/2/3/3/1)

Council Approved the five (5) year Electrification Plan in 2017 and revised the Electrification Plan through Council Resolutions 159/07/2019, 128/06/2021, 251/07/2020 and 156/08/2021, the five (5) year Electrification Plan and Council Resolutions 159/07/2019, 128/06/2021, 251/07/2020 and 156/08/2021 are attached as pages 121 - 138 and 139 - 143 respectively to the agenda.

The Department of Electricity has successfully provided individual electricity connections to more than 3 350 households since the start of the implementation of the five (5) Year Electrification Plan in 2018.

The following areas were initially recommended for electrification during the 2021/2022 Financial Year and approved by Council through Council Resolution 156/08/2021:

Informal settlement	Constituency	Location/Erf numbers	Number of households to be electrified
Havana Extensions 6 and 7	Samora Machel	Erven 1121, 1122, 1123, 1137, 1138 and 1118	162
Kilimanjaro	Tobias Hainyeko	Erf 3315	152
Okahandja Park B and C	Tobias Hainyeko	Okahandja Park B and C	118
Havana Extension 1	Moses Garoeb	Erven 411, 412, 413, 301 to 317, 318, 319 and 321	250
Otjomuise Extension 8	Khomasdal	Erven 3374, 3375, 3376 and 3377	115
Okuryangava Extension 8	Tobias Hainyeko	Erf 3908, Portions A, B and C	42
Otjomuise	Khomasdal	Lushoto and Cassamba Streets	40
Total			879

The Department of Housing, Property Management and Human Settlement advised the Department of Electricity late in 2021 (December) to withdraw the following informal areas due the fact that the residents in those areas are not settled as per the approved township layouts:

Informal settlement	Constituency	Location/Erf numbers	Number of households to be electrified
Otjomuise Extension 8	Khomasdal	Erven 3374, 3375, 3376 and 3377	115
Okuryangava Extension 8	Tobias Hainyeko	Erf 3908, Portions A, B and C	42
Total			157

Alternative Informal Areas to be considered for electrification during the 2021/2022 Financial Year were provided by the Department of Housing, Property Management and Human Settlement.

After thorough investigation by the Department of Electricity, it was determined that out of the areas provided for consideration to be electrified the following areas are recommended:

Informal settlement	Constituency	Number of households to be electrified
Havana Extension 1	Moses Garoëb	235
Okuryangava (block Erven 3216, 3192 and 3193)	Tobias Hainyeko	64
Total		299

As a result of the changes proposed by the Department of Housing, Property Management and Human Settlement, the informal settlement areas to be electrified during the current (2021/2022) Financial Year will be as follows:

Informal settlement	Constituency	Location/Erff numbers	Number of households to be electrified
Havana Extensions 6 and 7	Samora Machel	Erven 1121, 1122, 1123, 1137, 1138 and 1118	162
Killmanjaro	Tobias Hainyeko	Erf 3315	152
Okahandja Park B and C	Tobias Hainyeko	Okahandja Park B and C	118
Havana Extension 1	Moses Garoëb	Erven 411, 412, 413, 301 to 317, 318, 319 and 321	250
Havana Extension 1	Moses Garoëb	Walvis Bay, Aranos, Arandis and Ondangwa Streets	235
Okuryangava (block Erven 3216, 3192 and 3193)	Tobias Hainyeko	Block Erven 3216, 3192 and 3193	64
Otjomuise	Khomasdal	Lushoto and Cassamba Streets	40
Total			1 021

The Department of Economic Development and Community Services has requested the Department of Electricity to electrify informal market places around Windhoek during the 2021/2022 Financial Year. The following is the list of market places to be electrified in the 2021/2022 Financial Year:

No.	Market/Location	Description of needs
1	Bonsmara Market, Erf 8219, Windhoek, Northern Industrial Area	Install pre-paid electricity meters in the eight (8) lockable stalls.
2	Windhoek Flea Market, Erf 6873, Mandume Ndemufayo Avenue	Install pre-paid meters in the seven (7) lockable stalls.
3	Herero Mall, Clemens Kapuuo Street	Provision for approximately seventy (70) traders and for external lighting.
4	Katutura Industrial Stalls, Erf 2127, Leonard Auala Street, Katutura	Fifty three (53) stalls need to be installed with pre-paid electricity meters and the conventional meters should be removed.
5	Otjomuise Market, Erf 153, Beijing Street, Otjomuise	Install pre-paid meters in the thirty one (31) lockable stalls.
6	Pionierspark Market, Portion of Erf R/1301, David Hosea Meroro Street, Pionierspark	Install pre-paid meters in the eight (8) lockable stalls.

Some market places which were initially provided to the Department of Electricity for consideration to be electrified but were removed from the above list as those markets do not have necessary infrastructures to safely house the required electrical infrastructures.

The provision of individual pre-payment meters to the traders at various informal market places as requested in the table above will help Council as follows:

- To make sure that the electricity provision to the traders is safe for the traders and customers alike;
- To reduce electricity theft as split pre-payment meters will be installed in the kiosks which cannot be easily tampered with compared to normal pre-payment meters;
- To improve revenue collection at the market places through prepayment electricity sales; and
- To stimulate economic activities of the traders at the market places.

The Department of Electricity will strive to ensure that the additional funds required as a result of the changes introduced are secured from the CAPEX Budget allocation of N\$39 million from the Ministry of Urban and Rural Development during the 2021/2022 Financial Year.

This item serves to seek approval of the implementation of the Five (5) Year Electrification Plan with amendments as proposed by the Department of Electricity in consultation with the Department of Housing, Property Management and Human Settlement.

Management Committee

RECOMMENDED

- 1 That the request from the Department of Housing, Property Management and Human Settlement to include informal areas that are planned, listed as follows, be noted:

Informal settlement	Constituency	Location/Erf numbers	Number of households to be electrified
Havana Extensions 6 and 7	Samora Machel	Erven 1121, 1122, 1123, 1137, 1138 and 1118	162
Kilimanjaro	Tobias Hainyeko	Erf 3315	152
Okahandja Park B and C	Tobias Hainyeko	Okahandja Park B and C	118
Havana Extension 1	Moses Garoëb	Erven 411, 412, 413, 301 to 317, 318, 319 and 321	250
Havana Extension 1	Moses Garoëb	Walvis Bay, Aranos, Arandis and Ondangwa Streets	235
Okuryangava (block Erven 3216, 3192 and 3193)	Tobias Hainyeko	Block Erven 3216, 3192 and 3193	64
Otiomui	Khomasdal	Lushoto and Cassamba Streets	40
Total			1 021

- 2 That the request to electrify and provide pre-payment meters to marketplaces from the Acting Strategic Executive: Economic Development and Community Services, be noted:

No.	Market/Location	Description of needs
1	Bonsmara Market, Erf 8219, Windhoek, Northern Industrial Area	Install pre-paid electricity meters in the eight (8) lockable stalls.
2	Windhoek Flea Market, Erf 6873, Mandume Ndemufayo Avenue	Install pre-paid meters in the seven (7) lockable stalls.
3	Herero Mall, Clemens Kapuuo Street	Provision for approximately seventy (70) traders and for external lighting.
4	Kafutara Industrial Stalls, Erf 2127, Leonard Auala Street, Kafutara	Fifty three (53) stalls need to be installed with pre-paid electricity meters and the conventional meters should be removed.
5	Otjomuise Market, Erf 153, Beijing Street, Otjomuise	Install pre-paid meters in the thirty one (31) lockable stalls.
6	Pionierspark Market, Portion of Erf R/1301, David Hosea Meroro Street, Pionierspark	Install pre-paid meters in the eight (8) lockable stalls.

- 3 That approval be granted to the Strategic Executive: Electricity to start implementing the revised five (5) year Electrification Plan with amendments as proposed (by the Department of Electricity), in consultation with the Strategic Executive: Housing, Property Management and Human Settlement in the 2021/2022 Financial Year.
- 4 That the Strategic Executive: Electricity, in consultation with the Acting Chief Executive Officer (Acting Manager: Mayoral and Council Affairs), arrange groundbreaking ceremonies in the various locations before the execution of these projects in order for Councillors, to be kept abreast.
- 4.1 That during the abovementioned groundbreaking ceremonies, Councillors make use of the opportunity to engage and educate community members on all issues concerning challenges of electricity, i.e. bypasses and illegal activities, etc.
- 5 That the resolution be implemented prior to confirmation of the minutes.
-

DEPARTMENT OF ECONOMIC DEVELOPMENT & CUSTOMER SERVICES

The Council of the Municipality of Windhoek, under Section 30(1)(u) of the Local Authorities Act, 1992 (Act No. 23 of 1992), has determined the following fees, charges and tariffs with effect from 1 July 2022.

Division: Economic Development

INDUSTRIAL STALLS								
Description				2021/2022	2022/2023			Increase in %
Name of Stall	Nr of Stalls	Size in m ²	Rental Rate per m ² excluding VAT	Total per month	Tariff per month	VAT per month	Total per month	
Katutura	13 (1-13)	50	23.02	1,277.85	1,151.18	172.68	1,323.85	3.6%
	16 (14-30)	55	23.01	1,404.90	1,265.63	189.84	1,455.48	3.6%
	2 (31-32)	22.43	23.03	573.30	516.47	77.47	593.94	3.6%
	18 (33-51)	60	23.02	1,533.00	1,381.03	207.15	1,588.19	3.6%
	2 (52-53)	100	23.01	2,554.65	2,301.41	345.21	2,646.62	3.6%
Khomasdal	11	50	23.02	1,277.85	1,151.18	172.68	1,323.85	3.6%
	20	100	23.01	2,554.65	2,301.41	345.21	2,646.62	3.6%
Menarovandu	20 (1-20)	50	27.30	1,515.15	1,364.95	204.74	1,569.70	3.6%
	2 (21-22)	140	27.30	4,242.00	3,821.49	573.22	4,394.71	3.6%
	Stall 18 A	50	27.20	1,509.90	1,360.22	204.03	1,564.26	3.6%
	Stall 18 B	50	27.20	1,509.90	1,360.22	204.03	1,564.26	3.6%
Wanaheda	6	131.63	36.86	5,385.45	4,851.59	727.74	5,579.33	3.6%
OPEN SITES AT THE INDUSTRIAL STALLS								
Description				2021/2022	2022/2023			Increase in %
				Total per month	Tariff per month	VAT per month	Total per month	
Open space (906 m ²) - Khomasdal Industrial stalls – storage				7,100.10	6,396.26	959.44	7,355.70	3.6%
OPEN TRADING AREAS								
- Food Stands								
Area				2021/2022	2022/2023			Increase in %
				Total per month	Tariff per month	VAT per month	Total per month	
Central Business District				597.45	538.22	80.73	618.96	3.6%
Northern Industrial Area				399.00	359.45	53.92	413.36	3.6%
Southern Industrial Area				399.00	359.45	53.92	413.36	3.6%
Other Areas				302.40	272.42	40.86	313.29	3.6%
Mobile Food Carts/Vans				1,298.86	1,170.11	175.52	1,345.62	3.6%
Mobile Icecream Vans/bicycles				746.35	672.36	100.85	773.22	3.6%
John Meinert kiosk				New	723.10	108.47	831.57	New
Post Street Mall				New	460.10	69.02	529.12	New

OPEN SITES/FACILITIES							
Activity	2021/2022		2022/2023			Increase in %	
	Total		Tariff	VAT	Total		
Newspaper Vendors/Car Guards/ quarterly	267.75		241.21	36.18	277.39		3.6%
Barbeque Sites/ per day	57.75		52.03	7.80	59.83		3.6%
Saturday Street Market/ per day	57.75		52.03	7.80	59.83		3.6%
Undeveloped Sites/ quarterly	544.95		490.93	73.64	564.57		3.6%
Erf 7203 Central Business District	216.2		194.77	29.22	223.98		3.6%
Erven 576 KW, Erf R/1254PP and other similar sites	201.25		181.30	27.20	208.50		3.6%
153 & 154 Othomuse, Erf R/7350 Kat, Erf R/6296 Kat and other similar sites	181.7		163.69	24.55	188.24		3.6%
Erf 1006 Onganga Street Okuryangava and other similar markets	54.38		48.99	7.35	56.34		3.6%
POST STREET MALL OPEN SPACE/INDEPENDENCE AVENUE STANDS							
Description	2021/2022		2022/2023			Increase in %	
	Total		Tariff	VAT	Total		
Individuals/CBO/None profit making org./ per day or part thereof	544.00		490.07	73.51	563.58		3.6%
SME/ per day or part thereof	749.00		674.75	101.21	775.96		3.6%
Businesses/ per day or part thereof	2,498.00		2,250.37	337.56	2,587.93		3.6%
Gazebo/ per day or part thereof	121.00		109.01	16.35	125.36		3.6%
Containers / monthly	553.00		498.18	74.73	572.91		3.6%
Usage of open spaces/sites/ per event	1,757.00		1,582.83	237.42	1,820.25		3.6%
OPEN STANDS AT CORNER OF STOKES AND PATTERSON STREETS							
Activity	Total per month		Tariff per month	VAT per month	Total per month		Increase in %
Open Stands (under roof)	87.15		78.51	11.78	90.29		3.6%
MARKETS							
Stalls	Size in m ²	Rental rate per m ²	Total per month	Tariff per month	VAT per month	Total per month	Increase in %
Pionierspark							
P1	18.7	30.00	677.25	610.11	91.52	701.63	3.6%
P2	9.0	35.00	380.10	342.42	51.36	393.78	3.6%
P3	9.0	35.00	380.10	342.42	51.36	393.78	3.6%
P4	18.7	30.00	677.25	610.11	91.52	701.63	3.6%
P5	9.0	35.00	380.10	342.42	51.36	393.78	3.6%
P6	9.0	35.00	380.10	342.42	51.36	393.78	3.6%
Soweto							
Luxury kiosk (L1-L16)	18	50.00	1,086.75	979.02	146.85	1,125.87	3.6%
Teleshop (L-17)	30	45.50	1,648.50	1,485.08	222.76	1,707.85	3.6%
Semi- Luxury Stalls (SL1-26,28)	12	45.50	659.40	594.03	89.11	683.14	3.6%
Semi- Luxury Stall (SL27) (Not an SME)	12	150.00	2,173.50	1,958.04	293.71	2,251.75	3.6%
Weekly stands	4	26.09	126.00	113.51	17.03	130.54	3.6%

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Weekly stands (Electricity)	4	38.07	183.75	165.53	24.83	190.37	3.6%
Pyramid	-	-	106.05	95.54	14.33	109.87	3.6%
Barbeque	-	-	102.90	92.70	13.90	106.60	3.6%
Daily stands	-	-	57.75	52.03	7.80	59.83	3.6%
Soweto Market Bus stop traders	-	-	67.20	60.54	9.08	69.62	3.6%
Oshetu Community							
Lockable kiosks	10	50.00	603.75	543.90	81.59	625.49	3.6%
Lockable kiosks with water	10	51.44	621.60	559.98	84.00	643.98	3.6%
Lockable stalls (L17,L28)(Not an SME)	10	150.00	1,811.25	1,631.70	244.76	1,876.46	3.6%
Open Stands	-	-	89.25	80.40	12.06	92.46	3.6%
Barbeque stands before renovation	-	-	-	-	-	-	
Barbeque stands after renovation	-	-	267.75	241.21	36.18	277.39	3.6%
Fire wood areas	-	-	67.20	60.54	9.08	69.62	3.6%
Car wash	-	-	67.20	60.54	9.08	69.62	3.6%
Car wash Water Booth	4	69.83	308.70	278.10	41.71	319.81	3.6%
Stalls	Size in m²	Rental rate per m²	Total per month	Tariff per month	VAT per month	Total per month	Increase in %
Okuryangava Municipal Office Market (Ombili)							
One (1) luxury stall	14.00	45.50	770	693.35	104.00	797.36	3.6%
Two (2) semi-luxury stalls	12.00	45.50	659	594.03	89.11	683.14	3.6%
One (1) small stall	11.00	45.50	605	544.85	81.73	626.57	3.6%
Ten (10) open trading areas	8.00	11.00	106	95.54	14.33	109.87	3.6%
Lyeeta							
Fire wood	-	-	87.15	78.51	11.78	90.29	3.6%
Live chicken	-	-	67.20	60.54	9.08	69.62	3.6%
Barbecue Stands	-	-	155.40	140.00	21.00	160.99	3.6%
Open stands	-	-	67.20	60.54	9.08	69.62	3.6%
Barber Shops Prepaid electricity	-	-	126.00	113.51	17.03	130.54	3.6%
Nangheda Kaduuluma							
Open stands small	-	-	67.20	60.54	9.08	69.62	3.6%
Barbeques (Own Equipment)	-	-	67.20	60.54	9.08	69.62	3.6%
Barbeques (Municipal Equipment)	-	-	155.40	140.00	21.00	160.99	3.6%
Cooking Stands before renovation	-	-	67.20	60.54	9.08	69.62	3.6%
Cooking Stands after renovation	-	-	88.20	79.46	11.92	91.38	3.6%
Live chicken	-	-	87.15	78.51	11.78	90.29	3.6%
Fire Wood	-	-	67.20	60.54	9.08	69.62	3.6%
Kiosks (1-3)	5.10	45.50	280.35	252.56	37.88	290.44	3.6%

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Kiosks (4 -7)	3.80	45.50	208.95	188.24	28.24	216.47	3.6%
Kiosks (9-10)	7.70	45.50	423.15	381.20	57.18	438.38	3.6%
Eliazer Tuhadeleni							
Lockable stalls (no electricity)	-	30.00	399.00	359.45	53.92	413.36	3.6%
Live Chicken	-	-	87.15	78.51	11.78	90.29	3.6%
Fire Wood	-	-	67.20	60.54	9.08	69.62	3.6%
Open Stands	-	-	67.20	60.54	9.08	69.62	3.6%
Stalls	Size in m²	Rental rate per m²	Total per month	Tariff per month	VAT per month	Total per month	Increase in %
Onghendambala							
Open stands small	-	-	67.20	60.54	9.08	69.62	3.6%
Fire wood	-	-	67.20	60.54	9.08	69.62	3.6%
Barbeques (Own Equipment)	-	-	67.20	60.54	9.08	69.62	3.6%
Live Chicken	-	-	87.15	78.51	11.78	90.29	3.6%
Bonsmara Market							
Vendor	-	-	827.01	745.03	111.75	856.78	3.6%
Barber/ Saloon	-	-	1,157.82	1,043.04	156.46	1,199.50	3.6%
Kiosk	-	-	1,112.19	1,001.94	150.29	1,152.23	3.6%
Open trading areas	-	-	269.33	242.63	36.39	279.03	3.6%
Barbeque stands	-	-	343.99	309.89	46.48	356.37	3.6%
Windhoek Flea							
Lockable stalls	-	-	1,812.12	1,632.49	244.87	1,877.36	3.6%
Open Trading Areas	-	-	334.08	300.96	45.14	346.10	3.6%
Food Stands	-	-	410.78	370.06	55.51	425.57	3.6%
Barbeque stands	11.00	58.91	589.02	530.63	79.59	610.22	3.6%
Tukondjeni							
Live chicken	-	-	87.15	78.51	11.78	90.29	3.6%
Wood vendors	-	-	67.20	60.54	9.08	69.62	3.6%
Barbecue stands	-	-	155.40	140.00	21.00	160.99	3.6%
Barber shop stands with electricity	-	-	170.10	153.24	22.99	176.22	3.6%
Open trading area	2m x 2m	-	67.20	60.54	9.08	69.62	3.6%
Stalls	Size in m²	Rental rate per m²	Total per month	Tariff per month	VAT per month	Total per month	Increase in %
Open trading area	2m x 3m	-	100.80	90.81	13.62	104.43	3.6%
Open trading area Market entrance	-	-	135.45	122.02	18.30	140.33	3.6%
Open stand with roofing before renovation	-	-	182.70	164.59	24.69	189.28	3.6%
Open stand with roofing after renovation	-	-	237.30	213.78	32.07	245.84	3.6%
Twahangana							
Live chicken	-	-	87.15	78.51	11.78	90.29	3.6%
Wood vendors	-	-	67.20	60.54	9.08	69.62	3.6%

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Barbecue stands			135.45	122.02	18.30	140.33	3.6%
Barber shops			126.00	113.51	17.03	130.54	3.6%
Open stands			67.20	60.54	9.08	69.62	3.6%
Limbandungila							
Barbecue stands			126.00	113.51	17.03	130.54	3.6%
Post Street Mall and Semi- Mall							
Open stands small	-	-	144.90	130.54	19.58	150.12	3.6%
Okahandja Park							
Open stands	-	-	67.20	60.54	9.08	69.62	3.6%
Fire wood	-	-	67.20	60.54	9.08	69.62	3.6%
Live chicken	-	-	87.15	78.51	11.78	90.29	3.6%
Barbeque stands	2.80	37.65	127.05	114.46	17.17	131.62	3.6%
Kiosks 1 to 10	9.20	39.86	443.10	399.18	59.88	459.05	3.6%
Barber shops (with water) per cubicle	2.80	49.88	169.05	152.29	22.84	175.14	3.6%
Katutura Hospital							
Smaller stands (A1-A7)	-	-	67.20	60.54	9.08	69.62	3.6%
Stands (C1-C12)	-	-	87.15	78.51	11.78	90.29	3.6%
Stands (B1-B2)	-	-	106.05	95.54	14.33	109.87	3.6%
Khomasdal							
Six (6) lockable stalls	24.00	45.01	1,304.10	1,174.82	176.22	1,351.05	3.6%
Four (4) lockable stalls	19.80	44.86	1,072.05	965.78	144.87	1,110.64	3.6%
Ten (10) Open trading areas	4.40	25.50	135.45	122.02	18.30	140.33	3.6%
Six (6) perimeter stalls	5.29	43.78	280.35	252.56	37.88	290.44	3.6%
Six (6) barbeque stands (with barbeque rosters)	4.26	34.73	178.50	160.81	24.12	184.93	3.6%
Eveline Street Car Wash							
Car wash	-	-	339.15	305.53	45.83	351.36	3.6%
Car wash kiosk	12	90.75	1,293.60	1,165.36	174.80	1,340.17	3.6%
SOWETO SMALL BUSINESS INFORMATION CENTRE (SBIC) & OSHETU CONFERENCE			Total per month	Tariff per month	VAT per month	Total per month	Increase in %
Activity							
Rental per full day- inclusive of equipment			805.35	700.30	105.05	805.35	0.0%
Rental per full day- exclusive of equipment			644.70	560.61	84.09	644.70	0.0%
Rental per half day- inclusive of equipment			563.85	490.30	73.55	563.85	0.0%
Rental per half day- exclusive of equipment			403.20	350.61	52.59	403.20	0.0%
Oshetu Conference							
Rental per full day			378.00	328.70	49.30	378.00	0.0%
Rental per half day			189.00	164.35	24.65	189.00	0.0%
BUSINESS DEVELOPMENT & TRAINING PROGRAMMES/SESSIONS							
Activity	Duration		2021/2022	2022/2023			Increase in %
			Total	Tariff	VAT	Total	
Improve Your Business (IYB)	4 days		252.00	219.13	32.87	252.00	0.0%
Marketing and Customer Care	2 days		189.00	164.35	24.65	189.00	0.0%
Basic Computer Literacy	3 days		126.00	109.57	16.43	126.00	0.0%

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How to use the Internet	3½ days	126.00	109.57	16.43	126.00	0.0%
Basic Accounting	2 days	189.00	164.35	24.65	189.00	0.0%
Costing and Pricing	1 day	105.00	91.30	13.70	105.00	0.0%
Record and Bookkeeping	½ day	52.50	45.65	6.85	52.50	0.0%
Customer Care	½ day	52.50	45.65	6.85	52.50	0.0%
Business Planning & Budgeting	½ day	52.50	45.65	6.85	52.50	0.0%
Marketing	½ day	52.50	45.65	6.85	52.50	0.0%
SERVICES AT SMALL BUSINESS INFORMATION CENTRE (SBIC)		2021/2022	2022/2023			Increase in %
Activity		Total	Tariff	VAT	Total	
Internet Services per hour		19.95	17.35	2.60	19.95	0.0%
Internet Services per half hour		9.45	8.22	1.23	9.45	0.0%
Photo Copy/A4		2.10	1.83	0.27	2.10	0.0%
RHINO GARMENTS WAREHOUSE (DAILY RENTAL)		2021/2022	2022/2023			Increase in %
Size in m²		Total	Tariff	VAT	Total	
Daily Rental fee		23,323.65	20,281.43	3,042.22	23,323.65	0%
Rental of Dinning Hall						
Refundable beakage deposit 50% of total rental fee payable						
CANCELLATION AND NO-SHOW FOR THE RENTAL OF RHINO GARMENTS						
Description			Fees			
More than 30 days before arrival			No Charge			
15-30 calendar days before arrival. 25% of full account is retained			25% of full rental payment is retained			
8-14 calendar days before arrival. 50% of full account is retained			50% of full rental payment is retained			
7 or less calendar days before arrival. full account is re- tained			Full rental payment is retained			

DEPARTMENT OF HOUSING, PROPERTY MANAGEMENT & HUMAN SETTLEMENT

The Council of the Municipality of Windhoek, under Section 30(1)(u) of the Local Authorities Act, 1992 (Act No. 23 of 1992), has determined the following fees, charges and tariffs with effect from 1 July 2022.

Division: Property Management

POST STREET MALL KIOSKS							
Description			2021/2022	2022/2023			Increase in %
Type of kiosk	Size in m²	Rental rate per m² excluding VAT	Total per month	Tariff per month	VAT per month	Total per month	
Kiosk No. 1	28	93.93	3,024.67	2,630.15	394.52	3,024.67	0%
Kiosk No. 3	28	93.93	3,024.67	2,630.15	394.52	3,024.67	0%
Kiosk No. 4	28	93.93	3,024.67	2,630.15	394.52	3,024.67	0%
Kiosk No. 5	28	93.93	3,024.67	2,630.15	394.52	3,024.67	0%
Kiosk No. 6	20	93.93	2,160.48	1,878.68	281.80	2,160.48	0%
Bird Cage	45	93.93	4,861.08	4,227.03	634.05	4,861.08	0%

ERF 6296 KATUTURA (HERERO) MALL TRADERS

NO.	NAME	IDENTITY NUMBER	BUSINESS TYPE	STRUCTURE NUMBER	PROPOSED MONTHLY RENTAL (VAT EXCLUSIVE) N\$	ESTIMATED SIZES OF EXISTING STRUCTURES	CELL PHONE NUMBER
1	Isreal Tjizake	7302060025	Welding	STR1	163.69	61.48	811229025
2	Frans Hamukwaya	87031300541	Restaurant / Bar	STR2	163.69	82.4	813596394
3	Richard Kanduriko	8608300432	Bar	STR3	163.69	21.3	818696256
4	Tobias Hatipo	83092210166	Bar	STR4	163.69	15	815989122
5	Uaukua Uanee Kangorundu	93010101112	Bar, Restaurant	STR5	163.69	44.9	818710367
6	Queen Hengua	86093000540	Bar	STR6	163.69	41.2	812035442
7	Willes Kavanga (Committee member)	88040801176	Butchery/Restaurant/Bar	STR7	163.69	53.78	815707370
8	Sylvia Katjnamunene	791010 1094 8	Soft drinks, airtime	STR8	163.69	20	812889358
9	Tjhapu Havarua	730802 1011 5	drinks, car wash, prepaid	STR9	163.69	35.89	81449716
10	Stagfrindine Ndukerepo	82022210360	Bar	STR10	163.69	24.4	817779376
11	Albert (Committee member)	75091700641	Restaurant/Bar	STR11	163.69	22.4	818400383
12	Samson (Committee member)	700101 0444 5	Retail of meat, beer, soft drinks, car wash, prepaid electricity	STR12	163.69	72	817104113
13	Doreen Nganyona	91062200616	Hair salon	STR13	163.69	17.3	814993062
14	Cisla Karishua (Committee member)	82111110388	Restaurant/Hair Salon	STR14	163.69	67.68	812804547
15	Justina T Sheefeni	90070700370	Hair salon	STR15	163.69	16.8	814059977
16	Herero Mall Office			STR16	163.69	25.9	
17	Moses Tjirondero	84102810951	Bar	STR17	163.69	33.4	812609802
18	Kavehumbua Katjimuna	78081010084	Food and soft drinks	STR18	163.69	24.96	
19	Israel Ueritiko	81040210047	Restaurant / hair salon	STR19	163.69	15	813413413
20	Moses Haufiku	80041010191	Bar, Retail of bulk goods	STR20	163.69	35	812571843
21	Jona Panduleni Uupindi	890928 0027 10	Restaurant	STR21	163.69	8.8	812370196
22	Nomuu Rukoro	95121600747	Bar / Restaurant	STR22	163.69	25.7	816401578
23	Otaite Katjnamunene		Welding	STR23	163.69	63.13	812782229
24	Martheline Mootje Geises	77,081,600,387	Restaurant	STR24	163.69	47.08	816943308
25	Gazza Kandetu	Deceased		STR25	163.69	45	Not operational

26	Benedy Tjituaza	74031600734	Tool rental	STR26	163.69	16.34	816515863
27	Beneldine Ndikorea Ngizware	52111200409	Bar	STR27	163.69	26.3	814755092
28	Hermanus Ripuree Tjangura	7305100140	Retail of beer crates, Bar	STR28	163.69	44.3	811516039/0813545702
29	Uahindua Kambandii	80101010834	Bar	STR29	163.69	26.7	812365420
NO.	NAME	IDENTITY NUMBER	BUSINESS TYPE	STRUCTURE NUMBER	MONTHLY RENTAL	SIZE	CELL PHONE NUMBER
30	Micheal Tjitamunisa	72121500111	Bar	STR30	163.69	34.8	813771940
31	Benson Wahoroka Tjuma	72101500337	Restaurant	STR31	163.69	31.2	812631608
32	Erwin Tjimbinae Tjirimuje	82021610500	Bar	STR32	163.69	41.7	816789505
33	Elliot Paul Hiskia	47022200173	Bar, Restaurant, Bottle Store	STR33	163.69	25.3	814000000
34	Jennetha Muhoko	7808210180	Restaurant	STR34	163.69	60.78	818705937
35	Titus Mutimba Tjelivange	81081811097	Bar	STR35	163.69	24.8	817192023
36	Mateus Mutambo Hipandua	810305 1013 7	Bar	STR36	163.69	23.9	
37	Jacquiline Uandara	81030610390	Restaurant	STR37	163.69	37.29	816593303
38	Festus Uahana Harakuta	80052511049	Hair salon	STR38	163.69	15.5	812077728
39	Festus Erick Muhanda	91052401090	Bar	STR39	163.69	26	812173620
40	Ernest Hikuria	760423 0034 2	Bar	STR40	163.69	30	811516065
41	Francios Katjivena	84041010314	Mini wholesale(tango cards, coats, sweets, beer crates), restaurant	STR41	163.69	35.8	813025116
42	Alexia Tjuma	75041600627	Restaurant / Carwash	STR42	163.69	25.3	812551959
43	Makena Siwogedi (Committee member)	850122 1009 3	Car wash, Mini Shop	STR43	163.69	67.9	812197007
44	Richard Mujoro	82102010686	Hair salon	STR44	163.69	12.3	814732155
45	Eliphas U Kahorere	79010900118	Welding of trailers, retail of Oviririje music	STR45	163.69	16.2	812311234
46	Johannes Pombili Nghilaluv	83041410344	Bar	STR46	163.69	19.5	816706739
47	Nestory Shimwoondubo Nde	89022701069	Beer and cool drink crates	STR47	163.69	18.3	813307954
48	Clauden Kandjeo	92062800576	Bar	STR48	163.69	19.8	813252910
49	Jackson R Kamaze	85092411244	Bar / Hair Salon	STR49	163.69	17.3	812873038
50	Michael Mwaala	78032800388	Mini Shop	STR50	163.69	16.4	812850180

51	Roswitha Kahee	83043010272	Bar	STR51	163.69	23.94	812922016
52	Hijawo Katambo	86061001126	Hair salon / Meat cutting	STR52	163.69	18.1	817070608
53	Naaman Kotukaru	7102150755	Welding	STR53	163.69	22.8	817995305
54	Joseph Walipi Luhepo	77101210155	Meat market	STR54	163.69	34.5	0812456307 / 081 218648
55	Dockies Uatika	Deceased		STR55	163.69	17.3	
56	Ben Nambimbo	73071810284	Bar, Restaurant	STR56	163.69	16.32	817333835
57	Komelluis K Haindongo	85100061038	Beer, cold drink crates, cigarettes	STR57	163.69	47.8	812145840
58	Jackson Mumbundja	840727 1097 0	Restaurant and catering services, Meat Cutting	STR58	163.69	25.38	817319321
NO.	NAME	IDENTITY NUMBER	BUSINESS TYPE		MONTHLY RENTAL	SIZE	CELL PHONE NUMBER
59	Albertina Amakali	91082500854	Hair salon	STR59	163.69	18.3	816627297
60	Ruben Tjijoo	87050502332	Barbershop	STR60	163.69	28	816308850
61	Dina Kandando	64072500070	Kapana	STR61	163.69	14.8	817885532
62	Theophilus Nguyapewa	71121210279	Bar/ Restaurant	STR62	163.69	27.3	814379067
63	Jeremia Metaatuu	66030301322	Bar	STR63	163.69	45.12	812721922
64	Inico Ryan Kandjeo (Committee member)	800515 1097 9	Welding	STR62	163.69	43.68	812327428
65	Gustaphine Kapere	62072000262	Bar	STR65	163.69	45.15	
66	Jersey Katjilmune	880503 0074 9	Printing Shop, Restaurant/Take Away	STR66	163.69	30.5	0813358592 / 0816132729
67	Basili Ndishishi Hidileko	711205002222	Cold drinks, cigarettes, Bar	STR67	163.69	22.8	812819106
68	Nicklas Tjikuzu	611212 06 0068 1	Welding	STR68	163.69	38.4	816917854
69	Erwin Kauwora	82071010553	Welding	STR69	163.69	45.2	816525275
70	Benhard Nande Hamukwayi	99122901086	Tuckshop / Hair Salon	STR70	163.69	21	818636256

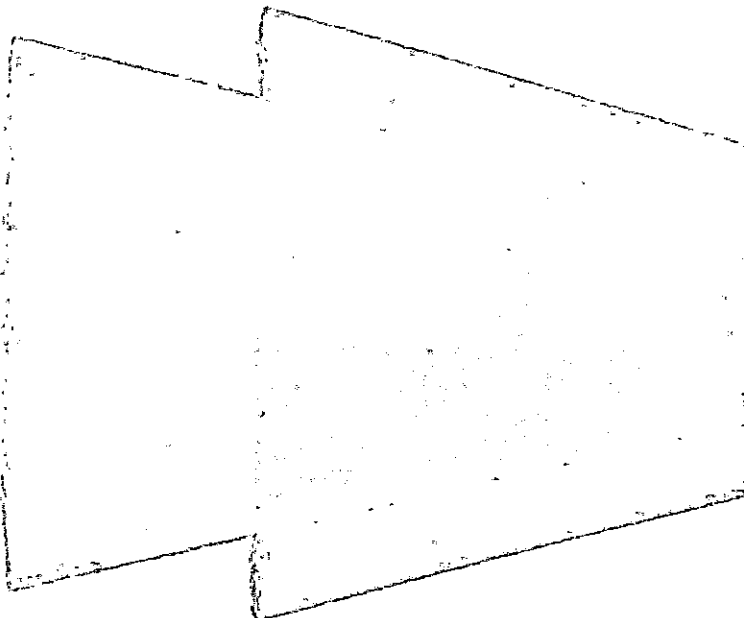
MALL TRADERS (NO STAND NUMBERS)

NAME	IDENTITY NUMBER	PROPOSED MONTHLY RENTAL (VAT EXCLUSIVE) N\$	BUSINESS TYPE	SIZE	CELL PHONE NUMBER
Inomambo Uariuavi	91081700227	163.69	Kapana (no structure)	10	817867878
Ivvone Uanivi	82062710119	163.69	Kapana (no structure)	10	813309789
Sondia Mbeuserua	83042810819	163.69	Kapana (no structure)	10	814370034
Theolady Kahona	78021410256	163.69	Kapana (no structure)	10	813859725
Uapingaena Katjindee	63102400566	163.69	Kapana (no structure)	10	812853688
Uatiruiye Hei	80110410483	163.69	Kapana (no structure)	10	8145206840
Batseba Mbaisa	73060610606	163.69	Kapana (no structure)	10	812011746
Sondia Mbeuserua	83042810879	163.69	Kapana (no structure)	10	814370034
Theo Puume Kahona	7802141256	163.69	Kapana (no structure)	10	818202358
Lydia Kaangundue	79081110276	163.69	Kapana (no structure)	10	813251699
Nensie Kanjore	721222	163.69	Kapana (no structure)	10	814265978

City of Windhoek

Street and Place Naming Guidelines

APPROVED BY COUNCIL RESOLUTION 76/04/2017



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1 Introduction and Background

The City of Windhoek is the Local Authority responsible for the administration of the street naming and renaming within its boundary. This administrative function is performed in order to ensure that all properties in the City are allocated official addresses. Street Addresses are an important urban navigation tool to the City's officials, residents, visitors and businesses.

Naming of streets and places is also an important element of service delivery as it promotes legibility and facilitates the effective delivery of services such as water and electricity, emergency services and also policing functions.

The naming and renaming of streets and places after persons who made an impact on the development of the City is a way of etching the country's history, both pleasant and not so pleasant, in the memory of people; and also to honour individuals for their contributions to the development of the country and the City and should therefore be done with careful consideration since it may have an impact on current and future users of a particular street or place.

2 Framework

The legislative framework within which the street and place naming and renaming is undertaken is the Local Authorities Act, Act 23 of 1992. Of particular relevance is Section 94 (1) (f) that stipulates as follows:

"the regulation of the naming from time to time of streets, and the numbering of houses, buildings and places in such streets"

3 Purpose of the Policy

- 3.1 The purpose of the policy is to provide a consolidated document to be used in the processes of naming and renaming of public places and streets within the City of Windhoek.
- 3.2 To ensure an inclusive, consultative and transparent process that enjoys public support when a proposal for a name change is received;
- 3.3 To facilitate the replacement of controversial, historical irrelevant and offensive names within Windhoek;
- 3.4 To facilitate the allocation of street names to new townships to be established in Windhoek; and

- 3.5 To serve as a guide to all private township developers within Windhoek on procedures to be followed in the allocation of street and place names.

4 Establishment of Committee

There shall be established a Committee under Section 30 (1) (w) exclusively dealing with the naming and renaming of public places and streets.

4.1 Composition of Committee

- 4.1.1 The committee will comprise of not less than eight (8) and no more than ten (10) members.

- 4.1.2 The committee shall consist of :

- 4.1.2.1 Three (3) Councillors nominated by Council,

- 4.1.2.2 Five (5) members from the public with expertise or experience in one or more of the following: town planning, onomastics, history, culture, linguistics, land survey, reconciliation and religion nominated by the Department of Community Services following consultation and acceptance of the nomination,

- 4.1.2.3 Two (2) staff members – one (1) representing the Department of Community Services and one (1) representing the Office of the Chief Executive Officer (the latter shall be staff member designated by the Chief Executive Officer).

- 4.1.3 The Department of Community Services shall perform the secretarial functions of the committee.

- 4.1.4 The Department of Community Services shall motivate and submit the names of the public members to Council for consideration.

4.2 Quorum of the committee

A simple majority of the Committee shall form the quorum.

4.3 Terms of office

- 4.3.1 The Committee shall hold office contemporaneous with the term of Council.
- 4.3.2 A member of the committee is appointed for a period of five (5) years.
- 4.3.3 A member of the committee may be re-appointed for a consecutive term of office.
- 4.3.4 Council may terminate a person's membership to the Committee.
- 4.3.5 If a member dies or resigns, Council must appoint another person to fill that vacancy for the remaining portion of the term of office of that member.

4.4 Meetings of the committee

- 4.4.1 The Chief Executive Officer must convene the first Committee meeting, thereafter the Chairperson of the Committee must be elected from the Members of the Committee.
- 4.4.2 The Strategic Executive Community Services will convene all other meetings including urgent meetings.
- 4.4.3 The committee will meet once every quarter or four (4) times a year and when convened by the Chairperson as often as necessary to consider urgent matters.
- 4.4.4 In the absence of the Chairperson, the members present at the meeting must elect from amongst themselves a Chairperson for the purpose of that meeting.

4.5 Functions of the committee

The primary functions of the Committee are to:

- 4.5.1 Assess and evaluate all naming and or renaming proposals received against the criteria as spelt out in this policy.
- 4.5.2 Recommend to Council proposed names for public places and streets within the Municipal boundary of Windhoek.

4.6 Allowances of members of the committee

Members of the committee shall not receive any remuneration and serve on a voluntary basis.

4.7 Annual report of the committee

In order to ensure that proper record keeping is maintained the committee will compile an annual report on the following;

4.7.1 Current names that were changed;

4.7.2 New names that were proposed and accepted

This report shall be held with the City's Registry for record keeping purposes.

4.8 Policy Review

This policy is subject to review as and when the regulatory; social and or the local authority environment require change.

5 Principles to be followed in naming streets and places

The principles detailed below should be adhered to in considering all submissions/proposals and petitions for the naming and renaming of public places and streets.

The following principles shall apply:

- 5.1 Proposed street names must be kept short.
- 5.2 Names of people, places, or objects may be used.
- 5.3 Names can be in all languages and should be easily pronounceable by Namibian citizens.
- 5.4 For record keeping purposes, information with regards to the proposed name, identity of a person, biography and activities the person was involved must accompany the proposal letter. This is important in cases where notable persons names are submitted as proposed for naming or renaming after streets or public places.

- 5.5 Names of the same object but in different languages can occur but are preferably to be avoided.
- 5.6 Names with similar sounds but different spelling cause confusion and should be avoided.
- 5.7 When personal names are used, the preferred form is to use only the surname, for instance, "Smith Street", the full name should be used, for example "Joan Harrison Street". A third alternative, which allows names to be kept in short form, is to use initials and surname, for example "H G Veii Street".

6 The naming of places and streets after deceased persons

- 6.1 The person must have popular support.
- 6.2 The person is credited with outstanding achievement, for example, in the areas of cultural, educational, social, sport or economic development.
- 6.3 The person should have greatly contributed towards promoting a positive image of Namibia and Windhoek.

7 Guidelines to be followed in renaming existing public places and streets

- 7.1 In an effort to keeping with previous Council Resolutions, streets should, as a general principle:
 - 7.1.1 be named after people, places, events and things related primarily to the City and its citizens and; b) Secondly, to Namibia at large.
- 7.2 The following are the criteria that will be applicable in the naming or renaming of public places and streets:
 - 7.2.1 To commemorate noteworthy persons associated with the City, Namibia, Africa and the international community of which the City is part of;
 - 7.2.2 To commemorate local history, places, events or culture;
 - 7.2.3 To promote names with powerful positive meanings for people, so as to provide opportunities to promote Community harmony;
 - 7.2.4 To recognise native wildlife, flora, fauna or natural features related to the community and the City of Windhoek;
 - 7.2.5 To recognise communities which contribute to the ethno-racial diversity of Windhoek City;
 - 7.2.6 To strengthen community identity;

- 7.2.7 To use names that can serve as locational tools and navigational aids for a predictable, manageable, and orderly environment (names are the beginnings of journeys or destination); and
- 7.2.8 To use names that creates a sense of place.
- 7.2.9 Preference shall be given to names of local area or historical significance.
- 7.2.10 Names of living persons should only be used in exceptional circumstances such as to celebrate Windhoek's rich heritage of struggle for a democratic, non-racial society and to acknowledge the contribution that many of the City's residents have made to the development of the City or Namibia.
- 7.2.11 Names should be grouped in categories for use in the same areas, for instance, the names of birds are used in certain extensions of Khomasdal, and whilst the names of historical figures are used in other townships; new developments can accommodate new trends in the naming of streets.
- 7.2.12 Renaming proposals must recognise persons who, in their lifetime demonstrated outstanding contributions to the City and the country at large. The following criteria must be met:
 - 7.2.12.1 Persons nominated dead or alive should have made a substantial contribution directly to the City of Windhoek or Namibia at large;
 - 7.2.12.2 The person must have given extensive or distinguished service to the community that goes beyond any doubt to Council;
 - 7.2.12.3 The service should be easily recognisable as having a direct benefit to the City or Namibia at large and should be such that it has produced substantial benefit to the well-being of the citizens of the country; and
 - 7.2.12.4 Nominees in the case of a Windhoek resident should have lived within the City of Windhoek for a significant number of years (significant usually means at least 15 years) and have had a long and close association and identification with the City.
 - 7.2.12.5 Nominations by foreigners shall be done by their direct diplomatic representatives through both the Ministry of International Relations and Ministry of Urban and Rural Development.

8 Names to be avoided

- 8.1 There must be no duplication of a name within the City.
- 8.2 Names for public streets must not be construed as commercial advertising.

- 8.3 Cumbersome, corrupted or poorly modified names, discriminatory or derogatory names from the point of view of race, sex, colour, creed, political affiliation or other social factors shall be avoided.
- 8.4 The reuse of former street names should be discouraged because of the confusion it causes in property records management.
- 8.5 Names of living people are to be excluded, except when the age of the proposed persons reach or exceed 70 years.
- 8.6 In addition to the guidelines the City will consider the following when renaming the City's streets:
 - 8.6.1 The historical reasons for the original name;
 - 8.6.2 The public profile or familiarity of the public place and street's original name;
 - 8.6.3 The cost associated with changing the place or street's name; that is, the cost of replacing street and traffic signs;
 - 8.6.4 The relevance of the proposed new name to the place and street's main user group; and
 - 8.6.5 The potential confusion created for emergency and other municipal services, commercial delivery services, and the travelling public.

9 Current streets and places that should not be renamed

The renaming of public places and streets which have the following characteristics is discouraged, i.e. streets that:

- 9.1 Have a name that reflects a positive historical event within the City of Windhoek;
- 9.2 Have a name that has specific relevance to the people of Namibia; and
- 9.3 Public places and streets that have already been renamed after a person associated with the City and people of Windhoek.

10 Process by which proposals for naming or renaming shall be made

- 10.1 Any citizen or person, Community or organisation in the geographical area of the City of Windhoek shall be entitled to propose the naming of new streets or renaming of an existing street in accordance with policies and procedures accepted by Council.
- 10.2 Application for the naming or renaming of streets/places shall be in writing under the name of the person making the proposal, and include details of

the affected street or place, proposed new name, background of the name to be eliminated, and fully motivated reasons which shall include research references, evidence of professional or community support of the name proposed.

- 10.3 Proposals may include the results of referenda, minutes of a concerned group or similar consultation within communities by way of evidence of support or opposition but which Council shall not consider as defining criteria.
- 10.4 Proposals will be received by the Chief Executive Officer, and forwarded to the Strategic Executive Community Services for report and preparation of a submission to the Committee.
- 10.5 The processing shall be strictly according to the proposed procedures provided in the Policy.
- 10.6 Proposals will be considered by the Street and Public Places Naming Committee who will make recommendations to Council.
- 10.7 The Council of the City of Windhoek will take the final decision on whether to accept the proposed name or not.

11 Public Participation

In order to ensure a transparent and fair process in the renaming of public places and streets, the following shall be followed:

- 11.1 The level of public participation must be reflective of the size, and importance of the street or public place to be named or renamed.
- 11.2 Council will place an advert in two (2) local newspapers for one week advertising the proposed renaming of a street or public space calling for objections from the public.
- 11.3 In cases where the street is short, the city may invite objections from all residents in the surrounding by way of registered mail.
- 11.4 A member of the public who has objections against the renaming of a place or street will have twenty one (21) working days to lodge the objections with Council.
- 11.5 Council shall retain the right to reject any objection with reasons and refuse the renaming of a public place or street.
- 11.6 Council's decision shall be final and no further objections may be entertained.

10 Annexures