



INVITATION TO SUBMIT FORMAL WRITTEN PRICE QUOTATIONS

QUOTATION NO.:	RFQ/DSP/2019-20/91
QUOTATION DESCRIPTION:	PROPOSAL TO INVITE INFORMAL TENDERS FOR THE LEASE OF PORTION OF ERF 16226 AND ERF 16331 COURT CRESCENT, ESPLANADE, EAST LONDON FOR THE ERECTION OF AN AMUSEMENT PARK DURING THE FESTIVE SEASON.

For publication on the Buffalo City Metropolitan Municipality website and Supply Chain Management Unit Noticeboard

NAME OF BIDDER:	
BCMM SUPPLIER DATABASE REGISTRATION NO.:	
STREET ADDRESS:	
POSTAL ADDRESS:	
TEL NO.:	CELL PHONE NO.:
EMAIL ADDRESS:	FAX NO.:
TOTAL QUOTATION AMOUNT:	AS PER DAILY TARRIFS.

Issued by:	Prepared by:
The City Manager c/o The General Manager: Supply Chain Management Unit 80 Phillip Frame Road Chiselhurst East London	Directorate of Spatial Planning and Development

INVITATION TO SUBMIT FORMAL WRITTEN PRICE QUOTATIONS

Buffalo City Metropolitan Municipality requests your quotation for the goods and/or services listed hereunder in this RFQ document. Bidders are requested to furnish all information requested and return their quotation submission on the date stipulated in this invitation and the RFQ advertisement. Late and incomplete submissions will invalidate the quotation submitted.

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ADVERT DATE:	03 SEPTEMBER 2019
CLOSING DATE:	10 SEPTEMBER 2019
CLOSING TIME:	12:00PM
COMPULSORY BRIEFING MEETING DATE & TIME: VENUE:	N/A
RFQ DOCUMENTS AVAILABLE:	Reception Desk Supply Chain Management Unit 80 Phillip Frame Road Chiselhurst East London
SUBMISSION OF RFQ:	Informal Tender Box Supply Chain Management Unit 80 Phillip Frame Road Chiselhurst East London
TECHNICAL ENQUIRIES:	Name: Roderick Owen Tel: 043 705 3369 Email: rodericko@buffalocity.gov.za
PROCEDURAL ENQUIRIES:	Cassandra Stoffels / Bongani Mndi Tel: (043) 705 9119 / (043) 705 9127 Email: CassandraR@buffalocity.gov.za BonganiMn@buffalocity.gov.za

NB: NO SUBMISSIONS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE (as defined in Regulation 1 of the Local Government: Municipal Supply Chain Management Regulations)

1.1 GENERAL CONDITIONS OF THE RFQ

ALL CONDITIONS AND/OR INSTRUCTIONS SET OUT BELOW MUST BE STRICTLY ADHERED TO, FAILING WHICH THE SUBMISSION WILL BE DECLARED NON-RESPONSIVE

1. References in this document to 'RFQ', 'tender', 'bid', shall be synonymous.
2. No tender will be considered unless submitted on this BCMM tender document.
3. The whole original tender document, as issued by BCMM must be submitted. A tender will be considered invalid and will not be accepted, if any part of this tender document is not submitted.
4. Bidders must submit one tender offer only, either as a single tendering entity or as a member of a joint venture.
5. Telephonic, telegraphic, telex, facsimile or emailed tender offers will not be accepted.
6. Any portion of the tender document not completed will be interpreted as 'not applicable'. Notwithstanding the afore-going, failure to complete any compulsory portion of the tender document will result in the tender being declared non-responsive.
7. Tenders must be properly received and deposited, on or before the closing date and on or before the closing time, in the **Informal Tender Box** at the BCMM Supply Chain Management Unit ('SCMU') situated at 80 Phillip Frame Road, Chiselhurst, East London. If the tender document is too large to fit in the allocated box, please enquire at the reception for assistance.
8. BCMM accepts no responsibility for ensuring that tenders are placed in the correct tender box, and should a tender be placed in the incorrect tender box, it will be not be accepted.
9. BCMM reserves the right to accept:
 - 9.1 the whole tender or part of a tender or any item or part of any item, or to accept more than one tender (in the event of a number of items being offered), and BCMM is not obliged to accept the lowest or any tender;
 - 9.2 a tender which is not substantially or materially different from the tender specification.
10. BCMM shall not consider tenders that are received after the closing date and time, as specified in the tender advertisement.
11. BCMM will not be held responsible for any expenses incurred by tenderers in preparing and submitting tenders.
12. BCMM may, after the tender closing date, request additional information or clarification of tenders in writing.
13. A tender may be rejected as non-responsive if the tenderer fails to provide any clarification requested by BCMM within the time for submission stated in the written request for such clarification.
14. A tenderer may request in writing, after the closing date, that the tender offer be withdrawn. Such withdrawal will be permitted or refused at the sole discretion of BCMM after consideration of the reasons for the withdrawal, which shall be fully set out by the tenderer in such written request for withdrawal.
15. The tender shall be signed by a person duly authorised to do so.
16. Tenders submitted by joint ventures, consortia, partnerships shall be accompanied by a joint venture, consortium, partnership agreement, in which it is defined precisely the conditions under which the joint venture, consortium or partnership will function, its period of duration, the persons authorised to represent and obligate it, the participation of the several firms of which it is formed, and any other information necessary to permit a full appraisal of its functioning.

17. Once the tender is awarded, all purchases will be made through an official BCMM order. Therefore no goods must be delivered or services rendered before an official order has been forwarded to and accepted by the successful tenderer.

18. Tender Evaluation

- 18.1 Tenders will be evaluated on functionality, should functionality criteria be made a requirement of this tender in the special conditions of tender set out in paragraph 1.2 of this tender document.
- 18.2 In the event that a functionality assessment is applicable to this tender, the minimum functionality score that a tender shall be required to obtain in order to be evaluated further shall be indicated in paragraph 1.2 of this tender document.
- 18.3 Any additional evaluation criteria of this tender shall be indicated in paragraph 1.2 of this document.
- 18.4 The tender will be evaluated for price and preference using the 80/20 preference points system, as follows :

Price	80
BBBEE	20

- 18.5 Tenderers may tender with or without VAT depending upon whether or not they are VAT vendors. In the calculation of price points, VAT shall be removed from the tender offer of tenderers registered as VAT vendors, so that financial offers can be evaluated on a comparative basis as a price advantage cannot be afforded to tenderers who are not VAT vendors.

19. Test for Responsiveness

19.1 Invalid Tenders

Tenders shall be invalid if:

- (a) The tender is not sealed when submitted into the tender box.
- (b) The tender is not completed in non-erasable ink.
- (c) The form of offer has not been completed in every respect and signed by the tenderer.
- (d) In a two-envelope system, a tenderer fails to submit both a technical proposal and a separate, sealed financial offer.
- (e) The tenderer has been listed on the National Treasury's Register for Tender Defaulters in terms of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, or has been listed on the National Treasury's List of Restricted Suppliers and who is therefore prohibited from doing business with the public sector.
- (f) The tenderer is prevented from doing business with BCMM in terms of Regulation 38 and 44 of the Supply Chain Management Regulations (MFMA).

19.2 Non-responsive Tenders

Tenders will be declared as non-responsive and eliminated from further evaluation in the following circumstances –

- (a) The tender does not comply with the tendering procedures.
- (b) The tender has not achieved the minimum score for functionality as set out in the tender evaluation criteria, where functionality is applicable.
- (c) Where there are material deviations or qualifications to the tender which in BCMM's opinion would –

- (i) Detrimentially affect the scope, quality or performance of the works, services or supply identified in the scope of works;
- (ii) Significantly change BCMM's or the tenderer's risks and responsibilities under the contract, or
- (iii) Affect the competitive position of the tenderer, or other tenderers presenting responsive tenders, if it were to be rectified.
- (d) The tender will be declared non-responsive if the tenderer fails to adhere to a written request (within the specified period set out in such request) to –
 - (i) Comply with the general conditions applicable to tenders as contained in the BCMM Supply Chain Management Policy;
 - (ii) Complete and/or sign any declarations and/or authorisations;
 - (iii) Register on the BCMM Supplier database;
 - (iv) Submit an original and valid tax clearance certificate from the South African Revenue Services (SARS) certifying that the taxes of the tenderer are in order, or written confirmation from SARS that suitable arrangements have been made with SARS.

20. Clarification of tender offer after submission

The tenderer must provide clarification of its tender offer in response to a request to do so from BCMM during the evaluation of tender offers. This may include providing a breakdown of rates or prices and correction of arithmetical errors by the adjustment of certain rates or item prices (or both). No change in the competitive position of tenderers or substance of the tender offer may be sought, offered, or permitted.

21. Provide other material

The tenderer shall provide, on request by BCMM, any other material that has a bearing on the tender offer, the tenderer's commercial position (including notarized joint venture agreements), or samples of materials, considered necessary by BCMM for the purpose of a full and fair risk assessment. Should the tenderer not provide the material, or a satisfactory reason as to why it cannot be provided, by the time for submission stated in BCMM's request, BCMM may regard the tender offer as non-responsive.

22. Inspections, tests and analysis

The tenderer shall, at the request of BCMM, provide access during working hours to its business premises for any inspections, tests and analyses as provided for in these tender conditions.

23. Securities, bonds, policies, etc

If required, the tenderer must submit for BCMM's acceptance before formation of the contract, all securities, bonds, guarantees, policies and certificates of insurance required in terms of the conditions of contract.

24. Imbalance in tendered rates

- 24.1 In the event of tendered rates or lump sums being declared by BCMM to be unacceptable to it because they are either excessively low or high or not in balance with other rates or lump sums, the Tenderer may be required to produce evidence and advance arguments in support of the tendered rates or lump sums objected to.
- 24.2 If after submission of such evidence and any further evidence requested, BCMM is still not satisfied with the tendered rates or lump sums objected to, it may request the tenderer to amend these rates and lump sums along the lines indicated by it.
- 24.3 The tenderer will then have the option to alter and/or amend the rates and lump sums objected to and such other related amounts as are agreed on by BCMM, but this shall be done without altering the tender offer as tendered for.
- 24.4 Should the Tenderer fail to amend his tender in a manner acceptable to BCMM, BCMM may reject the tender.

25. BCMM supplier database

- 25.1 A tenderer must be registered on the BCMM Supplier Database, or meet the listing criteria set out in the BCMM Supply Chain Management Policy, in order for its tender to be considered responsive.
- 25.2 A tenderer must be registered within 7 days of being requested to do so, failing which its tender shall be declared to be non-responsive.
- 25.3 It is each tenderer's responsibility to keep all the information on the BCMM Supplier Database updated. If any information required (e.g. tax clearance certificate, CIDB certificate, etc) is not valid or has expired, all transactions with the vendor may, in the sole discretion of BCMM, be suspended until such time as the correct, verified information is received.

26. Tax clearance certificates

- 26.1 No award shall be made to a person whose tax matters have not been declared to be in order by the South African Revenue Service (SARS).
- 26.2 Tenderers are therefore required to obtain a valid original Tax Clearance Certificate from the local SARS office where such tenderer is registered for income tax/VAT purposes.
- 26.3 Each party to a consortium, joint venture or partnership must comply with the above.

27. Inducements, rewards, gifts and other abuses of the Supply Chain Management System

- 27.1 No provider or potential provider of goods or services, or a recipient or potential recipient of goods disposed of or to be disposed of, may directly or indirectly commit any fraudulent act during the tender process or abuse the supply chain management system of BCMM.
- 27.2 Fraud and abuse of the supply chain management system is not permitted and may result in the tender being rejected, an existing contract being cancelled, blacklisting, and any other remedies available to BCMM as provided for in the Supply Chain Management Regulations.

28. Declarations and authorisation

Tenderers are required to complete all statutory declarations and authorisations in the schedules attached to this tender document in Section 1.4, failing which the tender may be declared non-responsive.

29. Samples

If the specifications require a tenderer to provide samples, these shall be provided strictly in accordance with the instructions set out in the tender conditions.

30. Alternative offers

Alternative offers may be considered, provided that a tender free of qualifications and strictly in accordance with the bid document is also submitted. BCMM shall not be bound to consider alternative tenders.

31. Alterations to tender document

Tenderers may not make any alterations or additions to the tender document, except to comply with instructions issued by BCMM, or as are necessary to correct errors made by the tenderer. All signatories to the tender offer shall initial all such alterations. Erasures and the use of masking fluid are prohibited.

32. Objections, Complaints, Queries and Disputes / Appeals in terms of Section 62 of the Systems Act

32.1 Objections, complaints, queries and disputes

Persons aggrieved by decisions or actions taken by BCMM in the implementation of the supply chain management system or any matter arising from a contract awarded in terms of the supply chain management system may, within 14 days of the decision or action, lodge a written objection or complaint or query or dispute against the decision or action.

32.2 Section 62 Appeals

- (a) In terms of section 62 of the Systems Act, a person whose rights are affected by a decision taken by a political structure, political office bearer, councillor or staff member of a municipality in terms of a power or duty delegated or sub-delegated by a delegating authority, may appeal against that decision by giving written notice of the appeal and reasons to the Accounting Officer within 21 days of the date of notification of the decision.
- (b) An appeal shall contain the following:
 - (i) The reasons and/or grounds for the appeal;
 - (ii) The manner in which the appellant's rights have been affected;
 - (iii) The remedy sought by the appellant.

32.3 Lodging of appeals, objections, complaints, queries and disputes relating to this tender

Appeals, objections, complaints, requests for information, queries and disputes must be submitted in writing to the Office of the Municipal Manager, 10th Floor, Trust Centre Building, Cnr of Oxford & North Streets, East London, OR by email, thandokaziin@buffalocity.gov.za

1.2 SPECIAL CONDITIONS OF THE REQUEST FOR QUOTATIONS (RFQ)

The special conditions qualify, or are in addition to the general conditions in section 1.1 above. In the event of any ambiguity or inconsistency between the general conditions and the special conditions, the latter shall have precedence.

These special conditions, the general conditions, and the returnable schedules are only required for evaluation purposes, and shall not form part of any contract arising from the invitation to tender.

General Conditions Clause No.	Additions or Variations to General Conditions
Clause 13 & 21 CLARIFICATION OF RFQ SUBMISSION	Where a bidder is requested to provide additional information or clarification of its submission, this shall not be an opportunity for the bidder to bolster its submission in any way, so as to afford it an unfair competitive advantage.
Clause 16 AUTHORITY OF SIGNATORY	The bidding entity must submit a letter of authority on its letterhead authorising the signatory to this RFQ to sign all documents in connection with the RFQ, and any contract which may arise therefrom, on behalf of the bidding entity. The letter of authority must be attached to Schedule A.
Clause 18	After the Service provider has been notified of the Award and signs Letter of Award, the bidder will have to wait for an official signed Purchase Order before commencing with the delivery or rendering of services appointed for.
Clause 19 EVALUATION OF RFQs	RFQs will be evaluated in accordance with the evaluation criteria set out on page 8,9,10,11 and 12 of this document.
Clause 23 INSPECTION, TESTS AND ANALYSES	No inspections, tests and analyses shall be required for this RFQ.

EVALUATION CRITERIA

The tender requirements are as follows:

1. The lease will be for the period from **20 November 2019** to **10 January 2020** both dates inclusive.
2. The tariff (non – negotiable) to be charged will be **R 1 925,00** per operational day and **R 397,00** per non-operational day inclusive of VAT, which will be payable into the bank account of Buffalo City Metropolitan Municipality by no later than 15 January 2020.
3. The Service Provider is to provide a list of the rides, stalls and equipment to be made available.
4. The Service provider is to provide an indication of any Corporate Social Responsibility to the local communities.
5. The Lessee is responsible to comply with all the requirements of the Safety, Sports and Recreational Events Act 2 of 2010, the Occupational Health and Safety Act 85 of 1993, Municipal By-Laws and any other legislation applicable to any activities that take place on the leased property.
6. The funfair shall not operate on any day between 24:00 and 7:00 (weekdays and weekends included).
7. The Lessee further indemnifies the Municipality against any liability that may arise out of the non-compliance with any legislation.
8. The Lessee to provide Electric certification for all the electrical installations, prior to the commencement of trading.
9. The Lessee to provide Mechanic certification for all the mechanical installations, including fair rides, prior to the commencement of trading.
10. The Lessee to ensure that Toilet facilities are provided for the public to the satisfaction of the City Health Department, prior to the commencement of trading.
11. The lessee to make provision in collaboration with the Sanitation Department for the proper disposal of waste water into the sewerage system (Waste water should not be disposed of into the Stormwater drains or on the grass area of the Public Open Space) prior to the commencement of trading.
12. The Lessee to ensure that fuel storage and usage is approved by the Fire Department, prior to the commencement of trading.
13. The Lessee to ensure that adequate measures to be implemented to manage fuel spillage (spill management plan) prior to the commencement of trading.

14. The City Health Department will monitor and address any matters related to illegal dumping or domestic refuse that accumulates on site.
15. Management of litter by the Lessee is to be to the standard of the Environmental Health Requirements.
16. A Waste Management Plan must be submitted by the Lessee and approved by the Solid Waste Management Department, prior to the commencement of trading.
17. All food prepared by the Lessee for the general public must be approved by the City Health Department, prior to the commencement of trading.
18. The Lessees living quarters on the site should include ablution facilities and be approved by the City Health Department, prior to the commencement of trading.
19. No glass containers to be used for any beverages.
20. No open fires. All LP Gas installations to be approved by the Fire Department, prior to the commencement of trading.
21. The Lessee to ensure adequate Public Liability insurance to cover the identified risks, prior to the commencement of trading.
22. Lessee to provide a plan of their Corporate Social Responsibility commitment.
23. Lessee to provide their own security to secure their assets.
24. Lessee to provide sufficient event management security to manage the anticipated crowd.
25. Lessee to provide copies of all safety certificates and insurance policies to the Disaster Management Department prior to the public use of the facilities.
26. Any electrical and water connection required will be for the account of the Lessee.
27. The Lessee to provide a detailed profile of the rides to be offered.
28. The Lessee to provide adequate security for the handling and receipt of cash.
29. The lessee to rehabilitate any part of the leased property that might have been damaged during the lease period to the satisfaction of the Lessor.
30. The Lessee will be allowed 5 days before and 5 days after the lease period to erect and dismantle all equipment.

The Tender will be Evaluated with regards to Functionality in terms of the following criteria: -

Description	Points Allocated per	Offered / Supplied by Bidder (to be concluded by Bidder)	Signature of Bidder confirming such	Points Earned by Bidder (to be concluded by Buffalo City Metropolitan Municipality)
Number of Rides on offer (exclusive of food stalls, non – food stalls and ticket / cash collection offices).	5 points per ride on offer			
Safety Compliance (Up to date Electrical and Mechanical Certificates) – to be attached to Tender documents submission.	5 points only. Absence of 1 or more required certificates = 0 points.			
Experience: 1 year = 1 point 2 years = 2 points 3 years = 3 points 4 years = 4 points 5 years = 5 points 6 years or more = 6 points.				
Food Stalls.	1 point per stall			
Non – Food Stalls.	1 point per stall			
Total Points	N/A	N/A	N/A	

Bidders failure to arrive on site without the aforementioned offered by the bidder (signature confirming such) will constitute a breach of this tender which can result in legal action being proceeded against the bidder by Buffalo City Metropolitan Municipality.

Maximum points that a Bidder can earn is 100.

NB: The Bidder with the highest points scored will be the preferred Bid.

1.3 RETURNABLE DOCUMENTS

In addition to the requirements stipulated in this tender, tenderers are required to submit the documentation listed below.

may result in the tender submission being classified as non-responsive and eliminated from further consideration.

	RETURNABLE DOCUMENT	AVAILABLE (TICK ✓)
1.	Original SARS tax clearance certificate	
2.	Certified copy of BBBEE certificate; if points are claimed	
2.1	Certified copy of BBBEE certificate (if tender is a Trust, Joint Venture of Consortium that is a legal entity)	
2.2	Certified copy of consolidated BBBEE scorecard (if tenderer is a Trust, Joint Venture or Consortium that is an unincorporated entity)	
3.	Proof of VAT registration; if not apparent from tax clearance certificate	
4.	Certified copy of Certificate of Incorporation; if tenderer is a Company	
5.	Certified copy of Founding Statement; if tenderer is a Closed Corporation	
6.	Certified copy of Partnership Agreement; if tenderer is a Partnership)	
7.	Certified copy of Joint Venture or Consortium Agreement; if tenderer is a Joint Venture or Consortium	
8.	Certified copy of ID document and a signed statement that tenderer is a sole proprietor; if tenderer is a one-man concern	
9.	Original Municipal debt clearance certificate / bidders' business premises lease agreement.	
10.	Certified ID copies of company directors	

NOTE – in the event that the tendering entity is a joint venture, consortium, or partnership, each partner must supply the above information.

1.4 RETURNABLE SCHEDULES

All returnable schedules below must be completed by the tendering entity, save for those schedules which are not applicable to it in which case the tendering entity must indicate which schedules are not applicable to it. Should the tenderer fail to complete all applicable and compulsory schedules, its tender submission shall be deemed to be non-responsive in accordance with clause 28 of the general conditions of tender above.

The schedules required to be completed are as listed below –

Schedule A	Letter of Authority for Signatory
Schedule B	Confirmation of Registration of Tenderer on BCMM Supplier Database
Schedule C	Municipal Bidding Documents

SCHEDULE A – LETTER OF AUTHORITY FOR SIGNATORY

Indicate the status of the tenderer by ticking the appropriate box hereunder with an x.

COMPANY	CLOSE CORPORATION	PARTNERSHIP	JOINT VENTURE	SOLE PROPRIETORSHIP

NOTE:

BIDDERS MUST ATTACH A LETTER OF AUTHORITY TO THIS PAGE, AUTHORIZING THE SIGNATORY TO THIS RFQ TO SIGN ALL DOCUMENTS IN CONNECTION WITH THIS RFQ AND ANY CONTRACT WHICH MAY ARISE THEREFROM, ON BEHALF OF THE BIDDING ENTITY.

SCHEDULE B – CONFIRMATION OF REGISTRATION OF TENDERER ON BCMM SUPPLIER DATABASE

TENDERER NAME	REGISTERED ON SUPPLIER DATABASE? (YES/NO)	DATABASE REGISTRATION NUMBER

A bidder who is not registered on the BCMM Supplier Database is not precluded from submitting a quotation; however such bidder must meet the listing criteria contained in the BCMM Supply Chain Management Policy (2015) in order for its quotation to be considered responsive.

It is the responsibility of a bidder to ensure that this requirement is complied with. In the case of Joint Ventures and Consortia, this requirement will apply to each party to the Joint Venture or Consortium.

BIDDER'S SIGNATURE:

SCHEDULE C – MUNICIPAL BIDDING DOCUMENTS

MBD 4

DECLARATION OF INTEREST

1. No bid will be accepted from persons in the service of the state¹.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority.
3. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

3.1 Full Name of bidder or his or her representative.....

3.2 Identity Number:

3.3 Position occupied in the Company (director, trustee, shareholder²):

.....

3.4 Company Registration Number:

3.5 Tax Reference Number:

3.6 VAT Registration Number:

3.7 The names of all directors / trustees / shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.

3.8 Are you presently in the service of the state? **YES / NO**

3.8.1 If yes, furnish particulars.....

.....

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

(a) a member of –

(i) any municipal council;
(ii) any provincial legislature; or
(iii) the national Assembly or the national Council of provinces;

(b) a member of the board of directors of any municipal entity;

(c) an official of any municipality or municipal entity;

(d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);

(e) a member of the accounting authority of any national or provincial public entity; or

(f) an employee of Parliament or a provincial legislature.

² Shareholder" means a person who owns shares in the company and is actively involved in the management of the company or business and exercises control over the company.

3.9 Have you been in the service of the state for the past twelve months? **YES / NO**

3.9.1 If yes, furnish particulars.....

.....

3.10 Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

3.10.1 If yes, furnish particulars

.....

3.11 Are you, aware of any relationship (family, friend, other) between any other bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid?..... **YES / NO**

3.11.1 If yes, furnish particulars.....

.....

3.12 Are any of the company's directors, trustees, managers, principle shareholders or stakeholders in service of the state?..... **YES / NO**

3.12.1 If yes, furnish particulars.....

.....

3.13 Are any spouse, child or parent of the company's directors, trustees, managers, principle shareholders or stakeholders in service of the state?..... **YES / NO**

3.13.1 If yes, furnish particulars.....

.....

3.14 Do you or any of the directors, trustees, managers, principle shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract. **YES / NO**

3.14.1 If yes, furnish particulars.....

.....

4. Full details of directors / trustees / members / shareholders.

Full Name	Identity Number	State Employee Number

.....
Signature

.....
Date

.....
Capacity

.....
Name of Bidder

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2

- a) The value of this bid is estimated to **exceed/not exceed** R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable; or
- b) Either the 80/20 or 90/10 preference point system will be applicable to this tender (*delete whichever is not applicable for this tender*).

1.3 Points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contributor.

1.4 The maximum points for this bid are allocated as follows:

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTOR	20
Total points for Price and B-BBEE must not exceed	100

1.5 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

2. DEFINITIONS

- (a) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) **“EME”** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (f) **“functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
- (g) **“prices”** includes all applicable taxes less all unconditional discounts;
- (h) **“proof of B-BBEE status level of contributor”** means:
 - 1) B-BBEE Status level certificate issued by an authorized body or person;
 - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
 - 3) Any other requirement prescribed in terms of the B-BBEE Act;
- (i) **“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (j) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

3. POINTS AWARDED FOR PRICE

3.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

80/20

or

90/10

$$P_{S=80} \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \quad \text{or} \quad P_{S=90} \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

Ps = Points scored for price of bid under consideration

Pt = Price of bid under consideration

P_{min} = Price of lowest acceptable bid

4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR

- 4.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level

of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

5. BID DECLARATION

5.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

6. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1

6.1 B-BBEE Status Level of Contributor: . =(maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

7. SUB-CONTRACTING

7.1 Will any portion of the contract be sub-contracted?

(Tick applicable box)

YES		NO	
-----	--	----	--

7.1.1 If yes, indicate:

i) What percentage of the contract will be subcontracted.....%

ii) The name of the sub-contractor.....

iii) The B-BBEE status level of the sub-contractor.....

iv) Whether the sub-contractor is an EME or QSE

(Tick applicable box)

YES		NO	
-----	--	----	--

v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations,2017:

Designated Group: An EME or QSE which is at last 51% owned by:	EME √	QSE √
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
OR		
Any EME		
Any QSE		

8. DECLARATION WITH REGARD TO COMPANY/FIRM

8.1 Name of company/firm:.....

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

- ☐ Partnership/Joint Venture / Consortium
- ☐ One person business/sole propriety
- ☐ Close corporation
- ☐ Company
- ☐ (Pty) Limited

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

8.6 COMPANY CLASSIFICATION

- ☐ Manufacturer
- ☐ Supplier
- ☐ Professional service provider
- ☐ Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

8.7 MUNICIPAL INFORMATION

Municipality where business is situated:

Registered Account Number:

Stand Number:.....

8.8 Total number of years the company/firm has been in business:.....

8.9 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
 - (a) disqualify the person from the bidding process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
 - (e) forward the matter for criminal prosecution.

WITNESSES

1.

2.

.....

SIGNATURE(S) OF BIDDERS(S)

DATE:

MBD 8

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

- 1 This Municipal Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by municipalities and municipal entities in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be rejected if that bidder, or any of its directors have:
 - a. abused the municipality's / municipal entity's supply chain management system or committed any improper conduct in relation to such system;
 - b. been convicted for fraud or corruption during the past five years;
 - c. willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - d. been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied). The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		

4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
Item	Question	Yes	No
4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.5.1	If so, furnish particulars:		

CERTIFICATION

**I, THE UNDERSIGNED (FULL NAME)
CERTIFY THAT THE INFORMATION FURNISHED ON THIS
DECLARATION FORM IS TRUE AND CORRECT.**

**I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT,
ACTION MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION PROVE
TO BE FALSE.**

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

MBD 9

CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Municipal Bidding Document (MBD) must form part of all bids¹ invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:
 - a. take all reasonable steps to prevent such abuse;
 - b. reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
 - c. cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.
- 4 This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

¹ Includes price quotations, advertised competitive bids, limited bids and proposals.

² Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

MBD 9

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Municipality / Municipal Entity)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: _____ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder

MBD 9

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

³ Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

MBD 9

10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....

Signature

.....

Date

.....

Position

.....

Name of Bidder

8.10 AGREEMENT & CONTRACT DATA

8.10.1 FORM OF OFFER AND ACCEPTANCE

PART 1 (OFFER TO BE COMPLETED BY TENDERER)

1. Buffalo City Metropolitan Municipality has solicited offers to enter into a contract for the procurement of :

RFQ/DSP/2019-20/91- THE LEASE OF PORTION OF ERF 16226 AND ERF 16331 COURT CRESCENT, ESPLANADE, EAST LONDON FOR THE ERECTION OF AN AMUSEMENT PARK DURING THE FESTIVE SEASON NOVEMBER 2019 – JANUARY 2020

2. I, the Tenderer, hereby undertake to supply and deliver all or any of the goods and/or works; OR render the services described in the attached bidding documents to BCMM in accordance with the requirements and specifications stipulated in bid number _____ at the price/s quoted. My offer/s remains binding upon me and open for acceptance by the purchaser during the validity period indicated and calculated from the closing time of bid.
3. The following documents shall be deemed to form and be read and construed as part of this Agreement:
 - (i) The Scope of Work;
 - (ii) This Tender document, viz
 - Scope of Services;
 - The Pricing Data;
 - This Form of Offer & Acceptance;
 - (iii) Bidder's Tender Proposal;
 - (iv) The Special Conditions of Contract;
 - (v) The General Conditions of Contract; and
 - (vi) Any Service Level Agreement that may be concluded by the appointed bidder and BCMM.
4. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the goods and/or works specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
5. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfilment of this contract.
6. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
7. I confirm that I am duly authorized to sign this contract.

The **TOTAL AMOUNT DUE BY THE WINNING BIDDER** will be as per the following Tariffs which are non – negotiable: -

- **Per Operational Day – R 1 925, 00 (One Thousand Nine Hundred and Twenty Five Rand) – VAT inclusive.**
- **Per Non – Operational Day – R 397, 00 (Three Hundred and Ninety Seven Rand) – VAT inclusive.**

This offer may be accepted by the authorised BCMM representative signing the acceptance part of this form of offer and acceptance, and returning one copy of this document to the tenderer before the end of the period of validity stated in the tender conditions, whereupon the tenderer becomes the party named as the appointed service provider in terms of the conditions of contract identified in the contract data.

NAME (PRINT)

CAPACITY

SIGNATURE

NAME OF FIRM

DATE

WITNESSES:

1

2

DATE:

FAILURE BY THE TENDERER TO COMPLETE AND SIGN THIS FORM OF OFFER, SHALL DISQUALIFY ITS RFQ SUBMISSION.

PART 2 (ACCEPTANCE TO BE COMPLETED BY BCMM)

By signing this part of this form of offer and acceptance, BCMM accepts the tenderer's offer. In consideration thereof, BCMM shall pay the appointed service provider the amount due in accordance with PART 1 of this offer and acceptance. Acceptance of the tenderer's offer shall form an agreement between BCMM and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

1. I..... in my capacity as accept your bid under reference number dated..... for the rendering of services indicated hereunder and/or further specified in the annexure(s).
2. An official order indicating service delivery instructions is forthcoming.

DESCRIPTION OF SERVICE	PRICE (ALL APPLICABLE TAXES INCLUDED)	COMPLETION DATE	B-BBEE STATUS LEVEL OF CONTRIBUTION	MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT (if applicable)
	As per Tariffs charged by BCMM.			

3. I confirm that I am duly authorised to sign this contract.

SIGNED AT ON

NAME (PRINT)

SIGNATURE

OFFICIAL STAMP

WITNESSES

1

2

DATE:

SCHEDULE OF DEVIATIONS OR QUALIFICATIONS

The tenderer should record any **proposed** deviations or qualifications he may wish to make to the tender in this Schedule. Alternatively, a tenderer may list such deviations or qualifications in a covering letter attached to his tender and reference such letter in this Schedule. Should any matter in such letter, which constitutes a deviation as aforesaid, be the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.

The tenderer's attention is drawn to paragraph 18.3(c) of the General Conditions of Tender, regarding the handling of material deviations and qualifications.

Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the tender documents, and which it is agreed by the parties becomes an obligation of the contract, shall also be recorded here.

Any change or addition to the tender documents arising from the above agreements and recorded here, shall also be incorporated into the final draft of the contract.

If no deviations or qualifications are desired, the schedule hereunder to be marked NIL, and signed by the tenderer.

1. Subject _____

Details _____

2. Subject _____

Details _____

3. Subject _____

Details _____

4. Subject _____

Details _____

5. Subject _____

Details _____

6. Subject _____

Details _____

By the duly authorized representatives signing this schedule of deviations, BCMM and the tenderer agree to and accept the foregoing schedule of deviations as the only deviations from and amendments to the documents listed in the tendering procedures and addenda thereto as listed in the tender schedules, as well as any confirmation, clarification or changes to the terms of the offer agreed by the tenderer and the employer during this process of offer and acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this agreement shall have any meaning or effect in the contract between the parties arising from this agreement.

For the tenderer:

Signature(s)

Name(s)

Capacity

.....
(Name and address of organization)

Name and signature
of witness Date

8.10.2 CONTRACT DATA

GENERAL CONDITIONS OF CONTRACT

The contract will be administered in terms of the **General Conditions of Contract 2010** as issued by National Treasury.

A copy of the General Conditions of Contract may be obtained from the National Treasury website – www.treasury.gov.za

8.11 PRICING DATA

8.11.1 PRICING INSTRUCTIONS

GENERAL

These pricing instructions provide the tenderer with guidelines and requirements with regard to the completion of price schedule. The pricing instructions also describe the criteria and assumptions which will be assumed in the contract to have been taken into account by the tenderer when developing his prices. The price schedule shall be read with all documents which form part of this contract.

RATES (where applicable to this tender)

Tenderer's price offer shall be valid for 90 days from the closing date of this tender.

The rates and prices submitted by the Tenderer must be entered into the pricing schedule below, failing which the tender will be declared to be non-responsive

No deviations from the pricing schedule will be permitted, except where indicated separately in the deviations portion of this tender document.

The tender price must be inclusive of VAT, where the tenderer is a registered VAT vendor.

Tenderers must provide rates that are fixed for the duration of the contract and not subject to adjustment except as provided for in the conditions of contract.

The prices and rates to be inserted in the price schedule are to be inclusive for the work described under the several items. Such prices and rates shall cover all costs and expenses that may be required in and for the execution of the work described, and shall cover the cost of all general risks, liabilities and obligations set forth or implied in the documents on which the tender is based, as well as overhead charges and profit. Reasonable prices shall be inserted as these will be used as basis for assessment of payments for additional work that may be carried out.

2.2.2 PRICING SCHEDULE

N/A

8.12 SCOPE OF WORK

8.12.1 LEASE AGREEMENT

TERMS OF REFERENCE FOR THE LEASE OF PORTIONS OF ERVEN 16226 AND 16331 COURT CRESCENT FOR FUN FAIR (AMUSEMENT PARK)



MEMORANDUM OF AN AGREEMENT OF LEASE made
and entered into by and between: -

THE BUFFALO CITY METROPOLITAN MUNICIPALITY

(hereinafter referred to as “the LESSOR”) of the one part;

and

(Hereinafter referred to as “the LESSEE”) of the other part.

THE PARTIES HERETO AGREE AS FOLLOWS:

1. LEASED PREMISES

That the Lessor, hereby lets and the Lessee hereby hires certain immovable property as indicated on the attached plan being:

Portion of Erven 16226 and 16331 known as Court Crescent

Situated on the Esplanade

Municipality and Division of East London

(Hereinafter referred to as “the LEASED PROPERTY”)

2. PROPOSED USE

The leased property shall be utilised by the Lessee for the erection of a Fun Fair during the festive season.

3. PERIOD

This Lease shall be for a period commencing on the **20 November 2019** and terminating on the **10 January 2020**.

4. RENTAL

The rental of the leased property shall be in terms of the Municipal tariff of **R 1 925, 00 (One Thousand Nine Hundred and Twenty Five Rand)** per operational day and **R 397, 00 (Three Hundred and Ninety Seven Rand)** per non- operational day including VAT payable at the office of the Chief Financial Officer, Buffalo City Municipality, Munifin Centre, Caxton Street, East London.

5. RATES AND TAXES

In addition to the rental the Lessee shall be liable to pay all service and tariff charges applicable to the leased area.

6. GENERAL

- 6.1 The Lessee leases the property in its present state and condition and shall keep the leased property in good and sufficient state of cleanliness during the period of this Lease.
- 6.2 The Lessor shall not pay to the Lessee any compensation for any improvements of whatsoever nature that may be made to the leased property by the Lessee.
- 6.3 The Lessee shall be responsible at all times for the maintenance of law and order on the leased property.
- 6.4 The Lessee shall not remove or cause or permit to be removed from the leased property any existing soil, clay, gravel, sand and flora without the written approval of the Lessor.
- 6.5 The Lessor reserves the right to free access, without notice, to the leased property for as many of its employees as may be necessary for the purpose of inspection, maintenance, renewal, cleaning, repairs and reconstruction of in connection with the existing sewers, rising mains, storm water drains, water mains, electric cables or any other work appurtenant thereto, or in regard to any such or municipal services which the Lessor may in future lay in or across the land.
- 6.6 It is agreed that the Lessor shall not be responsible for any flow of water onto or over the land hereby leased, and it is hereby understood and agreed that the Lessee shall not have any claim upon or against the Lessor or its employees for and in respect of any damages which may be caused to the leased property or to any improvements and structures of whatsoever nature thereon, by reason of any flow of water or flooding.
- 6.7 The lessee to pay the full amount of rental due for the lease of the land over the festive season, by no later than 15 January 2020.
- 6.8 Should the Lessee contravene or permit contravention of any one or more of the provisions of this lease, or failing the observance of any one or more of the terms and conditions of this lease and fail to remedy such default or breach within 7 (seven) days after despatch of notice in writing by certified post to the Lessee, requiring it to do so, the Lessor shall be entitled, notwithstanding any prior waiver extension or condonation and without prejudice to any other rights the Lessor may have hereunder, immediately and without prejudice to any other rights and remedies, cancel this Agreement and obtain repossession of the land, and for that purpose to take whatever action may be necessary for the immediate ejectment of the Lessee from the leased premises, and

to recover from the Lessee any loss or damage which the Lessor may have sustained by reason of the failure of the Lessee to observe and fulfil the conditions of this Lease.

- 6.9 In the event of any activities at the leased property creating a nuisance or annoyance to the Public lawfully using the leased property or to any others being in the neighbourhood of the leased property, the Lessee shall upon receipt of an order by the Lessor to do so, cease such activities forthwith or cause such activities to be forthwith terminated. Failure to comply with such order shall constitute a breach of this Lease.
- 6.10 The Lessor or any of its Employees shall have the right at all times during the terms of the lease to enter the leased property or any portion thereof for the purpose of ascertaining whether the terms and conditions of this Lease are being satisfactorily carried out, or for any other lawful purpose.
- 6.11 It is expressly stipulated and agreed between the said parties that any failure on the part of the Lessee to comply with the written order of the Lessor acting through its authorised Agents, made under the provisions of this contract shall be regarded as a breach of contract on the part of the Lessee liable to the penalties herein provided on including cancellation of the lease and ejectment from the premises.
- 6.12 The Lessee shall conform to and shall obey all laws, municipal by-laws, rules and regulations that are now or may hereafter during the terms of this Lease be in force within the Buffalo City Metropolitan Municipality.
- 6.13 That on termination of this Lease the Lessee shall be required to remove any improvements and/or structures as may be required by the Lessor, and shall re-instate the leased property as may be required by the Lessor.
- 6.14 The Lessee hereby indemnifies and keeps the Lessor indemnified against all actions, proceedings, claims and demands, costs, damages and expenses which may be levied, brought or made against the Lessor or which the Lessor may pay, sustain or incur by reason of any negligence or act on the part of the Lessee, its employees or persons acting under its control or authority upon the properties giving rise to injury and damage to persons or property upon the land or any place whatsoever.
- 6.15 For the purpose of delivery of any notices and services of any process, pleading or any documents in any action or proceedings arising out of this Lease, the Lessee chooses domicilium citandi et executandi at:

Address:

.....

.....

6.16 The Lessee shall not sub-let the leased property or any portion thereof nor shall it cede or assign its interest in this Lease or any rights acquired hereunder without the written consent of the Lessor first had and obtained and duly signed by the HOD: Spatial Planning and Development, which shall not be unreasonably withheld.

6.17 The Lessee or any other person shall not acquire or hold any licence for the sale of intoxicating liquor upon the property hereby leased, nor shall the lessee sell or supply or nor shall he bring or cause to be brought onto the property any intoxicating liquor without the consent of the Lessor.

6.18 SPECIAL CONDITIONS

- The fun fair shall not operate on any day between 24:00 and 7:00 (weekdays and weekends included).
- The Lessee further indemnifies the Municipality against any liability that may arise out of the non-compliance with any legislation.”
- The Lessee to provide Electric certification for all the electrical installations, prior to the commencement of trading.
- The Lessee to provide Mechanic certification for all the mechanical installations. including fair rides, prior to the commencement of trading.
- The Lessee to ensure that Toilet facilities are provided for the public to the satisfaction of the City Health Department, prior to the commencement of trading.
- The Lessee to make provision in collaboration with the Sanitation Department for the proper disposal of waste water into the sewage system (Waste water should not be disposed of into the Stormwater drains or on the grass area of the Public Open Space) prior to the commencement of trading.
- The Lessee to ensure that fuel storage and usage is approved by the Fire Department, prior to the commencement of trading.
- The Lessee to ensure that adequate measures to be implemented to manage fuel spillage (spill management plan) prior to the commencement of trading.
- The City Health Department will monitor and address any matters related to illegal dumping or domestic refuse that accumulates on site.
- Management of litter by the Lessee is to be to the standard of the Environmental Health Requirements.
- A Waste Management Plan must be submitted by the Lessee and approved by the Solid Waste Management Department, prior to the commencement of trading.
- All food prepared by the Lessee for the general public must be approved by the City Health Department, prior to the commencement of trading.
- The Lessees living quarters on the site should include ablution facilities and be approved by the City Health Department, prior to the commencement of trading.
- No glass containers to be used for any beverages.
- No open fires. All LP Gas installations to be approved by the Fire Department, prior to the commencement of trading.
- The Lessee to ensure adequate Public Liability insurance to cover the identified risks, prior to the commencement of trading.

- Lessee to provide a plan of their Corporate Social Responsibility commitment.
- Lessee to provide their own security to secure their assets.
- Lessee to provide sufficient event management security to manage the anticipated crowd.
- Lessee to provide copies of all safety certificates and insurance policies to the Disaster Management Department prior to the public use of the facilities.
- Any electrical and water connection required will be for the account of the Lessee.
- The Lessee to provide a detailed profile of the rides to be offered.
- The Lessee to provide adequate security for the handling and receipt of cash.
- The lessee to rehabilitate any part of the leased property that might have been damaged during the leased period to the satisfaction of the Lessor
- The Lessee will be allowed 5 days before and 5 days after the lease period to erect and dismantle all equipment.

7. MAGISTRATE'S COURT'S JURISDICTION

The Lessee hereby consents in terms of Section 45 of Act 32 of 1944 or any amendment thereof or substitution thereof to the Lessor taking any legal proceedings for enforcing any of his rights under this Agreement for the recovery of moneys claimable under this Agreement, cancellation thereof, damages or otherwise in the Magistrate's Court of any District having jurisdiction in respect of the Lessee by virtue of Section 2(1) of the aforesaid Act, if the Lessor so elects.

8. NOTICE

Notwithstanding anything in this Agreement contained, the Lessor may resume possession of the whole or any portion of the site at any time on giving forty-eight (48) hours' notice in writing to that effect, should it be required for any Municipal purpose, and may cancel or amend the lease accordingly.

THUS DONE and **SIGNED** at **EAST LONDON** on behalf of the Lessor on the day of 2018 in the presence of the undersigned witnesses: -

AS WITNESSES:

1.

2.

ON BEHALF OF THE LESSOR

THUS DONE and **SIGNED** at on behalf of the Lessee on the day of 2018 in the presence of the undersigned witnesses: -

AS WITNESSES:

1.

2.

ON BEHALF OF THE LESSEE

Full Names:

I.D. No.:

Address: