



VICTOR KHANYE LOCAL MUNICIPALITY

**POLICY AND PROCEDURE MANUAL FOR LAND
ACQUISITION AND THE DISPOSAL OF LAND**

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Having regard to the provisions of, inter alia, section 14 of the Local Government: Municipal Finance Management Act 56 of 2003, Regulation 40 of the Municipal Supply Chain Management Regulations published by General Notice No. 868 of 2005 and the Municipal Asset Transfer Regulations published by General Notice No. 878 of 2008, the Victor Khanye Local Municipality shall, as from the date of adoption hereof, implement this policy in respect of the sale and transfer of and the granting of rights to use, control or manage its immovable capital assets.

INTERPRETATION AND DEFINITIONS

The headings of the clauses in this Policy are for the purposes of convenience and reference only and shall not be used in the interpretation of, nor modify, nor amplify the terms of this Policy, nor any clause hereof. Unless a contrary intention clearly appears:

- 1.1 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:
 - 1.1.1 "Accounting Officer" means the Municipal Manager of the Municipality;
 - 1.1.2 "Act" means the Local Government: Municipality Finance Management Act 56 of 2003 and the Regulations promulgated thereunder; "Basic Municipal Service" means a municipal service that is necessary to ensure an acceptable and reasonable quality of life and which, if not provided, will endanger public health or safety or the environment;
 - 1.1.3 "Capital Asset" for the purposes of this Policy, means any immovable property such as land, property or buildings owned by the Municipality;
 - 1.1.4 "Council" means the full Council of the Municipality;
 - 1.1.5 "Encumbrance" in relation to a Capital Asset, means a right to the Capital Asset that is held by a third party that limits the owner's use of the asset;
 - 1.1.6 "Exempted Capital Asset" means a Capital Asset which exempted by Section 14(6) of the Act from the other provisions of that section;
 - 1.1.7 "Fair Market Value" in relation to a Capital Asset, means the value at which a knowledgeable willing Buyer would buy and a knowledgeable willing Seller would sell the Capital Asset in an arm's length transaction which, for the purposes of this Policy, shall be determined by a Registered Valuer;
 - 1.1.8 "High Value" in relation to a Capital Asset, means that the Fair Market Value of the Capital Asset exceeds any of the following amounts:
 - 1.1.8.1 R50 Million;
 - 1.1.8.2 One per cent of the total value of all capital assets of the Municipality as determined from the latest available audited financial statements of the Municipality; or
 - 1.1.8.3 An amount determined by resolution of the Council which is less than
 - 1.1.9.1 or 1.1.9.2;
 - 1.1.9 "Land Evaluation Committee" means the Land Evaluation Committee established by the Municipality to evaluate tenders, auctions, expressions of interest or other

bids and objections in respect of the sale and transfer of and the granting of rights to use, control or manage immovable Capital Assets of the Municipality;

1.1.10 "Long Term lease" means a period of longer than 3 (three) years;

1.1.11 "MSA" means the Local Government: Municipal Systems Act 32 of 2000;

1.1.12 "Municipality" means the Victor Khanye Local Municipality;

1.1.13 "Municipal Manager" means the person appointed by the Municipality in terms of Section 82(1)(a) or (b) of the Local Government: Municipal Structures Act 117 of 1998;

1.1.14 "Municipal Service" means a service that the Municipality in terms of its powers and functions provides or may provide to or for the benefit of the local community irrespective of whether:

1.1.14.1 such a service is provided or to be provided by the Municipality

through and internal mechanism contemplated in Section 76 of the MSA or by engaging an external mechanism contemplated in Section 76 of the said Act; and

1.1.14.2 fees, charges or tariffs are levied in respect of such a service or not.

1.1.15 "Non-Exempted Capital Asset" means a Capital Asset which is not exempted by Section 14(6) of the Act from the other provisions of that Section;

1.1.16 "Organ of State means:

1.1.16.1 a national department or national public entity;

1.1.16.2 a provincial department or provincial public entity;

1.1.16.3 a municipality or municipal entity; or

1.1.16.4 any other organ of state within the meaning assigned to "Organ of State" in Section 239 of the Constitution.

2. GENERAL PRINCIPLES

The Municipality may:

- (a) alienate or let or permit to be built upon, occupied, enclosed or cultivated any immovable property owned by the Municipality;
- (b) grant a servitude, way leave, encroachment or other rights on any immovable property of which the Municipality is the owner
 - i) subject to this policy document and the provisions of applicable legislation; or
 - ii) unless it is precluded from so doing by law or the conditions under which such property was acquired by the Municipality.
- (c) enter into a contract which will impose financial obligations on the Municipality beyond a financial year, but if the contract will impose financial obligations on the Municipality beyond the three years covered in the annual budget for that financial year, it may only do so in accordance with the provisions of Section 33 of the MFMA, and
- (d) enter into a public-private partnership agreement, but only in accordance with the provisions of Section 120 of the MFMA and the Public-Private Partnership Regulations.

Any reference to an enactment is to that enactment as at the date of adoption of this Policy and as amended or re-enacted from time to time.

3. APPLICATION OF THIS POLICY

This Policy applies to:

- 3.1 The acquisition, sale and Transfer of Capital Assets by the Municipality; and
- 3.2 The granting by the Municipality of the Rights to Use, Control or Manage Capital Assets.

4. EXEMPTIONS

- 4.1 This Policy shall not be read as permitting the sale and Transfer of Non-Exempted Capital Assets, needed to provide the minimum level of Basic Municipal Services.
- 4.2 This Policy does not apply to the sale and Transfer of Non-Exempted Capital Assets in terms of Public-Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005.
- 4.3 This Policy does not apply to the sale and Transfer of housing on municipal land and the Transfer of municipal land for the poor to beneficiaries of such housing.

- 4.4 This Policy does not apply to the granting by the Municipality of Rights to Use, Control or Manage Capital Assets in terms of Public-Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005.
- 4.5 This Policy does not apply to the granting by the Municipality of Rights to Use, Control or Manage municipal land for housing for the poor to beneficiaries of such housing.

5. **DISPOSAL OR TRANSFER OF IMMOVABLE PROPERTY**

- 5.1 In disposing of property, the Municipality shall seek to address: -
 - i) The undoing of negative legacies ii) Correct socio-economic deficiencies
 - iii) Adequately maintain the value of its resources iv) Address the social economic problems that have been handed down from the past
- 5.2 The determination of what is in the "public interest" when Municipal land is disposed of and what factors must or may be taken into account in deciding on the disposal The Municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a municipal immovable property needed to provide the minimum level of basic services, save where the transfer is to another organ of state, as provided for in section 14(6) of the MFMA read with Regulation 24 in Chapter 3 of the MATR.
- 5.3 A decision by the municipal council that a specific immovable property is not needed to provide the minimum level of basic municipal services, may not be reversed by the Municipality after that immovable property has been sold, transferred or otherwise disposed of in accordance with Section 14(3) of the MFMA.
- 5.4 The transfer of ownership of immovable property must be fair, equitable, transparent, competitive (unless it is not applicable or unpractical e.g. non-viable immovable property) and consistent with the supply chain management policy of the Municipality in accordance with Section 14(5) of the MFMA.
- 5.5 Transfer or disposal of a non-exempted high value immovable property
- 5.6 The Municipality may transfer ownership or otherwise dispose of a non-exempted high value immovable property only after:
 - 5.7 the Accounting Officer, through the Estates and Property Department, has conducted a public participation process to facilitate the determinations the municipal council must make in terms of sections 14(2)(a) and (b) of the MFMA; and
 - 5.8 the municipal council has, in terms of sections 14(2)(a) and (b) of the MFMA:
 - i) decided on reasonable grounds that the immovable property is not needed to provide the minimum level of basic municipal services;

ii) considered the fair market value of the immovable property and the economic and community value to be received in exchange for the immovable property in accordance with Section 14(2) of the MFMA, and

iii) has as a consequence to 5.6(b)(i) and (ii) above approved in principle that the immovable property asset may be transferred or disposed of.

5.9 The public participation process in terms of paragraph 8.1(a) may only be authorized by the Municipal Council. A request to the Municipal Council for authorization of a public participation process must be accompanied by:

5.10 a valuation and the method used to determine the value of the immovable property to be transferred or disposed of;

5.11 the reasons for the proposed transfer or disposal of the immovable property;

5.12 any expected benefits to the Municipality as a result of the proposed transfer or disposal;

5.13 any expected proceeds to be received by the Municipality from the proposed transfer or disposal, and

5.14 any expected gain or loss to be realized or incurred by the Municipality arising from the proposed transfer or disposal.

5.15 If the public participation is authorized, the accounting officer must at least 60 days before the meeting of Council at which the determinations referred to in 5.6(b)(i) and (ii) above are considered –

(a) make public the proposal to transfer or dispose of the immovable property;

(b) invite the local community and other interested parties to submit comments or representations in respect of the proposed transfer or disposal of the immovable property;

(c) solicit the views and recommendations of the National Treasury and the relevant Provincial Treasury on the matter.

5.16 Transfer or disposal of a non-exempted immovable property (not high value)

5.17 The Municipality may transfer ownership or otherwise dispose of a non-exempted immovable property only after the Municipal Council has, in terms of sections 14(2)(a) and (b) of the MFMA:

(a) decided on reasonable grounds that the immovable property is not needed to provide the minimum level of basic municipal services;

(b) considered the fair market value of the immovable property and the economic and community value to be received in exchange for the immovable property in accordance with Section 14(2) of the MFMA, and

(c) has as a consequence to 5.10(a) and (b) above approved in principle that the immovable property may be transferred or disposed of, and the method of disposal or transfer.

5.18 The Municipality may transfer ownership or otherwise dispose of a non-viable immovable property, as non-exempted immovable property which can be of no practical use to any other person, directly to adjoining property owner(s), only after the Municipal Council has, in terms of sections 14(2)(a) and (b) of the MFMA:

(a) decided on reasonable grounds that the non-viable immovable property is not needed to provide the minimum level of basic municipal services;

(b) considered the fair market value of the immovable property and the economic and community value to be received in exchange for the immovable property in accordance with Section 14(2) of the MFMA, and

(c) has as a consequence to 5.11(a) and (b) above approved in principle that the immovable property may be transferred or disposed, provided that, when giving the in principle approval, it is recorded in the minutes the full reasons for the Municipality preferring such direct transfer.

5.19 Where viable immovable property is offered for sale by public competition, any immovable property which remains unsold in such project may be sold out-of-hand by the Municipality at the upset price or higher, as long as it is satisfied that market prices are stable. The upset price must be determined in a way that corresponds with a fair market value and must include the recoverable development costs such as municipal services, advertising and survey costs. The upset price must be reviewed at least every twelve months

5.20 The Municipality shall not act in terms of paragraphs 5.6, 5.10 and 5.11 above, unless it has:

5.20.1 Advertised its intention so to act by causing a notice to that effect to be:

(a) affixed to the public notice boards of the Municipality;

(b) published in a newspaper that is circulated within the area of the town where the relevant property is situated;

(c) published on the official website of the Municipality, and

(d) in the case of immovable property valued at R2,5 million or higher, published in regional newspapers that are circulated within the province of the town where the relevant immovable property is situated unless a property valued less than R2,5 million at the sole discretion of the Municipality warrants publication in these newspapers, in accordance with Section 21A of the Systems Act, in which any person who wishes to object to the exercise of any such intention, is called upon to lodge his/her comments, objection or

representations in respect of such intention in writing with the Municipal Manager within a period of not less than thirty days from the date of the publication of the notice in the newspaper;

5.20.2 considered the objections or counter offers (if any) lodged in accordance with the advertisement contemplated by paragraph 5.13.1.

5.21 Approval in terms of 5.10(c) and 5.11(c) may be given subject to any conditions, including:

- (a) the way in which the immovable property is to be sold or disposed of;
- (b) a reserve price or minimum compensation for the immovable property;
- (c) whether the immovable property may be transferred or disposed of for less than its fair market value, in which case the criteria set out in clause 9 must be considered, and
- (d) a framework within which direct negotiations for the transfer or disposal of the immovable property must be conducted with another person, if transfer or disposal is subject to direct negotiations.

5.22 Transfer or disposal of an exempted immovable property

5.22.1 Paragraphs 5.5 and 5.13 above do not apply to the transfer of immovable property to another municipality or to a municipal entity or to a national or provincial organ of state in circumstances and in respect of categories of assets approved by the National Treasury in Regulation 20 of the MATR, provided that such transfers are in accordance with a prescribed framework contained in Chapter 3 of the MATR.

5.22.2 Where the requirements stipulated in Chapter 3 of the MATR are met, then notwithstanding fact that the transfer or disposal may be in respect of immovable property which is required to provide the minimum level of basic services, such disposals need not be at market related value and do not require a public participation process described in the MATR in respect of non-exempted disposals.

5.23 The Municipal Council must, when considering any proposed transfer or disposal of immovable property, take into account the aspects listed in Regulation 7 and 20(1)(f)(ii) of the MATR.

5.24 Sections 14(1) to (5) of the MFMA and Chapter 2 of the MATR must be applied if a municipality transfers a immovable property to an organ of state where none of the circumstances mentioned in regulation 20 apply, including when the immovable property is transferred in the course of an ordinary commercial transaction between the municipality and the organ of state.

5.25 Alienation of immovable property by means of a competitive process

5.25.1 The transfer of immovable property must, except in the case of non-viable immovable property, be affected by means of competitive process, which may include a public or closed tender, auction or proposal call.

5.25.2 The upset price for immovable property to be alienated by means of a competitive process will be determined in such a way that it corresponds with a fair market value and must include the recoverable development costs such as municipal services, advertising and survey costs.

5.25.3 In assessing tenders, the Municipality will take cognizance of the total cash value of the packages offered by the bidders, where such packages are permissible in terms of the conditions of tender. In other words, where the actual amounts tendered are roughly similar, but a particular bidder, for example, also offers to make improvements to the immovable property, the cash value of such improvements, which proposed improvements may not be deviated from, may also be taken into consideration to determine the highest tender.

5.25.4 Should the Municipality consider it desirable not to accept the highest tender or offer or decide to accept a particular development proposal in which the amount tendered is not the highest offer, the reasons for this decision must be fully set out and recorded in the minutes of the bid adjudication committee meeting in question and if applicable the minutes of the appeal tribunal.

5.25.5 In cases where tenders are according to the findings of the bid adjudication committee identical and the provisions of paragraph 5.18.4 are not applicable, the successful bidder may be determined by the drawing of lots in the presence of the involved parties.

5.26 The Municipality shall at all times when considering the alienation of its immovable property, take into consideration the Municipality's obligation to, as part of its process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to identify and designate land for housing development in terms of the Housing Act, 1997 (Act 107 of 1997).

5.27 Where immovable property is alienated for development, a condition, taking into consideration the nature of the development, might be included in the Deed of Sale stipulating that such development must be completed within two years from date of registration.

Likewise a condition may be included in the agreement to provide for forfeiture in the event that the development has not been completed within the required time period, unless a written extension has been granted by the Municipality.

5.28 Plight of the poor

5.28.1 Whenever the plight of the poor shall be a consideration in any decision to be taken in respect of the acquisition, disposal or letting of immovable property, regard shall be given to:

- i) the extent to which the needs of the poor are
or have been addressed,
- ii) the potential loss or benefit of the poor can
suffer or gain through the decision concerned and
- iii) the financial resources available to address the needs of the poor.

5.29 First time home owners

5.29.1 Immovable property purchased from Council by a first-time homeowner shall not, without Council's written consent, be resold within a period of 5 years of the date of transfer unless it was acquired through a fair tender process. This stipulation must be included in the Deed of Sale where it is applicable.

The need to promote first time home ownership in previously disadvantaged communities is recognised. The main objective of this method is the promotion of first time home ownership in previously disadvantaged communities. Natural persons who had never owned a home.

6. LEASING OF MUNICIPAL IMMOVABLE PROPERTY

The Leasing of Council owned Municipal property will be dealt with in depth under a separate policy. This section should be read with that policy.

6.1 Taking into consideration the nature and duration of the lease to be entered into, the leasing of immovable property may be affected by means of either:

6.1.1 a competitive process, which may include a closed or public tender or proposal call, specifically in circumstances listed in paragraph 6.3 below; or

6.1.2 a direct lease.

6.2 Council may let immovable property for development purposes aligned with its strategic objectives.

6.3 A competitive process must at all times be followed in circumstances where:

6.3.1 the lease is for a long term with an income value in excess of R10 million;

6.3.2 the lease is for a formal business premises with a market related rental;

6.3.3 more than one party, in discretion of the municipality, is interested in the lease of the subject property; and/or

6.3.4 by discretion of the municipality, a competitive process will best serve the interests of the community.

6.4 In order to achieve the objective of broad based economic empowerment, Council may limit the number of leases per tenderer in the course of a tender process.

6.5 Council may entertain unsolicited bids for the lease of viable immovable property for development purposes, subject to Section 113 of the MFMA.

6.6 Long term lease of municipal immovable property with an income value in excess of R10 million:

6.6.1 The Municipality may grant a long term lease of municipal immovable property with an income value in excess of R10 million only after:

- (a) the Accounting Officer has, through the Planning & development, conducted a public participation process; and
- (b) the Municipal Council has approved in principle that the right may be granted.

6.6.2 The public participation process in terms of paragraph 6.6.1(a) may only be authorised by the Municipal Council. A request to the Municipal Council for authorisation of a public participation process must be accompanied by:

- (a) the reasons for the proposal to grant the long term lease;
- (b) any expected benefits to the Municipality as a result of the lease;
- (c) any expected proceeds to be received by the Municipality from the proposed lease, and
- (d) any expected gain or loss to be realised or incurred by the Municipality arising from the lease.

6.7 If the public participation is authorised, the accounting officer must at least 60 days before the meeting of Council at which the determinations referred to in 6.6 above are considered

- a make public the proposal to lease the asset;
- b invite the local community and other interested parties to submit comments or representations in respect of the proposed lease of the asset;

c solicit the views and recommendations of the National Treasury and the relevant Provincial Treasury on the matter.

6.8 Non-viable streets, lanes, public open spaces and non-viable surplus immovable property may be let out-of-hand to adjoining owners. Unless otherwise provided herein, such immovable property shall be let at a fair market related value determined by a professional valuer. Leases for gardening purposes shall be at the tariff rental as approved by Council from time to time.

6.9 The Municipal Council must, when considering any proposed lease of municipal immovable property with a value in excess of R10 million, take into account the aspects listed in Regulation 36 of the MATR.

6.10 Long term lease of municipal immovable property with an income value less than R10 million:

6.10.1 The Municipality may grant a long- term lease of municipal immovable property with an income value of less than R10 million only after:

- (a) the Accounting Officer has approved the lease in principle;
- (b) in the case of a direct lease, the proposed lease was advertised in terms of paragraph 5.13.1 and 5.13.2 above to invite the local community and other interested parties to submit comments or representations; and
- (c) the Executive Mayor, as delegated authority, has subsequently approved that the right may be granted.

6.11 Short term lease of municipal immovable property:

6.11.1 Leases for up to one month ("incidental leases) and leases in excess of one month up to three years ("short term leases") shall be approved by the accounting officer. All -year leases signed by the Accounting Officer should be formalized and reported quarterly to Council via Portfolio Committee. Leases for a period of longer than three years ("long term leases") and leases where the value of the immovable property is in excess of R10 000 000-00 ("high value leases") shall be subject to approval by the Council.

6.12 Immovable property may be let out-of-hand to social care users. Rentals shall be determined in terms of the tariff rentals as approved by Council from time to time and in such cases the lessee shall accept responsibility for maintenance of the immovable property and any improvements thereon.

6.13 In the case of a direct lease of immovable property to registered social care organisations/institutions, sports/public facilities or registered non-profit organisations,

the rental shall be determined by the Accounting Officer taking into consideration the community value of the lease.

6.14 Immovable property let according to paragraph 6.11.1 above need not be advertised in terms of paragraph 5.13.1 and 5.13.2 and need not be subsequently approved by the Executive Mayor, but shall be subject to the following:

- (a) the lessee shall be responsible for all costs regarding the connection of services, service fees and any other costs associated with the lease;
- (b) the Municipality shall, if it is not prescribed that market related rental must be charged, determine the rental;
- (c) the lessee shall undertake in writing to compensate the Municipality for damages caused to the immovable property for whatever reason;
- (d) the lessee shall indemnify the Municipality against any claims; and
- (e) the Municipality may request proof of financial viability to honour the lease.

6.15 The in principle approval of the Accounting Officer must be obtained with any request for the renewal of a lease agreement.

6.16 The Municipality may:

6.16.1 enter into a contract which will impose financial obligations on the Municipality beyond a financial year, but if the contract will impose financial obligations on the Municipality beyond the three years covered in the annual budget for that financial year, it may only do so in accordance with the provisions of Section 33 of the MFMA, and

6.16.2 enter into a public-private partnership agreement, but only in accordance with the provisions of Section 120 of the MFMA and the Municipal Public-Private Partnership Regulations.

6.17 Sports facilities and other public amenities may be let out-of-hand to Sports Boards, Sports Federations and other similar bodies. Community based bodies and nonprofessional sporting bodies shall be charged the tariff rentals as approved by council from time to time. Professional sports bodies and bodies operating for profit shall be charged a fair market related rental based on the market value of the property to be leased. The market value shall be based on the most likely alternative use for the site.

7. COMPENSATION

7.1 The fair market value for the alienation of, the rental amount for the leasing or compensation payable for a servitude over municipal immovable property shall be determined by an independent professional valuer or professional associated valuer registered in terms of the Property Valuers Profession Act, 2000 (Act 47 of 2000), or any ensuing act at the cost of the purchaser (in the case of a direct sale) or lessee (in the case of a direct lease)/servitude holder (in the case of a servitude).

7.2 The Municipality, as a rule, bearing in mind the provisions of paragraph 23 and save for those cases mentioned in paragraphs 6.11.1, 7.2, 7.3 and 12.1-12.5 shall not:

(a) let immovable property at a lower rental than market related rental or the rental approved in the tariffs;

(b) sell, alienate or dispose of immovable property, grant a servitude or alienate a right at a lower amount than the amount at which it has been valued;

except in cases when the public interest or the plight of the poor demands otherwise and taking into account the provisions of Regulation 13(2) of the MATR, the latter in circumstances of an alienation.

7.3 In cases where a rental amount has been approved in the annual budget of the Municipality for certain types of leases and encroachments, the approved amount will be used for purposes of determining the rental amount.

7.4 In the case of a direct lease of immovable property to registered social care organizations/institutions, sports/public facilities or registered non-profit organizations, the

rental shall be determined by the Accounting Officer taking into consideration the community value of the lease.

8. CONDITIONS OF SALE

8.1 All costs pertaining to a transaction shall be borne by the successful bidder/purchaser, e.g. survey, advertisements, valuation, rezoning, relocation or provision of services where necessary, etc. The Municipality may, however, waive its right to claim the costs should it be to its advantage to bear the costs.

8.2 Should existing services need to be relocated or secured by means of the registration of a servitude in favor of the Municipality as a result of the alienation of the immovable property, all related costs shall be for the account of the successful bidder/purchaser.

8.3 Small areas of land such as closed roads or portions of public place sold to an adjacent owner must be consolidated with the existing property of the adjacent owner,

unless circumstances exist which, in the opinion of the Municipality, make such consolidation undesirable.

8.4 Where immovable property is alienated for development, a condition, taking into consideration the nature of the development, might be included in the Deed of Sale stipulating that such development must be completed within two years from date of registration. Likewise, a condition may be included in the agreement to provide for forfeiture in the event that the development has not been completed within the required time period, unless a written extension has been granted by the Municipality.

8.5 Save with prior approval, the immovable property alienated may only be used for the purpose for which it was originally sold and purposes permitted by town planning scheme regulations pertaining to such purposes.

8.6 The agreement might contain a suspensive condition in respect of immovable property which is sold subject to approval in terms of land use planning legislation.

8.7 A 10% deposit of the agreed/tendered purchase price will be due and payable by the purchaser/successful bidder within 10 days of date of request in writing thereof by the Municipality.

8.8 Interest on the purchase price, as from date of signature of the deed of sale, must be charged by the Municipality should payment or transfer be delayed due to an action or failure on the part of the successful bidder/ purchaser.

9. CONDITIONS OF LEASE

9.1 All costs pertaining to a transaction, e.g. survey, advertisements, valuation, relocation or provision of services where necessary, shall be borne by the Lessee. The Municipality may, however, waive its right to claim all or any portion of the costs. Where necessary a deposit to cover the costs may be required.

9.2 An agreement for the lease of municipal immovable property shall be in writing, stipulating the terms and conditions of the contract or agreement, which shall include provisions providing for:

- (a) the termination of the contract or agreement in the case of non- or underperformance;
- (b) dispute resolution mechanisms to settle disputes between the parties;
- (c) a periodic review of the contract or agreement once every three years in the case of a contract or agreement for longer than three years;
- (d) any other matters that may be prescribed, and
- (e) escalation in terms of paragraph 9.5 of this policy.

9.3 No immovable property shall be sub-let and no lease may be ceded or assigned without the prior written approval of the Municipality.

9.4 An owner of immovable property who leases adjoining municipal property may be substituted by his successor in title for the duration of the remainder of the lease term.

9.5 Rental, except where it is decided otherwise by the Municipality, shall escalate on the 1st of July every year, by a percentage fixed in accordance with the prevailing consumer price index (all items).

9.6 The lessee shall, as a rule, be liable for the payment of rates, taxes and service charges in respect of the leased property. In the case of leases to certain social care users and sports facilities at rentals lower than market value the Municipality may consider granting a rebate on rates in accordance with the Rates Policy of the Municipality.

9.7 The letting of lanes, public open spaces, road reserves and the like can be approved, subject to the following:

- (a) closing off/securing by the lessee of the leased area to the satisfaction and discretion of the Municipality;
- (b) the Lessee shall be responsible for the cost of relocation or installation of services where required and for the securing of servitudes, and
- (c) the closure of the lanes, public open spaces and road in terms of the applicable legislation shall be done at the cost of the Lessee.

9.8 The lessee shall indemnify the Municipality against any possible claims arising from the lease or use of the immovable property.

9.9 Where land is leased for development, a condition, taking into consideration the nature of the development, may be included in the lease agreement stipulating that such development must be completed within two years from date of conclusion of the lease agreement. Likewise, a suspensive condition may be included in the lease agreement to provide for cancellation in the

event that the development has not been completed, unless a written extension has been granted by the Municipality.

9.10 Save with prior written approval of the Municipality the property may only be used for the purpose for which it was let.

9.11 The Municipality shall at all reasonable times be entitled to enter and inspect the immovable property.

9.12 Subject to paragraph 9.11 above, immovable property let by the Municipality shall be inspected at least once a year by the Municipality to ensure compliance with the terms and conditions of the agreement of sale or lease.

9.13 The lessee shall be responsible for maintaining the leased property including all improvements thereon to the satisfaction of the Municipality.

9.14 Improvements provided by the Lessee and which the Council wishes to retain, shall revert, free of charge, to the Municipality once the lease period has terminated and/or in the event the agreement, due to breach of conditions, has been cancelled. Alternatively, agreement may be reached to the effect that the Lessee may remove any improvements erected from its own funds within three months of termination of the lease agreement, failing which such improvements shall revert to the Municipality free of charge without damage and if provided for in the agreement. The Lessee shall be liable for the cost involved in the removal of such improvements not required by the Municipality.

9.15 The Municipality reserves the right, where necessary, to resume immovable property let, or portion thereof, and to cancel an existing lease in its entirety where such immovable property is required for operational purpose or in the interest of the community or for any reason necessitating the cancellation thereof.

10. ACQUISITION OF IMMOVABLE PROPERTY

10.1 The municipality may acquire by purchase immovable property within- or outside the municipal boundary provided it complies with the requirements of the MFMA and subject thereto that the cost of the purchase has been budgeted for and approved by Council.

10.2 The Municipality will not continue with the purchase of any immovable property where the price is in excess of the market value thereof as assessed by a registered valuer. If different market related values are obtained, but similar in nature, the Municipality may negotiate the purchase price taking into consideration the purpose of the acquisition.

10.3 The Municipality may accept a donation of immovable property.

11. SERVITUDES

11.1 A servitude can be defined as a right which one person has over the immovable asset of another and includes instances in which the Municipality grants a party a right over a municipal owned immovable property. Servitudes result in a burden on the immovable property for extensive periods of time, sometimes permanently. It is for this reason that servitudes should only be granted after careful assessment of the impact of the proposed servitude on the immovable asset.

11.2 If the proposed servitude will result in the immovable property, in discretion of the municipality, being negatively affected, including the impairment of the ability to productively enjoy, utilize, permanently dispose or otherwise deal with the immovable asset, then such servitude might not be granted.

11.3 Subject to paragraph 11.2 above, servitudes may be granted to any person (private or state organ) subject to payment of an appropriate market related compensation by such person provided that in certain circumstances, e.g. where another organ of state requires a servitude for the benefit of the authority having been obtained, the payment to the granting of the servitude, may be waived.

11.4 The party requiring the servitude on municipal immovable property is responsible for all costs relating to the granting and registration of the servitude.

12 LEASES TO INFORMAL TRADERS

12.1 The more formalised informal trading from municipal immovable property, in particular buildings/structures will be from the demarcated areas as gazetted from time to time.

12.2 The leasing of municipal immovable property to informal traders may be affected by means of a direct lease, to availability of immovable property, the nature of the trade envisaged, the rental payable and the area the immovable property is situated in.

12.3 The Municipality may at any time formulate and implement criteria for the leasing of immovable property for informal trading. In this regard, the Municipality may, amongst others, take the following criteria in consideration:

- (a) The nature of the trading envisaged on the property;
- (b) The Applicant must be in possession of a valid permit to trade;
- (c) Where structures are continuously available, informal traders operating four days per week for at least 45 weeks a year will get preference over occasional /casual informal traders;
- (d) Preference will be given to local residents of the area where the structure is situated;
- (e) Only one stall will be allocated per household;
- (f) Informal traders who do not already operate in other informal markets within the jurisdiction of the Municipality will get preference; and/or
- (g) Unemployed people will get preference including those traders who demonstrate employment opportunities.

12.4 The Municipality will reserve the right to withdraw summarily the allocation of a municipal immovable property in the event of evidence proving that:

- (a) an informal trader has willfully supplied incorrect information;
- (b) an informal trader has failed to update his/her information annually;

(c)the informal trader has subleased to a third party without the approval of the Municipality;

(d)the informal trader is contravening the conditions of the lease agreement and/or any other legislation.

12.5 The rental payable for the leasing of immovable property situated in the demarcated areas will be determined taking into account the location, structure, services available, products or services rendered and any other diverse circumstances relevant to the lease.

13. SOCIAL CARE USES

13.1 Social care shall mean services provided by registered welfare, charitable, non-profit, cultural and religious organizations and includes, but is not limited to places of worship, child care facilities, rehabilitation centers, centers for the homeless, elderly and destitute persons and animal care facilities:

13.2 Immovable property owned by the Municipality may be alienated or let to social care users. Unless otherwise directed by Council, the purchase price payable shall be 25% of market value subject to a suitable reversionary clause being registered against the title deed of the property. Rentals shall be determined in terms of the tariff rentals as approved by Council from time to time.

13.3 Immovable property may be alienated or let out-of-hand to social care users in exceptional cases where the Council is of the opinion that public competition would not serve a useful purpose or that it is in the interest of the community or plight of the poor provided comments or representations on the proposed transfer or granting right to use, control of a municipal capital asset be invited from the local community and other interested persons in terms of Section 7(i) of the Asset Transfer Regulations.

13.4 No application shall be processed unless the prescribed application fee as per tariff has been paid, for example. legal, survey, re-zoning, sub-division, consolidations, advertisements, relocation, valuation, provision of services, and/or a deposit as per prescribed tariff to cover incidental costs has been paid.

13.5 The following factors shall be considered relevant in the selection and allocation of immovable property to places of worship:

13.5.1 The size of the congregation/membership (a minimum membership of 50 people.)

13.5.2 Availability of finance to acquire the site and commence with development within five years;

13.5.3 Whether or not such a denomination is already represented in the area;

13.5.4 Whether or not welfare type facilities/activities will be provided in addition to religious facilities;

13.5.5 Whether or not the congregation/membership is drawn from the area in Which a site is being applied for.

13.6 Transfer of ownership of viable immovable property arising from an unsolicited bid shall not take place unless the provisions of Section 113 of the MFMA have been complied with.

14 PROJECTIONS, PROJECTING STRUCTURES AND ENCROACHMENTS

14.1 All costs pertaining to an encroachment shall be borne by the encroacher, e.g. survey, advertisements, valuation, rezoning, relocation or provision of services where necessary, etc. The Municipality may, however, waive its right to claim the costs should it be to its advantage to bear the costs. Where necessary, a deposit to cover the costs may be required.

14.2 The Municipality may, subject to such conditions as it may deem fit –

14.2.1 encroachments on road reserves and public thoroughfares in order to encourage adjoining owners to maintain the road reserves adjoining their properties provided inter alia that:

(a) the planting of trees, shrubs and alien lawn or the erection of seating, statuary or other similar objects within 1,5 metres measured from the tarred or gravel surface of the road, are not permitted;

(b) the 1,5-meter area referred to in paragraph 14.2.1(a) may be planted with lawn of a type approved by the relevant directorate of the Municipality or paved at own costs to the satisfaction of the Municipality and subject to the owner of the adjoining property allowing at all times the free movement of pedestrians in those encroached areas;

(c) no such encroachment shall be partially or wholly enclosed or fenced by any means whatsoever, permanently or otherwise, for the exclusive use of the encroacher; and

(d) no encroachment fee shall be charged by the Municipality and no formal agreement need to be entered into in respect of the above encroachment; and

(e) the Municipality shall have the right of free access to the encroachment at all times for inspection, maintenance and repair of any services which may traverse the encroachment or to install such services in which case the Municipality shall not be liable for any damage to the encroachment which may arise from such inspection, maintenance, repair or installation, or

14.2.2 permit the erection or retention of a veranda, balcony, sign, sign-board or similar structure, device or contrivance which projects or extends into, under or over or on any public place, public street or public thoroughfare, provided inter alia that:

- (i) the erection or retention thereof shall not be permitted on the level of more than one floor;
- (ii) no such projection or structure shall be partially enclosed to a height of more than 1,5 metres measured from the floor level thereof except with the prior written approval of the municipality and subject to such conditions as it may impose,
- (iii) an annual encroachment fee, determined by the municipality, be levied on successful applicants municipal account for the right obtained to encroach and a formal agreement be entered into in respect of the above encroachment;
- (iv) the Municipality shall have the right of free access to the encroachment at all times for inspection, maintenance and repair of any services which may traverse the encroachment or to install such services in which case the Municipality shall not be liable for any damage to the encroachment which may arise from such inspection, maintenance, repair or installation; or

14.2.3 permit encroachments onto commonage, public open spaces or conservation areas provided inter alia that:

- (a) written applications accompanied with proof of payment of the application fee shall be submitted to the Municipality;
- (b) the delegated authority, through the Planning & Development, shall:
 - (i) obtain the comments of the relevant municipal directorates/departments;
 - (ii) cause the said application to be advertised in terms of paragraph 10.1 of this policy;
 - (iii) where objections against the said application are received, submit it to the applicant for his/her comment;
 - (iv) submit the application and all relevant documents to Executive Mayor;
- (vi) issue a permit (to the successful applicant to give effect to the approval of the application.
- (c) the planting of trees, shrubs and alien lawn or the erection of seating, statuary or other similar objects, are not permitted;

(d) no such encroachment shall be partially or wholly enclosed or fenced by any means whatsoever, permanently or otherwise, for the exclusive use of the adjacent property owner; and

(e) an annual encroachment fee, determined by Council, be levied on successful applicants municipal account for the right obtained to encroach.

14.2.4 permit the enclosure or exclusive use of portions of the commonage, public open spaces, public thoroughfares or any municipal owned immovable property for gardening purposes, provided inter alia that:

(a) written applications accompanied with proof of payment of the application fee shall be submitted to the Municipality;

(b) the delegated authority, through the Department & Planning Department, shall:

(i) obtain the comments of the relevant municipal directorate/departments;

(ii) cause the said application to be advertised in terms of paragraph 10.1 of this policy;

(iii) where objections against the said application are received, submit it to the applicant for his/her comment;

(iv) submit the application and all relevant documents to the Executive Mayor for approval;

(v) notify the applicant of the Executive Mayor's decision and where applicable furnish him/her with a copy of any conditions imposed by the Council or nominee; and

(vi) issue a permit (to the successful applicant to give effect to the approval of the application;

(c) the planting of trees, shrubs and alien lawn or the erection of seating, statuary or other similar objects, are not permitted.

(d) a monthly encroachment fee, determined by council, be levied on successful applicants municipal account for the right obtained to encroach.

14.2.5 permit the use of municipal land for outdoor seating adjoining a restaurant or for parking of vehicles, provided inter alia that this will be dealt with as a formal lease agreement and the procedure for a lease agreement be followed.

14.3 The Municipality may reduce the extent of a public place or public street which is encroached upon by the extent of the encroachment or by such greater extent as may, in its opinion, be desirable.

15. EVALUATION

15.1 A Land Evaluation Committee shall be established by the Accounting Officer in accordance with annexure "A" hereto, whose function will be to evaluate tenders, auctions, expressions of interest or other bids and objections received in response to any competitive bidding process and to make a recommendation to the Immovable Property Adjudication Committee (IPAC);

15.2 IPAC shall make the final award or to make another recommendation to the Accounting Officer as to how to proceed with the relevant transaction, which final award shall at all times be subject to the prior decision and considerations of the Council as referred to in Section 14(2) of the Act (where applicable).

15.3 In the event of the termination of any contract concluded pursuant to the application of this policy being cancelled due to a breach thereof by the party to whom the contract was awarded, the particular tender, auction, expressions of interest or other bids may be referred back to the Land Evaluation Committee to re-evaluate such tender, auction, expressions of interest or other bids so as to make an alternate recommendation to IPAC.

16. DISQUALIFICATION

The following persons shall be disqualified from participating in any process for the sale and Transfer and the granting of Rights to Use, Control or Manage Capital Assets:

16.1 Persons who have been convicted of fraud or corruption during the period of five years immediately preceding the closing date for advertisements;

16.2 Persons who have willfully neglected, reneged on or have failed to comply with a government or local government contract during the aforesaid period of five years;

16.3 Persons whose Tax affairs have not been cleared by the South African Revenue Service and who fail to provide a Tax Clearance Certificate in this regard;

16.4 Persons who are in arrears (or who have failed to make suitable arrangements with the Municipality to settle such arrears) in respect of any charges payable in terms of Section 118 of the MSA;

16.5 Persons who have an actual or likely conflict of interest in relation to the proposed transaction.

17. RESCISSION OF DECISIONS

Where recommendations or decisions giving rise to the awarding or conclusion of contracts have been unlawfully or improperly made, the Municipality shall be entitled to rescind such decisions. The power to rescind such decisions shall be incorporated in tender documents and in contracts finally concluded with tenderers. The power to rescind decisions and to terminate contracts shall extend to decisions that were made, taken or in any way influenced by Councilors in contravention of item 5 or 6 of the Code of Conduct for Councilors as set out in Schedule 1 to the MSA, or municipal officials in contravention of items 4 or 5 of the Code of Conduct for Municipal Staff Members as set out in Schedule 2 to that Act.

18. DUTIES OF ACCOUNTING OFFICER

The Accounting Officer shall:

18.1 implement this Policy;

18.2 take all reasonable steps to ensure that proper mechanisms are in place to ensure that the objectives and requirements contained in this Policy are achieved;

18.3 notify the Auditor General as defined in Section 1 of the Municipal Finance Management Act, in the event of any bid other than one recommended in the normal course of implementing this Policy being approved and of the reasons for deviating from such recommendation, save that this provision shall not apply if a different bid was approved in order to rectify an irregularity.

18.4 be responsible for the appointment of the members of the Land Evaluation Committee and its Chairperson;

18.5 appoint an appropriately qualified person to deal with all appeals against recommendations of the Land Evaluation Committee;

18.6 be responsible for the management of all contracts concluded pursuant to the implementation of this Policy;

18.7 COUNCIL MAY DELEGATE CERTAIN AUTHORITY

For certain movable assets below a value determined by the council, a council may delegate the authority to decide if an asset is not needed to provide a minimum level of basic municipal service and consider the fair market and economic and community value of that asset, to the Municipal Manager.

It may also delegate to the municipal manager the power to approve in-principle that the asset may be transferred or disposed of (regulation 5(6)). In the case of a municipal entity, the council of the parent municipality may delegate these tasks to the chief executive officer of the entity (regulation 8(6)). When council made such a delegation, the accounting officer will have to make the required regulation 7 or 10 considerations before he/ she will be able to make an in-principle decision.

Regulation 5(6) and 8(6) do not allow the accounting officer to further sub-delegate such a delegation

19. UNSOLICITED BIDS

The Municipality shall be entitled, but not obliged, to consider unsolicited bids received outside the processes initiated by the Municipality. To the extent appropriate in each case the principles set out in this Policy will apply, mutatis mutandis, to such unsolicited bids.

19.1 An unsolicited bid is a bid that is submitted by a prospective supplier to the municipality without any procurement requirement first having been identified and advertised. This situation arises when a supplier identifies an opportunity to render services or supply products not ordinarily required by the municipality.

19.2 In accordance with section 113 of the Act, there is no obligation upon the municipality to consider unsolicited bids received outside a normal bidding process.

19.3 The accounting officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid but only if -

- a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
- b) the product or service will be exceptionally beneficial to the municipality or have exceptional cost advantages;
- c) the person who made the bid is the sole provider of the product or service concerned; and
- d) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.

19.4 If the accounting officer decides to consider an unsolicited bid that complies with sub-paragraph (3), his decision must be made public in accordance with section 21A of the Municipal Systems

Act, together with -

- a) reasons as to why the bid should not be open to other competitors;

- b) an explanation of the potential benefits if the unsolicited bid were accepted; and
- c) an invitation to the public or other potential suppliers to submit their comments on the proposal within 30 days of the publication of the relevant notice.

19.5 The accounting officer must submit all written comments received pursuant to subparagraph (4), including any responses from the unsolicited bidder, to the National and Provincial Treasuries for comment.

19.6 Subject to subparagraphs (7) and (8) below, the adjudication committee must consider the unsolicited bid and may, depending on its delegations, award the bid or make a recommendation to the accounting officer.

19.7 A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.

19.8 When considering the matter, the adjudication committee must take into account

- a) any comments submitted by the public; and
- b) any written comments and recommendations of the National and Provincial Treasuries.

19.9 If any recommendations of the National and Provincial Treasuries are rejected or not followed, the accounting officer must submit to the Auditor-General and the National and Provincial Treasuries the reasons for rejecting or not following those recommendations.

19.10 Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the municipality to the bid may be entered into or signed within 30 days of the submission.

19.11 The processes to be followed by the municipality with regard to the acceptance or rejection of an unsolicited bid shall clearly be made known to the bidder who submits the unsolicited bid concerned.

19.12 The council shall exercise caution when interviewing a potential supplier or a person who may wish to offer services to the municipality in circumstance which may be tantamount to the submission of or negotiation with regard to an unsolicited bid and shall not do anything or cause anything to be done which may be contrary to this

20. **POLICY REPEAL**

The Policy and Procedures for the Disposal of Immovable Capital Assets adopted by the Municipality in April 2018 is hereby repealed.

21. TITLE OF POLICY

This Policy shall be referred to as the Victor Khanye Local Municipality Policy and Procedures for the Disposal of Immovable Capital Assets.

22. Procedure Manual

SCHEDULE 1

The following procedure shall be followed in relation to the sale and TRANSFER of a NON-EXEMPTED CAPITAL ASSET having a HIGH VALUE to an ORGAN OF STATE or to a PRIVATE SECTOR PARTY

1. This schedule may not be read as permitting the sale and Transfer of a Capital Asset needed to provide the minimum level of Basic Municipal Services. Section 14(1) Regulation 4(2)
2. This schedule is not applicable to the sale and Transfer of a Non-Exempted Capital Asset in terms of Public–Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. Regulation 4(3)(a)
3. This schedule is not applicable to the sale and Transfer of housing on municipal land and the Transfer of such municipal land for the poor to beneficiaries of such housing. Regulation 4(3)(b)
4. The value of the Capital Asset shall be determined in accordance with Regulation 5(4), or Regulation 5(5). Regulation 5(4), Regulation 5(5).
5. Authorisation shall be sought from the Council to conduct a public participation process in accordance with Regulation 5(3)(a), which request for authorisation shall be accompanied by an information statement as referred to in Regulation 5(3)(b). Regulation 5(3)(a), Regulation 5(3)(b)
6. The public participation process shall be conducted in accordance with Regulation 5(1)(a) read with Regulation 6 and the publication invitation and solicitation referred to in Regulation 6(a) and (b) shall be conducted at least 60 days before the referral to Council alluded to in 7. below. Regulation 5(1)(a), Regulation 6

7. The proposal to Transfer the Non-Exempted Capital Asset shall be referred to Council to make the determinations and to furnish its approval in principle that the Non-Exempted Capital Asset may be sold and Transferred in accordance with Regulation 5(1)(b) read with Sections 14(2)(a) and (b), in which referral the Council shall be advised of the factors referred to in Regulation 7. Sections 14(2)(a)&(b), Regulation 5(1)(b), Regulation 7
8. The Council shall be entitled to furnish its approval referred to in 7. above in principle in accordance with Regulation 11. Regulation 11
9. Any sale and Transfer of the Non-Exempted Capital Asset shall be in accordance with the Policy and procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal Directives adopted by the Municipality. Regulation 12, Supply Chain Management Regulation 40, Section 14(5)
10. If the Municipality on account of the public interest, in particular in relation to the plight of the poor, intends to transfer a Non-Exempted Capital Asset for less than its Fair Market Value, the factors referred to in Regulation 13(2) shall be taken into account. Regulation 13(2)
11. The proceeds received from the sale and Transfer of the Non-Exempted Capital Asset shall be dealt with in accordance with Regulation 16. Regulation 35
12. Any sale and Transfer in accordance with this Schedule shall be effected by a written Transfer Agreement compliant with Regulation 17 which shall be made available to the Council and public as provided for in Regulation 18. Regulation 17, Regulation 35
13. Gains, losses and associated costs not budgeted for that will be incurred in respect of the sale and Transfer shall be dealt with in accordance with Regulation 47. Regulation 35
14. The sale and Transfer of the Non-Exempted Capital Asset shall not affect any existing encumbrances, rights and servitudes attached to the Asset. Regulation 35

15. The sale and Transfer shall be given effect to and formalised in accordance with all applicable legislation and shall be fair, equitable, transparent and competitive. Regulation 49, Section 14(5)

Reference to a Section refers to a Section of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA).

Reference to a Supply Chain Management Regulation refers to a Regulation of the Municipal Supply Chain Management Regulations published by General Notice 868 of 2005 under the MFMA.

Reference to a Regulation refers to a Regulation of the Asset Transfer Regulations published by General Notice 878 of 2008 under the MFMA.

SCHEDULE 2

The following procedure shall be followed in relation to the sale and TRANSFER of a NON-EXEMPTED CAPITAL ASSET NOT having a HIGH VALUE to an ORGAN OF STATE or to a PRIVATE SECTOR PARTY

1. This schedule may not be read as permitting the sale and Transfer of a Capital Asset needed to provide the minimum level of Basic Municipal Services. Section 14(1) Regulation 4(2)

2. This schedule is not applicable to the sale and Transfer of a Non-Exempted Capital Asset in terms of Public–Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. Regulation 4(3)(a)

3. This schedule is not applicable to the sale and Transfer of housing on municipal land and the Transfer of such municipal land for the poor to beneficiaries of such housing. Regulation 4(3)(b)

4. The value of the Capital Asset shall be determined in accordance with Regulation 5(4), or Regulation 5(5). Regulation 5(4), Regulation 5(5).

5. The proposal to Transfer the Non-Exempted Capital Asset shall be referred to Council to make the determinations and to furnish its approval in principle that the Non-Exempted Capital Asset may be sold and Transferred in accordance with Regulation 5(1)(b) read with Sections 14(2)(a) and (b), in which referral the Council shall be advised of the factors referred to in Regulation 7. Sections 14(2)(a)&(b), Regulation 5(1)(b), Regulation 7

6. The Council shall be entitled to furnish its approval referred to in 5. above in principle in accordance with Regulation 11. Regulation 11

7. Any sale and Transfer of the Non-Exempted Capital Asset shall be in accordance with the Policy and procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal Directives adopted by the Municipality. Regulation 12, Supply Chain Management Regulation 40, Section 14(5)

8. If the Municipality on account of the public interest, in particular in relation to the plight of the poor, intends to transfer a Non-Exempted Capital Asset for less than its Fair Market Value, the factors referred to in Regulation 13(2) shall be taken into account. Regulation 13(2)

The proceeds received from the sale and Transfer of the Non-Exempted Capital Asset shall be dealt with in accordance with Regulation 16. Regulation 16

Any sale and Transfer in accordance with this Schedule shall be effected by a written Transfer Agreement compliant with Regulation 17 which shall be made available to the Council and public as provided for in Regulation 18. Regulation 17, Regulation 18

Gains, losses and associated costs not budgeted for that will be incurred in respect of the sale and Transfer shall be dealt with in accordance with Regulation 47. Regulation 47

The sale and Transfer of the Non-Exempted Capital Asset shall not affect any existing encumbrances, rights and servitudes attached to the Asset. Regulation 48

13. The sale and Transfer shall be given effect to and formalised in accordance with all applicable legislation and shall be fair, equitable, transparent and competitive. Regulation 49, Section 14(5)

Reference to a Section refers to a Section of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA).

Reference to a Supply Chain Management Regulation refers to a Regulation of the Municipal Supply Chain Management Regulations published by General Notice 868 of 2005 under the MFMA.

Reference to a Regulation refers to a Regulation of the Asset Transfer Regulations published by General Notice 878 of 2008 under the MFMA.

SCHEDULE 3

The following procedure shall be followed in relation to the sale and TRANSFER of a NON-EXEMPTED CAPITAL ASSET having a HIGH VALUE to a PRIVATE SECTOR PARTY appointed as a service provider through a competitive bidding process in accordance with Chapter 8 of the MSA.

1. This schedule may not be read as permitting the sale and Transfer of a Capital Asset needed to provide the minimum level of Basic Municipal Services. Section 14(1) Regulation 4(2)

2. This schedule is not applicable to the sale and Transfer of a Non-Exempted Capital Asset in terms of Public–Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. Regulation 4(3)(a)

3. This schedule is not applicable to the sale and Transfer of housing on municipal land and the Transfer of such municipal land for the poor to beneficiaries of such housing. Regulation 4(3)(b)

4. The value of the Capital Asset shall be determined in accordance with Regulation 5(4), or Regulation 5(5). Regulation 5(4), Regulation 5(5).

5. Authorisation shall be sought from the Council to conduct a public participation process in accordance with Regulation 5(3)(a), which request for authorisation shall be accompanied by an information statement as referred to in Regulation 5(3)(b). Regulation 5(3)(a), Regulation 5(3)(b)

6. The public participation process shall be conducted in accordance with Regulation 5(1)(a) read with Regulation 6 and the publication invitation and solicitation referred to in Regulation 6(a) and (b) shall be conducted at least 60 days before the referral to Council alluded to in 7. below. Regulation 5(1)(a), Regulation 6

7. The proposal to Transfer the Non-Exempted Capital Asset shall be referred to Council to make the determinations and to furnish its approval in principle that the Non-Exempted Capital Asset may be sold and Transferred in accordance with Regulation 5(1)(b) read with Sections 14(2)(a) and (b), in which referral the Council shall be advised of the factors referred to in Regulation 7. Sections 14(2)(a)&(b), Regulation 5(1)(b), Regulation 7
8. The Council shall be entitled to furnish its approval referred to in 7. above in principle in accordance with Regulation 11. Regulation 11
9. Compliance with the Disposal Management System referred to in the Policy and Procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal Directives adopted by the Municipality shall not be necessary and direct negotiations may be conducted with the Service Provider. Regulation 12(2) and 12(3)
10. The provisions of Regulations 14 and 15 shall be taken into account. Regulation 14, Regulation 15
11. If the Municipality on account of the public interest, in particular in relation to the plight of the poor, intends to transfer a Non-Exempted Capital Asset for less than its Fair Market Value, the factors referred to in Regulation 13(2) shall be taken into account. Regulation 13(2)
12. The proceeds received from the sale and Transfer of the Non-Exempted Capital Asset shall be dealt with in accordance with Regulation 16. Regulation 16
13. Any sale and Transfer in accordance with this Schedule shall be effected by a written Transfer Agreement compliant with Regulation 17 which shall be made available to the Council and public as provided for in Regulation 18. Regulation 17, Regulation 18
14. Gains, losses and associated costs not budgeted for that will be incurred in respect of the sale and Transfer shall be dealt with in accordance with Regulation 47. Regulation 47
15. The sale and Transfer of the Non-Exempted Capital Asset shall not affect any existing encumbrances, rights and servitudes attached to the Asset. Regulation 48

16. The sale and Transfer shall be given effect to and formalised in accordance with all applicable legislation and shall be fair, equitable, transparent and competitive. Regulation 49, Section 14(5)

Reference to a Section refers to a Section of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA).

Reference to a Supply Chain Management Regulation refers to a Regulation of the Municipal Supply Chain Management Regulations published by General Notice 868 of 2005 under the MFMA.

Reference to a Regulation refers to a Regulation of the Asset Transfer Regulations published by General Notice 878 of 2008 under the MFMA.

SCHEDULE 4

The following procedure shall be followed in relation to the sale and TRANSFER of a NON-EXEMPTED CAPITAL ASSET NOT having a HIGH VALUE to a PRIVATE SECTOR PARTY appointed as a service provider through a competitive bidding process in accordance with Chapter 8 of the MSA.

1. This schedule may not be read as permitting the sale and Transfer of a Capital Asset needed to provide the minimum level of Basic Municipal Services. Section 14(1) Regulation 4(2)

2. This schedule is not applicable to the sale and Transfer of a Non-Exempted Capital Asset in terms of Public–Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. Regulation 4(3)(a)

3. This schedule is not applicable to the sale and Transfer of housing on municipal land and the Transfer of such municipal land for the poor to beneficiaries of such housing. Regulation 4(3)(b)

4. The value of the Capital Asset shall be determined in accordance with Regulation 5(4), or Regulation 5(5). Regulation 5(4), Regulation 5(5).

5. The proposal to Transfer the Non-Exempted Capital Asset shall be referred to Council to make the determinations and to furnish its approval in principle that the Non-Exempted Capital Asset may be sold and Transferred in accordance with Regulation 5(1)(b) read with Sections 14(2)(a) and (b), in which referral the Council shall be advised of the factors referred to in Regulation 7. Sections 14(2)(a)&(b), Regulation 5(1)(b), Regulation 7

6. The Council shall be entitled to furnish its approval referred to in 5. above in principle in accordance with Regulation 11. Regulation 11

7. Compliance with the Disposal Management System referred to in the Policy and Procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal

Directives adopted by the Municipality shall not be necessary and direct negotiations may be conducted with the Service Provider. Regulation 12(2) and 12(3)

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8. The provisions of Regulations 14 and 15 shall be taken into account. Regulation 14, Regulation 15

9. If the Municipality on account of the public interest, in particular in relation to the plight of the poor, intends to transfer a Non-Exempted Capital Asset for less than its Fair Market Value, the factors referred to in Regulation 13(2) shall be taken into account. Regulation 13(2)

10. The proceeds received from the sale and Transfer of the Non-Exempted Capital Asset shall be dealt with in accordance with Regulation 16. Regulation 16

11. Any sale and Transfer in accordance with this Schedule shall be effected by a written Transfer Agreement compliant with Regulation 17 which shall be made available to the Council and public as provided for in Regulation 18. Regulation 17, Regulation 18

12. Gains, losses and associated costs not budgeted for that will be incurred in respect of the sale and Transfer shall be dealt with in accordance with Regulation 47. Regulation 47

13. The sale and Transfer of the Non-Exempted Capital Asset shall not affect any existing encumbrances, rights and servitudes attached to the Asset. Regulation 48

14. The sale and Transfer shall be given effect to and formalised in accordance with all applicable legislation and shall be fair, equitable, transparent and competitive. Regulation 49, Section 14(5)

Reference to a Section refers to a Section of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA).

Reference to a Supply Chain Management Regulation refers to a Regulation of the Municipal Supply Chain Management Regulations published by General Notice 868 of 2005 under the MFMA.

Reference to a Regulation refers to a Regulation of the Asset Transfer Regulations published by General Notice 878 of 2008 under the MFMA.

SCHEDULE 5

The following procedure shall be followed in relation to the sale and TRANSFER of an EXEMPTED CAPITAL ASSET NOT needed to provide the minimum level of BASIC MUNICIPAL SERVICES to ORGANS OF STATE.

1. It shall be determined in accordance with Regulation 20 whether Sections 14(1) to 14(5) applies to the particular transaction. Regulation 20
2. Sections 14(1) to 14(5) shall apply to the particular transaction and this Schedule shall not apply where none of the circumstances mentioned in Regulation 20 apply. Regulation 21
3. Where the provisions of Regulation 20(1)(a) apply, Regulation 22 shall be complied with. Regulation 22
4. Before a sale and Transfer of an Exempted Capital Asset to an Organ of State in circumstances described in Regulation 20(1), Regulation 23 shall be complied with. Regulation 23
5. Regulations 25, 26, and 27 shall be complied with. Regulation 25, Regulation 26, Regulation 27
6. The valuation of the Exempted Capital Asset and compensation therefore shall be calculated and agreed in accordance with Regulations 29 and 28. Regulation 29, Regulation 28
7. A written Transfer agreement shall be concluded in relation to the Transfer which shall comply with Regulation 30 and prior to entering into such Transfer agreement the Council must

consider the effects referred to in Regulation 31 and the due diligence referred to in Regulation 32 shall have been conducted. Regulation 30, Regulation 31, Regulation 32

Reference to a Section refers to a Section of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA).