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POLICY FRAMEWORK

IMMOVABLE PROPERTY ASSET TRANSFER, DISPOSAL AND THE GRANTING OF A RIGHT TO USE, MANAGE OR CONTROL A PROPERTY ASSET OWNED BY THE MUNICIPALITY



POLICY ON IMMOVABLE PROPERTY ASSET TRANSFER, DISPOSAL AND THE GRANTING OF A RIGHT TO USE, MANAGE OR CONTROL A PROPERTY ASSET OWNED BY THE MUNICIPALITY

LIST OF ABBREVIATIONS

BAC	Bid Adjudication Committee
BEC	Bid Evaluation Committee
BSC	Bid Specification Committee
COT	City of Tshwane
CITY	City of Tshwane
GIAMA	Government Immovable Asset Management Act 19 Of 2007
MATR	Municipal Asset Transfer Regulations 2008
MFMA	Local Government: Municipal Finance Management Act 56 Of 2003
MSA	Municipal Systems Act 32 of 2000
PPP	Public Private Partnership
SCM	Supply Chain Management
SCMP	Supply Chain Management Policy
SCMR	Supply Chain Management Regulations 2005
NGO	Non-Governmental Organization
NPO	Non-Profit Organization

GLOSSARY OF TERMS

In this policy, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act has the same meaning as in the Act.

TERMINOLOGY	DEFINITIONS
ACCOUNTING OFFICER	The Municipal Manager appointed in terms of Section 82 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) and being the Head of Administration and Accounting Officer in terms of Section 55 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) and includes any person: <ul style="list-style-type: none"> (a) Acting in such position; and (b) To whom the Municipal Manager has delegated a power, function or duty in respect of such a delegated power, function or duty.
ASSET REGISTER	A record of information on each asset that supports the effective financial and technical management of the assets, and meets statutory requirements.
BASIC MUNICIPAL SERVICES	Means a municipal service that is necessary to ensure an acceptable and reasonable quality of life and if not provided, would endanger public health, safety or the environment. , and shall include the meaning noted in this Policy.
COUNCIL	Council means the City of Tshwane Council as envisaged in chapter 3 of the Municipal Structures Act (Act No.117 of 1998).
DISPOSAL OF A PROPERTY ASSET	Disposal in relation to a property asset, means: <ul style="list-style-type: none"> (a) the demolition, dismantling or destruction of the property asset; or (b) any other process applied to a property asset which results in loss of ownership of the property asset otherwise than by way of transfer or ownership; and (c) ownership of the property asset is lost by the Municipality but not passed on to another party
EXEMPTED CAPITAL ASSET	Sections 14(1-5) and 90(1-5) of the MFMA and the SCMR do not apply in instances where the transfer is to another organ of state and results from any one of circumstances indicated in regulation 20 of the Municipal Asset Transfer Regulations, 2008. If the transfer results from something other than the circumstances outlined in regulation 20 of the MATR, such is an ordinary commercial transaction with an organ of state, then sections 14 and 90 of the MFMA, the SCMR (including the disposal management system) and Chapter 2 of the MATR (regulations 2 and 21), will apply.

<i>FAIR MARKET VALUE</i>	In relation to a property asset, means the value at which a knowledgeable buyer would buy and a knowledgeable seller would sell the property asset in an arm's length transaction.
<i>GRANTING A RIGHT TO USE, CONTROL OR MANAGE A PROPERTY ASSET</i>	Means a right granted to use, control or manage a property asset for a period exceeding one calendar month: <ul style="list-style-type: none"> (a) without ceding legal ownership in the property asset, (b) which include a lease, letting or hiring out arrangement for longer than one month; and (c) ownership is not lost or transferred to another party but temporary let for a purpose; this is commonly known as entering into a lease relationship, and it culminates in a written lease agreement and no verbal agreement is permissible.
<i>HIGHEST AND BEST USE VALUATION PRINCIPLE</i>	The definition of highest and best use is the reasonable, probable and legal use of vacant land or an improved property asset, which is physically possible, appropriately supported, financially feasible, and that results in the highest value.
<i>HIGH VALUE</i>	"high value" in relation to a capital asset means that the fair market of the capital asset exceeds any of the following amounts:- <ul style="list-style-type: none"> (a) R50mill (fifty million rand); (b) 1% (one percent) of the total value of the capital assets of the Municipality, as determined from the latest available audited annual financial statements of the Municipality; or (c) an amount determined by resolution of the Council of the Municipality, which is less than (a) or (b);
<i>LAND SWAP OR EXCHANGE</i>	Means a process: <ul style="list-style-type: none"> (a) of swap or exchange where the transfer and acquisition take place simultaneously (b) in which event the rules of both transfer and acquisition apply, and (c) where an exchange of ownership of the respective immovable property assets occur, (d) provided that in the event that one immovable property asset is higher in monetary value than that of the other, a cash payment equivalent to the shortfall may be made by the party whose property asset is of lesser value.
<i>LONG-TERM HIGH-VALUE LEASE</i>	This is a right to use manage or control a property asset (lease) where: <ul style="list-style-type: none"> (a) The proposed right will exceed three (3) years; and (b) the value of the property asset is greater than R10 mill (ten million rand) (MATR regulations 34(2) and 37(2)).
<i>LONG TERM LEASE</i>	A long term lease means a right granted to use, control or manage a property asset: <ul style="list-style-type: none"> (a) for a period exceeding three years, but for a period not exceeding 9 years and 11 months

	<ul style="list-style-type: none"> (b) without ceding legal ownership in the asset, (c) which include a lease, letting or hiring out arrangement for longer than 3 years, (d) ownership is not lost or transferred to another party but temporarily let for a purpose, and (e) it culminates in a written agreement and no verbal agreement is permissible.
NON-EXEMPTED CAPITAL ASSET	Non-exempted capital asset means a capital asset which is not exempted by section 14(6) or 90(6) of the MFMA from the other provisions of section 14 of the MFMA.
NON-STRATEGIC BUSINESS PROPERTIES	Properties zoned appropriately for business and/or industrial activities other than those classified as strategic property assets
NOTARIAL LEASE AGREEMENT	<p>A notarial lease means a right granted to use, control or manage a property asset:</p> <ul style="list-style-type: none"> (a) for a period that exceeds 9 years and 11 months, (b) without ceding legal ownership in the asset, (c) ownership is not lost or transferred, and (d) it culminates in a written agreement and no verbal agreement is permissible, and (e) a notarial lease (ten years or more) is registered in the deeds registry and recorded against the title of the property asset (the leased premises), in terms of The Formalities in Respect of Leases of Land Act 18 of 1969, and (f) the notarial right may not be pledged for the registrations of a mortgage bond over the notarial right, without the written consent of Council.
POLICY	Means this policy framework for the immovable property asset transfer, disposal and the granting of a right to use, manage or control a property asset owned by the Municipality as approved and amended from time-to time.
PROPERTY ASSET/CAPITAL ASSET	Means any immovable asset such as land, property or buildings and shall include a Capital Asset as intended in the MFMA.
PROPOSER	A proposer means any person, whether natural or juristic, that submits an unsolicited proposal to an institution
PUBLIC PRIVATE PARTNERSHIP	A Public Private agreement between the Municipality and a Private Partner as contemplated in section 120 of the Municipal Finance Management Act 2003 (Act 56 of 2003).
SERVITUDE	Means a real right which a person/property may have over the immovable property asset of another which results in a burden on the immovable property asset, so encumbered by the servitude for a specific period of time or an indefinite time as the case may be.
SHORT TERM LEASE	<p>Means a right granted to use, control or manage a property asset:</p> <ul style="list-style-type: none"> (a) for a period exceeding one calendar month, (b) for a period not exceeding 3 years (c) without ceding legal ownership in the property asset,

	<p>(d) which include a lease, letting or hiring out arrangement for longer than one month, and</p> <p>(e) ownership is not lost or transferred to another party but temporarily let for a purpose, and it culminates in a written agreement and no verbal agreement is permissible.</p>
<i>STRATEGIC PROPERTY ASSET</i>	<p>Means a property asset:</p> <p>(a) that has been identified as such by the Group Head: Group Property Management and Group Head: Economic Development and Spatial Planning; and</p> <p>(b) that is located in a specific priority developmental node</p>
<i>SUPPLY CHAIN MANAGEMENT POLICY</i>	<p>Refers to the Supply Chain Management Policy as approved by Council on 30 June 2016 and as amended from time to time.</p>
<i>TEMPORARY SHORT TERM USE RIGHT</i>	<p>Means:</p> <p>(a) the use of a property for less than one calendar month,</p> <p>(b) this type of transaction will be dealt with administratively, and</p> <p>(c) it culminates in a written agreement and no verbal agreement is permissible.</p>
<i>TRANSFER OF A PROPERTY ASSET</i>	<p>Transfer in relation to a property asset means,</p> <p>(a) transfer of ownership of the property asset as a result of a sale or other transaction;</p> <p>(b) which can include a donation or a swap transaction;</p> <p>(c) the critical element is whether ownership of the asset has passed from one party to another party; and</p> <p>(d) it culminates in a written agreement and no verbal agreement is permissible.</p> <p>This is commonly referred to as “sale” of a property asset.</p>

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POLICY ON IMMOVABLE PROPERTY ASSET TRANSFER, DISPOSAL AND THE GRANTING OF A RIGHT TO USE, MANAGE OR CONTROL A PROPERTY ASSET OWNED BY THE MUNICIPALITY

1 INTRODUCTION

The City of Tshwane has a vision to turn the City into a hub of opportunity that gives life to the rights and freedoms, enshrined in the Constitution of our country and is committed to developing an economic future that is inclusive, diversified and competitive. The remaking of Tshwane, the Capital City, is about intervening decisively to create a modern urban fabric premised on the principles of achieving spatial justice, sustainability, resilience, quality and efficiency. The City has a diverse property asset portfolio which it intends leveraging to achieve its vision. This Policy will direct and leverage the use of the City's property assets to enable that vision by providing a policy on how the City transfers, disposes and grants the rights to use, manage or control its property assets.

There is great demand for property assets as land is a scarce resource. Land ownership is also an emotive topic in the South African context due to the current socio-economic challenges, historic and spatial injustices facing the City and the Country. A great deal of inefficiency existed in the City's previous property asset disposal process which is characterized by, amongst others, large scale applications to purchase, lease or develop property assets met with administrative inefficiencies culminating in delayed response to the public to meet private sector demand requirements, irregular land use, land invasions and spatial planning issues. The Municipality has identified the need to improve transparency and accountability through a practical policy framework to be utilized when the Municipality wishes to transfer or dispose of a property asset or grant a right to use, manage or control a municipal property asset.

The purpose of this Policy is to provide a national and internationally benchmarked policy that is responsive to the socio-economic realities of South Africa. It is imperative that the City as a land owner ensures that good systems and procedures are constantly introduced, revised and implemented to ensure that the Municipality is able to meet its strategic objectives and preserve enough land for improved service delivery and to provide basic municipal services.

The City of Tshwane has an immovable property asset portfolio that consists of both developed and undeveloped portions of land which include:

- business properties,
- residential properties,
- agricultural holdings and farm land,

- industrial properties,
- community facilities (including health clinics and community halls),
- infrastructure properties including public streets,
- road reserves and sites reserved for roads and road camp purposes,
- parks, nature reserves and open spaces,
- recreational facilities such as libraries, sports and cultural facilities,
- historical buildings and museums,
- properties utilized for municipal operational purposes (office accommodation, parking areas, training academies, laboratories, engineering workshops, warehouses, vehicle depots),

While vast amounts of the properties listed above are required for the Municipality's own use and developmental objectives, some properties are in high demand by private parties and/or other organs of state for commercial, social and/or development requirements. The required balance to deliver on a socio-economic mandate and the management of efficiently controlled and optimally utilized immovable property assets to achieve this mandate creates many practical challenges in the management of the City's property asset portfolio.

The City is therefore implementing a pro-active property asset release strategy based on the highest and best use analysis of its residual capital assets, to advance turnaround times relating to processes, accelerated opportunities to encourage investment and promote partnerships to advance projects that stimulate growth and job creation, by leveraging private sector and/or public sector investment and the knock-on benefits, while ensuring that ecological habitats are conserved in perpetuity, whilst taking into consideration broader community interests, and without draining the City's resources.

To successfully realise this vision requires a strategic approach that identifies and nurtures the very best growth opportunities. In addition to the pro-active release of property assets the City also identifies categories of property assets which may be considered for disposal through a deviation process where it is in the public interest and/or impractical to follow the normal tender processes and is cognizant of the potential investment opportunities that may be realized by market-led proposals put to government by the private sector. The remake of the Capital City through spatial development, transformation and densification initiatives, including revitalisation and development of new economic nodes that support transit-oriented development and public transport systems offers extensive opportunities.

The core objective of remaking South Africa's Capital City is to forge a new identity. Realising this objective requires mobilisation of other spheres of government, residents, civil society and the private sector in order to concretise the process that will lead to shared development of South Africa's capital City. This policy therefore creates a framework in which these disposal decisions of the City are guided in an open and transparent manner.

Chapter 11, part one of the Local Government: Municipal Finance Management Act 56 of 2003 (hereinafter MFMA), deals with Supply Chain Management (hereinafter SCM). In terms of section 111 of the MFMA, each Municipality is required to have, and implement a Supply Chain Management Policy (hereinafter SCMP), which gives effect to the provisions of Part 1 of Chapter 11 of the MFMA. Regulation 40 of the Supply Chain Management Regulations, 2005 (SCMP) further stipulates that the SCMP policy must include a section that deals with an effective system of disposal management for the disposal or letting of property assets. The following sections therefore comprehensively outlines the policy applicable to the transfer, disposal and the granting of a right to use manage or control municipal owned property assets.

2 APPLICATION AND SCOPE OF THE POLICY

The policy is applicable to:

- the transfer (commonly referred to as sale) and disposal of immovable property assets owned and controlled by the Municipality and its Municipal Entities; as well as
- the granting of the right to use, control or manage immovable property assets commonly known as lease rights; and
- the granting of a servitude right.

This policy specifically excludes:

- Municipal property assets required for the provision of the minimum level of basic municipal services;
- Public Private Partnerships, governed by the legislation applicable to PPP's;
- Housing for the poor on municipal land and the transfer of that housing in terms of the relevant Housing legislation and allocation policies administered by the National Housing Department; and
- An exempted capital asset transferred to another organ of state as a result of the circumstances as listed in regulation 20 of the MATR.

This policy is regarded as the disposal management system as contemplated in Regulation 40 of the SCMR for the transfer, disposal and the granting of a right to use, manage or control a property asset owned by the Municipality.

3 EFFECTIVE DATE OF POLICY

3.1 This policy replaces:

- (a) The alienation policy as attached to the Supply Chain Management Policy approved by Council in its meeting held on 31 July 2013, and
- (b) The Church policy; and
- (c) Any other policy not previously repealed, that may also deal with the alienation and/or leasing of municipal owned property assets.

3.2 This policy will become effective from the date of Council approval.

3.3 The policy is to be read and interpreted together with the Supply Chain Management Policy of the Municipality, as amended from time to time.

3.4 Should there be any conflict between the SCM policy and this policy, this policy's interpretation shall have preference, since this policy specifically applies to municipal immovable property assets. This policy establishes the effective disposal management system required in the SCM regulations

4 PURPOSE OF THE POLICY

The City of Tshwane owns vast numbers of immovable property assets. Some of these properties are retained for future municipal service delivery and developmental objectives, while others are retained for investment purposes for financial sustainability and revenue optimization.

The purpose of this policy is to establish a framework that:

- a) The City may, under specific circumstances make a decision to transfer or dispose of property assets or rights in property assets, or grant rights to use, control or manage property assets or interests in such assets through leasing, letting or hiring out arrangements;
- b) Promotes the highest and best utilization of the City's property asset portfolio to create a long term recurring social and economic benefit for the City in line with its vision and strategic objectives;
- c) Ensures that irreplaceable property assets are not lost to the City, Council owned property assets should not be sold in principle but should rather be alienated of by means of notarial, long and short terms rights to use control or manage property assets or interest in such assets through leasing letting or hiring out arrangements
- d) Stimulates a growing economy that is inclusive, diversified and competitive;
- e) Promotes a livable, resilient and inclusive City;

- f) Complies with all applicable provisions of the MFMA, the SCMR, and the MATR and to National Treasury Guidelines issued in terms of the MFMA.
- g) Ensures the participation of the previously disadvantaged communities in the ownership and/or management, control or use of municipal property assets.

5 AIM OF THE POLICY

The aim of the policy is, inter alia, to ensure that the utilization of the property asset portfolio of the City:

- (a) Is primarily prioritized for the provision of efficient and effective delivery of sustainable basic municipal services which includes, and are not limited to, infrastructure services and human settlements in line with the City's mandate;
- (b) Ensure the optimal utilization of the City's property asset portfolio so that property asset value of the City's land holdings is increased over time due to the construction and improvements on the leased property assets which then revert to Council on expiry of the lease period;
- (c) Improves financial sustainability and furthers sound financial management towards improved delivery on the mandate of the City;
- (d) Creates a long term recurring benefit for the City;
- (e) Uplifts and promote private sector involvement and strategic partnerships;
- (f) Encourages continued property asset development, transformation and innovation to be responsive to the needs of the Citizens;
- (g) Strengthens and improves good governance, accountability and active citizenry;
- (h) Promotes sustainable, safer communities and integrated social development
- (i) Advances legislative compliance and promote compliance and the spirit of law, in general, constitutional values and principles;
- (j) Support the strategic objectives of the City and the Tshwane Integrated Development Plan (IDP), Municipal Spatial Development Framework (MSDF), Regional Spatial Development Framework (RSDF) and Tshwane Open Space Framework (TOSF).
- (k) Aligns City policies with the national and provincial development initiatives and supports the strategic interventions of national and provincial spheres of government.
- (l) Create an accountable governance system that sets out the imperative key principles, procedures and processes when the Municipality transacts on immovable property assets, in line with the provisions of the MFMA, the SCMR, the MATR and other applicable regulatory frameworks in pursuit of the Municipality's developmental objectives, cognizant of the uniqueness of immovable property assets as transactional commodities.
- (m) Promote social and economic investment and development in the City through availing property assets.

6 REGULATORY ENVIRONMENT: LEGISLATION AND TREASURY GUIDELINES

This policy must, at all times, be read with, and in conjunction with all applicable legislation as stipulated below. The City of Tshwane is committed to comply with all applicable legislation as it pertains to transactions on immovable property assets. The following applicable legislation are by no means conclusive:

- Constitution of the Republic of South Africa Act (Act No. 108 of 1996).
- Municipal Systems Act, (Act 32 of 2000) and its Regulations.
- Local Government: Municipal Finance Management Act (Act No. 56 of 2003).
- Regulations in terms of Section 168 of the Local Government: Municipal Finance Management Act, 2003.
- Municipal Supply Chain Management Regulations, 2005.
- Municipal Asset Transfer Regulations, 2008.
- Local Government Ordinance No. 17 of 1939.
- Alienation of Land Act, 1981 as amended.
- Preferential Procurement Policy Framework Act, (Act 5 of 2000) and its Regulations.
- Subdivision of Agricultural Land Act, (Act 70 of 1970).
- Spatial Planning and Land Use Management Act (Act 16 of 2013)

Cognizance must also be taken of the following legislative framework, which may have an impact on the property transaction environment:

- Promotion of Administrative Justice Act, Act no. 3 of 2000.
- Promotion of Access to Information Act, Act no. 2 of 2000.
- South African Consumer Protection Act, No 68 of 2008.

The Government Immovable Asset Management Act 19 of 2007 (hereinafter GIAMA), makes it incumbent on all national and provincial government departments to demonstrate that they are managing immovable assets efficiently and effectively in accordance with the principles of immovable asset management. Local Government is at this point in time still excluded from the requirements of the Act, but the overarching principles in GIAMA, have been considered in the formulation of this policy.

This policy also aims to incorporate Guidelines published by the National Treasury:

— National Treasury Model Supply Chain Policy.

7 GOVERNING PRINCIPLES OF THE POLICY

This Policy is governed and must be implemented in accordance with the following principles:

A) **ACCOUNTABILITY:** An effective supply chain management system must be maintained in order to enable the Accounting Officer to discharge his/her responsibilities.

B) **EFFICIENCY:** The property assets of the City of Tshwane must be managed optimally and the City should maximize administrative processes relating to the sale/lease/disposal of the property portfolio to implement service delivery and facilitate economic growth which is directed by the City.

C) **EFFECTIVENESS:** The Municipality must meet the socio-economic goals set by the National Government and must exercise sound financial governance appropriate to property transactions.

It is the duty of the City of Tshwane to protect the interest of the public. In view of the fact that the property assets to be transacted upon is held by the Municipality in favour of the general public, any bids that are approved must be the most beneficial to the Municipality and its residents.

D) **FAIR AND EQUITABLE:** Applicants, bidders and land owners must be treated fairly and have an equal opportunity to bid for municipal immovable property assets owned the City of Tshwane in the transactional circumstances outlined in the policy.

The Municipality should not impose unnecessary burdens or constraints on applicants, bidders and land owners. For this reason, all competitive bids must be advertised by means of a public advertisement in newspapers commonly circulating locally, or the website of the Municipality or municipal entity, or in any other appropriate way (which may include an advertisement in the Government Tender Bulletin). All bids received on time must be considered and no bidder may receive preferential treatment or be prejudiced against other bidders.

No specification/evaluation/adjudication information will be given to third parties except in cases where legal action has already been

taken and all documentation must be furnished for scrutiny as per the Uniform Rules of Court.

E) **LEGAL COMPLIANCE:**

The Municipality must conform to all legislative requirements in terms of property asset transactions.

F) **TRANSPARENCY:**

The Municipality must ensure that there is openness and clarity on its property asset transactions.

By advertising all competitive bids, prospective purchasers or lessees are informed of the intentions of the City of Tshwane. Bids received on time are opened in public, and the names and the bidders and the amounts offered are read out.

Transparency must be fostered by providing the public with timely, accessible and accurate information.

In order to enhance transparency members of the public will, at times, be encouraged to witness the pre-compliance evaluation; Bid Evaluation Committee and the Bid Adjudication Committee processes for awarding of bids.

The tender evaluation and award processes should be completed within 60 days from the date of tender closure.

G) **RESPONSIVENESS:**

The Municipality must endeavor to meet the aspirations, expectations and needs of the community affected by the property asset transaction.

H) **INFORMED DECISION-MAKING:**

The Municipality needs to base decisions on accurate information and monitor transactional requirements and conditions to ensure that they are being met.

The Municipality should refrain from accepting *ad hoc* applications for the transfer or lease of municipal property assets as it should rather be part of an annual disposal plan which would result in informed decisions being made by Council or the Accounting Officer.

I) **INTEGRITY:**

There must be no corruption or collusion with potential applicants, bidders or property owners.

J) **CONSISTENCY:**

Applicants and bidders must be able to expect the same general Supply Chain Management processes across the Municipality.

- K) **COMPETITIVENESS:** Property transfer, sales and leases must be carried out by competition unless there are convincing reasons to the contrary as outlined in the Policy.
- L) **VALUE FOR MONEY** The Municipality must adopt the principle of "value for money" on acquisitions and "commensurate reward" on property asset releases as well as the utilization of the procurement system to achieve government's policy objectives. The term "value for money" includes the monetary value, economic value as well as the community or social value, less any inherent liabilities to be obtained in the property asset. The City in determining the principal for value for money will consider the intended use of the property asset in determining the appropriate financial model for remuneration of the transaction. Due consideration should however be given to the utilization of the procurement system to achieve government's policy objectives. The state of the property assets to be transacted upon, the time taken to administrate the process and the cost-effectiveness of the finalization of contracts must be factored into any transactional consideration.
- M) **RISK TRANSFER:** The Municipality must ensure to transfer the risk relating to a municipal property asset in conjunction with the transfer of the property asset.
- N) **PROPERTY ASSET PRESERVATION:** The Municipality must prevent the indiscriminate and/or unsustainable transfer or disposal of a municipal property asset in order not to undermine the ability of the Municipality or Municipal Entity to render or expand municipal services in the longer term. The Municipality shall enforce all restrictive conditions in contracts and/or title deeds with specific emphasis, but not limited to, restrictive conditions relating to the "re-transfer" of property assets back to the Municipality in instances where the purchasers, donee or any other party/body/organization to the transaction, do not comply with the conditions of the legal agreement and/or title deed.
- O) **OPTIMUM BENEFICIAL CONTRACTUAL CONDITIONS IN FAVOUR OF THE MUNICIPALITY** As a general rule property assets of the municipality will not be sold but lease options as outlined in this policy would be considered. A notarial or long term right to use, control or manage land property assets or interest in land property assets, through leasing letting or hiring out arrangements is preferred over a short term right to use control or manage property assets or interest in land property assets through leasing letting or hiring

out arrangements in general., however the value of the development to be completed by a lessee should however be considered and a determination made by Council as to whether often circumstance necessitate a longer term right to use control or manage land property assets or interest in property assets through leasing letting or hiring out arrangements depending on the value of investment.

8 TRANSACTIONAL RESTRICTIONS AND EXCLUSIONS

- a. The purpose for which immovable property assets are released, will comply with the latest Council approved Municipal Spatial Development Framework (MSDF), Tshwane Open Space Framework (TOSF) and the Tshwane Vision 2030 and the use thereof is governed through the decision making bodies as contemplated in SPLUMA.
- b. No property asset required for greening, open space development, playground, waste management, cemetery and burial places, nature conservation, or biodiversity and ecological functions and services, may be made available for any other development. An exception may be considered if the economic benefit to be obtained far outweighs the environmental benefit to be received but such envisaged development shall incorporate and enhance the full environmental imperatives of the said area, whether it may include a park and recreational services or the biodiversity management of the property asset to the benefit of the community and the City. Where consideration is given to availing property assets and due to economic benefits outweighing environmental ones and the development does not incorporate environmental imperatives outlined above, then suitable alternative land should be provided for such purposes as required by the Municipality in close proximity to the envisaged development.
- c. Property assets situated within flood line or dolomitic areas will not be released for any development except for gardening purposes, unless the applicant provides an acceptable and proven engineering solution to the associated risks, and conditions as per item (b) above, are not compromised or diminished.
- d. Surplus immovable property assets (property assets not needed for the provision of basic municipal services as defined in section 14(2)) identified for such purpose may be released to address land ownership disparities for the previously disadvantaged and to promote Black Economic Empowerment.

- e. No property asset will be released in an area where the township has been approved but no township register has been opened in the Office of the Registrar of Deeds.
- f. No strategic property asset, whether vacant land or a building, both in the Inner City and the surrounds as identified by the Group Head: Group Property Management and Group Head: Economic Development and Spatial Planning, may be sold to the private sector or considered for land swaps. For strategic developments, the City may avail land on a notarial or long term lease, concession or partnership basis, excluding outright sale transactions.
- g. Applications to purchase reserve portions of property assets such as road reserves or redundant access alleys or non-demand portions etc., that do not have any negative impact on the realization of the City of Tshwane's Spatial Development Framework, may be considered.
- h. Strategic surplus immovable property assets, not immediately required for the provision of the minimum level of basic municipal services and the implementation of the developmental programs of the City, will be "banked" by making them available for development through short or long term leases or concessions or partnerships.
- i. Immovable property assets may be availed periodically for development through the invitation of development proposals.
- j. No lessee of the Municipality whom has been granted a lease right for any period whatsoever may cede its rights to the lease to any other party, and the Municipality shall in accordance with regulation 45(2)(x) include a clause in the agreement disallowing the lessee or parties to the contract or organ of state to whom the right is granted from ceding or subcontracting the right to another person or entity. Council may in its own discretion in instances of strategic developments, grant written approval for the subletting of portions of the completed development especially in those instances where the strategic development can be classified as a multi-use development.
- k. A notarial lease granted by the Municipality may only be ceded to another party with the written approval of the Municipal Council, subject thereto that the comments from the National Treasury and Provincial Treasury must first be obtained and considered in the report to Council.
- l. The lessee as defined within a notarial lease agreement, may with the written approval of the Municipal Council, sublet a defined portion of the property asset to a third party, subject to the same conditions as registered in the notarial lease.

- m. No mortgage bond may, without the written approval of Council, be registered over the municipal property itself, when a notarial lease has been granted. Such consent may not be unreasonably withheld by Council.
- n. No mortgage bond may be registered over a notarial lease right without the written approval of the Municipal Council subject thereto that the comments from the National Treasury and Provincial Treasury must first be obtained and considered in the report to Council.
- o. Any applications from applicants which had previous agreements with the Municipality and where such agreements have been cancelled due to the breach of contract by the specific applicants, will not be considered in any of the phases of this policy.
- p. The Municipality may at its own time and per its planning cycle, make the property asset which was applied for, available for transfer or lease in terms of this policy.

9 PROACTIVE LAND RELEASE

The City of Tshwane will, on a cyclical basis, in order to coincide with its planning and budgeting cycles, release specific immovable property assets, as per the prerogative of the Council, to members of the public. In order to effect the above, the following will apply:

- (a) The Group Head: Group Property Management, will package the identified portions of immovable property assets and, in conjunction with the Group Head: Economic Development and Spatial Planning, confirm the right usage as per the applicable Town Planning Scheme and the Municipal Spatial Development Framework.
- (b) Property required for the provision of the following services by COT will be precluded:
 - 1. Electricity services
 - 2. Water services
 - 3. Waste Water/Sanitation services
 - 4. Waste Management - Refuse removal, refuse dumps and solid waste disposal services
 - 5. Municipal Health Services
 - 6. Municipal Roads transport infrastructure and public transport
 - 7. Public Places and
 - 8. Cemeteries.

(c) A Highest and Best Use Analysis will be conducted on the identified property asset. The Highest and Best Use Analysis may includes comprehensive research of the following issues related to the identified property asset:

- The current and future best use possible of the property asset aligned to the MSDF and applicable RSDF
- Physical Site conditions
- Legal restrictions on the site
- Zoning conditions - Existing zoning should be used to determine if a land use application will be required to obtain the best possible uses of the property asset.
- Environmental factors
- Heritage issue
- Economic area analysis
- Site locality and context
- Market demand analysis
- Maintenance Obligations
- Holding Costs

(d) Assessing Best Use And Strategic Significance

In assessing the Highest and Best Use Analysis the following objectives will be taken into account:

1. Support city's development objectives;
2. Economic growth;
3. Social transformation; and
4. Generate income for City.

(e) After completion of the above studies, the Highest and Best Use Analysis recommends the optimal use of the site with reference to the following:

- i. Policy pressures from National and Provincial Government in terms of the extent of government current and/or future projects and/or plans may impact the City's property asset portfolio and the possibility for government collaboration and partnerships.
- ii. Strategic significance of the property asset transfer, disposal and/or the granting of a right to use, manage or control of the property asset.
- iii. Regional Priorities as per RSDF and Market Demand for property asset.
- iv. Land requirements over the Medium-term expenditure framework.
- v. Development risks on property assets.

- vi. Timing of the release and packaging of the immovable property asset transfer, disposal and/or the granting of a right to use, manage or control a property asset owned by the Municipality to optimize the release to match anticipated market demand for the identified market sector.
 - vii. National and international best practice, research and benchmarking aligned to City objectives to achieve the optimal business/financial/developmental models, urban design guidelines for implementation and property development models for execution.
 - viii. An analysis of future land demands, based on infrastructure implications on transport, roads, water, sanitation, electricity, and refuse removal, which impacts on social and economic growth.
- (f) Identified property assets will be submitted for further consideration in accordance with the applicable process outlined in the policy.
 - (g) Property assets to be released pro-actively to the private sector will include land zoned for Residential, Business, Industrial, Agricultural, Undetermined and Institutional and will include pro-active completion of township establishment requirements for the intended use.
 - (h) The Council shall, as outlined in Phase one of the policy, in a meeting open to the public, make a determination that the property assets so identified are not required for the provision of the minimum level of basic municipal services and may be transferred or lease rights may be granted.
 - (i) A public notice will be issued in terms of the Local Government Ordinance 17 of 1939 to afford the affected community an opportunity to comment, if any.
 - (j) All transactions in this category of pro-active land release to the private sector, will be concluded through a competitive bidding process, as provided for in the SCMP.

10 KEY PRINCIPLES IN THE DECISION MAKING PROCESS

Council owned land should not be sold as a general rule but should rather be alienated of by means of notarial, long and short terms rights to use control or manage land or interest in land through leasing letting or hiring out arrangements. The COT property portfolio is required to be assessed to further the City's strategic objectives and create financial sustainability in perpetuity. Immovable property assets may only considered for sale and/or disposal in exceptional circumstances or to further COT strategic objectives as considered at the discretion of the Council.

The pro-active land release of the City will provide the property assets that are intended to be released through Public Tender for the transfer, disposal or granting of a right to use, manage or control a property asset owned by the Municipality or Municipal Entity in order to ensure that the interests of the Municipality or Municipal Entity, its stakeholders and the community are not prejudiced by the transfer, disposal or the granting of the rights to use, manage or control.

The following guidelines shall be taken into consideration when COT takes a decision to transfer, dispose or grant the right to use, manage or control property assets following the highest and best use analysis which includes, amongst others, a determination of the economic and social benefits, strategic significance of the intended use of land and feasibility analysis.

11 GUIDELINES FOR THE TRANSFER, DISPOSAL OR GRANTING OF RIGHTS TO USE, MANAGE OR CONTROL PROPERTY ASSETS

In deciding whether to transfer, dispose or grant the rights to use, manage or control property assets the City may consider the following;

1. The best possible uses and also the probable future uses of the property assets aligned to the applicable RSDF.
2. The City's need for the provision of basic municipal services as contained in the MFMA which may include services such as housing, infrastructure services, provision of open spaces, clinics, library's, community facilities in general, etc., that are needed for current and future uses should be protected and not be alienated.
3. Critical Biodiversity Areas, Ecological Sensitive Areas, High Value Agricultural Land, Wetlands, Ridges, Geology Sensitive (Dolomite) and Heritage sites should not be sold.
4. Council owned property that is earmarked for large scale social housing or sustainable Human Settlements should not be alienated.
5. Existing zoning should be used to determine if a land uses application will be required to obtain the best possible uses of the property.
6. The availability of bulk services to a specific property asset should play an important role in the decision to alienate the property asset or not. The City should only sell serviced property asset in special circumstances.

11.1 CONSIDERATIONS FOR THE TRANSFER OF COUNCIL PROPERTY ASSETS:

The transfer of Council property assets may be considered in cases where it is impractical to follow the competitive bidding process or where emergency or exceptional circumstance exist. For purposes of this policy the transfer of property assets will be considered in instances where:

- Property assets are required to finalize allocations/transactions approved by former disestablished Municipalities or Transitional Administration entities subject to compliance with the requirements of this policy.
- Property assets which cannot be developed on their own due to their size or shape development, subject to legal certainty of the validity of this assertion, and need to be consolidated with adjoining private land holdings for development.
- In cases where the COT requires to develop the property asset for a specific purpose or in a specific manner to meet its strategic goals and such development could not be accomplished without the sale of the land.
- When the COT or its delegated authority has considered an unsolicited development proposal and considers the sale prudent in compliance with this policy.

11.2 CONSIDERATIONS FOR NOTARIAL LEASE AGREEMENTS

Considerations for notarial lease agreements greater than 9 (nine) years and 11 (eleven) months may be considered in instances where:

- Property asset is required for institutional purposes where institutions rely on developing a long-term brand and/or reputation such as research institutions, schools, universities, hospitals and community organizations.
- Corporate expansion of headquarters and/or manufacturing plants.
- Prevailing circumstance and the proposed value of the development justify a notarial term lease.
- Property is leased as a Specific Use Facility.
- Investment on the property asset may require a notarial lease depending on the investment maturity and Council in its discretion may therefore consider a notarial lease period.

11.3 LONG TERM LEASE AGREEMENTS

Long Term Lease Agreements greater than three (3) years and not exceeding nine (9) years eleven (11) months may be considered in instances where land is intended to be used for the provision of:

- Sporting, recreation or cultural purposes.
- Religious purposes.
- Addressing public interest and/or the plight of the poor by NPO's and NGO's.
- Cellular and/or radio masts.

- Residential purposes - existing improved property asset used for residential purposes (municipal houses, flats, duplexes and simplexes) which specifically excludes the provision of low cost and social housing that fall within the core mandate of the City's Housing Department and Housing entity (HCT).

11.4 SHORT TERM LEASES

Short term leases between 1-3 months may be considered for commercial entities or private or public sector persons for community, social, religious, commercial or other purposes, such as the making of movies or advertisements or the hosting of events as outlined in this policy.

11.5 TEMPORARY SHORT TERM USE RIGHTS

Temporary short term use rights under a period of one month are generally used for leasing out property asset facilities such as venues like halls and/or grounds for events. Such applications may be approved administratively by the Group Head: Group Property Management. All leases will be subject to market related rentals unless the public interest or plight of the poor requires them to be released at less than market value.

PHASE ONE APPROVAL

12 APPROVAL FOR THE DISPOSAL OR TRANSFER OF A PROPERTY ASSET OR THE GRANTING OF A RIGHT TO USE, MANAGE OR CONTROL A PROPERTY ASSET OWNED BY THE MUNICIPALITY

12.1 ROLES AND RESPONSIBILITIES THE COUNCIL

- (a) Only the Council may give approval for the transfer, disposal or granting of a right to use manage or control a property asset.
- (b) The Council may consider a report for the approval for the transfer, disposal or granting of a right to use manage or control a property asset subject thereto that the pre-emptive conditions of section 14(2) of the MFMA have been adhered to.
- (c) The Council is constrained from granting such approval in terms of section 14(2) of the MFMA and must, as a minimum comply with the following:
 - 1. hold a meeting which is open to the public,
 - 2. at such meeting, the Council must decide, on reasonable grounds, that the property asset is not required to provide the minimum level of municipal services, and
 - 3. at the said meeting, the Council must consider the fair market value of the property asset, as well as the economic and community value which will be received in exchange for the property asset.
- (d) In the case of institutional or commercial developments, Council may determine that the property asset is not required for the provision of the minimum level of basic municipal purposes for a given period and may grant a right to use, manage or control to a private party for a predetermined period. Once that period lapses in terms of the contract, a new Council resolution must be sought in respect of that land or building this allows the City to receive an interim revenue source and reduced holding costs for future developments and/or projects.
- (e) In order to safeguard the property assets of the City and to mitigate against possible decay, degeneration or loss that may be suffered by the Municipality, Council may elect to, through a competitive bidding process, grant a right to a private party to manage on behalf of Council, agricultural land, cellular and radio masts or residential properties used for investment purposes to administer the upkeep of those assets, collect the related rental amounts and to

achieve any objectives that the City may entrust on that private party through a management contract.

- (f) The Council must maintain oversight over the implementation of the Supply Chain Management Policy and this policy to ensure property asset transactions are consistent with these policies and are fair, equitable, transparent and competitive. For the purpose of such oversight, the Accounting Officer of the City must submit a report to the Council on a quarterly basis listing all immovable property asset transfers, disposals and rights granted for the use, management and/or control of such property assets to any party. Such report should include the financial, economic or social value received from any such transaction as well as any information that may assist the Council to perform its oversight function.

12.2 BASIC MUNICIPAL SERVICES

Considerations for determining basic municipal services are as follows:

- (a) The following services as per this policy are classified as basic municipal services.
1. Electricity services
 2. Water services
 3. Waste Water/Sanitation services
 4. Waste Management - Refuse removal, refuse dumps and solid waste disposal services
 5. Municipal Health Services
 6. Municipal Roads transport infrastructure and public transport
 7. Public Places
 8. Cemeteries.
- (b) The above classification will be used by COT to identify and compile a List of all Municipal Land and Buildings needed for Basic Municipal Services which are accordingly not transferable and disposable.
- (c) The Council is obliged, during the Council meeting, when considering the approval and prior to the granting of the approval, to also take into account the following factors as outlined in the MATR (*regulation 5(1)(b), 8(1)(b), 7, 10 and 36*). This is required irrespective of whether a high value property asset is under consideration or not:
- Whether the property asset may be required for the Municipality's own use at a later date;
 - The expected loss or gain that is expected to result from the proposed transaction;

- The extent to which any compensation to be received in respect of the proposed transaction will result in a significant economic or financial cost or benefit to the Municipality;
- The risks and rewards associated with the operation or control of the property asset in the transactions in relation to the Municipality's interests;
- The effect that the proposed transaction will have on the credit rating of the Municipality, its ability to raise long-term or short-term borrowings in the future and its financial position and cash flow;
- Any limitations or conditions attached to the property asset, and the consequences of any potential non-compliance with those conditions;
- The estimated cost of the proposed transaction;
- The transfer of any liabilities and reserve funds associated with the property asset;
- Any comments or representations on the proposed transaction received from the local community and other interested persons;
- Any written views and recommendations on the proposed transaction by the National Treasury and the relevant provincial treasury;
- The interests of any affected organ of state, the legal and economic interests and the interests of the local community; and
- Compliance with the legislative regime applicable to the proposed transfer, disposal or granting of the right to use, manage or control a property asset.

- (g) The approval by Council may be given subject to any conditions as the Council and administration may deem fit but in accordance with the legislative framework.

12.3 CONSIDERATION OF FAIR MARKET VALUE, ECONOMIC AND COMMUNITY VALUE OF A PROPERTY ASSET

- (a) The Municipality needs to attach a fair value market value to the transfer or disposal of a municipal property asset or the granting of a right to use, manage or control a property asset owned by the Municipality or Municipal Entity in order to ensure that the interests of the Municipality or Municipal Entity, its stakeholders and the community are not prejudiced by the transfer, disposal or granting the right to use, manage or control a property asset.
- (b) The determination of fair market value will be indicated through a property's valuation which should not be older than twelve (12) months.
- (c) In determining the fair market value the City may consider the realizable value of the property with regard to the current and/or proposed highest and best use of the property for full and optimum use and/or development potential of the land, in order to inform strategic property transaction decisions. A multi-dimensional analysis approach

consisting of current and future context of the property's national, provincial and regional fit, surrounding economy, demographics and local business footprint may be undertaken.

- (d) The determination of fair market value is an indication of the minimum value that Council may consider for a transaction and does not preclude the City from entering into agreements in line with commercial best practice and/or potential value of the property and its intended use which may render higher yield than the fair market value.
- (e) Immovable property must be sold and/or leased only at a minimum of fair market value of the asset unless in the public interest or when the plight of the poor demands otherwise. The public interest shall be interpreted from a constitutional perspective and the principle of equality, as contemplated in Section 9(1) of the Constitution, and in particular Section 9(2) of the Constitution in terms of which measures (such as this policy) to protect or advance persons or categories of persons disadvantaged by unfair discrimination, may be taken.
- (f) If the City 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 City must, when considering the proposed transfer, take into account the interest of:
 - the state;
 - the local community;
 - the strategic and economic interest of the City, including the long-term effect of the decision on the City;
 - the constitutional rights and legal interests of all affected parties;
 - whether the interest of the parties to the transfer and/or lease should carry more weight than the interest of the local community and how the individual interest is weighed against the collective interest; and
 - whether the local community would be better served if the capital asset is transferred/leased at less than its fair market value, as opposed to a transfer of the asset at fair market value.
- (g) All the considered factors as outlined above, must be considered by Council and documented in the Council minutes.
- (h) Should the Council approve property asset transaction at less than the property asset's fair market the following shall be made conditions of the contract:

- The benefiting third party/organisation must be registered as a public benefit entity, listed in schedule 9 of the Income Tax Act. Proof of such registration as Non-Profit Organisation Act of 1997 is required before any contract may be signed by the Municipality.
- The benefiting third party/organisation must submit its constitution or founding document to confirm that its income and property are not distributable to its members or office-bearers, except as reasonable compensation for services rendered.
- All property asset transactions that were as a result of a transaction where the Municipality did not receive fair market value, is subject to a reversionary right, and such right shall be registered against the title of the property asset/s or included as a clause in the lease agreement.
- If the beneficiaries already occupy the property, proof needs to be provided that the municipal service accounts and rates and taxes are paid, before the transfer and registry of the property in the Deeds Office; and that
- Where the beneficiary or benefiting third party/organisation that has already erected a building on site, such benefiting third party/organisation has to obtain for building plan approval for the buildings at their cost, prior to the property being transferred in the Office of the Registrar of Deeds.

12.4 PUBLIC PARTICIPATION FOR A HIGH VALUE PROPERTY ASSET PRIOR TO COUNCIL SECTION 14(2) APPROVAL

- (a) If the property asset to be transferred and/or disposed of is a high value capital asset and/or where the intended lease period is longer than 3 years with the fair market value of R10 mill (ten million rand) or exceeding that threshold (long term high value lease), Council must conduct a more rigorous public participation in terms of MATR, regulations 5 and 6.
- (h) The Council may approve a request from the Accounting Officer for the authorization of a public participation process only if such request is accompanied by an information statement that includes the following imperative information:
 - (1) the valuation of the asset and the method of valuation, and
 - (2) the reasons for the proposal to transfer, dispose or granting of the right to use, control or manage a property asset and
 - (3) the benefits, proceeds and gain or loss that could be realized or incurred if the proposal for transfer, disposal or the granting of a right to use, control or manage a property asset went ahead.

- ① Any presentations, comments or views received as a result of the public participation process in terms of Section 21A of the Municipal Systems Act, must be taken into consideration when Council considers granting approval for the transfer, disposal or the granting of a notarial lease.
- ① All the considered factors as outlined above, must be considered by Council and documented in the Council minutes.

12.5 NON PERMITTED DECISIONS

When a municipal Council has approved the transfer or disposal of a property asset not needed to provide the minimum level of basic municipal services, it may not be reversed by the Municipality after that property asset has been sold, transferred or in any other way disposed of as stipulated in section 14(3) of the MFMA.

12.6 DELEGATION

- (a) A municipal Council may delegate to the Accounting Officer its approval power to grant a lease right excluding the power to grant a long term high value lease right and a notarial lease right.
- (b) Only a municipal Council may authorize the public participation process and such authority may not be delegated.
- (c) Only a municipal Council may authorize the public participation process and such authority may not be delegated.

13 ROLES AND RESPONSIBILITIES OF THE ACCOUNTING OFFICER

- (a) The Accounting Officer must take all reasonable steps to ensure that the property assets and liabilities of the Municipality are managed effectively and that the property assets are safeguarded and maintained to the extent necessary.
- (b) The Accounting Officer must develop and institute systems, processes and procedures for the periodic release of Council property assets, in line with the budgeting and planning timelines of the Municipality.
- (c) The Accounting Officer must submit quarterly reports to the Executive Mayor and/or Council on all transactions entered into in respect of immovable property assets.

- (d) The Accounting Office must submit to Council recommendations for the release of any immovable property asset either by way of transfer of ownership or the granting of a right of use, of management or of control to any external party, subject to applicable regulatory conditions as per section 14 of the MFMA and the MATR regulations as outlined above.
- (e) The Accounting Officer must ensure that the Municipality does not transfer ownership as a result of sale or other transaction or otherwise permanently dispose of a property asset needed to provide the minimum level of basic municipal services.
- (f) Council must consider the granting of approval and the Accounting Officer must prepare an information statement for submission to Council requesting Council to authorise a public participation process.
- (g) The Accounting Officer must, at least 60 (sixty) days before the Council meeting where it is expected of Council to grant approval for a property transaction, in accordance with section 21A of the Municipal Systems Act, make public the proposal and the mandatory information statement, invite the community and other interested parties to submit their comments or representations and request the views and recommendations of the National Treasury and the relevant provincial treasury
- (h) Any presentations, comments or views received as a result of the public participation process in terms of Section 21A of the Municipal Systems Act, must be made available to Council prior to making any decision with regards to a proposed property transaction.
- (i) The Accounting Officer must ensure that any transfer of ownership of a property asset or the granting of a right to use, manage or control a property assets in terms of the MFMA and the MATR, is fair, equitable, transparent, competitive and consistent with the supply chain management policy and this Policy.
- (j) The Accounting Officer must put in place sufficient controls to ensure that no municipal immovable property asset is transferred from the Fixed Asset Register of the Municipality in a fraudulent manner, without the requisite authorizations and delegations.
- (k) The Accounting Officer may consider unsolicited bids as outlined in this Policy.

13.1 DELEGATION

- (a) The Accounting Officer may delegate the power to submit to Council recommendations for the release of any immovable property asset either by way of transfer of ownership or the granting of a right of use, of management or of control to any external party, subject to applicable

regulatory conditions as per section 14 of the MFMA and the MATR regulations, to the Group Head: Group Property Management.

- (b) The Accounting Officer may delegate the power to sign transfer/lease agreements/disposal and other related documents to the Group Head: Group Property Management after Council has approved such transfer and the SCM process has been completed to give effect to the approved transaction as indicated in this policy.

14 ROLES AND RESPONSIBILITIES OF THE GROUP HEAD: GROUP PROPERTY MANAGEMENT

- (a) Must ensure that all transactional types referred to in this Policy are in line with the Municipality's SCMP in respect of the management and functioning of the supply chain committees.
- (b) Must ensure that all transactional types referred to in this Policy are in line with the governing principles of this Policy
- (c) Must ensure that an effective and efficient contract management system is developed and maintained to ensure optimum income for the Municipality is realized and the community benefit of each property asset contract is optimized.

PHASE TWO

NOTICE OF COUNCIL'S INTENT TO TRANSFER, DISPOSE OR GRANT A LEASE RIGHT

15 LOCAL GOVERNMENT ORDINANCE NO. 17 OF 1939

The Local Authorities Ordinances, in so far as the sections that have not been repealed, are still applicable and include a provision on public participation to protect the interest of the community.

- (a) Section 79(18) requires the Municipality to advertise its intention to sell, lease, exchange or in any other way alienate a municipal property and to provide for, and consider objections, if any, to the proposed alienation of municipal property.

PHASE THREE

COMPETITIVE BIDS

16 COMPETITIVE BIDDING PROCESS: TENDER

- (a) The tender process will be the primary method to be followed for the transfer, disposal or granting of a right to use manage or control of properties assets except in cases outlined specifically in this Policy.
- (b) The competitive tender process would be in line with the SCMP in respect of the bid specification, bid advertising, bid evaluation and bid adjudication process.
- (c) The transfer, disposal or granting of a right to use manage or control of properties assets seeks to promote ownership of property by the Historically Disadvantaged Individuals and Promote BBBEE compliance and SMME's. To ensure that these targets are met, the Accounting Officer may develop an assessment criteria for all property asset tenders to be advertised aligned to the PPPFA and its Regulations. Such criteria must comply with The inclusion of Promotion of Equality and Unfair Discrimination Act, 2000 (Act 4 of 2000) which prohibits individuals, government departments and private organizations from discriminating unfairly from any person on the grounds of race, gender, disability, etc.
- (d) The Accounting Officer has the discretion to include, as and when, in a tender specification and contract conditions documents, such transactional conditions that may be deemed fit by the Municipality at any point in time after Phase 1 and Phase 2 has been completed, as outlined in this Policy.
- (e) Tender specification for residential properties (excluding larger housing developments) will include a condition that bids for residential properties will only be considered from those bidders who are natural persons and who do not own a residential property and can indicate that they are financially able to pay the full bid price. A condition to this effect should be included in the bid specification documentation. Legal entities are precluded from bidding in this category.
- (f) Tenders for non-strategic business properties would be subject to an assessment criteria as developed by the Accounting Officer, which assessment criteria would include a preference point system that should favour SMME's owned by South African citizens.

- (g) Tenderers that already acquired a property on previous tenders by being the successful bidder, will be excluded from the bid evaluation process in the event that due to the tenderer's fault, any previous property bid could not be finalized by way of a contract or the subsequent transfer of the property asset. Such tenderer would thus not qualify as a valid bidder.
- (h) In the case of a successful sales tender, the successful tender will be required to pay a 10% deposit plus VAT on the full purchase price within 5 days from date of signature of the deeds of sale, thereafter the full purchase price will be payable on date of registration of the property
- (i) Tenderers will be liable to complete Affordability Assessment Forms to determine the affordability of their bid and in case of a bid for a lease right, further documents such as bank statements may be required in line with the National Credit Act (Act 34 of 2005).
- (j) As per the prerogative of the Accounting Officer captured in paragraph (d), tenderers for business properties may be required to provide a motivation memorandum which should include, inter alia the following information:
 - i. That the business can employ 10 or more employees,
 - ii. That they intend on embarking on a community development projects i.e. community work; and
 - iii. How the development will contribute to the future development of the area i.e. providing for both present and future needs of the City.

17 COMPETITIVE BIDDING PROCESS: PUBLIC AUCTION

- (a) After having obtained Council's approval as defined in Phase 1 of the policy, the Accounting Officer may appoint an auctioneer for the transfer, disposal or granting of a right to use manage or control of property assets.
- (b) Council may determine the conditions of transfer, disposal or granting of a right to use manage or control of property assets for an auction process for each property asset to be auctioned.
- (c) All property assets to be transferred, disposed or where a right to use manage or control of property assets will be granted via auction will be subject to an undisclosed reserve price not less than the fair market value of the property.

18 INVITATION FOR DEVELOPMENT PROPOSALS: TWO PHASE BIDDING PROCESS

- (a) To ensure compliance with the City's Spatial Development Framework (MSDF) for a particular area and to encourage economic development and job creation, the City may invite development proposals for the transfer, disposal or granting of a right to use manage or control of strategic property assets.
- (b) The Bidding process to be followed in this method will take place in two phases where submissions will first be assessed in terms of its relevancy to the TSDF and the City's strategic objectives for the area. This would be the preferred process for large complex projects or long term projects with a duration period exceeding three years.
- (c) The first stage would be an assessment of technical proposals on conceptual design.
- (d) The second stage would be the final invitation for technical proposals, value benefit to the Municipality and price or rental bids.
- (e) The bid may be approved subject to the following conditions, but not limited to only those conditions listed below:
 - 1. Necessary studies including Environmental Impact Studies/ Traffic Impact studies or any other study that might be necessary for the development of the property asset will be at the costs and risks of the successful bidder.
 - 2. The successful bidder will be liable for any removal, moving and or change to the existing municipal services networks that may become necessary for the development of the property asset.
 - 3. The purchaser/lessee will be liable for all cost relating to rezoning or township establishment.
 - 4. All required bulk services will be provided at the costs of the beneficiary.
 - 5. The successful bidder will protect municipal servitudes by registering servitudes in favour of the Municipality, and there shall be no development or trees planted next to the servitudes.
 - 6. Access to and from the site/development will be to the satisfaction of the Municipality.
 - 7. Vacant property assets transferred, disposed or where the right to use, manage or control has been granted will be developed within a period of two years from date of which all land use, environmental approvals, etc, are achieved and will revert back to the Municipality if not developed within this period.
 - 8. No development on the property asset will take place before approval of building plans.
 - 9. Where a notarial term lease is for a period of 10 years or more, such agreement must be registered at the cost of the lessee in compliance with the relevant legislation.

10. Said lessee will be liable for payment of rates and service charges and the amount thereof will be reviewed annually in terms of the Property Rates and the Credit and Debt collection policies of the Municipality.

19 TRANSACTIONAL TYPES AND METHODS OF EXECUTION

- (a) Once Council has approved that a non-exempted property asset can be transferred or disposed of or a lease right may be granted in terms of Phase 1 and the Phase 2 Ordinance requirements have been met, the Municipality may proceed with the implementation of the approval by Council in accordance with its disposal management system as required by the SCMR and the MATR.
- (b) No Councillor may be part of any committee that considers a tender or the awarding of a bid in terms of section 117 of the MFMA

In order to manage the demand expectations of third parties after approval has been granted by Council the following demand management approach will apply.

The application types and transactional methods listed below are all subject thereto that no SCM process and/or approval and/or a legal agreement may commence or be concluded, unless Council has granted approval for such transfer, disposal or granting of a lease right.

DEVIATIONS POLICY

20 DEVIATIONS POLICY

Capital assets may only be transferred or disposed of and rights to use, control or manage municipal capital assets may only be granted through a competitive bidding process and/or at fair market value after compliance with the provisions of Phase 1 and Phase 2 of this policy and aligned to the MATR and SCM, unless the deviations policy as stated here under applies.

20.1 PURPOSE

The purpose of the deviations policy is to provide a framework in terms of which COT may, under specific circumstances, transfer or dispose of land or rights in land, or grant rights to use, control or manage land or interests in land through leasing, letting or hiring out arrangements for:

- (a) less than fair market value; and
- (b) through other methods than the competitive bidding process.

20.2 DEVIATION FROM THE FAIR MARKET VALUE

The right of COT to deviate from the fair market value principle is limited and governed by the following principles:

20.2.1 ON ACCOUNT OF THE PUBLIC INTEREST

The public interest shall be interpreted from a constitutional perspective and the principle of equality, as contemplated in Section 9(1) of the Constitution, and in particular Section 9(2) of the Constitution in terms of which measures (such as this policy) to protect or advance persons or categories of persons disadvantaged by unfair discrimination, may be taken; and/or

20.2.2 IN CONSIDERATION TO THE PLIGHT OF THE POOR.

In consideration of the plight of the poor, COT intends to transfer a non-exempted capital asset or dispose of land or rights in land, or grant rights to use, control or manage land for less than its fair market value, COT must, take into account:¹

¹ Regulation 13(2)(a) to (e) of the Asset Transfer Regulations

- (a) the interest of:
 - (i) the state; and
 - (ii) the local community;
- (b) the strategic and economic interest of the COT, including the long-term effect of the decision on the COT;
- (c) the constitutional rights and legal interests of all affected parties;
- (d) whether the interest of the parties to the transfer should carry more weight than the interest of the local community and how the individual interest is weighed against the collective interest; and
- (e) whether the local community would be better served if the capital asset is transferred and/or leased at less than its fair market value, as opposed to a transfer/lease of the asset at fair market value.

20.3 CATEGORIES FOR DEVIATION ON FAIR MARKET VALUE

The principles of the plight of the poor and public interest as highlighted above will apply to the facts of each property asset transaction however certain categories for property assets transfer, disposal or rights to use, control or manage a property asset may be considered at less than fair market value for the following categories:

- I. Residential property assets
- II. Land release relevant to historical allocation
- III. Sporting, recreation of cultural purposes
- IV. religious purposes
- V. NGOs and NPOs
- VI. Building Repairs and Refurbishments - Rights to use, manage or control a capital asset may be considered where the lessee undertakes the substantial refurbishment, repairs and maintenance obligation for the property asset in lieu of the market value to ensure that City property assets are preserved and their value is enhanced.

20.4 DEVIATIONS THROUGH OTHER METHODS THAN THE COMPETITIVE BIDDING PROCESS

20.4.1 APPLICATIONS FOR THE SALE OF COT PROPERTY ASSET

Applications for the sale of COT property asset will be considered in the following circumstances:

20.4.1.1 APPLICATION FOR LAND RELEASE RELEVANT TO HISTORICAL ALLOCATION

- (a) The transfer of properties, required to finalize allocations/transactions approved by former disestablished Municipalities or Transitional Administration entities will be considered only if:
1. The property is still available for sale or transfer, and
 2. The following documentation is provided:
 - Approved Council resolution of the former Municipality or Transitional entity;
 - Deed of Sale; and
 - Proof of payment for the sale of the property.
- (b) In case where there is no record of a Council resolution of the former Municipality approving the sale or allocation of the property, the proposed transfer will be subject to Phase one and Phase two as outlined in this Policy prior to the finalization of any sale or transfer.
- (c) No competitive bidding will be required and a deviation report that comprehensively outlines the reason for the deviation from a competitive process will be presented to the Bid Adjudication Committee for submission to the Accounting Officer for the ratification of the allocation of the transfer right to the applicant.

20.4.1.2 APPLICATIONS FOR NON-VIABLE PROPERTY FROM ADJACENT PROPERTY OWNERS

A “non-viable property” means property that, owing to urban planning, physical constraints or the extent of the property, cannot be developed on its own or function as a separate entity and that can therefore become functional only if used by an adjoining owner in conjunction with such owner’s property. These property types may include properties with access constraints and/or land-locked portions, redundant street portions, irregular shaped land parcels and vacant non-viable portions.

In the case of applications from adjacent land owners for non-viable property such applications, subject to the conditions below, must be transferred out of hand to the qualifying applicant.

- In the case of locked-land, the inaccessibility of the said land must be confirmed by the Group Head: Roads and Transport and the Group Head: Economic Development and Spatial Planning.
- In the case of undevelopable land, the soil conditions must be confirmed by the Head: Roads and Transport, the Head: Economic Development and Spatial Planning and the Group Head: Environmental Management declaring the land as undevelopable.
- Property assets which cannot be developed on their own due to their size or shape and need to be consolidated with adjoining private land holdings for development.
- Such applications must be accompanied by proof of ownership of the adjacent property/properties.
- The Municipality will first establish if the property is required for the provision of the minimum level of basic municipal services and Council, in line with the provisions of Section 14 of the MFMA (Phase 1) must make such determination that the property asset is not required for the provision of the minimum level of basic municipal services.
- A public notice will be issued in terms of the Local Government Ordinance 1939 to afford the affected community an opportunity to object, if any.

Where there is more than one adjacent owner, the application must be accompanied by written submissions from the other adjacent property owners consenting to the out of hand transfer of the required property, then no competitive bidding will be required.

A deviation report that comprehensively outlines the reason for the deviation from a competitive process, will be presented to the Bid Adjudication Committee for submission to the Accounting Officer for the ratification of the allocation of the property asset to the applicant.

Where there is more than one adjacent land owner and the other adjacent land owners object to the out of hand transfer of the said land portion, then a closed competitive bidding process among the affected land owners, who are the only ones that can gainfully utilize the said land portion, may be conducted in terms of the policy and SCMP.

Applications for the right to use, manage or control such property would not be considered as it would be a requirement to apply for street closure if applicable and the consolidation of the land portion with the property of the applicant, which can only be affected when ownership is transferred. The proposal to grant the light to use, manage or control a non-strategic property asset should be based on the financial viability of such transaction. Where the costs of contract administration outweighs the income to be generated on the contract then the proposal to sell the property should be considered.

20.4.2 NOTARIAL LEASE

20.4.2.1 SPECIFIC USE FACILITY

A “specific use facility” refers to a commercial or industrial property belonging to COT, which is designed and used for a specific activity or special operations eg aerodrome, which type of property will have to be rehabilitated to be used and zoned for a different activity

In order for the City to preserve its property assets and ensure that the improved properties, used and zoned for business purposes, are not vandalized or seen as an attractive space for illegal occupation, the following principles would apply to expedite the valid occupation and use of the property assets.

In instances where COT owns specific use facilities it shall be entitled to deviate from the competitive bidding process, on condition that the land shall ultimately be leased at fair market value, unless the public interest demands otherwise in instances where:

- Land has a specific economic use and purpose, as identified in COT’s Integrated Development Plan; or
- The use of the land is not easy determinable and in circumstances where it wants to engage the private sector in obtaining proposals for the use and/or development of the land; or
- The use of the land is not easy determinable and in circumstances where it wants to engage the private sector in obtaining proposals for the use and/or development of the land; and
- There are a number of limited interested parties, and it is not always practical to transfer or dispose or develop specific use facilities within the confines of the competitive bidding system.

COT shall be entitled to embark on a proposal call bidding process, or a selective bidding process by approaching specific parties to submit development proposals.

The required provisions Phase 1 and Phase 2 shall be complied with.

The period of the lease shall be determined in line with the highest and best use analysis and feasibility study.

The BAC must consider all bids made and make a recommendation to the Accounting Officer, who must award within 7 days of such recommendation.

20.5 LONG TERM LEASE

20.5.1 APPLICATIONS:

Applications for long term leases which are considered to be for greater than 3 years and not exceeding 9 years 11 months (notarial leases in similar circumstances may be considered as detailed in this policy when the development on the property asset justifies a longer term based on investment maturity requirements and feasibility studies) may be considered in the following circumstances:

20.5.1.1 SPORTING, RECREATION OF CULTURAL PURPOSES

Municipal property assets would not be donated or sold to sporting, recreation of cultural clubs or organizations and only the granting of a lease right may be considered by the Council.

The sporting, recreational, cultural clubs/organizations/codes must have a proven track record.

The fees, charges, rates, tariffs, scales of fees or other charges, relating to the letting of the immovable property, must be based on a special rate for such codes.

The fees, charges, rates, tariffs, scales of fees or other charges, relating to the letting of the immovable property, must be reviewed annually.

No right granted in terms in terms of the right to use, manage or control may be ceded to any other party.

Any improvements made to the property asset during the lease period would become the property of the Municipality and the sporting, recreation of cultural clubs or organizations would have no right to claim for any improvements made to the property.

Property would be made available on the conditions outlined herein, to ensure that sporting, recreation or cultural clubs or organizations obtain the benefit of the property, while also making a measurable contribution to the sporting, recreational and cultural needs of the community it serves.

The Accounting Officer shall conduct an evaluation of the proposal by the sporting, recreation or cultural clubs or organizations which should be considered and presented to Council for the MATR approval.

That the sporting, recreational, cultural clubs/organizations/codes has a sustainable plan or has been in existence for a period exceeding 3 years.

That the sporting, recreational, cultural clubs/organizations/codes has submitted their audited financial statements and/or bank account summary to the Accounting Officer to determine the financial viability of the sporting, recreational, cultural clubs/organizations/codes.

The sporting, recreational, cultural clubs/organizations/codes has the logistical and financial capacity to fulfil the maintenance obligations in respect of the property to be leased.

The specific Functional Line Department within the Municipality, must certify:

- that the proposed sporting, recreational, cultural services or activities are needed in the community and cannot be rendered by the Municipality or a Government Department, and
- that there are no other sporting, recreational, cultural clubs/organizations/codes already operational and delivering similar services or activities in the respective region, and
- the proposed activities/services by the sporting, recreational, cultural clubs/organizations/codes are consistent with the strategic objectives of the COT and desired community outcomes; and
- that there is demonstrated support in the community for the proposed activity/services to be rendered by the sporting, recreational, cultural clubs/organizations/codes .

The Municipality will first establish if the property asset is required for the provision of the minimum level of basic municipal services and Council, in line with the provisions of chapter 4 of the MATR, must make such determination that the property is not required for the provision of the minimum level of basic municipal services.

The Council may give approval for the granting of a lease right that does not exceed 9 years and 11 months as per the process outlined in phase 1 of this policy.

A public notice will be issued in terms of the Local Government Ordinance 1939 to afford the affected community an opportunity to object, if any.

If Council makes an decision that a lease right may be granted to a sporting, recreational, cultural clubs/organizations/codes, Council may on account of public interest, in particular in relation to the plight of the poor, approve a condition that a property asset may be transacted upon for less than its fair market rental value, subject thereto that the Council has considered the criteria:

- the interests of the State and the local community;
- the strategic and economic interest of the Municipality, including the long-term effect of the decision;
- the constitutional rights and legal interests of all affected parties;
- whether the interest of the parties to the lease carry more weight than the interest of the local community, and how the individual interest is weighed against the collective interest; and

- whether the local community would be better served if the property assets is leases at less than its fair market value as opposed to a fair market related rental value.

However should these sporting, recreational, cultural clubs/organizations/codes have eateries or conduct any other commercial activity on the property for members which supplement their income, in order to contribute to the upkeep of facilities and/or to provide an income source which assists with keeping their fees low then such use may be considered by the Council in determining the rental to be charged for the property asset. The associated revenue stream may also be taken into consideration in the determination of the rental for the property asset.

No competitive bidding will be required as this application and approval process is designed to assist sporting, recreational, cultural clubs/organizations/codes, as one of their objectives, adding value to the community through the auxiliary social services they provide or intend to provide and that it functions on a non-profit making basis.

A deviation report that comprehensively outlines the reason for the deviation from a competitive process will be presented to the Bid Adjudication Committee for submission to the Accounting Officer for the ratification of the allocation of the lease right to the sporting, recreational, cultural clubs/organizations/codes.

The sporting, recreational, cultural clubs/organizations/codes not sub-let or cede its lease rights to any third party.

The Municipality will reserve the right to conduct inspections to ensure that the property is still used for the intended purposes. Failing which the lease will be terminated with immediate effect and the property will revert back to the Municipality.

20.5.1.2 RELIGIOUS PURPOSES

- (a) Municipal property assets would not be donated to religious groups/organizations and only the granting of a right to use, manage or control a property asset may be considered by the Council.
- (b) Property asset/s would be made available on the conditions outlined herein, to ensure that religious groups/organizations obtain the benefit of the property asset, while also making a measurable contribution to the welfare of the community it serves.

- (c) The Accounting Officer shall conduct an evaluation of the proposal by the religious group/organization which should be registered as an NPO prior to such proposal being considered and presented to Council for the MATR approval.
- (d) The Accounting officer shall submit an information sheet to Council when seeking the approval for the granting of a lease right that addresses the following:
1. Apart from conducting religious activities, that the applicant is providing or intends to provide any of the following community services on the applied for property:
 - Care of the disabled
 - Care of the aged
 - Care of vulnerable children and youth
 - Care of the mentally ill
 - Care of the terminally ill
 - Care of the homeless
 - Programs and care for alcohol and substance abuse
 - Programs and care for battered and abused women
 - Programs for aftercare of school children.
 - Day care facilities at nominal fee to assist the community
 - Feeding schemes
 2. That the religious group/organization is registered as a Non-profit Organization and does not conduct any business for the benefit of profit seeking.
 3. That the religious group/organization has a sustainable plan or has been in existence for a period exceeding 3 years.
 4. That the NPO has submitted their audited financial statements and/or bank account summary to the Accounting Officer to determine the financial viability of the NPO.
 5. The NPO has the logistical and financial capacity to fulfil the maintenance obligations in respect of the property to be leased.
 6. The specific Functional Line Department within the Municipality, must certify:
 - i. that the proposed services are needed in the community and cannot be rendered by the Municipality or a Government Department, and

- ii. that there are no other organizations already operational and delivering similar services in the respective region, and
 - iii. the proposed activities/services by the NPO are consistent with the strategic objectives of the COT and desired community outcomes; and
 - iv. that there is demonstrated support in the community for the proposed activity/services to be rendered by the NPO.
- (e) The Municipality will first establish if the property is required for the provision of the minimum level of basic municipal services and Council, in line with the provisions of chapter 4 of the MATR, must make such determination that the property is not required for the provision of the minimum level of basic municipal services.
- (f) The Council may give approval for the granting of a lease right that does not exceed 9 years and 11 months as per the process outlined in phase 1 of this policy.
- (g) A public notice will be issued in terms of the Local Government Ordinance 1939 to afford the affected community an opportunity to object, if any.
- (h) If Council makes an decision that a lease right may be granted to a religious group/organization, Council may on account of public interest, in particular in relation to the plight of the poor, approve a condition that a property asset may be transacted upon for less than its fair market rental value, subject thereto that the Council has considered the criteria:
 - 1. the interests of the State and the local community;
 - 2. the strategic and economic interest of the Municipality, including the long-term effect of the decision;
 - 3. the constitutional rights and legal interests of all affected parties;
 - 4. whether the interest of the parties to the lease carry more weight than the interest of the local community, and how the individual interest is weighed against the collective interest; and
 - 5. whether the local community would be better served if the property assets is leases at less than its fair market value as opposed to a fair market related rental value.
- (i) Should the Council approve the granting of a right to use, control or manage, the following shall be made conditions of the contract:
 - 1. The benefiting third party/organisation must submit its constitution or founding document to confirm that its income and property are not distributable to its members or office-bearers, except as reasonable compensation for services rendered.

2. If the beneficiaries already occupy the property, proof needs to be provided that the municipal service accounts and rates and taxes are paid, before the lease agreement would be signed by the Municipality.
 3. Where the beneficiary or benefiting third party/organisation that has already erected a building on site, such benefiting third party/organisation has to obtain for building plan approval for the buildings at their cost, within a period of 6 months from date of signature of the contract by the Municipality.
- (j) No competitive bidding will be required as this application and approval process is designed to assist religious groups/organizations that have, as one of their objectives, adding value to the community through the auxiliary social services they provide or intend to provide and that it functions on a non-profit making basis.
 - (k) A deviation report that comprehensively outlines the reason for the deviation from a competitive process will be presented to the Bid Adjudication Committee for submission to the Accounting Officer for the ratification of the allocation of the lease right to the religious group/organization.
 - (l) The religious group/organization may not sub-let or cede its lease rights to any third party.
 - (m) The Municipality will reserve the right to conduct inspections to ensure that the property is still used for the intended purposes. Failing which the lease will be terminated with immediate effect and the property will revert back to the Municipality.

20.5.1.3 TO ADDRESS PUBLIC INTEREST AND/OR THE PLIGHT OF THE POOR BY NPO'S AND NGO's

- (a) The Accounting Officer shall conduct an evaluation of the proposal by the NGO, prior to such proposal being presented to Council for the MATR approval.
- (b) The Accounting officer shall submit an information sheet to Council when seeking approval of the granting of a lease right that address the following:
 1. That the applicant organization is providing any of the following community services:
 - Care of the disabled
 - Care of the aged
 - Care of vulnerable children and youth
 - Care of the mentally ill

- Care of the terminally ill
 - Care of the homeless
 - Programs and care for alcohol and substance abuse
 - Programs and care for battered and abused women
2. That the benefiting organization is registered as a Non-profit Organization or Non-Government Organization.
 3. That the organization has a sustainable plan or has been in existence for a period exceeding 3 years.
 4. That the NPO has submitted their audited financial statements and/or bank account summary to the Accounting Officer to determine the financial viability of the NPO to render the intended service as proposed to Council.
 5. That the NPO has submitted sufficient proof that the members and/or management team of the NPO has extensive knowledge and the necessary skills from previous projects/initiatives to run the envisaged project/property in an efficient and effective manner.
 6. The NPO has the logistical and financial capacity to fulfil the maintenance obligations in respect of the property to be leased
 7. The specific Functional Line Department within the Municipality, must certify:
 - that the proposed services are needed in the community and cannot be rendered by the Municipality, a Government Department, and
 - that there are no other organization already operational and delivering similar services in the respective region, and
 - the proposed activities/services by the NPO are consistent with the strategic objectives of the COT and desired community outcomes; and
 - that there is demonstrated support in the community for the proposed activity/services to be rendered by the NPO.
- (c) The Municipality will first establish if the property is required for the provision of the minimum level of basic municipal services and Council in line with the provisions of chapter 4 of the MATR must make such determination that the property is not required for the provision of the minimum level of basic municipal services.

- (d) The Council may give approval for the granting of a lease right as per the process outlined in phase 1 of this policy.
- (e) A public notice, as applicable, will be issued in terms of the Local Government Ordinance 1939 to afford the affected community an opportunity to object, if any.
- (f) If Council makes a decision that a lease right may be granted to an NPO, the Council may on account of public interest, in particular in relation to the plight of the poor, approve a condition that a property asset may be transacted upon for less than its fair market rental, subject thereto that the Council has considered the criteria:
- the interests of the State and the local community;
 - the strategic and economic interest of the Municipality, including the long-term effect of the decision;
 - the constitutional rights and legal interests of all affected parties;
 - whether the interest of the parties to the lease carry more weight than the interest of the local community, and how the individual interest is weighed against the collective interest; and
 - whether the local community would be better served if the property assets is leased at less than its fair market value as opposed to a fair market related rental value.
- (g) Should the Council approve a lease transaction, the following shall be made conditions of the contract:
4. The benefiting third party/organisation must submit its constitution or founding document to confirm that its income and property are not distributable to its members or office-bearers, except as reasonable compensation for services rendered.
 5. If the beneficiaries already occupy the property, proof needs to be provided that the municipal service accounts and rates and taxes are paid, before the lease agreement would be signed by the Municipality.
 6. Where the beneficiary or benefiting third party/organisation that has already erected a building on site, such benefiting third party/organisation has to obtain for building plan approval for the buildings at their cost, within a period of 6 months from date of signature of the contract by the Municipality.
- (h) No competitive bidding will be required as this application and approval process is designed to only assist those NPO's that function on a non-profit making basis and are determined to add value to the community.

- (i) A deviation report that comprehensively outlines the reason for the deviation from a competitive process will be presented to the Bid Adjudication Committee for submission to the Accounting Officer for the ratification of the allocation of the lease right to the NPO.
- (j) The NPO may not sub-let or cede its lease rights to any third party.
- (k) The Municipality will reserve the right to conduct inspections to ensure that the property is still used for community purposes. Failing which the lease will be terminated with immediate effect and the property will revert back to the Municipality and the NPO may be held liable for the undue benefit received.

20.5.2 CELLULAR AND/OR RADIO MASTS

Only applications for the lease will be considered in respect of cellular and radio masts. No application for transfer of ownership of a property asset will be considered in respect of cellular and radio masts. The following will apply in respect of applications for cellular and radio masts:

- (a) The municipality will first establish if the property is required for the provision of the minimum level of basic municipal services and Council, in line with the provisions of chapter 4 of the MATR must make such determination that the property is not required for the provision of the minimum level of basic municipal services.
- (b) A public notice will be issued in terms of the Local Government Ordinance 1939 to afford the affected community an opportunity to object, if any.
- (c) All applications will be subjected to the City of Tshwane Town Planning Scheme, as approved.
- (d) The right will be granted to the telecommunications or radio institution that applied for the right to lease the site, if no similar application for the same site has been submitted within a period of 30 days from date of acceptance of application by the Department: Group Property Management.
- (e) If the application falls within paragraph (d), then no competitive bidding will be required and a deviation report that comprehensively outlines the reason for the deviation will be presented to the Bid Adjudication Committee for submission to the Accounting Officer for the ratification of the allocation of the lease right to the applicant.
- (f) The telecommunications or radio institution that received the lease right, may not sublet or cede the right granted.

- (g) The municipality will determine the market related value to be received in return for the granting of the lease right.
- (h) Where more than one application was received for the same site within a period of 30 days, a competitive bidding process must be conducted within the specific telecommunications and radio sector, in compliance with this policy and the SCMP
- (i) All cellular or radio masts leases will be granted for a period not exceeding 9 years and 11 months.

20.5.3 EXISTING IMPROVED PROPERTY ASSET USED FOR BUSINESS OR INDUSTRIAL PURPOSES OR AS OFFICES

In order for the City to preserve its property assets and ensure that the improved properties, used and zoned for business and/or industrial and/or office purposes, are not vandalized or seen as an attractive space for illegal occupation, the following principles would apply to expedite the valid occupation and use of the property assets.

The Municipality may let an improved property, used and zoned for business purposes under the following conditions:

- (a) The lease right granted may not exceed a period of nine years and eleven months.
- (b) No option for automatic extension or renewal may be granted for a period that exceed initial contract period.
- (c) The lease right granted may only be for a market-related rental and no exceptions are permissible.
- (d) All fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of the immovable property may be reviewed annually.
- (e) The allocation of such lease right will be according to the following SCM process:
 - An advertisement must be placed in the local newspaper alerting members of the public of the availability of the space or business property.
 - Bidding must be permitted for a minimum period of 14 days.
 - Prior to the advertisement of the available space or business property, a valid valuation that determines the market rental must be obtained.
 - No BSC or BEC consideration would be required in this instance.
 - The BAC must consider all bids made and make a recommendation to the Accounting Officer, who must award within 7 days of such recommendation.

- The lease right will be awarded to the highest bidder in terms of monthly rental, subject thereto that:
 - i. the bidder does not owe the Municipality any other amounts including but not limited to municipal service charges, rates or other rental.
 - ii. The allocation to the successful bidder would be subject to a credit verification to determine the affordability of the bid as well as the potential risk for the Municipality.
 - iii. only bids from South African citizens would be evaluated in order to advance the developmental objectives of the Municipality towards its citizens.
- (f) The prospective tenant would be responsible for all municipal charges, including municipal rates charges on the property.

20.6 SHORT TERM LEASE

Applications for short term leases (greater than one (1) month and not exceeding two (2) years eleven (11) months) may be considered in the following circumstance:

20.6.1 EXISTING IMPROVED PROPERTY ASSET USED FOR RESIDENTIAL PURPOSES (MUNICIPAL HOUSES, FLATS, DUPLEXES AND SIMPLEXES)

In order for the City to preserve its property assets and ensure that the improved properties, used and zoned for residential purposes, are not vandalized or seen as an attractive space for illegal occupation, the following principles would apply to expedite the valid occupation and use of this type of property assets.

This category specifically excludes the provision of low cost and social housing that fall within the mandate of the City's Housing Department and Housing entity (HCT).

The Municipality may let an improved property, used and zoned for residential purposes and the following conditions apply:

- (a) COT shall be entitled to enter into leases with occupied properties to long-term (greater than 3 years) tenants at fair market value, outside the competitive bidding process, on condition that no further offers in this regard shall be made subsequent to the date of approval of this policy.
- (b) The offer to long-term tenants is a once-off opportunity to qualified persons and is designed to unlock land and to stimulate economic activity.

- (c) The lease right granted may not exceed a period of two (2) years eleven (11) months.
- (d) No option for automatic extension and/or renewal may be granted for a period that exceeds 2 years and 11 months.
- (e) On expiry of the lease agreements that were entered into for 2 years 11 months all subsequent leases shall be advertised by way of competitive bidding as per the policy.
- (f) The lease right granted may only be for a market-related rental and no exceptions are permissible.
- (g) All fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of the immovable property may be reviewed annually.
- (h) The allocation of such lease right will be according to the following SCM process:
 - 1. An offer for the short term lease will be made to the existing occupant that has complied with all rental payments for the prior period of occupation and based on the revised lease terms and conditions as contained hereunder.
 - 2. Should the offer be accepted then a short term lease agreement will be entered into as per the terms of this policy.
 - 3. Should the offer not be acceptable then all normal competitive bidding processes will be followed for new leases to be entered into for a period of 9 years 11 months as outlined in this policy.
 - 4. All Lessees would remain subject to a full credit check and no residential property will be allocated to any prospective tenant that has a poor credit record or has been blacklisted. Any prospective tenant authorizes the Municipality to conduct a credit check to ascertain the affordability of the tenant's proposal.
 - 5. No prospective tenant that owes the Municipality any other amounts including but not limited to municipal service charges, rates or other rental will be considered for the renting of a residential property.
 - 6. The prospective tenant would be responsible for all municipal chargers, including municipal rates charges on the property.
 - 7. Only South African citizens would be evaluated in order to advance the developmental objectives of the Municipality towards its citizens.
 - 8. The property is intended to be used for residential purposes only and the lessee will be responsible for all maintenance of the property.
 - 9. No sub-letting of the property is permitted.
 - 10. Preference will be given to those individuals who do not own property.

20.7 SHORT TERM LEASES BETWEEN ONE (1) MONTH AND LESS THAN THREE (3) MONTHS

COT may from time to time be approached with requests to grant rights to use, manage or control land for a short term period to commercial entities or private sector persons for community, social,

religious, commercial or other purposes, such as the making of movies or advertisements or the hosting of events.

On condition that the event or commercial purpose would directly or indirectly promote the image of COT or the City of Tshwane, COT shall be entitled to grant the right to use the COT facility or land outside the competitive bidding process and without the obligation to charge the payment of any fee or rental or to charge a fee or rental at less than fair market value, on condition that the provisions of Phase 1 have been complied with and the Accounting Officer or his delegated appointed Official has approved the agreement.

20.8 REGISTRATION OF A SERVITUDE FOR PRIVATE PURPOSES ON COT LAND

Where an application for the registration of a servitude for private purposes has been received, the following will apply:

- (a) The Municipality will first establish if the property is required for the provision of the minimum level of basic municipal services and Council, in line with the provisions of Section 14 of the MFMA must make such determination that the property is not required for the provision of the minimum level of basic municipal services.
- (b) A public notice will be issued in terms of the Local Government Ordinance 1939 to afford the affected community an opportunity to object, if any.
- (c) The Municipality will determine the market related value to be received in return for the granting of the servitude right.
- (d) Due to the nature of a servitude right, no competitive bidding will be required.
- (e) All applications will be subjected to the City of Tshwane Town Planning Scheme, as approved.

UNSOLICITED BIDS

21 UNSOLICITED BIDS: PRESCRIBED FRAMEWORK

An unsolicited bid is a market-led proposal put to COT by the private sector which has not been formally requested by the City. Since the City will, on a cyclical basis, release property assets on a proactive basis for transfer, disposal or the right to use manage or control property assets any application received from private parties for the transfer of or granting of a lease right for such property asset, will be considered an unsolicited bid.

Unsolicited bids (also referred to herein as unsolicited property asset proposals) may typically be a request by private sector to purchase and/or request the right to use manage or control COT property assets on an exclusive, non-competitive basis. Unsolicited property asset proposals may provide a mechanism for governments to leverage the private sector's expertise and experience, and harness unique and innovative ideas for the benefit of the community or to further the City's strategic objectives.

However, unsolicited bids may be perceived as being problematic because of the lack of competition and transparency which stems from governments granting exclusive rights to private sector proponents without a transparent competitive process.

The Accounting Officer may decide in terms of Section 113(2) of the MFMA to consider an unsolicited bid for property assets, but only do so in accordance with a prescribed framework, which is outlined below.

21.1 REQUIREMENTS FOR CONSIDERING UNSOLICITED BIDS

The Accounting Officer may decide to consider an unsolicited bid for property assets only if:

- (a) The property proposal involves a proven unique innovative design, approach and/or concept relating to a property asset or the manufacture or the delivery of a proven unique innovative design, approach and/or concept relating product or service which may be provided on the property asset which may include, but is not limited to, urban design, retrofitting, and property developments on City land that are in line with national and/or international best practice or first world development models that have not previously been introduced and will improve the economic benefit to the City; or
- (b) the proposal presents a new and cost-effective method of service delivery relating to the property asset; or
- (c) Is demonstrably a unique property asset proposal for the transfer, disposal or right to use, manage or control a property asset or only one potential developer can develop an immovable property asset in a particular unique manner, within a given period; or

- (d) Is demonstrably a proven unique innovative concept and only one potential tenant can utilize the property asset in the manufacture of a unique and innovative product or the product or item can only be produced or manufactured under specific unique requirements that are met by that particular municipal property asset; or
- (e) Only one potential developer or tenant carries the license or authorized permission of the Original Equipment Manufacturer (OEM) to produce the said product; or
- (f) The proposal would result in the significant generation of new sustainable employment opportunities and ensures that a substantial portion of the employment opportunities created that are better or improve on the existing national and regional norms; or
- (g) The proposal will promote Black Economic Empowerment and/or employment opportunities for black people;
- (h) It translates into economic emancipation and empowerment of a significant number of people to be employed as part of the proposal which may include provision of skills to a wider base of City residents; or
- (i) It contributes positively to the fixed investment figures and/or promotes the financial sustainability of the City; or
- (j) It promotes the supply of capital goods to expand the economy within the area of jurisdiction of the City; or
- (k) The person, institution or legal entity that made the bid is the only developer, who can bring about such development of a property asset in the City within a given period or is the only user, who can utilize that property asset in the specific unique manner or for the specific unique ends as envisaged above; or
- (l) The person or institution that made the bid holds the license or written permission from the original innovator or developer of such concept (e.g. Disneyland) or holds the intellectual property rights to such concept and further subject thereto that if the development is not carried out by the innovator or patent holder, the proponent must produce veritable proof that the development is appropriately authorized; or
- (m) It positively enhances the brand and reputation of the City, **AND**
- (n) A comprehensive and relevant project feasibility study has established that the unsolicited property asset proposal provides a clear business case that shows that there will either be an exceptional cost advantage or it will be exceptionally beneficial to COT. These claims should be supported by an in-depth study on the quantified benefits for the short term and also a projection on the medium to long term benefits or value to the Municipality or community.

21.2 INFORMATION TO BE SUBMITTED FOR AN UNSOLICITED BID TO BE CONSIDERED

21.2.1 The unsolicited property asset proposal must contain the following information in terms of the proponent:

- (a) the proponent's name, address, identification or registration number (if a corporation), VAT registration number and the contact details of its authorised representative;
- (b) identification of any confidential or proprietary data not to be made public;
- (c) the names of other South African institutions that have received a similar unsolicited proposal;
- (d) the proponent's current SARS Tax Clearance Certificate and in the case where the proponent is a consortium or joint venture, a current SARS Tax Clearance Certificate for each member thereof;
- (e) a declaration of interest containing the particulars set out in Standard Bid Document issued by the National Treasury,
- (f) a declaration of the proponents past supply chain practices containing the particulars issued by the National Treasury; and
- (g) a declaration from the proponent to the effect that the offering of the unsolicited proposal was not as a result of any non-public information obtained from officials of the relevant institution or any other institution.

21.2.2 The unsolicited property asset proposal must set out the following information in terms of the proposal offered:

- (a) a concise title and abstract (approximately 200 words) of the proposal;
- (b) a statement of the objectives, approach and scope of the proposal;
- (c) a statement describing how the proposal is demonstrably innovative and supported by evidence that the proponent is the sole provider of the innovation;
- (d) a statement of the anticipated benefits or cost advantages to the institution including the proposed price or total estimated cost for providing the proposal in sufficient detail to allow a meaningful evaluation by COT;
- (e) a statement showing how the proposed project supports the City's strategic growth and development plan and its other objectives; and
- (f) the period of time for which the proposal is valid for consideration, which may not be less than six months.

21.3 UNACCEPTABLE UNSOLICITED PROPOSALS

21.3.1 The accounting officer or accounting authority must reject the unsolicited property asset proposal if the proposal-

- (a) relates to known institutional requirements that can, within reasonable and practicable limits, be acquired by conventional competitive bidding methods;
- (b) relates to property related proposals which are generally available;
- (c) does not fall within the City's powers and functions;
- (d) does not comply with the information requirements stipulated above;
- (e) has not been submitted by a duly authorised representative of the proponent; or
- (f) contravenes the provisions of any law.

21.3.2 If the accounting officer or accounting authority decides to reject the unsolicited proposal, he or she must—

- (a) notify the authorised representative of the proponent in writing, at the address referred to in paragraph 21.2.1. (a), that the City has rejected the unsolicited proposal;
- (b) ensure that COT does not make use of any of the intellectual property or proprietary data in the unsolicited proposal; and
- (c) return to the proponent to the address referred to in paragraph 21.2.1.(a), all documents received in the unsolicited proposal including any copies of these documents.

Should the Municipality not consider an unsolicited bid as permitted in the MFMA, the Municipality may still at its discretion and own time and per its planning cycle, make the property asset which was applied for through an unsolicited bid, available for transfer, disposal or the right to use manage or control a property asset in terms of this policy.

21.4 EVALUATION OF UNSOLICITED BIDS

If the unsolicited proposal is a PPP, the accounting officer or accounting authority must comply with the requirements of MFMA and National Treasury Regulations. If the unsolicited proposal is not a PPP, then COT must undertake a comprehensive evaluation of the unsolicited proposal, which must include the following:

- (a) A feasibility study that evaluates the costs and benefits of proposal from the proponent, including, as appropriate, an assessment of –
 - (i) any unique, innovative, researched or meritorious methods, approaches or concepts demonstrated in the unsolicited proposal;
 - (ii) the overall scientific, technical, or socio-economic merit of the unsolicited proposal;
 - (ii) the potential contribution of the unsolicited proposal to COT's strategic objectives as identified in its strategic growth and development plan;
 - (iii) an assessment of whether the proposed cost of the project is realistic, affordable and justified; and
 - (iv) any other fact which, in the opinion of the COT is relevant to the particular unsolicited proposal.

21.5 ACCEPTABLE UNSOLICITED PROPOSALS

- (a) If the accounting officer or accounting authority decides to consider the unsolicited proposal, he or she must confirm in writing to the address referred to in paragraph 22.2.1.(a) the decision to consider the unsolicited proposal.

- (b) The Accounting officer must certify that the reasons for not going through the normal bidding processes are found to be sound.
- (c) If the Municipality decides to consider an unsolicited bid that complies the decision must be made public in accordance with Section 21A of the Municipal Systems Act, together with:
 - I. The reasons as to why the bid for the property asset should not be open to other competitors;
 - II. An explanation of the potential benefits if the unsolicited bid were accepted; and
 - III. An invitation to the public or other interested parties to submit their comments within thirty (30) days of the notice.
- (d) The Accounting Officer must submit all written comments received after the public process outlined above, including any responses from the unsolicited bidder to the property asset, to the National Treasury and the relevant Provincial Treasury for comments.
- (e) An unsolicited bid must be prepared in an appropriate manner for the Bid adjudication committee to consider.
- (f) A meeting of the Bid adjudication committee to consider an unsolicited bid must be open to the public.
- (g) A Bid adjudication committee considering an unsolicited bid may award the bid or make a recommendation to the Accounting Officer, depending on its delegations.
- (h) When considering the unsolicited bid for a property asset transaction, the BAC must take into account:
 - I. Any comments submitted by the public;
 - II. Any written comments and recommendations of the National Treasury or the relevant Provincial Treasury.
 - III. If any recommendations of the National Treasury or Provincial Treasury are rejected or not followed, the Accounting Officer must submit to the Auditor General, the relevant Provincial Treasury and the National Treasury the reasons for rejecting or not following those recommendations; and
 - IV. Such submission must be made within seven (7) days after the decision on the award of the unsolicited bid is taken, but no contract committing the City of Tshwane to the bid, may be entered into and signed within thirty (30) days of the submission.

22 ORGANS OF STATE

22.1 PROACTIVE LAND RELEASE TO PROVINCIAL GOVERNMENTS OR ORGANS OF STATE

- (a) Section 112 of the Town Planning and Town Ordinance (Ordinance 15 of 1986) requires the Municipality to proactively release land to organs of state that is earmarked for a stated purpose.

“Where the relevant authority has imposed a condition in terms of section 109(2) that the land in the township be reserved for state purposes, such land be transferred by the Local Authority to the state at the expense of the Local Authority within a period of 6 months from the date of proclamation of notice contemplated in section 11/1.”

- (b) Group Head: Group Property Management should submit a proposal to the relevant Provincial Government to determine their interest in the development of the property in line with their functions in terms of the Constitution. The Group Head: Group Property Management must commence the necessary process to obtain Council approval and to transfer such land to the state at the costs of the Government Department.
- (c) Should the land be required by the relevant organ of state or sphere of government, the Municipality will first establish if the property is required for the provision of the minimum level of basic municipal services and Council in line with the provisions of Section 14 of the MFMA make such determination that the property is not required for the provision of the minimum level of basic municipal services.
- (d) Should the property asset as reserved in the township establishment conditions, not be required by the relevant organ of state or sphere of government, the Head: Group Property Management will obtain written confirmation of same from the organ of state or sphere of government and would, in consultation with the Head: Economic Development and Spatial Planning, determine an appropriate beneficial use for the land and include such land in future land release plans.

22.2 APPLICATIONS FROM ORGANS OF STATE

Where an organ of state needs to acquire a municipal immovable property asset for the development of National and/or Provincial services by way of transfer, disposal or the granting of a right to use, manage or control that immovable property asset:

- (a) The Municipality will first establish if the property is required for the provision of the minimum level of basic municipal services.
- (b) Should the identified property be required for the provision of the minimum level of basic municipal services, an alternative site will be identified with the assistance of the Group Head: Economic Development and Spatial Planning and be offered to that organ of state in order to provide necessary support to other spheres of government.
- (c) Should the identified property not be required for the provision of the minimum level of basic municipal services, the application must be assessed in line with the provisions of Chapter 3 of the Municipal Asset Transfer Regulations, to determine whether the transfer or the granting of a right to use, manage or control that immovable asset is exempted in terms of Section 14 (6) of the MFMA.
- (d) If it is established that the transfer or the granting of a right to use, manage or control the immovable asset is not exempted in terms of Section 14(6) of the MFMA, then a market related value will be charged for the transfer, disposal or the granting of a right to use, manage or control that immovable property asset.
- (e) If it is established that the transfer or the granting of a right to use, manage or control the immovable asset is exempted in terms of Section 14(6), then the transfer of ownership or the granting of a right to use, manage or control that asset will be granted free of charge or be charged at a nominal rate.
- (f) A public notice will be issued in terms of the Local Government Ordinance 1939 to afford the affected community an opportunity to object, if any.
- (g) No competitive bidding will be required.
- (h) Sales, disposals, donations, leases and land swaps may be considered for organs of state. Council may consider a land swap of equivalent value to be set-off against the market related sale/lease and or disposal.
- (i) A deviation report that comprehensively outlines the reason for the deviation from a competitive process, must be presented to the Bid Adjudication Committee for submission to the Accounting Officer for the ratification of the allocation of the property asset to an organ of state.

22.3 APPLICATIONS FOR PERMISSION TO OCCUPY BY ORGANS OF STATE

Where COT has received an application for acquisition of property asset/s by the National and Provincial Government, a permission to occupy can be granted to the organ of state by Council prior to transfer of the property asset on condition that the organ of state indemnifies the Municipality against any action for damages and injuries of the occupants of the property. The organ of state shall for the duration of this occupation not under any circumstances have any claim or action whatsoever against the Municipality for damages or loss.

All risks in relation to the property asset would be transferred to the organ of state on date of occupation and the organ of state would be responsible for all municipal charges, including municipal services and rates and levy charges from date of occupation.

Occupational Rental may be charged for a property that is not exempt in terms of Section 14(6) of the MFMA.

22.4 APPLICATIONS FOR REGISTRATION OF SERVITUDES FROM GOVERNMENT DEPARTMENTS OR ORGANS OF STATE

Where Government Departments or other organs of State such as Rand Water, Eskom, Transnet, Sanral require the registration of servitudes against the Municipality's properties:

- (a) The Municipality will first establish if the property is required for the provision of the minimum level of basic municipal services and Council, in line with the provisions of Section 14 of the MFMA, will make such determination that the property is not required for the provision of the minimum level of basic municipal services.
- (b) The Municipality will determine the market related value to be received in return for the granting of the servitude right.
- (c) A public notice will be issued in terms of the Local Government Ordinance 1939 to afford the affected community an opportunity to object, if any.
- (d) No competitive bidding will be required.
- (e) A deviation report that comprehensively outlines the reason for the deviation from a competitive process, will be presented to the Bid Adjudication Committee for submission to the Accounting Officer for the ratification of the allocation of the servitude rights to an organ of state.
- (f) Occupational rental may be charged for a property that is not exempt in terms of section 14(6) MFMA.

GENERAL

23 GENERAL

23.1 FORMALIZING THE ASSET TRANSFER AGREEMENT OF LEASE AGREEMENT

- (a) The Group Head: Group Property Management will be required to effect the transfer of ownership by concluding, in conjunction with the Group Head: Group Legal Services, the Deed of Sale or the Deed of Donation as the case may be and to register such transfer, in consultation with the Group Chief Financial Officer, in the Fixed Asset Register of the City, in the case of a sale or donation.
- (b) The Group Head: Group Property Management will be required to see to the formalization of a lease agreement, in conjunction with the Group Head: Group Legal Services. The Lease Agreement made available to the Group Chief Financial Officer, in order to update the fixed Asset Register of the City.
- (c) The Group Head: Group Property Management will be required to register the servitude in favour of the organ of state or private party, in consultation with the Group Chief Financial Officer, and inform the Group Chief Financial Officer of the registration of such servitude to update such servitude in the Fixed Asset Register of the City.
- (d) All property asset transfers, disposals or the granting of a lease right, may only take place by way of a written transfer agreement, signed by both the Municipality and the private sector party or organ of state
- (e) The written agreement must include:
 - 1. the terms and conditions of the transfer or the right to use, manage or control a property asset;
 - 2. details of the property and subsidiary assets and liabilities to be transferred or where the right to use, manage or control has been granted;
 - 3. compensation to be paid or rental to be paid and the terms and conditions for payment;
 - 4. the effective date in which risk and accountability for the property assets are to be transferred
 - 5. All required town planning process necessary for the development of the property such as Rezoning/ subdivision/ consolidation, etc will be at the cost of the purchaser/lessee; and
 - 6. The property will be used in line with the approved Tshwane Town Planning Scheme.

- (f) Further to the above, a right to use, manage or control (lease) agreement must include:
1. the terms and conditions on which the right is granted;
 2. details of the property asset concerned;
 3. the period of the agreement;
 4. compensation to be paid and the terms and conditions for payment;
 5. requirements for the party to maintain and safeguard the property asset;
 6. sharing arrangements where applicable;
 7. requirements for and terms and conditions relating to improvements and enhancements;
 8. the effective date in which risk and accountability are to be transferred; and
 9. requirements that the party may not cede or subcontract their rights to another person.
- (g) The full contract in terms of which a Municipality transfers a property asset or grants a lease right must be made available in its entirety to the Council of the Municipality and may not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to Information Act, 2000.
- (h) A municipal Council may include conditions specifying development time frames for vacant undeveloped land, specify the permitted use of the property and may also include reversionary clauses for registration against the title of the property in instances where a property has been sold or leased out at below market value for a certain public cause.

23.2 TRANSACTIONAL REVIEW

- a) The Council must maintain oversight over the implementation of the Supply Chain Management Policy, its subsidiary and the Policy on Immovable Property Disposal, Transfer and the Granting of a Right to Use, Manage or Control municipal property assets to ensure property asset transactions are consistent with these policies and are fair, equitable, transparent and competitive.
- b) For the purpose of such oversight, the Accounting Officer must submit a report to the Council on a quarterly basis listing all immovable property asset acquisitions, transfers and rights granted for the use, management and/or control of such property assets to any party. Such report should include the financial, economic or social value received from any such transaction as well as any information that may assist the Council to perform its oversight function.

- c) A review process should be undertaken to assess the performance of the Municipality in respect of its disposal plans.
- d) The review process highlights opportunities for improving the effectiveness and efficiency of the disposal cycle and the possible review of the disposal management framework.

23.3 FORBIDDEN ACTIVITIES

- (a) No Councillor may be part of any committee that considers a tender or the awarding of a bid.
- (b) No person should unduly benefit from any transaction with a Municipality. The prohibitions of regulation 44 and 45 of the Supply Chain Management Regulations are also relevant to the property disposal cycle.
- (c) A transfer of property or the granting of a lease right to a third party should also be prohibited in instances where the tax matters of such third party has not been certified by SARS to be in order.
- (d) Irrespective of the procurement process followed, no award may be made to a person in terms of this Policy –
 - who is in the service of the state;
 - if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
 - a person who is an advisor or consultant contracted with the City.
- (e) As far as ethical standards are concerned, the Code of Conduct will apply.

23.4 AWARDS TO CLOSE FAMILY MEMBERS OF PERSONS IN THE SERVICE OF THE STATE

The accounting officer must ensure that the notes to the annual financial statements disclose particulars of any award of more than R2000 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including –

- (a) the name of that person;

- (b) the capacity in which that person is in the service of the state; and
- (c) the amount of the award.

23.5 COMBATING OF ABUSE OF SUPPLY CHAIN MANAGEMENT SYSTEM

- (1) The accounting officer must–
 - (a) take all reasonable steps to prevent abuse of the supply chain management system;
 - (b) investigate any allegations against an official or other role player of fraud, corruption, favoritism, unfair or irregular practices or failure to comply with this Policy, and when justified –
 - (i) take appropriate steps against such official or other role player; or
 - (ii) report any alleged criminal conduct to the South African Police Service;
 - (c) check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector;
 - (d) reject any bid from a bidder–
 - (i) if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the City, or to any other Municipality or municipal entity, are in arrears for more than three months; or
 - (ii) who during the last five years has failed to perform satisfactorily on a previous contract with the City and/or its municipal entities and/or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
 - (e) reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
 - (f) cancel a contract awarded to a person if –
 - (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
 - (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and

- (g) reject the bid of any bidder if that bidder or any of its directors –
 - (i) has abused the supply chain management system of the City or has committed any improper conduct in relation to such system;
 - (ii) has been convicted for fraud or corruption during the past five years;
 - (iii) has willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - (iv) has 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).
- (2) The accounting officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of subparagraphs (1)(b)(ii), (e) or (f) above.

24 RESOLUTION OF DISPUTES, OBJECTIONS, COMPLAINTS AND QUERIES

- (1) An unsuccessful tenderer may approach the accounting officer in writing within 14 days from being notified of its unsuccessful bid and state its reasons for disputing, objecting or complaining about the awarding of, or the cancellation of a tender.
- (2) The accounting officer must appoint an independent and impartial person in the employ of the Municipality and not directly involved in the supply chain management processes –
 - (a) to assist in the resolution of disputes between the City and other persons regarding –
 - any decisions or actions taken in the implementation of the supply chain management system;
 - any matter arising from a contract awarded in the course of the supply chain management system; or
 - to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.
- (3) The accounting officer, or another official designated by the accounting officer, is responsible for assisting the appointed person to perform his or her functions effectively.
- (4) The person appointed must –
 - (a) strive to resolve promptly all disputes, objections, complaints or queries received; and

- (b) submit monthly reports to the accounting officer on all disputes, objections, complaints or queries received, attended to or resolved.
- (5) This paragraph must not be read as affecting a person's right to approach a court at any time.

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