



NELSON MANDELA BAY POLICY

Policy and Procedures for the
Disposal of Capital Assets by the
NMBM and its entities

15 September 2016

FOR INFORMATION

NELSON MANDELA BAY

METROPOLITAN MUNICIPALITY

POLICY AND PROCEDURES FOR

THE DISPOSAL OF

IMMOVABLE CAPITAL ASSETS

2014

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

1. INTERPRETATION AND DEFINITIONS

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

1.1 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

1.1.1 "**Accounting Officer**" means the Municipal Manager of the Municipality;

1.1.2 "**Act**" means the Local Government: Municipality Finance Management Act 56 of 2003 and the Regulations promulgated thereunder;

1.1.3 "**Basic Municipal Service**" means a municipal service that is necessary to ensure an acceptable and reasonable quality of life and which, if not provided, will endanger public health or safety or the environment;

1.1.4 "**Capital Asset**" for the purposes of this Policy, means any immovable property such as land, property or buildings owned by the Municipality;

- 1.1.5 **"Council"** means the full Council of the Municipality;
- 1.1.6 **"Encumbrance"** in relation to a Capital Asset, means a right to the Capital Asset that is held by a third party that limits the owners use of the asset;
- 1.1.7 **"Exempted Capital Asset"** means a Capital Asset which exempted by Section 14(6) of the Act from the other provisions of that section;
- 1.1.8 **"Fair Market Value"** in relation to a Capital Asset, means the value at which a knowledgeable willing buyer would buy and a knowledgeable willing Seller would sell the Capital Asset in an arm's length transaction which, for the purposes of this Policy, shall be determined by a Registered Valuer;
- 1.1.9 **"High Value"** in relation to a Capital Asset, means that the Fair Market Value of the Capital Asset exceeds any of the following amounts:
- 1.1.9.1 R50 Million;
- 1.1.9.2 One per cent of the total value of all capital assets of the Municipality as determined from the latest available audited financial statements of the Municipality; or

1.1.9.3 An amount determined by resolution of the Council which is less than 1.1.9.1 or 1.1.9.2;

1.1.10 "**Land Evaluation Committee**" means the Land Evaluation Committee established by the Municipality to evaluate tenders, auctions, expressions of interest or other bids and objections in respect of the sale and transfer of and the granting of rights to use, control or manage immovable Capital Assets of the Municipality;

1.1.11 "**Long Term**" means a period of longer than 3 (three) years;

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

1.1.13 "**Municipality**" means the Nelson Mandela Bay Metropolitan Municipality, a Category A Municipality established by Part 2 of Schedule 1 of Notice 85 in the Eastern Cape Provincial Gazette No. 654 on 27 September 2000 promulgated in terms of Section 12(1) of the Local Government: Municipal Structures Act 117 of 1998, for the municipal area described in such Notice;

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

1.1.15 "Municipal Service"

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

1.1.15.1 such a service is provided or to be provided by the Municipality through an internal mechanism contemplated in Section 76 of the MSA or by engaging an external mechanism contemplated in Section 76 of the said Act; and

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

**1.1.16 "Non-Exempted
Capital Asset"**

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

1.1.17 "Organ of State"

means:

1.1.17.1 a national department or national public entity;

1.1.17.2 a provincial department or provincial public entity;

1.1.17.3 a municipality or municipal entity; or

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

1.1.18 **"Private Sector Party"** means a person who is not an Organ of State;

1.1.19 **"Registered Valuer"** means a person contemplated in the Property Valuers Profession Act No. 47 of 2000;

1.1.20 **"Right to Use, Control or Manage"** in relation to a Capital Asset, means a right to use, control or manage the Capital Asset for a period exceeding one (1) calendar month without ceding legal ownership in the Asset which, for the purposes of this Policy, shall include a Lease and servitude;

1.1.21 **"Transfer"** in relation to a Capital Asset, means a transfer of ownership in the Capital Asset as a result of a sale or other transaction;

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

2. **APPLICATION OF THIS POLICY**

Subject to clauses 3 and 4, this Policy applies to:

2.1 The sale and Transfer of Capital Assets by the Municipality; and

- 2.2 The granting by the Municipality of the Rights to Use, Control or Manage Capital Assets.

3. **EXEMPTIONS**

- 3.1 This Policy shall not be read as permitting the sale and Transfer of Non-Exempted Capital Assets, needed to provide the minimum level of Basic Municipal Services.
- 3.2 This Policy does not apply to the sale and Transfer of Non-Exempted Capital Assets in terms of Public-Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005.
- 3.3 This Policy does not apply to the sale and Transfer of housing on municipal land and the Transfer of that municipal land for the poor to beneficiaries of such housing.
- 3.4 This Policy does not apply to the granting by the Municipality of Rights to Use, Control or Manage Capital Assets in terms of Public-Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005.
- 3.5 This Policy does not apply to the granting by the Municipality of Rights to Use, Control or Manage municipal land for housing for the poor to beneficiaries of such housing.

4. **CATEGORIES OF APPLICATION**

- 4.1 Schedule 1 of this Policy shall be applied in respect of the sale and Transfer of Non-Exempted Capital Assets having a High Value to an Organ of State or to a Private Sector Party.
- 4.2 Schedule 2 of this Policy shall be applied in respect of the sale and Transfer of Non-Exempted Capital Assets not having a High Value to an Organ of State or to a Private Sector Party.

- 4.3 Schedule 3 of this Policy shall be applied in respect of the sale and Transfer of Non-Exempted Capital Assets having a High Value to a Private Sector Party appointed as a service provider through a competitive bidding process in accordance with Chapter 8 of the MSA.
- 4.4 Schedule 4 of this Policy shall be applied in respect of the sale and Transfer of Non-Exempted Capital Assets not having a High Value to a Private Sector Party appointed as a service provider through a competitive bidding process in accordance with Chapter 8 of the MSA.
- 4.5 Schedule 5 of this Policy shall be applied in respect of the sale and Transfer of Exempted Capital Assets not needed to provide the minimum level of Basic Municipal Services to Organs of State.
- 4.6 Schedule 6 of this Policy shall be applied in respect of the sale and Transfer of Exempted Capital Assets needed to provide the minimum level of Basic Municipal Services to Organs of State.
- 4.7 Schedule 7 of this Policy shall be applied in respect of the granting of a Long Term Right to Use, Control or Manage a Capital Asset having a Fair Market Value in excess of R10 Million.
- 4.8 Schedule 8 of this Policy shall be applied in respect of the granting of a Right to Use, Control or Manage a Capital Asset where either the Fair Market Value of the Capital Asset does not exceed R10 Million or a Long Term right is not proposed.
- 4.9 Schedule 9 of this Policy shall be applied in respect of the granting of a Right to Use, Control or Manage a Capital Asset not of a High Value where the right:
- 4.9.1 is granted for an indefinite or undetermined period;
- 4.9.2 is granted for a period which exceeds:

4.9.2.1 the useful life of the Capital Asset; or

4.9.2.2 the economic usefulness of the Capital Asset and which would require the Asset, in order to remain economically useful, to be substantially upgraded, altered or replaced during the period for which the right is granted; or

4.9.3 confers on the person to whom the right is granted:

4.9.3.1 an option to buy or acquire ownership in the Capital Asset; or

4.9.3.2 the power to use, control or manage the Capital Asset as if that person is the beneficial (but not legal) owner of the Asset which, for the purposes of this Policy shall be deemed to apply where the Right to Use, Control or Manage the Capital Asset is a Lease for a period of not less than 10 (ten) years and which Lease provides for the Lease to be notarially registered and for the Lessee to mortgage the Lease.

4.10 Schedule 10 of this Policy shall be applied in respect of the granting of a Right to Use, Control or Manage a High Value Capital Asset where the right:

4.10.1 is granted for an indefinite or undetermined period;

4.10.2 is granted for a period which exceeds:

4.10.2.1 the useful life of the Capital Asset; or

4.10.2.2 the economic usefulness of the Capital Asset and which would require the Asset, in order to remain economically useful, to be substantially upgraded, altered or replaced during the period for which the right is granted; or

4.10.3 confers on the person to whom the right is granted:

4.10.3.1 an option to buy or acquire ownership in the Capital Asset; or

4.10.3.2 the power to use, control or manage the Capital Asset as if that person is the beneficial (but not legal) owner of the Asset which, for the purposes of this Policy shall be deemed to apply where the Right to Use, Control or Manage the Capital Asset is a Lease for a period of not less than 10 (ten) years and which Lease provides for the Lease to be notarially registered and for the Lessee to mortgage the Lease.

4.11 Schedule 11 of this Policy shall be applied in respect of the granting of a Long Term Right to Use, Control or Manage a Capital Asset having a value in excess of R10 Million to a Private Sector Party or Organ of State appointed as a service provider through a competitive bidding process for the performance of a Municipal Service or commercial service.

4.12 Schedule 12 of this Policy shall be applied in respect of the granting of a Right to Use, Control or Manage a Capital Asset of a value not more than R10 Million or for a period other than a Long Term to a Private Sector Party or Organ of State appointed as a service provider through a competitive bidding process for the performance of a Municipal Service or commercial service.

5. **CAPITAL ASSETS NEEDED TO PROVIDE THE MINIMUM LEVEL OF BASIC MUNICIPAL SERVICES**

Save as is provided for in Schedules 6, 11 and 12, the Municipality shall not sell and Transfer or grant a Right to Use, Control or Manage a Capital Asset needed to provide the minimum level of Basic Municipal Services.

6. **APPROVALS AND DECISIONS OF COUNCIL**

- 6.1 Where approvals or decisions of the Council are required, such approvals and/or decisions shall be given and/or taken in a meeting open to the public.
- 6.2 A decision by the Council that a specific Capital Asset is not needed to provide the minimum level of Basic Municipal Services, may not be reversed by the Municipality after such Capital Asset has been sold, Transferred or otherwise disposed of.
- 6.3 Unless otherwise decided by the Council after considering the Fair Market Value of any Capital Asset and the economic and/or community value to be received in exchange for the Capital Asset and the demands of public interest or plight of the poor, Capital Assets shall only be sold and Transferred at Fair Market Value.
- 6.4 Unless otherwise decided by the Council after considering the Fair Market Value of any Capital Asset and the economic and/or community value to be received in exchange for the Capital Asset and the demands of public interest or plight of the poor, any Right to Use, Control or Manage a Capital Assets shall only be granted at Fair Market Value.

7. **PROCESSES**

- 7.1 The Municipality shall utilize the following processes in the sale and Transfer of or the grant of a Right to Use, Control or Manage any of its Capital Assets:
- 7.1.1 Tenders;
- 7.1.2 Auctions;
- 7.1.3 Calls for expressions of interest where the nature of the particular transaction and the range of likely participants in the process does not warrant a tender or auction process to be followed, save that where multiple participants express an interest in the sale and transfer or the grant of the Right to Use, Control or Manage the Capital Asset an appropriate

competitive bidding process shall be followed with such multiple participants;

7.1.4 Such other competitive bidding process as may be appropriate; or

7.1.5 Direct negotiations where specifically provided for in the Schedules hereto or in respect of the granting of a Right to Use, Control or Manage a Capital Asset for a period not exceeding 1 (one) calendar month.

7.2 The particular process to be utilize in each instance shall be determined by the Council who shall consider the following factors in determining the particular process:

7.2.1 the nature of the contract to be concluded;

7.2.2 the Capital Asset to be disposed of;

7.2.3 the likely contract consideration or price;

7.2.4 the time frame within which it is desirable for the process to be completed;

7.2.5 the technical nature of the contract;

7.2.6 the range of likely participants in the process;

7.2.7 whether the sale and Transfer or Right to Use, Control or Manage the Capital Asset has been previously advertised and whether any prejudice would be caused to anyone by a failure to re-advertise.

7.3 The Council shall be entitled to impose pre-qualification requirements in relation to any particular process and in particular where the proposed transactions require specific expertise, infrastructure and/or financial capacity or where the Council envisages a particular development and/or use of the Capital Asset.

- 7.3.1 Such pre-qualification requirements shall be disclosed at the commencement of the process.
- 7.3.2 Such pre-qualification requirements shall be determined in such a manner so as not to exclude or inhibit, save to the extent necessary to achieve the pre-qualification requirements, competitive bidding and the participation of qualified tenderers.

8. **TRANSPARENCY**

- 8.1 Where the Municipality is to advertise a tender, auction or such other type of competitive bidding process as may have been determined by its Council, such advertisements shall be open and transparent and shall be advertised in the local print media for a period of not less than 30 (thirty) days for Capital Assets whose Fair Market Value is more than R10 Million and for a period not less than 14 (fourteen) days for Capital Assets whose Fair Market Value is R10 Million or less and an official of the Municipality's name and contact number shall be included in all such invitations for enquiry purposes.
- 8.2 All advertisements shall contain details of how the required response should be marked, where they are to be placed or sent and the date, venue and time when all responses shall be opened.
- 8.3 All advertisements shall specify the necessity of any briefing session if required.
- 8.4 A copy of the advertisement shall further be posted by prepaid registered post to all owners, save the Municipality, of properties abutting the Capital Asset intended to be sold and transferred or in respect of which a Right to Use, Control or Manage is to be granted.
- 8.5 Wherever possible, the appropriate draft contracts envisaged to be concluded with any successful participant shall be provided to all interested parties on request pursuant to any advertised transaction.

- 8.6 All participants in the selected process shall be required to disclose any actual or likely conflict of interest and to certify that the disqualifications referred to in clause 10 are not applicable to them.
- 8.7 The opening, registering and recording of all responses to any advertisement shall be undertaken by a responsible official of the Municipality to be designated by the Accounting Officer.
- 8.8 Wherever possible, the opening of all responses to any advertisement shall take place in the presence of affected persons.
- 8.9 The Municipality shall be entitled to negotiate the final terms of contracts provided that such negotiation:
- 8.9.1 does not allow any preferred participant a second or unfair opportunity;
 - 8.9.2 is not to the detriment of any other participant; and
 - 8.9.3 does not lead to a lower price than that submitted.

9. **EVALUATION**

- 9.1 A Land Evaluation Committee shall be established by the Accounting Officer in accordance with annexure "A" hereto, whose function will be to evaluate tenders, auctions, expressions of interest or other bids and objections received in response to any competitive bidding process and to make a recommendation to the Accounting Officer to make the final award or to make another recommendation to the Accounting Officer as to how to proceed with the relevant transaction, which final award shall at all times be subject to the prior decision and considerations of the Council as referred to in Section 14(2) of the Act (where applicable). In the event of the termination of any contract concluded pursuant to the application of this policy being cancelled due to a breach thereof by the party to whom the contract was awarded, the particular tender, auction, expressions of interest or other bids may be

referred back to the Land Evaluation Committee to re-evaluate such tender, auction, expressions of interest or other bids so as to make an alternate recommendation to the Accounting Officer.

- 9.2 The Land Evaluation Committee shall, other than in circumstances reflected in 9.1 above, ensure that only tenders, bids or offers in the instances of expressions of interest or other bids of the highest value are recommended to the Accounting Officer for reward.
- 9.3 The Land Evaluation Committee shall be entitled to make such procedural rules as may be appropriate to facilitate their functions and powers.
- 9.4 The Land Evaluation Committee shall be entitled to appoint experts and/or consultants whether in-house or otherwise to assist in the evaluation of bids.
- 9.5 No Counsellor of the Municipality may be a member of the Land Evaluation Committee or attend any such meeting as an observer.
- 9.6 No person who has a conflict of interest shall participate in the evaluation of any transaction in respect of which such conflict exists.
- 9.7 Recommendations of the Land Evaluation Committee shall be made available to interested parties on request.
- 9.8 Any person aggrieved by a recommendation of the Land Evaluation Committee shall be entitled to appeal such recommendation to the Accounting Officer within 14 (fourteen) days of being notified of such recommendation.

10. **DISQUALIFICATION**

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

- 10.1 Persons who have been convicted of fraud or corruption during the period of five years immediately preceding the closing date for advertisements;
- 10.2 Persons who have wilfully neglected, reneged on or have failed to comply with a government or local government contract during the aforesaid period of five years;
- 10.3 Persons whose Tax affairs have not been cleared by the South African Revenue Service and who fail to provide a Tax Clearance Certificate in this regard;
- 10.4 Persons who are in arrears (or who have failed to make suitable arrangements with the Municipality to settle such arrears) in respect of any charges payable in terms of Section 118 of the MSA;
- 10.5 Persons who have an actual or likely conflict of interest in relation to the proposed transaction.

11. **RESCISSION OF DECISIONS**

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

of items 4 or 5 of the Code of Conduct for Municipal Staff Members as set out in Schedule 2 to that Act.

12. **DUTIES OF ACCOUNTING OFFICER**

The Accounting Officer shall:

- 12.1 implement this Policy;
- 12.2 take all reasonable steps to ensure that proper mechanisms are in place to ensure that the objectives and requirements contained in this Policy are achieved;
- 12.3 notify the Auditor General as defined in Section 1 of the Municipal Finance Management Act, in the event of any bid other than one recommended in the normal course of implementing this Policy being approved and of the reasons for deviating from such recommendation, save that this provision shall not apply if a different bid was approved in order to rectify an irregularity.
- 12.4 be responsible for the appointment of the members of the Land Evaluation Committee and its Chairperson;
- 12.5 appoint an appropriately qualified person to deal with all appeals against recommendations of the Land Evaluation Committee;

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

13. **UNSOLICITED BIDS**

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

14. **POLICY REPEAL**

The Policy and Procedures for the Disposal of Immovable Capital Assets adopted by the Municipality in May 2005 is hereby repealed.

15. **TITLE**

This Policy shall be referred to as the NMBMM Policy and Procedures for the Disposal of Immovable Capital Assets 2014.

SCHEDULE 1

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

1. This schedule may not be read as permitting the sale and Transfer of a Capital Asset needed to provide the minimum level of Basic Municipal Services. **Section 14(1) Regulation 4(2)**
2. This schedule is not applicable to the sale and Transfer of a Non-Exempted Capital Asset in terms of Public-Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. **Regulation 4(3)(a)**
3. This schedule is not applicable to the sale and Transfer of housing on municipal land and the Transfer of such municipal land for the poor to beneficiaries of such housing. **Regulation 4(3)(b)**
4. The value of the Capital Asset shall be determined in accordance with Regulation 5(4), or Regulation 5(5). **Regulation 5(4), Regulation 5(5).**
5. Authorisation shall be sought from the Council to conduct a public participation process in accordance with Regulation 5(3)(a), which request for authorisation shall be accompanied by an information statement as referred to in Regulation 5(3)(b). **Regulation 5(3)(a), Regulation 5(3)(b)**
6. The public participation process shall be conducted in accordance with Regulation 5(1)(a) read with Regulation 6 and the publication invitation and solicitation referred to in Regulation 6(a) and (b) shall be conducted at least 60 days before the referral to Council alluded to in 7. below. **Regulation 5(1)(a), Regulation 6**
7. The proposal to Transfer the Non-Exempted Capital Asset shall be referred to Council to make the determinations and to furnish its approval in principle that the Non-Exempted Capital Asset may be sold and Transferred in accordance with Regulation 5(1)(b) read with Sections 14(2)(a) and (b), in which referral the Council shall be advised of the factors referred to in Regulation 7. **Sections 14(2)(a)&(b), Regulation 5(1)(b), Regulation 7**
8. The Council shall be entitled to furnish its approval referred to in 7. above in principle in accordance with Regulation 11. **Regulation 11**
9. Any sale and Transfer of the Non-Exempted Capital Asset shall be in accordance with the Policy and procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal Directives adopted by the Municipality. **Regulation 12, Supply Chain Management Regulation 40, Section 14(5)**
10. If the Municipality on account of the public interest, in particular in relation to the plight of the poor, intends to transfer a Non-Exempted Capital Asset for less than its Fair Market Value, the factors referred to in Regulation 13(2) shall be taken into account. **Regulation 13(2)**

11. The proceeds received from the sale and Transfer of the Non-Exempted Capital Asset shall be dealt with in accordance with Regulation 16. **Regulation 16**
12. Any sale and Transfer in accordance with this Schedule shall be effected by a written Transfer Agreement compliant with Regulation 17 which shall be made available to the Council and public as provided for in Regulation 18. **Regulation 17, Regulation 18**
13. Gains, losses and associated costs not budgeted for that will be incurred in respect of the sale and Transfer shall be dealt with in accordance with Regulation 47. **Regulation 47**
14. The sale and Transfer of the Non-Exempted Capital Asset shall not affect any existing encumbrances, rights and servitudes attached to the Asset. **Regulation 48**
15. The sale and Transfer shall be given effect to and formalised in accordance with all applicable legislation and shall be fair, equitable, transparent and competitive. **Regulation 49, Section 14(5)**

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

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

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

SCHEDULE 2

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

1. This schedule may not be read as permitting the sale and Transfer of a Capital Asset needed to provide the minimum level of Basic Municipal Services. **Section 14(1) Regulation 4(2)**
2. This schedule is not applicable to the sale and Transfer of a Non-Exempted Capital Asset in terms of Public-Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. **Regulation 4(3)(a)**
3. This schedule is not applicable to the sale and Transfer of housing on municipal land and the Transfer of such municipal land for the poor to beneficiaries of such housing. **Regulation 4(3)(b)**
4. The value of the Capital Asset shall be determined in accordance with Regulation 5(4), or Regulation 5(5). **Regulation 5(4), Regulation 5(5).**
5. The proposal to Transfer the Non-Exempted Capital Asset shall be referred to Council to make the determinations and to furnish its approval in principle that the Non-Exempted Capital Asset may be sold and Transferred in accordance with Regulation 5(1)(b) read with Sections 14(2)(a) and (b), in which referral the Council shall be advised of the factors referred to in Regulation 7. **Sections 14(2)(a)&(b), Regulation 5(1)(b), Regulation 7**
6. The Council shall be entitled to furnish its approval referred to in 5. above in principle in accordance with Regulation 11. **Regulation 11**
7. Any sale and Transfer of the Non-Exempted Capital Asset shall be in accordance with the Policy and procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal Directives adopted by the Municipality. **Regulation 12, Supply Chain Management Regulation 40, Section 14(5)**
8. If the Municipality on account of the public interest, in particular in relation to the plight of the poor, intends to transfer a Non-Exempted Capital Asset for less than its Fair Market Value, the factors referred to in Regulation 13(2) shall be taken into account. **Regulation 13(2)**
9. The proceeds received from the sale and Transfer of the Non-Exempted Capital Asset shall be dealt with in accordance with Regulation 16. **Regulation 16**
10. Any sale and Transfer in accordance with this Schedule shall be effected by a written Transfer Agreement compliant with Regulation 17 which shall be made available to the Council and public as provided for in Regulation 18. **Regulation 17, Regulation 18**
11. Gains, losses and associated costs not budgeted for that will be incurred in respect of the sale and Transfer shall be dealt with in accordance with Regulation 47. **Regulation 47**

12. The sale and Transfer of the Non-Exempted Capital Asset shall not affect any existing encumbrances, rights and servitudes attached to the Asset. **Regulation 48**
13. The sale and Transfer shall be given effect to and formalised in accordance with all applicable legislation and shall be fair, equitable, transparent and competitive. **Regulation 49, Section 14(5)**

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

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

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

SCHEDULE 3

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

1. This schedule may not be read as permitting the sale and Transfer of a Capital Asset needed to provide the minimum level of Basic Municipal Services. **Section 14(1) Regulation 4(2)**
2. This schedule is not applicable to the sale and Transfer of a Non-Exempted Capital Asset in terms of Public-Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. **Regulation 4(3)(a)**
3. This schedule is not applicable to the sale and Transfer of housing on municipal land and the Transfer of such municipal land for the poor to beneficiaries of such housing. **Regulation 4(3)(b)**
4. The value of the Capital Asset shall be determined in accordance with Regulation 5(4), or Regulation 5(5). **Regulation 5(4), Regulation 5(5)**.
5. Authorisation shall be sought from the Council to conduct a public participation process in accordance with Regulation 5(3)(a), which request for authorisation shall be accompanied by an information statement as referred to in Regulation 5(3)(b). **Regulation 5(3)(a), Regulation 5(3)(b)**
6. The public participation process shall be conducted in accordance with Regulation 5(1)(a) read with Regulation 6 and the publication invitation and solicitation referred to in Regulation 6(a) and (b) shall be conducted at least 60 days before the referral to Council alluded to in 7. below. **Regulation 5(1)(a), Regulation 6**
7. The proposal to Transfer the Non-Exempted Capital Asset shall be referred to Council to make the determinations and to furnish its approval in principle that the Non-Exempted Capital Asset may be sold and Transferred in accordance with Regulation 5(1)(b) read with Sections 14(2)(a) and (b), in which referral the Council shall be advised of the factors referred to in Regulation 7. **Sections 14(2)(a)&(b), Regulation 5(1)(b), Regulation 7**
8. The Council shall be entitled to furnish its approval referred to in 7. above in principle in accordance with Regulation 11. **Regulation 11**
9. Compliance with the Disposal Management System referred to in the Policy and Procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal Directives adopted by the Municipality shall not be necessary and direct negotiations may be conducted with the Service Provider. **Regulation 12(2) and 12(3)**
10. The provisions of Regulations 14 and 15 shall be taken into account. **Regulation 14, Regulation 15**

11. If the Municipality on account of the public interest, in particular in relation to the plight of the poor, intends to transfer a Non-Exempted Capital Asset for less than its Fair Market Value, the factors referred to in Regulation 13(2) shall be taken into account. **Regulation 13(2)**
12. The proceeds received from the sale and Transfer of the Non-Exempted Capital Asset shall be dealt with in accordance with Regulation 16. **Regulation 16**
13. Any sale and Transfer in accordance with this Schedule shall be effected by a written Transfer Agreement compliant with Regulation 17 which shall be made available to the Council and public as provided for in Regulation 18. **Regulation 17, Regulation 18**
14. Gains, losses and associated costs not budgeted for that will be incurred in respect of the sale and Transfer shall be dealt with in accordance with Regulation 47. **Regulation 47**
15. The sale and Transfer of the Non-Exempted Capital Asset shall not affect any existing encumbrances, rights and servitudes attached to the Asset. **Regulation 48**
16. The sale and Transfer shall be given effect to and formalised in accordance with all applicable legislation and shall be fair, equitable, transparent and competitive. **Regulation 49, Section 14(5)**

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

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

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

SCHEDULE 4

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

1. This schedule may not be read as permitting the sale and Transfer of a Capital Asset needed to provide the minimum level of Basic Municipal Services. **Section 14(1) Regulation 4(2)**
2. This schedule is not applicable to the sale and Transfer of a Non-Exempted Capital Asset in terms of Public-Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. **Regulation 4(3)(a)**
3. This schedule is not applicable to the sale and Transfer of housing on municipal land and the Transfer of such municipal land for the poor to beneficiaries of such housing. **Regulation 4(3)(b)**
4. The value of the Capital Asset shall be determined in accordance with Regulation 5(4), or Regulation 5(5). **Regulation 5(4), Regulation 5(5).**
5. The proposal to Transfer the Non-Exempted Capital Asset shall be referred to Council to make the determinations and to furnish its approval in principle that the Non-Exempted Capital Asset may be sold and Transferred in accordance with Regulation 5(1)(b) read with Sections 14(2)(a) and (b), in which referral the Council shall be advised of the factors referred to in Regulation 7. **Sections 14(2)(a)&(b), Regulation 5(1)(b), Regulation 7**
6. The Council shall be entitled to furnish its approval referred to in 5. above in principle in accordance with Regulation 11. **Regulation 11**
7. Compliance with the Disposal Management System referred to in the Policy and Procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal Directives adopted by the Municipality shall not be necessary and direct negotiations may be conducted with the Service Provider. **Regulation 12(2) and 12(3)**
8. The provisions of Regulations 14 and 15 shall be taken into account. **Regulation 14, Regulation 15**
9. If the Municipality on account of the public interest, in particular in relation to the plight of the poor, intends to transfer a Non-Exempted Capital Asset for less than its Fair Market Value, the factors referred to in Regulation 13(2) shall be taken into account. **Regulation 13(2)**
10. The proceeds received from the sale and Transfer of the Non-Exempted Capital Asset shall be dealt with in accordance with Regulation 16. **Regulation 16**

11. Any sale and Transfer in accordance with this Schedule shall be effected by a written Transfer Agreement compliant with Regulation 17 which shall be made available to the Council and public as provided for in Regulation 18. **Regulation 17, Regulation 18**
12. Gains, losses and associated costs not budgeted for that will be incurred in respect of the sale and Transfer shall be dealt with in accordance with Regulation 47. **Regulation 47**
13. The sale and Transfer of the Non-Exempted Capital Asset shall not affect any existing encumbrances, rights and servitudes attached to the Asset. **Regulation 48**
14. The sale and Transfer shall be given effect to and formalised in accordance with all applicable legislation and shall be fair, equitable, transparent and competitive. **Regulation 49, Section 14(5)**

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

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

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

SCHEDULE 5

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

1. It shall be determined in accordance with Regulation 20 whether Sections 14(1) to 14(5) applies to the particular transaction. **Regulation 20**
2. Sections 14(1) to 14(5) shall apply to the particular transaction and this Schedule shall not apply where none of the circumstances mentioned in Regulation 20 apply. **Regulation 21**
3. Where the provisions of Regulation 20(1)(a) apply, Regulation 22 shall be complied with. **Regulation 22**
4. Before a sale and Transfer of an Exempted Capital Asset to an Organ of State in circumstances described in Regulation 20(1), Regulation 23 shall be complied with. **Regulation 23**
5. Regulations 25, 26, and 27 shall be complied with. **Regulation 25, Regulation 26, Regulation 27**
6. The valuation of the Exempted Capital Asset and compensation therefore shall be calculated and agreed in accordance with Regulations 29 and 28. **Regulation 29, Regulation 28**
7. A written Transfer agreement shall be concluded in relation to the Transfer which shall comply with Regulation 30 and prior to entering into such Transfer agreement the Council must consider the effects referred to in Regulation 31 and the due diligence referred to in Regulation 32 shall have been conducted. **Regulation 30, Regulation 31, Regulation 32**

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

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

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

SCHEDULE 6

The following procedure shall be followed in relation to the sale and **TRANSFER** of an **EXEMPTED CAPITAL ASSET** needed to provide the minimum level of **BASIC MUNICIPAL SERVICES** to **ORGANS OF STATE**.

1. It shall be determined in accordance with Regulation 20 whether Sections 14(1) to 14(5) applies to the particular transaction. **Regulation 20**
2. Sections 14(1) to 14(5) shall apply to the particular transaction and this Schedule shall not apply where none of the circumstances mentioned in Regulation 20 apply. **Regulation 21**
3. Where the provisions of Regulation 20(1)(a) apply, Regulation 22 shall be complied with. **Regulation 22**
4. Before a sale and Transfer of an Exempted Capital Asset to an Organ of State in circumstances described in Regulation 20(1), Regulation 23 shall be complied with. **Regulation 23**
5. The sale and Transfer of an Exempted Capital Asset needed to provide the minimum level of Basic Municipal Services may only be effected on the conditions stipulated in Regulation 24(1) and on condition that the Municipality is satisfied that the Organ of State to which the Exempted Capital Asset is to be transferred can adequately maintain and safeguard the Exempted Capital Asset as envisaged in Regulation 24(2), the Transfer agreement, service delivery or other agreement shall comply with Regulation 24(3) save that this paragraph 5. shall not apply in the circumstances referred to in Regulation 20(1)(c) or (d) relating to the assignment of powers and functions and the Transfer of Municipal housing or land to National or Provincial Organs of State for housing for the poor or in terms of a National or Provincial Housing Policy. **Regulation 24(1), Regulation 24(2), Regulation 24(3), Regulation 20(1)(c), Regulation 20(1)(d)**
6. Regulations 25, 26, and 27 shall be complied with. **Regulation 25, Regulation 26, Regulation 27**
7. The valuation of the Exempted Capital Asset and compensation therefore shall be calculated and agreed in accordance with Regulations 29 and 28. **Regulation 29, Regulation 28**
8. A written Transfer agreement shall be concluded in relation to the Transfer which shall comply with Regulation 30 and prior to entering into such Transfer agreement the Council must consider the effects referred to in Regulation 31 and the due diligence referred to in Regulation 32 shall have been conducted. **Regulation 30, Regulation 31, Regulation 32**

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

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

Reference to a Regulation refers to a Regulation of the Asset Transfer Regulations published by

General Notice 878 of 2008 under the MFMA.

SCHEDULE 7

The following procedure shall be followed in relation to the granting of a **LONG TERM** right to **USE, CONTROL** or **MANAGE** a **CAPITAL ASSET** having a **FAIR MARKET VALUE** in excess of **R10 MILLION**.

1. This schedule is not applicable to the granting of a right to Use, Control or Manage a Capital Asset in terms of Public–Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. **Regulation 33(2)(a)**
2. This schedule is not applicable to the granting of a right to Use, Control or Manage a Capital Asset for housing on municipal land for the poor to beneficiaries of such housing. **Regulation 33(2)(b)**
3. The value of the Capital Asset shall be determined by a registered valuer should it be envisaged that such Capital Asset could have a Fair Market Value in excess of R10 Million and should a Long Term (longer than three (3) years) be envisaged. **Regulation 34(2)**
4. Authorisation shall be sought from the Council to conduct a public participation process in accordance with Regulation 34(3)(a), which request for authorisation shall be accompanied by an information statement as referred to in Regulation 34(3)(b). **Regulation 34(3)(a), Regulation 34(3)(b)**
5. The public participation process shall be conducted in accordance with Regulation 34(1)(a) read with Regulation 35 and the publication invitation and solicitation referred to in Regulation 35(a) and (b) shall be conducted at least 60 days before the referral to Council alluded to in 6. below. **Regulation 34(1)(a), Regulation 35**
6. The proposal to grant the Right to Use, Control or Manage the Capital Asset shall be referred to Council for approval in principle in accordance with Regulation 34(1)(b) in which referral the Council shall be advised of the factors referred to in Regulation 36. **Regulation 34(1)(b), Regulation 36**
7. The Council shall be entitled to furnish a conditional approval which may be given subject to any conditions including the conditions referred to in Regulation 40. **Regulation 40**
8. Any grant of a right to Use, Control or Manage a Capital Asset shall be in accordance with the Policy and Procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal Directives adopted by the Municipality. **Regulation 41, Supply Chain Management Regulation 40**
9. Prior to granting a right to Use, Control or Manage a Capital Asset, the Municipality shall satisfy itself that the Private Sector Party or Organ of State to whom the right is to be granted can demonstrate the ability to adequately maintain and safeguard the asset. **Regulation 41(4)**

10. Any grant of a right to Use, Control or Manage a Capital Asset shall be by way of written agreement and shall, inter alia, set out the terms referred to in Regulation 45(2)(a) and shall be signed off in accordance with Regulation 45(2)(b). **Regulation 45**
11. Agreements granting rights to Use, Control or Manage a Capital Asset shall be made available to the Council and shall not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to Information Act 2 of 2000. **Regulation 46**
12. Gains, losses and associated costs not budgeted for that will be incurred in respect of the grant of the right to Use, Control or Manage a Capital Asset shall be dealt with in accordance with Regulation 47. **Regulation 47**
13. The grant of the right to Use, Control or Manage a Capital Asset shall not affect any existing encumbrances, rights and servitudes attached to the Capital Asset. **Regulation 48**
14. The grant of the right to Use, Control or Manage a Capital Asset shall be formalised in accordance with all applicable legislation and shall be fair, equitable, transparent and competitive. **Regulation 49**

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

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

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

SCHEDULE 8

The following procedure shall be followed in relation to the granting of a Right to **USE, CONTROL** or **MANAGE** a **CAPITAL ASSET** where **EITHER** the **FAIR MARKET VALUE** of the **CAPITAL ASSET** does **NOT** exceed R10 Million and a **LONG TERM** right is **NOT** proposed.

1. This schedule is not applicable to the granting of a right to Use, Control or Manage a Capital Asset in terms of Public-Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. **Regulation 33(2)(a)**
2. This schedule is not applicable to the granting of a right to Use, Control or Manage a Capital Asset for housing on municipal land for the poor to beneficiaries of such housing. **Regulation 33(2)(b)**
3. The value of the Capital Asset shall be determined by a registered valuer should it be envisaged that such Capital Asset could have a Fair Market Value in excess of R10 Million and should a Long Term (longer than three (3) years) be envisaged and if such value is found to be in excess of R10 Million and should a Long Term be envisaged, Schedule 7 shall be applied. **Regulation 34(2)**
4. The proposal to grant the Right to Use, Control or Manage the Capital Asset shall be referred to Council for approval in principle in accordance with Regulation 34(1)(b) in which referral the Council shall be advised of the factors referred to in Regulation 36. **Regulation 34(1)(b), Regulation 36**
5. The Council shall be entitled to furnish a conditional approval which may be given subject to any conditions including the conditions referred to in Regulation 40. **Regulation 40**
6. Any grant of a right to Use, Control or Manage a Capital Asset shall be in accordance with the Policy and Procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal Directives adopted by the Municipality. **Regulation 41, Supply Chain Management Regulation 40**
7. Prior to granting a right to Use, Control or Manage a Capital Asset, the Municipality shall satisfy itself that the Private Sector Party or Organ of State to whom the right is to be granted can demonstrate the ability to adequately maintain and safeguard the asset. **Regulation 41(4)**
8. Any grant of a right to Use, Control or Manage a Capital Asset shall be by way of written agreement and shall, inter alia, set out the terms referred to in Regulation 45(2)(a) and shall be signed off in accordance with Regulation 45(2)(b). **Regulation 45**
9. Agreements granting rights to Use, Control or Manage a Capital Asset shall be made available to the Council and shall not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to Information Act 2 of 2000. **Regulation 46**

10. Gains, losses and associated costs not budgeted for that will be incurred in respect of the grant of the right to Use, Control or Manage a Capital Asset shall be dealt with in accordance with Regulation 47. **Regulation 47**
11. The grant of the right to Use, Control or Manage a Capital Asset shall not affect any existing encumbrances, rights and servitudes attached to the Capital Asset. **Regulation 48**
12. The grant of the right to Use, Control or Manage a Capital Asset shall be formalised in accordance with all applicable legislation and shall be fair, equitable, transparent and competitive. **Regulation 49**

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

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

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

SCHEDULE 9

The following procedure shall be followed in relation to the granting of a
Right to **USE, CONTROL OR MANAGE** a **CAPITAL ASSET** not of a **HIGH VALUE**

where the right:

- (a) is granted for an indefinite or undetermined period;
 - (b) is granted for a period which exceeds:
 - (b)(i) the useful life of the Capital Asset; or
 - (b)(ii) the economic usefulness of the Capital Asset and which would require the Asset, in order to remain economically useful, to be substantially upgraded, altered or replaced during the period for which the right is granted; or
 - (c) confers on the person to whom the right is granted:
 - (c)(i) an option to buy or acquire ownership in the Capital Asset; or
 - (c)(ii) the power to use, control or manage the Capital Asset as if that person is the beneficial (but not legal) owner of the Asset which, for the purposes of this Policy shall be deemed to apply where the Right to Use, Control or Manage the Capital Asset is a Lease for a period of not less than 10 (ten) years and which Lease provides for the Lease to be notarially registered and for the Lessee to mortgage the Lease.
1. This schedule may not be read as permitting the sale and granting of a Right to Use, Control or Manage a Capital Asset needed to provide the minimum level of Basic Municipal Services. **Section 14(1) Regulation 4(2)**
 2. This schedule is not applicable to the granting of a Right to Use, Control or Manage a Capital Asset in terms of Public-Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. **Regulation 4(3)(a)**
 3. This schedule is not applicable to the granting of a Right to Use, Control or Manage municipal land for housing on such municipal land for the poor to beneficiaries of such housing. **Regulation 4(3)(b)**
 4. The value of the Capital Asset shall be determined in accordance with Regulation 5(4), or Regulation 5(5). **Regulation 5(4), Regulation 5(5).**
 5. The proposal to grant a Right to Use, Control or Manage the Capital Asset shall be referred to Council to make the determinations and to furnish its approval in principle that a Right to Use, Control or Manage may be granted in accordance with Regulation 5(1)(b) read with

Sections 14(2)(a) and (b), in which referral the Council shall be advised of the factors referred to in Regulation 7. **Sections 14(2)(a)&(b), Regulation 5(1)(b), Regulation 7**

6. The Council shall be entitled to furnish its approval referred to in 5. above in principle in accordance with Regulation 11. **Regulation 11**
7. Any grant of a Right to Use, Control or Manage a Capital Asset shall be in accordance with the Policy and procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal Directives adopted by the Municipality. **Regulation 12, Supply Chain Management Regulation 40, Section 14(5)**
8. If the Municipality on account of the public interest, in particular in relation to the plight of the poor, intends to grant a Right to Use, Control or Manage a Capital Asset for less than its Fair Market Value, the factors referred to in Regulation 13(2) shall be taken into account. **Regulation 13(2)**
9. The proceeds received from the granting of a Right to Use, Control or Manage shall be dealt with in accordance with Regulation 16. **Regulation 16**
10. Any granting of a Right to Use, Control or Manage in accordance with this Schedule shall be effected by a written Agreement compliant with Regulation 17 which shall be made available to the Council and public as provided for in Regulation 18. **Regulation 17, Regulation 18**
11. Gains, losses and associated costs not budgeted for that will be incurred in respect of the granting of a Right to Use, Control or Manage shall be dealt with in accordance with Regulation 47. **Regulation 47**
12. The granting of a Right to Use, Control or Manage a Capital Asset shall not affect any existing encumbrances, rights and servitudes attached to the Asset. **Regulation 48**
13. The granting of a Right to Use, Control or Manage shall be given effect to and formalised in accordance with all applicable legislation and shall be fair, equitable, transparent and competitive. **Regulation 49, Section 14(5)**

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

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

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

SCHEDULE 10

The following procedure shall be followed in relation to the granting of a
Right to **USE, CONTROL OR MANAGE** a **HIGH VALUE CAPITAL ASSET**

where the right:

- (a) is granted for an indefinite or undetermined period;
 - (b) is granted for a period which exceeds:
 - (b)(i) the useful life of the Capital Asset; or
 - (b)(ii) the economic usefulness of the Capital Asset and which would require the Asset, in order to remain economically useful, to be substantially upgraded, altered or replaced during the period for which the right is granted; or
 - (c) confers on the person to whom the right is granted:
 - (c)(i) an option to buy or acquire ownership in the Capital Asset; or
 - (c)(ii) the power to use, control or manage the Capital Asset as if that person is the beneficial (but not legal) owner of the Asset which, for the purposes of this Policy shall be deemed to apply where the Right to Use, Control or Manage the Capital Asset is a Lease for a period of not less than 10 (ten) years and which Lease provides for the Lease to be notarially registered and for the Lessee to mortgage the Lease.
1. This schedule may not be read as permitting the sale and granting of a Right to Use, Control or Manage a Capital Asset needed to provide the minimum level of Basic Municipal Services. **Section 14(1) Regulation 4(2)**
 2. This schedule is not applicable to the granting of a Right to Use, Control or Manage a Capital Asset in terms of Public-Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. **Regulation 4(3)(a)**
 3. This schedule is not applicable to the granting of a Right to Use, Control or Manage municipal land for housing on such municipal land for the poor to beneficiaries of such housing. **Regulation 4(3)(b)**
 4. The value of the Capital Asset shall be determined in accordance with Regulation 5(4), or Regulation 5(5). **Regulation 5(4), Regulation 5(5).**
 5. Authorisation shall be sought from the Council to conduct a public participation process in accordance with Regulation 5(3)(a), which request for authorisation shall be accompanied by an information statement as referred to in Regulation 5(3)(b). **Regulation 5(3)(a), Regulation 5(3)(b)**

6. The public participation process shall be conducted in accordance with Regulation 5(1)(a) read with Regulation 6 and the publication invitation and solicitation referred to in Regulation 6(a) and (b) shall be conducted at least 60 days before the referral to Council alluded to in 7. below. **Regulation 5(1)(a), Regulation 6**
7. The proposal to grant a Right to Use, Control or Manage the Capital Asset shall be referred to Council to make the determinations and to furnish its approval in principle that a Right to Use, Control or Manage may be granted in accordance with Regulation 5(1)(b) read with Sections 14(2)(a) and (b), in which referral the Council shall be advised of the factors referred to in Regulation 7. **Sections 14(2)(a)&(b), Regulation 5(1)(b), Regulation 7**
8. The Council shall be entitled to furnish its approval referred to in 5. above in principle in accordance with Regulation 11. **Regulation 11**
9. Any grant of a Right to Use, Control or Manage a Capital Asset shall be in accordance with the Policy and procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal Directives adopted by the Municipality. **Regulation 12, Supply Chain Management Regulation 40, Section 14(5)**
10. If the Municipality on account of the public interest, in particular in relation to the plight of the poor, intends to grant a Right to Use, Control or Manage a Capital Asset for less than its Fair Market Value, the factors referred to in Regulation 13(2) shall be taken into account. **Regulation 13(2)**
11. The proceeds received from the granting of a Right to Use, Control or Manage shall be dealt with in accordance with Regulation 16. **Regulation 16**
12. Any granting of a Right to Use, Control or Manage in accordance with this Schedule shall be effected by a written Agreement compliant with Regulation 17 which shall be made available to the Council and public as provided for in Regulation 18. **Regulation 17, Regulation 18**
13. Gains, losses and associated costs not budgeted for that will be incurred in respect of the granting of a Right to Use, Control or Manage shall be dealt with in accordance with Regulation 47. **Regulation 47**
14. The granting of a Right to Use, Control or Manage a Capital Asset shall not affect any existing encumbrances, rights and servitudes attached to the Asset. **Regulation 48**
15. The granting of a Right to Use, Control or Manage shall be given effect to and formalised in accordance with all applicable legislation and shall be fair, equitable, transparent and competitive. **Regulation 49, Section 14(5)**

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

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

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

SCHEDULE 11

This Schedule shall be applied in respect of the granting of a **LONG TERM** Right to **USE, CONTROL OR MANAGE** a **CAPITAL ASSET** having a value in excess of R10 Million to a **PRIVATE SECTOR PARTY** or **ORGAN OF STATE** appointed as a service provider through a competitive bidding process for the performance of a Municipal Service or commercial service.

1. This schedule is not applicable to the granting of a right to Use, Control or Manage a Capital Asset in terms of Public-Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. **Regulation 33(2)(a)**
2. This schedule is not applicable to the granting of a right to Use, Control or Manage a Capital Asset for housing on municipal land for the poor to beneficiaries of such housing. **Regulation 33(2)(b)**
3. The value of the Capital Asset shall be determined by a registered valuer should it be envisaged that such Capital Asset could have a Fair Market Value in excess of R10 Million and should a Long Term (longer than three (3) years) be envisaged. **Regulation 34(2)**
4. Authorisation shall be sought from the Council to conduct a public participation process in accordance with Regulation 34(3)(a), which request for authorisation shall be accompanied by an information statement as referred to in Regulation 34(3)(b). **Regulation 34(3)(a), Regulation 34(3)(b)**
5. The public participation process shall be conducted in accordance with Regulation 34(1)(a) read with Regulation 35 and the publication invitation and solicitation referred to in Regulation 35(a) and (b) shall be conducted at least 60 days before the referral to Council alluded to in 6. below. **Regulation 34(1)(a), Regulation 35**
6. The proposal to grant the Right to Use, Control or Manage the Capital Asset shall be referred to Council for approval in principle in accordance with Regulation 34(1)(b) in which referral the Council shall be advised of the factors referred to in Regulation 36. **Regulation 34(1)(b), Regulation 36**
7. If the Capital Asset is required to provide the minimum level of Basic Municipal Services, the Right to Use, Control or Manage shall only be granted upon the conditions reflected in Regulation 44(a) and (b). **Regulation 44(a) and (b)**
8. The Council shall be entitled to furnish a conditional approval which may be given subject to any conditions including the conditions referred to in Regulation 40. **Regulation 40**
9. Any grant of a right to Use, Control or Manage a Capital Asset shall be in accordance with the Policy and Procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal Directives adopted by the Municipality. **Regulation 41, Supply Chain Management Regulation 40**

10. Prior to granting a right to Use, Control or Manage a Capital Asset, the Municipality shall satisfy itself that the Private Sector Party or Organ of State to whom the right is to be granted can demonstrate the ability to adequately maintain and safeguard the asset. **Regulation 41(4)**
11. Any grant of a right to Use, Control or Manage a Capital Asset shall be by way of written agreement and shall, inter alia, set out the terms referred to in Regulation 45(2)(a) and shall be signed off in accordance with Regulation 45(2)(b). **Regulation 45**
12. Agreements granting rights to Use, Control or Manage a Capital Asset shall be made available to the Council and shall not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to Information Act 2 of 2000. **Regulation 46**
13. Gains, losses and associated costs not budgeted for that will be incurred in respect of the grant of the right to Use, Control or Manage a Capital Asset shall be dealt with in accordance with Regulation 47. **Regulation 47**
14. The grant of the right to Use, Control or Manage a Capital Asset shall not affect any existing encumbrances, rights and servitudes attached to the Capital Asset. **Regulation 48**
15. The grant of the right to Use, Control or Manage a Capital Asset shall be formalised in accordance with all applicable legislation and shall be fair, equitable, transparent and competitive. **Regulation 49**

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

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

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

SCHEDULE 12

This Schedule shall be applied in respect of the granting of a Right to **USE, CONTROL OR MANAGE** a **CAPITAL ASSET** of a value not more than R10 Million or for a period **other** than a **LONG TERM** to a **PRIVATE SECTOR PARTY** or **ORGAN OF STATE** appointed as a service provider through a competitive bidding process for the performance of a Municipal Service or commercial service.

1. This schedule is not applicable to the granting of a right to Use, Control or Manage a Capital Asset in terms of Public–Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. **Regulation 33(2)(a)**
2. This schedule is not applicable to the granting of a right to Use, Control or Manage a Capital Asset for housing on municipal land for the poor to beneficiaries of such housing. **Regulation 33(2)(b)**
3. The value of the Capital Asset shall be determined by a registered valuer should it be envisaged that such Capital Asset could have a Fair Market Value in excess of R10 Million and should a Long Term (longer than three (3) years) be envisaged and if such value is found to be in excess of R10 Million and should a Long Term be envisaged, Schedule 7 shall be applied. **Regulation 34(2)**
4. The proposal to grant the Right to Use, Control or Manage the Capital Asset shall be referred to Council for approval in principle in accordance with Regulation 34(1)(b) in which referral the Council shall be advised of the factors referred to in Regulation 36. **Regulation 34(1)(b), Regulation 36**
5. The Council shall be entitled to furnish a conditional approval which may be given subject to any conditions including the conditions referred to in Regulation 40. **Regulation 40**
6. Any grant of a right to Use, Control or Manage a Capital Asset shall be in accordance with the Policy and Procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal Directives adopted by the Municipality. **Regulation 41, Supply Chain Management Regulation 40**
7. If the Capital Asset is required to provide the minimum level of Basic Municipal Services, the Right to Use, Control or Manage shall only be granted upon the conditions reflected in Regulation 44(a) and (b). **Regulation 44(a) and (b)**
8. Prior to granting a right to Use, Control or Manage a Capital Asset, the Municipality shall satisfy itself that the Private Sector Party or Organ of State to whom the right is to be granted can demonstrate the ability to adequately maintain and safeguard the asset. **Regulation 41(4)**
9. Any grant of a right to Use, Control or Manage a Capital Asset shall be by way of written agreement and shall, inter alia, set out the terms referred to in Regulation 45(2)(a) and shall be signed off in accordance with Regulation 45(2)(b). **Regulation 45**

10. Agreements granting rights to Use, Control or Manage a Capital Asset shall be made available to the Council and shall not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to Information Act 2 of 2000. **Regulation 46**
11. Gains, losses and associated costs not budgeted for that will be incurred in respect of the grant of the right to Use, Control or Manage a Capital Asset shall be dealt with in accordance with Regulation 47. **Regulation 47**
12. The grant of the right to Use, Control or Manage a Capital Asset shall not affect any existing encumbrances, rights and servitudes attached to the Capital Asset. **Regulation 48**
13. The grant of the right to Use, Control or Manage a Capital Asset shall be formalised in accordance with all applicable legislation and shall be fair, equitable, transparent and competitive. **Regulation 49**

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

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

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

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NELSON MANDELA BAY METROPOLITAN
MUNICIPALITY

LAND EVALUATION COMMITTEE

TO PROVIDE FOR THE ESTABLISHMENT OF A LAND EVALUATION COMMITTEE, TO DEFINE ITS FUNCTIONS AND TO PROVIDE FOR INCIDENTAL MATTERS IN COMPLIANCE WITH THE LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT 56 OF 2003

1. DEFINITIONS

- 1.1** “*Accounting Officer*” – means the Municipal Manager of the Nelson Mandela Bay Metropolitan Municipality;
- 1.2** “*Acquisition Committee*” – means such Committee as is established by the NMBMM in relation to Acquisition Management in accordance with the MFMA and the Supply Chain Management Policy;
- 1.3** “*Basic Municipal Services*” – means a municipal service that is necessary to ensure an acceptable and reasonable quality of life and which, if not provided, would endanger public health or safety or the environment;

- 1.4** “*Code of Conduct for Councillors*” – means item 5 or 6 of the Code of Conduct for Councillors as set out in schedule 1 to the Municipal Systems Act 32 of 2000;
- 1.5** “*Code of Conduct for Municipal Staff Members*” – means item 4 or 5 of the Code of Conduct for Municipal Staff Members as set out in Schedule 2 to the Municipal Systems Act 32 of 2000;
- 1.6** “*Committee*” – means the Nelson Mandela Bay Metropolitan Municipality Land Evaluation Committee;
- 1.7** “*Community Value*” – means any value to be received in exchange for any immovable capital asset as determined by the Municipal Council in accordance with Section 14(2)(b) of the MFMA;
- 1.8** “*Councillor*” – means any member of a Municipal Council of any Municipality;
- 1.9** “*Economic Value*” – means any value to be received in exchange for any immovable capital asset as determined by the Municipal Council in accordance with Section 14(2)(b) of the MFMA;
- 1.10** “*Fair Market Value*” – means, in relation to any immovable capital asset, the fair market value thereof as determined by a Registered Valuer;
- 1.11** “*Gratification*” – includes -
- (a) money, whether in cash or otherwise;

- (b) any donation, gift, loan , fee, reward, valuable security, property or interest in property of any description, whether movable or immovable or any other similar advantage;
- (c) the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage;
- (d) any office, status, honour, employment, contract of employment or services, any agreement to give employment or render services in any capacity and residential or holiday accommodation;
- (e) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (f) any forbearance to demand any money or money's worth or valuable thing;
- (g) any other service or favour or advantage of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and includes the exercise or the forbearance from the exercise of any right or any official power or duty;
- (h) any right or privilege;
- (i) any real or pretended aid, vote, consent, influence or abstention from voting;
or
- (j) any valuable consideration or benefit of any kind, including any discount, commission, rebate, bonus, deduction or percentage;

1.12 **“Induce”** – includes to persuade, encourage, coerce, intimidate or threaten;

and

- 1.13** “*Inducement*” – has a corresponding meaning;
- 1.14** “*Land Evaluation Committee*” – means the Nelson Mandela Bay Metropolitan Municipality Land Evaluation Committee;
- 1.15** “*Member*” – means a member of the Land Evaluation Committee;
- 1.16** “*Municipal Council*” – means the Council of the Nelson Mandela Bay Metropolitan Municipality;
- 1.17** “*Municipal Entity*” – has the meaning assigned to it in Section 1 of the Municipal Systems Act;
- 1.18** “*MFMA*” – means the Local Government: Municipal Finance Management Act 56 of 2003;
- 1.19** “*Municipal Manager*” – means the Municipal Manager of the NMBMM appointed in terms of the Municipal Structures Act;
- 1.20** “*Municipal Structures Act*” – means the Local Government: Municipal Structures Act 117 of 1998;
- 1.21** “*Municipal Systems Act*” – means the Local Government: Municipal Systems Act 32 of 2000;

1.22 “*NMBMM*” – means the Nelson Mandela Bay Metropolitan Municipality;

1.23 “*Official*” – means –

(a) an employee of the NMBMM;

(b) a person seconded to the NMBMM to work as a member of the staff of the NMBMM; or

(c) a person contracted by the NMBMM to work as a member of the staff of the NMBMM otherwise than as an employee;

1.24 “*Policy*” – means the policy and procedures for the disposal of immovable capital assets as adopted by the NMBMM;

1.25 “*Supply Chain Management Policy*” – means the Supply Chain Management Policy adopted by the NMBMM in terms of the MFMA;

2. ESTABLISHMENT

As from a date to be determined by the Accounting Officer there shall be established a Committee to be known as the Nelson Mandela Bay Metropolitan Municipality Land Evaluation Committee.

3. CONSTITUTION OF THE COMMITTEE

3.1 The Committee shall consist of not less than five (5) members to be appointed by the Accounting Officer, all of whom shall be Officials, save that the Accounting Officer shall be entitled to appoint an external specialist advisor if deemed appropriate to serve on the

Committee and shall ensure, where practicable, the Committee includes at least one (1) senior supply chain management practitioner and at least one (1) technical expert both of whom shall be Officials of the Municipality if the Municipality has such officials.

- 3.2 No Councillor may be a member of the Committee nor attend any meeting of the Committee as an observer.
- 3.3 The Accounting Officer shall designate any member of the Committee as Chairperson and any other member as vice-Chairperson who shall act as a Chairperson of the Committee when the Chairperson is absent or is unable to perform his or her duties, and when both the Chairperson and vice-Chairperson are absent from a meeting of the Committee, the members present thereat may elect one of their number to preside at such meeting.
- 3.4 The term of office of each member shall be at the pleasure of the Accounting Officer.
- 3.5 If required, any vacancy shall be filled by the appointment of a further member by the Accounting Officer.

4. POWERS AND DUTIES OF THE COMMITTEE

- 4.1 Having regard to the provisions of Section 14 of the MFMA, the Regulations promulgated thereunder and the powers reserved for a decision by the Municipal Council, the Committee's function shall be to evaluate tenders, contracts or other bids and/or objections thereto in relation to the transfer of and the granting of rights to use, control or manage immovable capital assets by the NMBMM and to make a recommendation to the Accounting Officer to make a final award or to make another recommendation to the Accounting Officer as to how to proceed with the relevant transaction and to evaluate and make recommendations to the Accounting Officer relative to any intended acquisition of immovable capital assets by the NMBMM in accordance with 4.17.

- 4.2 The Committee shall be entitled to make such procedural rules as may be appropriate to facilitate their functions and powers provided such rules are not in conflict with the MFMA, the regulations promulgated thereunder, or the Policy.
- 4.3 The Committee shall not be entitled to determine the nature of any particular type of process adopted in relation to the method of transfer of or the granting of rights to use, control or manage any particular immovable capital asset but shall be obliged to report to the Accounting Officer and make such recommendations as it deems fit should it be of the opinion that any particular type of process adopted in relation to the transfer of or the granting of rights to use, control or manage under consideration is not fair, equitable, transparent, competitive and consistent with the Supply Chain Management Policy.
- 4.4 In the instance of the evaluation of an unopposed unsolicited bid, the Committee shall, prior to the evaluation thereof, first establish from the Housing and Land Directorate of the NMBMM that the transaction has, prior to submission to the Committee, been advertised for interested parties to participate in competing for the transaction or to object thereto. Should no response to the advertisement for expressions of interest or objections have been received, the unsolicited bid shall be recommended for award by the Accounting Officer subject to Section 14(2) of the MFMA and subject to the Committee being of the opinion that the process followed in relation to the transaction has been in compliance with Section 14(5) of the MFMA.
- 4.5 Any transaction to be evaluated by the Committee where multiple parties have expressed interest or where objections to the particular transaction have been noted shall be evaluated by the Committee in light of such competing expressions of interest and/or objections subject to the Committee being satisfied that the process followed in relation to the envisaged transaction has been fair, equitable, transparent, competitive and consistent with the Supply Chain Management Policy.
- 4.6 The Committee shall take cognizance of and abide by any pre-qualification criteria imposed in relation to any particular matter under consideration provided such pre-qualification criteria have been open and transparent.

- 4.7 The Committee shall not consider any contract, tender or bid submitted otherwise than in accordance with approved documentation applicable in each particular instance or in the event of such documentation not having been completed in all required respects.
- 4.8 The opening, registering and recording of competing contracts, tenders or bids shall take place in public and shall be opened at the same time or as soon as possible after the period for the submission of such competing contracts, tenders or bids has expired.
- 4.9 The Committee shall be obliged, if required, to read out the names of persons submitting competing contracts, tenders or bids and, if practical, the total consideration offered by such persons in respect of any particular transaction
- 4.10 The Committee shall exclude contracts, tenders and/or bids submitted by persons where a conflict of interest has been disclosed on the submitted documentation or is apparent and a record of such excluded contracts, tenders and/or bids shall be submitted to the Accounting Officer together with the Committee's recommendation.
- 4.11 All contracts, tenders and/or bids and objections shall be considered in accordance with the Policy and, where applicable, the Conditions of Tender and, where applicable, the Sworn Statements submitted by interested parties.
- 4.12 In evaluating any particular transaction the Committee shall take cognizance of:
- 4.12.1 The Fair Market Value of the immovable capital asset; and
 - 4.12.2 The Fair Market Value of the immovable capital asset as considered in accordance with Section 14(2) of the MFMA should the Municipal Council have already considered the matter in terms of Section 14(2) at the time of its evaluation; and

- 4.12.3 Any perceived interest of the public or the plight of the poor in relation to the specific transaction; and
- 4.12.4 Any economic and/or community value in relation to the transaction or attributed to any person and/or the demands of the public interest or plight of the poor as same may influence the value of the immovable capital asset as determined by the Council of the NMBMM.
- 4.12.5 Whether the particular transaction has been referred back to the Committee for re-evaluation pursuant to the termination of any recommended award.
- 4.13 The Accounting Officer may at any stage of the process envisaged herein, refer any recommendation of the Committee back to the Committee for reconsideration of the recommendation.
- 4.14 Any award of a contract, tender or bid by the Accounting Officer pursuant to a recommendation of the Committee shall be subject to the prior compliance with Section 14(2) of the MFMA.
- 4.15 In the event of any dispute in relation to the recommendation of the Committee, the Accounting Officer shall appoint an independent and impartial person not directly involved in the supply chain management processes of the NMBMM:
- 4.15.1 to assist in the resolution of such dispute; or
- 4.15.2 to deal with any objections, complaints or enquiries regarding the recommendation of the Committee or any matters arising from any particular transaction;

which objections, complaints or enquiries shall be lodged in writing with the Accounting Officer within fourteen (14) days of the recommendation of the Committee or the action objected to.

- 4.16 All powers and duties of the Committee shall be conducted by its members impartially and without prejudice and shall be untainted by personal self-interest.
- 4.17 Where it is the intention of the NMBMM to acquire an immovable capital asset and the Accounting Officer has confirmed, in writing, that the official procurement processes established in terms of the Supply Chain Management Policy have been dispensed with in accordance with Regulation 36 of the MFMA, the function of the Committee shall be to evaluate the intended acquisition in relation to the Fair Market Value of the immovable capital asset and to confirm, in writing, to the Accounting Officer that it is of the opinion that the intended acquisition and process relative thereto has and will be fair, equitable, transparent and costs effective and shall further make such recommendation to the Accounting Officer as it deems meet in relation to any objections received relative to the intended acquisition.

Where the official procurement processes established in terms of the Supply Chain Management Policy have not been dispensed with in relation to the intended acquisition, the intended acquisition shall be referred to the Acquisition Committee for evaluation.

5. MEETINGS OF THE COMMITTEE

- 5.1 The meetings of the Committee shall be held at such times and places as the Chairperson may determine or the Accounting Officer may direct.
- 5.2 If the Chairperson for any reason does not attend any meeting of the Committee, the vice-Chairperson shall preside, whom failing, the members present thereat shall elect one of their number to preside at that meeting.

- 5.3 The Chairperson, or the other person presiding at a meeting of the Committee, shall determine the procedure at such meeting.
- 5.4 The decision of the majority of members present at any meeting of the Committee, shall constitute a decision of the Committee.
- 5.5 Three (3) members of the Committee shall constitute a quorum for any meeting of the Committee.
- 5.6 In the event of an equality of votes in regard to any matter, the Chairperson of the Committee, or the person elected under subsection (2) as Chairperson for the meeting concerned, shall in addition to his or her deliberative vote have casting vote.
- 5.7 The proceedings of the Committee shall not be invalid merely by reason of the existence of a vacancy on the Committee.
- 5.8 Any member of the Committee having a direct or indirect interest in any particular transaction shall immediately disclose such interest to the Chairperson of the Committee and the Accounting Officer in writing and shall withdraw from the sitting of the Committee in relation to the particular transaction and shall have no vote thereat.
- 5.9 The Accounting Officer shall be entitled to appoint a neutral or independent observer to attend and/or oversee any meeting of the Committee when appropriate to ensure fairness and promoting transparency.

6. RECOMMENDATIONS OF THE COMMITTEE

- 6.1 All recommendations of the Committee shall be submitted to the Accounting Officer and, where practical, within three (3) months of closure of any advertisement pertaining to the particular transaction.
- 6.2 Any recommendation of the Committee shall be based on fairness, equitability, transparency, competitiveness and shall be consistent with the Supply Chain Management Policy.
- 6.3 All recommendations of the Committee or decisions unlawfully or improperly made, taken or influenced, including recommendations or decisions that were made, taken or in any way influenced by Councillors in contravention of the Code of conduct for Councillors or Municipal Officials in contravention of the Code of conduct for Municipal Staff Members shall be invalidated by the Accounting Officer.

7. GENERAL

- 7.1 No person shall amend or tamper with any tenders, quotations, contracts or bids after their submission to the Committee.
- 7.2 No person shall interfere with the functioning of the Committee.
- 7.3 The Committee shall, at all times, operate within the framework of the Supply Chain Management Policy.
- 7.4 No member of the Committee shall accept any Gratification, whether directly or indirectly in relation to any transaction evaluated, being evaluated or to be evaluated by the Committee and shall immediately report any offer or proposal of such Gratification or Inducement to the Accounting Officer who shall be entitled to exclude such member from attending any meeting pertaining to the particular transaction or voting thereat.

7.5 No member of the Committee shall Induce another member to act, evaluate or make a recommendation in any particular manner, nor shall any member offer any Gratification to any other member to act, evaluate or make a recommendation in any particular manner.

8. IMPLEMENTATION

8.1 The Accounting Officer shall ensure that the Committee is timeously established and the members thereof timeously appointed so as to ensure the effective functioning of the Committee.

8.2 The Accounting Officer shall take all reasonable steps to ensure that proper mechanisms and separation of duties in the Supply Chain Management System of which the Committee forms a part, are in place to minimize the likelihood of fraud, corruption, favoritism and unfair or irregular practices.

8.3 The Accounting Officer shall designate an appropriately qualified person to deal with all Appeals against any recommendation of the Committee, which Appeal shall be noted within fourteen (14) days of the recommendation of the Committee.
