



MSINGA LOCAL MUNICIPALITY

PROPERTY MANAGEMENT POLICY

Name of Document:	Lease Management Policy
Council Approval Date:	25/ 05/ 2019
Effective Date:	01/ 07 / 2019
Document Review Date:	/ 05 / 2020
Implementation Responsibility:	Corporate Services

1. Purpose of the Policy

The purpose of this Policy is to provide a procedural and management framework for leasing of all municipally owned properties or immovable assets in accordance with Umsinga Municipal Supply Chain Management Policy, Local Government: Municipal Financial Management Act 2003 and associated regulations (Municipal Supply Chain Management Regulations). In the event that any provision of this Policy is found to be contradictory to any law, such law shall take precedence over such provision.

2. Objectives and High Level Principles

The Leasing Policy will:

2.1.1. Facilitate equitable access to the municipality's immovable assets by applying the contents of section 217 of the Constitution of South Africa (which states that government procurement must be in accordance with a system which is fair, equitable, transparent, competitive and cost-effective).

2.1.2. Enable lease transactions and leases to be processed in a legislatively compliant yet efficient manner.

2.1.3. Secure future financial gains for the municipality.

2.1.4. Support the Municipality's social and environmental agendas by making provision for residents pursuing social and environmental activities to be granted access to municipal properties e.g. management of Sports, Recreation, Arts and Culture and Health and Social Development Department leases at affordable rates.

2.1.5. Support Umsinga municipal economic development imperatives by:

- (a) Facilitating the expedited processing of leases with developmental impact.
- (b) Aligning development with the strategic plans of the municipality.

2.1.6. Assist with the upkeep of properties in the portfolio insofar as maintenance requirements may be stipulated in rental agreements.

2.1.7. Provide a practical framework for the managing and letting of municipality's Immoveable Property.

3. Definition of Terms

3.1.1 **Municipality** shall mean Umsinga Municipality

3.1.2. **Bid** means an offer to lease a property from Umsinga Municipality at a specified rental.

3.1.3. **Bidder** means any person offering to lease a property owned by Umsinga Municipality

3.1.4. **Accounting Officer** shall mean the Municipal Manager of the Umsinga Municipality or his or her delegate.

3.1.5. **Council** shall mean the Council of Msinga municipality

3.1.6. **Custodian Department** shall mean the Umsinga Municipal department accountable for the optimal management, deployment and maintenance of the Umsinga Municipal immovable properties (assets) under its control in accordance with applicable legislation and policy.

3.1.7. **Expense Lease Agreements** shall mean Lease Agreements entered into between Umsinga municipality and owners of privately owned land or buildings where Umsinga municipality is the Lessee.

3.1.8. **In principle approval** shall mean a decision taken by the Council, or if the decision making powers have been delegated to the Municipal Manager or delegatee, in terms of Regulation 34 of the MATR to grant the rights to use municipality's owned immovable property or asset.

3.1.9. **Lease Agreement** shall mean a contract between a Lessor and Lessee that allows the Lessee rights to the use of a property owned or managed by the Lessor for a period of time. The agreement does not provide ownership rights to the Lessee; however, the Lessor may grant certain allowances to modify, change or otherwise adapt the property to suit the needs of the Lessee.

3.1.10. **Lease Commencement Date** shall mean the first day of the month following the final signature of the Lease Agreement by both Parties and any other date as may be agreed between the municipality and the lessee.

3.1.11. **Lease End Date** shall mean the last day of the Lease Period as stipulated in the Lease Agreement or the Lease Termination Date whichever comes first.

3.1.12. **Lease Period** shall mean the period of months/ years stipulated in the Lease Agreement commencing on the Commencement Date and expiring at either the Lease End Date or the Lease Termination Date, whichever comes first. The Lease period shall be a continuous period not linked to Umsinga municipality's financial periods.

3.1.13. **Lease Termination Date** shall mean the date on which the Lease Agreement has been cancelled prior to the Lease End Date.

3.1.14. **Lessor** shall mean Umsinga Municipality

3.1.15. **Lessee** shall mean the user of Umsinga municipality immovable property.

3.1.16. **Long Term Lease** shall mean a Lease Agreement entered into between Umsinga municipality and a Lessee of which the lease period is longer than five (5) years but less than 10 years, excluding the renewal period.

3.1.17. **MFMA** means the Local Government Municipal Finance Management Act, No 56 of 2003 including any Regulations promulgated in terms thereof, as amended from time to time.

3.1.18. **Option to Renew** shall mean the opportunity provided to an existing Lessee to renew a Lease Agreement for a further period to be negotiated between the Lessor and Lessee.

3.1.19. **Permission to Occupy** shall mean permission granted by the Municipal Manager or his delegatee in the prescribed form to any person or organization or organ of state to occupy a specified Property or portion thereof for a specific purpose and for a predefined period.

3.1.20. **Policy** shall mean the Leasing Policy for Municipally Owned Immovable Property.

3.1.21 **Property** shall mean any immoveable Property or asset acquired or owned by Umsinga Municipality.

3.1.22. **Rental** shall mean the applicable rental payable by a Lessee as determined by the municipality on a monthly or annual basis including any rental discounts (if applicable).

4. Legislative and Governance Framework

This policy must be read in conjunction with the latest versions (including amendments) of the following legislation and regulations.

4.1 Constitution of RSA, 1996, as amended.

4.2 Umsinga municipal Supply Chain Management Policy,

4.3 Local Government: Municipal Finance Management Act, 56 of 2003 Sections 14, 90 and 33 (MFMA).

4.5 Umsinga Municipal Asset Management Policy

4.6 Local Government: Municipal Systems Act, 2000.

5. Responsibilities

5.1 The Corporate Services Department is the custodian of this policy. The Director of Corporate Services in conjunction with the relevant Divisional Heads shall be responsible for the implementation of the policy as well as the monitoring of adherence thereof. Said department is to be contacted for clarification of the content of the policy if such a need exists.

5.2 The afore-mentioned officials shall also be responsible for the revision of the policy, as and when required, to ensure that the policy addresses the challenges it was designed to remedy.

6. The Rights to Use, Control or Manage Umsinga Municipal Owned Immoveable Assets

6.1 General principles and guidelines pertaining to the letting by Council of Immoveable Property

6.1.1 Where possible, Council's Immoveable Property should be managed as a sustainable resource by leveraging environmental, social and economic returns on such Immoveable Property while Council retains ownership thereof.

6.1.2 Immoveable Properties that have been let shall be inspected at reasonable time periods to ensure compliance with the terms and conditions of the agreement of lease.

6.1.3 Council reserves the right, where necessary, to resume Immoveable Property let, or a portion thereof, and to cancel an existing lease in its entirety where such Immoveable Property is required for operational purposes, in pursuance of Council's strategic objectives or in the interests of the community.

7. Framework for Lease Processing

Elements of a Lease

All the essential requirements listed below must exist simultaneously to constitute a valid lease of Umsinga Municipality's owned immoveable Property or asset.

7.1.1 The parties to the agreement i.e. the Lessor and the Lessee; where the Lessee is obliged to pay monthly rentals to the Lessor, and the Lessor provide the right to use the property to the Lessee.

7.1.2 The correct legal description of the subject immoveable property and its locality; and

7.1.3 Applicable rental which must be market related unless the lease is in the public interest or the plight of the poor demands otherwise, or an outdoor / out of home advertising lease;

7.1.4 Annual rental escalation percentage which must be agreed upon and noted in the Lease Agreement and must be in line with market related rental escalations.

8. USE OF PREMISES

The Lessee shall use the premises for business purposes only and for no other whatsoever without prior written consent of the Lessor.

9. ACTIVITIES CONDUCTED ON THE LEASED PREMISES

In the event of the Lessee understanding, or permitting to be undertaken, any activities.

In or on the leased premises, which constitutes:

- (1) A breach of the peace and/or
- (2) Disturbance of the amenities and/or enjoyment of the other person resident or employed in the general area and/or
- (3) Conduct which is inappropriate or undesirable in or on the premises under the control of the municipality

The municipality shall have the right to call the Lessee, in writing, to desist immediately, failing which such failure shall constitute a breach of the lease agreement.

10. DOMESTIC SERVICE CHARGES

10.1 The municipality shall be liable for the payment, direct to the competent authority, of charges for sanitation, and refuse removals.

10.1 The Lessee shall be liable for the payment to the Lessor for any interruption or failure of any Municipal or other services to the premises irrespective of course thereof, unless due to the negligence of the Lessor.

11. SUBLETING OR CESSION OF LEASE

The Lessee shall not cede, sub-let, mortgage or assign this lease or any of the rights held by it hereunder without having obtained the prior written approval of the Lessor.

12. MAINTENANCE OF LEASED PREMISES

12.1 The municipality shall be responsible for the structural maintenance of the premises during the currency of this lease. Structural maintenance of the premises during the currency of this leases. Structural maintenance shall include maintenance of the building structure, water, reticulation, sewerage system and all fire-fighting equipment and portable fire extinguishers as well as electrical and mechanical installations which form an integral part of the building including, inter alia:

- a). The air-conditioning and heating units
- b). Security access points
- c). Any other electrical appliance or installation forming an integral part of the building and grounds

12.2 the Lessee shall notify the municipality of any structural defects in the leased premises as soon as the defects are discovered and the municipality shall be obliged to have such defects repaid, such repair to commence within (21) twenty-one days of the notice. The structural defects referred to in this sub-clause are limited to the existing structure and its fixtures and in no way, can the Lessee shall be obliged to pay in securing suitable alternative premises of similar extent and quality.

12.3 If the municipality fails to commence the effecting of the necessary repairs to the structure of the leased premises or to the fixture thereto within the stipulated period of 21 days, the Lessee shall have the right to terminate the lease for with and to claim from the, who shall pay to the Lessee, any additional rental that the Lessee shall be obliged to pay in securing suitable alternative premises of similar extent and quality.

12.4 Alternatively, the Lessee shall have the right to have the necessary repairs affected in which ever manner necessary and offset such costs against the rental.

12.5 The Lessee shall, to the satisfaction of the Lessor, during the currency of this lease maintain the interior of the premises in a clean and tidy condition and in a good and proper state of repair. Damage or deterioration caused by the willful or negligence act or omission on the part of the Lessee or its clients shall be made good by the Lessee to the satisfaction of the Lessor.

12.6 If the Lessee fails to repair or rectify such damage or deterioration as mentioned in sub-paragraph 12.5 above within one month of its occurrence, the Lessor shall have the right to terminate the lease forthwith.

12.7 Upon termination of the lease, the Lessee undertakes to return the premises to the Lessor in the same good order and condition, fair wear and tear excepted.

13. RIGHT OF INSPECTION

The Lessor may at any reasonable time, by an authorized municipal official, enter upon the premises hereby leased or any portion thereof, for the purpose of inspection.

14. ANNUAL ESCALATION OF RENTAL AMOUNTS

14.2 Unless expressly otherwise indicated, all Lease Agreement shall be subject to an annual escalation to be determined by the Council, the municipal manager or his delegatee. Such rate shall be in the tariffs policy and shall be determined prior to the conclusion of the Lease Agreement at a fixed percentage for the duration of the lease period.

14.3 The Director of Corporate Services shall however, have the discretion to review the annual escalation percentage in respect of long term Lease Agreements at three (3) yearly intervals during the lease period and submit the proposal to the Council for approval.

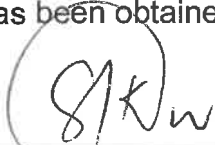
15 NON-PAYMENTS OF RENTAL

11.5.8.1 All Lessees who are in default with regards to the payment of their monthly or annual rental will be dealt with in terms of the Council's Credit Control and Debt Collection By-laws. This include handing them over to Corporate Legal Services. The Municipality has full right to terminate contract if the lessee fails to abide itself with rental payments.

16 REVIEW AND APPROVAL

16.1 The policy will be reviewed on the annual bases by the council of uMsinga Municipality.

16.2 the policy will be effective for implementation once the approval of the council has been obtained.



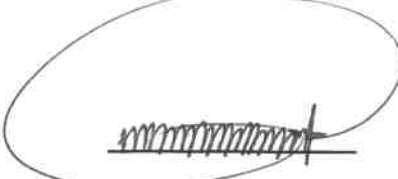
SL SOKHELA

MUNCIPAL MANAGER

2019/05/29

APPROVED

DATE



CLLR TL KUNENE

SPEAKER

APPROVED BY COUNCIL

