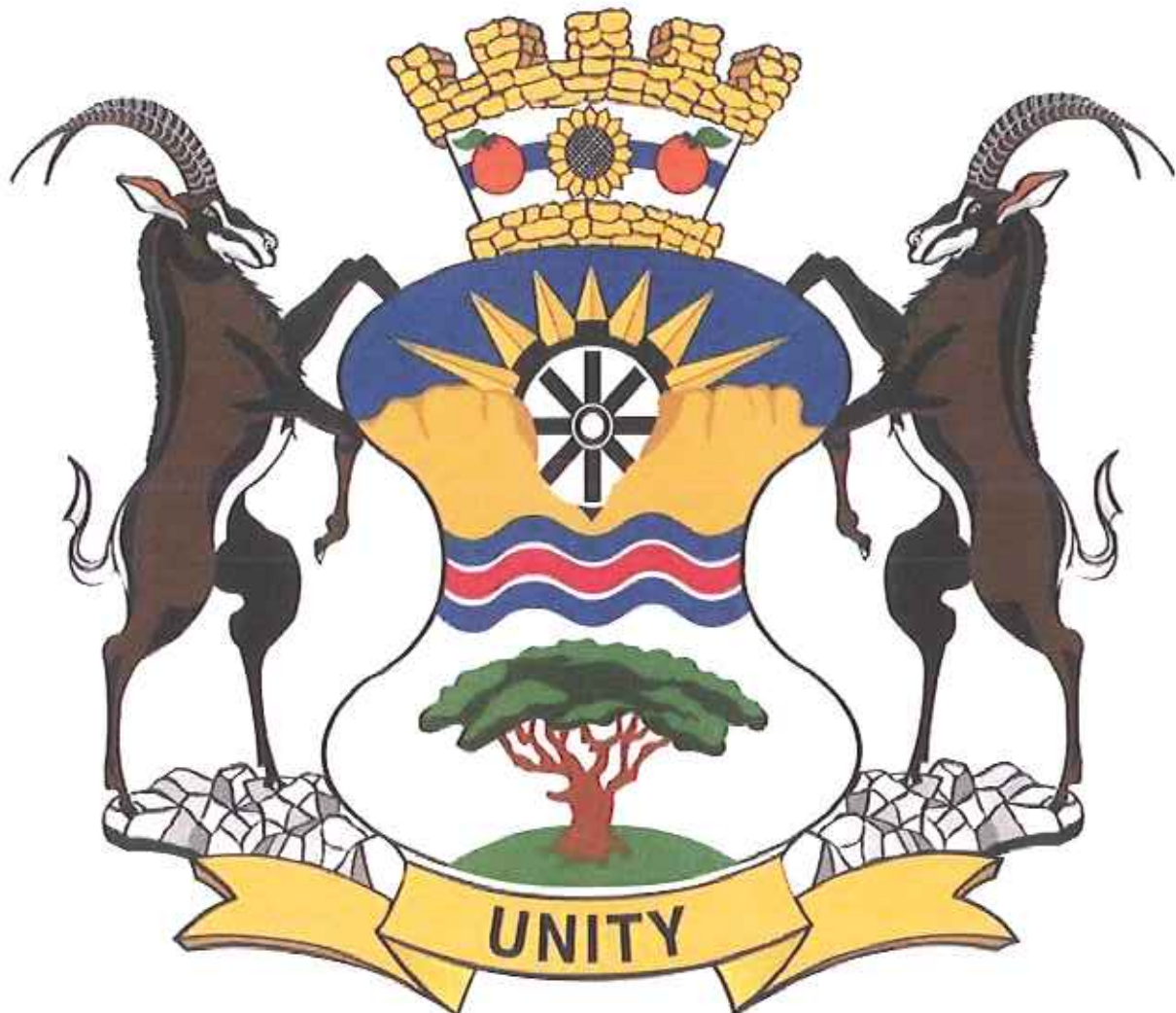


RUSTENBURG

LOCAL MUNICIPALITY



POLICY ON BORROWING

PREAMBLE

- (1) **WHEREAS** section 230A of the Constitution of the Republic of South Africa, 108 of 1996 (hereafter "the Constitution") permits the Rustenburg Local Municipality (hereafter "the Municipality") to raise loans in accordance with national legislation;
- (2) **AND WHEREAS** Chapter 6 of the Local Government: Municipal Finance Management Act, Act 56 of 2003 (hereafter "the MFMA") prescribe inter alia the type of debt and the conditions under which the Municipality may occur debt;
- (3) **AND WHEREAS** the Council of the Municipality wishes to stipulate the administrative arrangements regulating and governing the taking up of short-term and long-term debt;

NOW THEREFORE, the Municipality adopts the following Borrowing Policy to set out the objectives, statutory requirements and guidelines for the borrowing of funds.

THE RUSTENBURG LOCAL MUNICIPALITY: POLICY ON BORROWING

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CHAPTER 1

INTRODUCTORY PROVISIONS

1. DEFINITIONS

- (1) In this policy, except where the context otherwise indicates, or it is expressly stipulated otherwise, the following words and expressions shall have the respective meanings assigned to them hereunder, and words and expressions to which a meaning has been assigned in terms of the provisions of the MFMA, will have a corresponding meaning assigned thereto in terms of the said act. All headings are included for convenience only and shall not be used in the interpretation of any of the provisions of this policy.

NO.	WORD/EXPRESSION	DEFINITION
"A"		
1.1	"Accounting Officer"	Means the Municipal Manager appointed in terms of section 60 of the MFMA.
1.2	"annual budget"	Means the budget approved by the Council of the Municipality for any particular financial year, and shall include any adjustments to such a budget.
1.3	"annually"	Means once every financial year.
"B"		
1.4	"basic municipal service"	Means a municipal service necessary to ensure an acceptable and reasonable quality of life, which service, if not provided, would endanger public health or safety or the environment.
"C"		
1.5	"creditor"	In relation to a municipality, means a person to whom money is owing by the municipality.
1.6	"Chief Financial"	Means a person designated in terms of section 80(2)(a) of

	Officer"	the MFMA.
1.7	"Constitution"	Means the Constitution of the Republic of South Africa, 108 of 1996.
1.8	"Council"	Means the Municipal Council of the Municipality as referred to and constituted in terms of the provisions of section 157 of the Constitution.
"D"		
1.9	"debt"	Means: (a) a monetary liability or obligation created by a financing agreement, note, debenture, bond or overdraft, or by the issuance of municipal debt instruments; or (b) a contingent liability such as that created by guaranteeing a monetary liability or obligation of another.
1.10	"delegation"	In relation to a duty, includes an instruction or request to perform or to assist in performing the duty.
"E"		
1.11	"equitable share"	Means an allocation made by the National Government during a financial year, in its fiscal allocation, gazetted through the Division of Revenue Act, Act 5 of 2012 (hereinafter "the DORA") in order to assist municipalities to fund various expenses including expenses such as free basic services.
"F"		
1.12	"financial year"	Means the period starting from 1 July in any year and ending on 30 June of the following year.
"L"		
1.13	"lender"	In relation to a municipality, means a person who provides debt finance to a municipality.
1.14	"long-term debt"	Means debt repayable over a period exceeding one year.
"M"		

1.15	"Mayor"	Means, in terms of the provisions of section 1 of the MFMA, in relation to a municipality with an executive mayor, the councillor elected as the executive mayor of the municipality in terms of section 55 of the Structures Act.
1.16	"Municipal Finance Management Act" or "MFMA"	Means the Local Government: Municipal Finance Management Act, Act 56 of 2003 and the regulations promulgated in terms of this act.
1.17	"Municipality"	<p>Means the RUSTENBURG LOCAL MUNICIPALITY (also referred to as "RLM") a local government and legal entity with full legal capacity as contemplated in section 2 of the Systems Act read with the provisions of Chapter 7 of the Constitution and sections 12 and 14 of the Structures Act, with its main place of business and the offices of the Municipal Manager, as envisaged in terms of the provisions of section 115(3) of the Systems Act, at: Missionary Mpheni House, CNR NELSON MANDELA & BEYERS NAUDE STREET, RUSTENBURG, NORTH WEST PROVINCE, and may, depending on the context, include:</p> <ul style="list-style-type: none"> (a) its successor in title; or (b) a functionary, employee or official exercising a delegated power or carrying out an instruction, in the event of any power being delegated as contemplated in terms of the provisions of section 59 of the Systems Act, or exercising any lawful act in the furtherance of the Municipality's duties, functions and powers; or (c) an authorised service provider fulfilling a responsibility assigned to it by the Municipality through a service delivery agreement.
1.18	"municipal service" or "services"	<p>Means a service that a municipality in terms of its powers and functions provides or may provide to or for the benefit of the local community irrespective of whether –</p> <ul style="list-style-type: none"> (a) such service is provided or to be provided by the Municipality through an internal mechanism contemplated in section 76; and

		(b) fees, charges or tariffs are levied in respect of such service or not.
1.19	"municipal tariff" / "tariff"	Means a fee, charge or tariff for services which the Municipality may set for the provision of a municipal service to the local community, and includes a surcharge on such fee, charge or tariff.
"S"		
1.20	"security"	Means any mechanism intended to secure the interest of a lender or investor, and includes any of the mechanisms mentioned in section 48(2) of the MFMA.
1.21	"short-term debt"	Means debt repayable over a period not exceeding one year.
1.22	"Structures Act"	Means the Local Government: Municipal Structures Act, Act 117 of 1998 and promulgated regulations in line with the Act.
1.23	"Systems Act"	Means the Local Government: Municipal Systems Act, Act 32 of 2000, as amended, by Act 44 of 2003 and any promulgated Regulations in line with the Act.

2. AIM AND PURPOSE

- (1) The Municipality, as a custodian of public funds, has an obligation to see to it that cash resources are managed as effectively as possible. Council has a responsibility to spend public funds with great care and are liable to the community in that regard.
- (2) The purpose of this policy is:
 - (a) to establish a borrowing framework and guidelines for the Municipality for the borrowing of funds;

- (b) to ensure that borrowing forms part of the financial management procedure of the Municipality and that prudent borrowing procedures are applied consistently;
- (c) to ensure that the funds are obtained at the lowest possible interest rate at minimum risk, within the parameters of authorised borrowings;
- (d) to ensure compliance with statutory requirements and National Treasury borrowing regulations; and
- (e) to maintain financial sustainability.

3. TITLE AND APPLICATION

- (1) This policy is known as the Policy on Borrowing of the Municipality and is applicable to the municipal area of the Municipality.
- (2) This policy revokes all previous policies, decisions and/or *ad hoc* clauses within any other policy, regarding the subject matter of this policy.

4. COMMENCEMENT AND VALIDITY

This policy shall come into full force and effect upon the acceptance thereof by the Council of the Municipality by resolution.

5. RESPONSIBLE AUTHORITY

- (1) The responsible authority for the adoption and implementation of this policy is the Municipality, and where applicable the Council of the Municipality.

- (2) The Municipal Manager of the Municipality, as Accounting Officer, is in terms of the provisions of Chapter 8 of the MFMA responsible for managing the financial administration of the Municipality which inter alia includes the implementation of this policy.

6. DELEGATIONS OF POWER

- (1) The Accounting Officer of the Municipality must develop an appropriate system of delegations that will both maximise administrative and operational efficiency and provide adequate checks and balances in the Municipality's financial administration.
- (2) The Accounting Officer of the Municipality may, in accordance with the provisions of section 79 of the MFMA, delegate to a member of the Municipality's top management or any other official of the Municipality:
- (a) any of the powers or duties assigned to him/her in terms of the MFMA;
 - (b) any powers or duties reasonably necessary to assist him/her in complying with a duty which requires him/her to take reasonable or appropriate steps to ensure the achievement of the aims of a specific provision of the MFMA.
- (3) The Accounting Officer must regularly review delegations issued and, if necessary, amend or withdraw any of those delegations.
- (4) All delegation in terms of this policy:
- (a) must be in writing;
 - (b) is subject to such limitations and conditions as the Accounting Officer may impose in a specific case;

- (c) may either be to a specific individual or to the holder of a specific post in the Municipality; and
- (d) does not divest the Accounting Officer of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

7. POLICY OBJECTIVES

The objectives of this policy of the Municipality are to:

- (1) Enable the Municipality to exercise its obligations to ensure sufficient cash resources to implement its capital programme in the most effective manner.
- (2) Maintain debt within specified limits and ensure adequate provision for the repayment of debt and debt repayment to be sustainable.
- (3) Manage interest rate and credit risk exposure.
- (4) Ensure that all and any occurring of debt by the Municipality are made with great care, skill, prudence and diligence.

8. LEGISLATIVE FRAMEWORK

- (1) This policy is designed and must be implemented within the framework of *inter alia* the following legislation:
 - (a) The Constitution of the RSA, 1996;
 - (b) Local Government: Municipal Systems Act, Act 32 of 2000 as amended;
 - (c) Local Government: Municipal Finance Management Act, Act 56 of 2003; [and](#)
 - (d) Local Government: Municipal Regulations and Debt Disclosure published under GN R 492 in Government Gazette 29966 of 15 June 2007.

- ~~(e) Municipal Budget and Reporting Regulations for the MFMA published in Government Gazette 32141 dated 17 April 2009; and~~
- ~~(f) MFMA Circular no 49 on Non-payment of Obligations dated 30 June 2009~~

9. SHORT-TERM DEBT AND LONG-TERM DEBT

(1) Short-term Debt

- (a) A short term debt is a debt repayable by the Municipality over a period not exceeding 1 (one) year.
- (b) The Municipality may incur short-term debt only in accordance with and subject to the provisions of section 45 the MFMA and only when necessary to bridge:
 - (i) shortfalls within a financial year during which the debt is incurred, in expectation of specific and realistic anticipated income to be received within that financial year; or
 - (ii) capital needs within a financial year, to be repaid from specific funds to be received from enforceable allocations or long-term debt commitments.
- (c) The Municipality may incur short-term debt only if:
 - (i) a resolution of the Municipal Council, signed by the Mayor, has approved the debt agreement; and
 - (ii) the Accounting Officer has signed the agreement or other document which creates or acknowledges the debt.
- (d) For the purpose of obtaining a resolution to incur short-term debt, the Council may:
 - (i) approve a short-term debt transaction individually; or

- (ii) approve an agreement with a lender for a short-term credit facility to be accessed as and when required, including a line of credit or bank overdraft facility, provided that:
 - (aa) the credit limit must be specified in the resolution of the Council;
 - (bb) the terms of the agreement, including the credit limit, may be changed only by a resolution of the Council; and
 - (cc) if the Council approves a credit facility that is limited to emergency use, the Accounting Officer must notify the Council in writing as soon as practical of the amount, duration and cost of any debt incurred in terms of such a credit facility, as well as options for repaying such debt.
- (e) The Municipality:
 - (i) must pay off short-term debt within the financial year; and
 - (ii) may not renew or refinance short-term debt, whether its own debt or that of any other entity, where such renewal or refinancing will have the effect of extending the short-term debt into a new financial year.
- (f) No lender may wilfully extent credit to the Municipality for the purpose of renewing or refinancing short-term debt that must be paid off within the financial year. If a lender wilfully extends credit to the Municipality in contravention with the beforementioned, the Municipality is not bound to repay the loan or interest on the loan.

(2) Long-term Debt

- (a) A long term debt is a debt repayable by the Municipality over a period exceeding 1 (one) year.

- (b) The Municipality may incur long-term debt only in accordance with and subject to the provisions of section 46 of the MFMA and only for the purpose of:
 - (i) capital expenditure on property, plant or equipment to be used for the purpose of achieving the objects of local government as set out in section 152 of the Constitution, including costs referred to in sub-paragraph (e) below; or
 - (ii) re-financing existing long-term debt subject to sub-paragraph (f) below.
- (c) The Municipality may incur long-term debt only if:
 - (i) a resolution of the Council, signed by the Mayor, has approved the debt agreement; and
 - (ii) the Accounting Officer has signed the agreement or other document which creates or acknowledges the debt.
- (d) The Municipality may incur long-term debt only if the Accounting Officer of the Municipality:
 - (i) has, in accordance with section 21A of the Systems Act:
 - (aa) at least 21 (twenty one) days prior to the meeting of the Council at which approval for the debt is to be considered, made public an information statement setting out particulars of the proposed debt, including the amount of the proposed debt, the purposes for which the debt is to be incurred and particulars of any security to be provided; and
 - (bb) invited the public, the National Treasury and the relevant provincial treasury to submit written comments or representations to the Council in respect of the proposed debt; and
 - (cc) has submitted a copy of the information statement to the Municipal Council at least 21 (twenty one) days

prior to the meeting of the Council, together with particulars of:

(aaa) the essential repayment terms, including the anticipated debt repayment schedule; and

(bbb) the anticipated total cost in connection with such debt over the repayment period.

(e) Capital expenditure contemplated in sub-paragraph (b) above may include:

(i) financing costs, including:

(aa) capitalised interest for a reasonable initial period;

(bb) costs associated with security arrangements in accordance with section 48 of the MFMA;

(cc) discounts and fees in connection with the financing;

(dd) fees for legal, financial, advisory, trustee, credit rating and other services directly connected to the financing; and

(ee) costs connected to the sale or placement of debt, and costs for printing and publication directly connected to the financing;

(ii) costs of professional services directly related to the capital expenditure; and

(iii) such other costs as may be prescribed.

(f) The Municipality may borrow money for the purpose of re-financing existing long-term debt, provided that:

(i) the existing long-term debt was lawfully incurred;

(ii) the re-financing does not extend the term of the debt beyond the useful life of the property, plant or equipment for which the money was originally borrowed;

- (iii) the net present value of projected future payments (including principal and interest payments) after re-financing is less than the net present value of projected future payments before re-financing; and
 - (iv) the discount rate used in projecting net present value referred to above, and any assumptions in connection with the calculations, must be reasonable and in accordance with criteria set out in a framework that may be prescribed.
- (g) The Municipality's long-term debt must be consistent with its capital budget referred to in section 17(2) of the MFMA.

(3) Conditions applying to both short-term and long-term debt

- (a) Both short-term and long-term debt may be incurred by the Municipality only if:
 - (i) the debt is denominated in Rand and is not indexed to, or affected by, fluctuations in the value of the Rand against any foreign currency; and
 - (ii) section 48(3) of the MFMA, regarding assets secured required for providing basic municipal services, has been complied with, if security is to be provided by the Municipality.

(4) Security

- (a) The Municipality may, by resolution of the Council, provide security for:
 - (i) any of its debt obligations;
 - (ii) any debt obligations of a municipal entity under its sole control; or
 - (iii) contractual obligations of the Municipality undertaken in connection with capital expenditure by other persons on

property, plant or equipment to be used by the Municipality or such other person for the purpose of achieving the objects of local government in terms of section 152 of the Constitution.

- (b) The Municipality may in terms of sub-paragraph (a) above provide any appropriate security, including by:
- (i) giving a lien on, or pledging, mortgaging, ceding or otherwise hypothecating, an asset or right, or giving any other form of collateral;
 - (ii) undertaking to effect payment directly from money or sources that may become available and to authorise the lender or investor direct access to such sources to ensure payment of the secured debt or the performance of the secured obligations, but this form of security may not affect compliance with section 8(2) of the MFMA;
 - (iii) undertaking to deposit funds with the lender, investor or third party as security;
 - (iv) agreeing to specific payment mechanisms or procedures to ensure exclusive or dedicated payment to lenders or investors, including revenue intercepts, payments into dedicated accounts or other payment mechanisms or procedures;
 - (v) ceding as security any category of revenue or rights to future revenue;
 - (vi) undertaking to have disputes resolved through mediation, arbitration or other dispute resolution mechanisms;
 - (vii) undertaking to retain revenues or specific municipal tariffs or other charges, fees or funds at a particular level or at a level sufficient to meet its financial obligations;
 - (viii) undertaking to make provision in its budgets for the payment of its financial obligations, including capital and interest;

- (ix) agreeing to restrictions on debt that the Municipality may incur in future until the secured debt is settled or the secured obligations are met; and
 - (x) agreeing to such other arrangements as the Municipality may consider necessary and prudent.
- (c) A Council resolution authorising the provision of security in terms of giving a lien on, or pledging, mortgaging, ceding or otherwise hypothecating, an asset or right, or giving any other form of collateral:
 - (i) must determine whether the asset or right with respect to which the security is provided, is necessary for providing the minimum level of basic municipal services; and
 - (ii) if so, must indicate the manner in which the availability of the asset or right for the provision of that minimum level of basic municipal services will be protected.
- (d) If the resolution has determined that the asset or right is necessary for providing the minimum level of basic municipal services, neither the party to whom the municipal security is provided, nor any successor or assignee of such party, may, in the event of a default by the Municipality, deal with the asset or right in a manner that would preclude or impede the continuation of that minimum level of basic municipal services.
- (e) A determination in terms of sub-paragraph (c) above that an asset or right is not necessary for providing the minimum level of basic municipal services is binding on the Municipality until the secured debt has been paid in full or the secured obligations have been performed in full, as the case may be.

(5) Disclosure

- (a) Any official involved in the borrowing of money by the Municipality must, when interacting with a prospective lender or when preparing documentation for consideration by a prospective investor:-
 - (i) disclose all information in that person's possession or within that person's knowledge that may be material to the decision of that prospective lender or investor; and
 - (ii) take reasonable care to ensure the accuracy of any information disclosed.
- (b) A lender or investor may rely on written representations of the Municipality signed by the Accounting Officer, if the lender or investor did not know and had no reason to believe that those representations were false or misleading.

(6) Municipal Guarantees

- (a) The Municipality may not issue any guarantee for any commitment or debt of any organ of state or person, except on the following conditions:
 - (i) the guarantee must be within limits specified in the Municipality's approved budget;
 - (ii) the Municipality may guarantee the debt of a municipal entity under its sole control only if the guarantee is authorised by the Council in the same manner and subject to the same conditions applicable to the Municipality in terms of Chapter 6 of the MFMA;
 - (iii) the Municipality may guarantee the debt of a municipal entity under its shared control or of any other person, but only with the approval of the National Treasury, and then only if:
 - (aa) the Municipality creates, and maintains for the duration of the guarantee, a cash-backed reserve equal to its total potential financial exposure as a result of such guarantee; or

- (bb) the Municipality purchases and maintains in effect for the duration of the guarantee, a policy of insurance issued by a registered insurer, which covers the full amount of the Municipality's potential financial exposure as a result of such guarantee.

10. IMPLEMENTATION AND REVIEW OF THIS POLICY

- (1) This policy shall be implemented once approved by Council. All future borrowing transactions must be made in accordance with this policy.
- (2) In terms of section 17(1)(e) of the MFMA, this policy must be reviewed on annual basis and the reviewed policy tabled to Council for approval as part of the budget process.

11. INTERNAL CONTROLS

- (1) The internal control procedure involves Internal Audit and Performance Management, and the Auditor General reviewing and testing the systems of the Finance Department on a regular basis.
- (2) The Accounting Officer shall ensure that mechanisms, procedures and systems are put in place to ensure that:
 - (a) duties are separated in order to prevent fraud, collusion and other misconduct;
 - (b) loan agreements and contracts are kept in proper safe custody;
 - (c) there is a clear delegation of duties relating to the borrowing process;
 - (d) senior officials check and verify all transactions;

- (e) all transactions and repayments are properly documented;
- (f) a Code of Ethics and Standards is established and adhered to;
- (g) procedures relating to the borrowing process are established and set out in procedure manuals; and
- (h) Electronic Funds Transfer limits and a detailed procedure manual for the system.

12. NATIONAL TREASURY REPORTING AND MONITORING REQUIREMENTS

13. OTHER REPORTING AND MONITORING REQUIREMENTS
