



POLICY STATEMENT

The Government of Nunavut (GN) is committed to delivering services for Nunavummiut from spaces that meet acceptable standards for design, construction, and maintenance. Government-owned spaces may not be the best way to acquire space, and decisions related to lease or buy decisions should be made through the implementation of a comprehensive policy to obtain the best value for Nunavummiut overall, provide a fair and open environment for vendors, maintain current and accurate information, and ensure effective approaches to meet the GN's requirements.

This Policy outlines the lease administration process and establishes departmental responsibilities for commercial real property leasing.

1. PRINCIPLES

This Policy aligns with the Inuit Qaujimajatuqangit principles of:

- Havaqatigiingniq/ikajuqtigiingniq – Working together for a common cause. This policy was developed to create a common understanding of Leasing of Commercial Real Property practices. Common understanding helps to facilitate improved cooperation and communication in interdepartmental working relationships.
- Inuuqatigiittiarniq – respecting others, relationships and caring for people. This Policy was developed to ensure safety and well-being of all GN employees, contractors of public agencies and the public operating and or visiting the leased property.
- Pijittirniq – Serving and providing for family and or community. This policy serves the best interest of Nunavummiut through the careful consideration of costs, risks, availability, suitability, and benefit associated with leasing commercial real property. In doing so the policy focuses on the efficient use of leasing to support government programming and services that serve Nunavummiut and government operations.

2. APPLICATION

This Policy applies to all parties involved in the leasing of real property funded by the GN, via capital or operations & maintenance funding. The various types of spaces that may be leased by the Department of Community and Government Services (CGS) include, but are not limited to offices, warehouses, garages, and medical boarding homes. Programs and services may also require leases for special purpose space or unique spaces not previously listed. Commercial leases also exist outside of Nunavut for office space and medical boarding homes.

This Policy does not apply to:

- Staff Housing Accommodations.
- Daily or weekly rentals of conference rooms, meeting rooms, and court service areas.
- Municipal Accommodations where the Municipality is the lessee.



- Land Leases
- Public agencies listed in Schedule B of the *Financial Administration Act*, namely, Nunavut Housing Corporation, Nunavut Arctic College, the Nunavut Business Credit Corporation, Nunavut Development Corporation and Qulliq Energy Corporation
- Revenue Leases

3. DEFINITIONS

Client Department - A GN department or agency who occupies space for the purpose of conducting government operations.

Contract - A legal agreement for the supply of goods, services, real property or construction, whether by way of sale, conditional sale, lease or otherwise stated within the contract.

Demised Premises - The parts of the premises that the leaseholder or tenant is permitted to occupy.

Discount Rate - The discount rate to be used by the GN, for the purposes of this Policy, is the Government of Canada borrowing rate plus an adjustment factor, if deemed appropriate.

Fair Market Value - The total price (cash or equivalent) at an arms-length transaction that the Government could reasonably be expected to pay and a lessor (seller) could reasonably be expected to accept, if the property were for sale on the open market for a reasonable period of time, both Government and lessor (seller) being in possession of all pertinent facts, and neither being under any compulsion to act.

Financial Administration Act (FAA) – The legislation that allows the Financial Management Board to establish administrative policies and gives specific authority to the management and control of public funds.

Financial Management Board (FMB) - The Financial Management Board as established by the *Financial Administration Act*.

Government of Nunavut (GN) Leasing of Commercial Property Guideline - The document that defines leasing roles, responsibilities and procedures to be followed when processing lease transactions.

GN Office Space Standards - A guideline used by the GN to assess and assign office space for client departments who are going to occupy the space.

Landlord - The legal authority that leases or lets a property to the tenant.

Lease - A contractual agreement between a lessor and a lessee that conveys to the lessee the right to use specific property (real or personal), owned by the lessor, for a specific period of time in return for stipulated, and generally periodic, cash payments (rents).

- a) Capital Lease – a lease that from the point of view of the lessee, transfers substantially all of the benefits and risks incidental to ownership of property to the lessee.



COMMUNITY AND GOVERNMENT SERVICES

LEASING OF COMMERCIAL REAL PROPERTY POLICY

b) Operating Lease – a lease in which the lessor retains substantially all the benefits and risks incidental to ownership of property.

Lease Cost Premium - The amount by which the present value cost of leasing exceeds the purchase price of the real property.

Lease-To-Own Contract - A lease where the owner agrees to sell the property to the Government of Nunavut upon termination of the lease contract.

Letter of Intent (LOI) - A document provided by a prospective landlord or tenant to express interest, on a non-binding basis, in entering into a lease agreement under the terms as detailed in the LOI.

Maintenance Management Standards (MMS) - The standards which are proven methods to best perform tasks such as cleaning, repairs, routine maintenance, and data collection.

Needs Assessment – An assessment of a client department's space needs based on current approved departmental organizational charts, which will be used in conjunction with the GN Office Space Standards to determine the space requirements needed to properly maintain the departments and its program service delivery.

Needs Assessment Approval - A completed needs assessment which fully describes the space requirements of the Client Department will be approved by the Client Department before Real property commences work on behalf of the client group.

Overhold - When the tenant remains in possession of the demised premises after the expiration of the lease with the permission of the landlord when a formal lease document is not in place. The overhold document allows for rent to be paid to the landlord however is intended only to be a temporary document to be in place until longer term arrangements can be secured.

Present Value Cost – The amount that represents the value of future payments in today's dollars, applying the appropriate discount rate.

Real Property - Land, landscaping, and improvements.

Request for Proposal (RFP) – The solicitation of a proposal by public advertisement or private invitation.

Significant Lease Agreement - A lease term of greater than 10 years, and respecting leases with an annual lease obligation of greater than \$1,000,000.00, and leases meeting the capital lease criteria.

Sole Source - The contract authority may award a contract without competition where there are reasonable grounds to believe that the lease is urgently required, and/or only one lessee is available to meet the requirements of the lease.

Tenant - The GN, as represented by the Minister of CGS.

Term - The contractual "term", specifically the start and end dates of the lease agreement (as specified in the lease agreement) and includes the term(s) of any renewal of the lease. In addition, where any of the following provisions apply, the term should, at a minimum, reflect:



- All periods covered by bargain renewal options (e.g., renewals at less than fair market value).
- All periods for which failure to renew would impose on the Lessee (the GN) a penalty sufficiently large that renewal appears reasonable assured.
- All periods covered by ordinary renewal options during which the Lessee (the GN) has undertaken to guarantee the Lessor's debt related to the leased property.
- All periods covered by ordinary renewal options preceding the date on which a bargain purchase option (e.g., purchase at less than fair market value) is exercisable.
- All periods representing renewals or extensions of the Lease at the Lessor's option provided the lease term does not extend beyond the date a bargain purchase option becomes exercisable.

4. AUTHORITY AND ACCOUNTABILITY

4.1 Executive Council

The Executive Council is authorized to make exceptions and approve revisions to this policy.

4.2 Financial Management Board (FMB)

The Financial Management Board is empowered under the *Financial Administration Act* (FAA) to act on all matters related to the financial management and financial administration of the Government and to issue directives respecting such matters.

The FMB approval is required for all Significant Lease Agreements with a term of greater than 10 years and where the annual lease obligation is greater than \$1,000,000.00.

Additionally, FMB approval is required for capital leases in accordance with Financial Administration Manual Directive 890 Management and Control of Government's Borrowing Limit.

4.3 Contract Authority

Unless otherwise stated, (i) a Minister, or (ii) a Deputy Minister, and includes a public officer who has been delegated the power and duties of a contract authority of this Policy.

5. ROLES AND RESPONSIBILITIES

5.1 Client Department

The Department responsible for identifying its respective requirements to deliver programs and services and approving the Real Property Needs Assessment.

5.2 Community & Government Services (CGS)



COMMUNITY AND GOVERNMENT SERVICES

LEASING OF COMMERCIAL REAL PROPERTY POLICY

On behalf of the GN, the Department of CGS provides office space, and other facilities in support of government programs and services.

CGS is the contract authority for commercial real property lease contracts and for related contracts for construction, goods and services.

5.3 Real Property Division, CGS

The Director of Real Property is responsible for the approval of the Leasing of Commercial Real Property Guideline.

The Real Property Division manages Government of Nunavut office spaces, administers leases and is responsible for disposal of real property fixed assets. The Division is responsible for the administration of the Leasing of Commercial Real Property Policy and the creation and maintenance of the Leasing of Commercial Real Property Guideline. Any client department considering the acquisition of real property must engage with CGS Real Property Division.

5.4 Department of Finance

The Expenditure Management Branch of the Department of Finance that provides policy direction and support to departments and is responsible for providing an independent review of FMB submissions.

5.5 Department of Justice

The Department of Justice is the legal authority for real property lease contracts and has the right of oversight, review and input from a legal perspective therein. Such legal review comprises, but is not limited to, the following:

- a) CGS reviews all lease-related legal issues with the Department of Justice, as they may occur from time-to-time throughout the term of the lease.
- b) The Department of Justice provides legal advice to CGS respecting all lease-related issues on an ongoing, as required basis.
- c) The Department of Justice works with CGS to draft, review and issue all Letters of Intent (LOI's).
- d) The Department of Justice approves all non-standard lease agreements and related documents prior to their execution.
- e) The Department of Justice acts as Legal Counsel to CGS where formal representation is required, either in presence or in written form.

6. PROVISIONS

This Policy reflects and aligns with policies and priorities respecting the leasing of commercial real property, namely:



- Article 24 of the Nunavut Agreement
- Leasing Practices pursuant to the Lease Activity Report
- Government of Nunavut Space Allocation Standards
- Government Contract Regulations
- Nunavummi Nangminiqagtuniq Ikajjuti (NNI) Regulations
- Financial Administration Manual (FAM)

6.1 Lease Criteria

a) Properties will be leased according to the following criteria:

- I. The private sector is ready, willing, and able to provide properties for lease.
- II. The lease meets the requirements set out in the Commercial Real Property Leasing Guideline.
- III. FMB approval is required for all Significant Lease Agreements with a term of greater than 10-years and where the annual lease obligation is greater than \$1,000,000.00. Capital leases must be approved by FMB in accordance with FAM Directive 890 Management and Control of Government's Borrowing Limit.
- IV. Leased properties are to be operated and maintained in accordance with the GN's Maintenance Management Standards (MMS) applied to GN owned properties.
- V. Leased property shall be energy efficient as defined by the GN and shall meet any other specific requirements and standards (e.g., environmental) as may be provided.
- VI. Leased spaces will be maintained by the Landlord in accordance with industry acceptable standards including Occupational Health & Safety, National Building Code, GN Office Space Standards, National Fire Protection Association (NFPA) and accessibility standards. CGS Real Property provides oversight to ensure industry standards are met.
- VII. A thorough assessment of the associated costs, risks, availability, suitability, and benefits are considered when determining if a lease is appropriate. The decision to lease commercial real property should be made when it is the most economical and beneficial means for fulfilling the identified need.
- VIII. Leasing should impose no greater cost than outright purchase of the real property. Any exceptions must clearly identify tangible benefits arising from the lease that offset the additional cost and any inherent risks borne by the GN.
- IX. Where the lease cost premium exceeds ten percent of the cost of ownership, CGS may consider negotiating a lease-to-own contract to reduce the premium. In such instances, CGS will request CGS ministerial approval to negotiate a lease-to-own contract and the results will then be presented to FMB for consideration.



- X. The present value cost of leasing is not to exceed the purchase price of the real property, except as deemed appropriate and required in the support of development of northern business, or where there are sufficient tangible benefits to offset the lease premium. Only Executive Council and/or the Financial Management Board may authorize the award of a lease contract where the lease cost premium exceeds ten percent of the cost of ownership.

6.2 New Lease Contracts

- a) Prior to committing to a significant lease agreement, CGS must obtain an approved needs assessments from one or more client departments. The needs assessment should be performed on a timeline consistent with the negotiation timeline.
- b) All newly leased properties will be acquired through the procurement RFP and/or sole source except where the Executive Council has otherwise authorized negotiations to commence. RFPs will provide opportunities to Inuit firms, in accordance with Article 24 of Nunavut Agreement and NNI Regulations.
- c) During negotiations, no GN employee is permitted to make representations, verbal or written, to a lessor, other than through a formal Letter of Intent or Offer to Lease.
- d) Where an invitation request for proposals has been issued, CGS may negotiate with the lowest bidder to reduce lease costs and may negotiate a lease-to-own contract.

6.3 Lease Extension Agreements and Lease Overholds

- a) The client department is to provide approval for Real Property to extend the lease when an extension option is available.
- b) Real Property is to assess the duration of the overhold period subject to market conditions and Client Department needs.
- c) Prior to committing to Significant Lease (extension) Agreements, CGS must refer to the most recently conducted Needs Assessment, or in its absence, perform a needs assessment respecting its future long-term government program and service facility requirements. Such a needs assessment should be performed on a timeline consistent with the negotiations.

6.4 Significant Lease Agreements

- a) Prior to executing a Significant Lease Agreement and subsequent to its negotiation, the Significant Lease Agreement is to be subject to review by legal counsel and approved by FMB.

6.5 Lease Reporting

- a) The Department of CGS will prepare an annual Lease Activity Report for tabling in the Legislative Assembly.
- a) The GN is committed to transparency and accountability in leasing activities and as such shall disclose any instances in the Lease Activity Report where Executive Council exercises prerogative.



COMMUNITY AND GOVERNMENT SERVICES

LEASING OF COMMERCIAL REAL PROPERTY POLICY

6.6 For the purpose of the Leasing of Commercial Property Guideline developed pursuant to this policy, the following definitions should be used as appropriate:

Additional Rent – An operating and maintenance cost used for all expenses to operate a tenant space, including property tax, insurance and as a subcategory Common Area Maintenance expense.

Base Rent - The base lease rate a tenant pays under a net lease in commercial, industrial or office space in a building (also referred to as net rent). The base rent is net of expenses.

Base Building Systems – The structural components of a building to include the mechanical, electrical distribution and lighting systems, elevators, plumbing, sanitary, sprinkler, heating, ventilation and air conditioning, security, life-safety and other service systems or facilities of the building serving the common areas up to the point of connection for localized distribution to the demised premise.

Common Area Maintenance (CAM) expenses - Expenses associated with Common Area Maintenance, such as expenses to maintain hallways, elevators, lobbies, grounds, and parking areas.

Financial Administration Manual (FAM) - A manual that contains directives issued to public officers by the Financial Management Board (FMB) under section 5(1) of the *Financial Administration Act* (FAA). According to section 4(1) of the FAA, the FMB can issue directives on all matters related to the financial management and financial administration of the GN.

Estimated Useful Life – The remaining estimated life (in years) over which benefits of use(tenancy) the asset (i.e., building) will provide to the tenants.

Gross Lease - A rent structure that includes both the base rent and the additional rent that would be found in a net lease. Therefore, a flat all inclusive rental rate is charged that covers all costs associated with ownership, such as taxes, insurance, utilities, and common area maintenance expenses. A gross lease can be modified to meet the needs of the tenant.

Invitation to Tender - A written invitation to tender in which the format and the nature of the tender are stipulated, which will include an offer to lease, accomplished by public advertisement or private invitation.

Leased Tangible Capital Asset – A non-financial asset that has physical substance and a useful life extending beyond an accounting period and is held under lease by a government for use, on a continuing basis, in the production or supply of goods and services.

Lease versus Own Analysis - The discounted cash flow analysis that compares the present value cost of leasing versus the capital cost of purchasing the real property.

Net Lease - A contractual agreement where the tenant pays Base Rent plus Additional Rent. Additional Rent includes the proportionate share of property taxes, insurance, and common area maintenance costs.



COMMUNITY AND GOVERNMENT SERVICES

LEASING OF COMMERCIAL REAL PROPERTY POLICY

Sole Vendor - A situation where only one vendor exists that can supply the good or service. The supplier may have a monopoly (e.g., Qulliq Energy Corporation) or have a patent protection for a specific product.

Tenant Inducement - Any out-of-pocket payments required under a Lease to be paid by the landlord for the benefit of the tenant, which is in the nature of a tenant inducement, including specifically, but without limitation, tenant improvement costs (fit up cost), lease buyout payments, moving, design and refurbishment costs and free rent and fixturing periods.

Tenant Space Fit-Up - The design, procurement, construction, and commissioning related to the preparation of a leased space to meet the requirements of the approved client department Needs Assessment.

7. FINANCIAL RESOURCES

Financial resources required under this Policy are conditional upon the approval of funds in the Main Estimates by the Legislative Assembly and there being a sufficient unencumbered balance in the appropriate activity for the fiscal year for which the funds would be required.

8. PREROGATIVE OF CABINET

Nothing in this policy shall in any way be construed to limit the prerogative of Cabinet to make decisions or take action respecting the leasing of commercial real property outside the provisions of this policy.

9. SUNSET CLAUSE

This policy shall be in effect from the date of the approval and sunset on April 25, 2028.