

**PERFORMANCE AGREEMENT
MADE AND ENTERED INTO BY AND BETWEEN**

MOEKETSI PIET DICHABA

THE MUNICIPAL MANAGER ON BEHALF OF THE MUNICIPALITY OF PHOKWANE

AND

ZITHULELE NIKANI

DIRECTOR: PLANNING AND OPERATIONS OF PHOKWANE LOCAL MUNICIPALITY

FOR THE PERIOD

1 JANUARY 2014 TO 30 JUNE 2014



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PERFORMANCE AGREEMENT

1. BACKGROUND

To ensure a fair and objective performance review process the parties wish to ensure that they are clear about the performance objectives, measurements and targets to be achieved, and to secure the commitment of the Manager to achieve the developmental mandate of the Municipality and to implement actions that will secure the implementation of local government policies, goals and priorities.

2. PURPOSE OF THIS AGREEMENT

The parties agree that the purposes of this Agreement are to:

- 2.1. Comply with the provisions of Section 57(1)(b) of the Systems Act;
- 2.2. Specify the key accountabilities and Key Performance Areas of the Manager;
- 2.3. Clearly state the performance objectives, measurements and targets established for the Manager;
- 2.4. Agree to the review procedure in assessing the performance of the Manager;
- 2.5. Agree to appeal, dispute resolution and consequences of sub standard performances.
- 2.6. In the event of outstanding performance, to appropriately reward the employee; and;
- 2.7. Give effect to the employer's commitment to a performance orientated relationship with its employee in attaining equitable and improved service delivery.

3. CONTEXT OF AGREEMENT

For this contract to be effective the parties agree to the following conditions:

- That the agreement contract is established pursuant to the conditions of its employment contract and section 57(1) (b) of the Local Government: Municipal Systems Act, 2000.
- No variation or mutually agreed cancellation of this agreement has of any force or effect unless it had been reduced to writing and signed by or on behalf of both parties.
- No indulgence that the parties may grant to each other with regard to the compliance with any of the obligations in terms of this contract prejudices or constitutes a waiver of any parties' rights in terms of this agreement.
- Whenever the municipality fails to comply with any provision of this agreement, the manager must notify the municipal manager in writing of the specific breach.
- The municipality must repair any breach of this agreement within 30 (thirty) days of receiving the notification of the manager.
- Should the municipality fail to comply with a notice, the manager may, notwithstanding clause 11 of the employment contract, terminate the employment contract in writing without notice.
- Termination of the employment contract does not affect any recourse that the manager may have in terms of the law.
- That the performance of the manager will be measured against the criteria set out in the Performance Charter as an annexure to this document.
- That the performance of the manager will be measured by the Municipal Manager who will report the outcome of the review procedure to the Mayor, Council or the Executive committee.

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- That the manager's performance will be measured annually.
- That reasonable and fair steps be taken to correct areas of non-performance and that steps are taken as specified in the employment contract.

4. LEGAL REQUIREMENTS

4.1 LOCAL GOVERNMENT MUNICIPAL SYSTEMS ACT 2003

Section 57 of the Municipal Systems Act provides the following requirements in terms of Performance Agreements of the Municipal Manager and other senior personnel:

- "(1) A person to be appointed as the municipal manager of a municipality, and a person to be appointed as a manager directly accountable to the municipal manager, may be appointed to that position only-*
- (a) In terms of a written employment contract with the municipality complying with the provisions of this section; and*
 - (b) Subject to a separate performance agreement concluded annually as provided for in subsection (2).*
- (2) The performance agreement referred to in subsection (1) (b) must –*
- (a) Be concluded within a reasonable time after a person has been appointed as the municipal manager or as a manager directly accountable to the municipal manager and, thereafter, within one month after the beginning of the financial year of the municipality;*
 - (b) In the case of the municipal manager, be entered into with the municipality as represented by the Mayor or executive Mayor, as the case may be; and*
 - (c) In the case of a manager directly accountable to the municipal manager, be entered into with the municipal manager.*
- (3) The employment contract referred to in subsection (1)(a) must include, subject to applicable labour legislation, details of duties, remuneration, benefits and other terms and conditions of employment,*
- (4) The performance agreement referred to in subsection (1) (b) must include—*
- (a) Performance objectives and targets that must be met, and the time frames within which those performance objectives and targets must be met;*
 - (b) Standards and procedures for evaluating performance and intervals for evaluation; and*
 - (c) The consequences of substandard performance.*
- (5) The performance objectives and targets referred to in subsection (4)(a) must be practical, measurable and based on the key performance indicators set out from time to time in the municipality's integrated development plan.*
- (6) The employment contract for a municipal manager must—*
- (a) Be for a fixed term of employment not exceeding a period ending two years after the election of the next council of the municipality;*
 - (b) Include a provision for cancellation of the contract, in the case of non-compliance with the employment contract or, where applicable, the performance agreement;*



- (c) *Stipulate the terms of the renewal of the employment contract, but only by agreement between the parties; and*
- (d) *Reflect the values and principles referred to in section 50, the Code of conduct set out in Schedule 2, and the management standards and practices contained in section 51.*

(7) *A municipality may extend the application of subsection (6) to any manager directly accountable to the municipal manager."*

4.2 MUNICIPAL FINANCE MANAGEMENT ACT 56, 2003

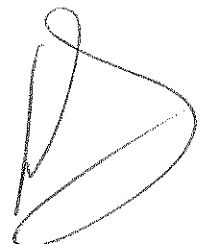
Section 53 of the Act requires the following from the Mayor of a Municipality with regard to the performance agreement of the senior managers:

Section 53 (1) (c)

- "(c) Take all reasonable steps to ensure -*
- iii) that the **annual performance agreements** as required in terms of section 57(1) (b) of the Municipal Systems Act **for the municipal manager and all senior managers-***
 - (aa) **comply with this Act** in order to promote sound financial management*
 - (bb) **are linked to the measurable performance objectives approved with the budget** and to the service delivery and budget implementation plan; and*
 - (cc) **are concluded in accordance with section 57(2j) of the Municipal Systems Act.**"*

5. COMMENCEMENT AND DURATION

- 5.1. The performance agreement must be entered into for each financial year of the municipality, or part thereof and specifically the period from 1 July 2013 to 30 June 2014;
- 5.2. The parties must review the provisions of this agreement during June 2013 and must conclude a new performance agreement that replaces this agreement within one month after the commencement of the new financial year;
- 5.3. The agreement will terminate on the termination of the employee's contract of employment for any reason;
- 5.4. If at any time during the validity of the agreement the work environment alters to the extent that the content of the agreement are no longer appropriate, the content must by mutual agreement between the parties, immediately be revised.



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6. PERFORMANCE PLAN

- 6.1 The Performance Plan, attached as Annexure B sets out the following conditions:
- (a) The performance objectives and targets that must be met by the employee; and
 - (b) The time frames within which those performance objectives and targets must be met.
- 6.2. The performance objectives and targets reflected in the performance plan are set by the employer in consultation with the employer and based on the Integrated Development Plan, Service Delivery and Budget Implementation Plan (SDBIP) and the Annual Budget of the municipality, and shall include key objectives; key performance indicators; target dates and weightings;
- 6.3. The key objectives describe the main tasks that need to be done. The key performance indicators provide the details of the evidence that must be provided to show that a key objective has been achieved. The target dates describe the timeframe in which the work must be achieved. The weightings show the relative importance of the key objectives to each other;
- 6.4. The employee's performance will, in addition, be measured in terms of contributions to the goals and strategies set out in the employer's Integrated Development Plan.

7. PERFORMANCE STANDARD AND CRITERIA

- 7.1 The employee agrees to participate in the Performance Management System that the Employer adopts or introduces for the municipality;
- 7.2 The Employee accepts that the purpose of the Performance Management System will be to provide a comprehensive system with specific performance standards to assist the Employer, management and municipal staff to perform to the standards required;
- 7.3 The Employer will consult the Employee about the specific performance standards that will be included in the Performance Management System as applicable to the Employee;
- 7.4 The Employee undertakes to actively focus towards the promotion and implementation of the Key Performance Areas (KPA's including projects relevant to the employee's responsibilities) within the local government framework;
- 7.5 The criteria upon which the performance of the Employee must be assessed shall be assessed consist of two components, both of which shall be contained in the Performance Plan. The Employee must be assessed against both components, with a weighting of 80:20 allocated to the Key Performance Areas (KPA's -80) and the Core Managerial Competencies (CMC's - 20) respectively. Each area of assessment will be weighted and will contribute a specific part to the total score. KPA's covering the main areas of work will account for 80% and CMCs will account for 20% of the final assessment;
- 7.6 The key aspects relating to the Core Managerial Competencies (CMC) and the weighting attached thereto are set out in the table below and a detailed description of the competencies contained in Annexure A



Core Managerial and Occupational Competencies	Weight
Core Managerial Competencies:	
Client Orientation and Customer Focus.	10
Financial Management.	
People Management and Empowerment.	
Change Management.	
Communication.	
Honesty and Integrity.	
Knowledge Management.	
Problem Solving and Analysis.	
Programme and Project Management.	
Service Delivery Innovation.	
Strategic Capability and Leadership.	
Core Occupational Competencies:	
Competence in Self Management	10
Interpretation of and implementation of legislative and national policy frameworks	
Knowledge of developmental local government	
Knowledge of Performance Management and Reporting	
Knowledge of global and South African political, social and economic context	
Knowledge of key municipal disciplines	
Skills of mediation	
Skills of Governance	
Integration with other national line sector departments	
Performance Improvement	
Total weighting	20

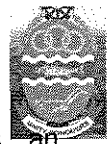
8. EVALUATING PERFORMANCE

- 8.1 The AGREEMENT sets out the process with regard to evaluation of the manager considering:
 - (a) the standards and procedures for evaluating the Employee's performance; and
 - (b) the intervals for the evaluation of the Employee's performance.
- 8.2. Despite the establishment of agreed intervals for evaluation, the Employer may in addition review the Employee's performance at any stage while the contract of employment remains in force.
- 8.3. The evaluation of the manager will be based on a Performance Scorecard and evidence file. During the year the actual performance of all specified KPI's will be recorded on an input sheet that will be translated on to Performance Scorecard and an evidence file kept where copies of all original source documents will be filed as proof of the recorded performances.
- 8.4. Personal growth and development needs identified during any performance review discussion must be documented in a Personal Development Plan as well as the actions agreed to and implementation must take place within set time frames.
- 8.5. The annual performance appraisal will involve:



- (a) Assessment of the achievement of results as outlined in the performance plan supported by the scorecard and evidence file:
 - (i) Each KPA should be assessed according to the extent to which the specified standards or performance indicators have been met and with due regard to ad hoc tasks that had to be performed relating to the KPA.
 - (ii) An indicative rating on the five-point scale should be provided for each KPA.
 - (iii) The applicable assessment-rating calculator must then be used to add the scores and calculate a final KPA score.
- (b) Assessment of the CMC's
 - (i) Each CMC should be assessed according to the extent to which the specified standards have been met.
 - (ii) An indicative rating on the five-point scale should be provided for each CMC.
 - (iii) The rating should be multiplied by the weighting given to each CMC during the contracting process to provide a score.
 - (iv) The applicable assessment-rating calculator must then be used to add the scores and calculate a final CCR score.
 - (v) To be able to assess the performance of the employee a data sheet must be used reflecting all the measurable indicators. The purpose of the data sheet is to capture the data relating to key performance indicator and must be supported by the necessary proof or evidence of the recorded performance levels. The data sheet and scoresheet will be used to by the panel to assess the performance.
- (c) Overall rating
 - (i) An overall rating is calculated by using the applicable assessment-rating calculator. Such overall rating represents the outcome of the performance appraisal and is contained in a rating sheet designed for this purpose.
 - (ii) The assessment of the performance of the Employee will be based on the following rating scale for KPA's and CMC's:

RATING SCALE	DESCRIPTION
5	Outstanding performance
4	Performance significantly above expectation
3	Fully effective
2	Performance not fully effective
1	Unacceptable performance



- d) To evaluate the performance of the Director Planning and Operations, an evaluation panel, with a maximum of four people, must be constituted including the following office bearers;
 - (i) The Municipal Manager;
 - (ii) The Director of Planning and Operations from District Municipality or nominated member.
 - (iii) The Chairperson of Planning and Operations portfolio committee or member.
 - (iv) The Chairperson or nominated member of the Audit Committee;
- e) In order to conduct an effective Review and evaluation session the Director must avail the following document at least two weeks prior to the scheduled review date to the Municipal Manager for distribution to the other panel members to allow them to prepare for the review meeting;
 - The original Performance Plan
 - The approved SDBIP
 - The Scorecard and input sheets
 - Evidence file
 - Rating sheet

9. SCHEDULE FOR PERFORMANCE REVIEWS

9.1. The performance of the Employee in relation to his/her performance agreement shall be reviewed on the following dates with the understanding that reviews in the first and third quarter may be verbal if performance is satisfactory:

Quarter	Period	Review date
First quarter	July – September 2013	Not later than 31 October 2013
Second quarter	October – December 2013	Not later than 31 January 2014
Third quarter	January 2013 – March 2014	Not later than 30 April 2014
Fourth quarter	April 2013 – June 2014	Not later than 31 July 2014

- 9.2. The Employer shall keep a record of the quarterly- and annual assessment meetings. A rating sheet will be kept for these purposes;
- 9.3. Performance feedback shall be based on the Employer's assessment of the Employee's performance based on the information provided on the input sheet, scorecard and supporting proof of performance (as kept in the evidence file);
- 9.4. The Employer will be entitled to review and make reasonable changes to the provisions of the performance plan from time to time for operational reasons on written agreement between both parties;
- 9.5. The Employer may amend the provisions of Annexure A whenever the performance management system is adopted, implemented and/or amended as the case may be between both parties in writing.

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10. DEVELOPMENTAL REQUIREMENTS

A Personal Development Plan (PDP) must be developed after conclusion of the review session for addressing performance deficiencies and developmental gaps and be discussed with the manager to reach an agreement on the implementation of the PDP.

11. OBLIGATIONS OF THE EMPLOYER

The Employer must –

- 9.6. create an enabling environment to facilitate effective performance by the employee;
- 9.7. provide access to skills development and capacity building opportunities;
- 9.8. work collaboratively with the Employee to solve problems and generate solutions to common problems that may impact on the performance of the Employee;
- 9.9. on the request of the Employee delegate such powers reasonably required by the Employee to enable him/ her to meet the performance objectives and targets established in terms of this Agreement; and
- 9.10. make available to the Employee such resources as the Employee may reasonably require from time to time assisting him/ her to meet the performance objectives and targets established in terms of this Agreement.

12. CONSULTATION

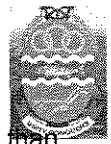
12.1 The Employer agrees to consult the Employee timeously where the exercising of the legislative powers and Council decisions powers will have amongst others –

- (a) a direct effect on the performance of any of the Employee's functions;
- (b) commit the Employee to implement or to give effect to a decision made by the Employer; and
- (c) a substantial financial effect on the Employer.

12.2 The Employer agrees to inform the Employee of the outcome of any decisions taken pursuant to the exercise of powers contemplated in sub-regulation (1) as soon as is practicable, to enable the Employee to take any necessary action without delay.

13. MANAGEMENT OF EVALUATION RESULTS

- (d) The evaluation of the Employee's performance based on the scorecard and rating sheet will form the basis for rewarding outstanding performance or correcting unacceptable performance.
- (e) A performance bonus of not more than 14% of the inclusive annual remuneration package may be paid to the Employee in recognition of outstanding performance. In determining the performance bonus the relevant percentage is based on the overall rating, calculated by using the applicable assessment rating calculator based on the following achievement:



- (a) An overall score of 80% to 90% is awarded a performance bonus not more than 5%
- (b) An overall score of 90% and above is awarded a performance bonus ranging from 6% to 8%.
- (c) If the following specific targets are achieved a performance bonus ranging between 9% to 14% depending on the level of achievement can be awarded:
 - No audit remarks by the Auditor General with reference to the Planning and Operations Directorate
 - That all SDBIP indicators and targets are achieved
 - That the budget spending of the Department does not exceed the annual budget for the year and that no unauthorized or fruitless expenditure is achieved in the Department.
- (f) In the case of unacceptable performance, the employer shall:
 - (a) provide systematic remedial or developmental support to assist the employee to improve his or her performance; and
 - (b) after appropriate performance counseling and having provided the necessary guidance and/or support and reasonable time for improvement in performance, and performance does not improve, the employer may consider steps to terminate the contract of employment of the employee on grounds of unfitness or incapacity to carry out his or her duties.

1.4 In the case where the employment of the employee is terminated, for whatever reason, during the period of the review any additional remuneration in terms of this section is also terminated. If the employee completes the review cycle and a performance review is conducted in terms of this agreement the employee will qualify for the payment of the additional remuneration in terms of this section.

14. APPEAL AGAINST RATING

The manager has the right to appeal in terms of any rating given by the appraiser or on the basis for rating used by the appraiser. The manager has the right to appeal to any comment made by the appraiser in the appraisal report that is, in her/his opinion, prejudicial. An appeal, stating the reasons for the appeal, must be submitted in writing within 7 (seven) working days after the final appraisal report has been submitted. The council must determine a date for the hearing of the appeal and must inform the appraiser and the manager of the date, time and venue of the hearing.

The municipality is not liable for making any arrangements regarding, or carrying any cost in respect of, such representation. The manager is entitled to be assisted during the hearing by a representative of choice. Should the manager elect to be assisted during the hearing and the representative is absent, the hearing must continue. The manager should inspect any documents submitted during the hearing by the appraiser and must submit supporting documents in respect of the appeal. The manager may present her/his case and lead witnesses and cross-examine any witness called by the appraiser. After having heard the parties, the Council must recuse the manager and make a final finding.

The Municipal Manager must reduce his/her finding to writing and submit it, together with the appraisal report to the executive committee at its first meeting next ensuing for its



information. The manager must be informed on the final findings of the appeal directly after the meeting. The finding of this Appeal Committee is deemed to be final and binding with regard to the reviewed procedure.

15. DISPUTE RESOLUTION

Despite the appeal conditions set out in par 8 of this document, the parties agree on the following dispute resolution mechanisms, when a matter in terms of the Performance Agreement needs to be resolved:

- 15.1 The party raising the dispute must give written notice of such a dispute within 7 days after the arousal of such a dispute. The notice must contain the reasons for the dispute and why it cannot be resolved between the parties. All relevant facts to the dispute must be explained in the document. The effected party, after having received such a dispute notice, must respond to the notice in writing within 7 days, providing his relevant comments and facts to the matter in dispute. The Municipal Manager must notify the council of such a dispute and process to be followed.
- 15.2 The Municipal Manager must hand both the written notice and the response to the notice to the Municipal Manager of the District Municipality with the request to conduct an informal dispute hearing to resolve the dispute. The Municipal Manager of the District Municipality will determine a date for an informal dispute hearing with the purpose to resolve the dispute and to formulate recommendations in this regard. The Municipal Manager of the district municipality must commence with such a dispute hearing within 14 days after having received the dispute notice. During the dispute hearing both parties will be afforded the opportunity to state their case. If the dispute hearing committee is able to resolve the matter, the Municipal Manager of the District Municipality will minute the recommendations of the dispute hearing committee. Both parties will sign the document and this will be a final and binding document.
- 15.3 If the dispute hearing committee fails to reach a satisfactory outcome, the matter will be referred to the MEC for Cooperative Government, Human Settlements and Traditional Affairs (COGHTA) for a final decision. The decision of the MEC will be final and binding.
- 15.4 The outcome of the dispute must be reported to the Council for final adoption.

16. CONSEQUENCES OF SUBSTANDARD PERFORMANCES

If the appraiser has found that the performance of the manager is substandard in general with regard to the specified indicators and targets or substandard with reference to specific indicators, he must indicate the areas of substandard performances on the scorecard. When completing the Performance Rating Report, he must make reference of the substandard performance and agree on corrective steps with the manager to improve the areas of substandard performance. The strategies and action must also be reflected on the learning and development plan. Apart from the final Performance Rating Report the municipal Manager must notify the manager in writing of the areas of sub standard performance together with the corrective strategies and action. He must indicate a timeline (three or six months) in which areas of substandard performance must be corrected. On the lapse of the notice period the mayor must conduct a follow up review on the areas of substandard performance to determine whether there is improvement and to agree on a new target for the remainder of the measurement period. If the performance of the manager on the identified



17. GENERAL

- 17.1 The contents of this performance agreement must be made available to the public by the employer in accordance with the Municipal Finance Management Act, 2003 and Section 46 of the Act;
- 17.2 Nothing in this agreement diminishes the obligations, duties or accountabilities of the Employee in terms of his/ her contract of employment, or the effects of existing or new regulations, circulars, policies, directives or other instruments;
- 17.3 The performance assessment results of the municipal managers must be submitted to the MEC responsible for local government in the relevant province as well as the national minister responsible for local government, within fourteen (14) days after the conclusion of the mid-year and final assessment or and when requested.

18. SIGNATORIES OF PARTIES TO THIS AGREEMENT

The content of this document have been discussed and agreed between the Municipal Manager and the Director of Planning and Operations.

	Municipal Manager	Director Planning and Operations
Name	Maekes Dikhaba	Zithulele Nkani
Signature		
Date	1 January 2014	1 January 2014
Witness 1		
Witness 2		
Place	Hartswater	Hartswater

ANNEXURES:

- Annexure A: Performance Plan
- Annexure B: Knowledge, Skills and Behaviour



ANNEXURE A – DESCRIPTION OF KNOWLEDGE, SKILLS AND BEHAVIOURS

Description / Definition / Observations	
Core Managerial Competencies	KNOWLEDGE
Client Orientation and Customer Focus.	Create an environment where all staff is focused on customer service in providing services by understanding the underlying needs of the customer and providing an appropriate service based on these underlying needs. Commitment and understanding of the Batho Pele principles
Financial Management.	The capability to understand and interpret the financial position of the municipality and applying sound financial management.
People Management and Empowerment.	Understanding the diversity of the organisation and ability to manage the human resources in a motivational manner
Change Management.	Understanding and applying change management principles and processes in dealing with internal and external influences and changing environment
Communication.	Ability to communicate effectively with all stakeholders in the organisation on all issues of strategic and service delivery importance
Honesty and Integrity.	To deal with all stakeholders in an honest and transparent way and with integrity always putting the interest of the organisation first.
Knowledge Management.	Understanding the importance of assembling a knowledge base in the institution and how to apply and utilize available skills in the institution.
Problem Solving and Analysis.	Ability to analyze situations and solve problems that allows effective management decisions
Programme and Project Management.	Capability to apply programme and project management principals and processes in implementing programmes and projects
Service Delivery Innovation.	Finding innovative solutions in providing effective and efficient services despite a lack of resources
Strategic Capability and Leadership.	The capability to define and understand the long term strategic challenge and position of the municipality and how to address it



Description / Definition / Observations	
Core Occupational Competencies	BEHAVIOURS
Competence in Self Management	Be able to apply effective time management and self discipline in achieving organisational goals and objectives
Interpretation of and implementation of the legislative and national policy frameworks	Be able to interpret legislation and policies on how to apply it to the organisation
Knowledge of developmental local government	To have a very good understanding and knowledge on the functioning of a municipality, its powers and functions.
Knowledge of Performance Management and Reporting	Have a good knowledge and understanding on the principles and application of performance management
Knowledge of global and South African political, social and economic context	Have a good knowledge and understanding of the political and socio- economic conditions of the country and the local area.
Knowledge of key municipal disciplines	Have a good knowledge of the key disciplines and key performance areas of the municipality
Skills of mediation	Be able to mediate and facilitate all aspects of conflict in order to mediate solutions
Skills of Governance	Understand the key aspects of effective and responsible governance and how to apply sound governance principles
Integration with other national line sector departments	Understand the powers and functions of sector departments and how to integrate them with local government
Performance Improvement	Be able to identify and apply creative solutions in improving the functioning and organizational performance of the municipality