

Buffalo City Municipality

Performance Agreement

CHIEF OPERATING OFFICER



2009/10

PERFORMANCE AGREEMENT

MADE AND ENTERED INTO BY AND BETWEEN

THE BUFFALO CITY MUNICIPALITY

Herein represented by

Ms. A. Magwentshu

In her duly authorised capacity as Municipal Manager

AND

Mr. V. DAYIMANI

In his capacity as the Chief Operating Officer of Buffalo City Municipality

WHEREAS:

- A.** The Employer has entered into a Agreement of Employment with the Employee in terms of section 57(1)(a) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
- B.** Section 57(1)(b) of the Local Government: Municipal Systems Act, 2000, read with the Memorandum of Agreement of Employment concluded between the parties, requires the parties to conclude an annual Performance Agreement within ninety days of assumption of duty, and renew it annually within one month of the commencement of the beginning of the financial year;
- C.** The parties must ensure that they are clear about the goals to be achieved, and secure the commitment of the Employee to a set of outcomes that will secure local government policy goals as defined in the municipal Integrated Development Plan; and
- D.** The parties must ensure that there is compliance with Sections 57(4A), 57(4B) and 57(5) of the Local Government: Municipal Systems Act, 2000,

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

INTERPRETATION AND DEFINITIONS

1 In this Agreement, unless the context indicates otherwise—

- (a) an expression, which denotes any gender, includes the other genders, a natural person includes an judicial person and vice versa, and the singular includes the plural and vice versa;
- (b) clause headings are for convenience only and will not be used in its interpretation, and the following expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings—

“**agreement**” means this Performance Agreement and all the Appendices hereto;

“**Employee**” means Mr. V. Dayimani;

“**MEC**” means the Member of the Eastern Cape Executive Council responsible for local government;

“**MFMA**” means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

“Municipality” means the Buffalo City Municipality, established in terms of Structures Act;

“parties” means the Municipality and the Employee;

“Regulations” means the Local Government: Performance Regulations for Municipal Managers and Managers Directly Accountable to Municipal Managers, 2006, promulgated in the Government Gazette as Regulation Notice 805 on 1 August 2006;

“Structures Act” means the Local Government: Municipal Structures Act, 2000 (Act No. 117 of 1998); and

“Systems Act” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and the Regulations promulgated in terms of the Act;

(c) words and expressions defined in any sub-clause, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause; and

(d) this agreement is governed by and construed in accordance with the laws of the Republic of South Africa.

PURPOSE OF THIS AGREEMENT

2. The purpose of this Agreement is to –

- (a) comply with the provisions of Section 57(1)(b),(4A),(4B) and (5) of the Systems Act as well as the Contract of Employment entered into between the parties;
- (b) communicate the Employer’s performance expectations and accountabilities to the Employee, by specifying objectives and targets as defined in the Integrated Development Plan, the Service Delivery and Budget Implementation Plan and the Budget of the municipality;
- (c) specify accountabilities as set out in the Performance Plan, which must be in a format substantially compliant with Appendix “A”;
- (d) monitor and measure performance against set targeted outputs;
- (e) use this Agreement and the Performance Plan as the basis for assessing the performance of the Employee and to establish whether the Employee has met the performance expectations applicable to the position; and
- (f) appropriately reward the Employee in accordance with the Employer’s performance management policy in the event of outstanding performance.

COMMENCEMENT AND DURATION

3. (1) This Agreement will commence on **1 July 2009** and will remain in force until **30 June 2010**, whereafter a new Agreement, Performance Plan and Personal Development Plan must be concluded between the parties for each of the following financial years or any portion thereof for the duration of the Contract of Employment.
- (2) This Agreement will terminate on the termination of the Employee's employment for any reason whatsoever.
- (3) The content of this Agreement may be revised at any time during the abovementioned period to determine the applicability of the matters agreed upon.
- (4) If at any time during the validity of this Agreement the work environment alters, whether as a result of government or council decisions or otherwise, to the extent that the contents of this Agreement are no longer appropriate, the contents must immediately be revised.
- (5) Any significant amendments or deviations must take cognisance of the requirements of sections 34 and 42 of the Systems Act, and regulation 4(5) of the Regulations.

PERFORMANCE OBJECTIVES

4. (1) The Performance Plan must set out the–
 - (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.
- (2) The performance objectives and targets reflected in the Performance Plan must–
 - (a) be set by the Employer in consultation with the Employee;
 - (b) be based on the Integrated Development Plan and Budget of the Employer; and
 - (c) include key objectives, performance indicators, target dates and weightings.
- (3) It is agreed that–
 - (a) the key objectives must describe the main tasks that must be performed by the Employee;
 - (b) the key performance indicators provide the details of the evidence that must be provided to indicate that a key objective has been achieved;

- (c) the target dates describe the timeframe in which the work must be achieved; and
 - (d) the weightings indicate the relative importance of the key objectives to each other.
- (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 and Service Delivery and Budget Implementation Plan.

PERFORMANCE MANAGEMENT SYSTEM

- 5.(1) The Employee agrees to participate in the performance management system that the Employer adopts or introduces for the Municipality, and accepts that the purpose of the performance management system is to provide a comprehensive system, with specific performance standards, to assist the Municipality to perform to the standards required.
- (2) The Employee shall familiarize himself or herself with the specific performance standards that are included in the performance management system that are applicable to the Employee.
- (3) The Employee undertakes to actively focus on the promotion and implementation of the Key Performance Areas, including special projects relevant to the Employee's responsibilities, within the local government framework.
- (4) The Employee must be assessed on his or her performance in terms of the performance indicators identified in the attached Performance Plan and include–
- (a) the Key Performance Areas; and
 - (b) Core Managerial Competencies, with a weighting of 80:20 allocated to sub-clause (a) and (b) respectively.
- (5) The Key Performance Areas will make up 80% of the Employee's assessment score, and will contain the following Areas:

Key Performance Areas (80% of Total)	Weighting
Basic Service Delivery	100
Municipal Institutional Development and Transformation	00
Local Economic Development	00
Municipal Financial Viability and Management	00
Good Governance and Public Participation	00
Total	100%

- (6) The Core Management Criteria will make up the other 20% of the Employee's assessment score, and are deemed to be most critical for the Employee's specific job should be selected from the list below as agreed to between the Employer and Employee:

CORE COMPETENCY REQUIREMENTS FOR EMPLOYEES (20% of Total)		
CORE MANAGERIAL COMPETENCIES (CMC)	√	WEIGHT
Strategic Capability	√	10
Programme and Project Management		
Financial Management - COMPULSORY	√	10
Change Management	√	10
Knowledge Management		
Service Delivery Innovation	√	10
Problem Solving and Analytical Thinking		
People Management and Empowerment - COMPULSORY	√	10
Client Orientation and Customer Focus - COMPULSORY	√	20
Communication		
Accountability and Ethical Conduct	√	10
Policy conceptualisation and implementation		
Mediation skills		
Advanced negotiation skills		
Advanced influencing skills		
Partnership and Stakeholder Relations	√	10
Supply Chain Management	√	10
TOTAL		100%

EVALUATING PERFORMANCE

6. (1) The Performance Plan, attached hereto as Appendix "A", must set out the—
- (a) the standards and procedures for evaluating the Employee's performance; and
 - (b) the intervals for the evaluation of the Employee's performance.
- (2) Despite the establishment of agreed intervals for evaluation, the Employer may in addition review the Employee's performance at any stage during the validity of the Agreement of Employment.
- (3) Personal growth and development needs identified during any performance review discussion, as well as the actions and time frames agreed to, must be documented in a Personal Development Plan, which must be in a format substantially compliant with Appendix "B".
- (4) The Employee's performance will be measured in terms of contributions to the goals and strategies contemplated in the Employer's Integrated Development Plan.

- (5) The annual performance appraisal must involve–
- (a) an assessment of the achievement of results as outlined in the performance plan;
 - (b) an assessment of each Key Performance Area 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;
 - (c) a rating on the five-point scale for each Key Performance Area; and
 - (d) the use of the applicable assessment rating calculator to add the scores and calculate a final Key Performance Area score.
- (6) The Core Management Criteria must be assessed–
- (a) according to the extent to which the specified standards have been met;
 - (b) with an indicative rating on the five-point scale for each Criteria; and
 - (c) by using the applicable assessment rating calculator to add the scores and calculating a final score.
- (7) An overall rating is calculated by using the applicable assessment-rating calculator, which represents the outcome of the performance appraisal, provided that the performance assessment of the Employee will be based on the following rating scale for both Key Performance Indicators and Core Management Criteria:

Level	Terminology	Description	Rating				
			1	2	3	4	5
5	Outstanding performance	Performance far exceeds the standard expected of an employee at this level. The appraisal indicates that the Employee has achieved above fully effective results against all performance criteria and indicators as specified in the PA and Performance plan and maintained this in all areas of responsibility throughout the year.					
4	Performance significantly above expectations	Performance is significantly higher than the standard expected in the job. The appraisal indicates that the Employee has achieved above fully effective results against more than half of the performance criteria and indicators and fully achieved all others throughout the year.					
3	Fully effective	Performance fully meets the standards expected in all areas of the job. The appraisal indicates that the Employee has fully achieved effective results against all significant performance criteria and indicators as specified in the PA and Performance Plan.					

2	Not fully effective	Performance is below the standard required for the job in key areas. Performance meets some of the standards expected for the job. The review/assessment indicates that the employee has achieved below fully effective results against more than half the key performance criteria and indicators as specified in the PA and Performance Plan.	
1	Unacceptable performance	Performance does not meet the standard expected for the job. The review/assessment indicates that the employee has achieved below fully effective results against almost all of the performance criteria and indicators as specified in the PA and Performance Plan. The employee has failed to demonstrate the commitment or ability to bring performance up to the level expected in the job despite management efforts to encourage improvement.	

(8) For the purposes of evaluating the annual performance of managers directly accountable to the municipal manager, an evaluation panel constituting of the following persons must be established-

- (i) Municipal Manager
- (ii) Chairperson of the audit committee
- (iii) A member of the Mayoral Committee
- (iv) Municipal Manager from another municipality
- (v) Manager responsible for human resources (secretariat)

SCHEDULE FOR PERFORMANCE REVIEWS

- 7.(1) The performance of each Employee in relation to his or her performance agreement must be reviewed during-
- (a) July to September for the First quarter;
 - (b) October to December for the Second Quarter;
 - (c) January to March for the Third quarter; and
 - (d) April to June for the Fourth quarter,

Reviews in first and third quarter may be verbal if performance is satisfactory.

- (2) The Employer must keep a record of the mid-year review and annual assessment meetings, and feedback must be based on the Employer's assessment of the Employee's performance.
- (3) The Employer may amend the provisions of the Performance Plan whenever the performance management system is adopted,

implemented or amended, provided that the Employee must be consulted before any such change is made.

OBLIGATIONS OF THE EMPLOYER

8. The Employer must–
 - (a) create an enabling environment to facilitate effective performance by the Employee;
 - (b) provide access to skills development and capacity building opportunities;
 - (c) work collaboratively with the Employee to solve problems and generate solutions to common problems that may impact on the performance of the Employee;
 - (d) on the request of the Employee delegate such powers reasonably required by the Employee to enable him or her to meet the performance objectives and targets established in this Agreement; and
 - (e) make available to the Employee such resources as the Employee may reasonably require from time to time to assist him or her to meet the performance objectives and targets established in this Agreement.

CONSULTATION

9. (1) The Employer agrees to consult the Employee timeously where the exercising of the powers will–
 - (a) have 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) have a substantial financial effect on the Employee.
- (2) The Employer agrees to inform the Employee of the outcome of any decisions taken pursuant to the exercise of powers contemplated in sub-clause (1) above, as soon as is practicable to enable the Employee to take any necessary action without delay.

MANAGEMENT OF EVALUATION OUTCOMES

10. (1) The evaluation of the Employee's performance will form the basis for rewarding outstanding performance or correcting unacceptable performance.
- (2) A performance bonus of between 5% and 14% of the inclusive annual remuneration package may be paid to the Employee in recognition of outstanding performance, as per regulation 32(2) of the Regulations.

- (3) In the case of unacceptable performance, the Employer–
 - (a) must provide systematic remedial or developmental support to assist the Employee to improve his or her performance; and
 - (b) may, after appropriate performance counselling and having provided the necessary guidance and support as well as reasonable time for improvement in performance, consider steps to terminate the contract of employment of the Employee on grounds of unfitness or incapacity to carry out his or her duties.

DISPUTE RESOLUTION

- 11. (1) Any disputes about the nature or content of the Employee's Performance Agreement, must be mediated by –
 - (a) the Executive Mayor, within thirty (30) days of receipt of a formal dispute from the Employee.
 - (b) any person designated by the Executive Mayor
- (2) Any disputes about the outcome of the Employee's performance evaluation, must be mediated by–
 - (a) the Executive Mayor within thirty (30) days of receipt of a formal dispute from the Employee.
 - (b) any person designated by the Executive Mayor, provided that the person was not part of the evaluation panel contemplated in regulation 27(4)(e) of the Regulations,
- (3) The decision of the Mediator contemplated in sub-clauses (1) and (2) will be final and binding on both parties.

GENERAL

- 12. (1) The Employer must make the contents of this Agreement and the outcome of any review conducted in terms of the Performance Plan available to the public as contemplated in section 46 of the Systems Act.
- (2) Nothing in this agreement diminishes the obligations, duties or accountabilities of the Employee in terms of his or her Agreement of Employment, or the effects of existing or new regulations, circulars, policies, directives or other instruments.

Thus done and signed at _____ on this
the ____ day of _____ 2009.

AS WITNESSES:

1.

Employee

2.

Thus done and signed at _____ on this
the ____ day of _____ 2009.

AS WITNESSES:

1.

Acting Municipal Manager

2.