

Buffalo City Municipality

Performance Agreement

Director: Corporate Services



2009/10

PERFORMANCE AGREEMENT

MADE AND ENTERED INTO BY AND BETWEEN

THE BUFFALO CITY MUNICIPALITY

Herein represented by

In her duly authorised capacity as Municipal Manager

AND

Ms. A. MAGWENTSHU

In her capacity as the Director: Corporate Services 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 Ms. A. Magwentshu;

“**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) specify objectives and targets defined and agreed with the employee and to communicate to the employee the employer’s expectations of the employee’s performance and accountabilities in alignment with the Integrated Development Plan, the Service Delivery and Budget Implementation Plan (SDBIP) and the Budget of the municipality;
- (c) specify accountabilities as set out in the Performance Plan, which forms an annexure to the performance agreement;
- (d) monitor and measure performance against set targeted outputs;
- (e) use the performance agreement as the basis for assessing whether the employee has met the performance expectations applicable to his or her job;
- (f) in the event of outstanding performance, to appropriately reward the employee; and
- (g) give effect to the employer’s commitment to a performance-orientated relationship with its employee in attaining equitable and improved service delivery.

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) The parties must review the provisions of this Agreement during June each year and must conclude a new performance agreement that replaces the previous agreement at least once a year within one month after the commencement of the new financial year.
- (2) This Agreement will terminate on the termination of the employee's contract of employment for any reason.
- (3) The content of this Agreement may be revised at any time during the above-mentioned 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, to the extent that the contents of the Agreement are no longer appropriate, the contents must by mutual agreement between the parties ,immediately be revised.

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 are set by the employer in consultation with the employee and based on the Integrated Development Plan, Service Delivery and Budget Implementation Plan (SDBIP) and the Budget of the municipality, and shall include key objectives; key performance indicators; target dates and weightings.
- (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.

- (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.
- (2) The employee accepts that the purpose of the performance management system is to provide a comprehensive system, with specific performance standards to assist the employer, management and municipal staff to perform to the standards required.
- (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.
- (4) The Employee undertakes to actively focus on the promotion and implementation of the Key Performance Areas (KPAs) (including special projects relevant to the Employee's responsibilities) within the local government framework.
- (5) The criteria upon which the performance of the Employee must be assessed consist of two components, both of which must be contained in the performance agreement. The employee must be assessed against both components, with a weighting of 80:20 allocated to the Key Performance Areas (KPAs) and the Core Competency Requirements (CCRs), respectively. Each area of assessment will be weighted and will contribute a specific part to the total score. KPAs covering the main areas of work will account for 80% and CCRs will account for 20% of the final assessment.
- (6) The employee's assessment will be based on his or her performance terms of the outputs/outcomes (performance indicators) identified as per the performance plan which are linked to the KPA's, which constitute 80% of the overall assessment result as per the weightings agreed to between the employer and the employee.

Key Performance Areas (KPA's) for Municipal Managers	Weighting
Basic Service Delivery	10
Municipal Institutional Development and Transformation	70
Local Economic Development	00
Municipal Financial Viability and Management	10

Good Governance and Public Participation	10
Total	100%

- (7) In the case of managers directly accountable to the municipal manager, key performance areas related to the functional area of the relevant manager must be subject to negotiation between the municipal manager and the relevant manager.
- (8) The CCRs will make up the other 20% of the Employee's assessment score. CCR's that 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 and must be considered with due regard to the proficiency level agreed to.

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	√	5
Knowledge Management	√	10
Service Delivery Innovation	√	5
Problem Solving and Analytical Thinking		
People Management and Empowerment - COMPULSORY	√	10
Client Orientation and Customer Focus - COMPULSORY	√	10
Communication	√	10
Accountability and Ethical Conduct	√	10
Policy conceptualisation and implementation		
Mediation skills	√	10
Advanced negotiation skills	√	10
Advanced influencing skills		
Partnership and Stakeholder Relations		
Supply Chain Management		
TOTAL		100%

EVALUATING PERFORMANCE

6. (1) The Performance Plan, attached hereto as Appendix "A", must set out the—
- the standards and procedures for evaluating the Employee's performance; and
 - 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 while the employment contract remains in force.
- (3) 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.
- (4) The annual performance appraisal must involve–
 - (a) an assessment of the achievement of results as outlined in the performance plan;
 - (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 under 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 CCRs
 - (i) Each CCR should be assessed according to the extent to which the specified standards have been met.
 - (ii) An indicative rating on the five-point scale for each CCR.
 - (iii) This rating should be multiplied by the weighting given to each CCR 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.
 - (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.
 - (ii) The assessment of the performance of the employee will be based on the following rating scale for the KPA's and CCR's:

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.					

- (d) For the purpose of evaluating the annual performance of the municipal manager, an evaluation panel constituted of the following persons must be established:

- (i) Executive Mayor or Mayor
 - (ii) Chairperson of the performance audit committee or the audit committee in the absence of a performance audit committee;
 - (iii) Member of the mayoral or executive committee or in respect of a plenary type municipality, another member of the council;
 - (iv) Mayor and/ or municipal manager from another municipality; and
 - (v) Member of a ward committee as nominated by the Executive Mayor or Mayor.
- (e) For the purposes of evaluating the annual performance of managers directly accountable to the municipal manager, an evaluation panel constituted of the following persons must be established:
- (i) Municipal Manager;
 - (ii) Chairperson of the performance audit committee or the audit committee in the absence of a performance audit committee;
 - (iii) Member of the Mayoral or Executive Committee or in respect of a plenary type municipality, another member of council; and
 - (iv) Municipal Manager from another municipality
- (f) The manager responsible for human resources of the municipality must provide secretariat services to the evaluation panels referred to in sub-regulations (d) and (e)

SCHEDULE FOR PERFORMANCE REVIEWS

7. (1) The performance of each Employee in relation to his or her performance agreement must be reviewed on the following dates with the understanding that reviews in the first and third quarter may be verbal if performance is satisfactory:

First quarter	:	July – September.....
Second quarter	:	October – December.....
Third quarter	:	January – March.....
Fourth quarter	:	April – June.....

- (2) The Employer must keep a record of the mid-year review and annual assessment meetings.
- (3) Performance feedback must be based on the Employer's assessment of the Employee's performance.
- (3) 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 agreement between both parties.

- (4) The employer may amend the provisions of the performance plan whenever the performance management system is adopted, implemented and / or amended as the case may be on agreement between both parties.

DEVELOPMENTAL REQUIREMENTS

8. A personal development plan (PDP) for addressing developmental gaps must form part of the performance agreement.

OBLIGATIONS OF THE EMPLOYER

9. 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 terms of the 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 terms of the Agreement.

CONSULTATION

10. (1) The Employer agrees to consult the Employee timeously where the exercising of the 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.
- (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

11. (1) The evaluation of the Employee's performance will form the basis for rewarding outstanding performance or correcting unacceptable performance.
- (2) A performance bonus ranging from 5% to 14% of the all-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, provided that:-
- (a) a score of 130% to 149% is awarded a performance bonus ranging from 5% to 9%; and
- (b) a score of 150% and above is awarded a performance bonus ranging from 10% to 14%.
- (3) 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 counselling and having provided the necessary guidance and support as well as 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.

DISPUTE RESOLUTION

11. (1) Any disputes about the nature or content of the Employee's Performance Agreement, must be mediated by -
- (a) In the case of the municipal manager, the MEC for local government in the province within thirty (30) days of receipt of a formal dispute from the employee, or any other person designated by MEC; and
- (b) In the case of managers directly accountable to the municipal manager, the Executive Mayor or Mayor within thirty (30) days of receipt of a formal dispute from the Employee;

Whose decision shall be final and binding on both parties

- (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.