

PERFORMANCE AGREEMENT

MADE AND ENTERED INTO BY AND BETWEEN:

**THE CITY OF TSHWANE
AS REPRESENTED BY THE CITY MANAGER**

MR. JASON NGOBENI

AND

**Mr Mpho Caleb Ronald Makopo
CHIEF LEGAL COUNSEL**

FOR THE

**FINANCIAL YEAR: 1 JULY 2011
- 30 JUNE 2012**

JN

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PERFORMANCE AGREEMENT

ENTERED INTO BY AND BETWEEN:

The City of Tshwane (CoT) herein represented by **Mr. Jason Ngobeni** in his/her capacity as **City Manager** (hereinafter referred to as the **Employer** or Supervisor)

And

Mr Mpho Caleb Ronald Makopo, employee of the Municipality (hereinafter referred to as the **Employee**).

WHEREBY IT IS AGREED AS FOLLOWS:

1. INTRODUCTION

- 1.1 The **Employer** has entered into a contract of employment with the **Employee** in terms of section 57(1)(a) of the Local Government: Municipal Systems Act 32 of 2000 ("the Systems Act"). The **Employer** and the **Employee** are hereinafter referred to as "the Parties".
- 1.2 Section 57(1)(b) of the Systems Act, read with the Contract of Employment concluded between the parties, requires the parties to conclude an annual performance agreement.
- 1.3 The parties wish to 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.
- 1.4 The parties wish to ensure that there is compliance with Sections 57(4A), 57(4B) and 57(5) of the Systems Act.

2. PURPOSE OF THIS AGREEMENT

The purpose of this Agreement is to -

- 2.1 comply with the provisions of Section 57(1)(b),(4A),(4B) and (5) of the Act as well as the employment contract entered into between the parties;
- 2.2 specify national and municipal key performance areas (KPA's), key performance indicators (KPI's) 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, Service Delivery and Budget Implementation Plan (SDBIP) and the Budget of the municipality;
- 2.3 specify accountabilities as set out in a performance plan, which forms an annexure to the performance agreement;
- 2.4 specify and plan for competency gaps as set out in a personal development plan (PDP), which forms an annexure to the performance agreement (a PDP for addressing developmental gaps which have been identified during the previous financial year must form part of the annual revised performance agreement);
- 2.5 monitor and measure performance against set targeted outputs;
- 2.6 use the performance agreement as the basis for assessing whether the employee has met the performance expectations applicable to his or her job;

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- 2.7 in the event of outstanding performance, to appropriately reward the employee; and
- 2.8 give effect to the employer's commitment to a performance-orientated relationship with its employee in attaining equitable and improved service delivery.

3 COMMENCEMENT AND DURATION

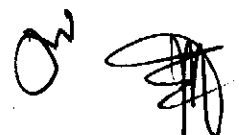
- 3.1 This Agreement will commence on 1 July 2011 and will remain in force until 30 June 2012. Thereafter a new Performance Agreement, Performance Plan and Personal Development Plan shall be concluded between the parties for the next financial year or any portion thereof.
- 3.2 The parties will review the provisions of this Agreement during June to July each year. The parties will conclude a new Performance Agreement and Performance Plan that replaces this Agreement at least once a year not later than 31 July of each successive financial year for the next financial year.
- 3.3 This Agreement will terminate on the termination of the **Employee's** contract of employment for any reason.
- 3.4 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. The **Employee** will be fully consulted before any such change is made.
- 3.5 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 shall immediately be revised.

4 KEY PERFORMANCE AREAS (KPA's)

- 4.1 The Performance Plan (Annexure A) sets out-
 - 4.1.1 the KPA's, KPI's and targets that must be met by the **Employee**; and
 - 4.1.2 the time frames within which those KPA's, KPI's and targets must be met.
- 4.2 The KPA's, KPI's and targets reflected in Annexure A 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 **Employer**, and shall include KPA's, KPI's and targets, target dates and weightings.
 - 4.2.1 The KPA's describe the main tasks that need to be done.
 - 4.2.2 The KPI's provide the details of the evidence that must be provided to show that a KPA has been achieved.
 - 4.2.3 The target dates describe the timeframe in which the work must be achieved.
 - 4.2.4 The weightings show the relative importance of the KPA's to each other.

5 PERFORMANCE MANAGEMENT SYSTEM

- 5.1 The **Employee** agrees to participate in the performance management system that the **Employer** adopts or introduces for the **Employer**, management and municipal staff of the **Employer**.



- 5.2 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.
- 5.3 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**.
- 5.4 The **Employee** undertakes to actively focus towards the promotion and implementation of the KPA's (including special projects relevant to the employee's responsibilities) within the local government framework.
- 5.5 The criteria upon which the performance of the **Employee** shall be assessed shall consist of two components, both of which shall be contained in the Performance Agreement.
- 5.5.1 The **Employee** must be assessed against both components, with a weighting of 130:20 allocated to the KPA's and the Core Competency Requirements (CCRs) respectively.
- 5.5.2 Each area of assessment will be weighted and will contribute a specific part to the total score.
- 5.5.3 KPA's covering the main areas of work will account for 130% and CCRs will account for 20% of the final assessment.
- 5.6 The **Employee's** assessment will be based on his/her performance in terms of the outputs/outcomes (performance indicators) identified as per the attached Performance Plan (**Annexure A**), which are linked to the KPA's, and will constitute 130% of the overall assessment result as per the weightings agreed to between the **Employer** and **Employee**. The **Employee** will contribute to the performance of the following applicable CKPA's:

National KPA	Strategic Objective	CoT Key Performance Areas
Basic Service delivery	1. Provide quality basic services and infrastructure	1.1 Households with access to basic or higher levels of electricity
		1.2 Households with access to basic or higher levels of water,
		1.3 Households with access to basic or higher levels of sanitation
		1.4 Households with access to basic or higher levels of solid waste removal
		1.5 Households with access to basic or higher levels of housing
None	1. Provide quality basic services and infrastructure	1.6 Intermediate or higher roads managed as a proportion of the total kilometres of Class 4 and 5 roads in the city
		1.7 Intermediate or higher storm water managed as a proportion of the total kilometres of storm water in the city
Local Economic development	2. Accelerate higher and shared economic growth and development	2.1: Leverage growing and strategic sectors in the City in a way that optimizes investment opportunities and focus on establishing an integrated economy
		2.2: Increase participation and broaden the contribution in growing the city's economy through the development of SMME's, co-operatives, the informal sector and the role of black people, women and youth

National KPA	Strategic Objective	CoT Key Performance Areas
None	3. To fight poverty, build clean, healthy, safe and sustainable communities	3.1 Reduce the burden of poverty through an effective indigent policy that enhances access for all those who qualify and link indigent families to targeted poverty alleviation programmes that would improve household income
		3.2 Promote a clean, healthy and sustainable environment and reduce the burden of preventable diseases on our people and our economy including chronic illnesses, TB, HIV & AIDS
		3.3 Decrease the crime levels working with the National Criminal Justice System, the South African Police Services, Business and communities, ensuring visible policing and strengthening the municipal court system
		3.4 Ensure the safety of our communities, businesses and roads, fostering a culture of respect for the rights of all, the laws that govern us all and a high moral and ethical standard
		3.5 Promote viable (sustainable) communities by establishing mixed human settlements with social and cultural programmes that enable the celebration of diversity and foster social inclusion
Good Governance and Public Participation	4. Foster participatory democracy and Batho Pele principles through a caring, accessible and accountable service	4.1 Optimise effective community participation in the ward committee system
		4.2 Batho Pele
	5. To ensure good governance, financial viability and optimal institutional transformation with capacity to execute its mandate	5.2 Sound HR management
		5.3 Audit
		5.4 Oversight
		5.5 IT management
		5.6 Secretariat and governance services
		5.7 Legal services
		5.8 Risk management
		5.9 Facilities maintenance
		5.10 Fleet management
5.11 Administrative services		
Municipal Financial Viability and Management	5. To ensure good governance, financial viability and optimal institutional transformation with capacity to execute its mandate	5.1 Financial management
Municipal Institutional Development and Transformation	5. To ensure good governance, financial viability and optimal institutional transformation with capacity to execute its mandate	

- 5.7 In the case of managers directly accountable to the City Manager, KPA's related to the functional area of the relevant manager, will be subject to negotiation between the City Manager and the relevant manager.
- 5.8 The CCR's 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 will be selected (✓) from the list below as agreed to between the **Employer** and **Employee**. Three of the CCR's are compulsory for City Managers and their direct reports:

CORE MANAGERIAL COMPETENCIES (CMC)	WEIGHT
Strategic Capability and Leadership	10
Financial Management (Compulsory)	10
Change Management	5
Knowledge Management	5
Service Delivery Innovation	10
People Management and Empowerment (Compulsory)	10
Client Orientation and Customer Focus (Compulsory)	5
Communication	5
Honesty and Integrity	10
CORE OCCUPATIONAL COMPETENCIES (COC)	
Competence in Self Management	5
Interpretation of and implementation within the legislative and national policy frameworks	5
Knowledge of Performance Management and Reporting	5
Knowledge of global and South African specific political, social and economic contexts	5
Skills in Governance	5
Exceptional and dynamic creativity to improve the functioning of the municipality	5
Total weight	100

6. EVALUATING PERFORMANCE

- 6.1 The Performance Plan (Annexure A) to this Agreement sets out -
- 6.1.1 the standards and procedures for evaluating the **Employee's** performance; and
- 6.1.2 the intervals for the evaluation of the **Employee's** performance.
- 6.2 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.
- 6.3 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.
- 6.4 The **Employee's** performance will be measured in terms of contributions to the goals and strategies set out in the **Employer's** IDP.
- 6.5 The annual performance appraisal will involve:
- 6.5.1 **Assessment of the achievement of results as outlined in the performance plan:**
- (a) Each KPA and its indicator(s) will 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.

- (b) An indicative rating on the five-point scale will be used for each KPA and indicator (see paragraph 6.6).

6.5.2 Assessment of the CCR's

- (a) Each applicable CCR and its indicator(s) will be assessed according to the extent to which the performance indicators and standards have been met.
- (b) An indicative rating on the five-point scale will be provided for each CCR and indicator (see paragraph 6.6).
- (c) This rating will be multiplied by the weighting given to each CCR during the contracting process, to provide a score.

6.5.3 Overall rating

An overall rating will be calculated. Such overall rating represents the outcome of the performance appraisal.

- 6.6 The assessment of the performance of the **Employee** will be based on the following rating scale for KPA's and CCRs:

Description		Rating
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.	5
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.	4
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.	3
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.	2
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.	1

- 6.7 Each KPI (outputs and CCR's) will be rated according to the abovementioned five-point scale. The score of each KPI is calculated as follows:

$$\text{Weight per indicator} \times \frac{\text{rate}}{3}$$

The sum of respectively all the output KPI scores and all the CC KPI scores is converted to 130% and 20%. The sum of these two scores is used for calculating performance bonuses (see paragraph 11.2)

6.7 For purposes of evaluating the annual performance of direct reports to the City Manager, an evaluation panel constituted of the following persons must be established -

- 6.7.1 City Manager;
- 6.7.2 Chairperson of the performance audit committee or the audit committee in the absence of a performance audit committee;
- 6.7.3 Member of the mayoral or executive committee or in respect of a plenary type municipality, another member of council; and
- 6.7.4 City Manager from another municipality.

7. SCHEDULE FOR PERFORMANCE COACHING

7.1 The performance of each **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:

First quarter (July to September)	:	October 2011
Second quarter (October to December)	:	January 2012
Third quarter (January to March)	:	April 2012
Fourth quarter (April to June)	:	July 2012

7.2 The responsibility for rescheduling a canceled coaching session will be with the individual who requested the rescheduling.

7.3 The fourth quarter coaching is followed up by a review which may be conducted concurrently with the coaching session.

7.4 The **Employer** shall keep a record of the mid-year coaching and annual assessment meetings.

7.5 Performance feedback shall be based on the **Employer's** assessment of the **Employee's** performance.

7.6 The **Employer** will be entitled to review and make reasonable changes to the provisions of Annexure "A" from time to time for operational reasons. The **Employee** will be fully consulted before any such change is made.

7.7 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. In that case the **Employee** will be fully consulted before any such change is made.

8. DEVELOPMENTAL REQUIREMENTS

The Personal Development Plan (PDP) for addressing developmental gaps will be provided when required.

9. OBLIGATIONS OF THE EMPLOYER

9.1 The Employer shall -

- 9.1.1 create an enabling environment to facilitate effective performance by the employee;

- 9.1.2 provide access to skills development and capacity building opportunities;
- 9.1.3 work collaboratively with the **Employee** to solve problems and generate solutions to common problems that may impact on the performance of the **Employee**;
- 9.1.4 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
- 9.1.5 make available to the **Employee** such resources as the **Employee** may reasonably require from time to time to assist him/her to meet the performance objectives and targets established in terms of this Agreement.

10. CONSULTATION

- 10.1 The **Employer** agrees to consult the **Employee** timeously where the exercising of the powers will have amongst others –
 - 10.1.1 a direct effect on the performance of any of the **Employee's** functions;
 - 10.1.2 commit the **Employee** to implement or to give effect to a decision made by the **Employer**; and
 - 10.1.3 a substantial financial effect on the **Employer**.
- 10.2 The **Employer** agrees to inform the **Employee** of the outcome of any decisions taken pursuant to the exercise of powers contemplated in 10.1 as soon as is practicable to enable the **Employee** to take any necessary action without delay.

11. 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.
- 11.2 A performance bonus of between 5% and 14% of the all-inclusive annual remuneration package may be paid to the **Employee** in recognition of outstanding performance to be constituted as follows:
 - 11.2.1 A score of above 150% is awarded a performance bonus ranging from 10% to 14%.
 - 11.2.2 A score of 130% to 149% is awarded a performance bonus ranging from 5% to 9%.
 - 11.2.3 A score of 100% to 129% is awarded no performance bonus.
 - 11.2.4 A score of less than 100% indicates remedial actions/performance counselling.
- 11.3 In the case of unacceptable performance, the **Employer** shall –
 - 11.3.1 provide systematic remedial or developmental support to assist the **Employee** to improve his or her performance; and
 - 11.3.2 after appropriate performance counselling and having provided the necessary guidance and/ or support as well as reasonable time for improvement in performance, 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.

12. DISPUTE RESOLUTION

12.1 Any disputes about the nature of the **Employee's** performance agreement, whether it relates to key responsibilities, priorities, methods of assessment and/or any other matter provided for, shall be mediated by –

12.1.1 In the case of managers directly accountable to the City Manager, the Executive Mayor within thirty (30) days of receipt of a formal dispute from the employee, whose decision shall be final and binding on both parties.

12.2 Any disputes about the outcome of the employee's performance evaluation, must be mediated by –

12.2.1 In the case of managers directly accountable to the municipal manager, a member of the municipal council, provided that such member was not part of the evaluation panel provided for in paragraph 6.7, within thirty (30) days of receipt of a formal dispute from the employee, whose decision shall be final and binding on both parties.

12.3 In the event that the mediation processes contemplated above fails, clause 22 of the Contract of Employment shall apply.

13. GENERAL

13.1 The contents of this agreement and the outcome of any review conducted in terms of Annexure A may be made available to the public by the **Employer**.

13.2 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.

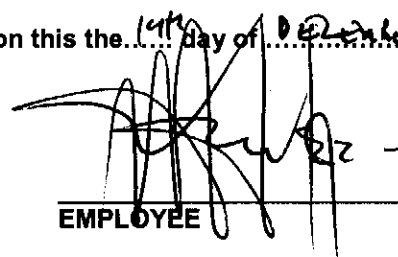
13.3 The performance assessment results must be submitted to the Mayoral Committee of the CoT within thirty (30) days after conclusion of the assessment.

Thus done and signed at Tshwane.....on this the 14th day of December 2011

AS WITNESSES:

1. _____

2. _____


EMPLOYEE

AS WITNESSES:

1. _____

2. _____


EMPLOYER (City Manager)

OUTPUT KPA TEMPLATE - CHIEF LEGAL COUNSEL
 PERFORMANCE SCORECARD - 2011/12

NB: MEASUREMENTS ARE CUMULATIVE UNLESS OTHERWISE SPECIFIED

FY 2010/2011 (Year 5 of 5)									
Strategic Objective	Key Performance Area (KPA)	Weight	Baseline (with effect from 01/07/2009)	5 Year Target (2010/2011)	2010/11	2011/12	2012/13	2013/14	Evidence Reference
Strategic Objective 5: Good Governance									
To manage day to day operations in the department	DL 1392	30		100%	100%	100%	100%	100%	*Approved Score cards by Directors *Approved by Council by June 2012.
City KPA 3.1: To ensure financial viability through financial management									
Departmental KPA 3.1.5: Expenditure Management									
To annually disclose fruitless expenditure details	ML 5.1.5.2	10		98%	75%	98%			* Monthly declaration reports *SAP reports
City KPA 4: To ensure sound HR management									
Departmental KPA 4.3: Occupational Health and Safety									
To monitor compliance to implementation of the Health and Safety Act	DL 1562	5		100%	100%	100%	100%	100%	*Generic OHS indices as per QPR (including OHS meetings)
City KPA 5: To ensure good governance									
Departmental KPA 5.A: Performance Management									
To ensure signing of performance plans for the 2010/11 financial year	DL 1600	5		100%	100%	100%	100%	100%	*Signed off performance plans/score cards by the ED
	DL 1601	5		100%	100%	100%	100%	100%	*Quarterly coaching minutes *Operational coordination meetings minutes

Phase 1: Planning		Phase 2: Execution		Phase 3: Reporting		Phase 4: Review		Phase 5: Evaluation		Phase 6: Improvement	
DL	DL	DL	DL	DL	DL	DL	DL	DL	DL	DL	DL
Departmental KPA 5.4.2 Audit											
To contribute to a clean audit report	DL 1640	% of internal control mechanisms put in place to deal with AG qualifications and other matters (obligatory)	10			0%				Annual measure in Q4	Report on strategic legal matters to City Manager and Mayoral Committee and Mayoral Committee.
Departmental KPA 5.4.7 Legal services											
To provide legal advice, comments and opinions to all council organisational structures compliant with legislation and policies.	DL 1790	Nr of judgments against CoT	15	9	<15					Annual measure in Q4	* Judgements/court orders
	DL 1784	% availability of dedicated advisors at Mayoral committee at all meetings per quarter	20		85%			85%	85%	85%	* Letter of confirmation by Governance Secretariat unit
	DL 1785	% adherence to timeframes (3 working days) pertaining to all requests for legal comments on reports	15		85%			85%	85%	85%	* Statistical data * Letter of confirmation
To coordinate the re-alignment of 21 by-laws compliant to city priority issues, constitution and legislation	DL 1789	Report on Contingency liabilities to CFO.	20		21					Annual measure in Q4	* Acknowledgement of receipt by CFO.

Phase 1: Planning									
FY 2010/2011 (Year 5 of 5)									
KPA	Performance Indicator	Weight	Current Program	Essential (with effect from 01/07/2009)	Budget 10/11	Current (2010/2011)	Quantity Roll Out of Year and LTP	Evidence Reference	
Departmental KPA 5.4.8 Risk management									
To mitigate and report registered strategic risks as per the approved risk management plan	DL 1805 (link to ML 5.4.8.4)	1	% of registered strategic risks mitigated and reported on as per approved risk management plan (Yes to all=100%, Some=0%) (obligatory)	100%	100%	100%	Annual measure in Q4	*Action plans on identified risks *Risk management plan report *Strategic risk register for division	
To manage a decrease in insurance claims due to controllable events	ML 5.4.8.1	4	% decrease in insurance claims due to controllable events (obligatory)	2%	10%	10%	Annual measure in Q4	*Insurance claims analysis/stats reports *SAP reports	
Core Competencies		20				80%	Annual measure in Q4	*Core competencies signed by CM	
Total (150 points)		150							
OUTPUT WEIGHT									
OUTPUT SCORE									