



# Phumelela Local Municipality



## PERFORMANCE CONTRACT

MADE AND ENTERED INTO BY AND BETWEEN:

**THE PHUMELELA LOCAL MUNICIPALITY  
AS REPRESENTED BY THE MAYOR**

.....

**FULL NAMES**

**MUNICIPAL MANAGER**

AND

.....,

**THE EMPLOYEE OF THE MUNICIPALITY  
(MAYOR)**

FOR THE

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

## PERFORMANCE CONTRACT

### 1. Parties

The **Phumelela Local Municipality** established in terms of the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998), conducting business at ....., herein represented by Councillor .....in his/her capacity as Mayor/ Executive Mayor acting on behalf of the Municipality (hereinafter referred to as the **Employer**); and

Mr/Mrs/Ms.....of.....  
.....(hereinafter referred to as the **Employee**) and (jointly referred to as the parties).

### 2. Establishment of contract

2.1 The **Employer** hereby employs the **Employee** on a fixed term contract and the **Employee** hereby accepts employment as **Municipal Manager**, subject to the terms and conditions contained in this contract and subject to the Local Government: Municipal Systems Act, 2000 and the Municipal Finance Management Act, 2003. The main duties that the **Employee** will be expected to perform are contained in section 55 of the Municipal Systems Act, 2000, as well as those contained in the Municipal Finance Management Act, 2003, both of which the **Employer** and **Employee** will further refine during the signing of an annual Performance Agreement.

2.2 The employment of the **Employee** with the **Employer** commences on ....., regardless of the date of signing this contract and terminates on..... The employment period may be reduced to comply with Section 57(6)(a) of the Municipal Systems Act, 2000, if this becomes necessary and the **Employee** shall under those circumstances not be entitled to a new contract to cover the period so lost.

2.3 It is specifically recorded that there is no expectation that this agreement will be renewed or extended beyond the term referred to in clause 2.2. The **Employer's** decision not to renew or extend the contract shall not constitute an unfair dismissal and the **Employee** shall not be entitled to any form of compensation.

2.4 The **Employee's** employment is further subject to compliance with the following terms:

2.4.1 The signing of a Performance Agreement within ninety (90) days after assumption of duty and annually within one (1) month after the commencement of the new financial year as provided for in Appendix A.

2.4.2 The submission of original certificates, or certified copies, of his/her academic and professional qualifications and proof of previous employment prior to date of assumption of duty.

2.4.3 The Code of Conduct as stipulated in Schedule 2 of the Municipal Systems Act, 2000 (Appendix B).

2.4.4 The disclosure of financial interests on the date of assumption of duty and on an annual basis within one (1) month after the commencement of the financial year, which shall be lodged with the Municipal Council. (The relevant form, Appendix C, is attached for completion and submission as indicated.)

### 3. Place of work

The **Employee's** place of work will include the **Employer's** area of jurisdiction, but he/she may be required to perform other duties or work at other places that may reasonably be required by the **Employer**.

### 4. Official working hours

The **Employee** will work such hours and days in accordance with the operational needs and requirements of the **Employer**, which will not be less than forty (40) hours per week from Monday to Friday.

### 5. Remuneration

5.1 The **Employee** will be paid an all-inclusive annual remuneration package (total cost-to-employer) of R.....; payable in equal monthly instalments.

5.2 The all-inclusive annual remuneration package consists of a **basic salary** and a **flexible portion**. The rules governing the structuring of the flexible portion, will be provided by the **Employer**.

5.3 The above-mentioned all-inclusive annual remuneration package must be structured in accordance with the guidelines provided by the South African Revenue Service (SARS).

5.4 The **Employee's** all-inclusive annual remuneration package shall be adjusted annually linked to a cost-of-living increase, which is not performance based.

### 6. Performance bonus

6.1 In accordance with Regulation 32 of the Local Government: Performance Regulations for Municipal Managers and Managers Directly Accountable to Municipal Managers, 2006, a performance bonus, based on affordability may be paid to the **Employee** after-

- 6.1.1 the annual report for the financial year under review has been tabled and adopted by the Municipal Council;
- 6.1.2 an evaluation of performance in accordance with the provisions of Regulation 23; and
- 6.1.3 approval of such evaluation by the Municipal Council as a reward for outstanding performance.

6.2 Details of this process and the implementation thereof are contained in the Performance Agreement and guideline document.

### 7. Motor vehicle

7.1 The **Employee** must have a motor vehicle available for the proper performance of his/her functions and discharge of his/her duties. He/she should secure his/her own financing.

7.2 If the **Employee** utilizes his/her private vehicle to carry out official duties, within as well as outside the municipal area, he/she will be compensated for kilometres travelled in excess of 500 km per month, according to the tariffs payable for privately owned vehicles as prescribed by the Department of Transport.

### 8. Mobile phone

The **Employee** shall be entitled to a mobile telephone for official purposes according to the policy of the Municipality or in accordance with a decision of the Municipal Council.

## 9. Retirement/ provident fund

The all-inclusive remuneration package may include a contribution to a retirement fund, provided that the total contributions will form part of the remuneration package referred to in 5.1. If the **Employee** elects to structure for a retirement/ provident fund contribution, he/she must supply the **Employer** with proof of such membership.

## 10. Medical Aid Scheme

The all-inclusive remuneration package may include a contribution towards a medical aid scheme, provided that the total contributions will form part of the remuneration package referred to in 5.1. If the **Employee** chooses to become a member of and contribute to a medical aid scheme, he/she must supply the **Employer** with proof of such membership.

## 11. Overtime work

The **Employee** shall place the whole of his/her time at the disposal of the Municipality. Parties to this contract therefore accept that it will be required of the **Employee** to work overtime, when reasonably required. The **Employee** will not qualify for overtime remuneration.

## 12. Deductions from salary

The **Employer** may make deductions from the monthly all-inclusive remuneration package, subject to the provisions of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997).

## 13. Leave

13.1 The **Employee** is entitled to twenty-four (24) working days annual leave with full pay every calendar year. If the **Employee** is appointed after the commencement of an annual leave cycle, he/she shall be entitled to annual vacation leave on a pro rata basis determined as a fraction of the entitlement. The **Employee** must take at least 10 (ten) consecutive working days leave within a twelve-month period. The remaining leave days, if any, must be taken no later than the end of June of the year following the relevant leave cycle, whereafter unused leave credits will be forfeited.

13.2 The **Employee** is entitled to thirty-six (36) working days sick leave with full pay in a three-year cycle.

13.3 The **Employee** shall be entitled to four (4) consecutive calendar months' maternity leave in accordance with the Basic Conditions of Employment Act 1997, to commence at any time from four (4) weeks before the date of confinement or on a date from which the attending medical practitioner certifies that it is necessary for the **Employee's** health or that of the unborn child.

13.4 The **Employee** is further be entitled to a maximum of five (5) working days family responsibility leave per calendar year, which can be utilised for birth, illness or death of an immediate family member.

13.5 The **Employer** may grant the **Employee** special leave with or without pay for a reasonable number of working days with prior approval in terms of the relevant special leave policy of the Municipality.

13.6 Any further leave benefits or requirements will be included in a directive on leave of absence, which will be provided by the **Employer**.

## 14. Precautionary suspension

- 14.1 The **Employer** may suspend the **Employee** on full pay if he/ she is alleged to have committed a serious offence and the **Employer** believes his/ her presence at the workplace might jeopardise any investigation into the alleged misconduct or endanger the well being or safety of any person or municipal property provided that before an **Employee** is suspended as a precautionary measure, he/ she must be given an opportunity to make representation on why he/ she should not be suspended.
- 14.2 The **Employee** who is to be suspended must be notified, in writing, of the reasons for his/her suspension simultaneously or at the latest within 24 hours after the suspension. He/she shall have the right to respond within seven (7) working days.
- 14.3 If the **Employee** is suspended as a precautionary measure, the **Employer** must hold a disciplinary hearing within sixty (60) days of the date of suspension, provided that the chairperson of the hearing may extend such period, failing which the suspension must be terminated in writing and the **Employee** must return to full duty.

## 15. Termination of contract

### 15. Termination of contract

- 15.1 The **Employee's** contract will terminate-
  - 5.1.1 automatically on expiry of the term referred to in the contract, subject to any extension or renewal;
  - 5.1.2 at the **Employee's** initiative, if the **Employee** gives the **Employer** two (2) month's notice of termination in writing;
  - 5.1.3 at the **Employer's** initiative, if the **Employer** terminates the **Employee's** appointment for reasons relating to misconduct, incapacity, unacceptable performance, or the operational requirements of the Municipality or for any other reason recognised by law as sufficient, on one (1) calendar month's notice of termination in writing.
- 15.2 The **Employer** will be entitled to terminate the **Employee's** employment contract for any sufficient reason recognised by law, provided that the **Employer** must comply with its disciplinary code and procedures, if in the absence of which, the disciplinary code and procedures of the South African Local Government Bargaining Council will apply, as well as in accordance with the Labour Relations Act, 66 of 1995. Reasons for terminating the employment contract may include the **Employee**-
  - 5.2.1 committing any serious or persistent breach of any of the provisions of his/ her employment contract;
  - 5.2.2 being guilty of any serious misconduct or deliberate neglect in the discharge of his/ her duties under the employment contract and signed performance agreement;
  - 5.2.3 being absent from employment without approval for a period exceeding thirty (30) days;
  - 5.2.4 disobeying a lawful instruction or direction of the **Employer**;
  - 5.2.5 having been convicted of a criminal offence other than an offence, which in the reasonable opinion of the **Employer**, does not affect his/ her position as an **Employee**; or
  - 5.2.6 failing to place the whole of his /her time at the disposal of the **Employer**.
- 15.3 Should the **Employee** accept a nomination as a candidate for election as a member of a Municipal Council, Provincial Legislature or Parliament, he/she shall be deemed to have voluntarily terminated his/her services with the **Employer** with effect from the date which he/she is issued a certificate in terms of section 31 (3) of the Electoral Act, 1998 (Act 73 of 1998) or section 64 of the Local Government Municipal Electoral Act, 2000 (Act 27 of 2000) stating that he/she is a candidate in the relevant election or from the date on which he/she is

nominated as a permanent delegate to the National Council of Provinces as contemplated in section 61 (2) (b) of the Constitution, 1996.

## **16. Grievances**

The **Employee** may lodge a complaint or grievance concerning an Act or omission of the **Employer** with the Municipal Council in accordance with applicable procedures and timeframes.

## **17. Variation**

No addition to or variation or mutually agreed cancellation or novation of this contract and no waiver of any right arising from this contract or its breach or termination shall be of any force or effect unless reduced to writing and signed by or on behalf of both parties.

## **18. No indulgence**

No latitude, extension of time or other indulgence which may be given or allowed by the **Employer** to the **Employee** in respect of the performance of any obligation in terms of the contract, and no delay or forbearance in the enforcement of any right of any party arising from the contract, and no single or partial exercise of any right by any party under the contract, shall in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a novation of or otherwise affect any of the party's rights in terms of arising from the contract or estop or preclude any such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term thereof.

## **19. Severability**

Save to the extent contemplated herein, the parties hereto acknowledge and agree that each phrase, sentence, paragraph and clause of the contract is severable, the one from the other, notwithstanding the manner in which they may be linked together or grouped automatically and if in terms of any judgement or order, any phrase, sentence, paragraph or clause is found to be defective or unenforceable for any reason, the remaining phrases, sentences, paragraphs and clauses, as the case may be, shall nevertheless continue to be of full force and effect.

## **20. General**

### **20.1 Good Faith**

In the implementation of this Contract, the parties undertake to observe the utmost good faith and they warrant in their dealings with each other that they will neither do anything nor refrain from doing anything that might prejudice or detract from the rights, assets or interests of each of other.

### **20.2 Interpretation of Agreement**

The interpretation of this Contract shall be governed by the laws and legal principles of the Republic of South Africa.

### **20.3 Jurisdiction**

The parties consent firstly to the jurisdiction of the Commission for Conciliation Mediation and Arbitration (CCMA) and if the CCMA is not able to adjudicate the dispute, the Courts of the Republic of South Africa with regard to any claim resulting or arising from this contract.

**21. Domicilium citandi et executandi**

The parties choose as their *domicilia citandi et executandi* for all purposes of this contract the addresses as set out in clause 1.

**22. Notices**

All notices given by either party to the other in terms of this contract shall be valid if given by pre paid post, telegram, and facsimile or delivered by hand. In the case of pre-paid post receipt of the notice will be deemed to be three (3) days after posting and in all other cases on the date of signature of receipt.

Thus **done** and **signed** at .....on this the..... day of ..... 2010.

**AS WITNESSES:**

1. \_\_\_\_\_

\_\_\_\_\_  
**MUNICIPAL MANAGER**

2. \_\_\_\_\_

Thus **done** and **signed** at ..... on this the..... day of .....2010.

**AS WITNESSES:**

1. \_\_\_\_\_

\_\_\_\_\_  
**MAYOR**

2. \_\_\_\_\_