



**CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD**

Making progress possible. Together.

Performance Agreement

BETWEEN

LUNGELO MBANDAZAYO

**THE CITY OF CAPE TOWN
("The City")**

AND

KEVIN JACOBY

("The employee")

FINANCIAL YEAR

1 JULY 2019 - 30 JUNE 2020

[Handwritten signatures and initials]

[Handwritten signature]

1. INTRODUCTION

- 1.1 The City duly represented by **Lungelo Mbandazayo**, in his capacity as the City Manager has entered into a contract of employment with the employee, **Kevin Jacoby**, for a 5-year period ending on **31 December 2021**, in terms of section 57 of the Local Government: Municipal Systems Act 32 of 2000 ("the Act").
- 1.2 Section 57(1) (b) of the Act, read with the employee's contract of employment requires the parties annually to conclude a separate performance agreement.
- 1.3 For purpose of this agreement, the 2006 Regulations shall mean the Local Government: Municipal Performance Regulations for Municipal Managers and Managers Directly Accountable to Municipal Managers (GN R 805 of 1 August 2006
- 1.4 The parties wish to ensure that they are clear about the performance targets and objectives to be achieved, and to secure the commitment of the employee to a set of actions that will secure local government policy goals.

2. PURPOSE OF THIS AGREEMENT

- 2.1 The parties agree that the purpose of this Agreement is to:
- 2.2 comply with the provisions of Section 57(1)(b), 57(4A), 57(4B), 57(4C) and 57(5) of the Act, as well as the employment contract entered into between the parties and applicable regulations promulgated under the Act;
- 2.3 specify objectives and targets defined and agreed with the employee and to communicate to the employee the City's expectations of the employee's performance and accountabilities in alignment with the Integrated Development Plan, Service Delivery and Budget Implementation Plan (SDBIP), the Budget of the City and the Performance Dashboard Monitoring System ("Performance Dashboard") and what informs it;
- 2.4 specify accountabilities as set out in the Performance Plan, which forms an annexure to the 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 job;

Handwritten signatures and initials, including 'EG' and 'JB', are visible in the bottom right corner of the page.

- 2.7 give effect to the City's commitment to a performance-orientated relationship with its employee in attaining equitable and improved service delivery and meeting the operational requirements of the City.
- 2.8 To ensure that the Executive Director maintains a high standard of ethics whilst exercising his fiduciary responsibility to ensure the diligent execution of his portion of the Municipality's approved SDBIP's for the 2019/2020 financial year.

3. COMMENCEMENT AND DURATION

- 3.1 This Agreement will commence on the **1st July 2019** and will remain in force until **30th June 2020** thereafter a new Performance Agreement and Performance Dashboard 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 each year and must conclude a new performance agreement that replaces the previous agreement at least once a year within one month after commencement of the new financial year.
- 3.3 This Agreement will terminate on the termination of the employee's contract of employment for any reason.
- 3.4 If at any time during the validity of this Agreement the work environment alters (whether as a result of government or council decisions, operational requirements or otherwise) to the extent that the contents of this Agreement are no longer appropriate, the contents shall immediately be revised in consultation with the employee.

4. PERFORMANCE OBJECTIVES

- 4.1 The Performance Dashboard (Annexure "A") sets out:
 - 4.1.1 the performance objectives and targets that must be met by the employee and;
 - 4.1.2 the time frames within which those performance objectives and targets must be met.
- 4.2 The performance objectives and targets reflected in Annexure "A" are set by the City in consultation with the employee, and include key performance areas ("KPA's"), key objectives; key performance indicators ("KPI's"); core competency requirements; target dates and weightings.

- 4.3 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 date describes the timeframe in which the work must be achieved. The weightings show the relative importance of the key objectives to each other.
- 4.4 The performance objectives and targets must be practical, measurable and based on the key performance indicators set out from time to time in the City's Integrated Development Plan.
- 4.5 The employee's performance will, in addition, be measured in terms of contributions to the goals and strategies set out in the City's Integrated Development Plan and the Performance Dashboard.

5. PERFORMANCE MANAGEMENT SYSTEM

- 5.1 The employee agrees to participate in the performance management system that the City adopts or introduces for the City, management and municipal staff of the City.
- 5.2 The employee accepts that the purpose of the performance management system is to provide a comprehensive system with specific performance standards to assist the City, management and municipal staff to perform to the standards required.
- 5.3 The City 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 actively to 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.
- 5.5 The criteria upon which the performance of the employee shall be assessed shall consist of two components, namely KPAs and Core Competencies.
 - 5.5.1 The employee will be assessed against both components, with a weighting of 80:20 allocated to the KPAs and the Core Competencies respectively as provided for in the 2006 regulations.
 - 5.5.2 Each area of assessment will be weighted and will contribute a specific part to the total score.

Handwritten signatures and initials, including what appears to be 'EG' and a large stylized signature.

- 5.6 The employee's assessment will be based on his performance in terms of the outputs / outcomes specified in the attached performance dashboard (Annexure "A").

6. EVALUATING PERFORMANCE

- 6.1 The Performance dashboard (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 City 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 and, where possible, actions agreed to and implementation must take place within set time frames.
- 6.4 The annual performance appraisal will involve:
- 6.4.1 An assessment of the achievement of results as outlined in the performance dashboard.
 - 6.4.1.1 Each KPA 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.
 - 6.4.1.2 An indicative rating on the five-point scale as set out in the regulations will be provided for each KPA.
 - 6.4.1.3 The applicable assessment rating calculator (refer to regulation 27) will then be used to add the scores and calculate a final KPA score.
 - 6.4.2 **Assessment of the Core Competencies**
 - 6.4.2.1 Each Core Competency will be assessed according to the extent to which the specified standards have been met.
 - 6.4.2.2 An indicative rating on the five-point scale will be provided for each core competency.

Handwritten signatures and initials are present in the bottom right corner of the page, including what appears to be a signature 'dr' and several other initials and marks.

- 6.4.2.3 This rating will be multiplied by the weighting given to each core competency to provide a score.
- 6.4.2.4 The applicable assessment rating calculator will then be used to add the scores and calculate a final core competency score.

6.4.3 Overall rating

- 6.4.3.1 An overall rating will be calculated by using the applicable assessment- rating calculator. Such overall rating represents the outcome of the performance appraisal.
- 6.4.3.2 For the purposes of evaluating the annual performance of the employee, an evaluation panel shall be constituted by the City and such panel shall comprise of the persons as provided for in the 2006 regulations.

7. SCHEDULE FOR PERFORMANCE REVIEWS

- 7.1. The performance of the employee shall be reviewed at least quarterly as required in terms of the provisions of the 2006 Regulations and in accordance with the Performance Dashboard.
- 7.2 The City shall keep a record of the review and assessment meetings and any Performance Dashboard correspondence and written feedback which will form part of the evidence to be taken into account in your annual performance appraisal and the formal poor performance process set out below.
- 7.3 Performance feedback shall be based on the City's assessment of the employee's performance.
- 7.4 The City will be entitled to review and make reasonable changes to the provisions of the performance dashboard (Annexure "A") from time to time for operational reasons on agreement between both parties which agreement shall not be unreasonably withheld.
- 7.5 The City may amend the provisions of Annexure A whenever a performance management system is adopted, implemented and / or amended as the case may be on agreement between both parties.

8. OBLIGATIONS OF CITY

- 8.1 City shall –
 - 8.1.1 create an enabling environment to facilitate effective performance by the employee;

- 8.1.2 provide access to skills development and capacity building opportunities;
- 8.1.3 work collaboratively with the employee to solve problems and generate solutions to common problems that may impact on the performance of the employee;
- 8.1.4 on the request of the employee delegate such powers reasonably required by the employee to enable him to meet the performance objectives and targets established in terms of this Agreement; and
- 8.1.5 make available to the employee such resources as the employee may reasonably require from time to time to assist him to meet the performance objectives and targets established in terms of this Agreement.

9. CONSULTATION

- 9.1 The City agrees to consult the employee timeously where the exercising of the City's powers will, amongst others, –
 - 9.1.1 have a direct effect on the performance of any of the employee's functions;
 - 9.1.2 commit the employee to implement or to give effect to a decision made by the City;
 - 9.1.3 have a substantial financial effect on the City.
- 9.2 The City agrees to inform the employee of the outcome of any decisions taken pursuant to the exercise of powers contemplated in 9.1 as soon as is practicable to enable the employee to take any necessary action without delay.

10. MANAGEMENT OF EVALUATION OUTCOMES

- 10.1 The evaluation of the employee's performance will form the basis for assessing outstanding performance or correcting unacceptable performance.
- 10.2 The employee acknowledged that the payment of a performance bonus contemplated in the regulation 32(2) of the 2006 Regulations is within the entire discretion of the City.
- 10.3 In the case of sub-standard or unacceptable performance (sub-standard performance is defined in the Local Government: Disciplinary regulations for Senior Managers, 2010 ("the 2010 Regulations) as: " ... poor work or unacceptable performance or failing to meet the required standard set for the post") the following shall apply:

Handwritten signatures and initials are present in the bottom right corner of the page, including what appears to be a signature and the initials 'EE' and 'B'.

10.3.1 If the City has reason to believe that you are not performing in accordance with the performance standards of your post the City Manager will:

- Convene a meeting to give you feedback on your performance at which you will be entitled to be represented by a fellow employee who consents to such representation;
- Provide reasons why it is necessary to initiate a formal poor performance procedure;

10.4. In the meeting the City Manager will:

- Explain the requirements, level and skills and the nature of the post;
- Explain why your performance is considered sub-standard, with reference to the Performance Agreement and Plan and/or the Performance Dashboard;
- Afford you or your representative an opportunity to respond to the performance outcomes referred to above.

10.5 After considering your responses the City Manager may initiate a formal programme of counselling and/or training within a time-frame set by the City Manager, as the exigencies, service delivery imperatives and the operational requirements of the City may require, enabling you to meet the required standard of performance. The City Manager will also establish ways to address any factors that may affect your performance which lie beyond your control.

10.6 Should you fail to meet the required performance standard within the set time-frame, if appropriate and subject to the City's service delivery imperatives and/or its operational requirements the City Manager may, if appropriate, regularly evaluate your performance at intervals set by the City Manager and provide further remedial or developmental support to assist you in eliminating the sub-standard performance.

10.7 Should your performance not improve to the requisite standard after receiving appropriate performance counselling, support and a reasonable time to improve your performance (which once again will be subject to service delivery imperatives and/or the operational requirements of the City) or if you refuse to follow or participate fully in the formal process of counselling and/or training as set out above, the City Manager will:

- Bring the allegations of poor performance to the attention of the Municipal Council ("Council") in the form of a report which will be tabled before

Handwritten signatures and initials are present at the bottom right of the page, including a large signature that appears to be 'JH' and several other initials and marks.

Council not later than 7 days after receipt thereof, failing which the Mayor may request the Speaker to convene a special meeting of Council to consider the said report.

10.8 If the Council is satisfied that sufficient evidence exists to institute a hearing in accordance with the provisions of Regulation 8 of the 2010 regulations, then such event you will be notified:

- by hand or by registered mail of the poor performance allegations against you and the convening of an inquiry to consider such allegations, which notification shall be within at least 7 days of the inquiry;
- Of the time, date and venue of the inquiry to be conducted into the alleged sub-standard performance;
- The name of the Presiding Chair and of the initiator;
- Of your right to be represented by a fellow employee, Shop Steward, Union Official or any other suitably qualified person;
- Of your right to request further particulars or access to documentation in writing, directed to the initiator, within 7 days after receipt of the notification;
- Of your right to call witnesses to testify on your behalf;
- That any request for a postponement is to be directed in writing to the initiator within 7 days after receipt of the notification and which request must contain the reasons why a postponement is sought;
- The fact that the inquiry will be conducted in your absence should you or your representative fail to attend the hearing and which will include the making of a finding and the imposition of a suitable outcome by the Chair.

10.9 The inquiry will be conducted in accordance with the prescripts set out in Regulation 10 of the 2010 Regulations.

10.10 The Chair of the inquiry may impose any, or a combination of the following outcomes with or without conditions:

- Suspension without pay for no more than 3 months;
- Demotion;
- transfer to another post;

Handwritten signatures and initials, including a large 'B' at the bottom right.

- Reduction in salary, allowances or other benefits;
- Dismissal.

11 DISPUTE RESOLUTION MECHANISMS FOLLOWING AN ADVERSE FINDING AND/OR OUTCOME AFTER THE SUB-STANDARD/POOR PERFORMANCE INQUIRY:

11.1 You will have the right to refer any finding and/or outcome imposed on you pursuant to the inquiry to the accredited agency in terms of the provisions of s133 of the Labour Relations Act ("LRA").

11.2 PRE-DISMISSAL ARBITRATION

11.2.1 The Council may with your consent, request the Commission for Conciliation, Mediation and Arbitration ("CCMA") to conduct an arbitration into the allegations of sub-standard performance as provided in s188A of the LRA in which case the decision of the arbitrator shall be final and binding subject only to review by the Labour Court.

11.3 DISPUTE RESOLUTION

11.3.1 There are 3 areas of dispute resolution in the performance arena:

11.3.1.1 The first is where the formal poor performance process has been triggered as per Clause 10 above, which may take place at any time during the annual performance cycle, and you dispute the findings and/or outcome of the Performance hearing. The dispute resolution processes in this instance are set out in Clause 11.1 and 11.2 above;

11.3.1.2 The second is where there is a dispute about the conclusion of a Performance Agreement as required by the Municipal Systems Act and your contract of employment. In such instance the provisions of Clause 11.4 below apply.

11.3.1.3 The third is where you dispute the outcome of the annual performance process. In such instance the provisions of Clause 11.5 below apply.

11.4 Section 57(1)(b) of the Municipal Systems Act provides that a person to be appointed as a senior manager may be appointed only "subject to a separate performance agreement concluded annually which, in terms of s57(2) must be concluded within a reasonable time after appointment and thereafter within one month after the beginning of the financial year of the Municipality.

This is carried through to your contract of employment which provides in Clause 4 thereof that it is a condition precedent of your employment that you sign a performance agreement as contemplated by s57 of the Systems Act within 60 days after appointment and thereafter annually for the duration of your contract within one month after the beginning of each financial year failing which your appointment lapses; provided that upon good cause shown by you to the City, the appointment shall not lapse. Accordingly, should you not enter into a performance agreement within the time frames specified above your appointment shall lapse, subject to the proviso set out above.

- 11.5 Notwithstanding anything in your contract to the contrary any disputes by yourself about the outcome of your annual performance evaluation must be mediated by a member of Council provided that such member was not part of the evaluation panel provided for in Regulation 27(4)(e) of the 2006 Regulations within 30 days of receipt of a formal dispute from you, whose decision shall be final and binding on the parties.

12. GENERAL

- 12.1 The contents of the Agreement and the outcome of any review conducted in terms of Annexure "A" will not be confidential, and may be made available to the public by the Municipality.
- 12.2 Nothing in this Agreement diminishes the obligations, duties or accountabilities of the employee in terms of his contract of employment, or the effects of existing or new regulations, circulars, policies, directives or other instruments which are binding on the employee.
- 12.3 The City undertakes not to make the employee's performance evaluation results available to the public without the prior written consent of the employee.

Handwritten signatures and initials at the bottom right of the page, including what appears to be 'EG' and other illegible marks.

Signed at CAPE TOWN on this 31 day of July 2019

AS WITNESSES:

1. Heindoo

2. Loyed

[Signature]

EMPLOYER

CITY MANAGER: LUNGELO MBANDAZAYO

Signed at Cape Town on this 27 day of June 2019

AS WITNESSES:

3. Ben

4. [Signature]

[Signature]

EMPLOYEE

KEVIN JACOBY