

PERFORMANCE AGREEMENT

Made and entered into by and between

**the Mayor of
SENQU LOCAL MUNICIPALITY
("the Municipality")
herein represented by the Mayor
Councilor Nozibele Yvonne Mtyali**

and

**Mr. Mxolisi Maxon Yawa
the Municipal Manager of the
SENQU LOCAL MUNICIPALITY
("the Manager")**

**for the financial year:
1 July 2013 to 30 June 2014**

WHEREBY IT IS AGREED AS FOLLOWS:

1. INTRODUCTION

- 1.1 The Municipality has, in terms of Section 57(1)(a) of the Local Government: Municipal Systems Act, No. 32 of 2000 ("the Systems Act") entered into a contract of employment with the Municipal Manager for a period of 5 years, commencing on 01 July 2012
- 1.2 Section 57(1)(b) of the Systems Act, read with the contract of employment concluded between the Parties, require 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 Municipal Manager 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), (4B) and (5) of the Systems Act.
- 1.5 In this Agreement the following words will have the meaning ascribed thereto:

"this Agreement" - means the performance agreement between the Municipality and the Municipal Manager and the annexures thereto.

"the Executive Committee" - means the Executive Committee of the Municipality constituted in terms of Section 55 of the Local Government: Municipal Structures Act as represented by its chairperson, the Mayor.

"the Municipal Manager" - means the Municipal Manager appointed in terms of Section 82 of the Local Government: Municipal Structures Act, No. 117 of 1998 as amended by Section 121 of Act 32 of 2000 and repealed by section 15 of Act 7 of 2011

"the Municipality" - means the SENQU LOCAL MUNICIPALITY.

"the Parties" - means the Municipal Manager and the Mayor on behalf of the SENQU LOCAL MUNICIPALITY.

2. PURPOSE OF THIS AGREEMENT

- 2.1 The Parties agree that the purposes of this Agreement are to:
 - 2.1.1. 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;
 - 2.1.2. specify objectives and targets established for the Municipal Manager and to communicate to the Mayor the Municipality's expectations of the Municipal Manager's performance and accountability;
 - 2.1.3. specify accountabilities as set out in Annexure A;
 - 2.1.4. monitor and measure performance against targeted outputs and outcomes;

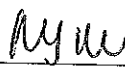




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- 2.1.5. use Annexures A and B as a basis for assessing the Municipal Manager for permanent employment and/or to assess whether the Municipal Manager has met the performance expectations applicable to his/her job;
- 2.1.6. appropriately reward the Municipal Manager in accordance with the Municipality's performance management policy in the event of outstanding performance;
- 2.1.7. establish a transparent and accountable working relationship; and
- 2.1.8. give effect to the Municipality's commitment to a performance-orientated relationship with its Municipal Manager in attaining equitable and improved service delivery.

3. COMMENCEMENT AND DURATION

- 3.1 Notwithstanding the date of signature this Agreement will commence on the 1st of July 2012 and will remain in force until a new performance agreement including a Performance Plan and Personal Development Plan is concluded between the Parties as contemplated in Clause 3.2
- 3.2 The Parties will review the provisions of this Agreement during June each year. The Parties will conclude a new performance agreement including a Performance Plan and Personal Development Plan that replaces this Agreement at least once a year by not later than the 31st of July each year.
- 3.3 The payment of the performance bonus is determined by the performance score obtained during the 4th quarter annual performance assessment as informed by the quarterly performance assessments. Should the Municipal Manager be entitled to a bonus, this will be paid out after approval by Council and not later than sixty (60) days thereafter in the Municipal Manager's salary for a month that shall be applicable.
- 3.4 The payment of a performance bonus for the year in which the Municipal Manager's contract of employment expires will be done as set out in clause 3.3 and the bonus so determined will be paid to the Municipal Manager on the last day of his/her employment or not later than 30 days thereafter.
- 3.5 In the event of the Municipal Manager commencing or terminating his services with the Municipality during the validity period of this Agreement, the Municipal Manager's performance for the portion of the period referred to in clause 3.1 during which he was employed, will be evaluated and he will be entitled to a pro rata performance bonus based on his evaluated performance and the period of actual service.
- 3.6 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 by the Parties.
- 3.7 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.
- 3.8 This Agreement will terminate on the termination of the Municipal Manager's contract of employment for any reason.

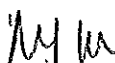



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4. PERFORMANCE OBJECTIVES

- 4.1 The Performance Plan in **Annexure A** sets out:
 - 4.1.1 the performance objectives and targets which must be met by the Municipal Manager; and
 - 4.1.2 the time frames within which those performance objectives and targets must be met.
- 4.2 The Personal Development Plan in **Annexure B** sets out the Municipal Manager's personal developmental requirements in line with the objectives and targets of the Municipality.
- 4.3 The Core Management Competencies reflected as set out those management skills regarded as critical to the position held by the Municipal Manager.
- 4.4 The performance objectives and targets reflected in **Annexure A** are set by the Municipality in consultation with the Municipal Manager and based on the Integrated Development Plan and the budget of the Municipality, and include key objectives, key performance areas, target dates and weightings.
- 4.5 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 time frame in which the work must be achieved. The weightings show the relative importance of the key objectives to each other.
- 4.6.0 The Municipal Manager's performance will, in addition, be measured in terms of contributions to the development objectives and strategies set out in the Municipality's Integrated Development Plan.

5. PERFORMANCE MANAGEMENT SYSTEM

- 5.1 The Municipal Manager agrees to participate in the performance management system that the Municipality adopts or introduces for the municipal management and municipal staff of the Municipality.
- 5.2 The Municipal Manager accepts that the purpose of the performance management system will be to provide a comprehensive system with specific performance standards to assist the municipal management and municipal staff to perform to the standards required.
- 5.3 The Executive Committee will consult the Municipal Manager about the specific performance standards that will be included in the performance management system as applicable to the Municipal Manager.
- 5.4 The Municipal Manager undertakes to actively focus towards the promotion and implementation of his/her Key Performance Areas as set out in **Annexure A** including special projects relevant to the Municipal Manager's responsibilities within the local government framework.

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6. PERFORMANCE ASSESSMENT

- 6.1 The performance of the Municipal Manager will be assessed against the outputs and outcomes achieved in terms of his/her Key Performance Areas (KPA's) as fully described in Annexure A and his/her Core Management Competencies (CMCs) determined at the commencement of this Agreement with a weighting of 80:20 allocated to the KPA's and CMCs respectively. Therefore the KPA's that refer to the main tasks of the Manager account for 80% of his/her assessment while the CMCs make up the other 20% of the Municipal Manager's assessment score.
- 6.2 The weightings agreed to in respect of the Municipal Manager's KPA's attached as Annexure A are set out in the table below:

KEY PERFORMANCE AREAS (KPA's)	WEIGHT
Basic Service Delivery and Infrastructure	20%
Municipal Financial Viability and Management	20%
Local Economic Development (LED)	10%
Municipal Transformation and Institutional Development	10%
Good Governance and Public Participation	20
Total	80%
KEY PERFORMANCE AREAS (KPA's)	WEIGHT

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6.3

The weightings agreed to in respect of the CMCs considered most critical for the Municipal Manager's position are set out in the table below:

CORE COMPETENCY REQUIREMENTS - CCRs		
CORE MANAGERIAL COMPETENCIES (CMC)	CHOICE (x)	WEIGHT
Strategic Capability and Leadership	x	4
Programme and Project Management		
Financial Management	compulsory	4
Change Management		
Knowledge Management		
Service Delivery Innovation		
Problem Solving and Analysis		
People Management and Empowerment	compulsory	3
Client Orientation and Customer Focus	compulsory	3
Communication		
Honesty and Integrity		
CORE OCCUPATIONAL COMPETENCIES (COCs)		
Competence in Self-Management		
Interpretation of and implementation within the legislative and national policy frameworks		
Knowledge of Developmental Local Government	X	3
Knowledge of Performance Management and Reporting		
Knowledge of Global and SA specific political, social and economic contexts		
Competence in Policy Conceptualisation, Analysis and Implementation	X	3
Knowledge of more than one functional municipal field or discipline		
Mediation Skills		
Governance Skills		
Competence as required by other national line sector departments		
Exceptional and dynamic creativity to improve the functioning of the Municipality		
TOTAL PERCENTAGE		20%

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The assessment of the performance of the Manager will be based on the following levels for KPAs and CMCs:

LEVEL	TERMINOLOGY	DESCRIPTION
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.

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6.5

To determine which rating on the five-point scale did the Manager achieve for each KPA the following criteria should be used:

Duration of task	- Was the target achieved within the projected time frame?
Level of complexity	- Required problem solving - Reconciling different perceptions - Innovative alternatives used
Cost	- within budget - saving - overspending
Constraints	- Did envisaged constraints materialize? - If so, were steps taken to manage/reduce the effect of the constraint? - If not, did it beneficially affect the completion of the target? - Any innovative/pro-active steps to manage the constraint

6.6

Annexure "B" may be used as the basis for progress discussions by the Municipality.

7.

PANEL AND SCHEDULE FOR PERFORMANCE ASSESSMENTS

7.1

An assessment panel consisting of the following persons will be established:

7.1.1 Mayor/Mayor

7.1.2 Chairperson of the Audit Committee

7.1.3 A ward committee member (on a rotational basis) where applicable

7.1.4 A member of the Executive Committee

7.1.5 The Mayor and/or Municipal Manager of another municipality

7.2

In addition an assessment will also be done by:

7.2.1 The Municipal Manager (own assessment)

7.2.2 Fellow section 56 managers.

7.3

The performance of the Manager will be assessed in relation to his/her achievement of:

7.3.1 the targets indicated for each KPA in Annexure A;

7.3.2 the CMCs as defined in Clause 6.3 of this agreement.

on a date to be determined for each of the following quarterly periods:

- 1st Quarter - July to September
- 2nd Quarter - October to December
- 3rd Quarter - January to March
- 4th Quarter - April to June

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- 7.4 Assessments in the first and third quarter may be verbal if the Manager's performance is satisfactory.
- 7.5 The Municipality will keep a record of the mid-year and annual assessment meetings.
- 7.6 The Municipality may appoint an external facilitator to assist with the annual assessment.
- 8. EVALUATING PERFORMANCE AND MANAGEMENT OF EVALUATION OUTCOMES**
- 8.1 The Municipal Manager will submit quarterly performance reports and a comprehensive annual performance report prior to the performance assessment meetings to the Mayor.
- 8.2 The Municipal Manager will give performance feedback to the Mayor after each quarterly and the annual assessment meetings.
- 8.3 The evaluation of the Municipal Manager's performance will form the basis for rewarding outstanding performance or correcting unacceptable performance.
- 8.4 At the end of the 4th quarter, the Executive Committee will determine if the Municipal Manager is eligible for a performance bonus as envisaged in his/her contract of employment based on the bonus allocation set out in Clause 8.11 hereto.
- 8.5 The results of the annual assessment and the scoring report of the Manager for the purposes of bonus allocation, if applicable, will be submitted to the Executive Council for a recommendation to the full Council.
- 8.6 A fully effective assessment score will render the Municipal Manager eligible to be considered for a performance related increase (pay progression) as envisaged in his/her contract of employment provided the Municipal Manager has completed at least 12 months continuous service with the Municipality at his/her current remuneration package on the 30th of June.
- 8.7 Personal growth and development needs identified during any performance assessment discussion, must be documented in the Manager's Personal Development Plan as well as the action steps and set time frames agreed to.
- 8.8 Despite the establishment of agreed intervals for assessment, the Mayor may, in addition, review the Municipal Manager's performance at any stage while his/her contract of employment remains in force.
- 8.9 The Mayor will be entitled to review and make reasonable changes to the provisions of Annexure "A" from time to time for operational reasons. The Municipal Manager will be fully consulted before any such change is made.

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8.10 The provisions of Annexure "A" may be amended by the Executive Committee when the Municipality's performance management system is adopted, implemented and/or amended as the case may be subject to clause 5.3.

8.11 The evaluation of the Municipal Manager's performance will form the basis for rewarding outstanding performance or correcting unacceptable performance.

8.11.1 A performance bonus ranging from 5% to 14% of the all-inclusive remuneration package may be paid to the Municipal Manager 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%.

9. OBLIGATIONS OF THE MUNICIPALITY

- 9.1 The Municipality will create an enabling environment to facilitate effective performance by the Municipal Manager.
- 9.2 The Municipal Manager will be provided with access to skills development and capacity building opportunities.
- 9.3 The Municipality will work collaboratively with the Municipal Manager to solve problems and generate solutions to common problems that may impact on the performance of the Municipal Manager.
- 9.4 The Municipality will make available to the Municipal Manager such resources including employees as the Municipal Manager may reasonably require from time to time to assist him to meet the performance objectives and targets established in terms of this Agreement; provided that it will at all times remain the responsibility of the Municipal Manager to ensure that he complies with those performance obligations and targets.
- 9.5 The Municipal Manager will, at his request, be delegated such powers by the Municipality as may in the discretion of the Municipality be reasonably required from time to time to enable him to meet the performance objectives and targets established in terms of this Agreement.

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10. CONSULTATION

- 10.1 The Executive Committee agrees to consult the Municipal Manager within a reasonable time where the exercising of the Executive Committee's powers will –
- 10.1.1 have a direct effect on the performance of any of the Municipal Manager's functions;
 - 10.1.2 commit the Municipal Manager to implement or to give effect to a decision made by the Executive Committee
 - 10.1.3 have a substantial financial effect on the Municipality.
- 10.2 The Mayor agrees to inform the Municipal Manager 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 Municipal Manager to take any necessary action without delay.

11. CONSEQUENCE OF UNACCEPTABLE OR POOR PERFORMANCE

- 11.1 Where the Mayor is, at any time during the Municipal Manager's employment, not satisfied with the Municipal Manager's performance with respect to any matter dealt with in this Agreement, the Mayor will give notice to the Municipal Manager to attend a meeting with the Mayor.
- 11.2 The Municipal Manager will have the opportunity at the meeting to satisfy the Mayor of the measures being taken to ensure that the Manager's performance becomes satisfactory in accordance with a documented programme, including any dates, for implementing these measures.
- 11.3 The Municipality will provide systematic remedial or developmental support to assist the Municipal Manager to improve his/her performance.
- 11.4 If, after appropriate performance counseling and having provided the necessary guidance and/or support as well as reasonable time for improvement in performance, the Mayor holds the view that the performance of the Municipal Manager is not satisfactory, the Municipal Council will, subject to compliance with applicable labour legislation, be entitled by notice in writing to the Manager, to terminate the Manager's employment in accordance with the notice period set out in the Municipal Manager's contract of employment.
- 11.5 Where there is a dispute or difference as to the performance of the Municipal Manager under this Agreement, the Parties will confer with a view to resolving the dispute or difference.
- 11.6 Nothing contained in this Agreement in any way limits the right of the Municipality to terminate the Municipal Manager's contract of employment with or without notice for any other breach by the Municipal Manager of his obligations to the Municipality or for any other valid reason in law.

W.M. [Signature] P. X.G. [Signature]

12. DISPUTES

- 12.1 In the event that the Municipal Manager is dissatisfied with any decision or action of the Executive Committee in terms of this Agreement, or where a dispute or difference arises as to the extent to which the Municipal Manager has achieved the performance objectives and targets established in terms of this Agreement, the Mayor may meet with the Municipal Manager with a view to resolving the issue. At the Municipal Manager's request the Mayor will record the outcome of the meeting in writing.
- 12.2 In the event that the Municipal Manager remains dissatisfied with the outcome of that meeting, he may raise the issue in writing with the Mayor. The Mayor will determine a process within 4 (four) weeks for resolving the issue, which will involve at least providing the Municipal Manager with an opportunity to state his case orally or in writing before the Mayor. At the Municipal Manager's request the Mayor will record the outcome of the meeting in writing. The final decision of the Mayor on the issue will be made within 6 (six) weeks of the issue being raised with the latter and will, subject to common law and applicable labour law, be final.
- 12.3 If any dispute about the nature of the Municipal Manager's performance agreement whether it relates to key responsibilities, priorities, methods of assessment or any other matter provided for cannot be resolved through an internal mechanism as contemplated above, the dispute will be mediated by the MEC for local government in the province or any other person appointed by the MEC within 30 days of receipt of a formal dispute from the Municipal Manager.
- 12.4 In the event that the mediation process contemplated above fails, the relevant arbitration clause of the contract of employment will apply.

13. GENERAL

- 13.1 The contents of this 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, where appropriate.
- 13.2 Nothing in this Agreement diminishes the obligations, duties or accountabilities of the Municipal Manager in terms of his/her contract of employment, or the effects of existing or new regulations, circulars, policies, directives or other instruments.

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Signed at ... *1st July* ... on this day of 2013.

As Witnesses:

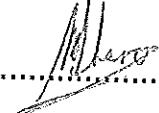
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Mayor
SENQU LOCAL MUNICIPALITY

Signed at on this day of 2013.

As Witnesses:

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Municipal Manager
SENQU LOCAL MUNICIPALITY