

## ... MUNICIPALITY

### EMPLOYMENT CONTRACT

#### 1. Parties

- 1.1 The ... Municipality established under Notice No ... of ..., 2000 conducting business at .... (fill in the physical address of the municipality's administrative headquarters) herein represented by ... (full names and surname) (identity number ...), in his capacity as (executive) mayor (hereinafter referred to as the employer); and
- 1.2 ... (full names and surname)(identity number ...) of ... (fill in the physical address of the employee) (hereinafter referred to as the employee) (jointly referred to as the parties).

#### 2. Establishment of contract

The employer hereby employs the employee who hereby accepts employment subject to the terms and conditions contained in this contract.

#### 3. Position and status of the employee

- 3.1 The employee is appointed and accepts appointment as the municipal manager of the employer.
- 3.2 The employee is the head of the employer's administration and accounting officer of the employer.

#### 4. Commencement and termination date

- 4.1 The employment of the employee with the employer commenced on ... regardless of the date of signing of this contract and terminates, without further notice, automatically six months after the first meeting of the next council of the employer elected during a general election of municipalities in terms of section 29(2) of the Local Government: Municipal Structures Act 1998 (Act No 117 of 1998).
- 4.2 It is specifically recorded that there is no expectation that this agreement will be renewed or extended beyond the term referred to in clause 4.1, other than by agreement between the parties.
- 4.3 Termination of this contract or failure to renew or extend the period referred to in clause 4.1 shall not constitute dismissal of the employee based on the employer's operational requirements, nor as an unfair or unlawful dismissal. Accordingly the employee she/he shall not be entitled to any additional remuneration or compensation, including (but not limited to) severance pay, notice pay, retirement and medical aid fund benefits to which an employee may otherwise be entitled to in the event of a termination based on an employer's operational requirements in respect of such termination or such failure.

## **5. Place of work**

Unless she/he is attending to the official business of the employer in another place within or outside the employer's municipal area, the employee shall work at the offices of the employer situated at the address referred to in clause 1.1.

## **6. Working hours**

6.1 The employee shall work a five-day forty hour working week, Monday to Friday, except public holidays and when she/he is on approved leave.

6.2 The employee shall work an eight hour working day.

6.3 The employee shall work from ... to ... and from ... to ... on every working day.

## **7. Duties and responsibilities**

7.1 The employee must perform the functions, discharge the duties and exercise the powers –

- (a) assigned to or conferred on her/him in terms of national, provincial and local legislation; and
- (b) delegated and sub-delegated to her/him in terms of the employer's delegated powers.

7.2 The employee's functions, powers and duties include any power, function and duty reasonably necessary for, or incidental to, the effective performance of her/his functions, discharge of her/his duties and the exercise of her/his powers.

## **8. Remuneration**

### **8.1 Total cost-to-company remuneration**

The employee's remuneration is calculated on a total cost-to-employer basis.

### **8.2 Basis for determining the quantum of total cost-to company**

- (a) The amount of the total cost-to-employer remuneration of the employee is R ... per annum, with effect from ...
- (b) It is specifically recorded that the employee is not entitled to any further or additional payments, except as stipulated in this contract.

### **8.3 Changes to the employee's salary**

- (a) The employer may annually, in its sole discretion, together with the consideration of its budget, review the remuneration of the employee, provided that any

increase in the employee's remuneration, shall be linked to her/his performance assessment for the financial year immediately preceding the year within which such increase is considered.

- (b) Any increase in the remuneration of the employee, if granted by the employer, shall be effective from the first day of the month following the month during which the employee started working for the employer.
- (c) The amount of any increase in remuneration that may be granted to the employee may not exceed an amount equivalent to the official inflation rate as measured by the CPIX for the year immediately preceding the year during which the adjustment becomes effective.
- (d) Should the employee in her/his annual performance assessment for the year immediately preceding the year during which an increase to her/his remuneration may be made –
  - (i) score 80% or more, she/he shall be entitled to an increase of 100% of the amount in paragraph (c);
  - (ii) score 70% or more but less than 80%, she/he shall be entitled to an increase of 80% of the amount in paragraph (c);
  - (iii) score 60% or more but less than 70%, she/he shall be entitled to an increase of 60% of the amount in paragraph (c); and
  - (iv) scored less than 60% she/he shall not be entitled, and the employer shall not grant or pay, any increase.

#### **8.4 Elements of remuneration**

Subject to the provisions of clauses 13 and 14, the employee shall, not later than the date of signing of this contract in writing instruct the employer's Director Finance as to the structure of her/his remuneration, provided that–

- (a) the employee may thereafter, during July of each year, issue different instructions regarding such structure to the employer;
- (b) the employee must become a member and remain a member of, and contribute to, a retirement fund and a medical aid scheme recognised by the employer;
- (c) 15% of the employee's total remuneration shall be allocated to her/his annual performance bonus;
- (d) not more than 40% of the balance of the employee's remuneration after deducting the amount referred to in sub-paragraph (c) may be appropriated to benefits and allowances; and

- (e) not less than 60% of the balance of the employee's remuneration after deducting the amount referred to in sub-paragraph (c) shall be appropriated to the employee's basic salary.

## **9. Payment of salary and salary advances**

- 9.1 Payment of the employee's salary is made, subject to section 32(4) of the Basic Conditions of Employment Act 1997 (Act No 75 of 1997), in twelve equal instalments, in arrears, by direct deposit into a bank account designated by the employee on the ... day of each month or the working day nearest to such date.
- 9.2. The employee may not draw any advances against her/his salary.

## **10. Employee to provide a suitable motor vehicle**

- 10.1. The employee shall supply and have a motor vehicle available for the proper performance of her/his functions and discharge of her/his duties.
- 10.2 The choice of motor vehicle referred to in clause 10.1 is in the exclusive discretion of the employee, provided that the vehicle must be suitable for the purpose for which it is supplied.
- 10.3. The employee shall not be entitled to use any vehicle of the employer for the performance of her/his functions or the discharge of her/his duties, except with the express prior permission of the employer having been obtained.

## **11. Reimbursement for travelling on the employer's official business**

- 11.1 The employer shall reimburse the employee for travelling expenses incurred for official journeys outside a radius of 20 km from the employee's ordinary place of work. The rate per kilometre at which the employer shall reimburse the employee shall be the rate prescribed by the Department of Transport for use of private vehicles.
- 11.2 The employer may impose such reasonable conditions on travelling in terms of clause 11.1 as may be necessary to ensure prudent financial management, in respect of, but not limited to-
  - (a) the maximum distance that may be travelled and claimed during any month; and
  - (b) requirements relating to the approval of official journeys
- 11.3 Official journeys exclude any journey between the employee's residence and ordinary place of work.
- 11.4 The employer shall deduct such tax from any amounts paid to the employee in terms of this clause as may be prescribed and pay any such amount over to the

South African Revenue Service in terms of the relevant legislation.

- 11.5 Whenever the employee uses air transport on the official business of the employer, she/he shall be entitled to hire a rental car for travelling at her/his destination in terms of the employer's subsistence and travelling policy.

## **12. Cellular/mobile phone and portable computer**

- 12.1 It is specifically agreed that the employee shall provide and make available a cellular telephone for the proper performance of her/his functions and discharge of her/his duties. The employer may reimburse the employee for the cost of a business airtime contract and calls made from such mobile phone up to an amount of R 600 per month in terms of the employer's policy on the reimbursement of mobile phone costs. The employee shall ensure that the number of such mobile phone is made available to all councillors and managers who are directly accountable to her/him.
- 12.2 The employer may, in its sole discretion, acquire and issue a portable computer to the employee for her/his exclusive use.
- 12.3 The issuing receipt which the employee shall sign when receiving a portable computer in terms of this clause shall include such detail with regard to the computer and concomitant equipment as may be reasonably required to identify it, including detail with regard to the configuration of the equipment concerned.
- 12.4 The employee shall present the computer and concomitant equipment on demand to the manager responsible for information technology to verify its physical existence and that it is in proper working order.
- 12.5 The employee shall at all times exercise reasonable care to prevent the loss, damage to or theft of any portable computer and concomitant equipment issued to her/him.
- 12.6 The employee shall immediately report the loss, suspected theft or damage of a portable computer or any concomitant equipment issued to her/him to the employer's manager responsible for asset management and the mayor. The mayor shall upon receiving a report in terms of this clause appoint a person, who may be another employee of the employer or another person, to investigate the circumstances of the reported loss, suspected theft or damage and to submit a written report to her/him. The mayor may, upon receipt of a report in terms of this paragraph, institute such action, including disciplinary action, as may be appropriate.
- 12.7 The employee shall on her/his last work day at the employer, return any portable computer and concomitant equipment that has been issued to her/him to the employer's manager responsible for asset management.

**13. Retirement fund**

- 13.1. The employee must become and remain a member of, and contribute to, a retirement fund recognised by the employer and which is registered in terms of the Pension Funds Act 1956.
- 13.2. The parties are bound by the rules of the fund and must contribute to the fund in terms of those rules, provided that the total amount of the employer's contribution to such fund for the benefit of the employee may not exceed 15% of the portion of the employee's remuneration allocated to benefits and allowances in terms of clause 8.4.

**14. Medical aid scheme**

- 14.1. The employee must, unless she/he is registered as the dependent of a member of another medical aid scheme, become and remain a member of, and contribute to, a medical aid scheme recognised by the employer and which is registered in terms of the Medical Schemes Act 1998.
- 14.2. The parties are bound by the rules of the scheme and must contribute to the scheme in terms of those rules, provided that the total amount of the employer's contribution to such scheme for the benefit of the employee may not exceed an amount as determined in terms of the Medical Aid Collective Agreement concluded in the South African Local Government Bargaining Council.

**15. Overtime work and overtime pay**

- 15.1. It will be required of the employee to work overtime from time to time.
- 15.2. Overtime worked shall not be remunerated, whether in cash or in kind.

**16. Deductions from salary**

- 16.1 The employer shall deduct, and the employee agrees that the employer deducts from her/his monthly salary and pay over to the relevant institution (where applicable) -
- (a) Income tax in terms of relevant legislation.
  - (b) The employee's contributions to her/his retirement and medical aid scheme.
  - (c) Any deductions ordered by a court of law.
  - (d) Any deduction authorised in terms of a law.
  - (e) Any deductions permitted in terms of a collective agreement.

16.2 Any deduction in terms of clause 16.1 must be clearly shown on the employee's salary advice.

## **17. Leave**

The employee is, subject to the employer's rules governing leave, entitled to leave as follows:

- (a) Annual leave as set out in clause 18.
- (b) Sick leave as set out in clause 19.
- (c) Family responsibility leave as set out in clause 20.

## **18. Annual leave**

18.1 The employee is entitled to 21 working days annual leave with full pay after every year of completed service.

18.2 The employee shall take at least 15 consecutive working days leave within six months after it became valid. The employer and the employee may by agreement extend the period of six months for a further period of six months.

18.3 Any leave of the employee that she/he had not taken accumulates to her/his credit, provided that not more than 42 working days annual leave may accrue to the employee's credit.

18.4 The employee may not commute leave to her/his credit.

## **19. Sick leave**

19.1. The employee is entitled 10 working days sick leave with full pay during every year of this contract.

19.2 Any sick leave not taken during a year accumulates to the employee's credit, provided that no accumulated sick leave shall be paid out to the employee at the termination of this contract.

19.3 Notwithstanding the number of days sick leave the employee may have to her/his credit, the procedure set out in clause 26 shall be followed when the employee is absent on sick leave-

- (a) for a period of two consecutive months; or
- (b) intermittently on more than 3 (three) occasions during any three-month period.

19.4. The employee must submit a medical certificate for every absence due to illness or injury that lasts more than two consecutive days. For every second or further

period of absence due to illness or injury during any period of eight weeks, the employee must submit a medical certificate regardless of the duration of such second or further absence.

- 19.5. The employee must submit a leave application form for any period of absence due to illness or injury.

## **20. Family responsibility leave**

- 20.1 The employee is entitled to family responsibility leave with full pay in accordance with section 27 of the Basic Conditions of Employment Act 1997.
- 20.2 An application for family responsibility leave must be accompanied by reasonable proof of the event for which the leave is applied.
- 20.3 Family responsibility leave not taken does not accumulate and lapses at the end of every year.

## **21. Applications for leave**

- 21.1 The employee shall apply for leave on the official application form of the employer and submit such application to the mayor.
- 21.2 An application for annual leave shall be submitted at least a number of days equivalent to the period of leave which is applied for prior to the leave commencing.

## **22. Recognition of prior employment**

It is a specific term of this agreement that no period of employment of the employee with another employer counts towards the employment of the employee with the employer.

## **23. Termination of contract by employee**

- 23.1. The employee may terminate this contract by giving thirty days written notice of termination addressed to the mayor.
- 23.2. Upon acceptance of the notice of termination the employee is entitled, on her/his last day of work, to all amounts owed to her/him by the employer.
- 23.3 Notice of termination of employment may not –
- (a) be given during any period of leave; and
  - (b) may not run concurrent with any period of leave, except sick leave.
- 23.5 If the employee gives notice of termination of employment, the mayor may, in her/his sole discretion, waive any part of the notice period. The employer will pay

the employee the remuneration she/he would have earned during the notice period or any part thereof so waived.

**24. Certificate of service**

The employer shall issue a certificate of service as determined in section 42 of the Basic Conditions of Employment Act to the employee not later than her/his last workday.

**25. Termination of employment for the employee's misconduct**

25.1. The employer shall terminate this contract in the event of the employee being dismissed as a penalty for misconduct.

25.2. The employee undertakes to adhere at all times to the disciplinary code and procedure as set out in the Disciplinary Code Collective Agreement concluded in the South African Local Government Bargaining Council, provided that –

- (a) any reference in the said Collective Agreement to the employer, municipal manager or the municipal manager's authorised representative, shall be construed as a reference to the mayor;
- (b) the mayor shall not –
  - (i) refer any alleged misconduct for departmental enquiry; and
  - (ii) appoint another employee of the employer or a councillor as prosecutor or presiding officer in any disciplinary enquiry in which the employee is the accused; and
- (c) the employer's council or a committee appointed by the said council for this purpose, may at any time exercise the mayor's powers in terms of this clause.

25.3 Notwithstanding the provisions of clause 25.2 the employer's council may, in its sole discretion, whenever it is alleged that the employee may be guilty of misconduct decide whether to deal with the matter in terms of the Disciplinary Code Collective Agreement or section 188A of the Labour Relations Act 1995 (Act No 66 of 1995) ("the Act").

25.4 Should the employer's council decide that an allegation of misconduct made against the employee shall be dealt with in terms of section 188A of the Act the following terms and conditions shall apply -

- (a) the employer shall, within a reasonable time of the formal submission of the allegation inform the employee in writing of its decision in terms of clause 25.3;
- (b) the procedures contained in clause 25.2 shall not apply;

- (c) the employer shall, immediately after informing the employee of its decision, refer the matter to the appropriate body or person in terms of section 188A of the Act and pay the prescribed fee to the relevant body or person;
- (d) the parties may during any proceedings in terms of this sub-clause be represented –
  - (i) in the case of the employee, by a co-employee or any member, office-bearer or official of a registered trade union of which the employee is a paid-up member; and
  - (ii) in the case of the employer, by one or more councillors appointed by the employer and any member, office-bearer or official of a registered employers' organisation of which the employer is a paid-up member;
- (e) section 138 of the Act, read with the changes required by the context, shall apply to any proceedings in terms of this sub-clause;
- (f) during any proceedings in terms of this sub-clause an arbitrator shall have all the powers conferred on a commissioner by section 142(1)(a) to (e), (2) and (7) to (9) of the Act, read with the changes required by the context;
- (g) the provisions of sections 143 to 146 of the Act apply to any award made by an arbitrator in terms of this sub-clause; and
- (h) an arbitrator conducting arbitration in terms of this sub-clause must, in the light of the evidence presented and by reference to the criteria of fairness in the Act, direct what action, if any, should be taken against the employee.

## **26. Termination of contract by the employer for ill health of the employee**

- 26.1 The employer may terminate this contract for the employee's incapacity due to ill health or injury in terms of this clause.
- 26.2 The mayor shall appoint a person as investigating officer if –
- (a) it is alleged that the employee is unable to perform her/his duties due to poor health or injury;
  - (b) the circumstances contemplated in clause 19.3 prevails; or
  - (c) the employee on her/his own initiative submits medical reports attesting to the employee's incapacity due to ill health or injury of at least two specialist medical practitioners.

- 26.3 An investigating officer may not be another employee or a councillor of the employer.
- 26.4 The investigating officer must obtain reports from at least two medical practitioners designated by her/him.
- 26.5 If the employee exercises her/his right not to submit to medical examination, the investigation must continue. In such event the investigation officer must investigate all other available evidence.
- 26.6 If the investigating officer is of the opinion, having considered all the evidence, that the employee is incapacitated due to ill-health or injury, she/he must investigate all possible alternatives to dismissal, including alternative service or the adjustment of the employee's working conditions in order to accommodate the employee's illness or disability.
- 26.7 The investigating officer shall take the following into account:
- (a) the nature of the employee's job;
  - (b) the period or periods of the employee's absence;
  - (c) the cause of the employee's disability, if applicable;
  - (d) the nature, seriousness and extent of the employee's illness or injury;
  - (e) whether the employee is able to perform the job with or without reasonable accommodation and, if so, the extent to which the employee is able to perform the job; and
  - (f) the degree to which the employee's working conditions or duties can be adapted or the temporary replacement of the employee during her/his absence.
- 26.8 The employee has the right to be heard during the investigation.
- 26.9 The investigating officer must submit her/his report and recommendation to the mayor who must submit it together with her/his recommendations, to the employer's council.
- 26.10 The employer's council, after it had considered the report and recommendation in terms of clause 26.9, must order-
- (a) that the matter be referred for implementation of the alternatives recommended; or
  - (b) that the contract be terminated.

26.11 The decision of the employer's council shall be final.

## **27. Termination of contract upon termination date**

27.1 This contract terminates automatically without further notice on the date referred to in clause 4 unless the parties before that date agree to renew or extend the contract. The renewal or extension of the contract may be on the same or different terms.

27.2 The employee shall make appropriate arrangements with the mayor or another employee of the employer designated by the mayor, to hand over and receive any and all property of the employer in the possession of the employee on her/his last work day.

## **28. Personal loans**

It is a specific condition of this contract that the employer will not grant any personal loan to the employee for whatever reason.

## **29. Additions to this contract**

29.1 The following documents are deemed to be part of this contract:

- (a) The employer's conditions of service.
- (b) The employer's human resources management policy.
- (c) The code of conduct referred to in the Local Government: Municipal Systems Act 2000.
- (d) Any collective agreement binding the employer.
- (e) The employer's delegated powers insofar as it applies to the employee.

29.2 Whenever there is an inconsistency between this contract and any document referred to in clause 29.1(a), (b) and (d), the provisions of this contract prevail.

## **30. Performance agreement**

It is specifically recorded that this employment contract is subject to the employer and the employee concluding a performance agreement in terms of section 57(1)(b) of the Local Government: Municipal Systems Act 2000.

## **31. Subject matter of performance agreement**

31.1 The subject matter of a performance agreement referred to in clause 30 is as follows:

- (a) the practicable and measurable performance objectives and targets, based on the key performance indicators set out in the employer's integrated development plan which the employee must meet during the year following the date of the conclusion of the performance agreement by the parties;
- (b) the timeframes within which those objectives and targets must be met;
- (c) the standards of performance that must be met;
- (d) the procedures for assessing the employee's performance;
- (e) the intervals of assessment; and
- (f) any other relevant matter.

31.2 The provisions of the Local Government: Municipal Finance Management Act 2003 (Act No 56 of 2003) conferring responsibilities on the accounting officer of a municipality shall be regarded as forming part of the performance agreement referred to in clause 30.

### **32. Procedure for concluding annual performance agreements**

- 32.1 The employee shall not later than 14 days after the employer's council has adopted the budget for any financial year during the duration of this contract submit in writing to the mayor the draft annual performance agreement between her/him and the employer.
- 32.2 Upon receipt of the draft annual performance agreement the mayor must determine a date, time and venue of a meeting between the mayor and the employee.
- 32.3 During a meeting in terms of clause 32.2 the mayor and the employee shall negotiate and attempt to reach agreement on the matters set out in clause 31.
- 32.4 A meeting in terms of this clause may be adjourned from time to time by agreement between the mayor and the employee, provided that a performance agreement in terms of clause 32.4 must be reached and signed on or before 31 July of every year during the duration of this contract.
- 32.5 The employee shall ensure that the signed collective agreement, together with any addenda and annexes thereto, and any amendments thereof, is uploaded to the employer's website and maintained thereon for the year to which the agreement relates.

### **33. Representation of the parties**

- 33.1 The parties are entitled to be assisted by representatives of their choice during

the establishment of an annual performance agreement for the employee.

- 33.2 The employer is not liable for making any arrangements regarding, or carrying any cost in respect of, the employee's representation referred to in clause 33.1. Should the employee elect to be assisted during the negotiation and her/his representative is absent or unavailable, the negotiation must continue, unless the mayor and the employee agree to postpone the negotiation.

#### **34. Failure to reach agreement**

- 34.1 Should the mayor and the employee fail to reach agreement on any aspect of the subject matter of the performance agreement, the parties may agree to have a further meeting on a date and at a time and venue agreed by them.
- 34.2 The mayor and the employee must agree on a facilitator to preside at a further meeting in terms of clause 34.1.
- 34.3 The parties must bear the cost of any arbitration in terms of clause 34.4 in equal parts.
- 34.4 Should the mayor and the employee fail to reach an agreement at a further meeting in terms of clause 34.1 or if they do not agree to such a meeting, the mayor shall in writing inform the employer's speaker accordingly.
- 34.5 The employer's speaker shall, as soon as she/he receives the mayor's notification in terms of clause 34.4, request the employee to furnish her/him in writing with such details regarding the matter as she/he wishes within seven working days of the speaker's request.
- 34.6 The speaker shall ensure that the mayor's report and the employee's response, if any, is submitted to the employer's council at its first meeting next ensuing, provided that if the mayor and the employee reaches agreement before the meeting of the council where the matter will be considered, the matter shall lapse.
- 34.7 The employer's council shall consider the mayor's report and the employee's response. If the council finds that -
- (a) the mayor has not negotiated with the employee in good faith, it may direct the mayor to accept the employee's proposals and to enter into the agreement; or
  - (b) the employee unreasonably refused to enter into the agreement, it shall terminate this contract with immediate effect.
- 34.8 The council's decision in the matter shall be final.
- 34.9 Termination of this contract in terms of clause 34.8 shall not constitute dismissal of the employee based on the employer's operational requirements, nor as an

unfair or unlawful dismissal. Accordingly the employee she/he shall not be entitled to any additional remuneration or compensation, including (but not limited to) severance pay, notice pay, retirement and medical aid fund benefits to which an employee may otherwise be entitled to in the event of a termination based on an employer's operational requirements in respect of such termination.

**35. Employer to enable employee to meet requirements of the job**

The employer must provide the employee with the resources, authority, direction and guidance reasonably required by the employee to-

- (a) comply with the provisions of this contract;
- (b) achieve the strategic objectives of the employer; and
- (c) attain any performance targets and goals set for the employee in terms of her/his performance agreement.

**36. Termination by the employer of contract for poor work performance**

36.1 The mayor must assess the work and performance of the employee in terms of her/his performance agreement.

36.2 The mayor must report on any such assessment to the employer's council.

36.3 The mayor must ensure that the employee receives appropriate instruction, guidance, counselling and training to rectify any reported deficiencies in her/his performance.

36.4 Should it be found at any time that the performance of the employee had not improved despite any steps in terms of clause 36.3 the employer may terminate this contract in terms of this clause.

36.5 The mayor must appoint a person to investigate the reasons for the poor performance if, at any time during the duration of this contract, it –

- (a) is alleged that the employee is unsuitable for the job due to poor work performance; or
- (b) is found that the employee, in two consecutive performance appraisals, has achieved a performance rating of 60% or less.

36.6 The investigating officer may not be another employee or a councillor of the employer.

36.7 The investigating officer must on a date agreed with the employee, consult with the employee and the mayor to establish:

- (a) whether the employee has succeeded to comply with the performance standards set by the employer;
- (b) if the employee did not comply, whether the employee was in fact aware of the standards or whether it could be reasonably expected of the employee to be aware thereof;
- (c) whether appropriate assessment, instruction, counselling, guidance and training were provided to the employee;
- (d) whether the employee after a reasonable time for improvement has been allowed, still did not comply with the required standards.

36.8 The employee must be given an opportunity to be heard during an investigation in terms of this clause.

36.9 Upon completion of the investigation the investigating officer must submit a written report and recommendation to the mayor. The mayor must submit the report, together with her/his recommendations, to the employer's council.

36.10 After the documentation had been considered, the employer's council must rule-

- (a) that further instruction, guidance, counselling or training be provided to the employee;
- (b) that the matter be referred back for the implementation of alternative solutions as recommended in the report; or
- (c) that this contract be terminated.

36.11 The decision of the employer's council shall be final.

36.12 Termination of this contract in terms of clause 36.10 shall not constitute dismissal of the employee based on the employer's operational requirements, nor as an unfair or unlawful dismissal. Accordingly the employee she/he shall not be entitled to any additional remuneration or compensation, including (but not limited to) severance pay, notice pay, retirement and medical aid fund benefits to which an employee may otherwise be entitled to in the event of a termination based on an employer's operational requirements in respect of such termination.

### **37. Reward for extra-ordinary performance**

37.1 The employer must annually provide in its budget an amount equal to 15 % of the employee's total cost-to-employer remuneration to pay to the employee a performance bonus in terms of this clause.

37.2 The employee is entitled to one performance bonus in terms of this clause during any year.

- 37.3 A performance bonus must be paid to the employee if her/his assessed performance exceeds the expectations of the employer as follows:
- (a) If the employee achieves a performance rating of 80%, the employee is entitled to 100% of the performance bonus;
  - (b) If the employee achieves a performance rating of 70%, the employee is entitled to 90% of the performance bonus; and
  - (c) If the employee achieves a performance rating of 65%, the employee is entitled to 80% of the performance bonus.
- 37.4 If the employee achieves a performance rating of less than 65%, she/he is not entitled to a performance bonus
- 37.5 A performance bonus in terms of this clause is payable together with the salary of the employee for the first month after –
- (a) the assessment had been made; and
  - (b) the employer's council has approved the assessment.
- 37.6 The employer shall deduct such income tax from any bonus payable in terms of this clause as may be prescribed and pay the amount over to the South African Revenue Service.

### **38. Legal aid and cession of action**

- 38.1 The employer hereby indemnifies the employee with regard to-
- (a) any claim which could arise against her/him as a result of the performance of an official duty in the course of her/his employment with the employer, provided that such duties were carried out in good faith and without negligence; and
  - (b) any legal costs or other expenses which are imposed on her/him, or which are of necessity incurred by her/him in the enquiry into or defence of any such claim or proceedings.
- 38.2 The employee, when requested to do so, must sign a cession of action in favour of the employer, in order to enable the employer to take legal steps to recover amounts paid by the employer to, or on behalf of, the employee-
- (a) with regard to any injury on duty sustained by the employee; and
  - (b) for the recovery of medical and other expenses.
- 38.3 The employee's claim for any pain or loss suffered, if applicable, must be included

in the action.

**39. Legal representation of employee**

The employer may, subject to such terms and conditions as it may determine, provide for the legal representation of the employee if a claim has, or legal proceedings of any nature, whether civil or criminal, have been instituted or if she/he has been summonsed to attend, in any capacity, any inquest or other statutory enquiry in connection with any act or omission in the discharge of her/his duties, or the exercise of her/his powers or the performance of her/his functions.

**40. Termination of employment when nominated for public office**

Whenever the employee accepts nomination as a candidate for election as a member of a Municipal Council, a Provincial Legislature or Parliament, she/he shall be deemed to have voluntarily terminated her/his employment with the employer with effect from the date of such nomination being accepted by the Independent Electoral Commission.

**41. Interest in contracts with the employer**

41.1 Subject to clause 41.2 the employee may not, without the express prior consent of the employer's council, have a direct or indirect personal, pecuniary or similar interest in, or be directly or indirectly concerned in or participate in the profits or benefits of, any contract with or work being done or to be done for the employer.

41.2 The provisions of clause 41.1 does not apply in respect of-

- (a) a contract entered into or work undertaken by a company, close corporation or any other legal persona, whether incorporated or registered under any law, merely by reason of the fact that the employee or her/his spouse or life partner is a director, shareholder, stockholder, employee or agent of such body;
- (b) the purchase of anything sold by the employer by public competition;
- (c) the purchase by the employer of anything at an auction sale;
- (d) the supply of goods or services commonly supplied or rendered by the employer to the public at a charge fixed by law or resolution of the employer;
- (e) the purchase or holding of municipal stock issued by the employer; or
- (f) the purchase or lease of land or the erection of a dwelling, if the conditions of such purchase, lease, erection or advance have been approved by the employer's council.

**42. Entire agreement**

This document contains the entire contract between the employer and the employee and no terms, warranties, conditions or representations whatsoever have been made or agreed upon apart from those contained in this document.

**43. Variation**

No variation or mutually agreed cancellation of this contract has of any force or effect unless it had been reduced to writing and signed by or on behalf of both parties.

**44. No indulgence**

No indulgence that the parties may grant to each other with regard to the compliance with any of the obligations in terms of this contract prejudices or constitutes a waiver of any parties' rights in terms of this contract.

**45. Breach of contract**

45.1 Whenever either party (the defaulting party) fails to comply with any provision of this contract, the other party (the suffering party) must notify the defaulting party in writing of the specific breach.

45.2 The defaulting party must repair any breach of this contract within 14 days of receiving the notification of the suffering party in terms of clause 45.1.

45.3 Should the defaulting party fail to comply with a notice in terms of clause 45.2, the suffering party may, notwithstanding clause 23, terminate this contract in writing without notice.

45.4 Termination of the contract by the employee in terms of clause 45.3 does not affect any recourse that the employee may have in terms of the law.

**46. Domicilia citandi et executandi**

The parties choose as their respective domicilium citandi et executandi for all purposes the addresses set out in clause 1.

**47. Notice**

All notices given by either party to the other in terms of this contract shall be valid if given by pre-paid post, telegram, facsimile or delivered by hand at the domicilium citandi et executandi referred to in clause 43.

**48. Interpretation**

In this contract, unless the context otherwise indicates, -

- (a) words and expressions denoting the singular include the plural and vice versa; and
- (c) “mayor” means the councillor elected to that office and includes any councillor acting in her/his stead.

**49. Jurisdiction**

The parties consent to the jurisdiction of the South African Local Government Bargaining Council with regard to any claim resulting or arising from this contract.

**THUS DONE AND SIGNED AT ... ON ...<sup>1</sup>**

As witnesses:

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

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

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

**THUS DONE AND SIGNED AT ... ON ...**

As witnesses:

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

\_\_\_\_\_  
**EMPLOYEE**

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

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<sup>1</sup> Fill in the date of signing.