

Memorandum of Agreement

between

Ivanplats Proprietary Limited

(a private limited liability company duly incorporated in accordance with the company laws of South Africa under registration number 1988/000334/07)

(*"Ivanplats"*)

and

Mogalakwena Local Municipality

(a Category B municipality established on 5 December 2000 in terms of the Local Government Municipal Structures Act, 1998)

(*"Municipality"*)



MOGALAKWENA MUNICIPALITY

IVANPLATS
An IVANHOEMINES company

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PART A: INTRODUCTION

1. BACKGROUND

1.1 Municipality

1.1.1 The Municipality is located in the Waterberg District Municipality of Limpopo Province and is responsible for basic service provision to several towns such as Ba-Mokopane, Mokerong, Rebone, Mokopane and Matlala. The Municipality is the Water Services Authority responsible for the provision of water services to the area under its jurisdiction.

1.1.2 The Municipality is currently in the process of completing the construction of the new Masodi Waste Water Treatment Works that will treat all of the wastewater from the Northern Drainage Zone in the Municipality's wastewater treatment system ("**Masodi Treatment Works**"). The Masodi Treatment Works has to date been constructed by the CMC-Tecroveer Joint Venture pursuant to its appointment in June 2015 with engineering services having been provided by Aurecon South Africa (Pty) Ltd (collectively, "**the Consultants**").

1.1.3 According to independent studies, the expected effluent flows from the Northern Drainage Zone to the Masodi Treatment Works will be 6.9 Ml/day. It is estimated that this flow will increase to 12 Ml/day by 2030. The Masodi Treatment Works has accordingly been designed with a capacity of 10 Ml/day with an option to expand this capacity by a further 5 Ml/day in the future.

1.2 Ivanplats

1.2.1 Ivanplats has finalised its feasibility study in relation to its Platreef platinum-nickel-palladium-gold-copper-rhodium mine ("**Platreef Mine**") located on the farms Macalaskop 243 KR and Turfspruit 241 approximately 15km from Mokopane. Construction of the Platreef Mine is due to be completed in 2022. For its operations at the Platreef Mine, Ivanplats requires approximately 7.5 Ml/day of water by 2022.

1.2.2 Ivanplats is proposing to source the majority of the Platreef Mine's grey water requirements from the Masodi Treatment Works.

1.2.3 Following Ivanplats having been shortlisted in the tender process conducted by the Municipality in relation to funding the construction of the Masodi Treatment Works, Ivanplats and the Municipality have been in detailed discussions regarding such funding and water supply arrangements. The outcome of such discussions form the basis of this Memorandum of Agreement.

1.3 Purpose

1.3.1 Ivanplats and the Municipality (collectively "**the Parties**") wish to record the current understanding between them regarding, amongst other things:

1.3.1.1 the financial assistance to be provided by Ivanplats to the Municipality for the costs of completing the Masodi Treatment Works;

1.3.1.2 the supply of treated effluent to Ivanplats from the Masodi Treatment Works; and

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1.3.1.3 the collaboration between the Municipality and Ivanplats with respect to future water schemes developed by the Municipality,

and are accordingly entering into this Memorandum of Agreement.

1.4 Structure

1.4.1 It is recorded that this Memorandum of Agreement consists of two separate components, being:

1.4.1.1 the initial agreement comprising the Pre-Approval Financial Assistance dealt with in Part B [*Initial Agreement*] below ("**Initial Agreement**") which, along with Part A [*Introduction*] and Part D [*General*], is binding and effective with effect from the date on which Ivanplats and the Municipality have executed this Memorandum of Agreement ("**Signature Date**"); and

1.4.1.2 the final agreement comprising the long term financial assistance and effluent provision component dealt with in Part C [*Final Agreement*] below ("**Final Agreement**"), which is binding and effective with effect from the date on which the suspensive condition in paragraph 1.5 below is fulfilled.

1.5 Suspensive Condition

1.5.1 It is recorded that the Final Agreement falls to be dealt with by the Municipality strictly in accordance with all applicable legal prescripts, including (but without limitation) section 33 of the Municipal Finance Management Act, 2003 ("MFMA") ("**Compliance Procedures**").

1.5.2 Notwithstanding anything else to the contrary in this Memorandum of Agreement:

1.5.2.1 whilst Part A [*Introduction*], Part B [*Initial Agreement*] and Part D [*General*] of this Memorandum of Agreement are binding with effect from the Signature Date, Part C [*Final Agreement*] is subject to the suspensive condition that the outcome of the Compliance Procedures is to the effect that the Municipality's participation in the Final Agreement has become legally permissible ("**Suspensive Condition**"); and

1.5.2.2 the Municipality shall expeditiously and in good faith pursue the completion of the Compliance Procedures and the fulfilment of the Suspensive Condition provided that, in doing so, all discretions to be exercised by the Municipality shall be executed strictly in accordance with its duties and functions in terms of the applicable constitutional and statutory prescripts, and more particularly (but without limitation) without favouring a positive outcome as regards the fulfilment of the Suspensive Condition beyond a proper, objective and rational assessment of the merits of the Final Agreement, taking into account all presentations and other inputs received in the course of executing the Compliance Procedures.

1.5.3 Should the Suspensive Condition not be fulfilled within 90 days after the Signature Date (or such longer period as Ivanplats and the Municipality may agree in writing), Part C [*Final Agreement*] shall lapse and shall be of no further force or effect.

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PART B: INITIAL AGREEMENT

2. FINANCIAL ASSISTANCE

2.1 Payments

2.1.1 Ivanplats will make available for payment to the Municipality an amount not exceeding R37,000,000 (thirty seven million Rand) (collectively, "***the Pre-Approval Financial Assistance***"), subject to the following provisions:

2.1.1.1 the payments by Ivanplats to the Municipality in terms of this paragraph 2.1 shall only be made against the Municipality having provided Ivanplats with not less than 5 business days' notice of each payment request accompanied by such supporting documentation as Ivanplats may require;

2.1.1.2 the Pre-Approval Financial Assistance shall be used by the Municipality solely for the purposes of settling the construction costs of the Masodi Treatment Works that are due, owing and payable to the Consultants;

2.1.1.3 in the event that the Suspensive Condition is fulfilled prior to the full amount of the Pre-Approval Financial Assistance being disbursed to and/or at the direction of the Municipality, Ivanplats shall not be obliged to provide any further financial assistance in terms of this paragraph 2, as further financial assistance shall instead be provided by Ivanplats to the Municipality in accordance with the provisions of Part C [*Final Agreement*] as Masodi Treatment Works Completion Funding; and

2.1.1.4 Ivanplats shall not be obliged to provide any further Pre-Approval Financial Assistance if the Suspensive Condition has not been fulfilled within 90 days after the Signature Date (or such longer period as Ivanplats and the Municipality may agree in writing).

2.1.2 In utilising the Pre-Approval Financial Assistance, the Municipality shall use its best endeavours to engage with the Consultants in such manner as optimises the cost effective, efficient and timely completion of the Masodi Treatment Works.

2.1.3 For the sake of clarification, the Parties acknowledge and agree that the Pre-Approval Financial Assistance will be made available on the terms and conditions set out in this paragraph 2 regardless of whether or not the Suspensive Condition has yet been fulfilled (but shall not be obliged to be provided after the expiry of the period referred to in paragraph 2.1.1.4).

2.2 Pre-Emptive Right

With effect from the payment of the Pre-Approval Financial Assistance (or any portion thereof) to the Municipality pursuant to paragraph 2.1.1, Ivanplats shall be entitled to a right of first refusal for the purchase of all treated effluent from the Masodi Treatment Works up

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to a total volume of 10 Ml/day or the maximum rated production capacity of the Masodi Treatment Works from time to time, whichever is higher ("**Pre-Emptive Right**").

2.3 Application of Pre-Approval Financial Assistance

Upon fulfilment of the Suspensive Condition, the Pre-Emptive Right shall be included in the arrangements set out in the Final Agreement and any Pre-Approval Financial Assistance payments made by Ivanplats to and/or at the direction of the Municipality shall be treated as forming part and parcel of the Masodi Treatment Works Completion Funding provided for in the Final Agreement.

PART C: FINAL AGREEMENT

3. FINANCIAL ASSISTANCE

3.1 Amount

Ivanplats will provide financial assistance to the Municipality for the certified costs of completing the Masodi Treatment Works, up to a maximum amount of R248,000,000 (two hundred and forty eight million Rand), which amount includes the Pre-Approval Financial Assistance payments as contemplated in paragraph 2.1, subject to the terms and conditions in this paragraph 3 ("**Masodi Treatment Works Completion Funding**").

3.2 Drawdown

The Masodi Treatment Works Completion Funding will be released by Ivanplats to reimburse the Municipality in accordance with Ivanplats's internal procurement policies and procedures, including the receipt by Ivanplats of appropriate certification and documentation from independent experts in relation to the evaluation and completion of the works concerned. Ivanplats shall bear the costs of any independent experts that are engaged by it for this purpose.

3.3 Utilisation

The proceeds of the Masodi Treatment Works Completion Funding will be maintained by the Municipality in a separate bank account in its name and regulated in terms of section 12 of the MFMA and will only be used by the Municipality for the purposes of settling the construction costs of the Masodi Treatment Works.

4. WATER SUPPLY FROM MASODI TREATMENT WORKS

4.1 Supply

The Municipality will supply treated effluent from the Masodi Treatment Works ("**Product**") to Ivanplats for use in the Platreef Mine in accordance with the general principles set out in this paragraph 4 ("**Product Supply Arrangements**").

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4.2 Purchase Price

Ivanplats will purchase the Product at a rate of R5.00/Kℓ (excluding VAT) for the first 10 Mℓ/day of Product, which amount will be increased at the CPI rate on each anniversary of the commencement of the Product Supply Arrangements, provided that such rate may be adjusted by way of agreement between the Parties if and to the extent that this rate is insufficient to fund the reasonable operation and maintenance costs of the Masodi Treatment Works.

4.3 Guaranteed Supply

4.3.1 The Municipality will guarantee a supply of not less than 5 Mℓ/d of Product from the Masodi Treatment Works to the Platreef Mine with effect from commencement of steady state production from the Platreef Mine in 2022 ("**Supply Volume**").

4.3.2 In the event that the supply of Product from the Masodi Treatment Works should at any time fall below the Supply Volume, the Municipality will be obliged to provide Ivanplats with the shortfall in Product or, alternatively, Ivanplats will be entitled to source its own Product with any reasonable cost differential being for the Municipality's cost and, in this regard, Ivanplats may be asked by the Municipality to help with finding alternative sources.

4.3.3 If and to the extent that future water and effluent supply initiatives (as contemplated in paragraph 5) are implemented, the Supply Volume may increase. This will in turn affect the additional capital contribution and the tariff which would be further negotiated in relation to any supply of Product in excess of 10 Mℓ/day.

4.4 Guaranteed Demand

4.4.1 Ivanplats shall guarantee consumption and/or purchase of at least 5 Mℓ/d of Product for use in the Platreef Mine with effect from commencement of steady state production from the Platreef Mine in 2022 ("**Demand Volume**").

4.4.2 If and to the extent that future water and effluent supply initiatives (as contemplated in paragraph 5) are implemented, the Demand Volume may change subject to the conditions stipulated in paragraph 4.3.3.

4.5 Adjustment to Supply Volume and Demand Volume

If and to the extent that in 2022 either (or both) the Supply Volume specified in paragraph 4.3.1 exceeds the actual rate at which the Product is technically capable of being supplied by the Masodi Treatment Works or the Demand Volume specified in paragraph 4.4.1 exceeds the volume of the Product technically required for use in the Platreef Mine then the Parties may in good faith discuss, negotiate and agree an adjustment to the specified Supply Volume or the Demand Volume (or both), as the case may be.

4.6 Quality

The Product supplied from the Masodi Treatment Works by the Municipality to Ivanplats for use in the Platreef Mine will conform to agreed specifications.

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4.7 Supply Point

The Product will be made available to Ivanplats for use in the Platreef Mine from an agreed connection point at the Masodi Treatment Works.

4.8 Operation and Maintenance

The Municipality will be responsible for the operation and maintenance of the Masodi Treatment Works according to relevant best practice in an integrated, cost effective, consultative and efficient manner. Ivanplats will conduct quarterly independent audits on the operation and maintenance of the Masodi Treatment Works to evaluate supply and quality as contemplated in the Product Supply Arrangements.

4.9 Step-In Rights

In the event that the Municipality should fail to perform any of its obligations in relation to the maintenance or operation of the Masodi Treatment Works then, subject to Ivanplats providing reasonable notice to the Municipality to rectify such failure, Ivanplats may do all such things as may be reasonably necessary to remedy such circumstances and shall be entitled to set off any costs reasonably incurred in remedying the circumstances concerned against future payments due to the Municipality in consultation with the Municipality.

4.10 Duration

The Product Supply Arrangements will endure for a period of 32 years after commencement of mining operations at the Platreef Mine in 2022.

5. FUTURE WATER SUPPLY PROJECTS

5.1 Peri-Urban Reticulation

Before steady state production from the Platreef Mine commences in 2022, the Municipality will endeavour, based on the funds at its disposal, to upgrade the existing individual sanitation systems in the areas within the Municipal boundaries to water borne sewerage systems through the construction of reticulation systems, bulk outfall sewers and sewage pump stations, all of which effluent will be treated in the Masodi Treatment Works.

5.2 Future Opportunities

5.2.1 Ivanplats and the Municipality will endeavour to collaborate and potentially partner with each other in relation to future water supply and development projects where the Municipality is not prevented by law from doing so ("**Future Water Supply Projects**").

5.2.2 The Future Water Supply Projects may include:

5.2.2.1 the utilisation of any surplus effluent provided to, or available from, the Existing Mokopane Treatment Works;

5.2.2.2 the utilisation of any excess potable water that is not required by the Municipality;

5.2.2.3 expanding the treatment capacity of the Masodi Treatment Works;

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5.2.2.4 the Phase 2B pipeline from Flag Boshielo Dam, which is to be constructed as part of the Olifants Water Resources Development Project; and

5.2.2.5 the Magalies Water Scheme from the Crocodile West River catchment area.

5.3 Assistance

The Municipality will endeavour to generally do such things as may be reasonably possible and within its power to assist Ivanplats in its development of the Platreef Mine.

5.4 Engagement

Ivanplats and the Municipality will engage regularly with each other (through their established communication platforms) to discuss, investigate and, if appropriate, pursue the Future Water Supply Projects.

PART D: GENERAL

6. GENERAL PROVISIONS

6.1 Implementation

6.1.1 The Parties will co-operate and collaborate with each other and do all such further acts and exchange all such further information as may be reasonably necessary or desirable to give effect to the arrangements contemplated in this Memorandum of Agreement.

6.1.2 For the duration of this Memorandum of Agreement, the Municipality will not enter into discussions or conclude any agreement with any third party which would in any way conflict with or detract from the objectives in respect of the Masodi Treatment Works and/or the Future Water Supply Projects set out in this Memorandum of Agreement.

6.2 Agreements

The Parties will work together as quickly and efficiently as practicable to prepare, negotiate and execute such definitive agreements as the Parties believe are suitable to amplify the principles and matters set out in paragraphs 3, 4 and 5 of this Memorandum of Agreement.

6.3 Status

Subject to paragraph 1.5, this Memorandum of Agreement records the commitment between the Parties regarding the commercial matters set out herein which will be amplified in the comprehensive agreements contemplated in paragraph 6.2 above.

6.4 Entire Understanding

This Memorandum of Agreement constitutes the entire understanding between the Parties as far as the subject matter contained in this Memorandum of Agreement is concerned.

6.5 Severability

Each of the provisions of this Memorandum of Agreement will be considered as separate terms and conditions and in the event that this Memorandum of Agreement is affected by

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any legislation or any amendment thereto, or if the provisions herein contained are by virtue of that legislation or otherwise, held to be illegal, invalid, prohibited or unenforceable, then any such provisions shall be ineffective only to the extent of the illegality, invalidity, prohibition or unenforceability and each of the remaining provisions hereof shall remain in full force and effect as if the illegal, invalid, prohibited or unenforceable provision was not a part hereof.

6.6 Variation

No agreement varying, adding to, deleting from or cancelling this Memorandum of Agreement, and no waiver whether specifically, implicitly or by conduct of any right to enforce any term of this Memorandum of Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

SIGNED at _____ **on** _____ **2018**

For and on behalf of

Ivanplats Proprietary Limited

Name:

Capacity:

who warrants his or her authority to do so.

SIGNED at _____ **on** _____ **2018**

For and on behalf of

Mogalakwena Local Municipality

Name:

Capacity:

who warrants his or her authority to do so.