

MEMORANDUM OF A LEASE AGREEMENT

(in respect of the landfill expansion site)

(EXECUTION VERSION)

Entered into between:

LUIPAARDSVLEI ESTATES (PTY) LTD

(Reg. No .: 1984/002863/07)

(Herein after referred to as “**the Lessor**”)

A private company with limited liability duly registered in terms of the Companies Act of the Republic of South Africa, herein represented by Edward Milne in his capacity as director of the company, duly authorised thereto by virtue of a resolution passed by the board of directors of the company;

and

MOGALE CITY LOCAL MUNICIPALITY

(Herein after referred to as “**the Lessee**”)

A local government body constituted under the Constitution of the Republic of South Africa 1996, herein represented by D.M. Mashitsho in his capacity as the municipal manager of the municipality, duly authorised thereto by virtue of a resolution passed by municipal council.

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PREAMBLE

WHEREAS the Lessor is the owner of a certain freehold land within the municipal borders of the Mogale City Local Municipality;

AND WHEREAS the said freehold land remains largely undeveloped as it remains the site of active mining operations;

AND WHEREAS Mogale City Local Municipality is currently operating a municipal landfill site on the said freehold land and has expressed a further requirement to construct a landfill expansion on the freehold land;

AND WHEREAS the parties acknowledge that there is no formal agreement between them regulating the Mogale City Local Municipality's use of a portion of the said freehold land as a landfill expansion site for municipal waste disposal purposes and for the consequent generation of gas energy from waste;

AND WHEREAS the parties are desirous to formalise a lease over a certain portion of the said freehold land in favour and by the Mogale City Local Municipality, for purposes of operating a landfill expansion site;

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS

Where words and phrases are highlighted in the text of this document, they shall bear the meanings assigned to them in this paragraph and where such words and phrases are not highlighted they shall bear the meaning consistent with the context. The expressions set forth below shall bear the following meanings:

1.1. **"EFFECTIVE DATE"** means 1 January 2013;

1.2. **"FIRST END DATE"** means 31 December 2019;

- 1.3. **“PARTIES”** means the **Lessor** and the **Lessee**, with **PARTY** having a corresponding meaning, referring to either the **Lessor** or the **Lessee**;
- 1.4. **“PROPERTY”** means an area of approximately 12.053 hectares which constitutes a portion of the Remaining Extent of Portion 209 of the Farm Luipaardsvlei 246 IQ, better delineated on Annexure “C”;
- 1.5. **“PROPERTY TITLE”** means the Deed of Transfer: T29579/1998, registered in favour of the Lessor;
- 1.6. **“SECOND END DATE”** means 31 December 2033;
- 1.7. **“SIGNATURE DATE”** means the date of signature of this agreement by the party last signing.

2. GENERAL INTERPRETATION

- 2.1. This agreement will be interpreted in terms of the rules as set out hereinafter to the exclusion of any other Statutes or Rules of Interpretation unless such Statutes or Rules of Interpretation are not excluded by any of the terms hereof.
- 2.2. The head notes to the clauses of this agreement are inserted for reference purposes only and shall in no way govern or affect the interpretation hereof.

3. ACKNOWLEDGMENTS

The **parties** confirm that the lease agreement herein contemplated is based on the following acknowledgements: -

- 3.1. The **parties** entered into a understanding on or about 27 June 2012, which understanding is more fully set out under Annexures "A" and "B" hereto attached and which terms are expressively incorporated under this agreement. To the extent that there is any conflict between the provisions of Annexures "A" and "B" and the text of this agreement, the text of this agreement shall prevail. It is noted that under Annexures "A" and "B" an usufruct was initially contemplated, which usufruct is now substituted for a lease, as provided for under this agreement.
- 3.2. The **Lessor** is fully apprised that the **Lessee** shall operate and manage a municipal landfill expansion site on the **property**.
- 3.3. The **Lessee** is fully apprised of the location, size and condition of the **property** and has conducted its own inspections of the **property** as to ascertain its suitability for purposes of operating a landfill expansion site in respect of the disposal of municipal waste.
- 3.4. The **Lessee** confirms that it has under the applicable legislation acquired the necessary licences/permits/authorisations to construct, operate and obtain closure

of the landfill expansion site to be situated on the **property**, which waste management licence is referenced as: Gaut 002/10-11/W0054, issued by the Gauteng Province – Department of Agriculture and Rural Development.

3.5. The **Lessee** appreciates the **property** is subject to mining rights, that the **Lessor**, its parent company and/or other associated companies are active mining enterprises and the respective holders of such mining rights. It hence follows that the **Lessor**, its parent company and/or other associated companies may have unique requirements in respect of the **property** from time to time, which is further provided for under clause 6.4.

3.6. In addition to the provisions of Annexure “A” (with specific reference to paragraphs 4.1 and 4.7 thereof) and Annexure “B” (confirming and agreeing to the latter), the **Lessee** acknowledges that it stands to derive a substantial commercial benefit from the terms of this lease. The **Lessee** further acknowledges and confirms that it recognises such benefit as a contribution made by the **Lessor** and its parent companies in terms of its Social and Labour Plan as prescribed under the Mineral and Petroleum Resources Development Act 28 of 2002, and that it shall furnish such documentary proof in support of this contribution as may be required by the **Lessor** from time to time.”

4. LETTING AND HIRING

4.1. The **Lessor** lets and the **Lessee** hires the **property** on the terms of this agreement.

4.2. This lease shall commence on the **effective date** and shall endure up and until the **Lessee** has officially surrendered its waste disposal site permit under the National Environmental Management: Waste Act 59 of 2008, which shall occur only after the **second end date**.

4.3. Notwithstanding the provisions of clause 4.2, the **Lessee** shall only dispose of municipal waste onto the **property** up and until the **first end date**, where after the **Lessee** shall discontinue any waste disposal and commence with the recovery and processing of waste for the generation of gas energy, which process must be concluded and decommissioned at the arrival of the **second end date**. Consequently to the arrival of the **second end date**, the **Lessee** shall oversee and implement the final rehabilitation and secure the closure of the landfill expansion site on the **property**.

4.4. The **Lessee** shall procure its best endeavours to rehabilitate and surrender its waste management licence as soon as practicable possible after the arrival of the **second end date**. Should the **Lessee** fail to surrender its waste management licence within a reasonable time from the **second end date**, it shall be deemed that the **Lessee** has appointed the **Lessor** as its agent to pursue and secure the surrender of the relevant waste disposal site permit at the cost and expense of the **Lessee**. The **Lessor** shall have prior consultations with the **Lessee** before assuming in writing the mandate hereby afforded, which mandate is afforded *in rem suam*.

5. NOTARIAL EXECUTION AND SPECIAL CONDITION

5.1. Registration:

5.1.1. It is the intention of the **parties** to have this lease agreement notarially executed and registered against the **property title** with the appropriate deeds office. The **Lessee** shall be responsible for all costs associated with the drafting, registration and eventual cancellation of this lease agreement, including but not limited to any conveyancing and land surveying fees.

5.1.2. It is a term of this agreement that the notarial execution and registration hereof against the **property title** shall not proceed until the **Lessee** has complied with the provisions of clause 5.2.

5.1.3. The **Lessor** and its agents shall be responsible for overseeing the notarial execution and registration of the lease against the **property title** on behalf of the **Lessee**.

5.2. Special Conditions:

5.2.1. For purposes of affecting the notarial execution and registration of the lease against the **property title**, land surveyor diagrams must be prepared, lodged and registered with the Surveyor General's Office. The **Lessee** shall be responsible for procuring the relevant Surveyor General diagrams.

5.2.2. It is acknowledged that the waste management licence referred to under clause 3.5 contains a material error in that it approves the construction of the landfill expansion site on "*Portion 5 of Luipaardsvlei Farm 246 IQ*". The Lessee has undertaken to remedy this error with the Gauteng Province – Department of Agriculture and Rural Development and to submit a copy of the rectified waste management licence to the Lessor.

5.2.3. It is further acknowledged that the land being owned under the **property title** has been zoned for agriculture/general purposes. Since the lease contemplated under this agreement could trigger the provisions of section 3(d) of the Subdivision of Agricultural Land Act 70 of 1970, it shall be incumbent upon the **Lessee** to obtain the relevant ministerial approvals in the instance that the Registrar of Deeds requires such approvals for the registration to proceed.

6. USE OF THE PROPERTY

- 6.1. The **property** is let to the **Lessee** for the purpose of operating a municipal landfill expansion site for the disposal of waste in accordance with its waste management licence and secondly for the recovery and processing of waste for the generation of gas energy and shall not be used for any other purpose whatsoever.
- 6.2. All operating and rehabilitation costs associated with the **Lessee's** activities on the **property** shall be strictly borne by the **Lessee** and the **Lessor** shall not incur any liability in respect thereof whatsoever, now or in the future.
- 6.3. The **Lessee** shall conduct its landfill operations and energy generation activities on the **property** strictly in accordance with the terms of its approved permit(s) and, without detracting from the provisions of its waste management licence or any other permit, shall be responsible for the management and mitigation of *inter alia*: any waste effluent occurring, any soil pollution and groundwater pollution, any air and odour pollution and shall oversee and exclusively be responsible for the storm water management on the **property**
- 6.4. The **Lessor**, its parent company and/or other associated companies may from time to time have a requirement to enter upon the **property** for purposes of progressing its mining activities and to construct and erect such mining infrastructure as it deems necessary. The **Lessor** undertakes to consult with the **Lessee** in such instances and agree not to conduct any activities which shall prejudice the **Lessee's** landfill operations, generation of gas energy, rehabilitation and closure of the landfill expansion site on the **property**. The **Lessee** in turn shall tolerate any other use of the **property** by the **Lessor**, its parent company and/or other associated companies.

7. RENT

During the subsistence of this lease agreement, the **Lessee** rents the **property** from the **Lessor** for a fixed fee of R1.00 per annum.

8. DUTIES BY THE LESSEE

8.1. The **Lessee** shall regularly and at the request of the **Lessor** convene with representatives of the **Lessor** to discuss matters relevant to this agreement and to report on progress in respect of its landfill operations, energy generation, rehabilitation and closure of the landfill expansion site on the **property**.

8.2. The **Lessee** shall keep the **Lessor** appraised as to any material and relevant changes/amendments to and suspensions of its waste management licence or any other permit; whilst the **Lessee** shall be exclusively responsible for securing the relevant permissions and permits required to generate gas energy from municipal waste at the **property**.

8.3. The **Lessee** shall not perform any acts or conduct its business on the **property** in such a manner as to prejudice the **Lessor**, its parent company and/or other associated companies' mining operations.

8.4. The **Lessee** shall upon the expiry of this lease agreement hand the **property** back to the **Lessor**, fully rehabilitated as provided for under the terms of its waste management licence as read with any surrender conditions been imposed by the relevant regulating authority.

9. SALE OF PROPERTY

The validity of this lease shall not in any way be affected by the transfer of the **property title** from the **Lessor** pursuant to a sale thereof. It shall accordingly, upon registration of transfer

of the **property title** into the name of the purchaser, remain of full force and effect save that the purchaser shall be substituted as lessor.

10. INDEMNITY

10.1. The **Lessee** hereby indemnifies and holds the **Lessor** free and harmless against any and all claims for injury, death, loss and/or damages in any respect whatsoever, which any third party might bring against the **Lessor** arising, directly, indirectly, or consequentially (*on a cause sine qua non test*) out of any act or omission relating to the negligence of the **Lessee** in failing to comply with its obligations herein set out and pursuant to the implementation and prosecution of this agreement and undertakes to make good any such claims which the **Lessor** may *prima facie* prove against the **Lessee**.

10.2. Notwithstanding the surrender by the **Lessee** of its waste management licence as contemplated under clause 4.4, the **Lessee** shall remain liable to the **Lessor** for any claims for injury, death, loss and/or damages arising from the **Lessee's** former operation of the landfill expansion site on the **property** and/or the generation of gas energy. In addition the **Lessee** shall *vis-a-vis* the **Lessor** remain responsible for any negative environmental impacts associated with its former operation, rehabilitation and closure of the landfill expansion site. The same principle shall apply if this lease agreement is prematurely terminated by any one of the **parties**.

11. BREACH

11.1. In the event of either **party** breaching any material provision of this agreement, the aggrieved party shall afford the other party an opportunity to remedy the breach by providing such other **party** with a written notice to remedy such breach within a

12.3. Any notice given in connection with this agreement must be in writing and may be delivered by hand; or be transmitted by telefax; to the *domicilium* chosen by the party concerned. Any notice or process delivered on any **party** in connection with any matter or subject arising out of this agreement or any notice shall be deemed to have been delivered if handed to any responsible person at the *domicilium* chosen by any party and it shall not be necessary to hand such process or notice to any **party** personally.

12.4. A notice given as set out above shall be presumed to have been duly delivered:

12.4.1. on the date of delivery if delivered by hand;

12.4.2. on the date of transmission if transmitted by telefax.

12.5. Notwithstanding anything to the contrary herein contained or implied, a written notice or communication actually received by a **party** shall be an adequate written notice or communication, notwithstanding that it was not delivered or transmitted at its chosen *domicilium*.

13. ASSIGNMENT AND SUBLETTING

The **Lessee** shall not be entitled, except with the prior written consent of the Lessor, to: -

13.1. cede or assign all or any of the rights and obligations of the **Lessee** under this lease agreement;

13.2. sublet the **property** in whole or part; or

13.3. give up possession of the **property** to any third party.

14. DISPUTES

14.1. The **parties** agree that in the event of any dispute arising in respect of the interpretation and/or application of any provision of this **agreement**, such dispute

shall be decided by the Arbitration Foundation of South Africa or its successor-in-title.

14.2. Notwithstanding the provisions of clause 14.1, any **party** shall be entitled to seek interim relief from a Court of competent jurisdiction pending the outcome of the contemplated arbitration proceedings, or pending such Order as the said Court may issue, pertaining to any dispute of whatsoever nature between the **parties** which may arise from this **agreement**.

15. ARBITRATION

15.1. In pursuance of clause 14.1, any dispute arising between the **parties** which affects the interests of the **parties** in terms of this agreement and which remains unresolved for a period of 21 (twenty one) days, shall be referred to and determined by arbitration in terms of this clause.

15.2. Any **party** to this agreement may declare a dispute in writing and demand that the said dispute be determined in terms of this clause by giving written notice to the other **parties**.

15.3. The arbitration shall be held:

15.3.1. At Krugersdorp - Gauteng;

15.3.2. With only the legal and other representative of the parties to the dispute present thereat;

15.3.3. *Mutatis mutandis* in accordance with the provisions of the Supreme Court Act, No 59 of 1959, read together with the Rules thereto made in terms of the said Act;

15.3.4. With the intention that the arbitration shall be initiated and completed as soon as possible;

- 15.3.5. The Arbitrator shall be, if the matter in dispute is principally:
- 15.3.5.1. A legal matter; a practising advocate of Pretoria of at least 10 (ten) years standing;
 - 15.3.5.2. An accounting matter; a practicing chartered accountant of Pretoria of at least 10 (ten) years standing;
 - 15.3.5.3. Any other matter; an independent person as agreed upon between the **parties** to the dispute.
- 15.3.6. Should the **parties** to the dispute fail to agree whether the dispute is principally a legal, accounting, or other matter within 7 (seven) days after the arbitration was demanded, in terms of clause 15.2 above, the matter shall be deemed to be a legal matter.
- 15.3.7. Should the **parties** fail to agree on an arbitrator within 14 (fourteen) days after the giving of notice in terms of 15.2, the arbitrator shall be appointed at the request of either **party** to the dispute by the president for the time being of the Law Society of the Northern Provinces.
- 15.3.8. The decision of the arbitrator shall be final and binding on the **parties** to the dispute and shall not be subject to appeal or review and may be made an order of Court at the instance of any of the **parties** to the dispute.
- 15.3.9. The provisions of clause 15 of this **agreement** constitute an irrevocable consent by the **parties** to any proceedings in terms hereof and no **party** shall be entitled to withdraw there from or claim at any such proceedings that it is not bound by such provisions; and are severable from the rest of this **agreement** and shall remain in full force and effect despite the termination, cancellation or invalidity of this **agreement**.

16. GENERAL

- 16.1. This agreement is intended to constitute a legally binding and enforceable contractual relationship.
- 16.2. This agreement and its appendices contain the entire agreement between the parties in relation to the subject matter hereof and supersedes any previous discussions between the **parties** and the **parties** agree that no consensual cancellation, amendment or novation of this agreement in its entirety or/of any term or condition thereof shall be of any force or effect, unless such variation, amendment or cancellation is reduced to writing and signed by both the parties or their authorised representatives hereto.
- 16.3. No waiver or abandonment of any **party's** rights arising from the agreement accrued or otherwise, will be of any force or effect as against such party unless such waiver or abandonment is reduced to writing and signed by the party waiving and abandoning such rights.
- 16.4. The "*contra proferentem*" rule shall not apply.
- 16.5. In the event of any provisions of this agreement being invalid in law, such provision/s shall be deemed deleted and regarded as severable from the remainder of this agreement which shall remain in full force and effect.
- 16.6. No extension of time or waiver or relaxation of any of the provisions or terms of this agreement or any agreement, or other document issued or executed pursuant to/or in terms of this agreement, shall operate as an *estoppel* against any party in respect of its rights under this agreement, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with this agreement.

16.7. To the extent permissible by law, no **party** shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

THIS AGREEMENT IS ATTESTED AND SIGNED ON BEHALF OF LUIPAARDSVLEI ESTATES (PTY) LTD ON THIS THE ___th DAY OF THE MONTH OF APRIL 2013 AT KRUGERSDORP IN THE PRESENCE OF THE UNDERSIGNED COMPETENT WITNESSES:

AS WITNESSES:

1. _____

Name: Edward Milne
Designation: Director
For and on behalf of:
LUIPAARDSVLEI ESTATES (PTY) LTD
Who warrants that he is duly authorized to do so by way of a resolution passed by the board of directors.
(LESSOR)

2. _____

THIS AGREEMENT IS ATTESTED AND SIGNED ON BEHALF OF THE MOGALE CITY LOCAL MUNICIPALITY ON THIS THE ___th DAY OF THE MONTH OF APRIL 2013 AT KRUGERSDORP IN THE PRESENCE OF THE UNDERSIGNED COMPETENT WITNESSES:

AS WITNESSES:

1. _____

Name: D.M. Mashitisho
Designation: Municipal Manager
For and on behalf of:
MOGALE CITY LOCAL MUNICIPALITY
Who warrants that he is duly authorized to do so by way of a resolution passed by the municipal council.
(LESSEE)

2. _____