

# MEMORANDUM OF UNDERSTANDING (MOU)

## **MATJHABENG LOCAL MUNICIPALITY**

A district municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998) herein represented by **THABISO TSOAELI** in his in his capacity as Municipal Manager and duly authorised thereto.

(hereinafter referred to as the Municipality)

### **On the one hand**

Entered into by and between

## **SIBANYE GOLD LIMITED**

a limited company, duly registered and incorporated under the laws of the Republic of South Africa with registration number 2002/031431/06) represented herein by

## **CHARL KEYTER**

In his capacity as

Chief Financial Officer and duly authorised thereto.

(hereinafter referred to as Sibanye-Stillwater)

and

## **HARMONY GOLD**

a limited company, duly registered and incorporated under the laws the Republic of South Africa with registration number 1950/038232/06

represented herein by

## **MELANIE NAIDOO-VERMAAK**

in her capacity as EXECUTIVE SUSTAINABLE DEVELOPMENT and duly authorised thereto.

(hereinafter referred to as Harmony)

### **On the other hand**

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## 1. PREAMBLE

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- 1.1 The purpose of this Memorandum of Understanding (“MOU”) is to record and define the basis of the relationship between the Parties with regards to the implementation of the **patching, resealing, resurfacing, of the identified roads infrastructure in the municipal area of Matjhabeng.**
- 1.2 The Parties wish to enter into this MOU as framework to govern their relationship.

## 2. DEFINITIONS

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The following words have the meanings set out next to them:

- 2.1 **“Confidential Information”** shall include, without limitation, any contracts, technical, commercial, scientific information, know-how, trade secrets, processes, machinery, designs, drawings, technical specifications, and data in whatever form, communicated to the Receiving Party or acquired by the Receiving Party from the Disclosing Party, in the past or in the future, during the course of the parties association with one another means all the information provided in terms of clause 12.1;
- 2.2 **“Community(ies)”** means the community, which is common to ~~all~~**both** Parties by virtue of the Parties’ respective technical/operational/political footprint;
- 2.3 **“Commencement date”** means the date of signature by the last party signing the MOU.
- 2.4 **“Disclosing Party”** means the Party which discloses Confidential Information to the other Party;

2.5 “**Harmony**” means Harmony Gold Mining Limited a company registered and incorporated under the laws of the Republic of South Africa with registration number 1950/038232/06

2.6 “**MOU**” means this Memorandum of Understanding including all annexures, schedules and addenda attached hereto;

2.7 “**Sibanye-Stillwater**” means Sibanye Gold Limited, a company registered and incorporated under the laws of the Republic of South Africa with Registration Number: 2002/031431/06

~~2.7.4~~ **2.8** “**The Municipality**” means the Matjhabeng Local Municipality a municipality duly established in accordance with provisions of Section 12 of the Local Government: Municipal Structures Act, 117 of 1998 (‘the Act’)

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~~2.8.2.9~~ “**Party**” and “**Parties**” means the Party or Parties to this MOU;

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~~2.9.2.10~~ “**Receiving Party**” means the Party which receives Confidential Information;

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~~2.10.2.11~~ “**Signature Date**” means the date on which the last Party signs this MOU;

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~~2.11.2.12~~ “**Third Party**” means any individual, corporation, association, governmental entity, or other entity, which is not a Party.

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### 3. INTERPRETATION

3.1 In this MOU, unless clearly inconsistent with or otherwise indicated by the context:

3.1.1 Any reference to the singular includes the plural and *vice versa*; and

3.1.2 Any reference to natural persons includes legal persons and *vice versa*; and

3.1.3 Any reference to a gender includes the other gender.

3.2 Where appropriate, meanings ascribed to defined words and expressions in clause 2 shall impose substantive obligations upon the Parties.

3.3 The clause headings in this MOU have been inserted for convenience only and shall not be taken into account in its interpretation.

3.4 Words and expressions defined in any sub-clause shall, for purposes of the clause which that sub-clause forms part of, bear the meanings assigned to such words and expressions in that sub-clause.

3.5 Unless the contrary is stated, reference to days shall mean business days, excluding Saturdays, Sundays and Public Holidays, and months and years shall be construed as calendar months or years, unless otherwise stipulated.

3.6 No provision herein shall be construed against or interpreted to the disadvantage of any Party by reason of such Party having or being deemed to have structured or drafted such provision.

3.7 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day, where the last day falls on a Saturday, Sunday or public holiday, the next succeeding business day.

3.8 The terms and conditions of this MOU will prevail in the event of any conflict between its terms and conditions and those of any annexure to it.

#### 4. BACKGROUND

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- 4.1 Sibanye-Stillwater and Harmony are both Mining Companies, with several existing operational Mining Rights, and are both committed to complying with the objectives of the Mineral Petroleum and Resources Development Act (28 of 2002) (“the MPRDA”), the Mining Charter, the Department of Mineral Resources (“the DMR”) and the transformation agenda of the country as a whole.
- 4.2 Sibanye-Stillwater and Harmony operates the gold mines located in the Matjhabeng Local municipal area, however, uranium is also produced as it is found within the mined reef. The parties are the largest employers in the area.
- 4.3 The parties have identified the need to contribute to the local socio-economic development of host Communities in order to ensure sustainability even beyond mine closures.
- 4.4 The Parties and their immediate Communities live and operate within close proximity and are one for all intents and purposes. Poor Roads Infrastructure is a key impediment to the development of Communities in general and extends to all role-players within the mining and municipal areas
- 4.5 Through this MOU the parties are demonstrating the need for a more collaborative approach and partnership with regard to their respective Mining Charter, Social and Labour Plan (“SLP”) initiatives and Local Economic Development (“LED”) projects in alignment with the Local Municipalities’ Integrated Development Plans (“IDP’s”), Spatial Development Frameworks (SDF’s) and their respective Social Indexes.
- 4.6 The Municipality is the co-ordinating governmental role-player that co-ordinates the Local Wards and Communities of Matjhabeng.

- 4.7 This MOU will guide the Parties on how to collaborate to ensure greater impact on the Communities at large. The quest of National Government for the revitalization of distressed mining communities will form an important premise for this roads project.

## 5. FRAMEWORK FOR CO-OPERATION

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### 5.1 MUNICIPALITY

5.1.1 The Municipality has executive and legislative authority and is empowered to govern, on its own initiative, the local governmental affairs of its community as provided for in the Constitution and other relevant legislation.

5.1.2 The Municipality's function is to carry out its constitutional mandate, by striving within its financial and administrative capacity to achieve the objects of local government to, viz:

- Provide democratic and accountable government for local communities;
- Ensure the provision of services to communities in a sustainable manner;
- Promote social and economic development
- Promote a safe and healthy environment; and
- Encourage the involvement of communities and community organisations in the matters of local government.

5.1.3 The Municipality has, in terms of the provisions of Section 25 of the Municipal Systems Act, 2000, adopted an IDP for the Municipality, which is a single, inclusive strategic plan for the development of the municipality and is subject to annual review which:

- Links, integrates and co-ordinates plans and takes into account proposals for the development of the municipality;
- Aligns the resources and capacity of the municipality with the implementation of the plan;
- Forms the policy framework and general basis on which annual budgets must be based;
- Complies with the provisions of the Act; and
- Is compatible with national and provincial development plans and planning requirements binding on the municipality in terms of legislation.

5.1.4 The IDP is the basis for the Municipality to:

- Identify its key development priorities;
- Formulate a clear vision, mission and values;
- Formulate appropriate strategies;
- Develop appropriate organisational structure and systems to realise the vision and the mission; and
- Align resources with the development priorities.

5.1.5 The IDP is an elaborate process that involves the participation of all relevant stakeholders and sets clear development objectives and performance targets for the Municipality, the latter which will provide direction throughout the roll-out of the IDP.

## **5.2 SIBANYE-STILLWATER**

5.2.1 Sibanye-Stillwater is a gold mining company which focus its financial and other resources primarily on the mining of gold and providing its shareholders with an equitable return on their investment in the company;

5.2.2 Sibanye-Stillwater in accordance with its declared policies:



- Regards its host community as a stakeholder and strive to, inter alia:
  - Afford stakeholders appropriate and equitable access to the benefits of the business;
  - Conduct their business responsibly and with due regard for the rights and legitimate expectations of host communities;
  - actively seek and encourage participation with its stakeholders
- Is inextricably linked to sustainable development and operating in compliance with the ‘Broad-Based Socio-Economic Empowerment Charter for the South African Mining Industry’, more commonly known as the Mining Charter.

5.2.3 Sibanye-Stillwater finds that in all the diverse environments within which it operates or develops mines, the local governments, in various degrees, seek to persuade it to accept a role in providing social and economic services to the community.

5.2.4 Sibanye-Stillwater seeks to play a role in the sustainable development of its host communities through education and skills development, socio-economic development of communities; and relationships with regulators, it remains conscious that mining operations will, eventually, come to an end and their community investment efforts, therefore, continue to favour longer term capacity-building interventions aimed at building human capital and overcoming specific infrastructural constraints to local economic development.

5.2.5 The objectives of Sibanye-Stillwater’s SLP are to:

- Promote employment and advance the social and economic welfare of all South Africans as per the vision of the Mining Charter;
- Contribute to the transformation of the mining industry; and
- Ensure that Sibanye-Stillwater contributes towards the socio-economic development of the area in which it operates as well as the areas from

which the majority of the workforce is sourced, including the Major Labour Source Communities.

5.2.6 Sibanye-Stillwater has adopted the ASA 1000 Stakeholder Engagement programme which provides a structured framework within which the mine can engage with its host community to ensure optimal participation by the mine in the socio-economic development of the Municipality.

5.2.7 As the IDP is a legislative requirement and as such has legal status and supersedes all other plans that guide development at local government level, it is the preferred vehicle for Sibanye-Stillwater to become involved in the provision of social and economic services to the community.

## **6. HARMONY**

6.2.1 Harmony is a gold mining company which focus its financial and other resources primarily on the mining of gold and providing its shareholders with an equitable return on their investment in the company;

6.2.2 Harmony in accordance with its declared policies:

- Regards its host community as a stakeholder and strive to, inter alia:
  - Afford stakeholders appropriate and equitable access to the benefits of the business;
  - Conduct their business responsibly and with due regard for the rights and legitimate expectations of host communities;
  - actively seek and encourage participation with its stakeholders
- Is inextricably linked to sustainable development and operating in compliance with the 'Broad-Based Socio-Economic Empowerment Charter for the South African Mining Industry', more commonly known as the Mining Charter.

- 6.2.3 Harmony finds that in all the diverse environments within which it operates or develops mines, the local governments, in various degrees, seek to persuade it to accept a role in providing social and economic services to the community.
- 6.2.4 Harmony seeks to play a role in the sustainable development of its host communities through education and skills development, socio-economic development of communities; and relationships with regulators, it remains conscious that mining operations will, eventually, come to an end and their community investment efforts, therefore, continue to favour longer term capacity-building interventions aimed at building human capital and overcoming specific infrastructural constraints to local economic development.
- 6.2.5 The objectives of Harmony's SLP are to:
- Promote employment and advance the social and economic welfare of all South Africans as per the vision of the Mining Charter;
  - Contribute to the transformation of the mining industry; and
  - Ensure that Harmony contributes towards the socio-economic development of the area in which it operates as well as the areas from which the majority of the workforce is sourced, including the Major Labour Sending Areas.
- 6.2.6 Harmony has an approved Stakeholder Engagement policy which guides and provides a structured framework within which the mine can engage with its host community to ensure optimal participation by the mine in the socio-economic development of the Municipality.
- 6.2.7 As the IDP is a legislative requirement and as such has legal status and supersedes all other plans that guide development at local government level, it is the preferred vehicle for Harmony to become involved in the provision of social and economic services to the community.

## 7. INTENT OF THE PARTIES

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The following set of guiding principles will apply to all engagements with the identified role-players and will serve to ensure clarity and consistency in that regard. The principles are as follows:

- 7.1 The quest of National Government for the revitalization of distressed mining communities will form an important premise;
- 7.2 The general quest for infrastructure development for the communities in order to facilitate economic growth in the municipal area;
- 7.3 Parties shall collectively cooperate in the patching, resurfacing and resealing of the identified roads infrastructure;
- 7.4 All funds that Sibanye-Stillwater and Harmony will make available for this project will be controlled solely by each respective party and parties agree that this spend will be recognised as an SLP spend for purposes of reporting to the DMR;
- 7.5 Sibanye-Stillwater and Harmony will use their own respective procurement and governance processes to appoint all the service providers for the identified roads infrastructure;
- 7.6 All parties will participate in monitoring, evaluating and reporting on the project that emanates from this MoU on a regular basis to all role-players so as to ensure proper governance;

- 7.7 Parties will establish a multi-disciplinary Steering Committee to give effect to the objectives of this MOU and report to the collective forum at least on a quarterly basis;
- 7.8 Apply available funding, within respective governance frameworks, towards the achievement of improved regional projects with greater impact;
- 7.9 Parties shall not share competitively sensitive information unrelated to the patching, resurfacing and resealing of the identified road infrastructure.

## 8. NATURE OF THIS AGREEMENT

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- 8.1 The provisions of clause 7 above set out a statement of intent only of the Parties and:
- 8.1.1 are not intended to create any legally binding rights or obligations between the Parties; and/or
- 8.1.2 no legally binding rights or obligations between the Parties shall be created unless and until contracts have been agreed and executed by the Parties.

## 9. NATURE OF BUSINESS RELATIONSHIP

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- 9.1 The Parties enter into this MOU as independent entities and nothing contained in this MOU shall be construed as any Party professing to represent the other Party in an agency capacity, save with the written consent of the other Party.
- 9.2 There is no joint and several liability on the part of any Party and each Party shall be liable only for those obligations specifically accepted by it.

## 10. STEERING COMMITTEE AND REPORTING

Without having the intention to create any enforceable legal obligations against each other, Sibanye-Stillwater and Harmony hereby agree to establish a Steering Committee to manage this project. ▲

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10.1 The Aim of the Steering Committee is to foster cooperation between Sibanye-Stillwater, ~~and~~ Harmony and the Municipality in developing the roads infrastructure of Matjabeng communities on a sustainable basis via the IDP of the Municipality.

▲ 10.2 The non-commercial socio-economic objectives of the Steering Committee are, *inter alia* :

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- To provide a platform to discuss issues of common interest between the parties;
- To promote sharing of experience and expertise related to economic and community development.
- To promote the development of the communities and roads infrastructure of Matjabeng on a sustainable basis via the IDP of the Municipality, thereby alleviating unemployment and poverty;
- To promote and foster measures calculated to encourage co-operation amongst, the parties.
- To promote stakeholder communication and participation ~~between~~amongst Sibanye-Stillwater, ~~and~~ Harmony and the Municipality; and
- To promote the local implementation of Community Development initiatives to benefit communities affected by mining in the area of Matjabeng Municipality which, is one of the pillars of the Mining Charter.

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10.3 It is envisaged that the Steering Committee, once fully constituted, will be composed of equal representation from the following, as nominated by each of the parties:

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- Sibanye – Stillwater
- Harmony
- Municipality;

#### 10.4 Termination Of Membership

Membership of the Steering Committee shall or may be terminated in any of the following ways:

- By written resignation to the Steering Committee by a member; or
- By a resolution of the Steering Committee based on good reason.

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10.5 The Steering Committee shall sit as often as may be decided on by the Committee, but not less than once every quarter. Non-members of the Steering Committee may only attend meetings of the Committee by invitation or with the permission of the Chairperson of the Committee.

10.6 The venue of meetings of the Steering Committee will be determined from time to time by the Steering Committee.

10.7 The Parties will alternate the role and responsibilities of the secretariat of the Steering Committee.

10.8 A working committee composed of the officials as designated by the Steering Committee shall attend to whatever tasks or responsibilities that are allocated to it by the Steering Committee. It will meet as often as determined by the Steering Committee and will report back to each meeting of the Steering Committee on its activities and progress made.

10.9 The Steering Committee shall from time to time, determine its own procedures. The members may resolve, after its launch, to change any of the provisions under clauses 10.1 to 10.8 here-above by resolution.

- 10.10 The Steering Committee is an advisory body and shall not take decisions which will be binding on any of its member organisations. Decisions will be taken on a consensus basis and members shall negotiate in good faith amongst themselves with a view of settling any disputes which may arise.

## 11. FUNDING

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Sibanye-Stillwater and Harmony have committed funding to this roads infrastructure project in the amount of twenty seven million rand (R27 000 000.00) per each party for the identified roads in the Welkom, Virginia and Thabong areas.

## 12. CONFIDENTIALITY

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- 12.1 ~~All Both~~ Parties undertake to treat the Confidential Information of the Disclosing Party as strictly confidential, not to divulge to any Third Party or sell, trade, publish or reproduce any of the Confidential Information of the Disclosing Party and not to put in use for any purpose unrelated to the Project, in any manner, any Confidential Information of the Disclosing Party, except as provided by the exclusions specified in clause 12.2 below.
- 12.2 The obligation of confidentiality contained in clause 12.1 above shall not apply to Confidential Information which:
- 12.2.1 at the time of the provision of the information to the Receiving Party or at any time after is or becomes a part of the public domain (other than as a result of an unauthorised disclosure by the Receiving Party);
- 12.2.2 is required to be disclosed by applicable law, regulation or competent judicial, governmental or other authority;



12.2.3 is disclosed to the Receiving Party, without obligation of confidentiality or restriction on its use, by a Third Party which has the right to make such disclosure;

12.2.4 at the time of the provision of the Confidential Information it was already known to the Receiving Party.

12.3 The Parties will expressly agree in writing on what shall constitute Confidential Information.

12.4 The Receiving Party shall be entitled to disclose the Confidential Information to Third Parties (without requiring the Disclosing Party's prior written consent) solely to the extent that disclosure of such Confidential Information to such Third Parties as necessary for purposes of executing its obligations in connection with this MOU, provided that such Third Party signs a similar confidentiality undertaking.

12.5 The provisions of clause 12 shall survive any termination or expiry of this MOU and shall terminate two years after the date of termination or expiry of this MOU.

### 13. PUBLICATION

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Neither Party may publish or publically disclose the contents or intent of this MOU without the prior written consent of the other Parties.

### 14. TERM AND TERMINATION

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14.1 Unless terminated in accordance with clause 14.2 below, this MOU shall be effective from the Signature Date and shall remain in effect for the duration of the project until the project is handed over to the Municipality.

- 14.2 This MOU may be terminated at any time by mutual agreement in writing and signed by all~~both~~ Parties; by either Party giving 90 days' written notice to ~~the~~ other Parties~~y~~ at any time;
- 14.3 When this MOU is terminated then unless agreed otherwise in writing all information provided is to be immediately returned to the Party who provided it.
- 14.4 The termination of this MOU in terms of clause 14.2 above will not impact on the continued obligations relating to the Confidential Information provided for in clause 12 above unless otherwise agreed in writing and signed by all~~both~~ Parties. The said termination will also not impact the validity of separate agreement entered into for a specific project, which agreement will be governed in terms of the specific provisions of that agreement.

## 15. NOTICES

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No notice or other communication under this MOU shall be effective unless it is given in writing to the applicable Party (whether by mail, fax or personal delivery) at the relevant address indicated below:

**Matjhabeng Local Municipality**

Representative: Thabiso Tsoaeli  
Position: Municipal Manager  
Telephone: (057) 391 3911  
Address: 1 Reinet Building  
Reinet Street  
Welkom  
E-mail: thabiso.tsoaeli@matjhabeng.co.za

**Sibanye-Stillwater**

Representative: Thabisile Phumo  
Position: Senior Vice President and Head of Stakeholder Relations: Stakeholder Relations  
Telephone: 011 278 9802  
Address: 1 Hospital Street (Off Cedar Ave)  
Libanon Business Park, Westonaria, 1780  
E-mail: [thabisile.phumo@sibanyestillwater.com](mailto:thabisile.phumo@sibanyestillwater.com)

**Harmony**

Representative: Melanie Naidoo-Vermaak  
Position: Executive Sustainable Development  
Telephone: 011 411 4022  
Address: Randfontein Office Park  
Corner Main Reef Road and Avenue  
Randfontein, 1759  
E-mail: [melanie.vermaak@harmony.co.za](mailto:melanie.vermaak@harmony.co.za)

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**MACTJHABENG LOCAL MUNICAIPALITY**

Signed by \_\_\_\_\_ in my capacity as  
(FULL NAME)

\_\_\_\_\_ for \_\_\_\_\_ on this  
(DESIGNATION)

\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ at \_\_\_\_\_  
(MONTH) (PLACE)

**AS WITNESSES:**

1. \_\_\_\_\_ /\_\_\_\_\_/\_\_\_\_\_  
(FULL NAME) (SIGNATURE) (DATE)

2. \_\_\_\_\_ /\_\_\_\_\_/\_\_\_\_\_  
(FULL NAME) (SIGNATURE) (DATE)

**SIBANYE-STILLWATER**

Signed by \_\_\_\_\_ in my capacity as  
(FULL NAME)

\_\_\_\_\_ for \_\_\_\_\_ on this  
(DESIGNATION)

\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ at \_\_\_\_\_  
(MONTH) (PLACE)

**AS WITNESSES:**

1. \_\_\_\_\_ /\_\_\_\_\_/\_\_\_\_\_  
(FULL NAME) (SIGNATURE) (DATE)

2. \_\_\_\_\_ /\_\_\_\_\_/\_\_\_\_\_  
(FULL NAME) (SIGNATURE) (DATE)

**HARMONY**

Signed by \_\_\_\_\_ in my capacity as  
(FULL NAME)

\_\_\_\_\_ for \_\_\_\_\_ on this  
(DESIGNATION)

\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ at \_\_\_\_\_  
(MONTH) (PLACE)

**AS WITNESSES:**

1. \_\_\_\_\_ /\_\_\_\_\_/\_\_\_\_\_  
(FULL NAME) (SIGNATURE) (DATE)

2. \_\_\_\_\_ /\_\_\_\_\_/\_\_\_\_\_  
(FULL NAME) (SIGNATURE) (DATE)