

## SERVICE DELIVERY AGREEMENT

ENTERED INTO BETWEEN:-

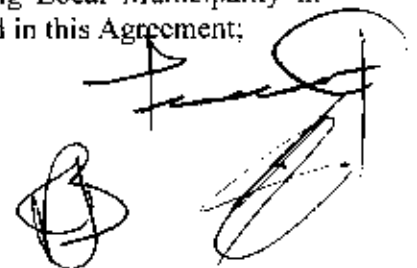
DIBHLABENG LOCAL MUNICIPALITY

and

NKANYEZI ENERGY (PTY) LTD

WHEREAS

- (a) Dithubeng Local Municipality is a local authority with jurisdiction within its demarcated municipal area;
- (b) Dithubeng Local Municipality performs various functions to enable it to perform its legal responsibilities and duties;
- (c) Dithubeng Local Municipality wishes to engage an independent service provider to provide the installation of 6 x 40m steel high mast lighting structures complete with floodlights, raising and lowering gear in Bohlakong, Bethlehem on areas identified by the Acting Director: Public Works;
- (d) For the purpose of this Agreement, Nkanyezi Energy (Pty) Ltd shall be engaged to provide and undertake the installation of 6 x 40m steel high mast lighting structures complete with floodlights, raising and lowering gear in Bohlakong, Bethlehem for Dithubeng Local Municipality;
- (e) In addition to the expectation by Dithubeng Local Municipality from the service provider to fulfill its traditional role and functions in terms of legal compliance;  
  
Dithubeng Local Municipality wishes to agree to benchmarks of service delivery with the service provider and a system of remuneration by Dithubeng Local Municipality of the service provider, measured against and linked to the agreed benchmarks;
- (f) Dithubeng Local Municipality wishes to attain their objectives of empowerment of previously disadvantaged individuals as well as other applicable legislation in this regard;
- (g) Nkanyezi Energy (Pty) Ltd is desirous of assisting Dithubeng Local Municipality in attaining the intensions, objectives and benchmarks as contained in this Agreement;



- (h) Nkanyezi Energy (Pty) Ltd understands, underwrites and commits to the principles of due diligence, transparency and good governance in fulfilling its role and functions / responsibilities towards Dithubeng Local Municipality; and
- (i) The parties will comply with the Constitution of the Republic of South Africa as amended from time to time and applicable legislation.

**PURPOSE**

- (a) The purpose of this Service Delivery Agreement is to formalize an arrangement between the Dithubeng Local Municipality and Nkanyezi Energy (Pty) Ltd (hereinafter, the Service Provider) to implement security as specified in the attached proposal.
- (b) Service delivery agreement means an agreement between a municipality and an institution or person mentioned in section 76(b)(v) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) in terms of which a municipal service is provided by that institution or person, either for his own account or on behalf of the municipality.

NOW THE PARTIES DO HEREBY AGREE:

**1. INTERPRETATION**

In this Agreement:

- 1.1 Clause headings are for convenience and shall not be in its interpretation.
- 1.2 Unless the context clearly indicates a contrary intension, an expression that denotes any gender shall include the other genders, natural persons shall include an artificial person and vice versa. The singular shall include the plural and vice versa and the following expressions shall bear the meaning assigned to them below and cognate expressions shall bear corresponding meanings:

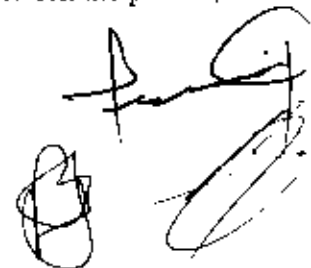
“Dithubeng Local Municipality” A municipality established under the Local Government: Municipal Structures (Act 117 of 1998, as amended), to govern and represent the said and having its office at:

9 Muller Street East  
BETHLEHEM  
9700

“parties” Dithubeng Local Municipality and Nkanyezi Energy (Pty) Ltd;

“effective date” This agreement shall be deemed to commence on the 6 July 2010;

“service” a service as contained in the main agreement between the parties;



“service plan” is the plan of service in line with Annexure “1 and 2” undertaken by the service provider on behalf of Dihlabeng Local Municipality which shall be that;

“Acceptance of quotation” means the signing of the agreement by the municipality which brings this agreement into force;

“Contract documents” means this service provision document, tender document or request for proposal, preliminaries, appointment letter, specifications, fees, scope work; also any documents annexed to the agreement documents by agreement between the parties;

“Contract price” means the amount specified in the main agreement and service plan of this agreement;

“Service Provider” means the person, partnership, company, close corporation, community of service provider or other legal body that agree to the scope of this agreement and is so identified in the schedule;

“Date of completion” means the completion of all work in this agreement including rectification of all defective and incomplete work to the reasonable satisfaction of the municipality;

“Days” means calendar days (including Saturdays, Sundays and public holidays, school holidays, etc);

“Final account” means the amount to be paid to the contractor in terms of clause 14 hereof;

“Guarantee” means the guarantee in the exact words of the guarantee form as provided with this document and to be provided by one or more guarantors on behalf of the service provider if required in writing by the municipality. The guarantor(s) will be responsible to finish the agreed work and/or for payment to the municipality of an amount of up to a maximum of 10% (ten percent) of the agreed sum, in the event that the service provider does not complete the works;

“Notice in writing” means a written notice delivered by either party to the other either by registered post, by hand or by telefacsimile, together with reasonable proof of the date of delivery;

“Payment” means payment by the municipality to the service provider of the amount(s) as agreed within 30 days of the completion of certain parts of the work to the satisfaction of the municipality;

“Practical completion” means that stage of completion when a work is completed sufficiently for it to be properly used for the purpose for which it was constructed;



“Site” means the place where a work is to be executed.

“Variations” means changes to the works the service provider issues to its staff and/or team as instructions in writing excluding extra work not described in a written instruction from the municipality, which such work will not be paid for the municipality;

“Works” means the work/service which is to be done by the service provider in terms of this service level agreement and as set out in the contract documents.

2. **APPOINTMENT**

Dihlabeng Local Municipality hereby appoints the service provider who accepts such appointment as an independent service provider to perform the work detailed in the service plan.

3. **SERVICE PROVIDER NOT EMPLOYEE OR AGENT IN RESPECT OF OTHER SERVICES**

Neither the service provider nor any other person performing any duties or engaged in any work on its instruction shall be an employee or agent of Dihlabeng Local Municipality.

4. **PERIOD**

4.1 This Agreement shall, subject to any alternative agreement between the parties, endure for the period of 3 months from date of signature and shall be renewable monthly except for a case where funding has been approved by Dihlabeng Local Municipality and in such case it will be for the period Dihlabeng had approved and the agreement will be renewable on a monthly basis and shall not be longer than twelve months.

4.2 the period of the agreement may be terminated and/or renewed on written agreement between the parties,

5. **SERVICE PROVIDER'S OBLIGATIONS**

The service provider shall:

- (a) Upon notification of the acceptance of the quotation, commence to executive work and carry out the work in accordance with this agreement, to the reasonable satisfaction of the municipality;
- (b) Provide all necessary labour, equipment etc the work, complete the work as set out in this agreement;

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- (c) Comply with all applicable statutory provisions and municipal requirements;
- (d) Comply with all written instructions of the municipality to make variations to the work undertaken;
- (e) Give any instructions and/or explanations and/or variations to its employees including any relevant advice to assist the employees to understand the service provision documents;
- (f) Inspect the work to decide when it is at the stage of practical completion and, when satisfied, certify that practical completion has occurred;
- (g) Inspect the work to decide when it is at the stage of final completion and, when satisfied, certify that final completion has occurred;
- (h) Decide on the settlement of any dispute that may arise between the service provider and the municipality, subject to the conditions of clause 17.

## 6. MUNICIPALITY'S OBLIGATIONS

The municipality shall:

- 6.1 Hand over the information as specified in the schedule mentioned hereafter;
- 6.2 Make payment to the service provider for the works as set out in the service plan;

## 7. BREACH AND TERMINATION

- 7.1 Should the Service Provider;
  - 7.1.1 fail to comply with any term of this Agreement or any of the terms and conditions of the addendum and benchmarks; or
  - 7.1.2 be wound up, or its estate sequestrated, whether provisionally or finally, or be placed under judicial management, or if the service provider defaults in the payment of its liabilities generally; or
  - 7.1.3 commit an act of insolvency; then and, in any of those events, Dithlabeng Local Municipality shall immediately be entitled, without prejudice to its rights in terms of this Agreement to cancel this Agreement in writing to the service provider.
- 7.2 Should Dithlabeng Local Municipality be dissatisfied with the manner in which Nkanyezi Energy (Pty) Ltd is performing the installation of 6 x 40m steel high mast lighting structures complete with floodlights, raising and lowering gear in Bohlakong, Bethlehem, will Dithlabeng Local Municipality give Nkanyezi Energy

(Pty) Ltd 30 (thirty) days notice to rectify the situation, and clearly specify in which regard Nkanyezi Energy (Pty) Ltd is not fully complying with the agreement.

Should Nkanyezi Energy (Pty) Ltd not be able to rectify the situation within in the 7 (seven) days period, shall Dihlabeng Local Municipality be entitled to cancel the agreement.

- 7.3 Any remuneration paid or payable by Dihlabeng Local Municipality to the service provider shall be made on a pro rata basis for work completed up to the date of actual termination of this Agreement and shall be reconciled between the parties with effect from the date of inception of this Agreement. Should there be any dispute about any account of Nkanyezi Energy (Pty) Ltd, must such an account be taxed.
- 7.4 The service provider warrants that he/she has not made, and will not make any promises to any person of the municipality, nor to any relative or business associate or political associate of the municipality to do or not to do anything as an inducement to award this agreement to the service provider or to allow any such wrongful inducement to gain an advantage in the carrying out of the contract.

Such conduct will serve as good grounds for cancellation.

- 7.5 The establishment by the municipality of proof of improper conduct by the service provider shall be grounds for immediate cancellation of the agreement by the municipality and of payment by the service provider to the municipality of any loss suffered by the municipality due to such cancellation.
- 7.6 Fails, in the opinion of the municipality, to carry out the works with reasonable diligence; and/or
- 7.7 Refuses to comply with an instruction issued by the municipality then the municipality shall, by notice in writing, inform the service provider of such default and, if such default shall continue for a further period of 30 days, cancel this contract and employ others to complete the works. The cost of such work by others shall be a debt due by the service provider to the municipality.

## 8. COSTS CONSEQUENT UPON BREACH

In the event of the either party being in breach of this Agreement, each party acknowledgement and agrees to pay legal costs incurred by either of them in enforcing its rights on the scale as between attorney and own client.

9. **CESSION**

- 9.1 The service provider shall not sub-contract or cede this agreement, including any portion thereof or interest therein, unless written permission is granted by Dikhalabeng Local Municipality and on such conditions as Dikhalabeng Local Municipality may approve.
- 9.2 The service provider shall ensure that in all its activities supports the principles of good governance, transparency and objectivity.

10. **WARRANTY OF QUALIFICATION**

The service provider warrants that it has the necessary knowledge and expertise of the local government environment and of the guiding policies and legislation to enable it to fulfill its obligations in terms of this Agreement.

11. **SPECIALIST WORK**

The municipality may directly employ specialist to do work which are beyond the expertise of the service provider and which are not included in the schedule on site whilst the work is in progress. The service provider shall allow such specialist to do their work as and when needed and shall make available all facilities to enable such work to be properly done to the satisfaction of the municipality.

12. **VIS MAJOR**

In the event that either of the parties or both parties cannot discharged its obligations in terms of this agreement as a result of an act of God neither of the parties shall be held liable for such non-performance.

13. **VARIATION OF WORK**

- 13.1 The service provider undertakes to agree to any reasonable request by Dikhalabeng Local Municipality for the variation or substitution of any clause or activity and resultant possible cost implication.
- 13.2 The payment due to the service provider in respect of such varied work shall be subject to negotiations and on the same terms and conditions of this Agreement.

14. **PAYMENT**

Dikhalabeng Local Municipality shall pay the service provider the total price of any work formally agreed to in writing, as outlined in the "service plan" within 30 (thirty) days of receipt of the VAT Invoice (or other terms as agreed).

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15. **RETENTION**

15.1 Retention will be applicable as follows:

10% of the contract price retention completion, being payable at the end of the guarantee period subject to a satisfactory standard of completion being attained.

15.2 This guarantee shall expire 12 months after the satisfaction standard of completion being issued.

16. **DOMICILIUM**

16.1 These parties choose domicilium citandi et executandi ("domicilium") for the purposes of giving any notice, the payment of any sum, the serving of any process or for any other purpose arising from this agreement as follows:

Dihlabeng Municipality:	The Municipal Manager Dihlabeng Local Municipality 9 Muller Street East BETHLEHEM, 9700
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Tel no: 058 303 5732  
Fax no: 058 303 5076

The Service Provider:	Nkanyezi Energy (Pty) Ltd Site no 7 Factory No K6 Industrial 1 PHUTHADITJHABA, 9866
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16.2 Each of the parties shall be entitled from time to time on 14 days written notice to the other to vary its domicilium to any other address within the Republic of South Africa which is not a post office box or post restante.

16.3 Any notice required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.

16.4 Any notice given and any payment made by one party to the other ("the addressee's") which:

16.4.1 Is delivered by hand during the normal business hours of the addressee's domicilium for the time being shall be presumed, until the contrary is proven to have been received by the addressee;

16.4.2 Is posted by pre-paid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicile for the time



being shall be presumed, unless the contrary is proof, to have been received by the addressee on the seventh day after the date of posting; and;

16.4.3 Is transmitted by facsimile where it is transmitted during normal business hours or, if transmitted outside normal business, within one hour of normal business hours on the next general business day.

## 17. DISPUTES

- 17.1 A dispute between the parties relating to any matter arising out of this agreement or the interpretation thereof, shall be referred to arbitration, by either of the parties, by way of a notice to the other party, in which notice particulars of the dispute are set out.
- 17.2 When arbitration proceedings are held it shall not be necessary to observe or carry out the usual formalities of procedure (e.g. There shall not be any pleadings or discovery or in accordance with the strict rules of evidence).
- 17.3 Arbitration shall be held immediately and with a view to its being completed within 30 days after it is demanded.
- 17.4 The arbitration for such arbitration proceedings shall be a suitably qualified person agreed upon by the parties and, failing agreement, nominated by the chairperson for the time being of the Association of Arbitrators (Southern Africa).
- 17.5 The decision of the arbitrator shall be final and binding on the parties, who shall summarily carry out that decision and either of the parties shall be entitled to have the decision made an order of any court with competent jurisdiction.
- 17.6 The "arbitration" clause in this agreement shall be severable from the rest of the agreement and therefore shall remain effective between the parties after this agreement has been terminated.
- 17.7 No clause in this agreement which refers to arbitration shall mean or be deemed to mean or interpreted to mean that either of the parties shall be precluded from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

## 18. GENERAL

- 18.1 This document constitutes the sole record of the Agreement between the parties;
- 18.2 No party shall be bound by any express or implied term representative, warranty, promise or the like not recorded herein;

18.3 No addition to, variation or agreed cancellation of this Agreement shall be any force or effect unless in writing and signed by the authorized and duly delegated representatives for the parties concerned; and

18.4 No extension of time or indulgence which either Party ("the grantor") may grant to the other ("the guarantee") shall constitute a waiver of any of the rights of the grantor who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the future.

19. **CONFIDENTIALITY**

The Parties undertake either during the term of the Agreement or after termination or expiration of the Agreement not to disclose any proprietary or confidential information or intellectual property relating to each other and the operations without each other's prior written consent. The determination of whether a Party's information is proprietary or confidential shall be in the sole discretion of each Party.



20. **TERMS OF AGREEMENT**

The terms of agreement shall be interpreted in whole in the following preference:

- This service delivery agreement;
- The proposal; or tender document;
- The appointment letter;
- Specifications based on the Occupational Health and Safety Act, 1993, (Act no 85 of 1993)

SIGNED AT BETHLEHEM ON 8<sup>th</sup> DAY OF JULY 2010

NAME: DIHLABENG LOCAL MUNICIPALITY  
SIGNATURE: 

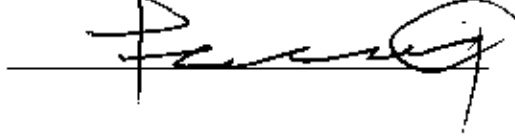
AS WITNESS SIGNATURES:  
1.   
2. 

FOR AND BEHALF OF DIHLABENG LOCAL MUNICIPALITY AND WARRANTING HIS/HER AUTHORITY


NAME:

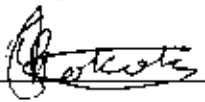
T. D. MIYA

SIGNATURE:



AS WITNESS SIGNATURES:

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

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

FOR AND BEHALF OF SERVICE PROVIDER AND WARRANTING HIS/HER  
AUTHORITY

## NKANYEZI ENERGY (PTY) LTD

### ANNEXURE 1

#### 1. THE WORK

To provide and undertake the installation of 6 x 40m steel high mast lighting structures complete with floodlights, raising and lowering gear in Bohlolong, Bethlehem on areas identified by the Acting Director: Public Works.

The service provider will be expected to work closely with the Municipal Manager, Director: Public Works, Heads of Department and the Project Manager Unit and appropriate officials and members of the Council.

The service provider will be expected to focus on the following key strategic and operational areas:

- Installation of 6 x 40m steel high mast lighting structures complete with floodlights, raising and lowering gear in Bohlolong, Bethlehem
- Supervision of local SMME's over execution of the project
- Submission of progress reports and payment certificates to Dihlabeng Local Municipality
- Any other service as may be required during the project

#### 2. CONTRACT DOCUMENTS

The contract documents comprise of the following:

Appointment letter

Signed service delivery agreement

Implementation plan

Occupational Health and Safety Specifications

#### 3. THE SITE

Dihlabeng Local Municipality jurisdiction area

#### 4. SPECIFICATION OF THE WORKS

- 4.1 The installation of 6 x 40m steel high mast lighting structures complete with floodlights, raising and lowering gear in Bohlolong, Bethlehem must be finalized within 3 months from 6 July 2010.

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4.2 The progress report and payment certificate must be submitted monthly.

5. **DATE OF COMMENCEMENT:** Date of signing of this agreement

6. **DATE OF REVIEW:** 6 September 2010.

7. **TIME FOR AND MANNER OF COMPLETION OF THE WORKS**

Meeting the target of 100% within 3 months from 6 July 2010.

8. **CONTRACT PRICE**

The price to be paid to the service provider will be **R1 640 464.74 including VAT and disbursements.**

9. **PAYMENT**

Monthly reports should be submitted and measured against the submitted implementation plan

Payments will be made in line with the implementation plan

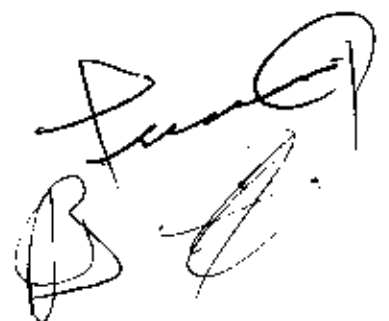
10. **SERVICES, TOOLS AND EQUIPMENT TO BE PROVIDED BY THE CONTRACTOR**

Labour

Necessary equipment

11. **SERVICES/TOOLS/EQUIPMENT TO BE ARRANGED BY THE MUNICIPALITY:**

Financial statements

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## ANNEXURE 2

PROJECT TIMELINE

ACTIVITY  (STEPS TO BE FOLLOWED IN THE PROJECT)	DELIVERABLE  (WHAT TO BE DELIVERED AS A PRODUCT)	PERFORMANCE INDICATOR  (PROOF OF WORK DONE)	PERFORMANCE  EXPECTED DATE OF DELIVERY)	COST  (AMOUNT TO BE PAID PER DELIVERABLE)
(1) Installation of 6 x 40m steel high mast lighting structures complete with floodlights, raising and lowering gear in Bohlokong, Bethlehem	Installation of 6 x 40m steel high mast lighting structures complete with floodlights, raising and lowering gear in Bohlokong, Bethlehem	Installation of 6 x 40m steel high mast lighting structures complete with floodlights, raising and lowering gear in Bohlokong, Bethlehem	Must be finalized within <b><u>3 months from 6 July 2010</u></b>	In total <b><u>R1 640 464,74</u></b>

Monthly accounting is done on a basis that payments will be made on deliverables as stipulated in Annexure 2.



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MASEPALA WA LEHAE  
LOCAL MUNICIPALITY  
PLASSLIKE MUNISIPALITEIT

HEAD OFFICE/HOOFKANTOOR

9 Muller Street East/Mullerstraat-Oos 9

PO Box 551, Bethlehem. 9700

Tel: (058) 303 5732 Fax: (058) 303 5076

Please address reply to: MUNICIPAL MANAGER

Rig asb antwoord aan: MUNISIPALE BESTUURDER

Our reference

Ons Verwys

E-mail: [info@dihlabeng.co.za](mailto:info@dihlabeng.co.za)

Web site / Webblad: [www.dihlabeng.org.za](http://www.dihlabeng.org.za)

Your Reference

U verwysing

Department  
Municipal Manager

Nkanyezi Energy Pty(Ltd)

Site no. 7

Factory No.K6

Industrial 1

Phuthaditjhaba

9866

06 July 2010

Dear Mr TD Miya

**APPOINTMENT AS SERVICE PROVIDER FOR SUPPLY, DELIVERY, INSTALLATION AND COMMISSION OF 6 X 40M STEEL HIGH MAST LIGHTING STRUCTURES COMPLETE WITH FLOODLIGHTS, RAISING AND LOWERING GEAR FOR BOHLOKONG TOWNSHIP.**

It is our please to inform you of your appointment for Erection of 6 high mast lights in Bohlokong. The prices as quoted in your proposal is capped at R 1 640 464.74.00 including VAT and disbursements.

The work required has been set out clearly in your tender proposal dated the 18<sup>th</sup> of May 2010. It must be stressed that a Service Level Agreement is required between yourselves and ourselves prior to the processing of any payments relating to the project.

Please be advised that our VAT number is 4000846529, which must be present on all of our invoices in order to secure payment for your services. If you have any queries please contact our Mr. P. Khiba at 058-303 5732.

We trust you find this in order

Sincerely

Municipal Manager

Mr. Thabiso Tsoaeli