

**REPUBLIC OF KENYA**



**MERU COUNTY GOVERNMENT**

**CONSULTANCY SERVICES FOR DETAILED DESIGN OF MAUA  
PARK IN MERU COUNTY**

**TENDER NO: CGM/RFP/022/2016-2017**

**DATE: 3<sup>rd</sup> Jan 2017**

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## **INTRODUCTION**

1. This Standard Request for Proposals (SRFP) has been prepared for use by public entities in Kenya in the procurement of consultancy services and selection of consultant.
  
2. The SRFP includes Standard form of Contract for Large Assignments and small assignment which are for lump sum or time based payments.
  
3. A separate SRFP has been provided for selection of individual professional consultant.
  
4. The General Conditions of Contract should not be modified and instead the Special Conditions of Contract should be used to reflect the unique circumstances of the particular assignment. Similarly the information to consultant should only be clarified or amended through the Appendix to information to Consultant.
  
5. This SRFP document shall be used where a shortlist of consultancy firms already exist or has been obtained through a shortlist after an advertisement of Expression of Interest for Consultancy required.

**SECTION I - LETTER OF INVITATION**

TO: *(Name and Address of Consultant)*

Date \_\_\_\_\_

Dear Sir/Madam,

**RE: CONSULTANCY SERVICES FOR DETAILED DESIGN OF MAUA PARK IN MERU COUNTY**

The County Government of Meru invites qualified firms for **consultancy services for Detailed Design of Maua Park in Meru County**

The request for proposals (RFP) includes the following documents:

- Section I - Letter of invitation
- Section II - Information to consultant  
Appendix to Consultant information
- Section III - Terms of Reference
- Section IV - Technical proposals
- Section V - Financial proposal
- Section VI - Standard Contract Form

- 1.1 Upon receipt, please inform us
- (a) that you have received the letter of invitation
  - (b) whether or not you will submit a proposal for the assignment

1.4 The completed technical and financial proposals must be submitted in the tender box at County Headquarters entrance or be addressed to: **County Secretary, P.O Box 120-60200-Meru** so as to be received on or before **3<sup>rd</sup> Jan 2017 at 10:00 am.**

Late submission will not be accepted.

Yours sincerely

*(Signature, name and title of procuring entity's official)*

## **SECTION II – INFORMATION TO FIRMS (ITF)**

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## **2.1 Introduction**

- 2.1.1 The Client named the Appendix to “ITF” will select a firm, from among the , firms invited to submit a proposal, in accordance with the method of selection detailed in this document.
- 2.1.2 The Procuring entity will provide the inputs specified in the Appendix “ITC”, assist the firm in obtaining licenses and permits needed to carry out the services and make available relevant project data and reports.
- 2.1.3 Please note that (i) the costs of preparing the proposal and of negotiating the Contract, including any visit to the Client are not reimbursable as a direct cost of the assignment; and (ii) the Client is not bound to accept any of the proposals submitted.
- 2.1.4 The procuring entity’s employees, committee members, board members and their relative (spouse and children) are not eligible to participate.
- 2.1.5 The tender document shall be obtained freely from the County Government of Meru website
- 2.1.6 The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.
- 2.1.7 The firms with the technical bids scoring **seventy percent (70%)** and above shall have their financial bids evaluated.

## **2.2 Clarification and Amendment of RFP Documents**

- 2.2.1 , firms may request a clarification of any of the RFP documents only up to **seven[7]** days before the proposal submission date. Any request for clarification must be sent in writing by paper mail, cable, telex, facsimile or electronic mail to the Client’s address indicated in the Appendix “ITF”. The Client will respond by cable, telex, facsimile or electronic mail to such requests and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all invited firms who intend to submit proposals.
- 2.2.2 At any time before the submission of proposals, the Client may for any reason, whether at his own initiative or in response to a clarification requested by an

invited firm, amend the RFP. Any amendment shall be issued in writing through addenda. Addenda shall be sent by mail, cable, telex or facsimile to all invited consultant and will be binding on them. The Client may at his discretion extend the deadline for the submission of proposals.

### **2.3 Preparation of Technical Proposal**

**2.3.1** The invited firms proposals shall be written in **English language**.

**2.3.2** In preparing the Technical Proposal, firms are expected to examine the documents constituting this RFP in detail, in particular the term of reference. Material deficiencies in providing the information requested may result in rejection of a proposal.

**2.3.3** While preparing the Technical Proposal, consultant must give particular attention to the following:

- (i) If a firm considers that it does not have all the expertise for the assignment, it may obtain a full range of expertise by associating with individual consultant(s) and/or other firms or entities in a joint venture or sub-consultancy as appropriate. Consultant shall not associate with the other consultant invited for this assignment. Any firms associating in contravention of this requirement shall automatically be disqualified.
- (ii) For assignments on a staff-time basis, the estimated number of professional staff-time is given in the Appendix. The proposal shall however be based on the number of professional staff-time estimated by the firm.
- (iii) It is desirable that the majority of the key professional staff proposed be permanent employees of the firm or have an extended and stable working relationship with it.
- (iv) Proposed professional staff must as a minimum, have the experience indicated in Appendix, preferably working under conditions similar to those prevailing in Kenya.
- (v) Alternative professional staff shall not be proposed and only one Curriculum Vitae (CV) may be submitted for each position.

**2.3.4** The Technical Proposal shall provide the following information as per terms of reference.

- (i) A description of the methodology and work plan for performing the assignment.
- (ii) The list of the proposed staff team by specialty, the tasks that would be assigned to each staff team member and their timing.

- (iii) CVs recently signed by the proposed professional staff and the authorized representative submitting the proposal. Key information should include number of years working for the firm/entity and degree of responsibility held in various assignments during the last ten (10) years.
- (iv) Any additional information requested in Appendix "A".

### **2.3.5 The Technical Proposal shall not include any financial information.**

## **2.4 Preparation of Financial Proposal**

- 2.4.1 In preparing the Financial Proposal, consultant are expected to take into account the requirements and conditions outlined in the RFP documents. The consultant are supposed to prepare bills of quantities and cost as per the design.
- 2.4.2 Consultant shall express the price of their services in Kenya Shillings.
- 2.4.3 Commissions and gratuities, if any, paid or to be paid by consultant and related to the assignment will be listed in the Financial Proposal submission Form.
- 2.4.4 The Proposal must remain valid for 60 days after the submission date. During this period, the consultant is expected to keep available, at his own cost, the professional staff proposed for the assignment. The Client will make his best effort to complete negotiations within this period. If the Client wishes to extend the validity period of the proposals, the consultant shall agree to the extension.

## **2.5 Submission, Receipt, and Opening of Proposals**

- 2.5.1 The original proposal (Technical Proposal and, if required, Financial Proposal; see para. 1.2) shall be prepared in indelible ink. It shall contain no interlineation or overwriting, except as necessary to correct errors made by the firm itself. Any such corrections must be initialed by the persons or person authorised to sign the proposals.
  - 2.5.2 For each proposal, the consultant shall prepare the number of copies indicated in Appendix "A". Each Technical Proposal and Financial Proposal shall be marked "**ORIGINAL**" or "**COPY**" as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original shall govern.
- 2.5.3** The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked "**TECHNICALPROPOSAL,**" and the original and all



copies of the Financial Proposal in a sealed envelope clearly marked **“FINANCIAL PROPOSAL”** and warning: **“DO NOT OPEN WITH THE TECHNICAL PROPOSAL”**. Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information indicated in the Appendix “ITC” and be clearly marked, **“DO NOT OPEN, EXCEPT IN PRESENCE OF THE OPENING COMMITTEE.”**

2.5.4 The completed Technical and Financial Proposals must be delivered at the submission address on or before the time and date stated in the Appendix “ITC”. Any proposal received after the closing time for submission of proposals shall be returned to the respective consultant unopened.

2.5.5 After the deadline for submission of proposals, the Technical Proposal shall be opened immediately by the opening committee. The Financial Proposal shall remain sealed and deposited with a responsible officer of the client department up to the time for public opening of financial proposals.

**2.6 Proposal Evaluation General**

2.6.1 From the time the bids are opened to the time the Contract is awarded, if any consultant wishes to contact the Client on any matter related to his proposal, he should do so in writing at the address indicated in the Appendix “ITC”. Any effort by the firm to influence the Client in the proposal evaluation, proposal comparison or Contract award decisions may result in the rejection of the consultant’s proposal.

2.6.2 Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.

**2.7 Evaluation of Technical Proposal**

2.7.1 The evaluation committee appointed by the Client shall evaluate the proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria as follows

	<b>Points</b>
(i) Specific experience of the consultant related to the assignment	10
(ii) Qualifications and competence of the key staff for the assignment	40
<b>Total Points</b>	<b><u>50</u></b>

Each responsive proposal will be given a technical score, ( A proposal shall be rejected at this stage if it does not respond to important aspects of the Terms of Reference or if it fails to achieve the minimum technical score indicated in the Appendix “ITF”.

## **2.8 Public Opening and Evaluation of Financial Proposal**

- 2.8.1 After Technical Proposal evaluation, the Client shall notify those consultant whose proposals did not meet the minimum qualifying mark or were considered non-responsive to the RFP and Terms of Reference, indicating that their Financial Proposals will be returned after completing the selection process. The Client shall simultaneously notify the consultant who have secured the minimum qualifying mark, indicating the date and time set for opening the Financial Proposals and stating that the opening ceremony is open to those consultant who choose to attend. The opening date shall not be sooner than seven (7) days after the notification date. The notification may be sent by registered letter, cable, telex, facsimile or electronic mail.
- 2.8.2 The Financial Proposals shall be opened publicly in the presence of the consultant’ representatives who choose to attend. The name of the consultant, the technical. Scores and the proposed prices shall be read aloud and recorded when the Financial Proposals are opened. The Client shall prepare minutes of the public opening.
- 2.8.3 The evaluation committee will determine whether the financial proposals are complete (i.e. whether the consultant has costed all the items of the corresponding Technical Proposal and correct any computational errors. The cost of any unpriced items shall be assumed to be included in other costs in the proposal. In all cases, the total price of the Financial Proposal as submitted shall prevail.
- 2.8.4 While comparing proposal prices between local and foreign firms participating in a selection process in financial evaluation of Proposals, firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias in proposal prices. However, there shall be no such preference in the technical evaluation of the tenders. Proof of local incorporation and citizenship shall be required before the provisions of this sub-clause are applied. Details of such proof shall be attached by the Consultant in the financial proposal.
- 2.8.5 The formulae for determining the Financial Score (Sf) shall, unless an alternative formulae is indicated in the Appendix “ITC”, be as follows:-  
( $Sf = 100 \times \frac{Fm}{F}$ ) where Sf is the financial score; Fm is the lowest priced financial proposal and F is the price of the proposal under consideration. Proposals will be ranked according to their combined technical (*St*) and financial (*Sf*) scores using the weights (*T*=the weight given to the Technical Proposal: *P*=

the weight given to the Financial Proposal;  $T + p = 1$ ) indicated in the Appendix. The combined technical and financial score,  $S$ , is calculated as follows:-  $S = St \times T\% + Sf \times P\%$ . The firm achieving the highest combined technical and financial score will be invited for negotiations.

2.8.6 The tender evaluation committee shall evaluate the tender within 30 days of from the date of opening the tender.

2.8.7 Contract price variations shall not be allowed for contracts not exceeding one year (12 months).

2.8.8 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price

2.8.9 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

## **2.9 Negotiations**

2.9.1 Negotiations will be held at the same address as “address to send information to the Client” indicated in the Appendix “ITF”. The aim is to reach agreement on all points and sign a contract.

2.9.2 Negotiations will include a discussion of the Technical Proposal, the proposed methodology (work plan), staffing and any suggestions made by the firm to improve the Terms of Reference. The Client and firm will then work out final Terms of Reference, staffing and bar charts indicating activities, staff periods in the field and in the head office, staff-months, logistics and reporting. The agreed work plan and final Terms of Reference will then be incorporated in the “Description of Services” and form part of the Contract. Special attention will be paid to getting the most the firm can offer within the available budget and to clearly defining the inputs required from the Client to ensure satisfactory implementation of the assignment.

2.9.3 Unless there are exceptional reasons, the financial negotiations will not involve the remuneration rates for staff (no breakdown of fees).

2.9.4 Having selected the firm on the basis of, among other things, an evaluation of proposed key professional staff, the Client expects to negotiate a contract on the basis of the experts named in the proposal. Before contract negotiations, the Client will require assurances that the experts will be actually available. The Client will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified.

2.9.5 The negotiations will conclude with a review of the draft form of the Contract. To complete negotiations the Client and the selected firm will initial the agreed

Contract. If negotiations fail, the Client will invite the firm whose proposal received the second highest score to negotiate a contract.

2.9.6 The client shall appoint a team for the purpose of the negotiations.

## **2.10 Award of Contract**

2.10.1 The Contract will be awarded following negotiations. After negotiations are completed, the Client will promptly notify other consultant on the shortlist that they were unsuccessful and return the Financial Proposals of those consultant who did not pass the technical evaluation.

2.10.2 The selected firm is expected to commence the assignment on the date and at the location specified in Appendix "ITF".

2.10.3 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

2.10.4 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

2.10.5 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

2.10.6 To qualify for contract awards, the tenderer shall have the following:

- (a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
- (b) Legal capacity to enter into a contract for procurement
- (c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- (d) Shall not be debarred from participating in public procurement.

## **2.11 Confidentiality**

2.11.1 Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the , firms who submitted the proposals or to other persons not officially concerned with the process, until the winning firm has been notified that it has been awarded the Contract.

## **2.12 Corrupt or fraudulent practices**

2.12.1 The client requires that the , firms observe the highest standards of ethics during the selection and award of the consultancy contract and also during the performance of the assignment. The tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

- 2.12.2 The client will reject a proposal for award if it determines that the , firm recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.
- 2.12.3 Further , firm which is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

## **Appendix to information to firms**

### **Note on the Appendix to Information to Consultant**

#### **Appendix to Information to Consultant**

The following information for procurement of consultancy services and selection of Consultant shall complement or amend the provisions of the information to Consultant, wherever there is a conflict between the provisions of the information to consultant and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the information to firms.

#### **Clause Reference**

2.1.1 The name of the Client is: **County Government of Meru**

---

2.1.1 The method of selection is: **Quality and cost based**

2.1.2 Technical and Financial Proposals are requested: **Yes**

#### **DETAILED DESIGN OF MAUA PARKIN MERU COUNTY As per the terms of reference (section 5)**

2.1.3 A pre-proposal conference will be held on.....at the Chambers at Meru County headquarters.

The name(s), address (es) and telephone numbers of the Client's official(s) are:

**The County Secretary  
County Government of Meru  
P.O Box 120-60200  
Meru  
[merucounty@county.go.ke](mailto:merucounty@county.go.ke)**

2.7.1 The minimum technical score required to pass is 70%.

2.7.1 Alternative formulae for determining the financial scores is the following:\_\_\_\_\_

The weights given to the Technical and Financial Proposals are:

T=\_\_\_0.8

P=\_\_\_0.2

2.10.2 The assignment is expected to commence immediately after award.

*(Amend as necessary)*

## **SECTION III: - TECHNICAL PROPOSAL**

### **Notes on the preparation of the Technical Proposals**

- 3.1 In preparing the technical proposals the consultant is expected to examine all terms and information included in the RFP. Failure to provide all requested information shall be at the consultant own risk and may result in rejection of the consultant's proposal.
- 3.2 The technical proposal shall provide all required information and any necessary additional information and shall be prepared as per the **Terms of Reference**.
- 3.3 The Technical proposal shall not include any financial information unless it is allowed in the Appendix to information to the consultant or the Special Conditions of contract.



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5. Team composition.	
6. Format of curriculum vitae (CV) for proposed Professional staff.	
7. Activity (work schedule)	

**1. TECHNICAL PROPOSAL SUBMISSION FORM**

[\_\_\_\_\_ Date]

To: The county secretary  
County Government of Meru  
P.O Box 120-60200  
Meru  
[Merucounty@County.Go.Ke](mailto:Merucounty@County.Go.Ke)

We, the undersigned, offer to provide the contracting services for Detailed Design of Maua Parkin Meru County [*Title of contracting services*] in accordance with your Request for Proposal dated .....[Date] and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal, [and a Financial Proposal sealed under a separate envelope-*where applicable*].

We understand you are not bound to accept any Proposal that you receive.

We remain,

Yours sincerely,

\_\_\_\_\_ [*Authorized Signature*]:

\_\_\_\_\_ [*Name and Title of Signatory*]

:

\_\_\_\_\_ [*Name of Firm*]

:

\_\_\_\_\_ [*Address:*]

## 2. FIRM'S REFERENCES

### Relevant Services Carried Out in the Last Five Years That Best Illustrate Qualifications

Using the format below, provide information on each assignment for which your firm either individually, as a corporate entity or in association, was legally contracted.

Assignment Name:	Country
Location within Country:	Professional Staff provided by Your Firm/Entity(profiles):
Name of Client:	Clients contact person for the assignment.
Address:	No of Staff-Months; Duration of Assignment:
Start Date (Month/Year):	Completion Date (Month/Year):
Name of Associated Consultant. If any:	Approx. Value of Services (Kshs)
	No of Months of Professional Staff provided by Associated Consultant:
Name of Senior Staff (Project Director/Coordinator, Team Leader) Involved and Functions Performed:	
Narrative Description of project:	
Description of Actual Services Provided by Your Staff:	

Firm's Name: \_\_\_\_\_

Name and title of signatory; \_\_\_\_\_

*(May be amended as necessary)*

**3. COMMENTS AND SUGGESTIONS OF CONSULTANT ON THE TERMS OF REFERENCE AND ON DATA, SERVICES AND FACILITIES TO BE PROVIDED BY THE CLIENT.**

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On the Terms of Reference:



## 5. TEAM COMPOSITION AND TASK ASSIGNMENTS

### 1. Technical/Managerial Staff

Name	Position

### 2. Support Staff

Name	Position

## 6. FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED PROFESSIONAL STAFF

Proposed Position: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Name of Staff: \_\_\_\_\_

Profession: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Years with Firm: \_\_\_\_\_ Nationality: \_\_\_\_\_

Membership in Professional Societies: \_\_\_\_\_

---

Detailed Tasks Assigned: \_\_\_\_\_

---

### **Key Qualifications:**

*[Give an outline of staff member's experience and training most pertinent to tasks on assignment. Describe degree of responsibility held by staff member on relevant previous assignments and give dates and locations].*

---

### **Education:**

*[Summarize college/university and other specialized education of staff member, giving names of schools, dates attended and degree[s] obtained.]*

---

### **Employment Record:**

*[Starting with present position, list in reverse order every employment held. List all positions held by staff member since graduation, giving dates, names of employing organizations, titles of positions held, and locations of assignments.]*

---

**Certification:**

I, the undersigned, certify that these data correctly describe me, my qualifications, and my experience.

\_\_\_\_\_ Date: \_\_\_\_\_  
*[Signature of staff member]*

\_\_\_\_\_ Date: \_\_\_\_\_  
*[Signature of authorised representative of the firm]*

Full name of staff member: \_\_\_\_\_

Full name of authorized representative: \_\_\_\_\_



## 8. ACTIVITY (WORK) SCHEDULE

### (a). Field Activities

*[1<sup>st</sup>, 2<sup>nd</sup>, etc, are months from the start of assignment]*

	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>	6 <sup>th</sup>	7 <sup>th</sup>	8 <sup>th</sup>	9 <sup>th</sup>	10 <sup>th</sup>	11 <sup>th</sup>	12 <sup>th</sup>	
Activity (Work)													
_____													
_____													
_____													
_____													

## **SECTION IV: - FINANCIAL PROPOSAL**

### Notes on preparation of Financial Proposal

- 4.1 The Financial proposal prepared by the consultant should list the costs associated with the assignment. These costs normally cover remuneration for staff, subsistence, transportation, services and equipment, printing of documents, surveys etc as may be applicable. The costs should be broken done to be clearly understood by the procuring entity.
- 4.2 The financial proposal shall be in Kenya Shillings or any other currency allowed in the request for proposal and shall take into account the tax liability and cost of insurances specified in the request for proposal.
- 4.3 The proposal should be prepared as per article 2.4.1

**SECTION IV - FINANCIAL PROPOSAL STANDARD FORMS**

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## 1. FINANCIAL PROPOSAL SUBMISSION FORM

\_\_\_\_\_ [ Date]

To: The county secretary  
County Government of Meru  
P.O Box 120-60200  
Meru  
[Merucounty@county.go.ke](mailto:Merucounty@county.go.ke)

Ladies/Gentlemen:

We, the undersigned, offer for \_\_\_\_\_ [Title of contracting services] in accordance with your Request for Proposal dated (\_\_\_\_\_) [Date] and our Proposal. Our attached Financial Proposal is for the sum of (\_\_\_\_\_) [Amount in words and figures] inclusive of the taxes.

We understand you are not bound to accept any proposal that you receive.

We remain,

Yours sincerely,

\_\_\_\_\_ [Authorized Signature]

\_\_\_\_\_  
: [Name and Title of Signatory]:

\_\_\_\_\_ [Name of Firm]

\_\_\_\_\_ [Address]

## 2. SUMMARY OF COSTS

Costs(inclusive of taxes)	Currency	Amount
1. Detailed Design of Maua Parkin Meru County consultancy services		
Total Amount of Financial Proposal		<hr/>

## **SECTION V: - TERMS OF REFERENCE**

### **CONSULTANCY SERVICES FOR PREPARATION OF FEASIBILITY STUDY and DETAILED DESIGN**

#### **1. PROJECT BACKGROUND**

##### **1.1 Introduction**

Maua is a town located in swampy area on the foot of Kiegoi and Kithetu hills. The Iriene area was proposed for a recreation facility and conceptual design developed. The purpose of this consultancy is to further cost and elaborate conceptual design and carry out investment appraisal –Capital Budgeting

##### **1.2 Project Area**

The proposed park is in Maua Town.

#### **2. OBJECTIVES OF THE ASSIGNMENT**

##### **2.1 Overall Objective**

The overall objective of the consultancy is to elaborate the conceptual design, cost the design and carry out the investment appraisal.

##### **2.2 Specific objectives**

**The consultancy will have the following specific objectives**

- To elaborate the conceptual design;
- To cost the elaborated designs;
- To carry out investment appraisal.

#### **3. DETAILED SCOPE OF WORKS**

##### **3.1 Review the Conceptual design**

The conceptual design will be reviewed and any gap identified or modification proposed be discussed with the client before adoption.

##### **3.2 Detailed Design**

The detailed design will be carried out for the elements of the park that have been agreed with the client.

##### **3.3 Investment Appraisal**

A discounting method for 30 year time horizon, with base year as 2016 will be adopted and the discounting rate based on commercial lending rate.

**Information, Personnel and Facilities to be provided by the Client, and Personnel**

**Data Services**

Department of Water, Environment and Natural Resources will use its best endeavors to facilitate access to other organizations for collection of information needed for the assignment, this remains the responsibility of the Consultant to access all data required for the Assignment.

**Personnel**

Department of Water, Environment and Natural Resources shall provide the counterpart liaison personnel to facilitate the work of the Consultant(s).



**SECTION VI:  
STANDARD FORMS OF CONTRACT**

- a. ANNEX I – LARGE ASSIGNMENTS (LUMP-SUM PAYMENTS)
  
- b. ANNEX II – LARGE AND SMALL ASSIGNMENTS (TIME -BASED PAYMENTS)

**ANNEX III – SMALL ASSIGNMENTS (LUMP-SUM PAYMENTS)**

**NOTES**

- 1. LARGE ASSIGNMENT \_\_\_\_\_Exceeding Ksh 5,000,000
- 2. SMALL ASSIGNMENT \_\_\_\_\_Not exceeding Ksh. 5,000,000
- 3. TIME BASED PAYMENT \_\_\_Time based fixed fee Exact duration of contract not fixed
- 4. LUMP-SUM PAYMENT \_\_\_\_\_Stated fixed contract sum.



## **ANNEX I**

**REPUBLIC OF KENYA**

**S T A N D A R D F O R M O F C O N T R A C T**

**F O R**

**CONTRACTING SERVICES**

**Large Assignments**  
**(Lump- Sum payment)**

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### **Special Notes**

1. The Lump-Sum price is arrived at on the basis of inputs – including rates – provided by the Consultant. The Client agrees to pay the Consultant according to a schedule of payments linked to the delivery of certain outputs, usually reports. Lump-sum contracts have the simplicity of administration, the Client having only to be satisfied with the outputs without monitoring the staff inputs and should be used for large Assignments in for example Design; Engineering; Supervision and Management Services; Master plans; Economic and Feasibility studies; and Surveys.
2. The Contract includes four parts: Form of Contract, the General Conditions of Contract, the Special Conditions of Contract and the Appendices. The Client using this standard contract should not alter the General Conditions. Any adjustment to meet any specific project features should be made only in the Special Conditions.

**(iii)**

**CONTRACT FOR CONSULTANT'S SERVICES**

**Large Assignments (Lump-Sum Payments)**

between

---

*[name of the Client]*

AND

\_\_\_\_\_  
[name of the Consultant]

Dated: \_\_\_\_\_[date]

(iv)

## I. FORM OF CONTRACT

### Large Assignments (Lump-Sum Payments)

This Agreement (hereinafter called the "Contract") is made the \_\_\_\_\_)day of the month of \_\_\_\_\_[month], [year], between \_\_\_\_\_, [name of client] of [or whose registered office is situated at] \_\_\_\_\_[location of office] (hereinafter called the "Client") of the one part AND

\_\_\_\_\_ [name of consultant] of [or  
whoseregistered office is situated at]  
\_\_\_\_\_ [location of office](hereinafter  
called the "Consultant") of the other part.

WHEREAS

- (a) the Client has requested the Consultant to provide certain contracting services as defined in the General Conditions of Contract attached to this Contract (hereinafter called the "Services");
- (b) the Consultant, having presented to the Client that he has the required professional skills and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract;

NOW THEREFORE the Parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
  - (a) The General Conditions of Contract;

- (b) The Special Conditions of Contract;
- (c) The following Appendices: [**Note:** *If any of these Appendices are not used, they should be deleted from the list*]
  - Appendix A: Description of the Services
  - Appendix B: Reporting Requirements
  - Appendix C: Key Personnel and Sub consultant
  - Appendix D: Breakdown of Contract Price in Foreign Currency
  - Appendix E: Breakdown of Contract Price in Local Currency
  - Appendix F: Services and Facilities Provided by the Client

**(v)**

- 2. The mutual rights and obligations of the Client and the Consultant shall be as set forth in the Contract; in particular:
  - (a) The Consultant shall carry out the Services in accordance with the provisions of the Contract; and
  - (b) the Client shall make payments to the Consultant in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of \_\_\_\_\_ [*name of client*]

[*full name* \_\_\_\_\_ of \_\_\_\_\_ *Client's*  
 authorised representative \_\_\_\_\_]

[*title*] \_\_\_\_\_

[*signature*] \_\_\_\_\_

[*date*] \_\_\_\_\_

For and on behalf of \_\_\_\_\_ [*name of consultant*]

[*full name of Consultant's*  
 authorized representative] \_\_\_\_\_

[*title*] \_\_\_\_\_



[signature]\_\_\_\_\_

[date]\_\_\_\_\_

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## II. GENERAL CONDITIONS OF CONTRACT

### 1. GENERAL PROVISIONS

#### 1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract shall have the following meanings:

- (a) “Applicable Law” means the laws and any other instruments having the force of law in the Republic of Kenya as they may be issued and in force from time to time;
- (b) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GC) are attached together with all the documents listed in Clause 1 of such signed Contract;
- (c) “Contract Price” means the price to be paid for the performance of the Services in accordance with Clause 6 herebelow;
- (d) “Foreign Currency” means any currency other than the Kenya Shilling;
- (e) “GC” means these General Conditions of Contract;

- (f) “Government” means the Government of the Republic of Kenya;
- (g) “Local Currency” means the Kenya Shilling;
- (h) “Member”, in case the Consultant consists of a joint venture of more than one entity, means any of these entities; “Members” means all these entities, and “Member in Charge” means the entity specified in the SC to act on their behalf in exercising all the Consultant’s rights and obligations towards the Client under this Contract;
- (i) “Party” means the Client or the Consultant, as the case may be and “Parties” means both of them;

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- (j) “Personnel” means persons hired by the Consultant or by any Subconsultant as employees and assigned to the performance of the Services or any part thereof;
- (k) “SC” means the Special Conditions of Contract by which the GC may be amended or supplemented;
- (l) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A; and
- (m) “Sub consultant” means any entity to which the Consultant subcontracts any part of the Services in accordance with the provisions of Clauses 3 and 4.

**1.2 Law Governing the Contract**

This Contract, its meaning and interpretation and the relationship between the Parties shall be governed by the Laws of Kenya.

**1.3 Language**

This Contract has been executed in English language which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

**1.4 Notices**

Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is

addressed or when sent by registered mail, telex, telegram or facsimile to such Party at the address specified in the SC.

**1.5 Location**

The Services shall be performed at such locations as are specified in Appendix A and, where the location of a particular task is not so specified, at such locations, whether in the Republic of Kenya or elsewhere, as the Client may approve.

**1.6 Authorized Representatives**

Any action required or permitted to be taken and any document required or permitted to be executed under this Contract by the Client or the Consultant may be taken or executed by the officials specified in the SC.

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**1.7 Taxes and Duties**

The Consultant, Sub consultant[s] and their personnel shall pay such taxes, duties, fees and other impositions as may be levied under the Laws of Kenya, the amount of which is deemed to have been included in the Contract Price.

**2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT**

**2.1 Effectiveness of Contract**

This Contract shall come into effect on the date the Contract is signed by both Parties or such other later date as may be stated in the SC.

**2.2 Commencement of Services**

The Consultant shall begin carrying out the Services thirty (30) days after the date the Contract becomes effective or at such other date as may be specified in the SC.

**2.3 Expiration of Contract**

Unless terminated earlier pursuant to Clause 2.6, this Contract shall terminate at the end of such time period, after the Effective Date, as is specified in the SC.

**2.4 Modification**

Modification of the terms and Conditions of this Contract, including any modification of the scope of the Services or the Contract Price, may only be made by written agreement between the Parties.

**2.5 Force Majeure**

**2.5.1 Definition** For the purposes of this Contract, "Force Majeure" means

an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

**2.5.2 No Breach of Contract** The failure of a Party to fulfill any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

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**2.5.3 Extension Of Time** Any period within which a Party shall, pursuant to this Contract complete any action or task shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

**2.5.4 Payments** During the period of his inability to perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by him during such period for the purposes of the Services and in reactivating the Service after the end of such period.

## **2.6 Termination**

**2.6.1 By the Client** The Client may terminate this Contract by not less than thirty (30) days' written notice of termination to the Consultant, to be given after the occurrence of any of the events specified in this Clause;

- (a) if the Consultant does not remedy a failure in the performance of his obligations under the Contract within thirty (30) days after being notified or within any further period as the Client may have subsequently approved in writing;
- (b) if the Consultant becomes insolvent or bankrupt;

- (c) if, as a result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (d) if the Consultant, in the judgement of the Client, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this clause;

“corrupt practice” means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the selection process or in Contract execution.

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“fraudulent practice” means a misrepresentation of facts in order to influence a selection process or the execution of Contract to the detriment of the Client, and includes collusive practice among consultant (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive the Client of the benefits of free and open competition.

- (e) if the Client in his sole discretion decides to terminate this Contract.

**2.6.2 By the Consultant** The Consultant may terminate this Contract by not less than thirty (30) days’ written notice to the Client, such notice to be given after the occurrence of any of the following events;

- (a) if the Client fails to pay any monies due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause 7 within sixty (60) days after receiving written notice from the Consultant that such payment is overdue; or
- (b) if, as a result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

**2.6.3 Payment upon Termination** Upon termination of this Contract pursuant to Clauses 2.6.1 or 2.6.2, the Client shall make the following payments to the Consultant:

- (a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;
- (b) except in the case of termination pursuant to paragraphs (a) and (b) of Clause 2.6.1, reimbursement of any reasonable costs incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel and their eligible dependents.

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### **3. OBLIGATIONS OF THE CONSULTANT**

#### **3.1 General**

The Consultant shall perform the Services and carry out his obligations with all due diligence, efficiency and economy in accordance with generally accepted professional techniques and practices and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Client and shall at all times support and safeguard the Client's legitimate interests in any dealing with Sub consultant or third parties.

#### **1.2 Conflict of Interests**

##### **3.2.1 Consultant Not to Benefit from Commissions, Discounts, Etc.**

(i) The remuneration of the Consultant pursuant to Clause 6 shall constitute the Consultant's sole remuneration in connection with this Contract or the Services and the Consultant shall not accept for his own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of his obligations under the Contract

and the Consultant shall use his best efforts to ensure that his personnel, any sub consultant[s] and agents of either of them similarly shall not receive any such additional remuneration.

- (ii) For a period of two years after the expiration of this Contract, the Consultant shall not engage and shall cause his personnel as well as his sub consultant[s] and his/their personnel not to engage in the activity of a purchaser (directly or indirectly) of the assets on which he advised the Client on this Contract nor shall he engage in the activity of an adviser (directly or indirectly) of potential purchasers of such assets.
- (iii) Where the Consultant as part of the Services has the responsibility of advising the Client on the procurement of goods, works or services, the Consultant will comply with any applicable

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procurement guidelines and shall at all times exercise such responsibility in the best interest of the Client. Any discounts or commissions obtained by the Consultant in the exercise of such procurement shall be for the account of the Client.

**3.2.2 Consultant and Affiliates Not to be Otherwise Interested in Project**

The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and his affiliates, as well as any Subconsultant and any of his affiliates, shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

**3.2.3 Prohibition of Conflicting Activities**

Neither the Consultant nor his subconsultant[s] nor their personnel shall engage, either directly or indirectly in any of the following activities:

- (a) during the term of this Contract, any business or professional activities in the Republic of Kenya

which would conflict with the activities assigned to them under this Contract; or

- (b) after the termination of this Contract, such other activities as may be specified in the SC.

**3.3 Confidentiality** The Consultant, his subconsultant[s] and the personnel of either of them shall not, either during the term of this Contract or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract or the Client's business or operations without the prior written consent of the Client.

**3.4 Insurance to be Taken Out by the Consultant** The Consultant (a) shall take out and maintain and shall cause any subconsultant[s] to take out and maintain, at his (or the subconsultant', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks and for the coverage, as shall be specified in the SC; and (b) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums have been paid.

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**3.5 Consultant's Actions Requiring Client's Prior Approval** The Consultant shall obtain the Client's prior approval in writing before taking any of the following actions;

- (a) entering into a subcontract for the performance of any part of the Services,
- (b) appointing such members of the personnel not listed by name in Appendix C ("Key Personnel and Subconsultant").

**3.6 Reporting Obligations** The Consultant shall submit to the Client the reports and documents specified in Appendix A in the form, in the numbers, and within the periods set forth in the said Appendix.

**3.7 Documents prepared by the Consult-** All plans, drawings, specifications, designs, reports and other documents and software submitted by the Consultant in accordance with Clause 3.6 shall become and



**ant to Be** remain the property of the Client and the Consultant  
**theProperty** shall, not later than upon termination or expiration of this  
**of the Client** Contract, deliver all such documents and software to the Client  
together with a detailed inventory thereof. The  
Consultant may retain a copy of such documents and  
software. Neither Party shall use these documents for  
purposes unrelated to this Contract without the prior  
approval of the other Party.

#### **4. CONSULTANT'S PERSONNEL**

**4.1 Description of Personnel** The titles, agreed job descriptions, minimum qualifications and estimated periods of engagement in the carrying out of the Services of the Consultant's Key Personnel are described in Appendix C. The Key Personnel and Sub consultant listed by title as well as by name in Appendix C are hereby approved by the Client.

**4.2 Removal and/or Replacement Of Personnel** (a) Except as the Client may otherwise agree, no changes shall be made in the Key Personnel. If for any reason beyond the reasonable control of the Consultant, it becomes necessary to replace any of the Key Personnel, the Consultant shall provide as a replacement a person of equivalent or better qualifications.

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- (b) If the Client finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) the Client has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultant shall, at the Client's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Client.
- (c) The Consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

## **5. OBLIGATIONS OF THE CLIENT**

### **5.1 Assistance and Exemptions**

The Client shall use his best efforts to ensure that he provides the Consultant such assistance and exemptions as may be necessary for due performance of this Contract.

### **5.2 Change in the Applicable Law**

If after the date of this Contract, there is any change in the Laws of Kenya with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Consultant, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties and corresponding adjustments shall be made to the amounts referred to in Clause 6.2 (a) or (b), as the case may be.

### **5.3 Services and Facilities**

The Client shall make available to the Consultant the Services and Facilities listed under Appendix F.

## **6. PAYMENTS TO THE CONSULTANT**

### **6.1 Lump-Sum Remuneration**

The Consultant's total remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all staff costs, Subconsultant's costs, printing, communications, travel, accommodation and the like and all other costs incurred by the Consultant in carrying out the

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Services described in Appendix A. Except as provided in Clause 5.2, the Contract Price may only be increased above the amounts stated in Clause 6.2 if the Parties have agreed to additional payments in accordance with Clause 2.4.

### **6.2 Contract Price**

- (a) The price payable in foreign currency is set forth in the SC.
- (b) The price payable in local currency is set forth in the SC.

### **6.3 Payment for**

For the purposes of determining the remuneration

**Additional Services** due for additional services as may be agreed under Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E.

**6.4 Terms and Conditions of Payment** Payments will be made to the account of the Consultant and according to the payment schedule stated in the SC. Unless otherwise stated in the SC, the first payment shall be made against the provision by the Consultant of a bank guarantee for the same amount and shall be valid for the period stated in the SC. Any other payment shall be made after the conditions listed in the SC for such payment have been met and the Consultant has submitted an invoice to the Client specifying the amount due.

**6.5 Interest on Delayed Payment** Payment shall be made within thirty (30) days of receipt of invoice and the relevant documents specified in Clause 6.4. If the Client has delayed payments beyond thirty (30) days after the due date hereof, simple interest shall be paid to the Consultant for each day of delay at a rate three percentage points above the prevailing Central Bank of Kenya's average rate for base lending .

## **7. SETTLEMENT OF DISPUTES**

**7.1 Amicable Settlement** The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

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**7.2 Dispute Settlement** Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be referred by either Party to the arbitration and final decision of a person to be agreed between the Parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the Chairman of the Chartered Institute of Arbitrators, Kenya Branch, on the request of the applying party.

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### III. SPECIAL CONDITIONS OF CONTRACT

Number of GC Clause	Amendments of and Supplements to Clauses in the General Conditions of Contract
1.1(h)	The Member in Charge is _____ [name of Member]
1.4	The addresses are:  Client: _____ Attention: _____ Telephone: _____ Telex; _____ Facsimile: _____  Consultant: _____ Attention: _____ Telephone; _____ Telex: _____ Facsimile: _____
1.6	The Authorized Representatives are:  For the Client: _____  For the Consultant: _____
2.1	The date on which this Contract shall come into effect is(_____) [date].

**Note:** The date may be specified by reference to conditions of effectiveness of the Contract, such as receipt by Consultant of advance payment and by Client of bank guarantee

2.2 The date for the commencement of Services is \_\_\_\_\_ [date]

2.3 The period shall be \_\_\_\_\_ [length of time].

**Note:** Fill in the period, eg, twenty-four (24) months or such other period as the Parties may agree in writing.

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3.4 The risks and coverage shall be:

(i) Professional Liability \_\_\_\_\_

(ii) Loss of or damage to equipment and property \_\_\_\_\_

6.2(a) The amount in foreign currency or currencies is \_\_\_\_\_  
[Insert amount].

6.2(b) The amount in local Currency is \_\_\_\_\_ [Insert amount]

6.4 Payments shall be made according to the following schedule:

**Note:** (a) This sample Clause should be specifically drafted for each Contract and the following installments are indicative only; (b) if the payment of foreign currency and of local currency does not follow the same schedule, add a separate schedule for payment in local currency; and (c) if applicable, detail further the nature of the report evidencing performance, as may be required, e.g., submission of study or specific phase of study, survey, drawings, draft bidding documents, etc., as listed in Appendix B, Reporting Requirements. In the example provided, the bank guarantee for the repayment is released when the payments have reached 50 percent of the lump-sum price, because it is assumed that at that point, the advance has been entirely set off against the performance of services.

- Twenty (20) percent of the Contract Price shall be paid on the commencement date against the submission of a bank guarantee for the same.
- Ten (10) percent of the lump-sum amount shall be paid upon submission of the inception report.

- Twenty-five (25) percent of the lump-sum amount shall be paid upon submission of the interim report.
- Twenty-five (25) percent of the lump-sum amount shall be paid upon submission of the draft final report.
- Twenty (20) percent of the lump-sum amount shall be paid upon approval of the final report.
- The bank guarantee shall be released when the total payments reach fifty (50) percent of the lump-sum amount.

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## **IV. Appendices**

### **APPENDIX A – DESCRIPTION OF THE SERVICES**

*Give detailed descriptions of the Services to be provided, dates for completion of various tasks, place of performance for different tasks, specific tasks to be approved by Client, etc.*

### **APPENDIX B – REPORTING REQUIREMENTS**

*List format, frequency, and contents of reports; persons to receive them; dates of submission; etc. If no reports are to be submitted, state here “Not applicable.”*

### **APPENDIX C– KEY PERSONNEL AND SUBCONSULTANT**

- List under:*
- C-1 *Titles [and names, if already available], detailed job descriptions and minimum qualifications of Personnel and staff-months for each.*
  - C-2 *List of approved Sub consultant (if already available); same information with respect to their Personnel as in C-1.*

### **APPENDIX D – BREAKDOWN OF CONTRACT PRICE IN FOREIGN CURRENCY**

*List here the elements of cost used to arrive at the breakdown of the lump-sum price – foreign currency portion:*

1. *Monthly rates for Personnel (Key Personnel and other Personnel).*
2. *Reimbursable expenditures.*

*This appendix will exclusively be used for determining remuneration for additional services.*

**APPENDIX E – BREAKDOWN OF CONTRACT PRICE IN LOCAL CURRENCY**

*List here the elements of cost used to arrive at the breakdown of the lump-sum price – local currency portion.*

1. *Monthly rates for Personnel (Key Personnel and other Personnel).*
2. *Reimbursable expenditures.*

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*This appendix will exclusively be used for determining remuneration for additional services.*

**APPENDIX F – Master plan layout**

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**LETTER OF NOTIFICATION OF AWARD**

Address of Procuring Entity

\_\_\_\_\_  
\_\_\_\_\_

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Tender No. \_\_\_\_\_

Tender Name \_\_\_\_\_

This is to notify that the contract/s stated below under the above mentioned tender have been awarded to you.

\_\_\_\_\_  
\_\_\_\_\_

1. Please acknowledge receipt of this letter of notification signifying your acceptance.
2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.
3. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

(FULL PARTICULARS) \_\_\_\_\_  
\_\_\_\_\_

SIGNED FOR ACCOUNTING OFFICER



**SECTION VI:**  
**STANDARD FORMS OF CONTRACT**

c. ANNEX I – LARGE ASSIGNMENTS (LUMP-SUM PAYMENTS)

d. ANNEX II – LARGE AND SMALL ASSIGNMENTS (TIME -BASED PAYMENTS)

**ANNEX III – SMALL ASSIGNMENTS (LUMP-SUM  
PAYMENTS)**

**NOTES**

5. LARGE ASSIGNMENT \_\_\_\_ Exceeding Ksh 5,000,000

6. SMALL ASSIGNMENT \_\_\_\_ Not exceeding Ksh. 5,000,000

7. TIME BASED PAYMENT \_\_\_\_ Time based fixed fee Exact  
duration of contract not fixed

8. LUMP-SUM PAYMENT \_\_\_\_ Stated fixed contract sum.

## **ANNEX I**

**REPUBLIC OF KENYA**

**S T A N D A R D F O R M O F C O N T R A C T**

**F O R**

**CONTRACTING SERVICES**

**Large Assignments**  
**(Lump- Sum payment)**

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### **Special Notes**

2. The Lump-Sum price is arrived at on the basis of inputs – including rates – provided by the Consultant. The Client agrees to pay the Consultant according to a schedule of payments linked to the delivery of certain outputs, usually reports. Lump-sum contracts have the simplicity of administration, the Client having only to be satisfied with the outputs without monitoring the staff inputs and should be used for large Assignments in for example Design; Engineering; Supervision and Management Services; Master plans; Economic and Feasibility studies; and Surveys.
  
2. The Contract includes four parts: Form of Contract, the General Conditions of Contract, the Special Conditions of Contract and the Appendices. The Client using this standard contract should not alter the General Conditions. Any adjustment to meet any specific project features should be made only in the Special Conditions.

**(iii)**

**CONTRACT FOR CONSULTANT'S SERVICES**

**Large Assignments (Lump-Sum Payments)**

between

---

*[name of the Client]*

AND

[name of the Consultant]

Dated: \_\_\_\_\_[date]

(iv)

## II. FORM OF CONTRACT

### Large Assignments (Lump-Sum Payments)

This Agreement (hereinafter called the "Contract") is made the \_\_\_\_\_)day of the month of \_\_\_\_\_[month], [year], between \_\_\_\_\_, [name of client] of [or whose registered office is situated at] \_\_\_\_\_[location of office] (hereinafter called the "Client") of the one part AND

\_\_\_\_\_ [name of consultant] of [or whoseregistered office is situated at] \_\_\_\_\_[location of office](hereinafter called the "Consultant") of the other part.

WHEREAS

- (c) the Client has requested the Consultant to provide certain contracting services as defined in the General Conditions of Contract attached to this Contract (hereinafter called the "Services");
- (d) the Consultant, having presented to the Client that he has the required professional skills and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract;

NOW THEREFORE the Parties hereto hereby agree as follows:

- 3. The following documents attached hereto shall be deemed to form an integral part of this Contract:
  - (d) The General Conditions of Contract;
  - (e) The Special Conditions of Contract;
  - (f) The following Appendices: [**Note:** *If any of these Appendices are not used, they should be deleted from the list*]  
Appendix A: Description of the Services



- Appendix B: Reporting Requirements
- Appendix C: Key Personnel and Sub consultant
- Appendix D: Breakdown of Contract Price in Foreign Currency
- Appendix E: Breakdown of Contract Price in Local Currency
- Appendix F: Services and Facilities Provided by the Client

**(v)**

4. The mutual rights and obligations of the Client and the Consultant shall be as set forth in the Contract; in particular:
- (c) The Consultant shall carry out the Services in accordance with the provisions of the Contract; and
  - (d) the Client shall make payments to the Consultant in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of \_\_\_\_\_ [*name of client*]

[*full name* \_\_\_\_\_ of \_\_\_\_\_ Client's  
*authorised representative* \_\_\_\_\_]

[*title*] \_\_\_\_\_

[*signature*] \_\_\_\_\_

[*date*] \_\_\_\_\_

For and on behalf of \_\_\_\_\_ [*name of consultant*]

[*full name of Consultant's*  
*authorized representative*] \_\_\_\_\_

[*title*] \_\_\_\_\_

[*signature*] \_\_\_\_\_

[*date*] \_\_\_\_\_

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## V. GENERAL CONDITIONS OF CONTRACT

### 5. GENERAL PROVISIONS

#### 1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract shall have the following meanings:

- (n) “Applicable Law” means the laws and any other instruments having the force of law in the Republic of Kenya as they may be issued and in force from time to time;
- (o) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GC) are attached together with all the documents listed in Clause 1 of such signed Contract;
- (p) “Contract Price” means the price to be paid for the performance of the Services in accordance with Clause 6 herebelow;
- (q) “Foreign Currency” means any currency other than the Kenya Shilling;
- (r) “GC” means these General Conditions of Contract;
- (s) “Government” means the Government of the Republic of Kenya;
- (t) “Local Currency” means the Kenya Shilling;

- (u) “Member”, in case the Consultant consists of a joint venture of more than one entity, means any of these entities; “Members” means all these entities, and “Member in Charge” means the entity specified in the SC to act on their behalf in exercising all the Consultant’s rights and obligations towards the Client under this Contract;
- (v) “Party” means the Client or the Consultant, as the case may be and “Parties” means both of them;

**(vii)**

- (w) “Personnel” means persons hired by the Consultant or by any Subconsultant as employees and assigned to the performance of the Services or any part thereof;
- (x) “SC” means the Special Conditions of Contract by which the GC may be amended or supplemented;
- (y) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A; and
- (z) “Sub consultant” means any entity to which the Consultant subcontracts any part of the Services in accordance with the provisions of Clauses 3 and 4.

**1.2 Law Governing the Contract**

This Contract, its meaning and interpretation and the relationship between the Parties shall be governed by the Laws of Kenya.

**1.3 Language**

This Contract has been executed in English language which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

**1.4 Notices**

Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed or when sent by registered mail, telex, telegram or facsimile to such Party at the address specified in the SC.

**1.5 Location**

The Services shall be performed at such locations as are specified in Appendix A and, where the location of a

particular task is not so specified, at such locations, whether in the Republic of Kenya or elsewhere, as the Client may approve.

- 5.6 Authorized Representatives** Any action required or permitted to be taken and any document required or permitted to be executed under this Contract by the Client or the Consultant may be taken or executed by the officials specified in the SC.

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- 1.7 Taxes and Duties** The Consultant, Sub consultant[s] and their personnel shall pay such taxes, duties, fees and other impositions as may be levied under the Laws of Kenya, the amount of which is deemed to have been included in the Contract Price.

## **6. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT**

- 2.1 Effectiveness of Contract** This Contract shall come into effect on the date the Contract is signed by both Parties or such other later date as may be stated in the SC.

- 2.2 Commencement of Services** The Consultant shall begin carrying out the Services thirty (30) days after the date the Contract becomes effective or at such other date as may be specified in the SC.

- 2.3 Expiration of Contract** Unless terminated earlier pursuant to Clause 2.6, this Contract shall terminate at the end of such time period, after the Effective Date, as is specified in the SC.

- 2.4 Modification** Modification of the terms and Conditions of this Contract, including any modification of the scope of the Services or the Contract Price, may only be made by written agreement between the Parties.

### **5.5 Force Majeure**

- 2.5.1 Definition** For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

**2.5.2 No Breach of Contract** The failure of a Party to fulfill any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

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**2.5.3 Extension Of Time** Any period within which a Party shall, pursuant to this Contract complete any action or task shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

**2.5.4 Payments** During the period of his inability to perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by him during such period for the purposes of the Services and in reactivating the Service after the end of such period.

## **5.6 Termination**

**2.6.1 By the Client** The Client may terminate this Contract by not less than thirty (30) days' written notice of termination to the Consultant, to be given after the occurrence of any of the events specified in this Clause;

- (f) if the Consultant does not remedy a failure in the performance of his obligations under the Contract within thirty (30) days after being notified or within any further period as the Client may have subsequently approved in writing;
- (g) if the Consultant becomes insolvent or bankrupt;
- (h) if, as a result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or

- (i) if the Consultant, in the judgement of the Client, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this clause;

“corrupt practice” means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the selection process or in Contract execution.

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“fraudulent practice” means a misrepresentation of facts in order to influence a selection process or the execution of Contract to the detriment of the Client, and includes collusive practice among consultant (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive the Client of the benefits of free and open competition.

- (j) if the Client in his sole discretion decides to terminate this Contract.

**2.6.2 By the Consultant** The Consultant may terminate this Contract by not less than thirty (30) days’ written notice to the Client, such notice to be given after the occurrence of any of the following events;

- (c) if the Client fails to pay any monies due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause 7 within sixty (60) days after receiving written notice from the Consultant that such payment is overdue; or
- (d) if, as a result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

**2.6.3 Payment upon Termination** Upon termination of this Contract pursuant to Clauses 2.6.1 or 2.6.2, the Client shall make the following payments to the Consultant:

- (c) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;
- (d) except in the case of termination pursuant to paragraphs (a) and (b) of Clause 2.6.1, reimbursement of any reasonable costs incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel and their eligible dependents.

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## **7. OBLIGATIONS OF THE CONSULTANT**

### **3.1 General**

The Consultant shall perform the Services and carry out his obligations with all due diligence, efficiency and economy in accordance with generally accepted professional techniques and practices and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Client and shall at all times support and safeguard the Client's legitimate interests in any dealing with Sub consultant or third parties.

### **1.3 Conflict of Interests**

#### **3.2.1 Consultant (i) Not to Benefit from Commissions, Discounts, Etc.**

The remuneration of the Consultant pursuant to Clause 6 shall constitute the Consultant's sole remuneration in connection with this Contract or the Services and the Consultant shall not accept for his own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of his obligations under the Contract and the Consultant shall use his best efforts to ensure that his personnel, any sub consultant[s] and agents of either of them similarly shall not receive any such additional remuneration.

- (iv) For a period of two years after the expiration of this Contract, the Consultant shall not engage and shall cause his personnel as well as his sub consultant[s] and his/their personnel not to engage in the activity of a purchaser (directly or indirectly) of the assets on which he advised the Client on this Contract nor shall he engage in the activity of an adviser (directly or indirectly) of potential purchasers of such assets.
- (v) Where the Consultant as part of the Services has the responsibility of advising the Client on the procurement of goods, works or services, the Consultant will comply with any applicable

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procurement guidelines and shall at all times exercise such responsibility in the best interest of the Client. Any discounts or commissions obtained by the Consultant in the exercise of such procurement shall be for the account of the Client.

**3.2.2 Consultant and Affiliates Not to be Otherwise Interested in Project**

The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and his affiliates, as well as any Subconsultant and any of his affiliates, shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

**3.2.3 Prohibition of Conflicting Activities**

Neither the Consultant nor his subconsultant[s] nor their personnel shall engage, either directly or indirectly in any of the following activities:

- (d) during the term of this Contract, any business or professional activities in the Republic of Kenya which would conflict with the activities assigned to them under this Contract; or



- (e) after the termination of this Contract, such other activities as may be specified in the SC.

**3.3 Confidentiality** The Consultant, his subconsultant[s] and the personnel of either of them shall not, either during the term of this Contract or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract or the Client's business or operations without the prior written consent of the Client.

**3.4 Insurance to be Taken Out by the Consultant** The Consultant (a) shall take out and maintain and shall cause any subconsultant[s] to take out and maintain, at his (or the subconsultant', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks and for the coverage, as shall be specified in the SC; and (b) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums have been paid.

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**3.5 Consultant's Actions Requiring Client's Prior Approval** The Consultant shall obtain the Client's prior approval in writing before taking any of the following actions;

- (c) entering into a subcontract for the performance of any part of the Services,
- (d) appointing such members of the personnel not listed by name in Appendix C ("Key Personnel and Subconsultant").

**3.6 Reporting Obligations** The Consultant shall submit to the Client the reports and documents specified in Appendix A in the form, in the numbers, and within the periods set forth in the said Appendix.

**3.7 Documents prepared by the Consultant to Be the Property** All plans, drawings, specifications, designs, reports and other documents and software submitted by the Consultant in accordance with Clause 3.6 shall become and remain the property of the Client and the Consultant shall, not later than upon termination or expiration of this

**of the Client**Contract, deliver all such documents and software to the Client together with a detailed inventory thereof. The Consultant may retain a copy of such documents and software. Neither Party shall use these documents for purposes unrelated to this Contract without the prior approval of the other Party.

## **8. CONSULTANT'S PERSONNEL**

**4.1 Description of Personnel** The titles, agreed job descriptions, minimum qualifications and estimated periods of engagement in the carrying out of the Services of the Consultant's Key Personnel are described in Appendix C. The Key Personnel and Sub consultant listed by title as well as by name in Appendix C are hereby approved by the Client.

**4.2 Removal and/or Replacement of Personnel** (a) Except as the Client may otherwise agree, no changes shall be made in the Key Personnel. If for any reason beyond the reasonable control of the Consultant, it becomes necessary to replace any of the Key Personnel, the Consultant shall provide as a replacement a person of equivalent or better qualifications.

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(b) If the Client finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) the Client has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultant shall, at the Client's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Client.

(f) The Consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

## **8. OBLIGATIONS OF THE CLIENT**

**5.1 Assistance and Exemptions**

The Client shall use his best efforts to ensure that he provides the Consultant such assistance and exemptions as may be necessary for due performance of this Contract.

**5.2 Change in the Applicable Law**

If after the date of this Contract, there is any change in the Laws of Kenya with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Consultant, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties and corresponding adjustments shall be made to the amounts referred to in Clause 6.2 (a) or (b), as the case may be.

**5.3 Services and Facilities**

The Client shall make available to the Consultant the Services and Facilities listed under Appendix F.

**9. PAYMENTS TO THE CONSULTANT**

**6.1 Lump-Sum Remuneration**

The Consultant’s total remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all staff costs, Subconsultant’ costs, printing, communications, travel, accommodation and the like and all other costs incurred by the Consultant in carrying out the

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Services described in Appendix A. Except as provided in Clause 5.2, the Contract Price may only be increased above the amounts stated in Clause 6.2 if the Parties have agreed to additional payments in accordance with Clause 2.4.

**6.2 Contract Price**

- (a) The price payable in foreign currency is set forth in the SC.
- (b) The price payable in local currency is set forth in the SC.

**6.3 Payment for**

For the purposes of determining the remuneration

**Additional Services** due for additional services as may be agreed under Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E.

**6.4 Terms and Conditions of Payment** Payments will be made to the account of the Consultant and according to the payment schedule stated in the SC. Unless otherwise stated in the SC, the first payment shall be made against the provision by the Consultant of a bank guarantee for the same amount and shall be valid for the period stated in the SC. Any other payment shall be made after the conditions listed in the SC for such payment have been met and the Consultant has submitted an invoice to the Client specifying the amount due.

**6.5 Interest on Delayed Payment** Payment shall be made within thirty (30) days of receipt of invoice and the relevant documents specified in Clause 6.4. If the Client has delayed payments beyond thirty (30) days after the due date hereof, simple interest shall be paid to the Consultant for each day of delay at a rate three percentage points above the prevailing Central Bank of Kenya's average rate for base lending .

## **10. SETTLEMENT OF DISPUTES**

**7.1 Amicable Settlement** The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

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**7.2 Dispute Settlement** Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be referred by either Party to the arbitration and final decision of a person to be agreed between the Parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the Chairman of the Chartered Institute of Arbitrators, Kenya Branch, on the request of the applying party.

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## VI. SPECIAL CONDITIONS OF CONTRACT

Number of GC Clause	Amendments of and Supplements to Clauses in the General Conditions of Contract
1.1(h)	The Member in Charge is _____ <i>[name of Member]</i>
1.4	The addresses are:  Client: _____ Attention: _____ Telephone: _____ Telex; _____ Facsimile: _____  Consultant: _____ Attention: _____ Telephone; _____ Telex: _____ Facsimile: _____
1.7	The Authorized Representatives are:  For the Client: _____  For the Consultant: _____
2.1	The date on which this Contract shall come into effect is(_____) <i>[date]</i> .

**Note:** *The date may be specified by reference to conditions of effectiveness of the Contract, such as receipt by Consultant of advance payment and by Client of bank guarantee*

2.2 The date for the commencement of Services is \_\_\_\_\_ [date]

2.3 The period shall be \_\_\_\_\_ [length of time].

**Note:** Fill in the period, eg, twenty-four (24) months or such other period as the Parties may agree in writing.

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3.5 The risks and coverage shall be:

(iii) Professional Liability \_\_\_\_\_

(iv) Loss of or damage to equipment and property \_\_\_\_\_

6.2(a) The amount in foreign currency or currencies is \_\_\_\_\_  
[Insert amount].

6.2(b) The amount in local Currency is \_\_\_\_\_ [Insert amount]

6.5 Payments shall be made according to the following schedule:

**Note:** (a) This sample Clause should be specifically drafted for each Contract and the following installments are indicative only; (b) if the payment of foreign currency and of local currency does not follow the same schedule, add a separate schedule for payment in local currency; and (c) if applicable, detail further the nature of the report evidencing performance, as may be required, e.g., submission of study or specific phase of study, survey, drawings, draft bidding documents, etc., as listed in Appendix B, Reporting Requirements. In the example provided, the bank guarantee for the repayment is released when the payments have reached 50 percent of the lump-sum price, because it is assumed that at that point, the advance has been entirely set off against the performance of services.

- Twenty (20) percent of the Contract Price shall be paid on the commencement date against the submission of a bank guarantee for the same.
- Ten (10) percent of the lump-sum amount shall be paid upon submission of the inception report.

- Twenty-five (25) percent of the lump-sum amount shall be paid upon submission of the interim report.
- Twenty-five (25) percent of the lump-sum amount shall be paid upon submission of the draft final report.
- Twenty (20) percent of the lump-sum amount shall be paid upon approval of the final report.
- The bank guarantee shall be released when the total payments reach fifty (50) percent of the lump-sum amount.

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## **VII. Appendices**

### **APPENDIX A – DESCRIPTION OF THE SERVICES**

*Give detailed descriptions of the Services to be provided, dates for completion of various tasks, place of performance for different tasks, specific tasks to be approved by Client, etc.*

### **APPENDIX B – REPORTING REQUIREMENTS**

*List format, frequency, and contents of reports; persons to receive them; dates of submission; etc. If no reports are to be submitted, state here “Not applicable.”*

### **APPENDIX C– KEY PERSONNEL AND SUBCONSULTANT**

*List under: C-1 Titles [and names, if already available], detailed job descriptions and minimum qualifications of Personnel and staff-months for each.*

*C-2 List of approved Sub consultant (if already available); same information with respect to their Personnel as in C-1.*

### **APPENDIX D – BREAKDOWN OF CONTRACT PRICE IN FOREIGN CURRENCY**

*List here the elements of cost used to arrive at the breakdown of the lump-sum price – foreign currency portion:*

- 3. Monthly rates for Personnel (Key Personnel and other Personnel).*
- 4. Reimbursable expenditures.*

*This appendix will exclusively be used for determining remuneration for additional services.*

**APPENDIX E – BREAKDOWN OF CONTRACT PRICE IN LOCAL CURRENCY**

*List here the elements of cost used to arrive at the breakdown of the lump-sum price – local currency portion.*

3. *Monthly rates for Personnel (Key Personnel and other Personnel).*
4. *Reimbursable expenditures.*

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*This appendix will exclusively be used for determining remuneration for additional services.*

**APPENDIX F – Master plan layout**



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**LETTER OF NOTIFICATION OF AWARD**

Address of Procuring Entity

\_\_\_\_\_  
\_\_\_\_\_

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Tender No. \_\_\_\_\_

Tender Name \_\_\_\_\_

This is to notify that the contract/s stated below under the above mentioned tender have been awarded to you.

\_\_\_\_\_  
\_\_\_\_\_

4. Please acknowledge receipt of this letter of notification signifying your acceptance.
5. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.
6. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

*(FULL PARTICULARS)* \_\_\_\_\_  
\_\_\_\_\_

SIGNED FOR ACCOUNTING OFFICER