

REPUBLIC OF KENYA



COUNTY GOVERNMENT OF BOMET COUNTY

TENDER DOCUMENT

**TENDER NAME: TENDER FOR PROVISION OF CONSULTANCY SERVICES TO PREPARE
CHEBUNYO TOWN SPATIAL PLAN
FOR THE PERIOD 2020-2030.**

TENDER NO: CGB/DLHUD/008/2018/2019.

NEGOTIATION NO :732274

SUBMISSION DEADLINE: 24th May, 2019 AT 12.00 NOON.

**PROCURING ENTITY:
County Government of Bomet
P.O Box 19-20400
Bomet, Kenya**

Contents

| | |
|--------------------------------------------|----|
| SECTION A: INVITATION TO TENDER | 3 |
| SECTION B: INFORMATION TO CANDIDATES | 4 |
| SECTION V: - TERMS OF REFERENCE | 10 |
| The department's Objectives are: | 10 |
| SECTION D: TECHNICAL PROPOSAL (TP) | 12 |
| SECTION E: FINANCIAL QUOTATION (FQ) | 12 |

SECTION A: INVITATION TO TENDER

DATE: 13TH May 2019 AT 12.00 NOON

TENDER REF NO. CGB/DLHUD/008/2018/2019.

**TENDER NAME: TENDER FOR PROVISION OF CONSULTANCY SERVICES TO PREPARE CHEBUNYO TOWN SPATIAL PLAN
FOR THE PERIOD 2020-2030.**

M/S.....

Dear Sir/Madam

1.1. The County Government of Bomet invites proposal for the provision of consultancy services to prepare Chebunyo Town Integrated Urban Area Development Plan. More details of the services are provided in the terms of reference (TOR) herein.

1.2. The request for proposal (RFP) includes the following documents;

- Section 1 – Letter of Invitation
- Section 2 – Information to Candidate
- Section 3 – Terms of Reference
- Section 4 – Technical Proposal
- Section 5 – Financial Proposal
- Section 6 – Standard Contract Form (where applicable)

1.3 Completed are to be enclosed in plain sealed envelopes marked with tender reference number and be deposited in the Tender Box or to be addressed to:

**COUNTY SECRETARY,
COUNTY GOVERNMENT OF BOMET,
P.O BOX 19-20400,
BOMET.**

So as to be received on or before: **24th May 2019 AT 12.00 NOON.**

1.4 Prices quoted should be net inclusive of all taxes and delivery must be in Kenya Shillings and shall remain valid for 120 days from the closing date of the tender.

1.5 Tender will be opened immediately thereafter in the presence of the Candidates or their representatives who choose to attend at offices in Bomet.

SECTION B: INFORMATION TO CANDIDATES

2.1 Introduction

2.1.1 The county Government of Bomet will select a candidate among those invited to submit in accordance with the method of selection detailed under this section and consistent with the regulations.

2.1.2 The candidates are invited to submit a technical proposal and a financial proposal for consulting services required for the assignment stated in the letter of invitation (Section A)

2.1.3 In the assignment where the procuring entity intends to apply standard conditions of engagement and scales of fees will have been approved by the relevant authority, a technical proposal only may be invited and submitted by the candidate. In such a case the highest ranked candidate in the technical proposal shall be invited to negotiate a contract on the basis of the set scale of fees. The technical proposal will be the basis for the contract negotiations and ultimately for a signed contract with the selected candidate.

2.1.4 The candidate must familiarize themselves with local conditions as regards the assignment and take them into account in preparing their proposals. To obtain adequate information on the assignment and on the local conditions, candidates are encouraged to liaise with the procuring entity regarding any information that they may require before submitting a quotation.

2.1.5 The client will provide the inputs and services specified in the special conditions of contract needed to assist the candidate to carry out the assignment.

2.1.6 The cost of preparing the proposal and negotiating the contract including any visit to the procuring entity are not reimbursable as a direct cost of the assignment. The procuring entity is not bound to accept any of the quotations submitted.

2.1.7 The procuring entity's employees, committee members, board members and their relatives (spouse and children) are not eligible to participate in the tender.

2.2 Clarification and amendment to the RFP documents

2.2.1 Candidates may request clarification of any of the RFP documents not later than 2 days before the decline for the submission of the proposals. Any request for the clarification must be sent in writing by post, fax or email to the procuring entity's address indicated in the special conditions of contract. The procuring entity will respond by post, fax or email 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 candidates invited to submit proposals.

2.2.2 At any time before the decline for the submission of the proposals, the procuring entity may for any reason; either at its own initiative or in response to a clarification requested by any candidate amends the

RFP. Any amendment shall be issued in writing, fax or email to all invited candidates and will be binding on them. The procuring entity may at its discretion extend the deadline for the submission of the quotations.

2.3 Preparation of Proposals

2.3.1 The individual consultant's proposal shall be written in English language.

2.3.2 In preparing the Technical proposal, the candidates are expected to examine the documents consisting the RFP in detail. Material deficiencies in providing the information requested may result in rejection of a Quotation.

2.3.3 While preparing the Technical proposal, the candidate must give particular attention to the following:

- a. If the candidate considers that it does not have all the expertise required for the assignment it may suggest in the proposals other person(s) who will assist in the assignment but they will not be party to the contract for the purpose of the performance of the assignment. A candidate will not propose other candidates invited to submit quotations for the assignment. Any candidate in contravention of this requirement shall automatically be disqualified.
- b. For all the staffs who will be involve in the assignment a candidate must indicate their responsibility in the assignment and also the staff time as necessary.
- c. The Curriculum Vitae (**CV**) of the staff proposed must be submitted with the quotation.

2.3.4 The Technical proposal shall provide the following information;

- a. The individual consultants **CV** and a brief of any recent experience of assignment of a similar nature. For each assignment the brief should indicate the profiles of staff involved, contract amount and the individual consultants' involvement.
- b. Any comment or suggestion on the Term of Reference and a list of service and facilities requested to be provided by the procuring entity.
- c. A description of the methodology and work plan for performing the proposed assignment.
- d. Any information requested in the special conditions of contract.

2.3.5 The Technical proposal shall be separated from the financial proposal and shall not include any financial information.

2.4 Financial proposal

2.4.1 In preparing the financial quotation, the candidate is expected to take into account the time required in completing the assignment as outlined in the RFP. The financial quotation will therefore be quoted in fees per day or month. The financial quotation may also include other costs as necessary, which will be considered as reimbursable. It will then give the total cost of the assignment.

2.4.2 The financial quotation should include the payable taxes.

2.4.3 The fees shall be expressed in Kenya Shillings.

2.4.4 The financial quotation must remain valid for 30 days after the submission date. During this period the candidate is expected to keep available at his own cost any staff proposed for the assignment. The procuring entity will make best efforts to complete negotiations within this period. If the procuring entity wishes to extend the validity period of the quotation, the candidate who do not agree, have the right not to extend the validity of their quotations.

2.4.5 The financial quotation must comply with the law governing the profession of the candidate.

2.5 Submission, Receipt and Opening of Proposals.

2.5.1 The technical proposal of the financial quotation (if required) shall be prepared in indelible ink. It shall contain no interlineations or overwriting, except as necessary to correct errors made by the candidates. Any such corrections must be initiated by the candidate.

2.5.2 For each quotation the candidate shall prepare the quotation in the number of copies indicated in the special conditions of the contract. Each Technical proposal and financial quotation shall be marked **“ORIGINAL” OR “COPY”** as appropriate. If there are any discrepancies between the original and copies of the quotation, the original shall govern.

2.5.3 The original and all copies of the Technical proposal shall be placed in sealed envelope marked **“TECHNICAL PROPOSAL”**, and the original and all copies of the financial quotation in sealed envelope dully marked **“FINANCIAL QUOTATION**. Both envelopes shall be placed in and an outer envelope and sealed. The outer envelope shall bear the procuring entities address and other information indicated in the appendix to the instructions to candidate and clearly marked **“DO NOT OPEN**”

2.5.4 The completed Technical proposal and financial quotations must be delivered at the submission address on or before the time and date of the submission of the quotation indicated in the appendix to the instruction to the candidates. Any quotations received later than the closing date for the submission of quotations shall be rejected and returned to the candidates unopened. For this purpose the inner envelope containing the technical and financial quotations will bear the address of the candidate submitting the quotations.

2.5.5 After the deadline for submission of quotations the outer envelope and the technical quotations shall be opened immediately by the opening committee. The financial quotations shall be marked with the candidates number allocated at the time of opening the outer envelope and the technical proposals but shall remain sealed and in custody of the responsible officer of the procuring entity up to the time set for opening it.

2.6 Evaluation of Proposal General (General)

2.6.1 From the time the quotations are opened to the time of the contract award, if any candidate wishes to contact the procuring entity on any matter relating to the quotation should do so in writing at the address indicated at the appendix to the instructions to candidates. Any effort by the candidate to influence the procuring entity’s staff in the evaluation of quotation companion proposals or award of contract may result in the rejection of the candidate quotation.

2.6.2 The Technical evaluation committee shall have no access to the financial quotation, which in any case will remain sealed, until the technical is concluded or finalized.

2.6.3 Mandatory Requirements to be met by the consultants

- a. Certified copy of incorporation and registration.
- b. Proof of a membership of institute of Planners.
- c. Copy of VAT/PIN certificate from KRA.
- d. Professional Licenses.
- e. VALID KRA TAX compliance certificate.
- f. Proof of financial Capability.

2.7 Evaluation of Technical Proposals

2.7.1 The evaluation committee appointed by the procuring entity to evaluate the quotations shall carry out the evaluation of technical proposals following the criteria set out in the terms of reference based on the following point's criteria.

CRITERIA

| | |
|-----------------------------------------------------------------------------|----|
| Specific experience related to the assignment | 30 |
| Adequacy of methodology and work plan in response to the Terms of reference | 20 |
| Financial capability | 10 |
| Qualifications and Experience of the Proposed staff | |
| i. Registered and Practicing Physical planner /Team Leader (10 Mks) | |
| ii. 2.No.Registered and Practicing physical planners (10 Mks) | |
| iii. 2 No. Assistant physical planners (5 Mks) | |
| iv. 2 No. Licensed Land Surveyors (5Mks) | |
| v. 2 No.GIS Expert (10Mks) | |

Financial capability

- Submission of audited financial statements acceptable to the employer accounts for the last 2 years -5 mks
- Submission of bank statement for a period of three months and ending at most one (1) week from the date of tender opening- 5 mks

TOTAL POINTS **100**

2.7.2 Any quotation which will be examined and found not comply with all the requirements for submission of the quotations will be declared non responsive. All the quotations found complied with all the requirements for submission of quotation shall be declared responsive by for evaluation committee.

2.7.3 Each responsive quotation will be given a Technical Score (TS). Any technical proposal which fails to achieve the total minimum score indicated in the appendix to the information to tenderers shall be rejected at this stage and will not proceed to the next stage of evaluation. The respective financial quotation will be returned to the individual consultant unopened. The minimum technical score is **70 Points**.

2.7.4 The technical evaluation may be simplified where the assignment is not complex in which case merit points will not be used.

2.8 Opening and Evaluation of Financial Quotation

2.8.1 After completion of the evaluation of Technical proposals the procuring entity shall notify the candidate whose proposal did not meet the minimum technical score or where declared non responsive to the RFP and terms of reference. The notification will indicate that their financial quotation shall not be opened and will be returned to them unopened after the completion of the selection process and contract award. At the same time, the procuring entity shall simultaneously notify the candidates who have secured the minimum technical score that they have passed the technical qualifications and inform them the date and time set by the procuring entity for opening their financial quotations. They will also be invited to attend the opening ceremony if they wish to do so.

2.8.2 The financial quotations shall be opened by the procuring entity in the presence of the candidates who choose to attend the opening. The name of the candidate, the technical score or the technical evaluation result and proposed fees shall be read out aloud and recorded. The evaluation committee shall prepare minutes of the financial quotation.

2.8.3 The formulae for determining the financial score (FS) unless an alternative formula is indicated in the appendix to the information to tenderers shall be as follows:

$S_f = 100 \times f_m / f$ where

S_f is the financial score

f_m is the lowest fees quoted and

f is the fees of the quotation under consideration.

The lowest fees quoted will be allocated the minimum score of 100

2.8.4 The candidates quotations will be ranked according to their combined technical score (ts) using financial score (fs) using the weights indicated in the appendix to the candidates. Unless otherwise stated in the appendix to the instructions to the candidates the formulae for the combined scores shall be as follows;

$S = ST \times T\% + SF \times P\%$

Where

ST... Is the technical score

Sf... Is the financial score

T...Is the weight given to the technical score and

P...Is the weight given to the financial quotation

NOTE: P+T will be equal to **100%**, **T=70%**, **P=30%**

The candidate achieving the highest combined technical and financial score will be invited for negotiations.

2.9 Negotiations

2.9.1 Negotiations will be held at the same address indicated in the appendix to the information to the candidates. The purpose of the negotiations is for the procuring entity and the candidate to reach agreements on all points regarding the assignment and sign a contract.

2.9.2 The negotiations will include a discussion on the technical proposals, the proposed methodology and work plan, staff and any suggestions made by the candidate to improve the Terms of reference. The agreed work plan and Terms of reference will be incorporated in the description of the service or assignment and form part of the contract.

2.9.3 The negotiations will be concluded with the review of the draft contract. If negotiations fail, the procuring entity will invite the candidate whose proposal achieved the second highest score to negotiate a contract.

2.10 Award of Contract

2.10.1 The contract will be awarded before commencement of negotiations. After negotiations are completed the procuring entity will promptly notify the other candidates that they were unsuccessful and return the financial quotation of the candidates who did not pass technical evaluation.

2.10.2 The selected candidate is expected to commence the assignment on the date indicated in the appendix to the instructions to tenderers or any other date agreed with the procuring entity at the time of the contract award. Both parties will sign the contract.

2.11 Confidentiality

2.11.1 Information relating to evaluation of quotation and recommendations of contract award shall not be disclosed to the candidates who submitted the quotation or to other persons not officially concerned with the process, until the winning candidate has been notified that he/she has been awarded the contract.

SECTION V: - TERMS OF REFERENCE

5.1 Background Information

The Vision of the Department of Lands, Housing and Urban Development of Bomet County is to be a leading Agency in land administration, housing and urban management for sustainable development of the County. Its mission is to improve livelihoods through efficient urban development, coordination, and land administration by promoting adequate and accessible housing and urban facilities for all County Citizen

The department's Objectives are:

- To create an enabling environment through policy, legal and regulatory reforms for management of the land and land use activities;
- To establish and support partnerships with relevant stakeholders in Urban Management;
- To promote sustainable urban development strategies towards improving urban mobility, safety and market development;
- To strengthen early warning systems, including resource surveys and remote sensing towards improved County disaster preparedness; and
- To monitor, generate, manage, and disseminate lands and urban development data and information.

5.2. Objectives

The overall objective of this consultancy is to prepare an **SPATIAL PLAN for Chebunyo Town** and its environs in fulfilment of the Constitution of Kenya, County Government Act, Urban areas and cities Act, Physical Planning Act, and other eligible legislations and in line with Vision 2030. The physical

Development plans shall be used as a guiding framework for urban development and subsequent development control to ensure that department fulfils its mandate.

5.3 Scope of the Assignment

The scope of the assignment shall be Preparation of a ten (10) year GIS based SPATIAL PLAN for the CHEBUNYO Town and its environs comprising of structure plan and physical planning policies and guidelines and shall include but not limited to:

- i. Delineating the boundary of the Town.
- ii. Undertake stakeholder mapping and analysis
- iii. Zoning of Land use for residential, commercial, industrial, public purpose, educational, recreational use among others;
- iv. Hold stakeholder meeting(s) to validate the draft Spatial Plan;
- v. xiii. Finalize the SPATIAL PLAN for CHEBUNYO Town and its environs and submit to the department.

NB: The Consultant MUST incorporate the technical professional staff of the Department of Lands, Housing and Urban Development in undertaking the assignment for capacity building.

The plan to be submitted electronically and in three hard copies produced to the scale of 1: 2,500.

5.4 Deliverables

-An inception report outlining the approach/methodology and execution. This report shall be submitted for review and approval by Chief Officer seven (7) days after the signature of the contract before commencement of the work.

-Situation analysis report.

-Draft Plan Report

-Submit final plan shall comprise of planning brief, maps, physical planning guidelines, development strategies and actions.

5.5 Time Span

This assignment is expected to be carried out for a period of Three (3) months

5.6. Institutional Arrangements

The Consultant will report to the County Executive Committee Member (CECM) of the department through the Chief Officer. The Director of lands will supervise the consultant on a day to day basis. The department will provide relevant background documents necessary for the assignment including; CIDP, Performance contract, and any other relevant document. The department shall be responsible for the coordination of meetings and other activities under the Consultancy.

5. 7. Expertise

a) Academic Qualifications

Lead consultant must have at least a degree in a relevant field in the area of physical (spatial) planning,

b) Experience

Lead consultant must have

- At least five years professional experience in SPATIAL Planning and management
- Prior working experience on decentralization /county Government which will be an added advantage
- Demonstrated experience in public sector SPATIAL Planning and development
- High level written and oral communications skills in English and Kiswahili
- Demonstrate excellent interpersonal and professional skills in interacting with government
- Skills in facilitation of stakeholder engagements/workshops;
- Evidence of having undertaken similar assignments;

- Experience in research, policy development, management and programming-related work.
- Must be result-oriented, a team player, exhibiting high levels of enthusiasm, tact, diplomacy and integrity;

5.8. Qualification requirement of the consultant/firm

- The firm/consultant should have demonstrated experience in undertaking similar assignments.
- The firm/Consultant should have demonstrated experience in conducting consultations with stakeholders.
- The firm/Consultant should be willing to work within Bomet County.

5.9. Schedule of Payments

The schedule of payments will be

- 30% of the total sum upon the Client's receipt of an acceptable copy of inception report,
- 30% of the total sum upon the Client's receipt of the draft report, acceptable to the Client;
- 40% of the total sum upon the Client's receipt of acceptable final report in both soft and bound copies as per ToR

SECTION D: TECHNICAL PROPOSAL (TP)

Notes on the Preparation of Technical Proposal

The Technical proposal shall be prepared and submitted by the candidates.

It shall contain the following:-

- a. Submission letter
- b. Comments and suggestions of the consultant on the terms of reference, personnel, facility and other requirements to be provided by the procuring entity.
- c. Description of methodology and work staff for the assignment
- d. The proposed key staff for the assignment
- e. Consultancy services activities times' schedule.

(TO BE PREPARED BY THE CANDIDATE AS APPROPRIATE)

SECTION E: FINANCIAL QUOTATION (FQ)

Notes on the Preparation Financial Quotation

The financial quotation shall be prepared and submitted by the candidates. It shall contain the following:

- a. Submitting letter indicating total fees
- b. Summary of costs
- c. Breakdown of fees per activity
- d. Breakdown of reimbursable costs/expenses per activity
- e. Miscellaneous expenses

(TO BE PREPARED BY THE CANDIDATE AS APPROPRIATE)

STANDARD FORM OF CONTRACT
FOR
CONSULTING SERVICES

Large Assignments
(Lump- Sum payment)

CONTENTS

| | |
|----------------------------------------------------------------------------|----------|
| Contract for Consultant's Services..... | iv |
| I Form of Contract..... | v-vi |
| II General Conditions of Contract..... | vii |
| 1. General Provisions..... | vii-viii |
| 1.1 Definitions..... | viii |
| 1.2 Law Governing the Contract..... | viii |
| 1.3 Language..... | viii |
| 1.4 Notices..... | viii |
| 1.5 Location..... | viii |
| 1.6 Authorized Representatives..... | viii |
| 1.7 Taxes and Duties..... | ix |
| 2. Commencement, Completion, Modification and Termination of Contract..... | ix |
| 2.1 Effectiveness of Contract..... | ix |
| 2.2 Commencement of Services..... | ix |
| 2.3 Expiration of Contract..... | ix |
| 2.4 Modification..... | ix |
| 2.5 Force Majeure..... | ix |
| 2.5.1 Definition..... | ix |
| 2.5.2 No Breach of Contract..... | ix |
| 2.5.3 Extension of Time..... | x |
| 2.5.4 Payments..... | x |
| 2.6 Termination..... | x |
| 2.6.1 By the Client..... | x |
| 2.6.2 By the Consultant..... | xi |
| 2.6.3 Payment upon Termination..... | xi |
| 3. Obligations of the Consultant..... | xii |
| 3.1 General..... | xii |

| | | |
|-------|-------------------------------------------------------------------------------|--------------|
| 3.2 | Conflict of Interests..... | xiii |
| 3.2.1 | Consultant Not to Benefit from Commissions, Discounts, etc..... | xii- xiii |
| 3.2.2 | Consultant and Affiliates Not to Be Otherwise Interested in Project..... | xiii |
| 3.2.3 | Prohibition of Conflicting Activities..... | xiii |
| 3.3 | Confidentiality..... | xiii |
| 3.4 | Insurance to be Taken Out by the Consultant... | xiv |
| 3.5 | Consultant's Actions Requiring Client's Prior Approval..... | xv |
| 3.6 | Reporting Obligations..... | xv |
| 3.7 | Documents Prepared by the Consultant to Be the Property of the Client..... | xv |
| 4 | Consultant's Personnel..... | xv |
| 4.1 | Description of Personnel..... | xv |
| 4.2 | Removal and/or Replacement of Personnel..... | xv |
| 5 | Obligations of the Client..... | xvi |
| 5.1 | Assistance and Exemptions..... | xvi |
| 5.2 | Change in the Applicable Law..... | xvi |
| 5.3 | Services and Facilities..... | xvi |
| 6 | Payments to the Consultant..... | xvi |
| 6.1 | Lump-Sum Remuneration..... | xvi |
| 6.2 | Contract Price..... | xvii |
| 6.3 | Payment for Additional Services..... | xvii |
| 6.4 | Terms and Conditions of Payment..... | xvii |
| 6.5 | Interest on Delayed Payments..... | xvii |
| 7 | Settlement of Disputes..... | xvii |
| 7.1 | Amicable Settlement..... | xvii |
| 7.2 | Dispute Settlement..... | xviii |
| III | Special Conditions of Contract..... | xix |
| IV | Appendices..... | xxi |
| | Appendix A – Description of the Services..... | xxi |
| | Appendix B – Reporting Requirements..... | xxi |
| | Appendix C – Key Personnel and Subconsultants..... | xxi |
| | Appendix D – Breakdown of Contract Price in Foreign Currency..... | xxi |
| | Appendix E – Breakdown of Contract Price in Local Currency..... | xxi |
| | Appendix F – Services and Facilities Provided by the Client..... | xxii |

CONTRACT FOR CONSULTANT'S SERVICES

Large Assignments (Lump-Sum Payments)

between

[name of the Client]

AND

[name of the Consultant]

Dated: _____ *[date]*

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 whose registered 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 consulting 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 consultants
 - 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
2. The mutual rights and obligations of the Client and the Consultants 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] _____

(vi)

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 here below;
- (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;

(vii)

- (j) “Personnel” means persons hired by the Consultant or by any Sub consultant 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.

(viii)

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.
- (ix)**
- 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** The Client may terminate this Contract by not less than

Client

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 anything of value to influence the action of a public official in the selection process or in Contract execution.

(x)

“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 consultants (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 The Consultant may terminate this Contract by not less

Consultant 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.

(xi)

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 consultants 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

(xii)

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 sub consultant 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 sub consultant[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 sub consultant[s] to take out and maintain, at his (or the sub consultants', 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.

(xiii)

**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 Sub consultants").

3.6 Reporting Obligations The Consultants 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 of the Client 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 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 consultants 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.

(xiv)

- (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 | 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. | Exemptions |
| 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, Sub consultants' costs, printing, communications, travel, accommodation and the like and all other costs incurred by the Consultant in carrying out the
- (xv)
- 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 Additional Services** For the purposes of determining the remuneration 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.

(xvi)

- 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.

(xvii)

III. SPECIAL CONDITIONS OF CONTRACT

| Number of GC Amendments of and Supplements to Clauses in the Clause | General Conditions of Contract |
|------------------------------------------------------------------------|--------------------------------|
|------------------------------------------------------------------------|--------------------------------|

| | |
|--------|-----------------------------------------------|
| 1.1(i) | 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 Consultants 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.

(xviii)

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.

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 SUBCONSULTANTS

- 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 consultants (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.*

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

APPENDIX F – SERVICES AND FACILITIES PROVIDED BY THE CLIENT

(xxi)

ANNEX II

**SAMPLE CONTRACT FOR CONSULTING
SERVICES**

**LARGE ASSIGNMENTS
AND
Small Assignments**

Time-Based Payments

**SAMPLE CONTRACT FOR CONSULTING SERVICES
SMALL ASSIGNMENTS
TIME-BASED PAYMENTS**

CONTRACT

This Agreement [hereinafter called “the Contract”) is entered into this _____ *[Insert starting date of assignment]*, by and between _____ *[Insert Client’s name]* of _____ *[or whose registered office is situated at]* _____ *[insert Client’s address]* (hereinafter called “the Client”) of the one part AND

_____ *[Insert Consultant’s name]* of _____ *[or whose registered office is situated at]* _____ *[insert Consultant’s address]* (hereinafter called “the Consultant”) of the other part.

WHEREAS, the Client wishes to have the Consultant perform the Services [hereinafter referred to as “the Services”, and

WHEREAS, the Consultant is willing to perform the said Services,

NOW THEREFORE THE PARTIES hereby agree as follows:

- 1. Services**
- (i) The Consultant shall perform the Services specified in Appendix A, “Terms of Reference and Scope of Services,” which is made an integral part of this Contract.
 - (ii) The Consultant shall provide the reports listed in Appendix B, “Consultant’s Reporting Obligations,” within the time periods listed in such Appendix and the personnel listed in Appendix C, “Cost Estimate of Services, List of Personnel and Schedule of Rates” to perform the Services.

- 2. Term**
- The Consultant shall perform the Services during the period commencing _____ *[Insert start date]* and continuing through to _____ *[Insert completion date]* or any other period(s) as may be subsequently agreed by the parties in writing.

- 3. Payment**
- A. Ceiling

For Services rendered pursuant to Appendix A, the Client shall pay the Consultant an amount not to exceed a ceiling of _____ *[Insert ceiling amount]*. This amount has been established based on the understanding that it includes all of the Consultant’s costs and profits as

(i)

well as any tax obligation that may be imposed on the Consultant. The payments made under the Contract consist of the Consultant’s remuneration as defined in sub-paragraph (B) below and of the reimbursable expenditures as defined in sub-paragraph (C) below.

- B. Remuneration

The Client shall pay the Consultant for Services rendered at the rate(s) per man/month spent (or per day spent or per hour spent, subject to a maximum of eight hours per day) in accordance with the rates agreed and specified in Appendix C, "Cost Estimate of Services, List of Personnel and Schedule of Rates".

C. Reimbursables

The Client shall pay the Consultant for reimbursable expenses which shall consist of and be limited to:

- (i) normal and customary expenditures for official road and air travel, accommodation, printing and telephone charges; air travel will be reimbursed at the cost of less than first class travel and will need to be authorized by the Client's coordinator;
- (ii) such other expenses as approved in advance by the Client's coordinator.

D. Payment Conditions.

Payment shall be made in Kenya shillings unless otherwise specified not later than thirty {30} days following submission of invoices in duplicate to the Coordinator designated in Clause 4 herebelow. If the Client has delayed payments beyond thirty (30) days after the 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.

The parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

4. Project Administration

A. Coordinator

The Client designates _____
[Insert name] as Client's Coordinator; the Coordinator shall be responsible for the coordination of activities under the Contract, for receiving and approving invoices

(ii)
for payment and for acceptance of the deliverables by the Client.

B. Timesheets.

During the course of their work under this Contract, including field work, the Consultant's employees

providing services under this Contract may be required to complete timesheets or any other document used to identify time spent as well as expenses incurred, as instructed by the Project Coordinator.

C. Records and Accounts

The Consultant shall keep accurate and systematic records and accounts in respect of the Services which will clearly identify all charges and expenses. The Client reserves the right to audit or to nominate a reputable accounting firm to audit the Consultant's records relating to amounts claimed under this Contract during its term and any extension and for a period of three months thereafter.

5. Performance Standard

The Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity. The Consultant shall promptly replace any employees assigned under this Contract that the Client considers unsatisfactory.

6. Confidentiality

The Consultant shall not, during the term of this Contract and within two years after its expiration, disclose any proprietary or confidential information relating to the Services, this Contract or the Client's business or operations without the prior written consent of the Client.

7. Ownership of Material

Any studies, reports or other material, graphic, software or otherwise prepared by the Consultant for the Client under the Contract shall belong to and remain the property of the Client. The Consultant may retain a copy of such documents and software.

8. Consultant Not to be Engaged in Certain Activities

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

9. Insurance

The Consultant will be responsible for taking out any appropriate insurance coverage.

(iii)

10. Assignment

The Consultant shall not assign this Contract or Subcontract any portion thereof without the Client's prior written consent.

11. Law Governing Contract and Language

The Contract shall be governed by the Laws of Kenya and the language of the Contract shall be English Language.

12. Dispute Resolution

Any dispute arising out of this Contract which cannot be amicably settled between the parties, shall 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.

FOR THE CLIENT

FOR THE CONSULTANT

Full name; _____ Full name _____

Title: _____ Title: _____

Signature; _____ Signature; _____

Date; _____ Date; _____

LIST OF APPENDICES

Appendix A: Terms of Reference and Scope of Services

Appendix B: Consultant's Reporting Obligation

Appendix C: Cost Estimate of Services, List of Personnel and Schedule of Rates

APPENDIX C

Cost Estimate of Services, List of Personnel and Schedule of Rates.

(1) Remuneration of Staff

| | Name | Rate (per month/day/hour in currency) | Time spent(numberof month/day/ hour) | Total (currency) |
|-----------------|------|---------------------------------------------|-----------------------------------------------|------------------|
| (a) Team Leader | | | | |
| (b) | | | | |
| (c) | | | | |
| | | | | Sub-Total (1) |

(2) Reimbursable

| | Rate | Days | Total |
|-------------------------|------|------|---------------|
| (a) Air Travel | | | |
| (b) Road Transportation | | | |
| (c) Per Diem | | | |
| | | | Sub-Total (2) |

TOTAL COST _____

Physical Contingency _____

CONTRACT CEILING _____

(vi)

ANNEX III

SAMPLE CONTRACT FOR CONSULTING SERVICES

Small Assignments

Lump-sum payments

SAMPLE CONTRACT FOR CONSULTING SERVICES

SMALL ASSIGNMENTS

LUMP-SUM PAYMENTS

CONTRACT

This Agreement, [hereinafter called “the Contract”) is entered into this _____ *[Insert starting date of assignment]*, by and between _____ *[Insert Client’s name]* of [or whose registered office is situated at] _____ *[insert Client’s address]* (hereinafter called “the Client”) of the one part AND

_____ *[Insert Consultant’s name]* of [or whose registered office is situated at] _____ *[insert Consultant’s address]* (hereinafter called “the Consultant”) of the other part.

WHEREAS the Client wishes to have the Consultant perform the services [hereinafter referred to as “the Services”, and

WHEREAS the Consultant is willing to perform the said Services,

NOW THEREFORE THE PARTIES hereby agree as follows:

- 1. Services**
- (i) The Consultant shall perform the Services specified in Appendix A, "Terms of Reference and Scope of Services," which is made an integral part of this Contract.
 - (ii) The Consultant shall provide the personnel listed in Appendix B, "Consultant's Personnel," to perform the Services.
 - (iii) The Consultant shall submit to the Client the reports in the form and within the time periods specified in Appendix C, "Consultant's Reporting Obligations."

2. Term

The Consultant shall perform the Services during the period commencing on _____ [Insert starting date] and continuing through to _____ [Insert completion date], or any other period(s) as may be subsequently agreed by the parties in writing.

(i)

3. Payment

A. Ceiling

For Services rendered pursuant to Appendix A, the Client shall pay the Consultant an amount not to exceed _____ [Insert amount]. This amount has been established based on the understanding that it includes all of the Consultant's costs and profits as well as any tax obligation that may be imposed on the Consultant.

B. Schedule of Payments

The schedule of payments is specified below (Modify in order to reflect the output required as described in Appendix C.)

Kshs _____ upon the Client's receipt of a copy of this Contract signed by the Consultant;

Kshs _____ upon the Client's receipt of the draft report, acceptable to the Client; and

Kshs _____ upon the Client's receipt of the final report, acceptable to the Client.

Kshs _____ Total

C. Payment Conditions

Payment shall be made in Kenya Shillings unless otherwise specified not later than thirty [30] days following submission by the Consultant of invoices in duplicate to the Coordinator designated in Clause 4 herebelow. 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.

4. Project Administration

A. Coordinator.

The Client designates _____[insert name] as Client's Coordinator; the Coordinator will be responsible for the coordination of activities under this Contract, for acceptance and approval of the reports and of other deliverables by the Client and for receiving and approving invoices for payment.

B. Reports.

The reports listed in Appendix C, "Consultant's Reporting Obligations," shall be submitted in the course of the

(ii)

assignment and will constitute the basis for the payments to be made under paragraph 3.

5. Performance Standards

The Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity. The Consultant shall promptly replace any employees assigned under this Contract that the Client considers unsatisfactory.

6. Confidentiality

The Consultant shall not, during the term of this Contract and within two years after its expiration, disclose any proprietary or confidential information relating to the Services, this Contract or the Client's business or operations without the prior written consent of the Client.

7. Ownership of Material

Any studies, reports or other material, graphic, software or otherwise prepared by the Consultant for the Client under the Contract shall belong to and remain the property of the Client. The Consultant may retain a copy of such documents and software.

8. Consultant Not to be Engaged in certain Activities

The Consultant agrees that during the term of this Contract and after its termination the Consultant and any entity affiliated with the Consultant 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.

9. Insurance

The Consultant will be responsible for taking out any appropriate insurance coverage.

10. Assignment

The Consultant shall not assign this Contract or sub-contract any portion of it without the Client's prior written consent.

11. Law Governing Contract and Language

The Contract shall be governed by the laws of Kenya and the language of the Contract shall be English Language.

12. Dispute Resolution

Any dispute arising out of the Contract which cannot be amicably settled between the parties shall 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.

(iii)

FOR THE CLIENT

FOR THE CONSULTANT

Full name; _____ Full name; _____

Title: _____ Title: _____

Signature; _____ Signature; _____

Date; _____ Date; _____

LIST OF APPENDICES

Appendix A: Terms of Reference and Scope of Services

Appendix B: Consultant's Personnel

Appendix C: Consultant's Reporting Obligations

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

FORM RB 1

**REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (*Procuring Entity*)

Request for review of the decision of the..... (*Name of the Procuring Entity*) of
.....dated the...day of20.....in the matter of Tender No.....of
.....20...

REQUEST FOR REVIEW

I/We.....,the above named Applicant(s), of address: Physical
address.....Fax No.....Tel. No.....Email, hereby request the Public

Procurement Administrative Review Board to review the whole/part of the above mentioned decision on the following grounds , namely:-

- 1.
 - 2.
- etc.

By this memorandum, the Applicant requests the Board for an order/orders that: -

- 1.
 - 2.
- etc

SIGNED(Applicant)

Dated on.....day of/...20...

FOR OFFICIAL USE ONLY

Lodged with the Secretary Public Procurement Administrative Review Board on day of20.....

SIGNED
Board Secretary

