



County Government of Kisumu

City Of Kisumu

Kenya Urban Support Programme (KUSP)

**ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT
(ESIA) FOR 2019/2020 KENYA URBAN SUPPORT
PROGRAMME (KUSP) PROJECTS IN CITY OF KISUMU**

TENDER No. CGK/COK/KUSP/S/2019-2020/01

MAY 2020

Letter of Invitation

To [name and address of Candidate]

Date:

Dear Sir/Madam,

- 1.1 The County Government of Kisumu, *City of Kisumu* invites proposals for the following consultancy services ***Consultancy for Environmental and Social Impact Assessment (ESIA) for 2019/2020 Kenya Urban Support Programme (KUSP) projects in City of Kisumu.*** More details of the services are provided in the terms of reference herein.

- 1.2 The request for proposal (RFP) includes the following documents;
 - Section I - Letter of invitation
 - Section II - Information to Candidate
 - Section III - Terms of reference
 - Section IV - Technical proposal
 - Section V - Financial proposal
 - Section VI - Standard Contract Form (where applicable)

- 1.3 On receipt of this RFP please prepare your quotation as required and return before the date and time indicated in the document.

Yours sincerely,

Doris C. Ombara
City Manager

SELECTION OF CONSULTANTS

REQUEST FOR PROPOSALS

RFP No.: CCK/COK/KUSP/S/2019-2020/01

Selection of Consulting Services for: Request for Proposals for Environmental and Social Impact Assessment (ESIA) for 2019/2020 Kenya Urban Support Programme (KUSP) Projects in City of Kisumu

Client: City of Kisumu

Country: Kenya

Project: Kisumu Urban Support Programme

Issued in: MAY 2020

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PART I – SELECTION PROCEDURES AND REQUIREMENTS

Section I. Instructions to Consultants

A. GENERAL PROVISIONS

1. Definitions

- (a) “**Affiliate(s)**” means an individual or an entity that directly or indirectly controls, is controlled by, or is under common control with the Consultant.
- (b) “**Applicable law**” means the laws and any other instruments having the force of law in the Client’s country, or in such other country as may be specified in the **Data Sheet**, as they may be issued and in force from time to time.
- (c) “**KUSP**” means the Kenya Urban Support Programme
- (d) “**Beneficiary**” means any direct recipient of KUSP financing, regardless of whether it received or will receive a loan or a grant under a Financing Agreement.
- (e) “**Client**” means the implementing agency that signs the Contract for the Services with the selected Consultant.
- (f) “**Consultant**” means a legally-established professional consulting firm or an entity that may provide or provides the Services to the Client under the Contract.
- (g) “**Contract**” means a legally binding written agreement signed between the Client and the Consultant. It includes all the attached documents listed in its Clause 1 (the General Conditions of Contract (GCC), the Special Conditions of Contract (SCC), and the Appendices).
- (h) “**Data Sheet**” means an integral part of the Instructions to Consultants (ITC) Section II that is used to reflect specific country and assignment conditions to supplement, but not to over-write, the provisions of the ITC.
- (i) “**Day**” means a calendar day.
- (j) “**Experts**” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or Joint Venture member(s).
- (k) “**Government**” means the government of the Client’s country.
- (l) “**Joint Venture (JV)**” means an association with or without a legal personality distinct from that of its members, of more than one Consultant where one member has the authority to conduct

all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Client for the performance of the Contract.

- (m) “**Key Expert(s)**” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose CV is taken into account in the technical evaluation of the Consultant’s proposal.
- (n) “**ITC**” (this Section I of the RFP) means the Instructions to Consultants that provide the shortlisted Consultants with all information they need to prepare their Proposals.
- (o) “**LOI**” means the Letter of Invitation being sent by the Client to the shortlisted Consultants.
- (p) “**Non-Key Expert(s)**” means an individual professional provided by the Consultant or its Sub-consultant and who is assigned to perform the Services or any part thereof under the Contract and whose CVs are not evaluated individually.
- (q) “**Proposal**” means the Technical Proposal and the Financial Proposal of the Consultant.
- (r) “**RFP**” means the Request for Proposals to be prepared by the Client for the selection of Consultants.
- (s) “**Services**” means the consulting services work to be performed by the Consultant pursuant to the Contract.
- (t) “**Sub-consultant**” means an entity to whom the Consultant intends to subcontract any part of the Services while remaining responsible to the Client during the performance of the Contract.
- (u) “**TORs**” (this Section VII of the RFP) means the Terms of Reference that explain the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the Client and the Consultant, and expected results and deliverables of the Services.

2. Introduction

1.1 The Client named in the **Data Sheet** intends to select a Consultant from those listed in the Letter of Invitation, in accordance with the method of selection specified in the **Data Sheet**.

1.1 The shortlisted Consultants are invited to submit a Technical Proposal and a Financial Proposal for the Services named in the **Data Sheet**. The Proposal will be the basis for negotiating and ultimately signing the Contract with the selected Consultant.

1.1 The Consultants should take into account the Applicable law in preparing their Proposals. They may attend a pre-proposal conference if one is specified in the **Data Sheet**. Attending any such pre-proposal conference is mandatory and is at the Consultants’ expense.

1.1 The Client will timely provide, at no cost to the Consultants, the inputs, relevant project data, and reports required for the preparation of the Consultant's Proposal as specified in the **Data Sheet**.

3. Conflict of Interest

1.1 The Consultant is required to provide professional, objective, and impartial advice, at all times holding the Client's interests paramount, strictly avoiding conflicts with other assignments or its own corporate interests, and acting without any consideration for future work.

1.1 The Consultant has an obligation to disclose to the Client any situation of actual or potential conflict of interest that impacts its capacity to serve the best interest of its Client. Failure to disclose such situations may lead to the rejection of the Consultant's Proposal or the termination of its Contract.

Without limitation on the generality of the foregoing, and unless stated otherwise in the **Data Sheet**, the Consultant shall not be hired under the circumstances set forth below:

a. Conflicting activities

(i) Conflict between consulting activities and procurement of goods, works or non-consulting services: a firm that has been engaged by the Client to provide goods, works, or non-consulting services for a project, or any of its Affiliates, shall be disqualified from providing consulting services resulting from or directly related to those goods, works, or non-consulting services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, or any of its Affiliates, shall be disqualified from subsequently providing goods or works or non-consulting services resulting from or directly related to the consulting services for such preparation or implementation;

b. Conflicting assignments

(ii) Conflict among consulting assignments: a Consultant (including its Experts and Sub-consultants) or any of its Affiliates shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the Consultant for the same or for another Client;

c. Conflicting relationships

(iii) Relationship with the Client's staff: a Consultant (including its Experts and Sub-consultants) that has a close business or family relationship with a professional staff of the Client who are directly or indirectly involved in any part of (i) the preparation of the Terms of Reference for the Services, (ii) the selection process for the Contract, or (iii) the supervision of the Contract, may not be awarded a Contract.

4. Unfair Competitive Advantage

1.1 Fairness and transparency in the selection process require that the Consultants or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, the Client shall indicate in the **Data Sheet** and make available to all shortlisted Consultants together with this RFP all information that would in that respect give such Consultant any unfair competitive advantage over

other competing Consultants.

5. Corrupt and Fraudulent Practices

5.1 The procuring entity requires that the Consultant 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.

5.2 The procuring entity will reject a proposal for award if it determines that the Consultant recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.

5.3 Further a consultant who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in Public Procurement in Kenya

6. Eligibility

1.1 The WB financing may benefit to Consultants (firms, including Joint Ventures and their individual members) from all countries to offer consulting services for WB-financed projects subject to compliance with the eligibility criteria specified in Section V.

1.1 Furthermore, it is the Consultant's responsibility to ensure that its Experts, Joint Venture members, Sub-consultants, agents (declared or not), sub-contractors, service providers, suppliers and/or their employees meet the eligibility requirements as established by the WB in the Section V.

1.1 Government officials and civil servants of the Client's country are not eligible to be included as Experts in the Consultant's Proposal unless such engagement does not conflict with the Applicable law, and they

(i) Are on leave of absence without pay, or have resigned or retired;

(ii) Are not being hired by the same agency they were working for before going on leave of absence without pay, resigning, or retiring;

(iii) Their hiring would not create a conflict of interest.

B. PREPARATION OF PROPOSALS

7. General Considerations

7.1. In preparing the Proposal, the Consultant is expected to examine the RFP in detail. Material deficiencies in providing the information requested in the RFP may result in rejection of the Proposal.

8. Cost of Preparation of Proposal

8.1. The Consultant shall bear all costs associated with the preparation and submission of its Proposal, and the Client shall not be responsible or liable for those costs, regardless of the conduct or outcome of the selection process.

9. Language

9.1. The Proposal, as well as all correspondence and documents relating to the Proposal exchanged between the Consultant and the Client

shall be written in the language(s) specified in the **Data Sheet**.

**10. Documents
Comprising
the
Proposal**

10.1. The Proposal shall comprise the documents and forms listed in the **Data Sheet**.

10.2. The Consultant shall furnish information on commissions, gratuities, and fees, if any, paid or to be paid to agents or any other party relating to this Proposal and, if awarded, Contract execution.

11. Only One Proposal

11.1. The Consultant shall submit only one Proposal, either in its own name or as part of a Joint Venture in another Proposal. If a Consultant, including any Joint Venture member, submits or participates in more than one proposal, all such proposals shall be disqualified and rejected. This does not, however, unless otherwise stated in the **Data Sheet**, preclude a Sub-consultant, or the Consultant's staff from participating as Key Experts and Non-Key Experts in more than one Proposal.

12. Proposal Validity

12.1. **The Data Sheet** indicates the period during which the Consultant's Proposal must remain valid after the Proposal submission deadline.

12.2. During this period, the Consultant shall maintain its original Proposal without any change, including the availability of the Key Experts, the proposed rates and the total price.

12.3. If it is established that any Key Expert nominated in the Consultant's Proposal was not available at the time of Proposal submission or was included in the Proposal without his/her confirmation, such Proposal shall be disqualified and rejected for further evaluation.

**a. Extension of
Validity Period**

12.4. The Client will make its best effort to complete the negotiations within the proposal's validity period. However, should the need arise, the Client may request, in writing, all Consultants who submitted Proposals prior to the submission deadline to extend the Proposals' validity.

12.5. If the Consultant agrees to extend the validity of its Proposal, it shall be done without any change in the original Proposal and with the confirmation of the availability of the Key Experts.

12.6. The Consultant has the right to refuse to extend the validity of its Proposal in which case such Proposal will not be further evaluated.

**b. Substitution of
Key Experts in case
of Extension of
Validity Period**

12.7. If any of the Key Experts become unavailable for the extended validity period, the Consultant shall provide a written adequate justification and evidence satisfactory to the Client together with the substitution request. In such case, a replacement Key Expert shall have equal or better qualifications and experience than those of the originally proposed Key Expert. The technical evaluation score, however, will remain to be based on the evaluation of the CV of the original Key Expert.

12.8. If the Consultant fails to provide a replacement Key Expert with

equal or better qualifications, or if the provided reasons for the replacement or justification are unacceptable to the Client, such Proposal will be rejected.

c. Sub-Contracting 12.9. The Consultant shall not subcontract the whole of the Services.

13. Clarification and Amendment of RFP 13.1. The Consultant may request a clarification of any part of the RFP during the period indicated in the **Data Sheet** before the Proposals' submission deadline. Any request for clarification must be sent in writing, or by standard electronic means, to the Client's address indicated in the **Data Sheet**. The Client will respond in writing, or by standard electronic means, and will send written copies of the response (including an explanation of the query but without identifying its source) to all shortlisted Consultants. Should the Client deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure described below:

13.1.1. At any time before the proposal submission deadline, the Client may amend the RFP by issuing an amendment in writing or by standard electronic means. The amendment shall be sent to all shortlisted Consultants and will be binding on them. The shortlisted Consultants shall acknowledge receipt of all amendments in writing.

13.1.2. If the amendment is substantial, the Client shall extend the proposal submission deadline to give the shortlisted Consultants reasonable time to take an amendment into account in their Proposals.

13.2. The Consultant may submit a modified Proposal or a modification to any part of it at any time prior to the proposal submission deadline. No modifications to the Technical or Financial Proposal shall be accepted after the deadline.

14. Preparation of Proposals Specific Considerations 14.1. While preparing the Proposal, the Consultant must give particular attention to the following:

14.1.1. If a shortlisted Consultant considers that it may enhance its expertise for the Services by associating with other consultants in the form of a Joint Venture, it may do so with either (a) non-shortlisted Consultant(s), or (b) shortlisted Consultants if permitted in the **Data Sheet**. Association with a non-shortlisted Consultant shall be subject to approval of the Client. When associating with non-shortlisted firms in the form of a Joint Venture, the shortlisted Consultant shall be a lead member. If shortlisted Consultants associate with each other, any of them can be a lead member.

14.1.2. The Client may indicate in the **Data Sheet** the estimated Key Experts' time input (expressed in person-month) or the Client's estimated total cost of the Services, but not both. This estimate is indicative and the Proposal shall be based on the Consultant's own estimates for the same.

14.1.3. If stated in the **Data Sheet**, the Consultant shall include in its Proposal at least the same time input (in the same unit as indicated in the **Data Sheet**) of Key Experts, failing which the Financial Proposal will be rejected.

14.1.4. For assignments under the Fixed-Budget selection method, the estimated Key Experts' time input is not disclosed. Total available budget, with an indication whether it is inclusive or exclusive of taxes, is given in the **Data Sheet**, and the Financial Proposal shall not exceed this budget.

15. Technical Proposal Format and Content

15.1. The Technical Proposal shall not include any financial information. A Technical Proposal containing material financial information shall be declared non-responsive.

15.1.1. Consultant shall not propose alternative Key Experts. Only one CV shall be submitted for each Key Expert position. Failure to comply with this requirement will make the Proposal non-responsive.

15.1.2. Variations are not allowed.

15.2. The Technical Proposal shall be prepared using the Standard Forms provided in Section III of the RFP.

16. Financial Proposal

16.1. The Financial Proposal shall be prepared using the Standard Forms provided in Section IV of the RFP. It shall list all costs associated with the Services, including (a) remuneration of Key Experts and Non-Key Experts, (b) other expenses indicated in the **Data Sheet**.

a. Price Adjustment

16.2. For assignments with a duration exceeding 18 months, a price adjustment provision of remuneration rates applies if so stated in the **Data Sheet**.

b. Taxes

16.3. The Financial Proposal should clearly estimate, as a separate amount, the taxes, duties, fees, levies and other charges imposed in the Client's country under the Applicable law, on the Consultants, the Sub-consultants, and their Experts (other than nationals or permanent residents of the Client's country). The Consultant and its Sub-consultants and Experts are responsible for meeting all tax liabilities arising out of the Contract unless stated otherwise in the **Data Sheet**. Information on taxes in the Client's country is provided in the **Data Sheet**.

c. Currency of Proposal

16.4. The Consultant may express the price for its Services in the currency or currencies as stated in the **Data Sheet**. If indicated in the **Data Sheet**, the portion of the price representing local cost shall be stated in the national currency.

d. Currency of Payment

16.5. Payment under the Contract shall be made in the currency or currencies in which the payment is requested in the Proposal.

C. SUBMISSION, OPENING AND EVALUATION

17. Submission, Sealing, and Marking of Proposals

17.1 The Consultant shall submit a signed and complete Proposal comprising the documents and forms in accordance with Clause 10 (Documents Comprising Proposal). The submission can be done by mail or by hand. If authorized in the **Data Sheet**, the Consultant may choose to submit its Proposals electronically.

17.2 An authorized representative of the Consultant shall sign the original submission letters in the required format for both the Technical Proposal and the Financial Proposal and shall initial all pages of both. The authorization shall be in the form of a written power of attorney attached to the Technical Proposal.

17.2.1 A Proposal submitted by a Joint Venture shall be signed by all members so as to be legally binding on all members, or by an authorized representative who has a written power of attorney signed by each member's authorized representative.

17.3 Any modifications, revisions, interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Proposal.

17.4 The signed Technical and Financial Proposal shall be marked "ORIGINAL", and its copies marked "COPY" as appropriate. The number of copies is indicated in the **Data Sheet**. All copies shall be made from the signed original. If there are discrepancies between the original and the copies, the original shall prevail.

17.5 The original and all the copies of the Technical Proposal shall be placed inside of a sealed envelope clearly marked "**TECHNICAL PROPOSAL**", "[Name of the Services t]", reference number, name and address of the Consultant, and with a warning "**DO NOT OPEN UNTIL TECHNICAL PROPOSAL OPENING.**"

17.6 Similarly, the original Financial Proposal shall be placed inside of a sealed envelope clearly marked "**FINANCIAL PROPOSAL**" followed by the name of the Services, reference number, name and address of the Consultant, and with a warning "**DO NOT OPEN WITH THE TECHNICAL PROPOSAL.**"

17.7 The sealed envelopes containing the Technical and Financial Proposals shall be placed into one outer envelope and sealed. This outer envelope shall bear the submission address, RFP reference number, the name of the Services, Consultant's name and the address, and shall be clearly marked "**DO NOT OPEN BEFORE TECHNICAL PROPOSAL OPENING.**"

17.8 If the envelopes and packages with the Proposal are not sealed and marked as required, the Client will assume no responsibility for the misplacement, loss, or premature opening of the

Proposal.

17.9 The Proposal or its modifications must be sent to the address indicated in the **Data Sheet** and received by the Client no later than the deadline indicated in the **Data Sheet**, or any extension to this deadline. Any Proposal or its modification received by the Client after the deadline shall be declared late and rejected, and promptly returned unopened.

18. Confidentiality

18.1 From the time the Proposals are opened to the time the Contract is awarded, the Consultant should not contact the Client on any matter related to its Technical and/or Financial Proposal. Information relating to the evaluation of Proposals and award recommendations shall not be disclosed to the Consultants who submitted the Proposals or to any other party not officially concerned with the process, until the publication of the Contract award information.

18.2 Any attempt by shortlisted Consultants or anyone on behalf of the Consultant to influence improperly the Client in the evaluation of the Proposals or Contract award decisions may result in the rejection of its Proposal.

18.3 Notwithstanding the above provisions, from the time of the Proposals' opening to the time of Contract award publication, if a Consultant wishes to contact the Client on any matter related to the selection process, it should do so only in writing.

19. Opening of Technical Proposals

19.1 The Client's evaluation committee shall conduct the opening of the Technical Proposals in the presence of the shortlisted Consultants' authorized representatives who choose to attend (in person, or online if this option is offered in the **Data Sheet**). The opening date, time and address are stated in the **Data Sheet**. The envelopes with the Financial Proposal shall remain sealed and shall be securely stored with a reputable public auditor or independent authority until they are opened in accordance with Clause 23 of the ITC.

19.2 At the opening of the Technical Proposals the following shall be read out: (i) the name of the Consultant or, in case of a Joint Venture, the name of the Joint Venture, the name of the lead member and the names of all members; (ii) the presence or absence of a duly sealed envelope with the Financial Proposal; (iii) any modifications to the Proposal submitted prior to proposal submission deadline; and (iv) any other information deemed appropriate or as indicated in the **Data Sheet**.

20. Proposals Evaluation

20.1 Subject to provision of [Sub-clause 15.1](#) of the ITC, the evaluators of the Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.

20.2 The Consultant is not permitted to alter or modify its Proposal in any way after the proposal submission deadline except as permitted under [Sub-clause 12.7](#) of this ITC. While evaluating the Proposals, the Client will conduct the evaluation solely on the basis

of the submitted Technical and Financial Proposals.

21. Evaluation of Technical Proposals

21.1. The Client's evaluation committee shall evaluate the Technical Proposals on the basis of their responsiveness to the Terms of Reference and the RFP, applying the evaluation criteria, sub-criteria, and point system specified in the **Data Sheet**. 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 RFP or if it fails to achieve the minimum technical score indicated in the **Data Sheet**.

22. Financial Proposals for QBS

22.1 Following the ranking of the Technical Proposals, when the selection is based on quality only (QBS), the top-ranked Consultant is invited to negotiate the Contract. Only the Financial Proposal of the technically top-ranked Consultant is opened by the Client's evaluation committee. All other Financial Proposals are returned unopened after the Contract negotiations are successfully concluded and the Contract is signed.

23. Public Opening of Financial Proposals (for QCBS, FBS, and LCS methods)

23.1 After the technical evaluation is completed, the Client shall notify those Consultants whose Proposals were considered non-responsive to the RFP and TOR or did not meet the minimum qualifying technical score (and shall provide information relating to the Consultant's overall technical score) that their Financial Proposals will be returned unopened after completing the selection process and Contract signing. The Client shall simultaneously notify in writing those Consultants that have achieved the minimum overall technical score and inform them of the date, time and location for the opening of the Financial Proposals. The opening date should allow the Consultants sufficient time to make arrangements for attending the opening. The Consultant's attendance at the opening of the Financial Proposals (in person, or online if such option is indicated in the **Data Sheet**) is optional and is at the Consultant's choice.

23.2 The Financial Proposals shall be opened by the Client's evaluation committee in the presence of the representatives of those Consultants whose proposals have passed the minimum technical score. At the opening, the names of the Consultants, the overall technical scores, and the total prices shall be read aloud and recorded. Copies of the record shall be sent to all Consultants who submitted Proposals.

24. Correction of Errors

24.1 Activities and items described in the Technical Proposal but not priced in the Financial Proposal, shall be assumed to be included in the prices of other activities or items, and no corrections will be made to the Financial Proposal.

a. Time-Based Contracts

24.1.1 In the case of a Time-Based contract, the Client's evaluation committee will (a) correct any computational or arithmetical errors, and (b) adjust the prices if they fail to reflect all inputs included for the respective activities or items in the Technical Proposal. In case of discrepancy between (i) a partial amount (sub-total) and the total amount, or (ii) between the amount derived by multiplication of unit price with quantity and the total price, or (iii) between words and figures,

the former will prevail. In case of discrepancy between the Technical and Financial Proposals in indicating quantities of input, the Technical Proposal prevails and the Client's evaluation committee shall correct the quantification indicated in the Financial Proposal so as to make it consistent with the one indicated in the Technical Proposal, apply the relevant unit price included in the Financial Proposal to the corrected quantity, and correct the total Proposal cost.

b. Lump-Sum Contracts

24.1.2 In the case of a Lump-Sum contract, the Consultant is deemed to have included all inputs that are necessary to perform the Services in the Financial Proposal, so neither arithmetical corrections nor price adjustments shall be made. The total price, net of taxes understood as per Clause ITC 25 below, specified in the Financial Proposal (Form FIN-1) shall be considered as the offered price.

24.2 If the Financial Proposal is significantly lower than the Client's estimate, the Client shall require the Consultants to produce detailed price analyses for any or all items of the Financial Proposal, to demonstrate the internal consistency of those prices with the methodology, resources and schedule proposed. Notwithstanding provisions of [Sub-clause](#) ITC 24.1 which shall not apply, if inconsistencies are evidenced, the Financial Proposal shall be declared non-compliant and rejected.

25. Taxes

25.1 The Client's evaluation of the Consultant's Financial Proposal shall include taxes and duties in the Client's country in accordance with the instructions in the **Data Sheet**.

26. Conversion to Single Currency

26.1 For the evaluation purposes, prices shall be converted to a single currency using the selling rates of exchange, source and date indicated in the **Data Sheet**.

27. Combined Quality and Cost Evaluation

a. Quality- and Cost-Based Selection (QCBS)

27.1. In the case of QCBS, the total score is calculated by weighting the technical and financial scores and adding them as per the formula and instructions in the **Data Sheet**. The Consultant achieving the highest combined technical and financial score will be invited for negotiations.

b. Fixed-Budget Selection (FBS)

27.2. In the case of FBS, those Proposals that exceed the budget indicated in [Sub-clause](#) 14.1.4 of the **Data Sheet** shall be rejected. The Client will select the Consultant that submitted the highest-ranked Technical Proposal, and invite such Consultant to negotiate the Contract.

c. Least-Cost Selection

27.3. In the case of Least-Cost Selection (LCS), the Client will select the Consultant with the lowest evaluated total price among those consultants that achieved the minimum technical score, and invite such Consultant to negotiate the Contract.

D. NEGOTIATIONS AND AWARD

28. Negotiations

28.1. The negotiations will be held at the date and address indicated in the **Data Sheet** with the Consultant’s representative(s) who must have written power of attorney to negotiate and sign a Contract on behalf of the Consultant.

28.2. The Client shall prepare minutes of negotiations that are signed by the Client and the Consultant’s authorized representative.

a. Availability of Key Experts

28.3. The invited Consultant shall confirm the availability of all Key Experts included in the Proposal as a pre-requisite to the negotiations, or, if applicable, a replacement in accordance with Clause 12 of the ITC. Failure to confirm the Key Experts’ availability may result in the rejection of the Consultant’s Proposal and the Client proceeding to negotiate the Contract with the next-ranked Consultant.

28.4. Notwithstanding the above, the substitution of Key Experts at the negotiations may be considered if due solely to circumstances outside the reasonable control of and not foreseeable by the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall offer a substitute Key Expert within the period of time specified in the letter of invitation to negotiate the Contract, who shall have equivalent or better qualifications and experience than the original candidate.

b. Technical negotiations

28.5. The negotiations include discussions about the Terms of Reference (TORs), the proposed methodology, the Client’s inputs, the special conditions of the Contract, and finalizing the “Description of Services” part of the Contract. These discussions shall not substantially alter the original scope of services under the TORs or the terms of the Contract and shall not modify the ranking of the Proposals.

c. Financial negotiations

28.6. The negotiations include the clarification of the Consultant’s tax liability in the Client’s country and how it should be reflected in the Contract.

28.7. If the selection method included cost as a factor in the evaluation, the total price stated in the Financial Proposal for a Lump-Sum contract shall not be negotiated.

28.8. In the case of a Time-Based contract, unit rates negotiations shall not take place, except when the offered Key Experts and Non-Key Experts’ remuneration rates are much higher than the typically charged rates by consultants in similar contracts. In such case, the Client may ask for clarifications and, if the fees are very high, ask to change the rates.

29. Conclusion of Negotiations

29.1. The negotiations are concluded with a review of the finalized draft Contract, which then shall be initiated by the Client and the Consultant’s authorized representative.

29.2. If the negotiations fail, the Client shall inform the Consultant

in writing of all pending issues and disagreements and provide a final opportunity to the Consultant to respond. If disagreement persists, the Client shall terminate the negotiations informing the Consultant of the reasons for doing so. The Client will invite the next-ranked Consultant to negotiate a Contract. Once the Client commences negotiations with the next-ranked Consultant, the Client shall not reopen the earlier negotiations.

29.3. The Client reserves the right to annul the RFP process and reject all Proposals at any time prior to contract award, without thereby incurring any liability to Consultants.

30. Award of Contract

30.1. After completing the negotiations the Client shall sign the Contract; if applicable, publish the award information; and promptly notify the other shortlisted Consultants.

30.2. The Consultant is expected to commence the Services on the date and at the location specified in the **Data Sheet**.

Section II. Data Sheet

A. General	
ITC 1 (b)	Applicable law: <i>Kenyan Law</i>
ITC 2.1	<p>Name of the Client: <i>City of Kisumu</i></p> <p>Method of selection: <i>Restricted Tender, Quality and Cost Based Selection (QCBS)</i></p> <p>Type of contract: <i>Time Based Contract</i></p>
ITC 2.2	<p>The name of the Services is: <i>Request for Proposals for Environmental and Social Impact Assessment (ESIA) for 2019/2020 Kenya Urban Support Programme (KUSP) Projects in City of Kisumu divided in the following lots:</i></p> <ol style="list-style-type: none"> <i>1. Proposed Construction of Non - Motorized Transport phase 2,</i> <i>2. Proposed Construction of Nyamasaria Satellite Buspark,</i> <i>3. Proposed Improvement of Jommo Kenyatta Sportsground, Jamhuri Garden, Botanical Garden, Market (Oile) Park, Streetscaping of urban roads,</i> <i>4. Proposed Construction of Kaloleni Social Hall and Dunga Waterfront.</i>
ITC 2.4	The Client will provide the following inputs, project data, reports, etc. to facilitate the preparation of the Proposals: <i>As per Terms of Reference</i>
ITC Conflict of Interest	3.2.1 The following additional circumstances shall be considered as a conflict of interest: <i>Refer to Section I. Instruction to Consultants of this document.</i>
B. Preparation of Proposals	
ITC Language	9.1 Proposals shall be submitted in <i>English language.</i> All correspondence exchanges and documents shall be in <i>English language.</i>
ITC Documents Comprising the Proposal	<p>10.1 The Proposal shall comprise the following:</p> <p style="padding-left: 40px;">1st Inner Envelope with the Technical Proposal:</p> <ol style="list-style-type: none"> (1) Technical Proposal Submission Form (TECH (2) Power of Attorney to sign the Proposal (3) Statement of Integrity (signed) (4) Up-to-date Indemnity Cover (5) Description of methodology, work plan and team composition (TECH-2, TECH-3, TECH-4 and TECH-5 are provided as indicative format) <p style="padding-left: 40px;">AND</p> <p style="padding-left: 40px;">2nd Inner Envelope with the Financial Proposal:</p> <ol style="list-style-type: none"> (1) Financial Proposal Submission Form (FIN-1) (2) Summary of Costs (FIN-2) (3) Breakdown of Prices (FIN-3 and FIN-4)

ITC 11.1	Participation of Sub-consultants, and Non-Key Experts in more than one Proposal is permissible.
ITC 12.1 Proposal Validity	Proposals must remain valid for 120 days.
ITC 13.1 Clarification	Clarifications may be requested no later than 14 days prior to the submission deadline. The contact information for requesting clarifications is: <i>The City Manager, City of Kisumu, P. O. Box 105-40100 Kisumu, Email: townclerk_kisumu@yahoo.com</i>
ITC 14.1.1	Consultants may associate in form of a Consortium as long as they don't appear in more than one consortium.
ITC 14.1.3 <i>[for time-based contracts only]</i>	<i>The project implementation period shall be a maximum of 3 Months. The Consultant shall prepare the Key-Expert man-months to fit within the period.</i>
ITC 16.1 Other expenses	The Consultant shall detail ALL Expenses of his Proposal in compliance with items listed in Form FIN-4
ITC 16.3 Taxes	The Consultant quote should include all Local taxes. Information on the Consultant's tax obligations in the Client's country can be found at Kenya Revenue Authority.
ITC 16.4 Currency of Proposal	The Financial Proposal shall be stated in the following currencies: <i>Kenya Shillings (KES)</i> The Financial Proposal should state local costs in the Client's country currency (local currency): Yes
C. Submission, Opening and Evaluation	
ITC 17.1	The consultants shall not have the option of submitting their proposals electronically
ITC 17.4	The Consultant must submit: (a) Technical Proposal: one (1) original and four (4) paper copies + one (1) digital copy (CD or flash disk);

	(b) Financial Proposal: one (1) original and four (4) paper copies + one (1) digital copy (CD or flash disk).								
ITC 17.9	<p>The Proposals must be submitted no later than:</p> <p>Date: 29th MAY, 2020</p> <p>Time: 12.00 Noon local time</p> <p>The Proposal submission address is: City Manager, City of Kisumu, P. O. Box 105, 40100 Kisumu, Kenya Email:townclerk_kisumu@yahoo.com</p>								
ITC 19.1 Opening of Technical Proposals	<p>An online option of the opening of the Technical Proposals is not offered.</p> <p>The opening shall take place at:</p> <p>Street Address: <i>Court Road</i> Floor, room number: <i>First Floor, City Hall Chambers</i> City: <i>Kisumu</i> Country: <i>Kenya</i></p> <p>Date: 29th May, 2020</p> <p>Time:12.00 Noon Local Time</p>								
ITC 21.1 Evaluation of Technical Proposals	<p>Criteria, sub-criteria, and point system for the evaluation of the Technical Proposals:</p> <table border="1"> <thead> <tr> <th></th> <th style="text-align: right;">Points</th> </tr> </thead> <tbody> <tr> <td>(i) Financial Situation:</td> <td style="text-align: right;">20 points</td> </tr> <tr> <td>(ii) Firm experience:</td> <td style="text-align: right;">20 points</td> </tr> <tr> <td>(iii) Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs):</td> <td style="text-align: right;">20 points</td> </tr> </tbody> </table> <p><i>[Notes to Consultant: the Client will assess whether the proposed methodology is clear, responds to the TORs, work plan is realistic and implementable; overall team composition is balanced and has an appropriate skills mix; and the work plan has right input of Experts]</i></p> <p>(iv) Key Experts' qualifications and competence for the Services: <i>[Notes to Consultant: each position number corresponds to the same for the Key Experts in Form TECH-4 to be prepared by the Consultant]</i></p> <p>a) <i>Position K-1: [Team Leader/Environmentalist]</i> b) <i>Position K-2: [Sociologist]</i> c) <i>Position K-3:[Civil Engineer]</i> d) <i>Position K-4:[Health and Safety]</i> e) <i>Position K-5:[Valuer/Physical Planner]</i></p>		Points	(i) Financial Situation:	20 points	(ii) Firm experience:	20 points	(iii) Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs):	20 points
	Points								
(i) Financial Situation:	20 points								
(ii) Firm experience:	20 points								
(iii) Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs):	20 points								

	<p><i>f) Position K-6 [Socio Economist]</i></p> <p style="text-align: right;">Total points for criterion (iv): [40]</p> <p>Total points for criterion (i-iv): 100</p> <p>The minimum technical score (St) required to pass is: [80]</p>
ITC 23.1	An online option of the opening of the Financial Proposals is not offered
ITC 26.1	<p>The single currency for the conversion of all prices expressed in various currencies into a single one is: <i>KES</i></p> <p>The official source of the selling (exchange) rate is: <i>Central Bank of Kenya</i></p> <p>The date of the exchange rate is the date of the deadline for submission.</p>
ITC 27.1 Combined Quality and Cost Evaluation (QCBS only)	<p>The lowest evaluated Financial Proposal (Fm) is given the maximum financial score (Sf) of 100.</p> <p>The formula for determining the financial scores (Sf) of all other Proposals is calculated as following:</p> <p>Sf = 100 x Fm/ F, in which “Sf” is the financial score, “Fm” is the lowest price, and “F” the price of the proposal under consideration.</p> <p>The weights given to the Technical (T) and Financial (P) Proposals are: T = [80], and P = [20]</p> <p>Proposals are 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) as following: $S = St \times T\% + Sf \times P\%$.</p>
	D. Negotiations and Award
ITC 28.1	<p>Expected date and address for contract negotiations:</p> <p>To be communicated after notification of Intention to award</p>
ITC 30.1	Date of Contract Signing: To be communicated after award
ITC 30.2	<p>Expected date for the commencement of the Services:</p> <p>Date: <i>14 days after signing the contract</i></p>

Section III. Technical Proposal – Standard Forms

Form TECH-1 (format not be altered)

TECHNICAL PROPOSAL SUBMISSION FORM

[Location, Date]

To: [Name and address of Client]

Dear Sirs:

We, the undersigned, offer to provide the Services for [Insert title of Services] in accordance with your Request for Proposals dated [Insert Date] and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal and a Financial Proposal sealed in a separate envelope.

[If the Consultant is a Joint Venture, insert the following: We are submitting our Proposal as a Joint Venture with: [Insert a list with the full name and the legal address of each member, and indicate the lead member]. We have attached a copy [insert: “of our letter of intent to form a Joint Venture” or, if a JV is already formed, “of the JV agreement”] signed by every participating member, which details the likely legal structure of and the confirmation of joint and severable liability of the members of the said Joint Venture.

[OR

If the Consultant’s Proposal includes Sub-consultants, insert the following: We are submitting our Proposal with the following firms as Sub-consultants: [Insert a list with full name and address of each Sub-consultant.]

We hereby declare that:

- (a) All the information and statements made in this Proposal are true and we accept that any misrepresentation contained in this Proposal may lead to the rejection of our Proposal by the Client;
- (b) Our Proposal shall be valid and remain binding upon us for the period of time specified in the Data Sheet, [Sub-clause 12.1](#);
- (c) We have no conflict of interest in accordance with ITC 3;
- (d) Except as stated in the Data Sheet, [Sub-clause 12.1](#), we undertake to negotiate a Contract on the basis of the proposed Key Experts. We accept that the substitution of Key Experts for reasons other than those stated in ITC [Clauses 12.7](#) and [28.4](#) shall end Contract negotiations;

Request for Proposals for Environment and Social Impact Assessment (ESIA) for 2019/2020 Kenya Urban Support Programme (KUSP) Projects in City of Kisumu

- (e) Our Proposal is binding upon us and subject to any modifications resulting from the Contract negotiations.

We undertake, if our Proposal is accepted and the Contract is signed, to initiate the Services related to the assignment no later than the date indicated in [Sub-clause 30.2](#) of the Data Sheet.

We acknowledge and agree that the Client reserves the right to annul the selection process and reject all Proposals at any time prior to Contract award, without thereby incurring any liability to us.

We remain,

Yours sincerely,

Authorized Signature [In full and initials]: _____

Name and Title of Signatory: _____

Name of Consultant (company's name or JV's name): _____

In the capacity of: _____

Address: _____

Contact information (phone and e-mail): _____

[For a Joint Venture, either all members shall sign or only the lead member, in which case the power of attorney to sign on behalf of all members shall be attached]

Technical Proposal (Form TECH-2)

[Below is a suggested structure of the Technical Proposal]

A - Consultant's Structure and Experience

[Provide here a brief description of the background and organization of your company, and - in case of a joint venture - of each member that will be participating in the Services, including an organizational chart, a list of board of directors, and beneficial ownership.]

B - Description of Approach, Methodology, and Work Plan in accordance with the Terms of Reference

- a) **Technical Approach and Methodology.** *[Please explain your understanding of the objectives of the Services as outlined in the Terms of Reference (TORs), the technical approach, and the methodology you would adopt for implementing the tasks to deliver the expected output(s), and the degree of detail of such output. Include here your comments and suggestions on the TORs and comments on counterpart staff and facilities provided by the Client if any. Please do not repeat/copy the TORs in here.]*
- b) **Work Plan.** *[Please outline the plan for the implementation of the main activities/tasks of the Services, their content and duration, phasing and interrelations, milestones (including interim approvals by the Client), and tentative delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing your understanding of the TORs and ability to translate them into a feasible working plan. A list of the final documents (including reports) to be delivered as final output(s) should be included here. The Work Schedule Form (Form TECH-3) may be used for that purpose.]*

C - Consultant's Organization and Staffing

[Please describe the structure and composition of your team, including a list of the Key Experts, Non-Key Experts and relevant technical and administrative support staff, and staffing for training, if the Terms of Reference specify training as a specific component of the Services. Experts' inputs should be specified and should be consistent with the proposed methodology and the TORs requirements. Form TECH-4 may be used for that purpose. CVs of all experts shall be provided (Form TECH-5 may be used for that purpose).]

Form TECH-3 (INDICATIVE FORMAT)

WORK SCHEDULE AND PLANNING FOR DELIVERABLES

N°	Deliverables (D-..)	Months												
		1	2	3	4	5	6	7	8	9	n	TOTAL	
D-1	<i>[e.g., Deliverable #1: Report A</i>													
	<i>1) Data collection</i>													
	<i>2) Drafting</i>													
	<i>3) Inception report</i>													
	<i>4) Incorporating comments</i>													
	<i>5)</i>													
	<i>6) Delivery of final report to Client]</i>													
D-2	<i>[e.g., Deliverable #2:.....]</i>													
n														

Form TECH-4 (INDICATIVE FORMAT)

TEAM COMPOSITION, ASSIGNMENT, AND KEY EXPERTS’ INPUTS

N°	Name	Expert’s input (in person/month) per each Deliverable (listed in TECH-3)										Total time-input (in Months)		
		Position		D-1	D-2	D-3	D-...				Home	Field	Total
KEY EXPERTS														
K-1	<i>[e.g., Mr. Abbbb]</i>	<i>[Team Leader]</i>	<i>[Home]</i> <i>[Field]</i>	<i>[2 month]</i> <i>[0.5 m]</i>	<i>[1.0]</i> <i>[2.5]</i>	<i>[1.0]</i> <i>[0]</i>								
K-2														
K-3														
...														
											Subtotal			
NON-KEY EXPERTS														
N-1			<i>[Home]</i> <i>[Field]</i>											
N-2														
...														
											Subtotal			
											Total			

 Full time input
 Part time input

FORM TECH-5
(INDICATIVE FORMAT)

CURRICULUM VITAE (CV)

Position Title and No.	<i>[e.g., K-1, TEAM LEADER]</i>
Name of Expert:	<i>[Insert full name]</i>
Date of Birth:	<i>[day/month/year]</i>
Country of Citizenship/Residence	

Education: *[List college/university or other specialized education, giving names of educational institutions, dates attended, degree(s)/diploma(s) obtained]*

Employment record relevant to the Services: *[Starting with present position, list in reverse order. Please provide dates, name of employing organization, titles of positions held, types of activities performed and location of the assignment, and contact information of previous clients and employing organization(s) who can be contacted for references. Past employment that is not relevant to the Services does not need to be included.]*

Period	Employing organization and your title/position. Contact information for references	Country	Summary of activities performed relevant to the Services
<i>[e.g., May 2005-present]</i>	<i>[e.g., Ministry of, advisor/consultant to... For references: Tel...../e-mail.....; Mr. Hbbbb, deputy minister]</i>		

Membership in Professional Associations and Publications:

Language Skills (indicate only languages in which you can work): _____

Adequacy for the Services:

Detailed Tasks Assigned to Consultant’s Team of Experts:	Reference to Prior Work/Assignments that Best Illustrates Capability to Handle the Assigned Tasks
<i>[List all deliverables/tasks as in TECH- 3 in which the Expert will be involved]</i>	

Experts contact information: *[e-mail, phone.....]*

Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience, and I am available to undertake the Services in case of an award. I understand that any misstatement or misrepresentation described herein may lead to my disqualification or dismissal by the Client.

[day/month/year]

Name of Expert	Signature	Date
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[day/month/year]

Name of authorized	Signature	Date
--------------------	-----------	------

Representative of the Consultant
[the same who signs the Proposal]

Section IV. Financial Proposal - Standard Forms

FORM FIN - 1

FINANCIAL PROPOSAL SUBMISSION FORM

[Location, Date]

To: *[Name and address of Client]*

Dear Sirs:

We, the undersigned, offer to provide the Services for *[Insert title of Services]* in accordance with your Request for Proposal dated *[Insert Date]* and our Technical Proposal.

Our attached Financial Proposal is for the amount of *[Indicate the corresponding to the amount(s) currency (ies)] [Insert amount(s) in words and figures]*, excluding of all indirect local taxes *[or “including of all indirect local taxes” in accordance with [Sub-clause 25.1](#) in the Data Sheet]*. The estimated amount of local indirect taxes is *[Insert currency] [Insert amount in words and figures]* which shall be confirmed or adjusted, if needed, during negotiations.*[Please note that all amounts shall be the same as in Form FIN-2]*

Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Proposal, i.e. before the date indicated in [Sub-clause 12.1](#) of the Data Sheet.

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

We remain,

Yours sincerely,

Authorized Signature *[In full and initials]*: _____

Name and Title of Signatory: _____

In the capacity of: _____

Address: _____

E-mail: _____

[For a Joint Venture, either all members shall sign or only the lead member/consultant, in which case the power of attorney to sign on behalf of all members shall be attached]

FORM FIN-2 SUMMARY OF COSTS

[The following table is provided as an indicative template and should be adapted to each RFP by the Client. The Client shall select the appropriate table in accordance with the Contract type (lump-sum price or unit prices (time-based)) and shall delete the other table. The table should identify the tax estimates as a separate amount.]

TIME-BASED CONTRACT (UNIT PRICES)

Item	Cost	
	<i>[Consultant must state the proposed Costs in accordance with Sub-clause 16.4 of the Data Sheet; delete columns which are not used]</i>	
	<i>[Insert Foreign Currency]</i>	<i>[Insert Local Currency]</i>
Cost of the Financial Proposal (excluding taxes)		
Including:		
(1) Remuneration		
(2) Other expenses <i>[specify LS or reimbursable]</i>		
Total Cost of the Financial Proposal (excluding taxes): <i>[Should match with the amount in Form FIN-1]</i>		
Local Tax Estimates – to be discussed and finalized at the negotiations if the Contract is awarded		
<u>Total Estimate for Local Taxes:</u>		

Footnote: Payments will be made in the currency(ies) expressed above (Reference to ITC 16.4)

FORM FIN-3 BREAKDOWN OF REMUNERATION

A. Remuneration							
No.	Name	Position (as in TECH-4)	Person-month Remuneration Rate (excluding taxes)	Time Input in Person/Month (from TECH-4)	[Foreign Currency- as in FIN-2]	[Local Currency- as in FIN-2]	
	Key Experts						
K-1			[Home]				
			[Field]				
K-2							
	Non-Key Experts						
N-1			[Home]				
N-2			[Field]				
	Total Costs (excl. tax)						

FORM FIN-4 BREAKDOWN OF OTHER EXPENSES

B. Other Expenses						
N o.	Type of Other Expenses ¹	Unit	Unit Cost ²	Quantity	[Foreign Currency- as in FIN-2]	[Local Currency- as in FIN-2]
	Per diem allowances ³	Day	Lump Sum			
—	International flights	Ticket	Lump Sum			
—	In/out airport transportation	Trip	Lump Sum			
	Communication costs between [Insert place] and [Insert place]	Month	Lump Sum			
	Reproduction of reports	1	Lump Sum			
	Office rent	Month	Lump Sum			
					
	Training of the Client’s personnel – if required in TOR	As per ToR	Lump Sum			
Total Costs (excl. tax)						

¹Delete any item not relevant to the Services

² Substitute “Lump Sum” by “Reimbursable” if the Client prefers to reimburse incurred expenses at their actual cost

³Per diem allowance is paid for each night the expert is required by the Contract to be away from his/her usual place of residence. Client can set up a ceiling

Evaluation and Qualification Criteria

The client will use the following criteria to evaluate bids and determine whether a bidder has the required qualifications.

Qualification Requirements

In this stage the extent to which the bids meet the minimum bid qualification requirements is checked.

Note: Bidders shall attach copies of ALL relevant documents e.g. certificates, licenses, etc.

Factor / Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder			At least one partner	
		Single Entity	Joint Venture			
			All partners combined	Each partner		
1. Statutory and General Requirements						
1.1. Registration as Company	Legally constituted firm according to laws of Kenya	Must meet requirement	n/a	Must meet requirement	n/a	Certificate of Incorporation/registration
1.2. Individual Registration by relevant bodies (NEMA Registration, NEMA License, ISK, etc.)	“registration with relevant professional bodies”	Must meet requirement	n/a	Must meet requirement	n/a	Certificate of Registration/ registration number, Valid Practicing License, Letter of Good Standing etc
1.3. Tax Compliance	Tax Registered and Tax Compliant	Must meet requirement	n/a	Must meet requirement	n/a	Current Tax Compliance Certificate
1.4. Physical address	Must have physical office	Must meet requirement	n/a	Must meet requirement	n/a	Single Business Permit, utility bills, lease agreement etc
1.5. Sanctity of bid document	Having document intact, legible and well bound (not tampered with in any way and signed by authorized person.	Must meet requirement	Must meet requirement	n/a	n/a	Bid Document
2. Bidding Forms and Other Requirements						
2.1. Technical Proposal	Letter of Technical Proposal	Must meet	Must meet	n/a	n/a	Letter of Submission

Factor / Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture		At least one partner	
			All partners combined	Each partner		
Submission Form	prepared as perform furnished in Section III (Forms Tech 1) , and signed by authorized person only	requirement	requirement			
2.2. Power of Attorney	Written confirmation authorizing signatory of Bid to commit Bidder.	Must meet requirement	Existing or intended JV must meet requirement	Must meet requirement	n/a	Letter of Authority
2.3. Environmental and Social Commitment	Written commitment of Bidder.	Must meet requirement	Existing JV must meet requirement	Must meet requirement	n/a	Letter of Commitment.
2.4. Statement of Work Methods	Statement of work methods as stipulated in Section III, in sufficient detail to demonstrate adequacy of Bidders' proposal to meet work requirements.	Must meet requirement	Must meet requirement	Must meet requirement	n/a	Well written and detailed chapter in bid explaining work method as per section III part B
2.5. Consultancy Schedule / Works Program	Work Schedule and Planning for Deliverables as stipulated in Section III, in sufficient detail to demonstrate adequacy of Bidders' proposal to meet completion time	Must meet requirement	Existing JV must meet requirement	Must meet requirement	n/a	A logical programme of activities on Critical Path in Project as per section III Form Tech 3
2.6. Joint Venture Documents	Bids submitted by JV include copy of Joint Venture Agreement entered into by all partners.	n/a	Must meet requirement	Must meet requirement	n/a	Joint Venture Agreement
3. Eligibility						
3.1. Conflict of Interest	No conflicts of interests.	Must meet requirement	Existing or intended JV must meet	Must meet requirement	n/a	Letter of Bid

Factor / Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder			At least one partner	
		Single Entity	Joint Venture			
			All partners combined	Each partner		
3.2. Agency Ineligibility	Not having been declared ineligible by World Bank.	Must meet requirement	Existing JV must meet requirement	Must meet requirement	n/a	Letter of Bid
3.3. Ineligibility based on sanctions from Kenya, EU or UN	Not listed as sanctioned person or entity by Kenya, EU or UN	Must meet requirement	Existing JV must meet requirement	Must meet requirement	n/a	Letter of Bid
4. Historical Contract Non-Performance						
4.1. History of non-performing contracts	Non-performance of a contract did not occur within last 5 years prior to deadline for application submission, based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with Dispute Resolution Mechanism under respective contract, and where all appeal instances available to bidder have been exhausted	Must meet requirement by itself or as partner to past or existing JV	n/a	Must meet requirement by itself or as partner to past or existing JV	n/a	Litigation History
4.2. Pending Litigation	All pending litigation shall in total not represent more than Thirty percent (30%) of Bidder's net worth and shall be treated as resolved against Bidder	Must meet requirement by itself or as partner to past or existing JV	n/a	Must meet requirement by itself or as partner to past or existing JV	n/a	Litigation History

All bidders with all the preliminary requirements proceed to the second stage of evaluation

Technical Evaluation

In this stage, we evaluate the bids on the tender's technical criteria.

Factor / Sub-Factor	Criteria Requirement
5. Financial Situation	
5.1. Historical Financial Performance	Submission of audited reports, for last (3) years to demonstrate current soundness of bidders financial position and its prospective long term profitability
5.2. Average Annual Turnover	Minimum average annual turnover of KES Fifteen Million (KES 15,000,000) calculated as total certified payments received for contracts in progress or completed, during last three (3) years
5.3. Financial Resources	Demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet following cash-flow requirement: a. KES Five Million (KES 5,000,000) per month and b. overall cash flow requirements for this contract and its current commitments
-6. Firm/Association Experience	
6.1. General Experience	Proven experience under contracts in the role of a Consultant for ESIA at least 5 years prior to applications submission deadline
6.2. Specific Experience	Proven experience of participation as Consultant in at least two (2) similar assignments and technical magnitude within last three (3) years, that have been successfully and substantially completed and that are of same nature to proposed Services. Similarity is based on physical size, complexity, financial capital input, methods/technology or other characteristics as described in Section V, Employer's Requirements
6.3 Portfolio of previous experiences	Reference confirmations of successful completion of the work presented in 6.2
7. Key Personnel	
7.1.Environmentalist/ Team Leader	At least Bachelor degree in Environmental studies, 10 years' experience in ESIA, preparation of ESMPs, RAP and Socio-Economic Feasibility (SEF) assessments.
7.2. Sociologist	At least Bachelor of Science in Social Studies , 10 years participation in ESIA, preparation on ESMPs, RAP, and Socio-Economic Feasibility (SEF) assessments in specific projects.
7.3. Civil Engineering	At least Bachelor of Science in Civil Engineering. At least 5 years work experience in ESIA, preparation of ESMPs, RAP and Socio-Economic Feasibility (SEF) assessments.
7.4 Health and Safety	At least Bsc. (Health related studies), 5 years specific works experience in at least 5 projects in ESIA, preparation of ESMPs..

Factor / Sub-Factor	Criteria Requirement
7.5 Valuer/Physical Planner	At least BA (Land Economics or Planning), 5 years specific works experience as a planner in at least 3 RAP projects of similar nature (land regulation and ownership))
7.6 Socio-Economist	At least Bachelor’s Degree or equivalent in Socio-economics, or related studies. At least 5 years’ experience in feasibility studies or similar assignments
8. Methodology	
8.1. Methodology and Work Plan	Brief description on the methodology to be used and implementation work plan to prove the Consultants understanding of the objectives and expected outcomes from <u>ESMP Reviews and Socio-economic Feasibility Studies</u> to include aspects and components such as: baseline conditions; legal policy and institutional framework; anticipated impacts to the environment, social and economic aspects; mitigation and/or corrective measures; developing ESMP by presenting potential impacts, mitigation actions, targets and responsibilities, associated costs and monitoring indicators for ESMP. The work plan should include details of the proposed timeline for carrying out the works within the time for completion, in the form of a bar chart showing notably the critical path;

Section VI. WB Policy – Corrupt and Fraudulent Practices – Social and Environmental Responsibility

1. Corrupt and Fraudulent Practices

The Contracting Authority and the suppliers, contractors, subcontractors, consultants or sub consultants must observe the highest standard of ethics during the procurement process and performance of the contract. The Contracting Authority means the Purchaser, the Employer, the Client, as the case may be, for the procurement of goods, works, plants, consulting services or non-consulting services.

By signing the Statement of Integrity the suppliers, contractors, subcontractors, consultants or sub consultants declare that (i) “it did not engage in any practice likely to influence the contract award process to the Contracting Authority’s detriment, and that it did not and will not get involved in any anti-competitive practice”, and that (ii) “the procurement process and the performance of the contract did not and shall not give rise to any act of corruption or fraud”.

Moreover, the WB requires including in the Procurement Documents and WB-financed contracts a provision requiring that suppliers, contractors, subcontractors, consultants or sub-consultants will permit the WB to inspect their accounts and records relating to the procurement process and performance of the WB-financed contract, and to have them audited by auditors appointed by the WB.

The WB reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

- (a) Reject a proposal for a contract award if it is established that during the selection process the bidder or consultant that is recommended for the award has been convicted of corruption, directly or by means of an agent, or has engaged in fraud or anti-competitive practices in view of being awarded the Contract;
- (b) Declare mis-procurement when it is established that, at any time, the Contracting Authority, the suppliers, contractors, subcontractors, consultants or sub consultants their representatives have engaged in acts of corruption, fraud or anti-competitive practices during the procurement process or performance of the contract without the Contracting Authority having taken appropriate action in due time satisfactory to the WB to remedy the situation, including by failing to inform the WB at the time they knew of such practices.

The WB defines, for the purposes of this provision, the terms set forth below as follows:

(a) Corruption of a Public Officer means:

- (i) The act of promising, offering or giving to a Public Officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such Public Officer to act or refrain from acting in his official capacity; or
- (ii) The act by which a Public Officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such Public Officer to act or refrain from acting in his official capacity.

(b) A Public Officer shall be construed as meaning:

- (i) Any person who holds a legislative, executive, administrative or judicial mandate (within the country of the Contracting Authority) regardless of whether that person was nominated or elected, regardless of the permanent or temporary, paid or unpaid nature of the position and regardless of the hierarchical level the person occupies;

- (ii) Any other person who performs a public function, including for a State institution or a State-owned company, or who provides a public service;
 - (iii) Any other person defined as a Public Officer by the national laws of the country of the Contracting Authority.
- (c) Corruption of a private person means:
- (i) The act of promising, offering or giving to any person other than a Public Officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations; or
 - (ii) The act by which any person other than a Public Officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations;
- (d) Fraud means any dishonest conduct (act or omission), whether or not it constitutes a criminal offence, deliberately intended to deceive others, to intentionally conceal items, to violate or vitiate consent, to circumvent legal or regulatory requirements and/or to violate internal rules in order to obtain illegitimate profit.
- (e) Anti-competitive practices mean:
- (i) Any concerted or implied practices which have as their object or effect the prevention, restriction or distortion of competition within a marketplace, especially where they (i) limit access to the marketplace or free exercise of competition by other undertakings, (ii) prevent free, competition-driven price determination by artificially causing price increases or decreases, (iii) restrict or control production, markets, investments or technical progress; or (iv) divide up market shares or sources of supply;
 - (ii) Any abuse by one undertaking or a group of undertakings which hold a dominant position on an internal market or on a substantial part of it;
 - (iii) Any practice whereby prices are quoted or set unreasonably low, the object of which is to eliminate an undertaking or any of its products from a market or to prevent it from entering the market.

2. Social and Environmental Responsibility

In order to promote sustainable development, the WB seeks to ensure that internationally recognized environmental and social standards are complied with. Candidates for WB-financed contracts shall consequently undertake in the Statement of Integrity to:

- (a) Comply with and ensure that all their subcontractors or sub consultants comply with international environmental and labour standards, consistent with applicable law and regulations in the country of implementation of the contract, including the fundamental conventions of the International Labour Organization (ILO) and international environmental treaties;
- (b) Implement environmental and social risks mitigation measures when specified in the environmental and social management plan (ESMP) provided by the Contracting Authority.

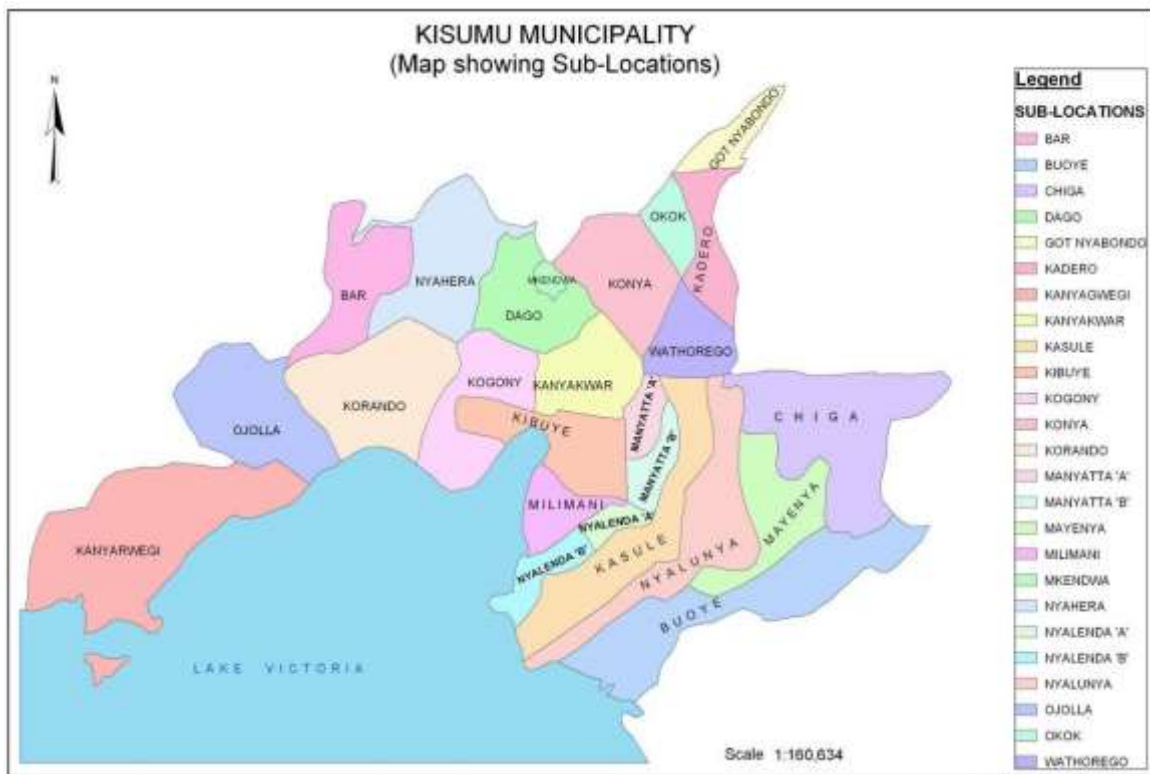
Section VII. Terms of Reference

1. Introduction

1.1 Kisumu City Profile

Kisumu is the third largest town in Kenya, with an estimated population of 565,052 in the Kisumu District for 2008, and approximately 406,000 in the Kisumu Municipality. Located in the West of Kenya, Kisumu is bordered by Lake Victoria to the southwest, and the sugar belt and Kano irrigation scheme to the east.

Map 1: Map of Kisumu City



Source: Town Planning Department, Municipal Council of Kisumu

Expansion of the town has been rapid and unplanned. In the last two and a half decades, Kisumu's municipal boundary has expanded from 50 km² in 1971 to over 400 km². The current population growth rate is 2.6% per annum with a density of approximately 975 persons per km². Approximately 60% of the Kisumu population lives in informal settlements and as the population continue to expand a significant number of people is observed to move from the surrounding districts into Kisumu City to work or business on daily basis.

Approximately 73% of the total population is aged below 30 years old, and a total of 42% of the population is younger than 15. The high proportion of young people in the town creates a significant amount of pressure on the available educational, health and other related facilities. Kisumu benefits from a strategic geographical position at the crossroads

of three countries: Kenya, Uganda and Tanzania. The city is the hub of communication networks (railway lines, commercial roads, air transportation) that serve most of Western Kenya. This fact has facilitated its dominance as the administrative, industrial, and commercial capital of this region.

The city experiences a high unemployment rate of about 30%, and the bulk of the population, particularly in the informal and slum settlements, works in the informal sector: 52% of the working population is engaged in informal activities. Low income and job insecurity are the biggest challenges that the poor of Kisumu face.

Table 1: Kisumu City Social and Economic Snapshot (2009)

City area	Covers an area of approximately 417 km ² , of which 297 km ² is dry land and approximately 120 km ² is under water. The city is the headquarters of Kisumu County.
City population	Approximately 406,000 compared to country population of approximately 37.5 million (2007, World Development Indicators database).
City population density	Approximately 975 per km ² .
City growth rate	Estimated at 2.6% per annum
Employment⁴	High levels of skilled and unskilled unemployment. Unemployment rate is 30% 52% of the working population engaged in informal activities with a monthly wage in the range of KShs. 3,000 to KShs. 4,000.
Poverty	48% of the urban population lives within the absolute poverty bracket. (2004 figures from UN-Habitat)
Food	53.4% of the population below the food poverty line in comparison to Nairobi (8.4%), Mombasa (38.6%) and Nakuru (30%). (2004 figures from UN-Habitat)
Education	The adult literacy rate is 48% ⁵ , with 24.6% of urban poor having attained secondary school education. Low enrolment rate and high gender parity between boys and girls. Within Kenya, the city is known as “the brains of Kenya”.
Water	40% sewerage coverage. Over half (52%) of the population uses water from piped connections, either through individual household connections, yard tap or residential resale, while 26% rely on water vendors.
Waste management	20% of residential waste is collected and disposed of by the City Council of Kisumu (CCK) and private waste collectors ⁶
Housing	The city lacks adequate shelter, with approximately 60 percent of the urban population who reside in the peri-urban and informal settlements lacking basic services. Approximately 75 percent of peri-

⁴ Source: “Kisumu Urban Sector Profile”, UN-HABITAT, 2006

⁵ Source: Kenya National Adult Literacy Survey, 2005

⁶ Source: KISWAMP Baseline Survey, Oct. 2008

Health	<p>urban inhabitants live in temporary and semi-permanent structures.</p> <p>The key health challenges that Kisumu faces include high HIV/AIDS infection rates and malaria, and waterborne diseases contributing to a high child mortality rate.</p> <p>The prevalence rate of HIV/AIDS in Nyanza Province is of 15 percent, which is double the national average. According to the 2001 results of sentinel surveillance by the Ministry of Health, 35% of pregnant women tested positive for HIV in Kisumu.</p>
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Source: MCK Strategic Plan, Kisumu Water Supply and Sanitation Project Long Term Action Plan, and MCI Report on Kisumu

Lack of proper planning has led to severe infrastructure backlog in the town, and the population lacks access to basic services like water, electricity, healthcare etc. In addition to that, the Municipality is in a critical financial situation because of inadequate governance, financial policies and strategies. Because of the weakness of its financial resources the Council cannot deliver the necessary services to its population. The key challenges that Kisumu faces today are urban sprawl and slum expansion, a high level of unemployment and inadequate service delivery.

1.2 Programme Background:

The Kenya Urban Support Programme (KUSP) is a USD300 million project whose objective is to establish and strengthen urban institutions to deliver improved infrastructure and services in participating counties in Kenya. The Operation will provide direct support to all counties other than the city counties of Nairobi and Mombasa, and to 59 potentially eligible urban areas within those counties.

The proposed Operation will finance key parts of the KenUP (Kenya Urban Programme) (across its six thematic areas, including urban institutions, governance, management, finance, planning, and infrastructure and service delivery).

1.3 Programme objectives

The aim of the KUSP is to achieve the following objectives;

- Support for the establishment, operationalization and strengthening of the institutional framework for urban management as part of the national level interventions (Window 1);
- Strengthening management and administration of urban finances (including conditional grants) in Window 1;
- Provision of support for planning, urban infrastructure, and service delivery in Window 1;
- Assist County Governments Address Urban Development and Management Issues as part of the county level interventions (Window 2);
- Ensure Urban institutions are established and operational (UIG minimum conditions are achieved) in Window 2; and
- Ensure urban institutions are performing effectively in delivering urban infrastructure and services (UDG performance standards are achieved) in Window 3.

The Operation will be implemented through institutional arrangements at the national, county and urban board levels. The primary responsibility for the implementation of window 1 will lie with the Urban Development Department (UDD) in the State Department of Housing and Urban Development (SDHUD) of the Ministry of

Transport, Infrastructure, Housing and Development (MTIHUD). Window 2 and 3 will be implemented through the County and Urban Board levels respectively.

1.4 Project Financing

The total KenUP budget is estimated at US\$1 billion. Of this, KUSP will provide US\$300 million dollars or 30% of the total KenUP funding budget. The Operation will be implemented over a period of six years.

2. Role of Consultancy Services

The City of Kisumu (CoK) intends to use part of the proceeds under the KUSP budget to engage a consultant under these Terms of Reference to undertake Environment and Social Impact Assessment (ESIA) studies for specific public infrastructure projects broadly outlined under the areas listed below;

- i. Construction of Nyamasaria satellite bus park within Kisumu City
- ii. Construction of Non-Motorized Transport Facility Phase 2 including civil works at the Uhuru Business Park
- iii. Improvement of Jomo Kenyatta Sports ground and other open spaces within the City

The overall time-frame for the completion of the assignment will be estimated based on specific project requirements.

3. The Assignment Background

Many development agencies have now made it mandatory that all projects be screen for environmental and social safeguards. This process focuses on predicting, evaluating, and managing negative impacts associated with large-scale infrastructure development investment projects. The proposed investment projects are funded by the World Bank, under the KUSP, and therefore must undergo ESIA .

A consultant is therefore expected to undertake ESIA and consequently prepare a report that will incorporate all existing environmental and social issues that may arise during construction and post construction, taking into consideration all safeguard policies.

3.1 ESIA Studies justification

Potential impacts to the environment and social aspects would be anticipated from the proposed project sites of the projects, both during construction and post construction (viz. air quality, land degradation, public health, safety linkages, etc.).

For the above reason, the target projects sites must undergo a process of an intensive environment and social impact assessment (ESIA) study as per the provisions under the Environment Management and Coordination Act (EMCA), 1999. An important part of the ESIA will be a comprehensive consultation and involvement of all stakeholders and members public to explain details of the projects concepts and designs as well as obtaining their concerns, suggestions and opinion to ensure full acceptability of the proposals.

Appropriate mitigation measures, including the wishes of the stakeholders and affected persons will be established on all identified impacts for integration into the construction and operations.

4. Objective and Scope of the Assignment

4.1 Objective of the Assignment

The Objectives of the assignment are:-

1. To undertake an Environmental and Social Impact Assessment (ESIA) documenting the present condition of the environment and social and identifying the positive and negative impacts that may result from the design and construction of the proposed project investments at the selected sites. In so doing, to address the necessary environmental and social mitigation and monitoring measures in an Environmental and Social Management Plan (ESMP).
2. Undertake social assessments, social interactions and consultative meetings to obtain the views and opinions of the stakeholders on the above

4.2 Scope of Services

Task 1: Detailed Desk-top Review: The Consultant is to review all existing documentation. He shall further undertake a detailed study of the proposed sites for the projects, mapping the linkages to existing and proposed complementary facilities. The Consultant shall then concisely describe each facility assessed, its geographic, ecological, general layout of facilities including maps at appropriate scale where necessary. Information on size, capacity, facilities and services should also be provided.

Task 2: Description of the environment: collect, collate, evaluate, and present baseline data of the relevant environmental characteristics of the project areas, Include any information on changes anticipated before the project commences.

Task 3: Description of the baseline environment: The Consultant is required to collect, collate and present baseline information on the environmental characteristics of the existing situation around each facility. This description should involve but not limited to:

- a) *Physical environment* (topography, land cover, geology, climate and meteorology, air quality, hydrology etc.,
- b) *Biological environment* (i.e., flora and fauna types and diversity, endangered species, sensitive habitats etc.)
- c) *Social and cultural environment*, including present and projected, where appropriate (i.e., population, land use, planned development activities, community social structure, employment and labour market, sources and distribution of income, cultural/religious sites and properties, vulnerable groups and indigenous populations etc)

- d) *Economic activities*, agriculture, livestock, fisheries, small scale industries etc

Task 4: Legislative and Regulatory Framework: The Consultant shall identify and describe the pertinent regulations and standards- both local and international, governing the environmental quality, health and safety, protection of sensitive areas, land use control at the national and local levels and ecological and socio-economic issues. Thereafter, the Consultant shall identify the project activities that should comply with the identified regulations.

Task 5: Determination of impacts of project facilities and activities: From the detailed field study, the Consultant shall analyse and describe all significant changes brought about by each facility/activity. These would encompass environmental, ecological and social impacts, both positive and negative, as a result of each facility/activity intervention that are likely to bring about changes in the baseline environmental and social conditions discussed in Task 2. The Consultant will make a prioritization of all concerns identified and differentiate between short, medium, long-term and cumulative impacts during construction, operation and decommissioning. The Consultant shall also identify both temporary and permanent impacts. A detailed outline and discussion of specific conditions that might affect the environment which are unique to the type of facility and/or operation being audited should be provided.

Task 6: Occupational health and safety concerns: The Consultant shall analyse and describe all occupational health and safety concerns brought about by activities during all the phases of the project. The Consultant shall make recommendations on corrective and remedial measures to be implemented under the environmental management plan.

Task 7: Development of management plan to mitigate negative impacts: The Consultant shall develop a comprehensive environmental management plan. The plan should recommend a set of mitigation, monitoring and institutional measures to eliminate, minimise or reduce to acceptable levels of adverse environmental impacts and/or maximise socio-economic benefits. The Consultant should provide cost outlays for the proposed mitigation measures as well as their institutional and financial support, time frame and responsibility. This shall be provided for all the project phases.

Task 8: Development of monitoring plan: The Consultant is required to give a specific description, and technical details, of monitoring measures for ESMP, including the parameters to be measured, methods to be used, sampling locations, frequency of measurements, definition of thresholds that will signal the need for corrective actions as well as deliver a monitoring and reporting procedure. The Consultant should provide a time frame and implementation mechanism, staffing requirements, training and cost outlays.

Task 9: Comparison: Systematically compare feasible alternatives to the proposed project site, technology, design, and operations including the no-project situation in terms of their potential environmental impacts; the feasibility of mitigating these impacts; their capital and recurrent costs; their suitability under local conditions and their institutional, training, and monitoring requirements. For each of the alternatives, quantify the environmental impacts to the extent possible, and attaches economic values where

feasible. State the basis for selecting the particular project design proposed and justifies recommended emission levels and approaches to pollution prevention and abatement.

Task 10: Study Reports: The output will be an Environmental and Social Impact Assessment report prepared in accordance with the regulatory provisions. The report shall be in the English Language and has to be clear and concise. The reports should be in a format acceptable to local competent authorities, international environmental standards and development partners. The Consultant shall present the reports to relevant environmental authorities for approval in the required number of copies.

Task 11: Approval: The Consultant shall present the report prepared under Task 8 for approval by the relevant authorities. The Consultant shall be responsible for making any modifications that the authorities may demand before approval of the report.

Task 12: Counterpart Staff: For the purpose of capacity building the Consultant shall undertake the study together with counterpart staff seconded by the Client.

4.3 The ESIA Report Outline

Executive Summary

Concisely discuss significant findings and recommended actions.

Policy, Legal and Administrative Framework

Discuss the policy, legal, and administrative framework within which the study is carried out. Explain the environmental requirements of any co-financiers. Identify relevant international environmental agreements to which the country is a party.

Project Description

Concisely describe the proposed project and its geographic, ecological, social, and temporal context, including any offsite investments that may be required (e.g. dedicated amenities including access roads, water supply, housing, sanitation, power supply and drainage). Indicate the need for any resettlement plan. Include a map showing the project site and the project's area of influence.

Baseline Data

Assess the dimension of the study area and describes relevant physical, biological, and socioeconomic conditions, including any changes anticipated before the project commences. Also take into account current and proposed development activities within the project area but not directly connected to the project. Data should be relevant to decisions about project location, design, operation, or mitigation measures.

Environmental Impacts

Predict and assess the project's likely positive and negative impacts, in quantitative terms to the extent possible. Identify mitigation measures and any residual negative impacts that cannot be mitigated. Explore opportunities for environmental enhancement. Identify and estimates the extent and quality of available data, key data gaps, and uncertainties associated with predictions, and specifies topics that do not require further attention.

Analysis of Alternatives

Systematically compare feasible alternatives to the proposed project site, technology, design, and operations including the no-project situation in terms of their potential environmental impacts; the feasibility of mitigating these impacts; their capital and recurrent costs; their suitability under local conditions and their institutional, training, and monitoring requirements. For each of the alternatives, quantify the environmental impacts to the extent possible, and attaches economic values where feasible. State the basis for selecting the particular project design proposed and justifies recommended emission levels and approaches to pollution prevention and abatement.

Stakeholders and Public Consultations

This is a dedicated chapter to present the level of engagement, the outcome and summary of the emerging issues. The chapter should be backed with detailed proceedings of the consultation forums together with full list of the persons consulted.

Resettlement Action Plan

While the main RAP report will be utilized for land acquisition, a dedicated chapter will be prepared to provide a summary of the resettlement issues for completeness of the social linkages in the ESIA Report.

Environmental and Social Management Plan (ESMP)

Provide mitigation measures, implementation schedule, monitoring, institutional strengthening, and cost estimates. The consultant will also provide assistance in submission of ESIA Reports to NEMA and subsequent discussions with NEMA and other agencies as required to obtain EIA License. On the basis of the findings through documentary surveys, field assessments, consultations and guidelines from the environmental regulations, a comprehensive environmental and social management plan will be established through this study. The focus of the ESMP will include the following;

1. Description of adverse effects to the environment and social aspects within the sub-project areas,
2. Description of mitigation measures for each of the impacts identified. Each measure will be described with reference to the effect(s) it is intended to deal with,
3. Description of monitoring program to provide information on the occurrence of environmental effects
4. Responsibilities including the people, groups, or organizations that will carry out the mitigation and monitoring activities are defined, as well as to whom they report and are responsible,
5. Implementation schedule addressing the timing, frequency and duration of mitigation measures and monitoring are specified in an implementation schedule, and linked to the overall subproject schedule,
6. Cost estimates and sources of funds will be specified for the initial subproject investment and for the mitigation and monitoring activities is implemented.

5. Anticipated Deliverables and Timelines

1. An acceptable inception report (with a review of the methodology and the terms of reference among others) – within 3 weeks of the commencement date;
2. Draft ESIA Project Report for review (with preliminary stakeholder consultations, environmental quality and environment and social management plan) – 1.5 months upon commencement date;
3. Final ESIA Project Report for submission to NEMA – 2 months upon commencement date and NEMA Licences;
4. Resettlement/relocation Action Plan (RAP) report where applicable.

6. Key Professional Staff

Interested Consulting Firms should present a professional discipline mix comprising of the following cadres:

1. Environmentalist (Team Leader) with a minimum of Master's Degree in Environmental Studies/Environmental Engineering and must have at least 10 years' experience in solid waste management specifically or environment and social impact assessment studies, preferably in urban based projects. He should also be registered with NEMA as a Lead Expert with a valid practicing license and have experience of conducting environmental and social impact assessments
2. Sanitary Engineer with at least a Master's Degree from a recognized University and a minimum of 10 years' experience with a notable exposure to solid waste management works within urban settings
3. Sociologist with at least a Bachelors University Degree in Social Studies and a minimum of 5 years' experience on social development and strong exposure to urban communities and social services
4. Health and Safety Expert with a minimum of Bachelor's Degree in Safety studies or other relevant disciplines and at least 5 years of experience in occupational and environmental health assessments preferably in an urban setting. Registration with relevant authorities is a must
5. Hydro-geologist holding a minimum of a Bachelor's Degree from a recognized University and at least 10 years' experience in surface and ground water assessment. Exposure to the regional water resources characteristics will be an added advantage
6. Ecologist/Biologist with at least a Bachelor's degree and a minimum of 5 years' experience. Exposure to the local ecological conditions will be an additional advantage
7. Qualified Physical Planner with at least 5 years' experience in urban planning and should hold a minimum of a Bachelor's degree in Land Economics or Planning. Experience in RAP Studies

7. Duration of Assignment

The ESIA process is expected to take 90 calendar days, including documentary reviews, field evaluation, report preparation, public consultations, feedback from the client and final submissions. The Consultant will also be expected to facilitate the submission of the ESIA Reports report to NEMA for review and approval.

8. The Support/Inputs Provided By the Client

1. KUSP/CoK will make available the detailed respective project designs and other associated environmental studies available on the projects;
2. KUSP/CoK will also provide physical layout plans of the respective project sites showing location of key operation features and significant components;
3. KUSP/CoK will also provide background information and data including description of available infrastructure,
4. Documented corporate policy documents and environmental guidelines governing the operations.
5. KUSP/CoK will support in convening the Public Consultation forums (the Consultant will, however, meet the associated costs)
6. The City of Kisumu, assisted by the KUSP Technical Secretariat will be responsible for managing and supervising project implementation.
7. CoK shall appoint a Project Manager in charge of liaising with all stakeholders on project related matters. The Project Manager shall provide preliminary data as available in the CoK. Further the Project Manager will liaise with the relevant government departments and agencies for collection of relevant data pertaining to the socio economic status, regulation/acts etc. The Project Manager will also be responsible for checking the reports and submitting them to the Client for approval together with his/her comments, if any

9. Place of performance of the assignment and timing

The services will be carried out in Kisumu City. The locations details are presented below.

Project		Site Location
1. Construction of Nyamasaria satellite bus park within Kisumu City	Administrative Location	Nairobi Road Central Kolwa Ward, Kisumu Central Sub-County
	Distance from Kisumu town	
	Land use	Commercial

Project		Site Location
2. Construction of Non-Motorized Transport Facility Phase 2	Administrative Location	(NMT) Kisumu CBD Market/Milimani Ward, Railways Ward, Kaloleni Shaurimoyo ward Kisumu Central Sub-County
3. Improvement of Jomo Kenyatta Sports ground, other open spaces,	Administrative Location	Kisumu CBD Market/Milimani Ward Kisumu Central Sub-County
	Land use	Recreational
4. Kaloleni Community Centre and Dunga Waterfront within the City	Administrative Location	Nyalenda B ward, Kaloleni ShauriMoyo Ward
	Land use	Recreational

PART II – CONDITIONS OF CONTRACT AND CONTRACT FORMS

Section VIII. Conditions of Contract and Contract Forms

CONTRACT FOR CONSULTANT'S SERVICES

Project Name _____

Contract No. _____

between

[Name of the Client]

and

[Name of the Consultant]

Dated: _____

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I. FORM OF CONTRACT

[Text in brackets [] is for guidance purpose and should be deleted in the final text]

This CONTRACT (hereinafter called the “Contract”) is made the *[number]* day of the month of *[month]*, *[year]*, between, on the one hand, *[name of Client]* (hereinafter called the “Client”) and, on the other hand, *[name of Consultant]* (hereinafter called the “Consultant”).

[If the Consultant consist of more than one entity, the above should be partially amended to read as follows: “...(hereinafter called the “Client”) and, on the other hand, a Joint Venture (name of the JV) consisting of the following entities, each member of which will be jointly and severally liable to the Client for all the Consultant’s obligations under this Contract, namely, [name of member] and [name of member] (hereinafter called the “Consultant”).]

WHEREAS

- (a) The Client has requested the Consultant to provide certain consulting services as defined in this Contract (hereinafter called the “Services”);
- (b) The Consultant, having represented to the Client that it has the required professional skills, expertise and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;
- (c) The Client has received *[or has applied for]* funds from the World Bank (the “WB”) toward the cost of the Services and intends to apply a portion of these funds to eligible payments under this Contract, it being understood that (i) payments by the WB will be made only at the request of the Client and upon approval by the WB; (ii) such payments will be subject, in all respects, to the terms and conditions of the agreement between the Client and the WB providing for the funds, and (iii) no party other than the Client shall derive any rights from the agreement or have any claim to the funds proceeds;

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(including Attachment 1 “GoK Policy – Corrupt and Fraudulent Practices – Social and Environmental Responsibility);
 - (b) The Special Conditions of Contract;
 - (c) Appendices:
 - Appendix A: Terms of Reference;
 - Appendix B: Consultant’s Technical Proposal (including methodology and Experts, and the signed Statement of Integrity);
 - Appendix C: Breakdown of the Contract Price(s);
 - Appendix D: Form of Advance Payment Guarantee.

In the event of any inconsistency between the documents, the following priority order shall prevail: the Special Conditions of Contract; the General Conditions of Contract, including Attachment 1; Appendix A; Appendix B; Appendix C and Appendix D. Any reference to this Contract shall include, where the context permits, a reference to its Appendices.

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]*

[Authorized Representative of the Client – name, title and signature]

For and on behalf of *[Name of Consultant or Name of a Joint Venture]*

[Authorized Representative of the Consultant – name and signature]

[Note: For a joint venture, either all members shall sign or only the lead member, in which case the power of attorney to sign on behalf of all members shall be attached.]

For and on behalf of each of the members of the Consultant *[insert the name of the Joint Venture]*

[Name of the lead member]

[Authorized Representative on behalf of a Joint Venture]

[add signature blocks for each member if all are signing]

II. GENERAL CONDITIONS OF CONTRACT

A. GENERAL PROVISIONS

1. Definitions

- 1.1. Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:
- (a) “**Applicable law**” means the laws and any other instruments having the force of law in the Client’s country, or in such other country as may be specified in the **Special Conditions of Contract (SCC)**, as they may be issued and in force from time to time.
 - (b) “**WB**” means the World Bank (WB).
 - (c) “**Client**” means the implementing agency that signs the Contract for the Services with the selected Consultant.
 - (d) “**Consultant**” means a legally-established professional consulting firm or entity selected by the Client to provide the Services under the signed Contract.
 - (e) “**Contract**” means the legally binding written agreement signed between the Client and the Consultant and which includes all the attached documents listed in its paragraph 1 of the Form of Contract (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices).
 - (f) “**Day**” means a calendar day unless indicated otherwise.
 - (g) “**Effective Date**” means the date on which this Contract comes into force and effect pursuant to Clause GCC 11.
 - (h) “**Experts**” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or JV member(s) assigned by the Consultant to perform the Services or any part thereof under the Contract.
 - (i) “**Foreign Currency**” means any currency other than the currency of the Client’s country.
 - (j) “**GCC**” means these General Conditions of Contract.
 - (k) “**Government**” means the government of the Client’s country.
 - (l) “**Joint Venture (JV)**” means an association with or without a legal personality distinct from that of its members, of more than one entity where one member has the authority to conduct all businesses for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Client for the performance of the Contract.
 - (m) “**Key Expert(s)**” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose Curricula Vitae (CV) was taken into account in the technical evaluation of the

Consultant's proposal.

- (n) “**Local Currency**” means the currency of the Client’s country.
- (o) “**Non-Key Expert(s)**” means an individual professional provided by the Consultant or its Sub-consultant to perform the Services or any part thereof under the Contract.
- (p) “**Party**” means the Client or the Consultant, as the case may be, and “**Parties**” means both of them.
- (q) “**SCC**” means the Special Conditions of Contract by which the GCC may be amended or supplemented but not over-written.
- (r) “**Services**” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.
- (s) “**Sub-consultants**” means an entity to whom/which the Consultant subcontracts any part of the Services while remaining solely liable for the execution of the Contract.

2. Relationship between the Parties

2.1. Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Client and the Consultant. The Consultant, subject to this Contract, has the complete charge of the Experts and Sub-consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

3. Law Governing Contract

3.1. This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable law.

4. Language

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

5. Headings

5.1. The headings shall not limit, alter or affect the meaning of this Contract.

6. Communications

6.1. Any communication required or permitted to be given or made pursuant to this Contract shall be made in writing in the language specified in Clause GCC 4. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the **SCC**.

6.2. A Party may change its address for notice hereunder by giving the other Party any communication of such change to the address specified in the **SCC**.

7. Location

7.1. The Services shall be performed at such locations as are specified in **Appendix A** hereto and, where the location of a particular task is not so specified, at such locations, whether in the Government’s country or elsewhere, as the Client may approve.

8. Authority of

8.1. In case the Consultant is a Joint Venture, the members hereby authorize the lead member specified in the **SCC** to act on their behalf in

- Member in Charge** exercising all the Consultant’s rights and obligations towards the Client under this Contract, including without limitation the receiving of instructions and payments from the Client.
- 9. Authorized Representatives** 9.1. 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 **SCC**.
- 10. Corrupt and Fraudulent Practices, and Social and Environmental Responsibility** 10.1. The WB requires compliance with the policy in regard to corrupt and fraudulent practices, social and environmental responsibility as set forth in **Attachment 1** to the GCC.

B. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

- 11. Effectiveness of Contract** 11.1. This Contract shall come into force and effect on the date (the “Effective Date”) of the Client’s notice to the Consultant instructing the Consultant to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, listed in the **SCC** have been met.
- 12. Termination of Contract for Failure to Become Effective** 12.1. If this Contract has not become effective within such time period after the date of Contract signature as specified in the **SCC**, either Party may, by not less than twenty two (22) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.
- 13. Commencement of Services** 13.1. The Consultant shall confirm availability of Key Experts and begin carrying out the Services not later than the number of days after the Effective Date specified in the **SCC**.
- 14. Expiration of Contract** 14.1. Unless terminated earlier pursuant to Clause GCC 19 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the **SCC**.
- 15. Entire Agreement** 15.1. This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.
- 16. Modifications or Variations** 16.1. Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.
- 16.2. In cases of substantial modifications or variations, the prior written consent of the WB is required.
- 17. Force Majeure**
- a. Definition** 17.1. For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party, is not foreseeable, is

unavoidable, and makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances, and subject to those requirements. It includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action confiscation or any other action by Government agencies.

17.2. Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Experts, Sub-consultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder.

17.3. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

b. Non Breach of Contract

17.4. The failure of a Party to fulfill any of its obligations hereunder 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 has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

c. Measures to be Taken

17.5. A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

17.6. A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) calendar days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

17.7. 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.

17.8. During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Client, shall either:

- (a) Cease its activities and demobilize, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Client, the costs related to the reactivation of the Services; or
- (b) Continue with the Services to the extent reasonably possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs

reasonably and necessarily incurred.

17.9. In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clauses GCC 48 and 49.

18. Suspension

18.1. The Client may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) days after receipt by the Consultant of such notice of suspension.

19. Termination

19.1 This Contract may be terminated by either Party as per provisions set up below:

a. By the Client

19.1.1 The Client may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause. In such an occurrence the Client shall give at least thirty (30) days' written notice of termination to the Consultant in case of the events referred to in (a) through (d); at least sixty (60) days' written notice in case of the event referred to in (e); and at least five (5) days' written notice in case of the event referred to in (f):

- (a) If the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause GCC 18;
- (b) If the Consultant becomes (or, if the Consultant consists of a Joint Venture, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;
- (c) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to [Sub-clause](#) GCC 49.1;
- (d) If, as the 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;
- (e) If the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract;
- (f) If the Consultant fails to confirm availability of Key Experts.

19.1.2 Furthermore, if the Client determines that the Consultant has engaged in corrupt or fraudulent practices, in competing for or in executing the Contract, then the Client is entitled, after giving fourteen (14) days written notice to the Consultant, to terminate the Consultant's employment under the Contract.

b. By the Consultant

19.1.3 The Consultant may terminate this Contract, by not less than thirty (30) days' written notice to the Client, in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this

Sub-clause.

- (a) If the Client fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to [Sub-clause](#) GCC 49.1 within forty-five (45) days after receiving written notice from the Consultant that such payment is overdue;
- (b) If, as the 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;
- (c) If the Client fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC 49.1;
- (d) If the Client is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the Client of the Consultant's notice specifying such breach.

c. Cessation of Rights and Obligations

19.1.4 Upon termination of this Contract pursuant to Clauses GCC 12 or GCC 19 hereof, or upon expiration of this Contract pursuant to Clause GCC 14, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GCC 22, (iii) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause GCC 25, and (iv) any right which a Party may have under the Applicable law.

d. Cessation of Services

19.1.5 Upon termination of this Contract by notice of either Party to the other pursuant to [Sub-clauses](#) GCC 19a or GCC 19b, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to the documents prepared by the Consultant and equipment and materials furnished by the Client, the Consultant shall proceed as provided, respectively, by Clauses GCC 27 or GCC 28.

e. Payment upon Termination

19.1.6 Upon termination of this Contract, the Client shall make the following payments to the Consultant:

- (a) Remuneration for Services satisfactorily performed prior to the effective date of termination, other expenses incurred and, for unit prices (time-based), reimbursable expenditures for expenditures actually incurred prior to the effective date of termination; and pursuant to Clause 42;
- (b) In the case of termination pursuant to paragraphs (d) and (e) of [Sub-clause](#) GCC 19.1.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Experts.

C. OBLIGATIONS OF THE CONSULTANT

20. General

- a. Standard of Performance** 20.1 The Consultant shall perform the Services and carry out the Services with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with third parties.
- 20.2 The Consultant shall employ and provide such qualified and experienced Experts and Sub-consultants as are required to carry out the Services.
- 20.3 The Consultant may subcontract part of the Services to an extent and with such Key Experts and Sub-consultants as may be approved in advance by the Client. Notwithstanding such approval, the Consultant shall retain full responsibility for the Services. The Consultant shall not subcontract the whole of the Services.
- b. Law Applicable to Services** 20.4 The Consultant shall perform the Services in accordance with the Contract and the Applicable law and shall take all practicable steps to ensure that any of its Experts and Sub-consultants, comply with the Applicable law.
- 20.5 Throughout the execution of the Contract, the Consultant shall comply with the import of goods and services prohibitions in the Client's country when as a matter of law or official regulations, the Client's country prohibits commercial relations with that country.
- 20.6 The Client shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

21. Conflict of Interests

- 21.1 The Consultant shall hold the Client's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.
- a. Consultant Not to Benefit from Commissions, Discounts, etc.** 21.1.1 The payment of the Consultant pursuant to GCC F (Clauses GCC 41 through 46) shall constitute the Consultant's only payment in connection with this Contract and, subject to [Sub-clause](#) GCC 21.1.3, the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-consultants, as well as Experts and agents of either of them, similarly shall not receive any such additional payment.
- 21.1.2 Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the Client on the procurement of goods, works, plants, consulting services or non-consulting services, the Consultant shall comply with the Client's applicable regulations, 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 responsibility shall be for the account of the Client.

b. Consultant and Affiliates Not to Engage in Certain Activities

21.1.3 The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-consultants and any entity affiliated with such Sub-consultants, shall be disqualified from providing goods, works, plants, consulting services or non-consulting services resulting from or directly related to the Consultant's Services for the preparation or implementation of the project, unless otherwise indicated in the SCC.

c. Prohibition of Conflicting Activities

21.1.4 The Consultant shall not engage, and shall cause its Experts as well as its Sub-consultants not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.

d. Strict Duty to Disclose Conflicting Activities

21.1.5 The Consultant has an obligation and shall ensure that its Experts and Sub-consultants shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Client, or that may reasonably be perceived as having this effect. Failure to disclose such situations may lead to the termination of its Contract.

22. Confidentiality

22.1 Except with the prior written approval of the Client, the Consultant and the Experts shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Experts make public the recommendations formulated in the course of, or as a result of, the Services.

23. Liability of the Consultant

23.1 Subject to additional provisions, if any, set forth in the SCC, the Consultant's liability under this Contract shall be as determined under the Applicable law.

24. Insurance to be Taken out by the Consultant

24.1 The Consultant (i) shall take out and maintain, and shall cause any Sub-consultants to take out and maintain, at its (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 specified in the SCC, and (ii) 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 therefore have been paid. The Consultant shall ensure that such insurance is in place prior to commencing the Services as stated in Clause GCC 13.

25. Accounting, Inspection and Auditing

25.1 The Consultant shall keep, and shall make all reasonable efforts to cause its Sub-consultants to keep, accurate and systematic accounts and records in respect of the Services in such form and detail as will clearly identify relevant time changes and costs.

25.2 The Consultant shall permit and shall cause its Sub-consultants to permit, the WB and/or persons appointed by the WB to inspect the Site and/or all accounts and records relating to the performance of the Contract and the submission of the Proposal to provide the Services, and to have such accounts and records audited by auditors appointed by the WB if

requested by the WB. The Consultant's attention is drawn to Clause GCC 10 which provides, inter alia, that acts intended to materially impede the exercise of the WB's inspection and audit rights provided for under this [Sub-clause](#) GCC 25.2 constitute a prohibited practice subject to contract termination.

26. Reporting Obligations

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

27. Proprietary Rights of the Client in Reports and Records

27.1 Unless otherwise indicated in the **SCC**, all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material compiled or prepared by the Consultant for the Client in the course of the Services shall be confidential and become and remain the absolute property of the Client. The Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Client, together with a detailed inventory thereof. The Consultant may retain a copy of such documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Client.

27.2 If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of the plans, drawings, specifications, designs, databases, other documents and software, the Consultant shall obtain the Client's prior written approval to such agreements, and the Client shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned. Other restrictions about the future use of these documents and software, if any, shall be specified in the **SCC**.

28. Equipment, Vehicles and Materials

28.1 Equipment, vehicles and materials made available to the Consultant by the Client, or purchased by the Consultant wholly or partly with funds provided by the Client, shall be the property of the Client and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the Client an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and materials in accordance with the Client's instructions. While in possession of such equipment, vehicles and materials, the Consultant, unless otherwise instructed by the Client in writing, shall insure them at the expense of the Client in an amount equal to their full replacement value.

28.2 Any equipment or materials brought by the Consultant or its Experts into the Client's country for the use either for the project or personal use shall remain the property of the Consultant or the Experts concerned, as applicable.

D. CONSULTANT'S EXPERTS AND SUB-CONSULTANTS

29. Description of Key Experts

29.1 The title, agreed job description, minimum qualification and time-input estimates to carry out the Services of each of the Consultant's Key Experts are described in **Appendix B**.

29.2 In case of unit prices (time-based) and if required to comply with the provisions of [Sub-clause](#) GCC 20a, adjustments with respect to the estimated time-input of Key Experts set forth in **Appendix B** may be made by the Consultant by a written notice to the Client, provided (i) that such

adjustments shall not alter the original time-input estimates for any individual by more than 10% or one week, whichever is larger; and (ii) that the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth in [Sub-clause](#) GCC 41.1.

29.3 In case of unit prices (time-based) and if additional work is required beyond the scope of the Services specified in **Appendix A**, the estimated time-input for the Key Experts may be increased by written agreement between the Client and the Consultant. In case where payments under this Contract exceed the ceilings set forth in [Sub-clause](#) GCC 41.1, the Parties shall sign a Contract amendment.

30. Replacement of Key Experts

30.1 Except as the Client may otherwise agree in writing, no changes shall be made in the Key Experts.

30.2 Notwithstanding the above, the substitution of Key Experts during Contract execution may be considered only based on the Consultant's written request and due to circumstances outside the reasonable control of the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall forthwith provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

31. Approval of Additional Key Experts

31.1 If during execution of the Contract, additional Key Experts are required to carry out the Services, the Consultant shall submit to the Client a copy of their Curricula Vitae (CVs) for review and approval. If the Client does not object in writing (stating the reasons for the objection) within twenty two (22) days from the date of receipt of such CVs, the additional Key Experts shall be deemed approved by the Client.

31.2 In case of unit price (time-based) contract, the rate of remuneration payable to such new additional Key Experts shall be based on the rates for other Key Experts position which require similar qualifications and experience.

32. Removal of Experts or Sub-consultants

32.1 If the Client finds that any of the Experts or Sub-consultant has committed serious misconduct or has been charged with having committed a criminal action, or if the Client determines that one of the Consultant's Experts or Sub-consultants have engaged in corrupt or fraudulent practice while performing the Services, the Consultant shall, at the Client's written request, provide a replacement.

32.2 In the event that any of the Key Experts, Non-Key Experts or Sub-consultants is found by the Client to be incompetent or incapable in discharging assigned duties, the Client, specifying the grounds therefore, may request the Consultant to provide a replacement.

32.3 Any replacement of the removed Experts or Sub-consultants shall possess better qualifications and experience and shall be acceptable to the Client.

33. Replacement/ Removal of Experts – Impact on Payments

33.1 In case of unit price (time-based) Contract, except as the Client may otherwise agree, (i) the Consultant shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (ii) the remuneration to be paid for any of the Experts provided as a replacement shall not exceed the remuneration which would have been

payable to the Experts replaced or removed.

33.2 In case of lump-sum Contract, the Consultant shall bear all costs arising out or incidental to any removal and/or replacement of such Experts.

34. Working Hours, Overtime, Leave, etc. (time-based contract only)

34.1 Working hours and holidays for Experts are set forth in **Appendix A**. To account for travel time to/from the Client's country, Experts carrying out Services inside the Client's country shall be deemed to have commenced or finished work in respect of the Services such number of days specified in Appendix A before their arrival in, or after their departure from, the Client's country.

34.2 The Experts shall neither be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in **Appendix A**, and the Consultant's remuneration shall be deemed to cover these items.

34.3 Any taking of leave by the Experts shall be subject to the prior approval of the Consultant who shall ensure that absence for leave purposes will not delay the progress and or impact an adequate supervision of the Services.

E. OBLIGATIONS OF THE CLIENT

35. Assistance and Exemptions

35.1 Unless otherwise specified in the **SCC**, the Client shall use its best efforts to:

- (a) Assist the Consultant with obtaining work permits and such other documents as shall be necessary to enable the Consultant to perform the Services;
- (b) Assist the Consultant with promptly obtaining, for the Experts and, if appropriate, their eligible dependents, all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in the Client's country while carrying out the Services under the Contract;
- (c) Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Experts and their eligible dependents;
- (d) Issue to officials, agents and representatives of the Government all such instructions and information as may be necessary or appropriate for the prompt and effective implementation of the Services;
- (e) Assist the Consultant and the Experts and any Sub-consultants employed by the Consultant for the Services with obtaining exemption from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a legal entity in the Client's country according to the Applicable Law in the Client's country;
- (f) Assist the Consultant, any Sub-consultants and the Experts of either of them with obtaining the privilege, pursuant to the Applicable law in the Client's country, of bringing into the Client's country reasonable amounts of foreign currency for the purposes of the

Services or for the personal use of the Experts and of withdrawing any such amounts as may be earned therein by the Experts in the execution of the Services;

- (g) Provide to the Consultant any such other assistance as may be specified in the **SCC**.

36. Access to Project Site

36.1 The Client warrants that the Consultant shall have, free of charge, unimpeded access to the project site in respect of which access is required for the performance of the Services. The Client will be responsible for any damage to the project site or any property thereon resulting from such access and will indemnify the Consultant and each of the experts in respect of liability for any such damage, unless such damage is caused by the willful default or negligence of the Consultant or any Sub-consultants or the Experts of either of them.

37. Change in the Applicable Law Related to Taxes and Duties

37.1 If, after the date of this Contract, there is any change in the Applicable Law in the Client's country with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and other expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in [Sub-clause GCC 41.1](#)

38. Services, Facilities and Property of the Client

38.1 The Client shall make available to the Consultant and the Experts, for the purposes of the Services and free of any charge, the services, facilities and property described in the Terms of Reference (**Appendix A**) at the times and in the manner specified in the above mentioned **Appendix A**.

38.2 In case that such services, facilities and property shall not be made available to the Consultant as and when specified in **Appendix A**, the Parties shall agree on (i) any time extension that it may be appropriate to grant to the Consultant for the performance of the Services, (ii) the manner in which the Consultant shall procure any such services, facilities and property from other sources, and (iii) the additional payments, if any, to be made to the Consultant as a result thereof pursuant to Clause GCC 41.

39. Counterpart Personnel

39.1 The Client shall make available to the Consultant free of charge such professional and support counterpart personnel, to be nominated by the Client with the Consultant's advice, if specified in **Appendix A**.

39.2 If counterpart personnel are not provided by the Client to the Consultant as and when specified in **Appendix A**, the Client and the Consultant shall agree on (i) how the affected part of the Services shall be carried out, and (ii) the additional payments, if any, to be made by the Client to the Consultant as a result thereof pursuant to Clause GCC 41.

39.3 Professional and support counterpart personnel, excluding Client's liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to perform adequately any work assigned to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Client shall not unreasonably refuse to act upon such request.

40. Payment Obligation 40.1 In consideration of the Services performed by the Consultant under this Contract, the Client shall make such payments to the Consultant and in such manner as provided by GCC F below.

F. PAYMENTS TO THE CONSULTANT

41. Ceiling (time-based) Contract (lump-sum) Amount or Price 41.1 In case of unit price (time-based) Contract, an estimate of the cost of the Services is set forth in **Appendix C** (Contract Price(s)). Payments under this Contract shall not exceed the ceilings in foreign currency and in local currency specified in the **SCC**. For any payments in excess of the ceilings, an amendment to the Contract shall be signed by the Parties referring to the provision of this Contract that evokes such amendment.

41.2 In case of a lump-sum Contract, the Contract price is fixed and is set forth in the **SCC**. The Contract price breakdown is provided in **Appendix C**. Any change to the Contract price can be made only if the Parties have agreed to the revised scope of Services pursuant to Clause GCC 16 and have amended in writing the Terms of Reference in **Appendix A**.

42. Remuneration and Reimbursable Expenses (unit price – time-based only) 42.1 The Client shall pay to the Consultant (i) remuneration that shall be determined on the basis of the time actually spent by each Expert in the performance of the Services after the commencement date of the Services or after any other date as the Parties shall agree in writing; and (ii) other expenses including reimbursable expenses that are actually and reasonably incurred by the Consultant in the performance of the Services.

42.2 All payments shall be at the rates set forth in **Appendix C**.

42.3 Unless the **SCC** provides for the price adjustment of the remuneration rates, said remuneration shall be fixed for the duration of the Contract.

42.4 The remuneration rates shall cover: (i) such salaries and allowances as the Consultant shall have agreed to pay to the Experts as well as factors for social charges and overheads (bonuses or other means of profit-sharing shall not be allowed as an element of overheads), (ii) the cost of backstopping by home office staff not included in the Experts' list in **Appendix B**, (iii) the Consultant's profit, and (iv) any other cost unless otherwise specified in the **SCC**.

43. Taxes and Duties 43.1 The Consultant, Sub-consultants and Experts are responsible for meeting any and all tax liabilities arising out of the Contract unless it is stated otherwise in the **SCC**.

43.2 As an exception to the above and as stated in the **SCC**, all local identifiable indirect taxes (itemized and finalized at Contract negotiations) are reimbursed to the Consultant or are paid by the Client on behalf of the Consultant.

44. Currency of Payment 44.1 Any payment under this Contract shall be made in the currency (ies) of the Contract.

45. Mode of Billing and Payment 45.1 Billings and payments in respect of the Services shall be made as follows:

- (a) Advance payment. Within the number of days as specified in the **SCC** after the Effective Date, the Client shall pay to the Consultant an advance payment as specified in the **SCC**. Unless otherwise indicated in the **SCC**, an advance payment shall be made against the submission of a bank guarantee acceptable to the Client in an amount (or amounts) and in a currency (or currencies) specified in the **SCC**. Such guarantee (i) is to remain effective until the advance payment has been fully set off, and (ii) is to be in the form set forth in **Appendix D**, or in any other form that the Client shall have approved in writing. The advance payments will be set off by the Client in installments as specified in the **SCC** until the said advance payments have been fully set off;
- (b) The Itemized Invoices (unit price – time-based). As soon as practicable and not later than fifteen (15) days after the end of each calendar month during the period of the Services, or after the end of each time interval otherwise indicated in the **SCC**, the Consultant shall submit to the Client, in duplicate, itemized invoices, accompanied by the receipts or other appropriate supporting documents, of the amounts payable pursuant to Clauses GCC 44 and GCC 45 for such interval, or for any other period indicated in the **SCC**. Separate invoices shall be submitted for expenses incurred in foreign currency and in local currency. Each invoice shall show remuneration and other expenses (including reimbursable expenses) separately. The Client shall pay the Consultant's invoices within sixty (60) days from the receipt by the Client of such itemized invoices and of the supporting documents. Only the portion of an invoice that is not satisfactorily supported may be withheld from payment. Should any discrepancy be found to exist between actual payment and costs authorized, the Client may add or subtract the difference from any subsequent payments;
- (c) The Lump-Sum Installment Payments. The Client shall pay the Consultant within sixty (60) days after the receipt by the Client of the deliverable(s) and the cover invoice for the related lump-sum installment payment. The payment can be withheld if the Client does not approve the submitted deliverable(s) as satisfactory in which case the Client shall provide comments to the Consultant within the same sixty (60) days period. The Consultant shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated;
- (d) The Final Payment. The final payment under this Clause shall be made only after the final report and a final invoice, identified as such, shall have been submitted by the Consultant and approved as satisfactory by the Client. The Services shall be deemed completed and finally accepted by the Client and the final report and final invoice shall be deemed approved by the Client as satisfactory ninety (90) calendar days after receipt of the final report and final invoice by the Client unless the Client, within such ninety (90) calendar day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report or final invoice. The Consultant shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated. Any amount that the Client has paid or has caused to be paid in accordance with this Clause in excess of the amounts

payable in accordance with the provisions of this Contract shall be reimbursed by the Consultant to the Client within thirty (30) days after receipt by the Consultant of notice thereof. Such claim for reimbursement shall be made by the Client within twelve (12) calendar months after receipt by the Client of the final report and the final invoice that the Client has approved in accordance with the above;

- (e) All payments under this Contract shall be made to the accounts of the Consultant specified in the SCC;
- (f) With the exception of the final payment under (d) above, payments neither constitute acceptance of the Services nor relieve the Consultant of any obligations hereunder.

46. Interest on Delayed Payments and Damages

46.1 Interest on delayed payments: If the Client had delayed payments beyond fifteen (15) days after the due date stated in [Sub-clause](#) GCC 45.1 (b) or (c), interest shall be paid to the Consultant on any amount due by, not paid on, such due date for each day of delay at the annual rate stated in the SCC.

46.2 Damages: If the Consultant fails to comply with the Contract requirements, the Client shall be entitled to apply damages as stated in the SCC. The total amount of the damages shall not exceed 10% of the Contract amount.

G. FAIRNESS AND GOOD FAITH

47. Good Faith

47.1 The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

H. SETTLEMENT OF DISPUTES

48. Amicable Settlement

48.1 The Parties shall seek to resolve any dispute amicably by mutual consultation.

48.2 If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within fourteen (14) days from receipt. If that Party fails to respond within fourteen (14) days, or the dispute cannot be amicably settled within fourteen (14) days from the response of that Party, [Sub-clause](#) GCC 49.1 shall apply.

49. Dispute Resolution

49.1 Any dispute between the Parties arising under or related to this Contract that cannot be settled amicably may be referred to by either Party to the adjudication/arbitration in accordance with the provisions specified in the SCC.

Attachment 1: WB Policy – Corrupt and Fraudulent Practices – Social and Environmental Responsibility

1. Corrupt and Fraudulent Practices

The Contracting Authority and the suppliers, contractors, subcontractors, consultants or subconsultants must observe the highest standard of ethics during the procurement process and performance of the contract. The Contracting Authority means the Purchaser, the Employer, the Client, as the case may be, for the procurement of goods, works, plants, consulting services or non-consulting services.

By signing the Statement of Integrity the suppliers, contractors, subcontractors, consultants or subconsultants declare that (i) “it did not engage in any practice likely to influence the contract award process to the Contracting Authority’s detriment, and that it did not and will not get involved in any anti-competitive practice”, and that (ii) “the procurement process and the performance of the contract did not and shall not give rise to any act of corruption or fraud”.

Suppliers, contractors, subcontractors, consultants or subconsultants permit the WB to inspect their accounts and records relating to the procurement process and performance of the WB-financed contract, and to have them audited by auditors appointed by the WB.

The WB reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

- (a) Reject a proposal for a contract award if it is established that during the selection process the bidder or consultant that is recommended for the award has been convicted of corruption, directly or by means of an agent, or has engaged in fraud or anti-competitive practices in view of being awarded the Contract;
- (b) Declare misprocurement when it is established that, at any time, the Contracting Authority, the suppliers, contractors, subcontractors, consultants or subconsultants their representatives have engaged in acts of corruption, fraud or anti-competitive practices during the procurement process or performance of the contract without the Contracting Authority having taken appropriate action in due time satisfactory to the WB to remedy the situation, including by failing to inform the WB at the time they knew of such practices.

The WB defines, for the purposes of this provision, the terms set forth below as follows:

(a) Corruption of a Public Officer means:

- (i) The act of promising, offering or giving to a Public Officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such Public Officer to act or refrain from acting in his official capacity; or
- (ii) The act by which a Public Officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such Public Officer to act or refrain from acting in his official capacity.

(b) A Public Officer shall be construed as meaning:

- (i) Any person who holds a legislative, executive, administrative or judicial mandate (within the country of the Contracting Authority) regardless of whether that person was nominated or elected, regardless of the permanent or temporary, paid or unpaid nature of the position and regardless of the hierarchical level the person occupies;

- (ii) Any other person who performs a public function, including for a State institution or a State-owned company, or who provides a public service;
 - (iii) Any other person defined as a Public Officer by the national laws of the country of the Contracting Authority.
- (c) Corruption of a private person means:
- (i) The act of promising, offering or giving to any person other than a Public Officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations; or
 - (ii) The act by which any person other than a Public Officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations;
- (d) Fraud means any dishonest conduct (act or omission), whether or not it constitutes a criminal offence, deliberately intended to deceive others, to intentionally conceal items, to violate or vitiate consent, to circumvent legal or regulatory requirements and/or to violate internal rules in order to obtain illegitimate profit.
- (e) Anti-competitive practices mean:
- (i) Any concerted or implied practices which have as their object or effect the prevention, restriction or distortion of competition within a marketplace, especially where they (i) limit access to the marketplace or free exercise of competition by other undertakings, (ii) prevent free, competition-driven price determination by artificially causing price increases or decreases, (iii) restrict or control production, markets, investments or technical progress; or (iv) divide up market shares or sources of supply;
 - (ii) Any abuse by one undertaking or a group of undertakings which hold a dominant position on an internal market or on a substantial part of it;
 - (iii) Any practice whereby prices are quoted or set unreasonably low, the object of which is to eliminate an undertaking or any of its products from a market or to prevent it from entering the market.

2. Social and Environmental Responsibility

In order to promote sustainable development, the WB seeks to ensure that internationally recognised environmental and social standards are complied with. Candidates for WB-financed contracts shall consequently undertake in the Statement of Integrity to:

- (a) Comply with and ensure that all their subcontractors or sub consultants comply with international environmental and labour standards, consistent with applicable law and regulations in the country of implementation of the contract, including the fundamental conventions of the International Labour Organisations (ILO) and international environmental treaties;
- (b) Implement environmental and social risks mitigation measures when specified in the environmental and social management plan (ESMP) provided by the Contracting Authority.

III. SPECIAL CONDITIONS OF CONTRACT

[Notes in brackets are for guidance purposes only and should be deleted in the final text of the signed contract]

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a) and 3.1 Applicable law	The Contract shall be construed in accordance with the law of Kenya
4.1 Language	The language is: English.
6.1 and 6.2 Communications	<p>The addresses are:</p> <p><u>Client</u> : City of Kisumu Attention : City Manager Facsimile : P.O.Box 105 – 40100 Kisumu E-mail (where permitted): townclerk_kisumu@yahoo.com</p> <p><u>Consultant</u> : ----- Attention : ----- Facsimile : ----- E-mail (where permitted) : -----</p>
8.1 Authority of Member in Charge	N/A
9.1 Authorized Representatives	<p>The Authorized Representatives are:</p> <p>For the Client: Doris C. Ombara, City Manager</p> <p>For the Consultant: -----</p>
11.1 Effectiveness of Contract	The Contract shall come into force at the date of Contract signature. There is no effectiveness condition.
13.1 Commencement of Services	<p>Commencement of Services: the Services shall start on</p> <p>14 days after the Contract signature</p>
14.1 Expiration of Contract	The time period shall be 12 weeks.
23.1 Liability of the Consultant	No additional provisions.
24.1 Insurance to be Taken out by	The insurance coverage against the risks shall be as follows:

<p>the Consultant</p>	<p>(a) Professional liability insurance, with a minimum coverage of KES. ---- -----;</p> <p>(b) Third Party liability insurance, with a minimum coverage of KES. ---- ----;</p> <p>(d) Client’s liability and workers’ compensation insurance for the Consultant’s Experts and Sub-consultants in accordance with the relevant provisions of the Applicable law in the Client’s country, as well as, with respect to such Experts, any such life, health, accident, travel or other insurance as may be appropriate.</p>
<p>27.1 Proprietary Rights in Reports and Records</p>	<p><i>Not Applicable</i></p>
<p>27.2</p>	<p>The Consultant shall not use the <i>output of this contract work</i> for purposes unrelated to this Contract without the prior written approval of the Client.</p>
<p>35.1 (a) through (f) Assistance and Exemptions</p>	<p><i>No tax exemption.</i></p>
<p>41 Ceiling Amount or Contract Price</p>	<p>The contract is: a unit price (time-based) contract] <i>[In time-based contracts the Consultant provides services on a timed basis according to quality specifications, and Consultant’s remuneration is determined on the basis of the time actually spent by the Consultant in carrying out the Services and is based on (i) agreed upon unit rates for the Consultant’s Experts multiplied by the actual time spent by the Experts in executing the Services, and (ii) reimbursable expenses using actual expenses and/or agreed unit prices. This type of contract requires the Client to closely supervise the Consultant and to be involved in the daily execution of the Services.</i></p> <p>The Contract ceiling (time-based) is: KES. ----- Inclusive of VAT.</p>
<p>42.1 Remuneration and Reimbursable Expenses</p>	<p>Time actually spent per month shall be calculated as the number of days actually worked by the expert divided by twenty-two (22) working days. One working day (billable) shall not be less than eight (8) working (billable) hours.</p>
<p>42.3</p>	<p>Price adjustment on the remuneration does not apply</p>
<p>43.1 and 43.2 Taxes and Duties</p>	<p>The Consultant, the Sub-consultants and the Experts are not exempt from:</p> <p>any indirect taxes, duties, fees, levies and other impositions imposed, under the Applicable law in the Client’s country, on the Consultant, the Sub-consultants and the Experts in respect of:</p> <p>(a) Any payments whatsoever made to the Consultant, Sub-consultants and</p>

	<p>the Experts (other than nationals or permanent residents of the Client’s country), in connection with the carrying out of the Services;</p> <p>(b) Any equipment, materials and supplies brought into the Client’s country by the Consultant or Sub-consultants for the purpose of carrying out the Services and which, after having been brought into such territories, will be subsequently withdrawn by them;</p> <p>(c) Any equipment imported for the purpose of carrying out the Services and paid for out of funds provided by the Client and which is treated as property of the Client;</p> <p>(d) Any property brought into the Client’s country by the Consultant, any Sub-consultants or the Experts (other than nationals or permanent residents of the Client’s country), or the eligible dependents of such experts for their personal use and which will subsequently be withdrawn by them upon their respective departure from the Client’s country, provided that:</p> <p style="padding-left: 40px;">(i) The Consultant, Sub-consultants and experts shall follow the usual customs procedures of the Client’s country in importing property into the Client’s country; and</p> <p style="padding-left: 40px;">If the Consultant, Sub-consultants or Experts do not withdraw but dispose of any property in the Client’s country upon which customs duties and taxes have been exempted, the Consultant, Sub-consultants or Experts, as the case may be, (a) shall bear such customs duties and taxes in conformity with the regulations of the Client’s country, or (b) shall reimburse them to the Client if they were paid by the Client at the time the property in question was brought into the Client’s country.]</p>
<p>45.1(a) Mode of Billing and Payment</p>	<p><i>There is no advance payment to be made.</i></p>
<p>45.1(b) (time-based)</p>	<p>The Consultant shall submit to the Client itemized statements at time intervals of <i>every two weeks</i>.</p>
<p>45.1(e)</p>	<p>The accounts are:</p> <p>for foreign currency: <i>N/A</i>. for local currency:</p> <p><i>Account Name:</i> <i>Account No.</i> <i>Bank:</i> <i>Branch:</i> <i>Bank Code:</i> <i>Branch Code:</i> <i>SWIFT Code:</i></p>

46.1 Interest on Delayed Payments	The interest rate is: Local currency, Prevailing 90 day Treasury Bill+ 1%
46.2 Damages	1% per week for late delivery of each expected Deliverable shall be due by the Consultant as Delay Damages.
49. Dispute Resolution	<p>Disputes shall be settled by arbitration in accordance with the following provisions:</p> <p>1. <u>Selection of the Arbitrator.</u> Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator, in accordance with the following provisions:</p> <p>The Parties may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to the Federation Internationale des Ingenieurs-Conseil (FIDIC) of Lausanne, Switzerland for a list of not fewer than five (5) nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, the FIDIC shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.</p>

	<p>2. <u>Rules of Procedure.</u> Except as otherwise stated herein, arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract.</p> <p>3. <u>Nationality and Qualifications of the Arbitrator.</u> The sole arbitrator appointed shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Consultant’s home country (or of the home country of any of their members or Parties in case of Joint Venture) or of the Client’s country. For the purposes of this Clause, “home country” means any of:</p> <ul style="list-style-type: none"> (a) The country of constitution of the Consultant or of any of their members or Parties; or (b) The country in which the Consultant’s or any of their members’ or Parties’ principal place of business is located; or (c) The country of nationality of a majority of the Consultant’s or of any members’ or Parties’ shareholders; or (d) The country of nationality of the Sub-consultants concerned, where the dispute involves a subcontract.
	<p>4. <u>Miscellaneous.</u> In any arbitration proceeding hereunder:</p> <ul style="list-style-type: none"> (a) Proceedings shall, unless otherwise agreed by the Parties, be held in <i>Kisumu, Kenya</i>; (b) The English language shall be the official language for all purposes; and (c) The decision of the sole arbitrator shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.

IV. APPENDICES

APPENDIX A – TERMS OF REFERENCE

[This Appendix shall include the final Terms of Reference (TORs) (on the basis of Section 7 of the RFP) worked out by the Client and the Consultant during the negotiations; dates for completion of various tasks; location of performance for different tasks; detailed reporting requirements; Client's input, including counterpart personnel assigned by the Client to work on the Consultant's team; specific tasks that require prior approval by the Client.

For time-based contracts, specify: the hours of work for Key Experts; travel time to/ from the Client's country; entitlement, if any, to leave pay; public holidays in the Client's country that may affect Consultant's work; etc.]

APPENDIX B – CONSULTANT'S TECHNICAL PROPOSAL INCLUDING METHODOLOGY AND KEY EXPERTS

[Insert the Consultant's Technical Proposal and finalized during the Contract's negotiations. Attach the CVs (updated and signed by the respective Key Experts) demonstrating the qualifications of Key Experts.]

APPENDIX C – BREAKDOWN OF CONTRACT PRICE

[Insert the tables with the Breakdown of the Contract Price(s). The tables shall be based on Forms FIN-2, FIN-3 and FIN-4 of the Consultant's Financial Proposal and shall reflect any changes agreed at the Contract negotiations, if any.

For time-based contract, all reimbursable expenses shall be reimbursed at actual cost, unless otherwise explicitly provided in this Appendix, and in no event shall reimbursement be made in excess of the Contract amount. Conditions and allowance for reimbursable expenses to be eligible for payment may be specified here consistently with SCC 42.1]

APPENDIX D - FORM OF ADVANCE PAYMENT GUARANTEE

[See [Sub-clauses GCC 45.1 \(a\) and SCC 45.1\(a\)](#)]

Bank Guarantee for Advance Payment

_____ [Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: _____ [Name and Address of Client]

Date: _____

ADVANCE PAYMENT GUARANTEE No.: _____

We have been informed that _____ [name of Consultant or a name of the Joint Venture, same as appears on the signed Contract] (hereinafter called "the Consultant") has entered into Contract No. _____ [reference number of the contract] dated _____ with you, for the provision of _____ [brief description of Services] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of _____ [amount in figures] () [amount in words] is to be made against an advance payment guarantee.

At the request of the Consultant, we _____ [name of bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ [amount in figures] () [amount in words]¹ upon receipt by us of your first demand in writing accompanied by a written statement stating that the Consultant are in breach of their obligation under the Contract because the Consultant have used the advance payment for purposes other than toward providing the Services under the Contract.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Consultant on their account number _____ at _____ [name and address of bank].

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Consultant as indicated in copies of certified monthly statements which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of the monthly payment certificate indicating that the Consultant has made full repayment of the amount of the advance payment, or on the __ day of _____, 2____, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

¹ The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Client.

² Insert the expected expiration date. In the event of an extension of the time for completion of the Contract, the Client would need to request an extension of this guarantee from the Guarantor. Such request must be made in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Client might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Client's written request for such extension presented to the Guarantor before the expiry of the guarantee. Such an extension will be granted only once."

III. Special Conditions of Contract

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.

[Signature]

Note: All italicized text is for indicative purposes only to assist in preparing this form and shall be deleted from the final product.