



**CONSULTANCY SERVICES**

**FOR**

**PREFEASIBILITY STUDY OF NAIROBI BELTWAY PPP  
PROJECT**

**TENDER NO: KURA/RMLF/HQ/219/2019 - 2020**

**REQUEST FOR PROPOSAL**

**MARCH, 2020**

**DIRECTOR, POLICY, STRATEGY &  
COMPLIANCE  
KENYA URBAN ROADS AUTHORITY  
P.O. Box 41727-00100  
NAIROBI**

**DIRECTOR GENERAL  
KENYA URBAN ROADS AUTHORITY  
P.O. Box 41727-00100  
NAIROBI**

## **TABLE OF CONTENTS**

SECTION A: - LETTER OF INVITATION .....	1
SECTION B: INFORMATION TO CONSULTANTS.....	3
APPENDIX “A” .....	10
APPENDIX “B” .....	12
SECTION C: TECHNICAL PROPOSAL – STANDARD FORMS .....	13
SECTION D: FINANCIAL PROPOSAL – STANDARD FORMS .....	25
SECTION E: TERMS OF REFERENCE .....	29
SECTION F: STANDARD FORMS OF CONTRACT .....	49
IV. LIST OF APPENDICES.....	66

## SECTION A: - INVITATION TO TENDER

Dear Sir/Madam,

### CONSULTANCY SERVICES FOR PREFEASIBILITY STUDY, OF NAIROBI BELTWAY PPP PROJECT

### TENDER No.: KURA/RMLF/HQ/219/2019-2020

The Kenya Urban Roads Authority invites proposals to provide the following consulting services:

### PREFEASIBILITY STUDY OF NAIROBI BELTWAY PPP PROJECT

**This is the Request for Proposal.**

**More details on the Services are provided in the attached Request for Proposal.**

The RFP includes the following documents:

- a) Section A – Invitation to tender
- b) Section B – Information to Consultants
- c) Section C – Technical Proposal – Standard Forms
- d) Section D – Financial Proposal – Standard Forms
- e) Section E – Terms of Reference
- f) Section F – Standard Contract form
- g) List of Appendices

The following **MUST** be submitted together with the proposal:-

- a) Certified Copy of Certificate of Incorporation in Kenya;
- b) Certified Copy of Valid Tax Compliance Certificate (*Please note that the Tax Compliance Certificates will be verified with the Kenya Revenue Authority and Certificates found not to be in order will lead to the disqualification of the bidder at the preliminary evaluation stage*);
- c) Certified Copy of VAT Registration Certificate;
- d) Certified Copy of CR12 Certificate (valid within the last 12 months);
- e) Curriculum Vitae (CV) of the Proposed Key Staff signed and dated by the proposed professional staff and the authorized representative submitting the proposal of not more than three pages;
- f) Certified Copies of Certificates and Testimonials of the Proposed Key Staff;
- g) Current Work Load;
- h) Litigation History; and
- i) Others as described in this RFP.

**NOTE: Items a, b, c, d and f MUST be certified by Commissioner of Oaths or Notaries Public.**

The submission date and time for these proposals is *as indicated in the tender notice available on [www.kura.go.ke/tender](http://www.kura.go.ke/tender) notices*, and the submission address is:

**Director General  
Kenya Urban Roads Authority  
BARABARA PLAZA, Block D, Mazao Road - off South Airport Road, JKIA  
P.O. Box 41727 – 00100 GPO  
NAIROBI**

Yours sincerely,

**Deputy Director, Supply Chain Management**  
**For: DIRECTOR GENERAL**

## SECTION B: INFORMATION TO CONSULTANTS

### 1. Introduction

- 1.1 The Client named in Appendix “A” will select a firm among those interested to submit a proposal, in accordance with the method of selection detailed under this section.

The consultants are invited to submit a Technical Proposal and a Financial Proposal, or a Technical Proposal only, as specified in Appendix “A” for consulting services required for the assignment named in the said Appendix. *A Technical Proposal only may be submitted in assignments where the Client intends to apply standard conditions of engagement and scales of fees for professional services as is the case with Building and Civil Engineering Consulting services. In such a case the highest ranked firm of the technical proposal shall be invited to negotiate a contract on the basis of scale fees.* The proposal will be the basis for Contract negotiations and ultimately for a signed Contract with the selected firm.

The consultants must familiarize themselves with local conditions and take them into account in preparing their proposals. To obtain first hand information on the assignment and on the local conditions, consultants are encouraged to liaise with the Client regarding any information that they may require before submitting a proposal and to attend a pre-proposal conference where applicable. Consultants should contact the officials named in Appendix “A” to arrange for any visit or to obtain additional information on the pre-proposal conference. Consultants should ensure that these officials are advised of the visit in adequate time to allow them to make appropriate arrangements.

The Client will provide the inputs specified in Appendix “A”, assist the firm in obtaining licenses and permits needed to carry out the services and make available relevant project data and reports.

Please note that (i) the costs of preparing the proposal and of negotiating the Contract, including any visit to the Client are not reimbursable as a direct cost of the assignment; and (ii) the Client is not bound to accept any of the proposals submitted.

### 2. Clarification and Amendment of RFP Document

- 2.1 Consultants may request a clarification of any of the RFP documents only up to seven [7] days before the proposal submission date. Any request for clarification must be sent in writing by papermail, cable, telex, facsimile or electronic mail to the Client’s address indicated in Appendix “A”. The Client will respond by cable, telex, facsimile or electronic mail to such requests and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all interested consultants who intend to submit proposals.

- 2.2 At any time before the submission of proposals, the Client may for any reason, whether at his own initiative or in response to a clarification requested by an invited firm, amend the RFP. Any amendment shall be issued in writing through addenda. Addenda shall be sent by mail, cable,

telex or facsimile to all interested consultants and will be binding on them. The Client may at his discretion extend the deadline for the submission of proposals.

- 3. Preparation of Proposal**
- Technical Proposal**
- 3.1 The Consultants proposal shall be written in English language.
- 3.2 In preparing the Technical Proposal, consultants are expected to examine the documents constituting this RFP in detail. Material deficiencies in providing the information requested may result in rejection of a proposal.
- 3.3 While preparing the Technical Proposal, consultants must give particular attention to the following:
- a. If a firm considers that it does not have all the expertise for the assignment, it may obtain a full range of expertise by associating with individual consultant(s) and/or other firms or entities in a joint venture or sub consultancy as appropriate. Consultants shall not associate with the other consultants interested for this assignment. Any firms associating in contravention of this requirement shall automatically be disqualified.
  - b. For assignments on a staff-time basis, the estimated number of professional staff-months is given in Appendix “A”. The proposal shall however be based on the number of professional staff- months estimated by the firm.
  - c. It is desirable that the majority of the key professional staff proposed be permanent employees of the firm or have an extended and stable working relationship with it.
  - d. Proposed professional staff must as a minimum, have the experience indicated in Appendix “A”, preferably working under conditions similar to those prevailing in Kenya.
  - e. Alternative professional staff shall not be proposed and only one Curriculum Vitae (CV) may be submitted for each position.
- 3.4 The Technical Proposal shall provide the following information using the attached Standard Forms;
- (i) A brief description of the firm’s organization and an outline of recent experience on assignments of a similar nature. For each assignment the outline should indicate *inter alia*, the profiles of the staff proposed, duration of the assignment, contract amount and firm’s involvement.
  - (ii) Any comments or suggestions on the Terms of Reference, a list of services and facilities to be provided by the Client.
  - (iii) A description of the methodology and work plan for performing the assignment.

- (iv) The list of the proposed staff team by speciality, the tasks that would be assigned to each staff team member and their timing.
- (v) CVs must be currently signed by the proposed professional staff and the authorized representative submitting the proposal of not more than three pages. Key information should include number of years working for the firm/entity and degree of responsibility held in various assignments during the last ten (10) years.
- (vi) Estimates of the total staff input (professional and support staff staff-time) needed to carry out the assignment supported by bar chart diagrams showing the time proposed for each professional staff team member.
- (vii) A detailed description of the proposed methodology, staffing and monitoring of training, if Appendix "A" specifies training as a major component of the assignment.
- (viii) Any additional information requested in Appendix "A".

3.5 The Technical Proposal shall not include any financial information.

**Financial Proposal**

- 3.6 In preparing the Financial Proposal, consultants are expected to take into account the requirements and conditions outlined in the RFP documents. The Financial Proposal should follow Standard Forms (Section D). It lists all costs associated with the assignment including;
- (a) remuneration for staff (in the field and at headquarters), and;
  - (b) reimbursable expenses such as subsistence (per diem, housing), transportation (international and local, for mobilization and demobilization), services and equipment (vehicles, office equipment, furniture, and supplies), office rent, insurance, printing of documents, and training, if it is a major component of the assignment. If appropriate these costs should be broken down by activity.
- 3.7 The Financial Proposal should clearly identify as a separate amount, the local taxes, duties, fees, levies and other charges imposed under the law on the consultants, the sub-consultants and their personnel, unless Appendix "A" specifies otherwise.
- 3.8 Consultants shall express the price of their services in Kenya Shillings.
- 3.9 Commissions and gratuities, if any, paid or to be paid by consultants and related to the assignment will be listed in the Financial Proposal submission Form.
- 3.10 The Proposal must remain valid for 90 days after the submission date. During this period, the consultant is expected to keep available, at his own cost, the professional staff proposed for the assignment. The Client will make his best effort to complete negotiations within this period. If

the Client wishes to extend the validity period of the proposals, the consultants who do not agree have the right not to extend the validity of their proposals, in which case such Proposal will not be further evaluated.

- 4. Submission, Receipt and Opening of Proposals**
- 4.1 The original proposal (Technical Proposal and, if required, Financial Proposal; see para. 1.2) shall be prepared in indelible ink. It shall contain no interlineations or overwriting, except as necessary to correct errors made by the firm itself. Any such corrections must be initialed by the persons or person authorised to sign the proposals.
- 4.2 For each proposal, the consultants shall prepare the number of copies indicated in Appendix “A”. Each Technical Proposal and Financial Proposal shall be marked “**ORIGINAL**” or “**COPY**” as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original shall govern.
- 4.3 The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked “**TECHNICAL PROPOSAL,**” and the original and all copies of the Financial Proposal in a sealed envelope clearly marked “**FINANCIAL PROPOSAL**” and warning: “**DO NOT OPEN WITH THE TECHNICAL PROPOSAL**”. Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information indicated in Appendix “A” and be clearly marked, “**DO NOT OPEN, EXCEPT IN PRESENCE OF THE TENDER OPENING COMMITTEE.**”
- 4.4 The completed Technical and Financial Proposals must be delivered at the submission address on or before the time and date stated in Appendix “A”. Any proposal received after the closing time for submission of proposals shall be returned to the respective consultant unopened.
- 4.5 After the deadline for submission of proposals, the Technical Proposal shall be opened immediately by the tender opening committee. The Financial Proposal shall remain sealed and deposited with a responsible officer of the client department until all submitted proposals are opened publicly.
- 5 Proposal Evaluation General**
- 5.1 From the time the bids are opened to the time the Contract is awarded, if any consultant wishes to contact the Client on any matter related to his proposal, he should do so in writing at the address indicated in Appendix “A”. Any effort by the Consultant to influence the Client in the proposal evaluation, proposal comparison or Contract award decisions may result in the rejection of the consultant’s proposal.
- 5.2 Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.
- Evaluation of Technical Proposals**
- 5.3 The Tender Processing Committee appointed by the Client shall evaluate the proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria as follows:-
- |                                                                     | <b>Points</b> |
|---------------------------------------------------------------------|---------------|
| (i) Specific experience of the consultant related to the assignment | 10            |

(ii)	Comments on the TOR and site visit	10
(iii)	Adequacy of the proposed workplan and methodology in responding to the terms of reference	20
(iv)	Participation by nationals	5
(v)	Transfer of Knowledge (Activity workplan and Personnel schedule)	5
(vi)	Qualifications and competence of the key staff for the assignment	<u>50</u>
	<b>Total Points</b>	<b><u>100</u></b>

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

**Public Opening and Evaluation of Financial Proposals**

- 5.4 After Technical Proposal evaluation, the Client shall notify those consultants whose proposals did not meet the minimum qualifying mark or were considered non-responsive to the RFP and Terms of Reference, indicating that their Financial Proposals will be returned after completing the selection process. The Client shall simultaneously notify the consultants who have secured the minimum qualifying mark, indicating the date and time set for opening the Financial Proposals and stating that the opening ceremony is open to those consultants who choose to attend. The opening date shall not be sooner than seven (7) days after the notification date. The notification may be sent by registered letter, cable, telex, facsimile or electronic mail.
- 5.5 The Financial Proposals shall be opened publicly in the presence of the consultants’ representatives who choose to attend.
- 5.6 The name of the consultant, the technical scores and the proposed prices shall be read aloud and recorded when the Financial Proposals are opened. The Client shall prepare minutes of the public opening.
- 5.7 The Tender Processing Committee will determine whether the financial proposals are complete (i.e. Whether the consultant has costed all the items of the corresponding Technical Proposal and correct any computational errors. The cost of any unpriced items shall be assumed to be included in other costs in the proposal. In all cases, the total price of the Financial Proposal as submitted shall prevail.
- 5.8 While comparing proposal prices between local and foreign firms participating in a selection process in financial evaluation of Proposals, firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias in proposal prices. However, there shall be no such preference in the technical evaluation of the tenders. Proof of local incorporation and citizenship shall be required before the provisions of this sub-clause are applied. Details of such proof shall be attached by the Consultant in the financial proposal.

- 5.9 The formulae for determining the Financial Score (S<sub>f</sub>) shall, unless an alternative formulae is indicated in Appendix “A”, be as follows:-

$$S_f = 100 \times F_m / F$$

where S<sub>f</sub> is the financial score;

F<sub>m</sub> is the lowest priced financial proposal and

F is the price of the proposal under consideration.

Proposals will be ranked according to their combined technical (S<sub>t</sub>) and financial (S<sub>f</sub>) scores using the weights (T=the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) indicated in the Appendix.

The combined technical and financial score, S, is calculated as follows: S = S<sub>t</sub> x T % + S<sub>f</sub> x P %. The firm achieving the highest combined technical and financial score will be invited for negotiations.

## 6. Negotiations

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

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

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

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

- 6.5 The negotiations will conclude with a review of the draft form of the Contract. To complete negotiations the Client and the selected firm will initial the agreed Contract. If negotiations fail, the Client will invite the firm whose proposal received the second highest score to negotiate a contract.

## 7. Award of Contract

- 7.1 The Contract will be awarded following negotiations. After negotiations are completed, the Client will promptly notify other consultants, who had

bidded, that they were unsuccessful and return the Financial Proposals of those consultants who did not pass the technical evaluation.

7.2 The selected firm is expected to commence the assignment on the date and at the location specified in Appendix “A”.

**8. Confidentiality**

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

## APPENDIX “A”

### Reference Clause

- 1.1 & 2.1 The name of the Client is:
- Director General,  
Kenya Urban Roads Authority***
- 1.2 Technical and Financial Proposals are requested: ***Yes***
- A Technical Proposal only is requested: ***No***
- The name, objectives, and description of the assignment are:
- Consultancy Services for PreFeasibility Study of Nairobi Beltway PPP Project***
- A pre-bidders conference will be held: ***Yes as indicated in the tender notice available on [www.kura.go.ke/tender](http://www.kura.go.ke/tender) notices.***
- The name(s), address(es) and telephone numbers of the Client’s official (s) are:
- |                                                                                                                                        |                                                                                                                                        |
|----------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| <b><i>Eng. Mike Y. Telieny<br/>Director (PS&amp;C)<br/>Kenya Urban Roads Authority<br/>P.O. Box 41727-00100<br/><u>NAIROBI</u></i></b> | <b><i>Richard Kyalo<br/>Deputy Director (S&amp;EP)<br/>Kenya Urban Roads Authority<br/>P.O. Box 41727-00100<br/><u>NAIROBI</u></i></b> |
|----------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|
- Tel: +254-020-8013844 Tel: +254-020-8013844  
Email: [mtelieny@kura.go.ke](mailto:mtelieny@kura.go.ke) OR [rkyalo@kura.go.ke](mailto:rkyalo@kura.go.ke)***
- 1.4 The Client shall also give assistance to facilitate the timely granting of the Consultant and his personnel of:
- i). Unobstructed access to all sites and locations involved in carrying out the services.
  - i) The Consultant will be responsible for determining the number of professional staff months to be assigned for any activity.
  - ii) The duration required to complete the assignment is: ***Eight (8) months.***
  - iii) The minimum required experience in years of proposed professional staff is detailed in the Terms of References under Personnel requirements.
- 3.3 This minimum required experience in years of proposed professional staff is detailed in the Terms of References under Personnel requirements (8.0).
- 3.4 (i) Training is a specific component of this assignment: ***Yes***
- The Consultant shall

(a) Train one (1) No. Project Supervision Staff (Public Service JG ‘S’) nominated by the Client in “Strategic Leadership” at Kenya School of Government – Mombasa.

The Consultant shall include the whole cost of training of Clients one (1) staff in the financial proposal, including the tuition, associated allowances and airtravel.

3.7 Taxes:

*The Consultant shall be liable to pay all taxes, duties and levies including VAT in accordance with the laws of Kenya and the Client shall not reimburse any amount paid in this context.*

4.2 Consultants **MUST** submit *1 (One) original and 2 (Two) additional copies of each proposal.*

4.3 The proposal submission address is:

**Director General  
Kenya Urban Roads Authority  
BARABARA PLAZA, Block D, Mazao Road - off South  
Airport Road, JKIA  
P. O. Box 41727 – 00100, GPO, NAIROBI  
Tel: 254 – 020 – 8013844**

The outer envelope shall also be clearly marked:

**Consultancy Services for PreFeasibility Study of Nairobi Beltway PPP Project**

**TENDER No.: KURA/RMLF/HQ/219/2019-2020**

4.4 Proposals should be submitted not later than the following date and time:

*as indicated in the tender notice available on [www.kura.go.ke/tender notices](http://www.kura.go.ke/tender-notices).*

5.1 The address to send information to the Client is:

**Director General  
Kenya Urban Roads Authority  
BARABARA PLAZA, Block D, Mazao Road - off South  
Airport Road, JKIA  
P. O. Box 41727 – 00100, GPO, NAIROBI  
Tel: 254 – 020 – 8013844**

5.3 The minimum Technical Score required to pass is **75%**. Any bidder scoring less than **75%** shall be disqualified. Any bidder not providing any of the required documents shall be disqualified.

5.9 Alternative formulae for determining the financial scores is the following: **None**

Weightings: T = 0.8      F = 0.2 (T- Technical F- Financial)

Selection Criteria shall be Quality and Cost Based (QCB).

7.2 Commencement of Assignment: *Fourteen days after order to commence*

## APPENDIX “B”

### EVALUATION GRID

#### METHODOLOGY AND ORGANISATION

Firm’s experience and organization	10
Comments on Terms of Reference	10
Methodology, Activity Schedule and Work plan	30
<b>Total score for Methodology and Organization</b>	<b>50</b>

#### KEY PERSONNEL

1. PPP Expert / Team Leader	9
2. Transport Planner /Economist	8
3. Urban Highways Design Engineer	8
4. Environmental Specialist	4
5. Socio-Economic Specialist	4
6. Legal Expert	5
7. Surveyor	4
8. Financial Expert	8
<b>Total Score for Key Personnel</b>	<b>50</b>

*The weightings for scoring the Key Personnel shall be based on Qualification and Skills (25%), General professional experience (25%) and Specific professional experience (50%)*

## **SECTION C: TECHNICAL PROPOSAL – STANDARD FORMS**

These forms shall include;

- i. Technical Proposal Submission Form.
- ii. Firm's Current Workload.
- iii. Firm's References.
- iv. Comments and Suggestions of Consultants on the Terms of Reference and on Data, Services and Facilities to be provided by the Client.
- v. Description of the Methodology and Work Plan for Performing the Assignment.
- vi. Team Composition and Task Assignments.
- vii. Format of Curriculum Vitae (CV) for Proposed Professional Staff.
- viii. Time Schedule for Professional Personnel.
- ix. Activity (Work) Schedule.
- x. Confidential Business Questionnaire

**(i). TECHNICAL PROPOSAL SUBMISSION FORM**

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

To: \_\_\_\_\_ [Name and address of Client]

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for \_\_\_\_\_

[Title of consulting services] in accordance with your Request for Proposal dated \_\_\_\_\_ [Date] and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal, [and a Financial Proposal sealed under a separate envelope-where applicable].

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

We remain,

Yours sincerely,

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

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

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

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

**(ii). FIRM’S CURRENT WORKLOAD**

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

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

Firm’s Name: \_\_\_\_\_

Name and Title of Signatory; \_\_\_\_\_

**(iii). FIRM'S REFERENCES**

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

Using the format below, provide information on each assignment for which your firm either individually as a corporate entity or in association, was legally contracted (include attachments of letters from Client awarding the contract and confirming successful completion of projects).

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

**\* Attach Correspondences**

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

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

**(iv) COMMENTS AND SUGGESTIONS OF CONSULTANT ON THE TERMS OF REFERENCE AND ON DATA, SERVICES AND FACILITIES TO BE PROVIDED BY THE CLIENT**

---

On the Terms of Reference:

- 1.
- 2.
- 3.
- 4.
- 5.

On the data, services and facilities to be provided by the Client:

- 1.
- 2.
- 3.
- 4.
- 5.

**(v) DESCRIPTION OF THE METHODOLOGY AND WORK PLAN FOR  
PERFORMING THE ASSIGNMENT**

---

**(vi) TEAM COMPOSITION AND TASK ASSIGNMENTS**

**1. Technical Staff**

<b>Name</b>	<b>Position</b>	<b>Task</b>

**2. Support Staff**

<b>Name</b>	<b>Position</b>	<b>Task</b>

**(vii). FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED PROFESSIONAL STAFF**

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

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

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

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

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

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

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

---

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

---

**Key Qualifications:**

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

---

**Education:**

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

---

**Employment Record:**

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

---

**Certification:**

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

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

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

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

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

**(viii). TIME SCHEDULE FOR PROFESSIONAL PERSONNEL**

Name	Position	Reports Due/ Activities	1	2	3	4	5	6	Number of months

Mo (in the Form of a Bar Chart)

Reports Due: \_\_\_\_\_

Activities Duration: \_\_\_\_\_

Signature: \_\_\_\_\_  
(Authorized representative)

Full Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

**(ix). ACTIVITY (WORK) SCHEDULE**

**(a). Field Investigation and Study Items**

*[M1, M2, M3, M4 are months from the start to end of the assignment)*

	M1	M2	M3	M4	M5..	M8
Activity (Work)						
_____						
_____						
_____						
_____						

**(b). Completion and Submission of Reports**

Reports	Date
Inception Report	
Preliminary Feasibility Reports including Preliminary Designs.	
Draft Feasibility Reports including Preliminary Designs.	
Final Feasibility Reports including Preliminary Designs	
Progress Reports	

**(x). CONFIDENTIAL BUSINESS QUESTIONNAIRE**

You are required to give the particulars indicated in Part 1 and either Part 2 (a), 2(b) or 2(c) whichever applies to your type of business.

You are advised that it is a serious offence to give false information on this Form.

**Part 1 - General:**

Business name.....

Location of business premises

.....

Plot No..... Street/Road.....

Postal Address..... Tel No.....

Nature of business.....

.....

Current Trade Licence No. .... Expiring Date.....

Maximum value of business which you can handle at any one time:

Kshs.....

Name of your Bankers.....

Branch.....

**Part 2(a) - Sole Proprietor:**

Your name in full.....

Age.....

Nationality .....Country of origin.....

\*Citizenship details.....

**Part 2(b) - Partnership:**

Give details of partners as follows:

Name	Nationality	Citizenship Details*	Shares
1.....			
2.....			
3.....			
4.....			
5.....			

**Part 2(c) - Registered Company:**

Private or public.....

State the nominal and issued capital of the company-

Nominal Kshs.....

Issued Kshs.....

Give details of all directors as follows:

Name	Nationality	Citizenship Details*	Shares**
1.....			
2.....			
3.....			
4.....			
5.....			

**Part 2(d) - Interest in the Firm:**

Is there any person / persons in the Kenya Urban Roads Authority who has interest in this firm?  
Yes /No\*\*\*

.....  
Date

.....  
Signature of Authorized Representative

\* Attach Proof of Citizenship (Compulsory)

\*\* Attach certified copy of current (within last 12 months) From CR12

\*\*\* Delete as necessary

## **SECTION D: FINANCIAL PROPOSAL – STANDARD FORMS**

These forms shall include;

- i) Financial Proposal Submission Form.
- ii) Summary of Costs.
- iii) Breakdown of Price per Activity.
- iv) Breakdown of Remuneration per Activity.
- v) Reimbursable per Activity.
- vi) Miscellaneous Expenses.

**(i) FINANCIAL PROPOSAL SUBMISSION FORMS**

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

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
[Name and address of Client]

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for

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

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

We remain,

Yours sincerely,

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

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

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

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

**(ii) SUMMARY OF COSTS**

Costs	Currency(ies)	Amount(s)
Subtotal		
Add 10% Contingency		
Taxes		
Total Amount of Financial Proposal		_____

**(iii) BREAKDOWN OF PRICE PER ACTIVITY**

Activity NO.: _____	Description: _____
Price Component	Amount(s)
Remuneration	
Reimbursable Expenses	
Miscellaneous Expenses	
Subtotal	_____

**(iv) BREAKDOWN OF REMUNERATION PER ACTIVITY**

Activity No----- Activity Name-----			
	Names	Input(Staff Months, days, remuneration or hours rate as appropriate)	Amount
Key Staff (Insert proposed position)			
1.			
2.			
3.			
4.			
<b>Grand Total</b>			

**(v) REIMBURSABLES PER ACTIVITY**

Activity No: \_\_\_\_\_ Activity Name: \_\_\_\_\_

No.	Description	Unit	Quantity	Unit Price	Total Amount
1.	Air travel	Trip			
2	Road travel	Kms			
3.	Rail travel	Kms			
4.	Subsistence Allowance	Day			
5.	Training				
6.	PIT Transport				
	<b>Grand Total</b>				_____

**(vi) MISCELLANEOUS EXPENSES**

Activity No. \_\_\_\_\_ Activity Name: \_\_\_\_\_

No.	Description	Unit	Quantity	Unit Price	Total Amount
1.	Communication costs (telephone, telegram, telex)				
2.	Drafting, reproduction of reports				
3.	Equipment etc.				
4.	Miscellaneous				
	<b>Grand Total</b>				_____



## 1. INTRODUCTION

### 1.1. General

The Government of Kenya (GoK) has mobilized resources through the Roads Maintenance Levy Fund (RMLF) and intends to apply a portion of proceeds from this fund to eligible payments for **Consultancy Services for PreFeasibility Study of Nairobi Beltway PPP Project**.

The Government of Kenya, through its implementing Agency, the Kenya Urban Roads Authority (KURA) shall require the Consultant to render all technical support services which may be deemed relevant to the above services. The detailed description of the consulting services to be performed is described in these Terms of Reference (TOR).

### 1.2. Project Description

#### 1.2.1 Project Location

The project roads are located in Nairobi City and its Metropolis.

### 1.3. Selection Criteria

The Consultant and team selected to undertake the services shall have had extensive experience in the PPP PreFeasibility Studies, Financial Modelling, Engineering, Environmental and Social Impact Assessment.

This is a Lumpsum Contract.

### 1.4. Project Objectives

The roads are critical to promote and facilitate traffic movement within and around Nairobi city and its metropolis. The roads are meant to increase mobility, divert through traffic from the town centre and to serve the expansion needs of Nairobi City.

A PreFeasibility study will be prepared that will inform the Government of Kenya (GoK) on the engineering, economic, financial, environmental and social aspects of developing the Beltway as a PPP Project.

## 2. STUDY OBJECTIVES

The study will provide the decision makers in the Government of Kenya through Kenya Urban Roads Authority, with sufficient information to later undertake Detailed Feasibility Study and construct the project road. This study shall gather information and generate data necessary to populate the National Treasury's PPP Screening Tool (**to be collected in soft from KURAs Department of Strategy & Economic Planning**). Outputs from that tool will allow KURA to make a decision on whether to proceed with the PPP Project and thereafter undertake a full PPP Feasibility Study.

### 3. SCOPE OF WORK

#### 3.1. General

The Consultant shall perform all work necessary as called for in these Terms of Reference including all technical studies, field investigations and related services. In carrying their work, the Consultant shall co-operate fully with the concerned agencies of the Government of Kenya, in particular the Strategy & Economic Planning Department - Kenya Urban Roads Authority, Ministry of Transport & Infrastructure, Provincial Administration, Ministry in charge of Lands, County Governments amongst others. The Consultant shall provide the necessary support services related to and necessary for the completion of the assignment. The work shall cover but not be limited to the aspects outlined in these Terms of Reference.

#### 3.2 Description

##### 3.2.1 Undertaking the Pre-feasibility study

The objective of the preliminary study is to assess the viability of the project(s) prior to conducting detailed feasibility studies. The Consultancy shall be expected to:

- (i) Propose an appropriate and workable implementation plan for the execution of the project.
- (ii) Review and assess the recommendations indicated on the concept proposal and determine the adequacy of available data and information in relation to the requirements of the study, and if found inadequate, provide the required data through research from other sources, preferably a similar project in a developing economy.
- (iii) Conduct a review of global best practice on tolled PPP roads in major urban areas and apply global best practice into the project.
- (iv) Carry out a preliminary assessment of the current Nairobi road transport needs, practices and requirements of existing urban road transport facilities and related projects/business/services. Particular emphasis should be on the regulatory requirements for the construction and operations of urban road transport facilities.
- (v) Carry out a legal review of the project (s) based on all relevant and applicable international and national laws and regulations. The Consultancy shall identify legal processes and concerns as well as impediments/ requirements and the legal strategy/ies to undertake the implementation of the proposed project under a PPP arrangement.
- (vi) Develop the technical description of the project in consultation with the KURA including technical parameters/ standards/ specifications based on best practices.
- (vii) Carry out a preliminary market research and demand estimation/analysis with details on the methods and parameters to be used in the projection and the need for the project.
- (viii) Carry out preliminary financial and economic analysis, including value for money (VFM)/ value engineering, based on preliminary cost estimates and proposed cost-recovery mechanism. These should include an assessment of the acceptable pricing of the urban roads transport to be made available by the project and the possibility of cross subsidy. The study will also assess the merits of other sources of financing that may be conducive for project implementation.
- (ix) Conduct initial environmental and social/resettlement/gender assessment and associated risk factors.

- (x) Carry out a preliminary financial, political and legal risk analysis including institutional issues that may impede the implementation of the Project and the required government support, if any.
- (xi) Carry out a preliminary information management system, needs assessment for the proposed project .
- (xii) Assess the different PPP modalities for the Project, and determine the PPP modality that will provide the best value for money to the Contracting Authority.
- (xiii) Assess the existing structures and recommend the institutional set up around which the project will be implemented, including the appropriate Agency to enter into a PPP contract.
- (xiv) The Consultancy shall conduct regular consultations with KURA in the course of preparing and finalizing the pre-feasibility study.
- (xv) If at the pre-feasibility stage, it is determined that the project is not viable or would not be implemented under PPP, KURA shall in consultation with the PPPU determine the way forward in implementation of these projects.
- (xvi) On the other hand, should the pre-feasibility study establish that the project is viable for PPP implementation, a Transaction Advisory (TA) services shall be procured that will provide all necessary technical, legal and financial advisory support including all necessary approvals in compliance with all elements of the PPP Act and its implementing regulations, and all other applicable laws and regulations.

### **3.2.2 Detailed Scope of Work**

The study involves collection of social, economic, environmental, operating, and physical data that is necessary to support conclusions about the PPP viability of the project roads and any related feeder roads required to support the project road. Three (3) major options of the beltway will be subjected to analysis and eventually choose on the best option. These options could include existing ringroads, arterials and bypasses.

The consultancy will collect data, analyse and report on all the six (6) mandatory input requirements of the screening tool enumerated below:

#### **I. STRATEGIC SUITABILITY**

##### **1. Alignment with government priorities**

The Consultant to assess and ascertain the following:

- (i). Does the project have high strategic importance for the country and could enable significant private sector investments in the economic development of the region.
- (ii). If the project will lead to an improvement in quality of life for its citizens. For example, by way of reduced costs of living or improved liveability for the citizens.

##### **2. Identification of service need**

The Consultant to assess and ascertain the following:

- (i). If there is a clear articulation and substantiation of the service deficiency.
- (ii). If the desired service outcome well defined and can be used to scope out the project.

- (iii). If there is a consensus on users' and stakeholders' expectations from the project.

### **3. Assessment of service delivery options**

The Consultant to assess and ascertain the following:

- (i). If there has been an assessment of all possible technical solutions to address the identified need.
- (ii). If the technical solution clearly addresses the service need in a cost-effective and affordable manner.

### **4. Scoping of the project**

The Consultant to assess and ascertain the following:

- (i). If there is a clear description of the technical features of the project.
- (ii). If the user base has been identified for the project in terms users, geography, growth trends etc.
- (iii). If the project outputs are defined, measurable and verifiable.
- (iv). If the scoping covers the entire term of the project.

## **II. PRELIMINARY FEASIBILITY**

### **1. Technical Prefeasibility**

The Consultant to assess and ascertain the following:

- (i). If the project will to be based on technology that has been proven commercially in similar environments previously.
- (ii). If the project's scope of work is comparable to other reference projects.
- (iii). If the technical cost estimates are line with required output specifications
- (iv). If the life cycle costs for major components of the project are reasonable and affordable
- (v). If site-suitability assessment been completed for the proposed project site
- (vi). If the proposed site is accessible with any potential challenges during construction manageable
- (vii). If the project is able to source the required skills, either locally or from overseas, in relation to the project's Construction, Operations and Maintenance

### **2. Environmental Sustainability**

The Consultant to assess and ascertain the following:

- (i). If there is a reliable initial environmental analysis related to the project
- (ii). If the project has any significant negative impact on any natural resources or protected land

- (iii). If the identified environmental management strategy, or its related approvals, are likely to result in uncertainties or delays that could impede the implementation of the project
- (iv). If the completed project is likely to be carbon neutral or net carbon negative, in terms of GHG emissions
- (v). If the design and systems of the project will be resilient and adaptive to changes in climate conditions or other significant long-term changes in operational or environmental conditions
- (vi). If the project design is suitably addressing the impact of potential natural or human-induced hazards in the region

### **3. Social Sustainability**

The Consultant to assess and ascertain the following:

- (i). If there is a reliable initial social analysis related to the project
- (ii). If the project has a significant adverse impact on health or quality of life of users, workers, or the local population
- (iii). If the project is likely to be socially sustainable or have manageable social impacts
- (iv). If the project requires land acquisition
- (v). If there is a plan and adequate funds available for land acquisition and resettlement
- (vi). If there is support for the project from affected communities and key stakeholders
- (vii). If the identified social management strategy, or its related approvals, result in uncertainties or delays that could impede the project implementation

### **4. Economic Prefeasibility**

The Consultant to assess and ascertain the following:

- (i). If the economic analysis is based on realistic assumptions and historical data
- (ii). If communities within the area of influence of the project will be able to share direct or indirect economic benefits from the project

### **5. Financial Prefeasibility**

The Consultant to assess and ascertain the following:

- (i). If there a preliminary financial analysis based on assessment of net present value or internal rate of return of project's cash flows
- (ii). If the revenue projections are realistic. For example, revenues from user charges are based on user surveys or on demand models with realistic assumptions and historical data; and revenues from availability payments are backed by clear

understanding from the counterparty agency or on availability/capacity utilization factors based on realistic assumptions and historical data

- (iii). If the financing assumptions are comparable with similar projects

## **6. Legal Prefeasibility**

The Consultant to assess and ascertain the following:

- (i). If there is a framework that provides adequate basis for establishment of hybrid revenue mechanism for the PPP project
- (ii). If the law is confer enforceable with rights such as, rights of substitution, step-in rights or other applicable remedies that enable the lenders to recover their outstanding loan amounts.
- (iii). If there are any restrictions on foreign exchange or capital movements that may limit the project's access to finance
- (iv). If there is a plan to address the legal barriers through appropriate executive action or legislative reforms

## **III. RISK ASSESSMENT**

### **1. Risk of delay in land acquisition**

The Consultant to assess and ascertain the following:

- (i). If there is need to acquire land, and if there exists suitable parcel(s).
- (ii). If the government prepared or committed to prepare a fully-budgeted land acquisition plan.
- (iii). If the PPP agreement will have provision of 100% unencumbered land as a condition precedent.
- (iv). If land acquisition lead to substantial involuntary resettlement.
- (v). If the project needs to acquire forest or other sensitive or protected land.
- (vi). Have there been substantial delays in land acquisition in similar projects in the past.
- (vii). If there are any other issues that could delay the land acquisition.

### **2. Financing Risk**

The Consultant to assess and ascertain the following:

- (i). If there are similar PPP projects that have achieved financial close in the country or region.
- (ii). If there are financiers who will be, or have expressed interest in the PPP.

- (iii). If financial close will be a condition precedent to the effectiveness of the PPP agreement.
- (iv). If it can be reasonably expected that financial close will not get delayed to materially affect the conditions of effectiveness of the PPP Agreement.

### **3. Design and Construction Risk**

The Consultant to assess and ascertain the following:

- (i). If the project is likely to be based on technology that has been proven commercially in similar environments previously.
- (ii). If the proposed site is accessible with any potential challenges during construction being manageable.
- (iii). If the project will be able to source the required skills in relation to the project's construction, operations and maintenance (as applicable).
- (iv). If the project scope will allow the private sector to efficiently manage the design, construction and commissioning risks.
- (v). If there will be a strong system to manage contractor/sub-contractor performance and construction related challenges.
- (vi). If there will be independent reviews of designs, monitoring of construction progress and oversight during testing and commissioning phases.

### **4. Operations and Maintenance Risk**

The Consultant to assess and ascertain the following:

- (i). If the Project scope clearly includes a well-defined, measurable, and verifiable O&M component.
- (ii). If there will be a strong system of safeguards, incentives and liabilities to manage contractor/sub-contractor/ equipment supplier performance during O&M.
- (iii). If the project will be able to source the required skills locally or from overseas, in relation to the project's construction, operations and maintenance (as applicable).

### **5. Market Risk and Demand Risk**

The Consultant to assess and ascertain the following:

- (i). If the PPP project will have a ready baseline of demand or offtake that has been well established either through historical data or through firm off-take commitments or through an exclusivity of service area.

- (ii). If there are precedents of similar projects in the country or in the region, where the actual usage or off-take from the project facility in the initial years has been at least 85% of the originally projected usage or off-take.
- (iii). If there are competing projects in the defined market that could impact the ramping up of demand for this PPP project.
- (iv). If there is an indication that user charges will be affordable to users. Such as, through an assessment of the ability and willingness to pay of the users or through benchmarking with similar projects.
- (v). In case of delays in ramping up of demand, if the private sector will have some flexibility in repricing tariffs to manage and off-set demand shortfalls in any given year; or the government would provide some level of cash deficiency support or assurances.
- (vi). If there is a transparent and well-defined process for setting user charges and managing their increase.

## **6. Off Taker Risk**

The Consultant to assess and identify all aspects and the potential of off-taker risks relating to the proposed project.

## **7. Foreign Exchange Risk**

The Consultant to assess and ascertain the following:

- (i). If the project will be able to manage the foreign exchange risk by obtaining an adequate hedging cover? For example, through forward exchange contracts or options or similar arrangements.
- (ii). If all the costs related to foreign exchange risk have been factored into the financial assessment.
- (iii). If there are any other factors or concerns related to foreign exchange risk that could severely impact the project's financial viability or impact the project's ability to raise financing.

## **8. Environmental and Social Risk**

The Consultant to assess and ascertain the following:

- (i). If there is a credible environmental and social impact analysis of the PPP.
- (ii). If the costs of mitigating the environmental and social impacts of the project have been considered in the PPP.

- (iii). If the private sector has the ability to manage the environmental and social impact mitigation measures envisaged in the project scope.
- (iv). If the private sector will take on environmental and social risks applicable after the contract signing date and not prior period liabilities.
- (v). If contractual measures will be put in place to ensure that the project financials are reset in the event of delays in executing mitigation for reasons beyond the control of the project company.

#### **IV. PPP SUITABILITY**

##### **1. Value for Money**

###### **1.1 Qualitative assessment of Value for Money**

The Consultant to assess and ascertain the following:

- (i). If the project size and contract duration have the potential to maximize private sector efficiency.
- (ii). If the PPP has adequately integrated responsibility of design, build, finance with operations and maintenance risks under one party that enables the private sector to derive efficiency gains from better management (than what the public sector could have achieved) of the whole-of-life-cycle costs of the project.
- (iii). If there is potential for the private sector to operate and manage the project more efficiently than the public sector to decrease the project's whole-of-life-costs.
- (iv). If there is potential for a private operator to generate higher revenues than the public sector would have through better utilization of the project assets.

###### **1.2 Quantitative assessment of Value for Money**

The Consultant to assess and ascertain the following:

- (i). If the modeling assumptions are backed by historical or empirical data.
- (ii). If the VFM for the project is greater than the threshold VFM requirement.
- (iii). If the VFM for the project will remain greater than the threshold rate in case of stress (or low) case scenario.

##### **2. Market appetite**

- (i). If there is a favorable response expected from the private sector towards the project? For example, as gauged by the contracting agency through preliminary market consultations or similar investor interactions.

- (ii). If similar PPP projects have been successfully implemented in the past in the country or in the region.
- (iii). If the debt financing will be available for the project with a relatively long tenure (above 7 years) and at a reasonable cost.
- (iv). If the project is eligible for government funding support.
- (v). If the project is eligible for funding/ guarantees from multilateral/ donor agencies.

## **V. FISCAL AFFORDABILITY ASSESSMENT**

The Consultant to assess and ascertain the following:

- (i). Extent and Nature of Government Fiscal Support for the project and quantify the Support.
- (ii). If there are no significant fiscal commitments required by the project and if the project has minimal contingent liabilities.

## **VI. GOVERNMENT'S INSTITUTIONAL CAPABILITY ASSESSMENT**

### **1. Institutional Capacity**

The Consultant to assess and ascertain the following:

- (i). If there is a PPP focal point within the contracting agency.
- (ii). If the contracting agency has the capacity to manage the PPP project preparation and procurement processes.
- (iii). If the contracting agency or its key personnel have previous experience with PPPs.
- (iv). If the contracting agency will have access to transaction advisors and/or consultants for project preparation and procurement.

### **2. Preparedness of the Contracting Agency for the Project**

The Consultant to assess and ascertain the following:

- (i). If the proposal has a project plan on the next stages of the project with identified deadlines and responsibilities allocated.
- (ii). If the contracting agency has budgeted funds, or does it have access to funds, to complete project preparation? This includes the costs of preparing required studies, securing land, resettlement costs, and environmental and social impact cost mitigation.

- (iii). If the project plan has incorporated a strategic communications plan to engage with internal and external stakeholders of the project during the next stages of the project.
- (iv). If the contracting agency is aware of the requirements for licenses, approvals and permits in case the project covers multiple jurisdictions.
- (v). If there are any constraints that could delay the project from getting to the market.

### **3. Project Execution Capability of the Contracting Agency**

The Consultant to determine the following with respect to the capacity of the Kenya Urban Roads Authority (KURA) and associated institutions in executing the project:

- (i). If the contracting agency has adequate project management capability as evidenced from successful experience of implementing public funded projects in the sector.
- (ii). If the contracting agency has been effective in managing key contractual risks and monitoring performance of PPP projects during their operations phase.
- (iii). If the PPP project will have independent engineers or consultants to oversee the project's construction.
- (iv). If the contracting agency will hire independent consultants or advisors to periodically assess project performance during the operations phase.
- (v). If the contracting agency will insist on project level disclosure to the public in relation to project's performance and in meeting contractual obligations from time to time.

## 4 REPORT AND TIME SCHEDULE

### 4.1 Commencement

The Consultant shall commence the study within fourteen (14) calendar days of the effective date of the contract.

### 4.2 Reports

The Consultant shall prepare and submit to the Project Manager, KURA Technical Team the following reports. **All reports shall be in English and prepared on A4 metric size paper. All reports will be submitted in five hard copies and two soft copies in CD ROM format.** The consultant will discuss and get approval of the software format used to prepare the soft copies for drawings to ensure compatibility with available software in the Client's establishment. In order to facilitate speedy review by the Client of Consultant's work, the Consultant is encouraged to organize parts of the main reports into working papers for prior discussion with the Client before compilation into deliverables.

a) **Inception Report (One (1) Month)**

This shall summarize initial findings and give proposals covering methodologies of the preliminary studies, and the detailed work plan for the conduct of the preliminary design – 5 hard copies and two softcopies for the client.

b) **Preliminary PreFeasibility Study Report (Four (4) Months):**

This shall summarize the findings, analysis, results, and recommendations of the study, and shall contain all supporting material and include an executive summary.

The Consultant shall prepare preliminary design drawings and reports in accordance with the format and title sheets as directed by the Team Leader, Project Technical Team. These documents to be submitted in 5 hard copies and two softcopies to be submitted to the Team Leader-Project Technical Team.

The report will generally incorporate comments generated from the presentation of the Inception Report as well as comments from the Client's Technical Team.

c) **Draft Final PreFeasibility Study Report (Two (2) Months)**

This report will encompass the entire scope of the consultancy in detail, including all technical investigations and studies: engineering; traffic; socio-economic and environmental, conceptual design, alternative upgrading scenarios, cost estimates, land acquisition plans and material source plans.

The report will generally incorporate comments generated from the presentation of the Preliminary PreFeasibility Study Report as well as comments from the Client's Technical Team.

The Draft PreFeasibility Study Report shall conform to a report structure that details at a minimum all six (6) mandatory input requirements of the Screening tool.

**d) Final PreFeasibility Study Report (One (1) Month)**

The report will generally incorporate comments generated from the presentation of the Draft Final PreFeasibility Study Report as well as comments from the Client's Technical Team. (Ten hard copies and Two soft copies)

The Final Feasibility Study Report shall conform to the report structure of the Terms of References input mandatory requirements of screening tool as a bare minimum.

The environmental and social impact assessment reports, as well as the Preliminary Engineering design Report shall be packaged as separate volumes.

**e) Progress Reports (Monthly)**

These shall be submitted monthly and shall detail all work performed during the reporting period and utilization of the study personnel. This shall contain preliminary conclusions (covering such topics as traffic studies and design standards), based on the analyses substantially completed, and shall also identify actual and anticipated difficulties and delays in the work, their causes and the remedies proposed to solve them – 3 hard copies and two softcopies to be presented to the Team leader-Project Technical Team

### **4.3 Records of Documents**

After delivery of all final documentation, the originals of the following documents are to be deposited with the Team Leader, KURA Technical Team;

- i) All drawings, both full size and photo-reduced, inclusive of land acquisition drawings, all in transparent material.
- ii) Tabulated test result of the materials investigations and any interpretation therefrom inclusive of materials charts
- iii) Earthworks computations inclusive of mass-haul diagram
- iv) Structural calculations
- v) Hydrological and water way calculations
- vi) Setting out data and earthworks computation on CD ROM.

### **4.4 Time Schedule**

The PreFeasibility study and conceptual designs shall be completed and forwarded to the Team Leader, KURA Technical Team within Eight (8) months of the commencement of the assignment. The Consultant should be prepared to attend meetings with the Client to discuss the assignment at any stage.

**Schedule: Proposed Time Schedule for Consultancy**

ACTIVITY	MONTHS								
	M 1	M 2	M2	M3	M4	M5	M6	M7	M8
Inception Report									
Comments KURA									
Preliminary Report									
Comments by KURA									
Draft Final Report									
Comments by KURA									
Final Pre-Feasibility Study Report									

**4.5 Lateness in reporting**

Where a report required is delayed beyond the stipulated time for submission, the consultant shall provide to the Client an explanation satisfactory to the Client for the delay in submission and the remedial measures to be undertaken.

## 5 OBLIGATION OF THE CLIENT AND CONSULTANT

### 5.1 Documents and Reports

The Client will supply all pertinent data and information in its possession and give such assistance as shall reasonably be required for the conduct by the Consultant of his duties under this contract save that such assistance shall not be extended to the provision of any supplies or services. The Consultant will be required to pay for purchase fee of maps, manuals and other documents.

The following will on request be supplied by the Team Leader, KURA Technical Team to the Consultant who will be awarded the consultancy: -

- i) Standard specifications for Road and Bridge Construction 1986
- ii) Road Design Manual Part I – Geometric Design of Rural Roads 1979
- iii) Road Design Manual Part III – Pavement design and Materials 1987
- iv) Analysis of Contract Rates, latest edition
- v) Sample standard drawings

*Please note that appropriate charges will be levied for certain documents.*

The Client will:

- (i) Ensure free access to all sites and locations connected with the execution of the study;
- (ii) Provide the Consultant with any assistance as the Consultant may be entitled to in accordance with the Terms of Reference
- (iii) Provide the Consultant with all documents, data, any existing photographs and other information pertaining to the study that are available within the Authority.
- (iv) Facilitate the issuance of work permits and entry visas for the Consultant's expatriate staff.

In particular, the Client shall provide the following

- (i) All data and reports pertaining to the design studies that have been carried out for the road under study if any;
- (ii) Available data and information on road inventory and traffic counts;
- (iii) Recent road construction and maintenance costs; and
- (iv) Unhindered access to pertinent data.

### 5.2 Liaison

The Project Technical Team shall provide liaison with other Ministries and Departments in order to introduce the Consultant to them. The Consultant shall be fully responsible for collecting data and information from these agencies, including paying for it where necessary.

The Consultant shall be fully responsible for collecting data and information from Government agencies, paying for it where necessary.

### 5.3 Taxes and Duties

The Consultant shall be liable to pay all duties and taxes in connection with this assignment including VAT and other taxable payable under the laws of Kenya. No tax or duty exemption shall be given to the Consultant. The Consultant shall be deemed to have taken the above into consideration while preparing his financial proposal.

#### **5.4 Correspondence**

The Client shall ensure that correspondence exchange in respect of the implementation of the study is treated promptly by the agency in order to avoid any delay. Correspondence by e-mail shall be on Microsoft Outlook (for Client).

#### **5.5 Consultant's Obligations**

- 5.5.1 All information, data and reports obtained from the Client in the execution of the services of the Consultant shall be properly reviewed and analysed by the Consultant. The responsibility for the correctness of using such data shall rest with the Consultant. All such information, data, and reports shall be treated as confidential and returned to the Client upon completion of the assignment.
- 5.5.2 The consultant shall be responsible for analysis, interpretation, and conclusion made from the data and information provided by the client.
- 5.5.3 The Consultant shall be responsible for arranging for all necessary office and living accommodation, transportation (**including transport for Client supervision staff and provide a vehicle for the supervision team for full duration of the contract period – eight months**), equipment and supplies, surveys, investigations, materials testing, secretarial services, related to the performance of the works. Specifications and provisions for vehicle are as follows: Saloon Car less than 6 years old, more than 1500CC, a driver, maintenance, comprehensive insurance, travel per month of 4,000Kms and vehicle shall revert back to consultant after 8 month use by client.
- 5.5.4 The Consultant shall be responsible for the printing of all reports, drawings, maps, etc.
- 5.5.5 The Consultant shall provide a training plan for any counterpart personnel as approved by the Client.
- 5.5.6 All reports and documents relevant to the project, maps, field survey notes, computer programs and electronic data, etc. shall become the property of the Client. The Consultant shall provide the originals of maps, plans and all drawings with final tender documents both in hard and soft copies in CD ROMs and in acceptable electronic format.

## **6 PERSONNEL REQUIREMENTS**

The Prefeasibility team shall comprise the following members. The detailed tasks assigned to each team member are not necessarily limited to those listed.

### **6.1 The Consultant's Key Personnel**

The Consultants shall at a minimum, provide the key staff described below. Curriculum Vitae not exceeding four pages per person shall be provided in respect of each key staff.

It is anticipated that **30 staff man– months** of key professional staff stated below would be required to accomplish the tasks stated in the TOR of the assignment:

#### **a) PPP Expert/Team Leader**

Advanced university degree in Management, Economics, Engineering or any other relevant field.

A minimum of 15 years' demonstrated experience in providing PPP transaction advisory services/development of large infrastructure projects on PPP basis including extensive experience in project structuring and risk analysis, allocation and management; project agreements; bid process management including preparation of bidding process documentation and post-bid process monitoring. Successful preparation of PPP projects with at least three financially closed projects. Relevant qualifications and experience in roads infrastructure operation & maintenance projects in general, and in Africa in particular; Experience in toll road/highway projects will be an additional merit.

Good English communication and writing skills, especially in report writing, are essential.

#### **b) Financial Expert**

Advanced university degree in Finance/Financial Engineering, Master of Business Administration, Business Economics or any other relevant field.

At least 15 years of professional experience in project finance, with a proven track record in financial valuation and financial modeling of PPP projects.

Demonstrated experience in dealing with capital market institution, such as investment banks, global insurance and guarantee products, etc., and experience in raising funds for similar PPP projects until financial close and successful contract award with at least one financially closed PPP project. Experience in toll road/highway projects will be an additional merit.

Good English communication and writing skills, especially in report writing, are essential.

#### **c) Urban Highway Design Engineer**

The HE should be a qualified and competent registered professional civil engineer with a recognized degree in Civil Engineering or equivalent and a minimum of 12 years post qualification professional experience as a Highway and Structures Design Engineer on major

road contracts of similar nature. Knowledge of various internationally accepted design codes and methodologies and familiarity with internationally ‘best practices’ as well as proficiency in latest computer aided road design software is essential. Experience in roads design, supervision and construction management will be required. Fluency in both written and spoken English is essential.

**d) Environmental Expert (EE)**

University degree in Environmental Science, Environmental Law or related field with, optionally, relevant post-graduate qualification in any related field.

A minimum of 10 years of demonstrated experience in the preparation of environmental impact statements/environmental impact assessments (EIS/EIA) and environmental management plans/programs for three projects (public- and private-funded) in accordance with the specific requirements of developing countries. Familiarity with Kenya’s environmental and resettlement law is required.

Good English communication and writing skills, especially in report writing, are essential.

**e) Socio- Economic Specialist (SES)**

University degree in social sciences, development studies or other related field.

A minimum of 10 years’ demonstrated experience in the assessment of social impacts, gender analysis and mitigation measures for 3 investment projects (public and private funded) in Kenya. Thorough knowledge of Kenyan labour laws and other related laws/provisions.

Experience in the application of International Development Association’s (IDA) Environmental and Social Management Framework on Safeguards Policy Statement (involuntary resettlement safeguards, indigenous peoples safeguards, Physical Cultural Resources, Projects on International Waterways, etc.) in implementing PPP projects will be an additional merit. Relevant qualifications and experience in Roads infrastructure development, Operation & Maintenance projects in general, and in Africa in particular, will be an advantage.

Good English communication and writing skills, especially in report writing, are essential.

**f) Legal Expert**

Advanced university degree in Law, with excellent knowledge of the locally applicable laws in the infrastructure, environment and road transport sectors.

A minimum of 10 years’ demonstrated experience in drafting contractual agreements and other related documents/agreements; PPP procurement, managing bidding process, and resolving legal issues, policy and institutional assessment; and, successful preparation of PPP projects with at least three financially closed PPP project. Experience in toll road/highway projects will be an additional merit.

Good English communication and writing skills, especially in report writing, are essential.

**g) Transport Planner / Economist**

University degree in Urban Planning, Management, Engineering, Economics or related field with, optionally, relevant post-graduate qualification in transport planning.

A minimum of 10 years' demonstrated experience in transport planning and travel demand forecast modelling, traffic engineering, and management. Relevant qualifications and experience in urban roads transport planning and traffic engineering in general, and in Africa in particular will be an added advantage.

Good English communication and writing skills, especially in report writing, are essential.

#### **h) Surveyor**

The Surveyor will be responsible for all preliminary topographic survey. The Surveyor will:

- (i) Acquire necessary physical / cadastral plans from the relevant Government bodies, and use the same to identify existing road corridors;
- (ii) Manage a team of technician surveyors, ensuring best practice and appropriate accuracy;
- (iii) Conduct control surveys and install permanent and stable benchmarks suitable for reference during detailed design work and construction;
- (iv) Conduct preliminary topographic surveys of the road corridor, sufficient for conceptual design work;
- (v) Ensure timely and accurate transfer of survey information to the design engineers;
- (vi) Prepare preliminary land acquisition plans.

The Surveyor will be a competent and qualified candidate, with a degree in Survey & Photogrammetry and a minimum of 10 years post qualification professional experience, of which not less than 5 years have been in survey for design and construction of major highway contracts of similar nature. The candidate should be conversant with modern methods of survey including the use of Total Stations and GPS equipment. Fluency in both written and spoken English is essential.

#### **6.2 Support Staff**

The consultants shall provide the necessary support staff – including junior engineers, draftsmen, field surveyors, field supervisors and office support staff – needed in order to carry out their tasks and fulfill their responsibilities effectively.

It is anticipated that about **30 staff-months** of support staff would be required

#### **6.3 Work Schedule**

The consultant shall propose a schedule of activities and corresponding deployment of manpower, which will ensure that all duties entrusted to him/her, will be adequately performed. This schedule, together with a comprehensive statement justifying the proposed deployment will be incorporated in the methodology statement.

## SECTION F: STANDARD FORMS OF CONTRACT

### CONTENTS

Special notes

Contract for Consultant's Services

I Form of Contract

II General Conditions of Contract

General Provisions

Definitions

Law Governing the Contract

Language

Notices

Location

Authorized Representatives

Taxes and Duties

Commencement, Completion, Modification and

Termination of Contract

Effectiveness of Contract

Commencement of Services

Expiration of Contract

Modification

Force Majeure

2.5.1 Definition

2.5.2 No Breach of Contract

2.5.3 Extension of Time

2.5.4 Payments

2.6 Termination

2.6.1 By the Client

2.6.2 By the Consultant

2.6.3 Payment upon Termination

3. Obligations of the Consultant

3.1 General

Conflict of Interests

Consultant Not to Benefit from Commissions,  
Discounts, etc

Consultant and Affiliates Not to Be  
Otherwise Interested in Project

3.2.3 Prohibition of Conflicting Activities

3.3 Confidentiality

3.4 Insurance to be Taken Out by the Consultant

3.5 Consultant's Actions Requiring Client's Prior  
Approval

3.6 Reporting Obligations

3.7 Documents Prepared by the Consultant to

- 4 Be the Property of the Client
  - 4.1 Consultant's Personnel
  - 4.2 Description of Personnel
  - 4.3 Removal and/or Replacement of Personnel
- 5 Obligations of the Client
  - 5.1 Assistance and Exemptions
  - 5.2 Change in the Applicable Law
  - 5.3 Services and Facilities
- 6 Payments to the Consultant
  - 6.1 Lump-Sum Remuneration
  - 6.2 Contract Price
  - 6.3 Payment for Additional Services
  - 6.4 Terms and Conditions of Payment
  - 6.5 Interest on Delayed Payments
- 7 Settlement of Disputes
  - 7.1 Amicable Settlement
  - 7.2 Dispute Settlement
- III Special Conditions of Contract
- IV Appendices
  - Appendix A – Description of the Services
  - Appendix B – Reporting Requirements
  - Appendix C – Key Personnel and Sub-consultants
  - Appendix D – Breakdown of Contract Price in Foreign Currency
  - Appendix E – Breakdown of Contract Price in Local Currency
  - Appendix F – Services and Facilities Provided by the Client
  - Appendix G – Confidential Business Questionnaire

## **Special Notes**

1. The Lump-Sum price is arrived at on the basis of inputs – including rates – provided by the Consultant. The Client agrees to pay the Consultant according to a schedule of payments stipulated under clause 6.4 of Special Conditions of Contract.
2. The Contract includes four parts: Form of Contract, the General Conditions of Contract, the Special Conditions of Contract and the Appendices.

## **CONTRACT FOR CONSULTANT'S SERVICES**

between

\_\_\_\_\_  
*[name of the Client]*

AND

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

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

## I. FORM OF CONTRACT

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

### WHEREAS

the Client has requested the Consultant to provide certain consulting services as defined in the General Conditions of Contract attached to this Contract (hereinafter called the “Services”);

the Consultant, having represented to the Client that he has the required professional skills and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract;

NOW THEREFORE the Parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:

The General Conditions of Contract;

The Special Conditions of Contract;

The following Appendices:

Appendix A: Description of the Services

Appendix B: Reporting Requirements

Appendix C: Key Personnel and Sub consultants

Appendix D: Breakdown of Contract Price in Foreign Currency

Appendix E: Breakdown of Contract Price in Local Currency

Appendix F: Services and Facilities Provided by the Client

Appendix G: Confidential Business Questionnaire

2. The mutual rights and obligations of the Client and the Consultants shall be as set forth in the Contract; in particular:

The Consultant shall carry out the Services in accordance with the provisions of the Contract; and

The Client shall make payments to the Consultant in accordance with the provisions of the Contract.

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

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

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

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

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

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

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

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

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

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

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

# GENERAL CONDITIONS OF CONTRACT

## GENERAL PROVISIONS

### 1. GENERAL PROVISIONS

#### 1.1 Definitions

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

“Applicable Law” means the laws and any other instruments having the force of law in the Republic of Kenya as they may be issued and in force from time to time;

“Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GC) are attached together with all the documents listed in Clause 1 of such signed Contract;

“Contract Price” means the price to be paid for the performance of the Services in accordance with Clause 6 herebelow;

“Foreign Currency” means any currency other than the Kenya Shilling;

“GC” means these General Conditions of Contract;

“Government” means the Government of the Republic of Kenya;

“Local Currency” means the Kenya Shilling;

“Member”, in case the Consultant consists of a joint venture of more than one entity, means any of these entities; “Members” means all these entities, and “Member in Charge” means the entity specified in the SC to act on their behalf in exercising all the Consultant’s rights and obligations towards the Client under this Contract;

“Party” means the Client or the Consultant, as the case may be and “Parties” means both of them;

“Personnel” means persons hired by the Consultant or by any Subconsultant as employees and assigned to the performance of the Services or any part thereof;

“SC” means the Special Conditions of Contract by which the GC may be amended or supplemented;

“Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A; and

“Sub-consultant” means any entity to which the Consultant subcontracts any part of the Services in accordance with the provisions of Clauses 3 and 4.

#### 1.2 Law Governing Contract

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

#### 1.3 Language

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

- 1.4 Notices** Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed or when sent by registered mail, telex, telegram or facsimile to such Party at the address specified in the SC.
- 1.5 Location** The Services shall be performed at such locations as are specified in Appendix A and, where the location of a particular task is not so specified, at such locations, whether in the Republic of Kenya or elsewhere, as the Client may approve.
- 1.6 Authorised Representative** Any action required or permitted to be taken and any document required or permitted to be executed under this Contract by the Client or the Consultant may be taken or executed by the officials specified in the SC.
- 1.7 Taxes and Duties** The Consultant, Sub-consultant [s] and their personnel shall pay such taxes, duties, fees and other impositions as may be levied under the Laws of Kenya, the amount of which is deemed to have been included in the Contract Price.

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

- 2.1 Effectiveness of Contract** This Contract shall come into effect on the date the Contract is signed by both Parties or such other later date as may be stated in the SC.
- 2.2 Commencement of Services** The Consultant shall begin carrying out the Services fourteen (14) days after the date the Contract becomes effective or at such other date as may be specified in the SC.
- 2.3 Expiration of Contract** Unless terminated earlier pursuant to Clause 2.6, this Contract shall terminate at the end of such time period, after the Effective Date, as is specified in the SC.
- 2.4 Modification** Modification of the terms and Conditions of this Contract, including any modification of the scope of the Services or the Contract Price, may only be made by written agreement between the Parties.
- 2.5 Force Majeure**
- 2.5.1 Definition** For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.
- 2.5.2 No Breach of Contract** The failure of a Party to fulfill any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.
- 2.5.3 Extension of Time** Any period within which a Party shall, pursuant to this Contract complete any action or task shall be extended for a period equal to the time during

which such Party was unable to perform such action as a result of Force Majeure.

#### **2.5.4 Payments**

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

### **2.6 Termination**

#### **2.6.1 By the Client**

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

- a. if the Consultant does not remedy a failure in the performance of his obligations under the Contract within thirty (30) days after being notified or within any further period as the Client may have subsequently approved in writing;
- b. if the Consultant becomes insolvent or bankrupt;
- c. if, as a result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- d. if the Consultant, in the judgment of the Client, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this clause;

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

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

- e. if the Client in his sole discretion decides to terminate this Contract
- f. if the Consultant fails to execute and complete the works within the stipulated contract period plus any time extensions formally granted by the Client pursuant to Clause 2.3 of the SCC.

#### **2.6.2 By the Consultant**

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

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

#### **2.6.3 Payment upon Termination**

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

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

### 3. OBLIGATIONS OF THE CONSULTANT

#### 3.1 General

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

#### 3.2 Conflict of Interests

##### 3.2.1 Consultant Not to Benefit from Commissions, Discounts, etc.

- i. The remuneration of the Consultant pursuant to Clause 6 shall constitute the Consultant's sole remuneration in connection with this Contract or the Services and the Consultant shall not accept for his own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of his obligations under the Contract and the Consultant shall use his best efforts to ensure that his personnel, any sub-consultant[s] and agents of either of them similarly shall not receive any such additional remuneration.
- ii. For a period of two years after the expiration of this Contract, the Consultant shall not engage and shall cause his personnel as well as his sub-consultant[s] and his/their personnel not to engage in the activity of a purchaser (directly or indirectly) of the assets on which he advised the Client on this Contract nor shall he engage in the activity of an adviser (directly or indirectly) of potential purchasers of such assets.
- iii. Where the Consultant as part of the Services has the responsibility of advising the Client on the procurement of goods, works or services, the Consultant will comply with any applicable procurement guidelines and shall at all times exercise such responsibility in the best interest of the Client. Any discounts or commissions obtained by the Consultant in the exercise of such procurement shall be for the account of the Client.

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

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

- 3.2.3 Prohibition of Conflicting Activities** Neither the Consultant nor his sub-consultant[s] nor their personnel shall engage, either directly or indirectly in any of the following activities:
- (a) during the term of this Contract, any business or professional activities in the Republic of Kenya which would conflict with the activities assigned to them under this Contract; or
  - (b) after the termination of this Contract, such other activities as may be specified in the SC.
- 3.3 Confidentiality** The Consultant, his sub-consultant [s] and the personnel of either of them shall not, either during the term of this Contract or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract or the Client's business or operations without the prior written consent of the Client.
- 3.4 Insurance to be Taken Out by the Consultant** The Consultant (a) shall take out and maintain and shall cause any sub-consultant[s] to take out and maintain, at his (or the sub-consultants', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks and for the coverage, as shall be specified in the SC; and (b) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums have been paid.
- 3.5 Consultant's Actions Requiring Client's Prior Approval** The Consultant shall obtain the Client's prior approval in writing before taking any of the following actions:
- a) Entering into a subcontract for the performance of any part of the Services,
  - b) Appointing such members of the personnel not listed by name in Appendix C ("Key Personnel and Sub-consultants").
- 3.6 Reporting Obligations** The Consultants shall submit to the Client the reports and documents specified in Appendix A in the form, in the numbers, and within the periods set forth in the said Appendix.
- 3.7 Documents Prepared by the Consultant to be the Property of the Client** All plans, drawings, specifications, designs, reports and other documents and software submitted by the Consultant in accordance with Clause 3.6 shall become and remain the property of the Client and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Client together with a detailed inventory thereof. The Consultant may retain a copy of such documents and software. Neither Party shall use these documents for purposes unrelated to this Contract without the prior approval of the other Party.
- 4. CONSULTANT'S PERSONNEL**
- 4.1 Description of Personnel** The titles, agreed job descriptions, minimum qualifications and estimated periods of engagement in the carrying out of the Services of the Consultant's Key Personnel are described in Appendix C. The Key Personnel and Sub-consultants listed by title as well as by name in Appendix C are hereby approved by the Client.
- 4.2 Removal and/or Replacement of Personnel** (a) Except as the Client may otherwise agree, no changes shall be made in the Key Personnel. If for any reason beyond the reasonable control of the Consultant, it becomes necessary to replace any of the Key

Personnel, the Consultant shall provide as a replacement a person of equivalent or better qualifications.

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

## 5. OBLIGATIONS OF THE CLIENT

- 5.1 Assistance and Exemptions** The Client shall use his best efforts to ensure that provides the Consultant such assistance and exemptions as may be necessary for due performance of this Contract.
- 5.2 Change in the Applicable Law** If after the date of this Contract, there is any change in the Laws of Kenya with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Consultant, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties and corresponding adjustments shall be made to the amounts referred to in Clause 6.2 (a) or (b), as the case may be.
- 5.3 Services and Facilities** The Client shall make available to the Consultant the Services and Facilities listed under Appendix F.

## 6. PAYMENTS TO THE CONSULTANT

- 6.1 Lump-Sum Remuneration** The Consultant's total remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all staff costs, Sub-consultants' costs, printing, communications, travel, accommodation and the like and all other costs incurred by the Consultant in carrying out the Services described in Appendix A. Except as provided in Clause 5.2, the Contract Price may only be increased above the amounts stated in Clause 6.2 if the Parties have agreed to additional payments in accordance with Clause 2.4.
- 6.2 Contract Price**
- (a) The price payable in foreign currency is set forth in the SC.
  - (b) The price payable in local currency is set forth in the SC.
- 6.3 Payment for Additional Services** For the purposes of determining the remuneration due for additional services as may be agreed under Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E.
- 6.4 Terms and Conditions of Payment** Payments will be made to the account of the Consultant and according to the payment schedule stated in the "Special Conditions of Contract".
- 6.5 Interest on Dealtayed Payment** Payment shall be made within thirty (30) days of receipt of invoice and the relevant documents specified in Clause 6.4. If the Client has delayed

payments beyond ninety (90) days after the due date hereof, simple interest shall be paid to the Consultant for each day of delay at a rate three percentage points above the prevailing Central Bank of Kenya's average rate for base lending.

**7. SETTLEMENT OF DISPUTES**

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

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

## SPECIAL CONDITIONS OF CONTRACT

Number of GC Clause	Amendments of and Supplements to Clauses in the General Conditions of Contract
1.1(i)	The Member in Charge is _____ <i>[name of Member]</i>
1.4	<p>The addresses are:</p> <p>Client:           <b>Director General</b>                       <b>Kenya Urban Roads Authority (KURA)</b>                       <b>P. O. Box 41727 – 00100</b>                       <u><b>Nairobi, Kenya</b></u></p> <p>Attention:       <b>Director (Policy, Strategy &amp; Compliance)</b></p> <p>Consultant: _____</p> <p>Attention: _____</p> <p>Telephone; _____</p>
1.6	<p>The Authorized Representatives are:</p> <p>For the Client:       <b>Director, Policy Strategy &amp; Compliance</b></p> <p>For the Consultant: _____</p>
2.1	<p>The date on which this Contract shall come into effect is <b>Upon the Contract being signed by the Client specified in Clauses 1.1 and 2.1 of Appendix A</b></p> <p><i>Note: The date may be specified by reference to conditions of effectiveness of the Contract, such as receipt by Consultants of advance payment and by Client of bank guarantee</i></p>
2.2	The date for the commencement of Services is <b>Fourteen (14) days</b> after issue of Commencement Letter
2.3	The period shall be <b><u>Eight (8) Months</u></b> .
	<p><b>The Consultant shall be charged Liquidated Damages at the rate of 0.05% of the contract sum per day for the extra days beyond the official contract period plus any time extensions granted by the Client, to a maximum of 5% of the Contract Sum, beyond which the Contract shall be terminated in accordance with the conditions of this contract.</b></p>

**Note:** Fill in the period, e.g., *Eight Months* or such other period as the Parties may agree in writing.

2.4 The Consultant shall sign a Service Level Agreement with the Client which shall quantify the minimum acceptable service to the Client and the Consultant's performance will be assessed every quarterly during the implementation of the Contract.

3.1 Notwithstanding Clause 3.1 of the GC:-

i) The consultant shall be held responsible for the accuracy of the data up to the time of implementation.

3.4 The risks and coverage shall be:

I. Professional Liability: **Full amount of this Contract**

II. Loss of or damage to equipment and property: **KShs 5,000,000**

III. Third party Liability: **KShs 5,000,000**

IV. Motor vehicle insurance: **KShs 3,000,000**

V. Employer's Liability and workers compensation: **KShs 5,000,000**

**4.1 All the proposed/approved key staff must be present during presentation of the findings to the client.**

6.2(a) The amount in foreign currency or currencies: **Nil**

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

Payments shall be made according to the following schedule:

a) Twenty (20) percent of the Contract Price shall be paid upon submission and acceptance by the Client of the **Inception Report**.

b) Twenty (30) percent of the Contract Price shall be paid upon submission and acceptance by the Client of the **Preliminary PreFeasibility Study Report**

c) Twenty (30) percent of the Contract Price shall be paid upon submission and acceptance by the Client of the **Draft Final PreFeasibility Study Reports**.

d) Twenty (20) percent of the Contract Price shall be paid upon submission and acceptance by the Client of the **Final PreFeasibility Study Report**.

Payments in Ksh shall be made to the following Account

Account Number: \_\_\_\_\_

Account Name: \_\_\_\_\_

Bank: \_\_\_\_\_

Address: \_\_\_\_\_

- 1.5 Payments will be made within 90 (ninety) days of receipt of the invoice and the relevant documents specified in Clause 6.4 above. Late payment will attract interest from the client
- 1.6 The Consultancy services rendered by the Consultant shall be carried out to the satisfaction of the Director (PS&C) represented by the Project Manager following which a contract completion certificate shall be issued and final payment made under clause 6.2 (b) of the Special Conditions.
- 7.2 Disputes shall be settled by arbitration in accordance with the following provisions:
1. Selection of Arbitrators. Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three arbitrators, in accordance with the following provisions:
    - (a) Where the Parties agree that the dispute concerns a technical matter, they 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 Institution of Engineers of Kenya* for a list of not fewer than five 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 Institution of Engineers of Kenya* shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.
    - (b) Where the Parties do not agree that the dispute concerns a technical matter, the Client and the Consultant shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by *the Chartered Institute of Arbitrators of Kenya*.
    - (c) If, in a dispute subject to Clause SC 7.2 1.(b), one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to *the Chartered Institute of Arbitrators of Kenya* to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.
  2. Rules of Procedure. Except as stated herein, arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the *Chartered Institute of Arbitrators of Kenya* as in force on the date of this Contract.
  3. Substitute Arbitrators. If for any reason an arbitrator is unable to perform his function, a substitute shall be appointed in the same manner as the original arbitrator.
  4. Nationality and Qualifications of Arbitrators. The sole arbitrator or the third arbitrator appointed pursuant to paragraphs (a) through (c) of Clause SC 7.2 1 hereof shall be a nationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall be a Kenyan.

Miscellaneous. In any arbitration proceeding hereunder:

- (a) proceedings shall, unless otherwise agreed by the Parties, be held in **Nairobi, Kenya**
- (b) **English** language shall be the official language for all purposes; and
- (c) the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) 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. LIST OF APPENDICES

- APPENDIX A: TERMS OF REFERENCE (to be inserted)
- APPENDIX B: COMMENTS ON TERMS OF REFERENCE (to be inserted)
- APPENDIX C: DESCRIPTION OF THE METHODOLOGY AND WORKPLAN FOR PERFORMING THE ASSIGNMENT (to be inserted)
- APPENDIX D: TIME SCHEDULE FOR PROFESSIONAL PERSONNEL (to be inserted)
- APPENDIX E: TEAM COMPOSITION AND TASK ASSIGNMENTS (to be inserted)
- APPENDIX F: CURRICULUM VITAE (CV) FOR PROPOSED PROFESSIONAL STAFF (to be inserted)
- APPENDIX G: ACTIVITY (WORKPLAN) SCHEDULE (to be inserted)
- APPENDIX H: BREAKDOWN OF CONTRACT PRICE IN KSHS (to be inserted)
- APPENDIX I: OTHER SUBMISSIONS
- Technical proposal submission form*  
*Firm's References*  
*Financial proposal submission form*
- APPENDIX J: THE REQUEST FOR PROPOSALS (to be inserted)
- APPENDIX K: SERVICE LEVEL AGREEMENT BETWEEN KENYA URBAN ROADS AUTHORITY & CONSULTANT (To be inserted as an Annex in the Contract Agreement)
- APPENDIX L: CONFIDENTIAL BUSINESS QUESTIONNAIRE
- APPENDIX M: PPP SCREENING TOOL (soft copy)