



**DEVELOPMENT PARTNER FOR THE PROPOSED JOINT VENTURE IN THE RE-DEVELOPMENT OF  
LAND REFERENCE NUMBER 330/1192 NAIROBI KENYA**

**TENDER NUMBER: KPPF/PROC/2-A/02/19**

**OPEN INTERNATIONAL TENDER**

**JUNE 2019**

Stima Plaza, Kolobot Road,  
P.O. Box 1548 - 00600  
Nairobi, Kenya.

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Website: [www.kppf.co.ke](http://www.kppf.co.ke)

**ALL CANDIDATES ARE ADVISED TO READ CAREFULLY THIS TENDER DOCUMENT IN ITS  
ENTIRETY BEFORE MAKING ANY BID**

Proposed Joint Venture Opportunity for the Re-Development of Plot L.R. Number 330/1192, along Naivasha/Riara Road, Nairobi Kenya.

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## **SECTION I - INVITATION TO TENDER**

**DATE: JUNE 2019**

- 1.1 The Kenya Power Pension Fund (KPPF) invites bids from eligible tenderers for **DEVELOPMENT PARTNER FOR THE PROPOSED JOINT VENTURE IN THE RE-DEVELOPMENT OF LAND REFERENCE NUMBER 330/1192 TENDER NO. KPPF/PROC/2-A/02/19**
- 1.2 Tendering will be conducted through the Bidding procedures specified in the Public Procurement and Asset Disposal Act, 2015, the Public Procurement and Disposal Regulations, 2006 and Amendment Regulations (2013) Nos. 106 and 114.
- 1.3 Interested firms may obtain further information on the Tenders Documents, from the Fund’s website [www.kppf.co.ke](http://www.kppf.co.ke) or the Fund’s Office at the following address;

Proposed Joint Venture Opportunity for the Re-Development of Plot L.R. Number 330/1192, along Naivasha/Riara Road, Nairobi Kenya.

Procurement Officer,  
Kenya Power Pension Fund Offices, Stima Plaza Annex, Kolobot Road, Parklands  
P.O Box 1548 – 00600  
Nairobi, Kenya.  
Tel No: 254-20-3201020 / +254 711 031 020  
Email: [tenders@kppf.co.ke](mailto:tenders@kppf.co.ke)

- 1.4 Information downloaded from [www.kppf.co.ke](http://www.kppf.co.ke) is FREE OF CHARGE and bidders may register their submissions via email address [tenders@kppf.co.ke](mailto:tenders@kppf.co.ke)
- 1.5 Completed tender documents are to be enclosed in plain sealed envelopes marked with the Tender reference number “**TENDER NO. KPPF/PROC/2-A/02/19**” and tender name “**DEVELOPMENT PARTNER FOR THE PROPOSED JOINT VENTURE IN THE RE-DEVELOPMENT OF LAND REFERENCE NUMBER 330/1192**” and be deposited in the Tender Box next to the lift lobby located at Stima Plaza Annex, Ground Floor, Kolobot Road, Nairobi, Kenya so as to be received on or before **Friday, 2<sup>nd</sup> August 2019 at 11:30 AM (“the tender Submission Deadline”)**.
- 1.6 Any duly sealed tender documents which are **bulky** and cannot fit into the Tender Box shall be received only between **8.00 a.m. and 11.30 a.m.** at the Fund’s Offices, **Stima Plaza Annex, 3<sup>rd</sup> Floor Ndovu Meeting Room on the tender submission deadline**. Bidders who submit documents in accordance with this paragraph must sign the submission register for bulky Tender documents which will be availed at the time and place of submission.
- 1.7 Tenders will be opened promptly thereafter.
- 1.8 All tenderers whose tenders will have been received before the closing date and time will be advised of the results of their tender submissions
- 1.9 Prices quoted should be inclusive of all taxes and levies (where applicable) and must be in Kenya Shillings or another currency that is freely convertible in Kenya (for Foreign bidders) and shall remain valid for One Hundred Twenty (120) days from the Bid Submission Deadline.
- 1.10 The Tender Security shall be an **Original** Bank guarantee issued by a commercial bank licensed by the Central Bank of Kenya and **MUST** be submitted with Tender documents. The Tender Security must be in the form specified under this clause and must be issued for Proposed Joint Venture Opportunity for the Re-Development of Plot L.R. Number 330/1192, along Naivasha/Riara Road, Nairobi Kenya.

the benefit of KPPF in the amount of **Kshs. 10,000,000.00 (Ten Million Kenya Shillings only)** or equivalent in a freely convertible currency. The exchange rate to be used for currency conversion for evaluation purposes shall be the Central Bank of Kenya selling rate ruling on the Tender closing date. (Please visit the Central Bank of Kenya website).

**1.11 Pre-Bid Meeting**

There will be a pre-bid meeting to be held on site, **along Naivasha Road** opposite dagoretti corner stage and easily identifiable as Umeme Plaza, Nairobi, Kenya on **3<sup>rd</sup> July 2019 at 11:30 am**. Non-attendance during the pre-bid meeting will not be a cause of disqualification of the Tender.

- 1.12** The Fund reserves the right to conduct due diligence and, for that purpose, to contact any government or other agency in order to satisfy itself of the eligibility and/or suitability of any Bidder, provided that the foregoing shall not be interpreted to excuse any Bidder from making all disclosures required in the tender documents and the applicable laws.

## **DISCLAIMER**

The Kenya Power and Lighting Company Limited Staff Retirement Benefits Scheme ( "the Fund") has taken adequate care in the preparation of this tender. Nevertheless, the Bidder should satisfy itself that the tender is complete in all respects.

Neither the Fund, nor its employees, consultants, advisors accept any liability or responsibility for the accuracy or completeness of, nor make any representation or warranty – express or implied, with respect to the information contained in the tender, or on which the tender is based, or any other information or representations supplied or made in connection with the Selection Process.

Neither the Fund, nor its employees, consultants or advisors will have any liability to any Bidder or any other person under any law, statute, rules or regulations or otherwise for any loss, expense or damage which may arise from or be incurred or suffered in connection with any information contained in this tender, the award of the Project (hereinafter defined), the information and any other information supplied by or on behalf of the Fund or their employees, any consultants or otherwise arising in any way from the selection process for the Project.

The tender does not address concerns relating to diverse investment objectives, financial situation and particular needs of each party. The tender is not intended to provide the basis for any investment decision and each prospective Bidder must make its/their own independent assessment in respect of various aspects of the feasibilities of the Project.

Nothing in this tender is, or should be relied on, as a promise or representation as to the future. In furnishing the tender, neither the Fund, nor its employees, advisors undertake to provide the recipient with access to any additional information or to update the tender or to correct any perceived inaccuracies therein.

The Fund or its authorized officers/representatives/ advisors reserve the right, without prior notice, to change the procedure for the selection of the Development Partner or terminate discussions and the delivery of information at any time before the signing of any agreement for the Project, without assigning reasons thereof.

The Fund reserves the right to reject any or all of the Bids submitted in response to the tender at any stage without assigning any reasons whatsoever.

The Fund reserves the right to change any or all of the provisions of the tender. Such changes will be intimated to all the Bidders.

The Fund reserves the right to change, modify, add to or alter the selection process including additional evaluation criteria. Any change in the selection process shall be communicated to all Bidders.

## SECTION II - TENDER SUBMISSION CHECKLIST

### Tender Submission Format

Bidders are advised to clearly label their documents according to the tender submission checklist.

| No. | Item   | Tick Where Provided |
|-----|--|---------------------|
| 1.  | Duly completed Declaration Form  |                     |
| 2.  | Duly completed Tender Form   |                     |
| 3.  | Copy of Valid Tax Compliance Certificate   |                     |
| 4.  | Registration Certificate   |                     |
| 5.  | Duly completed Confidential Business questionnaire   |                     |
| 6.  | Schedule of requirements   |                     |
| 7.  | Names with full contact as well as physical addresses of previous customers of similar project and reference letters from previous customers |                     |
| 8.  | Tender Security  |                     |
| 9.  | Copy of power of Attorney  |                     |
| 10. | Internal Rate of Return  |                     |
| 11. | Technical Submission based on schedule of requirements   |                     |
| 12. | Any other document or item required by the Tender Document. (The Tenderer shall specify such other documents or items it has submitted)      |                     |

### \*NOTES TO TENDERERS

- Valid Tax Compliance Certificate shall be one issued by the relevant tax authorities and valid for at least up to the tender closing date. All Kenyan registered Tenderers must provide a valid Tax Compliance Certificate.

## **SECTION III - INSTRUCTIONS TO TENDERERS (ITT)**

### **3.1 Definitions**

In this tender, unless the context or express provision otherwise requires: -

1. *Any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made thereunder.*
2. *“ Date of Tender Document” shall be the start date specified on the KPPF tender document*
3. *“ Day” means calendar day and “ month” means calendar month.*
4. *“ KEBS” wherever appearing means the Kenya Bureau of Standards or its successor(s) and assign(s) where the context so admits.*
5. *“ KENAS” wherever appearing means the Kenya National Accreditation Service or its successor(s) and assign(s) where the context so admits*
6. *“ PPRA” wherever appearing means The Public Procurement Regulatory Authority or its successor(s) and assign(s) where the context so admits.*
7. *Reference to “ the tender” or the “ Tender Document” includes its appendices and documents mentioned hereunder and any reference to this tender or to any other document includes a reference to the other document as varied supplemented and/or replaced in any manner from time to time.*
8. *“ The Procuring Entity” means The Kenya Power & Lighting Company Limited Staff Retirement Benefits Scheme or its successor(s) and assign(s) where the context so admits (hereinafter referred to as Kenya Power Pension Fund or the Fund abbreviated as KPPF).*
9. *“ The Tenderer/Bidder” means the person(s) submitting its Tender/Bid for this project in response to the Invitation to Tender.*
10. *Where there are two or more persons included in the expression the “ Tenderer/Bidder”, any act or default or omission by the Tenderer/Bidder shall be deemed to be an act, default or omission by any one or more of such persons.*
11. *Words importing the masculine gender only, include the feminine gender or ( as the case may be) the neutral gender.*
12. *Words importing the singular number only include the plural number and vice-versa and where there are two or more persons included in the expression the “ Tenderer” the covenants, agreements and obligations expressed to be made or performed by the Tenderer shall be deemed to be made or performed by such persons jointly and severally.*
13. *KPPF's Authorised person(s) shall mean its CEO & Trust Secretary who is designated by the PPAD Act 2015 to exercise such power, authority or discretion as is required under the*

- tender and any contract arising therefrom, or such other KPPF staff delegated with such authority.*
14. *Citizen Development Partner -means a person/firm wholly owned and controlled by person(s) who are citizens of Kenya.*
  15. *Local Development Partner - a firm shall be qualified if it is registered in Kenya.*
  16. *Bidding Joint Venture – shall mean an association of two or more Entities bound by a joint bidding agreement entered into by them for the purpose of this tender for this Project*
  17. *Member shall mean an Entity that is a member of joint venture and which is a party to the joint bidding agreement*
  18. *Lead Member shall mean, with reference to a Prospective Bidder which is formed of a Joint Venture, a Member who undertakes prime responsibility and is named as the Lead Member in the form in Section XVII*
  19. *Construction Contractor shall mean an Entity, proposed by the Successful Bidder in the Qualification Documents to undertake the construction works under the Project Agreement*
  20. *Project - Shall mean the proposed re-development of plot Land Reference Number 330/1192 through a joint venture which includes the design, financing, construction, operation, maintenance and disposal.*
  21. *Joint Venture Agreement shall mean the Joint Venture Agreement to be entered into by The Fund and the Development Partner. “ Joint Venture Agreement” and “ Contract” are synonymous*
  22. *Development Partner / Developer shall mean the Successful Bidder which shall, through an SPV, enter into a Joint Venture Agreement with The Fund for the Project*
  23. *Development Cost shall mean the total development cost offered by a Bidder in its Tender for the development of the Project, AND INCLUDES the consultancy costs, construction decosts, all taxes payable including Value Added Tax(V.A.T), and profits expected from the Project BUT EXCLUDING the value of Land.*
  24. *Special Purpose vehicle ( SPV) shall mean a project company to be established under the Companies Act, 2015 by the Development Partner and KPPF, for the sole purpose of implementing the Project under a Joint Venture Agreement*
  25. *Internal Rate of Return shall mean a metric used in measuring the profitability of potential investments on an annual basis. Internal rate of return is used to evaluate the attractiveness of a project or investment and, generally speaking, the higher a project's internal rate of return, the more desirable it is to undertake the project.*
  26. *Minimum Qualification Requirements shall mean the Technical Qualification Requirements, the Financial Qualification Requirements and Other Qualification Requirements set out in this tender document*

27. *Transaction Advisor shall mean M/s Spearhead Africa Limited and Mboya Wangong'u & Waiyaki Advocates*
28. *Addendum / Clarification shall mean written instructions or guidance issued by KURA including (but not limited to) further instructions, scheduling changes, information updates, clarifications and the response to any queries made by the Prospective Bidders in relation to this tender document and made available on KPPF's website at [www.kppf.co.ke](http://www.kppf.co.ke)*

### **3.2 Eligible Tenderers**

3.2.1 A tenderer is eligible to bid for this contract only if the tenderer satisfies the following criteria—

- a) the tenderer has the legal capacity to enter into a contract for procurement or asset disposal;
- b) the tenderer is not insolvent, in receivership, bankrupt or in the process of being wound up;
- c) the tenderer, if a member of a regulated profession, has satisfied all the professional requirements;
- d) the tenderer and his or her affiliates, if any, is not debarred;
- e) the tenderer has fulfilled tax obligations;
- f) the tenderer has not been convicted of corrupt or fraudulent practices; and
- g) is not guilty of any serious violation of fair employment laws and practices.

In addition, this Invitation to Tender is open to all Tenderers eligible as described in the **Appendix to Instructions to Tenderers**.

Successful Tenderers shall comply with this tender and the ensuing contract. Notwithstanding any other provisions of this tender, the following are not eligible to participate in the tender: -

- a) KPPF's employees, its Board or any of its committee members.
- b) Any tenderer submitting false, inaccurate or incomplete information about their qualifications.
- c) where in case of a corporation, private company, partnership or other body, the tenderer, their spouse, child or affiliates has substantial or controlling interest and is found to be in contravention of the provisions of section 3.2.1 above.

3.2.5 Despite the provisions of section 3.2.1 a tenderer having a substantial or controlling interest shall be eligible to bid where—

- (a) such tenderer has declared any conflict of interest; and
- (b) performance and price competition for that good, work or service is

Proposed Joint Venture Opportunity for the Re-Development of Plot L.R. Number 330/1192, along Naivasha/Riara Road, Nairobi Kenya.

not available or can only be sourced from that tenderer.

- 3.2.6 For the purposes of this paragraph, any relative i.e. spouse(s) and child(ren) of any person mentioned in sub-paragraph 3.2.1 is also ineligible to participate in the tender. In addition, a Cabinet Secretary shall include the President, Deputy President or the Attorney General of GoK.
- 3.2.7 Tenderers shall provide the qualification information statement that the Tenderer (including affiliates) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by KPPF to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of this project under this Invitation to Tender.
- 3.2.8 Tenderers shall not be under declarations as prescribed at Section XII.
- 3.2.9 Tenderers who are not under these declarations shall complete the Declaration Form strictly in the form and content as prescribed at Section XII.
- 3.2.10 Those that are under the Declaration as prescribed at Section XII whether currently or in the past shall not complete the Form. They will submit a suitable Form giving details, the nature and present status of their circumstances.

### **3.3 Joint Venture**

- 3.3.1 Tenders submitted by a joint venture of two or more firms, as partners shall comply with the following requirements: -
  - a) the Tender Form and in case of a successful tender, the Contract Agreement Form, shall be signed so as to be legally binding on all partners of the joint venture.
  - b) one of the partners shall be nominated as being lead member, and this authorization shall be evidenced by submitting a Power of Attorney signed by legally authorized signatories of all the partners.
  - c) The Power of Attorney which shall accompany the tender, shall be granted by the authorized signatories of all the partners as follows:-
    - (i.) for local bidders, before a Commissioner of Oaths or a Notary Public or Magistrate of the Kenyan Judiciary.
    - (ii.) for a foreign bidder, before a Notary Public, or the equivalent of a Notary Public, and in this regard the bidder shall provide satisfactory proof of such equivalence.

- d) the lead member shall be authorized to incur liability and receive instructions for and on behalf of any and all the partners of the joint venture and the entire execution of the contract including payment shall be done exclusively with the lead member.
- 3.3.2 All partners of the joint venture shall be liable jointly and severally for the execution of the contract in accordance with the contract terms, and a relevant statement to this effect shall be included in the authorization mentioned in paragraph 3.3.1 (b) above as well as in the Form of Tender and the Contract Agreement Form (in case of the accepted tender).
- 3.3.3 A copy of the agreement entered into by the joint venture partners shall be submitted with the tender.

### **3.4 Cost of Tendering**

- 3.4.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and KPPF will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

### **3.5 Contents of the Tender Document**

- 3.5.1 The Tender Document comprises the documents listed below and Addendum (where applicable) issued in accordance with paragraph 3.7 of these Instructions to Tenderers: -
- a. *Invitation to Tender*
  - b. *Instructions to Tenderers*
  - c. *Appendix to Instructions to Tenderers*
  - d. *Technical Requirements*
  - e. *Evaluation Criteria*
  - f. *General Outline of Joint Venture of Agreement*
  - g. *Power of attorney Form*
  - h. *Tender Form*
  - i. *Tender Security Form*
  - j. *Declaration Form*
  - k. *Confidential Business Questionnaire form*
  - l. *Performance Security Form*
  - m. *Price Schedule*

- 3.5.2 The Tenderer is expected to examine all instructions, forms, provisions, requirements, terms and specifications in the Tender Document. Failure to furnish all information required by the

Tender Document or to submit a tender not substantially responsive to the Tender Document in every respect will be at the Tenderer's risk and may result in the rejection of its Tender.

- 3.5.3 All recipients of the documents for the proposed Contract for the purpose of submitting a tender (*whether they submit a tender or not*) shall treat the details of the documents as "Private and Confidential".

### **3.6 Clarification of Documents**

A prospective Tenderer requiring any clarification of the Tender Document may notify the Procurement Officer in writing and ensure receipt is acknowledged at KPPF's Physical address indicated on the Tender Document. KPPF will respond in writing to any request for clarification of the Tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of Tenders, prescribed by KPPF. Written copies of KPPF's response (*including an explanation of the query but without identifying the source of inquiry*) will be published and accessible to all prospective Tenderers on the KPPF's website [www.kppf.co.ke](http://www.kppf.co.ke)

### **3.7 Amendment of Documents**

- 3.7.1 At any time prior to the deadline for submission of Tenders, KPPF, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Tenderer, may modify the tender documents by amendment.
- 3.7.2 All prospective Tenderers will be notified of any amendments (*hereinafter referred to or otherwise known as addendum*) through the Funds' website [www.kppf.co.ke](http://www.kppf.co.ke) in writing and will be binding on them.
- 3.7.3 In order to allow prospective Tenderers reasonable time in which to take the amendment into account in preparing their Tenders, KPPF, at its discretion, may extend the deadline for the submission of Tenders.

### **3.8 Language of Tender**

The Tender prepared by the Tenderer, as well as all correspondence and documents relating to the tender, exchanged between the Tenderer and KPPF, shall be written in English language. Any printed literature furnished by the Tenderer written in any other language shall be accompanied by an accurate English translation of the relevant passages, in which case, for purposes of interpretation of the Tender, the English translation shall govern. The English

translation shall be on the Tenderer's letterhead and shall be signed by the duly authorized signatory signing the Tender and stamped with the Tenderer's stamp.

### **3.9 Documents Comprising the Tender**

The Tender prepared and submitted by the Tenderers shall include but not be limited to all the following components: -

- a) *Declaration Form, Tender Form and a Price Schedule completed in compliance with paragraphs 3.2, 3.10, 3.11 and 3.12.*
- b) *Documentary evidence established in accordance with paragraph 3.13 that the Tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted.*
- c) *Documentary evidence established in accordance with paragraph 3.14 and any ancillary thereto to be provided by the Tenderer conform to the tender documents, and,*
- d) *Tender Security furnished in accordance with paragraph 3.17*
- e) *A detailed list of previous customers and their contact addresses shall be submitted with the Tender for the purpose of reference, or for evaluation where the Details of Service so dictate.*
- f) *And all other documents indicated in Section II (Tender Submission Checklist)*

### **3.10 Tender Form**

The Tenderer shall complete and sign the Tender Form and all other documents furnished in the Tender Document, indicating projects to be performed, a brief description of the project, Internal Rate of Return (IRR) and other information required.

### **3.11 Tender Prices (hereunder referred to as Internal Rate of Return)**

3.11.1 The Tenderer shall indicate on the appropriate Price Schedule Section XXI, the Internal Rate of Return (IRR) it proposes for the project under the contract.

3.11.2 The return indicated shall be as derived in the financial model taking into consideration all costs/expenses and revenue from the project.

3.11.3 The IRR to be submitted (quoted) by the Tenderer shall remain fixed for the contract duration.

Proposed Joint Venture Opportunity for the Re-Development of Plot L.R. Number 330/1192, along Naivasha/Riara Road, Nairobi Kenya.

3.11.4 The IRR that is derived by a disclosed incorporation or usage of an international accepted standard formula shall be acceptable within the meaning of this paragraph.

### **3.12 Tender Currencies**

3.12.1 that the Tenderer will provide from within or outside Kenya, the prices shall be quoted in Kenya Shillings, or in another freely convertible currency in Kenya. The currency quoted must be indicated clearly in the tender document.

3.12.2 The exchange rate to be used for currency conversion shall be the Central Bank of Kenya selling rate prevailing on the Tender closing date. (*Please visit the Central Bank of Kenya website*).

### **3.13 Tenderer's Eligibility and Qualifications**

3.13.1 Tenderer shall furnish, as part of its Tender, documents establishing the Tenderer's eligibility to tender and its qualifications to perform the contract if its Tender is accepted.

3.13.2 The documentary evidence of the Tenderer's qualifications to perform the contract if its Tender is accepted shall be established to KPPF's satisfaction in accordance to Section VI of this tender document.

### **3.14 Non Compliance to tender requirements**

3.14.1 Any material failure on the part of a Prospective Bidder to comply with the terms of this tender will result in its tender documents being treated as non-compliant.

3.14.2 KPPF reserves the right to reject any materially non-compliant tender documents without further evaluation of the remaining tender documents.

### **3.15 Negotiations**

3.15.1 Having selected the Development Partner, the Fund expects to negotiate the joint venture agreement.

3.15.2 Negotiations will be held at the Fund's offices at the address indicated above. The aim is to reach agreement on all points and sign a contract.

3.15.3 Negotiations will include the following but not limited to;

- a) The type and assumptions on proposed development
- b) Financial model including assumptions
- c) Exit plan

3.15.5 The negotiations will conclude with a review of the draft form of the JVA. To complete negotiations the Fund and the Development Partner will execute the joint venture agreement. If negotiations fail, the Fund will invite the firm whose Tender received the second highest score to negotiate a JVA.

### **3.16 Warranty**

3.16.1 By submitting the tender documents, the Prospective Bidder (including each Partner) warrants that;

- i. No Conflict of Interest exists;
- ii. Their tender documents have been prepared without consultation, communication or agreement for restricting competition with any other Prospective Bidder (including the it's Members or Affiliates);
- iii. Their tender documents have not been disclosed, nor will they be disclosed to any other Prospective Bidder,
- iv. No attempt has been made nor will be made by them to induce any other person to submit or not to submit tender documents; and
- v. They (including any of the it's Members and their Affiliates) have not engaged or consulted with, including by way of gratuitous consultations, any person who
  - a. is currently in the employment of the Transaction Advisors or
  - b. was in the employment of the Transaction Advisor and was involved in the Project in any manner or capacity in the 1 (one) year preceding the tender Submission Date.

### **3.17 Tender Security**

3.17.1 The Tenderer shall furnish, as part of its Tender, a tender security for the amount specified in the Appendix to Instructions to Tenderers.

3.17.2 The tender security shall be the following:-

- a) an original Bank Guarantee that is strictly in the form and content as prescribed in the Tender Security Form (Bank Guarantee) in the Tender Document.

3.17.3 The tender security is required to protect KPPF against the risk of the Tenderer's conduct which would warrant the security's forfeiture pursuant to paragraph 3.17.10.

3.17.4 The Tender Security shall be denominated in Kenya Shillings or in another freely convertible currency in Kenya. A Tender Security in form of a Bank Guarantee should be from a commercial bank licensed by the Central Bank of Kenya.

Proposed Joint Venture Opportunity for the Re-Development of Plot L.R. Number 330/1192, along Naivasha/Riara Road, Nairobi Kenya.

- 3.17.5 The Tender Security shall be valid for thirty (30) days beyond the validity of the tender.
- 3.17.6 KPPF shall seek authentication of the Tender Security from the issuing bank. It is the responsibility of the Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPPF. The period for response shall not exceed five (5) days from the date of KPPF's query. Should there be no conclusive response by the bank within this period, such Tenderer's Tender Security may be deemed as invalid and the bid rejected.
- 3.17.7 Any Tender not secured in accordance with this paragraph will be rejected by KPPF as non-responsive, pursuant to paragraph 3.27.
- 3.17.8 The unsuccessful Tenderer's Tender Security will be released as promptly as possible, in any of the following circumstances: -
- a) *the procurement proceedings are terminated*
  - b) *KPPF determines that none of the submitted Tenders is responsive*
  - c) *a contract for the procurement is entered into.*
- 3.17.9 The successful Tenderer's Tender Security will be released upon the successful Tenderer's signing the contract, pursuant to paragraph 3.36 and furnishing an authentic Performance Security, pursuant to paragraph 3.37.
- 3.17.10 The Tender Security shall be forfeited –
- a) *if the Tenderer withdraws its Tender after the deadline for submitting Tenders but before the expiry of the period during which the Tenders must remain valid*
  - b) *if the Tenderer fails to enter into a written contract in accordance with paragraph 3.36*
  - c) *if the successful Tenderer fails to furnish the performance security in accordance with paragraph 3.37*
  - d) *if the Tenderer fails to extend the validity of the tender security where KPPF has extended the tender validity period in accordance with paragraph 3.18.*

### **3.18 Validity of Tenders**

- 3.18.1 Tenders shall remain valid for One Hundred and Twenty (120) days after the date of tender opening as specified in the Invitation to Tender or as otherwise may be prescribed by KPPF,

pursuant to paragraph 3.22. A Tender that is valid for a shorter period shall be rejected by KPPF as non-responsive.

- 3.18.2 In exceptional circumstances, KPPF may extend the Tender validity period. The extension shall be made in writing. The tender security provided under paragraph 3.17 shall also be extended. A Tenderer shall not be required nor permitted to modify its tender during the extended period

### **3.19 Alternative Offers, One tender per Tenderer**

- 3.19.1 Only main offers shall be considered; as alternative offers are **not acceptable**.
- 3.19.2 A firm or company shall submit only one Tender in the same tendering process, either individually or as a partner in a joint venture.
- 3.19.3 A Tenderer who submits or participates in more than one tender (in cases of alternatives that have been permitted or requested) will cause all tenders in which the Tenderer has participated to be disqualified.

### **3.20 Preparation and Signing of the Tender**

- 3.20.1 The Tender shall be typed or written in indelible ink. It shall be signed by the Tenderer or a person or persons duly authorized to bind the Tenderer to the contract.
- 3.20.2 The authorization shall be indicated by a written Power of Attorney granted by the Tenderer to the authorized person before any of the following persons:-
- a) *For local Tenderers, a Commissioner of Oaths or a Notary Public or a Magistrate of the Kenyan Judiciary.*
  - b) *For foreign Tenderers, a Notary Public in the country of the Tenderer.*
- In either case above, the Power of Attorney shall accompany the Tender.
- 3.20.3 All pages of the Tender, including un-amended printed literature, shall be initialled by the person or persons signing the Tender and serially numbered.
- 3.20.4 The Tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the Tenderer, in which case such corrections shall be initialled by the person or persons signing the Tender.
- 3.20.5 KPPF will assume no responsibility whatsoever for the Tenderer's failure to comply with or observe the entire contents of this paragraph 3.21.
- 3.20.6 Any Tender not prepared and signed in accordance with this paragraph may be rejected by KPPF as non-responsive, pursuant to paragraph 3.27.

### **3.21 Number of Sets of and Tender Format**

- 3.21.1 The Tenderer shall prepare and seal two complete sets of its Tender, identifying the Tender Number and Tender name and clearly marking the "ORIGINAL TENDER" and "COPY 1 OF TENDER", as appropriate in envelopes or packages. Each set shall be properly bound together. The copy shall be a replica of the Original. Each copy will be deemed to contain the same information as the Original. If the envelopes or packages are not sealed and marked as required by this paragraph, KPPF will assume no responsibility whatsoever for the Tender's misplacement or premature opening.

### **3.22 Deadline for Submission of Tenders**

- 3.22.1 Tenders must be received by KPPF by the date and time specified in Invitation to tender.
- 3.22.2 KPPF may, at its discretion, extend this deadline for submission of Tenders by amending the tender documents in accordance with paragraph 3.7, in which case all rights and obligations of KPPF and the Tenderer previously subject to the initial deadline, will therefore be subject to the deadline as extended.

### **3.23 Modification and Withdrawal of Tenders**

- 3.23.1 The Tenderer may modify or withdraw its Tender after it has submitted, provided that the modification, including substitution or withdrawal of the Tender is received by KPPF prior to the deadline prescribed for submission of tenders.
- 3.23.2 No Tender may be modified after the deadline for submission of Tenders.
- 3.23.3 No Tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period during which the Tender must remain valid except where KPPF extends the initial validity period. Any withdrawal of a Tender during this interval shall result in forfeiture of the Tenderer's Tender Security except where KPPF extends the initial validity period.

### **3.24 Opening of Tenders**

- 3.24.1 KPPF shall open all Tenders promptly at the date and time at the location specified in the Invitation to Tender or as may otherwise be indicated. If the total number of bidders who respond to the tender is less than two, the tender shall be considered Non- Competitive.

- 3. 24.2 The Tenderer's names, tender modifications or withdrawals, the presence or absence of requisite Tender Security and such other details as KPPF, at its discretion, may consider appropriate, will be announced at the opening.
- 3. 24.3 At the Tender opening, tender prices, discounts, and such other details as KPPF, at its discretion, may consider appropriate will be read out.
- 3. 24.4 The Tenderers or their representatives may attend the opening and those present shall sign a register evidencing their attendance.

### **3.25 Process to be Confidential**

- 3.25.1 After the opening of tenders, information relating to the examination, clarification, evaluation and comparisons of tenders and recommendations arising therefrom shall not be disclosed to a Tenderer or other person(s) not officially concerned with such process until conclusion of that process.
- 3.25.2 Conclusion of that process shall be deemed to have occurred, at the latest, by the date and time KPPF notifies the successful bidder(s). In any event, official disclosure by KPPF of any information upon conclusion of that process may only be to the unsuccessful bidders and may contain only the information permissible by law in summary form.
- 3. 25.3 Any effort by a Tenderer to influence KPPF or any of its staff members in the process of examination, evaluation and comparison of tenders and information or decisions concerning the Tender may result in the disqualification of the Tenderer.

### **3.26 Clarification of Tenders and Contacting KPPF**

- 3.26.1 To assist in the examination, evaluation and comparison of Tenders KPPF may, at its discretion, ask the Tenderer for a clarification of its Tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the Tender shall be sought, offered, or permitted.
- 3.26.2 The Tenderer is required to provide timely clarification or substantiation of the information that is essential for effective evaluation of its qualifications. It is the responsibility of the Tenderer to provide in writing the clarification or substantiation which should reach KPPF within five (5) days from the date of KPPF's query. Such writing may include by electronic mail, facsimile or postal mail. Should there be no conclusive response within this period, it shall result in the Tenderer's disqualification.
- 3.26.3 Save as is provided in this paragraph and paragraph 3.26 above, no Tenderer shall contact KPPF on any matter related to its Tender, from the time of the tender opening to the time the successful Tenderer is announced.

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- 3.26.4 Any effort by a Tenderer to influence KPPF in its decisions on tender evaluation, tender comparison, tender recommendation(s) or signing of Agreement may result in the disqualification of the Tenderer.

### **3.27 Evaluation and Responsiveness**

- 3.27.1 if number of tenders submitted before the su

Prior to the detailed evaluation, KPPF will determine the substantial responsiveness of each Tender. For purposes of this tender, a substantially responsive Tender is one that conforms to the requirements of Preliminary Evaluation. KPPF's determination of a Tender's responsiveness is to be based on the contents of the Tender itself without recourse to extrinsic evidence.

- 3.27.2 KPPF will examine the Tenders to determine whether they conform to the set Evaluation Criteria.
- 3.27.3 Notwithstanding the contents of the foregoing sub-paragraphs, if a Tender is not substantially responsive, it will be rejected at the earliest stage of evaluation by KPPF and cannot subsequently be made responsive by the Tenderer by correction of any non-conformity.

### **3.28 Minor Deviations, Errors or Oversights**

- 3.28.1 KPPF may waive any minor deviation in a Tender that does not materially depart from the requirements of the project set out in the Tender Document.
- 3.28.2 Such minor deviation -
- 3.28.2.1 shall be quantified to the extent possible,*
  - 3.28.2.2 shall be taken into account in the evaluation process, and,*
  - 3.28.2.3 shall be applied uniformly and consistently to all qualified Tenders duly received by KPPF.*
- 3.28.3 KPPF may waive errors and oversights that can be corrected without affecting the substance of the Tender.

### **3.29 Technical Evaluation and Comparison of Tenders**

- 3.29.1 KPPF will further evaluate and compare the Tenders that have been determined to be substantially responsive, in compliance to the technical requirement set out in the Tender Document and as per the prescribed Evaluation Criteria.

- 3.29.2 The Operational Plan is a critical aspect of the Tender. KPPF requires that the project shall be performed at the time specified. KPPF's evaluation of a tender will also take into account the Operational Plan proposed in the Tender.

### **3.30 Financial Evaluation**

- 3.30.1 The financial evaluation and comparison shall be as set out in the Evaluation Criteria. The comparison shall be financial model including the assumptions.

- 3.30.2 Where other currencies are used, KPPF will convert those currencies to the same currency using the selling exchange rate ruling on the date of tender closing provided by the Central Bank of Kenya.

### **3.31 Debarment of a Tenderer**

A Tenderer who gives false information in the Tender about its qualification or who refuses to enter into a contract after notification of contract award may be forwarded to PPRA for consideration of debarment from participating in future public procurement.

### **3.32 Confirmation of Qualification for Award**

- 3.32.1 KPPF may confirm to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.
- 3.32.2 The confirmation will take into account the Tenderer's financial, technical, and performance capabilities. It will be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to paragraph 3.13 as well as confirmation of such other information as KPPF deems necessary and appropriate. This may include factory, office and other facilities inspection and audits.
- 3.32.3 An affirmative confirmation will be a prerequisite for award of the contract to the Tenderer. A negative confirmation will result in rejection of the Tenderer's Tender, in which event KPPF will proceed to the next lowest evaluated responsive tender to make a similar confirmation of that Tenderer's capabilities to perform satisfactorily.

### **3.33 Award of Contract**

- 3.33.1 KPPF will award the contract to the successful Tenderer whose Tender has been determined to be substantially responsive, compliant with the evaluation criteria and has Proposed Joint Venture Opportunity for the Re-Development of Plot L.R. Number 330/1192, along Naivasha/Riara Road, Nairobi Kenya.

been determined to be the lowest evaluated tender, and further, where deemed necessary, that the Tenderer is confirmed to be qualified to perform the contract satisfactorily.

3.33.2 Award will be done as indicated in the Appendix to Instructions to Tenderers.

### **3.34 Termination of Procurement Proceedings**

3.34.1 KPPF may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

3.34.2 KPPF shall give prompt notice of the termination to the Tenderers, and, on request from any Tenderer, give its reasons for termination within fourteen (14) days of such request.

### **3.35 Notification of Award**

3.35.1 Prior to the expiration of the period of tender validity, KPPF shall notify the successful Tenderer in writing that its Tender has been accepted.

3.35.2 The notification of award shall not constitute the formation of the contract until one is finally signed by both parties.

3.35.3 Simultaneously, and without prejudice to the contents of paragraph 3.33, on issuance of Notification of Award to the successful Tenderer, KPPF shall notify each unsuccessful Tenderer.

3.35.4 A notification of the tender outcome does not reduce the validity period for any tender security whether the Tenderer is successful or not, except where such tender security is officially released to the Bank and/or the Tenderer and such Bank discharged of all its obligations by KPPF prior to the expiry of its stated validity period.

### **3.36 Signing of Contract**

3.36.1 At the same time as KPPF notifies the successful Tenderer that its Tender has been accepted, KPPF will send the Tenderer the Contract Agreement provided in the Tender Document together with any other necessary documents incorporating all agreements between the Parties.

3.36.2 Within fourteen (14) days of the date of notification of award, the successful Tenderer shall only sign the Contract Form and all the documents specified in that Form and return them to KPPF within that period of fourteen (14) days.

3.36.3 KPPF shall sign and date the Contract not earlier than fourteen (14) days from the date of notification of contract award. Further, KPPF shall not sign the contract until and unless the authentic performance security is received in accordance with paragraph 3.37.

3.36.4 Failure of the successful Tenderer to sign the Contract, the award shall be annulled and its tender security forfeited in which event KPPF shall notify the next highest evaluated Tenderer that its Tender has been accepted.

3.36.5 Paragraph 3.33 together with the provisions of this paragraph 3.36 will apply with necessary modifications with respect to the Tenderer notified under sub-paragraph 3.35.4

### **3.37 Performance Security**

3.37.1 After fourteen (14) days of the date of notification of intent of award from KPPF, the successful Tenderer shall furnish KPPF with a Performance Security which shall be an original Bank Guarantee that is strictly in the form and content as prescribed in the Performance Security Form (Bank Guarantee) in the Tender Document.

3.37.2 The Performance Security shall be issued by a commercial bank licensed by the Central Bank of Kenya. The bank must be located in Kenya.

3.37.3 The Performance Security shall be the sum of ten percent (10%) of the contract value. It shall be in the currency of the contract price.

3.37.4 KPPF shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the successful Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPPF. The period for response shall not exceed three (3) days from the date of KPPF's query. Should there be no conclusive response by the Bank within this period, such successful Tenderer's Performance Security may be deemed as invalid.

3.37.5 Failure of the successful Tenderer to furnish an authentic Performance Security, the award shall be annulled and the Tender Security forfeited, in which event KPPF may notify the next lowest evaluated Tenderer that its Tender has been accepted.

3.37.6 Paragraph 3.35, 3.36 together with the provisions of this paragraph 3.37 will apply with necessary modifications, and as far as circumstances permit, with respect to the Tenderer notified under sub-paragraph 3.36.4.

### **3.38 Corrupt or Fraudulent Practices**

3.38.1 KPPF requires that Tenderers observe the highest standard of ethics during the procurement process and execution of contracts. When used in the present Regulations, the following terms are defined as follows: -

- a) *" Corrupt practice " means the offering, giving, receiving or soliciting of any thing of value to influence the action of public official in the procurement process or in contract execution;*

- b) *“ Fraudulent practice ” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of KPPF, and includes collusive practice among Tenderers (prior to or after Tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive KPPF of the benefits of free and open competition.*
- 3.38.2 KPPF will nullify its notification of award if it determines that the Tenderer recommended has engaged in corrupt or fraudulent practices in competing for the contract in question.
- 3.38.3 Further, a Tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

## SECTION IV APPENDIX TO INSTRUCTIONS TO TENDERERS

The following information regarding the particulars of the tender shall complement and or amend the provisions of the Instructions to Tenderers *hereinafter abbreviated as ITT*. Wherever there is a conflict between the provisions of the ITT and the Appendix, the provisions of the Appendix herein shall prevail over those of the ITT.

| No. | ITT Reference Clause                             | Particulars of Appendix   |
|-----|--|---|
| 1.  | 3.2 Eligible Tenderers                           | Open to ALL   |
| 2.  | 1.11 Pre- Bid Meeting                            | Bidders shall <b>along Naivasha Road</b> opposite dagoretti corner stage and easily identifiable as Umeme Plaza, Nairobi, Kenya on <b>Wednesday 3<sup>rd</sup> July 2019 at 11:30 am.</b><br><b>It is not mandatory.</b>  |
| 3.  | 3.26 Preparation and Sealing of tender documents | The Tenderer shall prepare two complete sets of its Tender, identifying and clearly marking the "ORIGINAL TENDER" and "COPY 1 OF TENDER" as appropriate. Each set shall be properly bound.<br>The copy shall be a replica of the Original. The copy will be deemed to contain the same information as the Original.       |
| 4.  | 3.17 Tender Security                             | Original Tender Security shall be <b>Kshs. 10,000,000.00</b> submitted in the provided format issued by a bank licensed by Central Bank of Kenya.<br>Tender Security must be valid for thirty <b>(30) days beyond the validity of the Tender.</b>   |
| 5.  | 3.24 Opening of Tenders                          | Tender documents will be opened promptly after the Bid Submission Deadline in the presence of the Bidders or their representatives who choose to attend the opening at <b>Stima Plaza Annex, 3<sup>rd</sup> Floor, Ndovu Meeting Room</b> , Kolobot Road, Parklands, Nairobi, Kenya.<br>Bidders are encouraged to attend. |
| 6.  | 3.36 Award of Contract                           | Award shall be to the highest evaluated bidder.   |
| 7.  | 3.38 Performance Security                        | Performance Security shall be 10% of the contract sum.  |

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|    |                      |                   |
|----|----------------------|-------------------|
| 8. | 3.18 Tender validity | Shall be 120 days |
|----|----------------------|-------------------|

## SECTION V - SCHEDULE OF REQUIREMENTS – PROJECT SCOPE

### 1) Introduction

The Kenya Power Pension Fund is one of the leading Kenyan occupational pension funds that has 10,874 members and more than Kshs. 30 billion in assets under management (AUM) across its two pension funds – **The Kenya Power & Lighting Company Limited Staff Retirement Benefits Scheme** (Defined Benefit Scheme (DB)) and **The Kenya Power & Lighting Company Limited, Staff Retirement Benefits Scheme 2006** (the Defined Contribution Scheme (DC)).

The DB and DC Schemes were established with the main purpose of providing pension and cash benefits for members, who are employees of the Kenya Power & Lighting Company Limited, upon their retirement and where applicable, relief for the dependents of deceased members. The DB Scheme was established on 3<sup>rd</sup> May 1971 and was closed to new members and ceased receiving contributions from members with effect from 30<sup>th</sup> June 2006. The DC Scheme was established on 1<sup>st</sup> July 2006 and receives a percentage of members’ salaries as mandatory contributions and also receives additional voluntary contributions (AVC).

The DB Scheme (the Fund) is looking for a development partner as indicated in the scope of work.

### 2) Project Brief

The Kenya Power & Lighting Company Limited Staff Retirement Benefits Scheme (“the Fund”) is the registered proprietor of all that parcel of land known as L.R. No. 330/1192. The Property is situated along **Naivasha Road/Riara Road** in Lavington area, Nairobi. The property is easily identifiable as Umeme Plaza. It is within the neighbourhood of the Junction Shopping Mall.

The Fund wishes to undertake redevelopment on the Property into a mixed-use complex that could accommodate different property asset types such as residential, retail and commercial, for outright sale to the market. For that purpose, the Fund wishes to procure an investor /partner, who is interested in the said project through a joint venture with the Fund (“the Project”)

- Land Reference Number: 330/1192
- Location: the Property is located in a prime area along Riara Road/ Naivasha Road, Lavington Area, Nairobi.
- Property Tenure: Leasehold interest for a term of 99 years from 01/12/1998 (residual term is therefore about 79 years).

Proposed Joint Venture Opportunity for the Re-Development of Plot L.R. Number 330/1192, along Naivasha/Riara Road, Nairobi Kenya.

- Size: approximately one decimal two six eight (1.268 Ha) or three decimal one three (3.13 acres).
- Value: Kshs. 1.4 Billion. This is for purposes of determining the IRR
- Amenities: mains water, electricity and sewerage services are connected to the Property. The Property is accessible through Riara Road and Naivasha Road both of which are tar-surfaced.
- User: residential/commercial.
- Plot Description: The Property is a fairly flat rectangular shaped commercial plot of loam soils. Boundaries are marked with masonry walls topped with electric wire fence all round.
- Improvements: The Property is currently developed with two (2 No) double and three storied commercial blocks of offices and 2 No. warehouses attached to the three-storied commercial blocks.
- General Remarks: The Property is located in an area that attracts a diverse and relatively wealthy population and is characterized by upper-middle- and high-income residential developments. The subject property is conveniently located along Naivasha/Riara Road and is in close proximity to popular retail centres such as the Junction Mall, Nakumatt Prestige, Adams Arcade, Yaya Center, and multiple entertainment facilities. This therefore reiterates the prime nature of the subject Property and its suitability for the proposed re-development.

Figure 2 below is an image of the subject site location.



Figure 2: Property Site

### 3) Objectives of the Project

The objective of the Project is to develop a financially and practically viable redevelopment that could accommodate different property asset types such as residential, retail and commercial. Bidders are required to justify their selected property asset mix with a market study demonstrating the viability of the project and anticipated end-user/market acceptance. In doing so, it is intended that the Project will:

- a) Provide value for money to both the Fund and the partner;
- b) Be affordable and acceptable by the market; and
- c) Be commercially viable.

### 4) Proposed Transaction Structure

The Fund intends that the Project will be undertaken through a joint venture between the Fund and the Successful bidder via a special purpose vehicle. This joint venture model was selected due to its simplicity, predictability and ease of consummation, governance and management.

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The Fund's contribution will be the Property while the Development partner will provide all development capital (development expertise and construction funds). The relationship between the Fund and the partner, as well as all aspects of the Project, sale of units and profits sharing, will be governed by the following Project Agreements:

- a) A Joint Venture Agreement; and
- b) Any other agreements which they shall deem necessary in the circumstances then prevailing.

The Fund emphasizes that an arrangement where the Successful Bidder shall at their own cost;

At the bidding stage:

- a) Provide a preliminary market and financial feasibility report;
- b) Provide preliminary development master plan, designs and typologies backed by the market and financial feasibility report;
- c) Provide Tenders for best use development, IRR calculations and the best value for money via a comprehensive financial model whilst demonstrating a clean basis/justification for the proposed IRR.
- d) Provide Tenders for best profit sharing under the JV.
- e) Provide a comprehensive financing strategy and plan of the project including the best exit plan.

Following successful award:

- f) Undertake a detailed market and financial feasibility study.
- g) Procure, and enter into contracts with, all project professionals and contractors.
- h) Undertake all statutory studies including environmental impact assessment study for the Project.
- i) Undertake detailed design, including but not limited to architectural designs, structural designs, electrical and mechanical services designs and preparation of bills of quantities.
- j) Obtain all necessary approvals necessary for (i) undertaking the project upto its completion and (b) exit of the resulting development.
- k) Undertake construction of the development to completion with control of and responsibility towards on-time completion/delivery of the project.

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- l) Undertake the sale and marketing of the development as will be agreed in the Joint Venture Agreement.

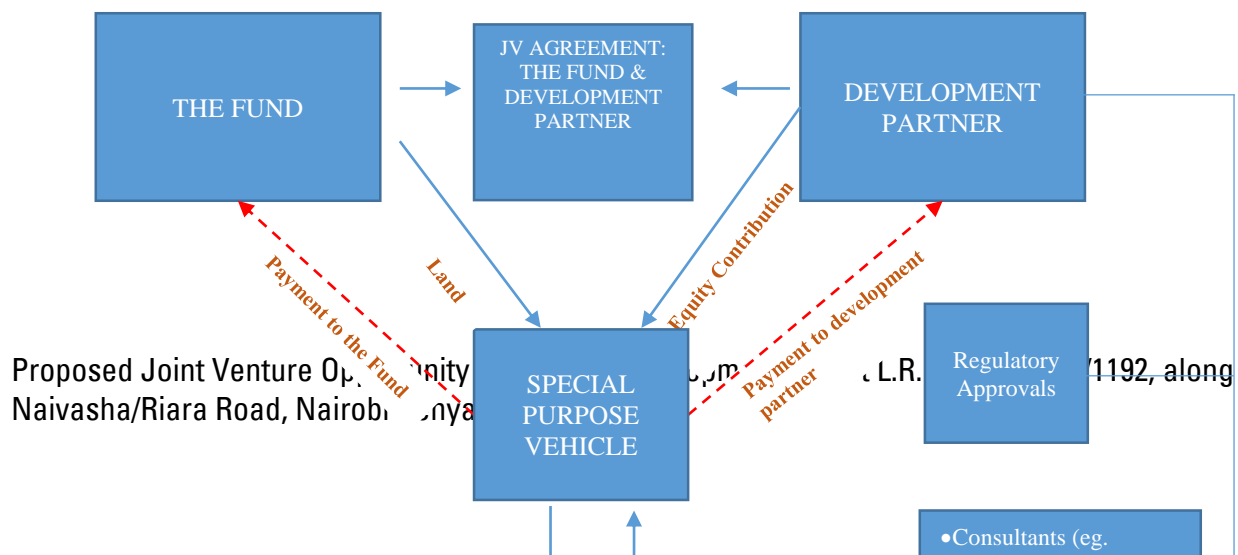
Items a), b), c), d) & e) shall form part of the Bidder's technical Tender submitted for consideration by the Fund. Further, for purposes of the technical Tender submission, the Bidders shall submit, as an annexure to their technical Tenders, a best design solution for the Project. Items f) to l) shall be delivered by the successful Bidder at various stages of the Project.

## **5) Project Structure**

1. The Fund proposes that the Project will be implemented through an SPV which will be structured as a Limited Liability Partnership (LLP) due to tax efficiency/transparency, ease of exit and management flexibility.
2. The bidding parameter will be based on the technical and financial viability of the Bidder's Tender, proposed project returns (including sales and marketing costs and prices);
3. The Fund will then proceed to enter into a Joint Venture Agreement (and any other relevant agreement) with the successful Bidder to undertake the redevelopment of the Project.
4. The Fund will establish an SPV which will be structured as an LLP. Initially, the Fund will be the sole partner.
5. Upon successful appointment and entry into the Joint Venture Agreement:
  - a) The Successful Bidder shall submit the detailed architectural, structural, mechanical, and electrical designs, plans and drawings, layouts and specifications and shall submit to the Fund for review and recommendation, and require them to be modified as may be reasonably necessary and shall in so doing conform to all Laws, Regulations or Guidelines in force in Kenya including the National Environmental Management Regulations.
  - b) The Fund shall transfer the Property to the SPV.
  - c) The Successful Bidder will:
    - a. carry out Project technical and financial feasibility studies as well as an environmental impact assessment;
    - b. obtain all regulatory approvals necessary for the Project;
    - c. enter into contracts with all project contractors and service providers, under which he will pay all of the costs/expenses of developing the property. Thus, the contractors and service providers will be procured by, and enter into contracts

- with, the Successful Bidder, who will then become liable to monitor their performance and accept any liability for breach of those contracts;
- d. cause to be prepared the Bills of Quantities and may Tender for the works where from the actual cost of the project and the consideration/rental shall be established. The Successful Bidder shall be the developer and thus will remain responsible for the BQs preparation, Tendering and construction.
- d) Since development expenses are the developer’s contribution to the joint venture, the investor’s equity in the SPV will be allotted to them upon achievement of pre-agreed spending and development milestones – **these milestones will be set out in the Joint Venture Agreement**. Thus, the developer will acquire full and final ownership rights over his equity stake only after full draw-down of his contribution or, in other words, upon his payment of all development costs. Besides, the Fund will have a continuing security interest (implemented by way of a pledge) over the developer’s equity interest in the SPV until full draw-down of the developer’s contribution.
  - e) Once the units are constructed, they will be sold by the SPV (however, as indicated previously, the developer will be responsible for marketing the units), which will:
    - i. Grant sub-leases to unit purchasers (equivalent to the remaining term of the lease less a reversionary nominal period – typically the last 5 days of the lease);
    - ii. Establish a management company whose only shareholders will be all unit purchasers; and
    - iii. Upon sale of the last unit:
    - iv. Transfer its reversionary to the management company; and
    - v. Distribute proceeds of sale to the Fund and the investor.

Figure 1 below shows the envisaged joint venture structure described above:



***Figure 1: Joint Venture Structure***

**The Fund has a target IRR of 20% and will have the right to claw back on the developer's equity interest in the SPV (and, consequently, the developer's share of Project profits) to achieve this return if the project IRR falls below 20%.**

**6) Project Design and Specifications**

The successful bidder shall be responsible for designing, building and financing of the project as stipulated in the Joint Venture Agreement with the Fund. Bidders are encouraged to use innovative design and technologies taking into consideration cost, time and quality. The bidders shall incorporate:

- a. Green building concepts that limit the carbon footprint, through creating structures and using processes that are environmentally responsible and resource efficient through a building life cycle, from siting to design, construction, operation, maintenance, renovation and de-construction (demolition). This should include green designs, energy and resource efficient installations, soft and hard landscaping, solar water heating, rainwater harvesting, wastewater recycling, etc;
- b. Provisions for vulnerable groups facilities including disabled, elderly, children and any other category and; and

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- c. Sustainability and maintainability of the estate and related amenities, bearing in mind the objective of affordability

### **DESIGN COMPONENTS**

#### **i. Site Investigations**

- Confirm size and site layout
- Carry out topographical survey
- Carry out geotechnical survey
- Any other relevant investigations

#### **ii. Undertake the following designs**

- Master Plan and schematic layout
- Architectural designs (include site layouts, floor plans elevations and sections)
- Landscaping designs
- Any other relevant designs

### **7) Works Programme and Method Statement**

Bidders shall provide a comprehensive work programme with clear outputs and technical information, including drawings and charts as necessary, to comply with the requirements.

Bidders shall provide a comprehensive method statement showing how they intend to carry out the works to conform to the requirements.

### **8) Approvals**

The successful bidder will be required to obtain development permits from the various institutions which include but not limited to:

- a) County Government of Nairobi City.
- b) Ministry responsible for Land and Physical Planning.
- c) National Environmental Management Authority.
- d) National Construction Authority.
- e) Water Resource Authority.
- f) Any other relevant approving authority/agencies.

### **9) Site Visit**

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Bidders are advised to visit and examine the site and its surrounding and obtain for themselves on their own cost and responsibility all information that may be necessary for preparing the Tender and entering into a contract.

The Bidder and any of its personnel or agent will be granted permission by the Fund to enter upon premises and lands for the purpose of such inspection, but only upon the express condition that the Bidder, its personnel or agents, will release and indemnify the Fund from and against all liability in respect of and will be responsible for personal injury (whether fatal or otherwise), loss of or damage to property and any other loss, damage, costs and expenses however caused, which but for the exercise of such permission, would not have arisen.

Where necessary or upon request, the Fund shall organize a site visit at a date to be notified. A representative of the Fund will be available to meet the Bidders at the site. The representative will not be available at any other time for site inspection visits.

## **10) Financial Output**

Bidders will be required to include a comprehensive financial model to demonstrate the financial viability of their Tenders, taking into consideration the Fund's expected IRR as stated above.

The comprehensive financial model must fully reflect the below and be supported by the submitted Bill of Quantities and market feasibility in the bid:

### **I. Development Details**

- Number of housing units (or other development option) to be constructed
- Housing unit (or other development option) area sizes
- Commercial and ancillary areas
- Parking bays
- Total built up area
- Cost per square meter
- Total development costs breakdown (inclusive of professional fees, financing costs and other relevant costs)
- Construction timeline
- Sales revenue projections

### **II. Project cash flows**

### **III. Funding structure**

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### **11) Project Development Fee**

The Bidders shall also include as part of their Bids, an amount equivalent to 1.25% of the Total Project Development Cost as the Project Development Fee to be paid to the Fund to cater for costs incurred prior to commencement of the project. The project development fee is to be paid by the successful bidder upon final close, preparation and signing joint ventures/private partnership agreements.

### **12) Project Returns**

The Fund targets an IRR of 20%. (Tenders credibly demonstrating higher returns will be assessed favorably.)

### **13) Project Timeline**

Project should not exceed a timeframe of for (4) years. This period is inclusive of the construction time and the disposal period. (Tenders credibly demonstrating earlier completion will be assessed favorably.)

### **14) Bidder Profile & Financial Resources**

Local and International bidders with the demonstratable financial resources required for the project and a track record of successful completion of similar developments.

Bidders will be required to demonstrate that they have the financing available for the development and will be required to show evidence of financial resources including cash in hand, un-drawn lines of credit, overdraft facility, etc.

Bidders will also be required to demonstrate the strength of their balance sheet and annual turnover.

### **15) Comments on Terms of Reference**

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The tenderer may offer suggestions and improvements to these Terms of Reference that would result in better implementation of the Project. Such Tenders if accepted will form part of the Terms of Reference of the Tenders submitted by the tenderer and, if the tenderer is selected, will be taken to account in the Project Agreements.

## **SECTION VI - EVALUATION CRITERIA**

### **1. Preliminary Evaluation**

For purposes of this Tender, a substantially responsive Tender is one that conforms to the requirements of Evaluation criteria. This shall include confirmation of the following:

- a. Submission of Tender Security which complies with the Tender Documents - Checking its validity, whether it is Original; whether it is issued by a local commercial bank licensed by CBK; whether it is strictly in the amount required, whether it is in the format required in accordance with the sample Tender Security Form(s).
- b. Submission of Declaration Form(s) duly completed and signed. The Declaration form shall be in the bidder's own letterhead showing details of agreement to inject equity into the re-development through a joint venture on the terms specified in the Terms of Reference under Section V.
- c. Submission and considering Tender Form duly completed and signed.
- d. Submission of duly filled and signed Declaration form
- e. Submission and considering the following: -

#### **For Local Bidders**

- a) Company or Firm's Registration Certificate and in case of a joint venture, the Power of Attorney for designating the Lead member in accordance with Section XVII.
- b) KRA PIN Certificate.
- c) Valid Tax Compliance Certificate(s).

#### **For Foreign Bidders**

- a) Company or Firm's Registration Certificate and in case of a joint venture, the Power of Attorney for designating the Lead member in accordance with Section XVII.
- a) PIN Certificate or its equivalent in the country of the Bidder or a statement from the tax authorities in the Bidder's country of origin indicating that such certificate or its equivalent is not issued.

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- b) Valid Tax Compliance Certificate or its equivalent in the country of the Bidder or a statement from the tax authorities in the Bidder's country of origin indicating that such certificate or its equivalent is not issued.
- c) Submission and considering the Confidential Business Questionnaire annexed hereto Section X:-
  - Is fully signed and filled;
  - Contains details that correspond to the related information in the bid;
  - That the Bidder is not ineligible; and
  - Has attached to it a current CR12/ CR13 for local bidders issued by the Registrar of Companies
  - For foreign Companies/Firms, attach list of director shareholding signed and stamped.
- d) Two (2) credible reference checks of projects of similar nature, structure (joint venture), complexity and magnitude ongoing or completed within the last 5 years and a letter authorizing the Fund to confirm the details of the references if it deems appropriate.
- e) Audited accounts for the last five (5) years. If the Bidder has been in business for less than 5 years, then accounts for the duration of years it has been in business shall suffice but evidence must be provided to this effect.
- f) Where applicable, the Joint Bidding Agreement in accordance with Section XVII

## 2. Technical Tender Evaluation Criteria

The Technical Tender shall be evaluated and scored using a scale of 200 points (which shall then be aggregated to 100%). Marks shall be allocated according to the quality, thoroughness and credibility of the Technical Tender elements as in the tender document. The total points and relative weights for these elements are presented in the following table. The bidder with the highest score shall be deemed to be the successful bidder.

| Technical Bid Reference  | Maximum Points | Evaluation Elements   |
|--|----------------|---|
| <p><b>Project Implementation Methodology</b></p> <p><b>Most appealing and viable methodology promising the best returns and ease of implementation</b></p> | 20             | <p>1. <b>Project Scope (max. 4 Points):</b> The project scope and structure should be definitive and to the point. Bidders should clearly state and describe:</p> <ul style="list-style-type: none"> <li>a) The type of development to be undertaken/constructed – 1 Point</li> <li>b) The timelines of the project – 1 Point</li> <li>c) The projects expected returns – 1 Point</li> <li>d) The project stakeholders and their roles – 1 Point</li> </ul> <p>2. <b>Project Analysis (max. 18 Points):</b> Analyse the Project and the proposed transaction structure and identify the merits and challenges of the Project. Where challenges are identified, propose how these will be overcome. Further, propose the highest and best use of the Property.</p> <ul style="list-style-type: none"> <li>a) Demonstrate highest and best use analysis of site – <b>(max. 4 Points)</b></li> <li>b) Providing clear development rationale of the project with respect to site location and condition – <b>(max. 4 Points)</b></li> <li>c) Identify potential risks and challenges to the project and recommend solutions and mitigations – <b>(max. 4 Points)</b></li> </ul> <p>3. <b>Development Approach (max. 4 Points):</b> Define the methodology that would be used in implementing the project.</p> |
| <p><b>Proposed Project Designs</b></p> <p><b>Concept designs and drawings should be submitted.</b></p>   | 5              | <p>Proposed concept designs should be accurate and complete and will be awarded as per below:</p> <ul style="list-style-type: none"> <li>a) Comprehensive overall site plans – <b>(max. 1 Point)</b></li> <li>b) Floor plans and layouts – <b>(max. 1 Point)</b></li> <li>c) Individual unit typologies – <b>(max. 1 Point)</b></li> <li>d) Project landscape designs – <b>(max. 1 Point)</b></li> <li>e) Project Renders – <b>(max. 1 Point)</b></li> </ul>  |
| <p><b>Project Concept and Design Rationale</b></p> <p><b>Report detailing the rationale</b></p>  | 5              | <p>Sufficient detail and adequate rationale should be provided to support the proposed design in relation to:</p> <ul style="list-style-type: none"> <li>a) Net and Gross built up areas – <b>(max. 1 Point)</b></li> <li>b) Project planning – <b>(max. 1 Point)</b></li> <li>c) Design concepts and approach – <b>(max. 1 Point)</b></li> <li>d) Project environment – <b>(max. 1 Point)</b></li> </ul>   |

| <b>Technical Reference</b>   | <b>Bid</b> | <b>Maximum Points</b> | <b>Evaluation Elements</b>   |
|--|------------|-----------------------|--|
| <b>behind the conceptual design.</b>   |            |                       | e) Landscape design – <b>(max. 1 Point)</b>  |
| <b>Functional Designs</b><br><br><b>Demonstration of design functionality.</b>                             |            | 7                     | Sufficiently detailed written description of the design functionality to be provided which should incorporate:<br>a) Structural Design System – <b>(max. 1 Point)</b><br>b) Electrical Design System – <b>(max. 1 Point)</b><br>c) Mechanical Design System - <b>(max. 1 Point)</b><br>d) Accessibility to site – <b>(max. 1 Point)</b><br>e) Maintainability of designs – <b>(max. 1 Point)</b><br>f) Compliance with statutory and zoning requirements – <b>(max. 1 Point)</b><br>g) Adequate circulation (internal and external incorporating structure height) – <b>(max. 1 Point)</b> |
| <b>Works Specifications</b><br><br><b>Construction works specifications and timelines.</b>                 |            | 10                    | Sufficiently detailed written description containing:<br>a) Construction method statement – <b>(max. 1 Point)</b><br>b) Gantt chart containing construction works timelines – <b>(max. 5 Points)</b><br>c) Project management plan - <b>(max. 1 Point)</b><br>d) Adequacy of existing site services (water, power, roads) and impact on surrounding buildings - <b>(max. 1 Point)</b><br>e) Key materials and products to be used within the overall construction - <b>(max. 1 Point)</b><br>f) Quality control and safety strategies - <b>(max. 1 Point)</b>                              |
| <b>Parking design</b><br><br><b>Parking ratios achieved and design for vehicle parking and drive ways.</b> |            | 5                     | 1. Accurate and complete parking design drawings. <b>(max. 2 Points):</b><br><br>2. Parking ratios achieved – <b>(max. 3 Points):</b> Determined according to the parking ratios submitted as follows:<br>3. If parking ratio of 3:1 or above – <b>(3 Points)</b><br>a) If parking ratio of 2:1 – (2 Points)<br>b) If parking ratio of 1:1 – (1 Point)<br>c) If parking ratio below 1:1 – (0 Points)   |

| Technical Bid Reference   | Maximum Points | Evaluation Elements   |
|---|----------------|---|
| <b>Innovation</b><br><br><b>Innovative use of key materials and schedule of finishes to reduce on costs, timelines and designs.</b> | 3              | Demonstrate use of alternative building technologies <b>that reduce costs, construction timelines and improve design concept. (max. 3 Points)</b>   |
| <b>Green Technologies</b><br><br><b>Use of green technologies and environmental sustainability of designs</b>                       | 4              | Comprehensive description of green building concepts intended to be incorporated and environmental sustainability of project post project completion.<br>a) Use of energy and resource efficient installations – <b>(1 Point)</b><br>b) Use of environmentally friendly construction inputs – <b>(1 Point)</b><br>c) Incorporating efficient water use (rainwater harvesting, waste water recycling) – <b>(2 Points)</b>  |
| <b>Financial Resources</b><br><br><b>Demonstration of the bidder's financial capacity to undertake the development.</b>             | 45             | The bidder and their financier should provide a firm commitment that funds are available for the project and will be weighted as follows:<br><br>1. Evidence of funding committed to the project.<br>Fully underwritten and irrevocable bid from financial institutions - <b>(max 25 Points)</b><br>or<br>Project specific commitment to self-finance ( <i>Bidders equity as per latest financial statements must be equal to or higher than total development cost</i> ) - <b>(max 25 Points)</b><br>or<br>Bank letter of support – <b>(max 10 Points)</b><br><br>2. Evidence of financial resources (cash in hand, un-drawn lines of credit, overdraft facility etc.) - <b>(max. 12 Points)</b><br><br>3. Average annual turnover over the last five (5) years – <b>(max. 8 Points)</b> |

| Technical Reference  | Bid | Maximum Points | Evaluation Elements   |
|--|-----|----------------|---|
|  |     |                | a) Annual Turnover greater than KES 2.5 Billion – <b>(8 Points)</b><br>b) Annual turnover less than KES 2.5 Billion – <b>(3 Points)</b><br><br><b>Provide audited financial statements for the last five years</b>  |
| <b>Financial Model and Investment Appraisal.</b><br><br><b>Proposed development financials (including the IRR) to be used to determine the project with the best value for money.</b><br><br><b>A comprehensive financial model should be submitted supported by the submitted bill of quantities and market feasibility in the bid.</b> | 35  |                | 1. Comprehensive financial model - <b>(max. total 10 Points)</b> .<br>a) Total development cost – <b>(max 2 Points)</b><br>b) Total development cost per square meter - <b>(max. 2 Points)</b><br>c) Anticipated revenue per square meter of saleable space – <b>(max. 2 Points)</b><br>d) Rationale behind the assumptions used in the model supported by credible market information - <b>(max 4 Points)</b><br><br>2. Break-down of total construction costs <b>(total max. 6 Points)</b> . These costs should reflect the submitted bill of quantities.<br>a) Land value<br>b) Planning, Approvals and Licenses Costs <b>(max. 1 Point)</b><br>c) Site & Construction Costs <b>(max. 1 Point)</b><br>d) Professional fees e.g. Architects, Engineers, Consultants etc. <b>(max. 1 Point)</b><br>e) Sales and marketing costs <b>(max. 1 Point)</b><br>f) Finance costs <b>(max. 1 Point)</b><br>g) Other envisioned costs <b>(max. 1 Point)</b><br><br>3. Break-down of total revenue - <b>(total max. 3 Points)</b><br><br>4. Funding structure - <b>(max. 3 Points)</b> : Debt and equity split of the project which should match with the respective contributions to the project from the equity and debt holders.<br><br>5. Project cashflows - <b>(max. 3 Points)</b> : Project cashflows should reflect the project costs and revenues with respect to the time in which they will occur. It should clearly show how the costs match the sources of finance. For simplicity, the time period used should be quarterly. |

| Technical Reference  | Bid | Maximum Points | Evaluation Elements   |
|--|-----|----------------|---|
|  |     |                | <p>6. Investment Return Metrics <b>(total max. 30 Points)</b>.</p> <p>6. (i) These are important in determining the profitability of the project. Internal Rate of Return (IRR) as indicated of the price schedule and derived from the financial model</p> <p>a) Greater or equal to 25% IRR: <b>(max. 15 points)</b></p> <p>b) Below 25% to 20% IRR <b>(max. 7.5 points)</b></p> <p>c) Below 20% to 15% IRR: <b>(max. 7.5 points)</b></p> <p>d) Below 15% IRR – <b>Zero points</b></p> <p>6.(ii) As IRR is a time-sensitive metric, all projections on IRR should be modelled to begin from the date of contract signing to the date of full exit from the project.</p> <p>a) Overall project Return on Investment (ROI) – <b>(max. 6 Points)</b></p> <p>b) Return on Equity (ROE) – <b>(max. 3 Points)</b></p> <p>c) Project Net Present Value (NPV) – <b>(max. 3 Points)</b></p> <p>d) Discounted Net Present Value <b>(using 13.5% rate) - (max. 3 Points)</b></p> |
| <p><b>Reference Checks.</b></p> <p><b>Completed projects in the last five (5) years</b></p>                                      | 10  |                | <p><b>Credible reference checks - (max. 10 Points):</b> Bidder should provide a maximum of two (2) references of projects of similar nature, structure (joint venture), complexity and magnitude ongoing or completed within the last 5 years and a letter authorizing the Fund to confirm the details of the references if it deems appropriate. Reference letters should be annexed in the bid document. <b>(5 Points per valid reference)</b></p>  |
| <p><b>Key Personnel</b></p> <p><b>Composition of project development team</b></p> <p><b>Attach CVs of the lead personnel</b></p> | 16  |                | <p>Key personnel should include:</p> <p>1. <b>Project Manager (max. 2 Points):</b> Can be any of: Architect, Quantity Surveyor, Engineer, Building Surveyor, Construction Manager.</p> <p>a) Holder of degree with over 15 years relevant experience – (2 Points)</p> <p>b) Holder of degree with over 10-15 years relevant experience – (1 Point)</p>  |

| Technical Bid Reference   | Maximum Points | Evaluation Elements   |
|---|----------------|---|
| <p>together with the CVs of the key Staff of each member of the firm who will be dedicated to this project.</p> |                | <p>c) Holder of degree with over 5-10 years relevant experience – (0.5 Point)</p> <p>2. <b>Construction Site Manager (max. 2 Points):</b> Can be any of: Architect, Quantity Surveyor, Engineer, Building Surveyor, Construction Manager.</p> <p>a) Holder of degree with over 15 years relevant experience – (2 Points)</p> <p>b) Holder of degree with over 10-15 years relevant experience – (1 Point)</p> <p>c) Holder of degree with over 5-10 years relevant experience – (0.5 Point)</p> <p>3. <b>Quantity Surveyor – (max. 2 Points)</b></p> <p>a) Holder of degree with over 15 years relevant experience – (2 Points)</p> <p>b) Holder of degree with between 10-15 years relevant experience (1 Point)</p> <p>c) Holder of degree with between 5-10 years relevant experience – (0.5 Point)</p> <p>4. <b>Project Architect – (max. 2 Points)</b></p> <p>a) Holder of degree with over 15 years relevant experience – (2 Points)</p> <p>b) Holder of degree with between 10-15 years relevant experience (1 Point)</p> <p>c) Holder of degree with between 5-10 years relevant experience – (0.5 Point)</p> <p>5. <b>Civil and Structural Engineer – (max. 2 Points)</b></p> <p>a) Holder of degree with over 15 years relevant experience – (2 Points)</p> <p>b) Holder of degree with between 10-15 years relevant experience (1 Point)</p> |

| Technical Reference   | Bid | Maximum Points | Evaluation Elements   |
|---|-----|----------------|---|
|   |     |                | <p>c) Holder of degree with between 5-10 years relevant experience – (0.5 Point)</p> <p><b>6. Project Mechanical Engineer – (max. 2 Points)</b></p> <p>a) Holder of degree with over 15 years relevant experience – (2 Points)</p> <p>b) Holder of degree with between 10-15 years relevant experience (1 Point)</p> <p>c) Holder of degree with between 5-10 years relevant experience – (0.5 Point)</p> <p><b>7. Electrical Engineer – (max. 2 Points)</b></p> <p>a) Holder of degree with over 15 years relevant experience – (3 Points)</p> <p>b) Holder of degree with between 10-15 years relevant experience – (2 Points)</p> <p>c) Holder of degree with between 5-10 years relevant experience – (1 Point)</p> <p><b>8. EIA Expert – (max. 2 Points)</b></p> <p>a) Licensed with over 10 years relevant experience (2 Points)</p> <p>b) Licensed with between 5-10 years relevant experience (1 Point)</p> <p>c) Licensed with up to 5 years relevant experience (0.5 Point)</p> |
| <p><b>Marketing and Exit Plan</b></p> <p><b>Tender on parties' exit upon completion of the Project.</b></p> | 15  |                | <p><b>b. Provision of sales and marketing team – (max. 4 Points)</b></p> <p><b>c. Comprehensive description of proposed exit plan (max. 5 Points)</b></p> <p><b>d. Demonstrate that conceptualized exit price points are competitive in the market (max. 4 Points)</b></p> <p><b>e. Demonstrate that exit timelines align to IRR targets (max. 2 Points)</b></p>  |
| <b>TOTAL</b>  |     | <b>200</b>     |   |

- **Note: There are 200 maximum possible points for the technical Tenders which shall be aggregated to 100%. Any features that Bidders wish to include over and above the Fund's stated requirements will not receive any additional points.**
- **Due diligence may be carried out on the highest scoring bidder.**

## **SECTION VII – STANDARD FORMS**

- 1) Tender Form
- 2) Confidential Business Questionnaire
- 3) Tender Security Form (Bank Guarantee)
- 4) Tender Security Form (Sacco Society, Micro Finance, Enterprise Fund)
- 5) Declaration Form
- 6) Price schedule – indicate the internal rate of return for the project
- 7) Power of Attorney
- 8) Joint Bidding Agreement
- 9) Letter of notification of award
- 10) Letter of notification of regret
- 11) Contract Agreement Form
- 12) Performance Security Form (Bank Guarantee)
- 13) Letter of Acceptance
- 14) 6B. Firm's references
- 15) 6C. Comments and suggestions of Bidders on the Terms of Reference and on data and/or services to be provided by the Fund
- 16) 6D. Description of the methodology and Project design and specifications.
- 17) 6E. Proposed Project design
- 18) 6F. Design Report
- 19) 6G. Landscape designs
- 20) 6H. Parking design
- 21) 6I. Works specifications
- 22) 6J. Work program
- 23) 6K. Proposed structural design system, Electrical design system, Mechanical design
- 24) 6L. Tender on use of green technologies in the Project
- 25) 6M. Project Investment Appraisal
- 26) 6N. Financing strategy and unit marketing plan
- 27) 6O. Proposed Exit Plan

## **SECTION VIII – GENERAL OUTLINE OF THE CONDITIONS OF THE JOINT VENTURE AGREEMENT**

### **GENERAL CONDITIONS OF CONTRACT**

To consummate the Project, a number of agreements will be required to be executed between the project proponent and the developer, the SPV and third parties among others. Among these is a Joint Venture Agreement between the Fund and the Developer.

These General Conditions of Contract (“hereinafter referred to as the Conditions”) sets out some of the principle terms and conditions of the Joint Venture Agreement.

#### **1. APPLICATION**

These Conditions shall form part of the terms of the Joint Venture Agreement unless the Developer and the Fund otherwise agree.

#### **2. PARTIES**

The parties to the Joint Venture Agreement (“the Agreement”) shall be the Fund and the winning bidder (“the Developer/ Development Partner (both hereafter collectively referred to as “Parties” and each individually as a “Party”).

#### **3. THE PROPERTY**

The property upon which the Project shall be implemented is all that land known as Land Reference Number 330/1192 (Original No. 330/119) delineated on Land Survey Plan number 223252. The Property is located along Naivasha/ Riara Road, Nairobi and measures 1.268 Ha or three decimal one three (3.13 Acres). The Property is held under a lease of ninety-nine (99) years from the 1<sup>st</sup> December 1998.

#### **4. STRUCTURE OF THE JOINT VENTURE**

4.1 The Parties shall register a Special Purpose Vehicle (hereinafter the SPV), which shall be structured as a limited liability partnership.

4.2 Subject to these Conditions, each Party shall hold a partnership interest equivalent to that Party’s contribution to the joint venture.

4.3 Upon registration of the SPV, but in consideration for the Developer fulfilling all of its obligations hereunder, the Fund will transfer the Property to the SPV.

4.4 Stamp duty (if any), capital gains tax (if payable), registration charges and all other incidental charges for the transfer of the Property to the SPV by the Fund shall be paid by the Developer

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but shall be taken into account in determining the equity contribution by the Developer to the joint venture.

## 5. CONDITIONS PRECEDENT TO THE AGREEMENT

5.1 The implementation of the Agreement and, consequently, the commencement of the Project shall be conditional upon the fulfilment (or where relevant and the Parties have so agreed, waiver) of each of the following conditions (“**the Conditions Precedent**”):

5.1.1 Receipt of the necessary corporate approvals for the execution and implementation of this Agreement by the relevant decision-making bodies of the Fund and of the Developer;

5.1.2 Registration of the SPV in accordance with these Conditions;

5.1.3 The Fund transferring the Property to the SPV in accordance with these Conditions;

5.1.4 The Developer conducting a comprehensive feasibility study on the Project including conduct of all necessary pre-construction technical studies as may be reasonably required for the Project of this magnitude (environmental contamination, geological, hydrological etc) and providing to the Fund a detailed report thereof;

5.1.5 The Developer preparing, or causing to be prepared, detailed Project Designs, and submitting them to the Fund for review and final approval;

5.1.6 The Developer preparing, or causing to be prepared, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion and submitting them to the Fund for review and final approval;

5.1.7 The Developer submitting to the Fund evidence of its financial capability and technical capacity to undertake the Project, in each case to the satisfaction of the Fund including attainment of Financial Close by the Developer and furnishing the Fund with copies of the executed Financing Agreement, if any;

5.1.8 The Developer submitting to the Fund true and up-to-date copies of all insurance documents evidencing that the insurance coverage to be obtained by the Developer for the Construction Works period shall be in full force and effect on the Effective Date;

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- 5.1.9 The Developer submitting to the Fund a comprehensive sales and marketing strategy report including pricing of the units within the Project acceptable to the Fund;
  - 5.1.10 Appointment, by both parties, of the Independent Technical Expert and the Independent Financial Expert to oversee the implementation of the parties' obligations under this Agreement;
  - 5.1.11 Payment of the Project Development Fee to the Transaction Advisors by the Developer, for provision of transaction advisory services, as stipulated in the Bid Documents, the Developer submitting to the Fund, and the Fund approving, the Project Designs; and
  - 5.1.12 The Developer providing the Performance Security.
- 5.2 If the Conditions Precedent are not fulfilled or waived (if capable of being waived) within the 45 Business Days from the commencement date of the Agreement, then the Fund may, at its absolute discretion:
- 5.2.1 Defer the period within which any outstanding Condition Precedent shall be fulfilled by such time as the Parties shall agree in writing;
  - 5.2.2 Agree to proceed with the Project so far as practicable (without prejudice to their rights under this Agreement); or
  - 5.2.3 Terminate this Agreement, which termination shall be without prejudice to any accrued rights and liabilities of the parties at the date thereof.
- 5.3 In the event that the Conditions Precedent cannot be achieved by reason of Force Majeure (and provided such a Condition Precedent has not been waived by a Party), the Conditions Precedent satisfaction period shall be extended by such further reasonable period as shall be determined by the Independent Technical Expert.
- 5.4 Except as is otherwise provided hereunder, any costs or expenses incurred in connection with satisfying the Conditions Precedent shall be borne by the Party with the obligation to satisfy the relevant Condition Precedent.

5.5 Each Party shall keep the other Party fully informed of and consult with the other party concerning the status of such Party's efforts to satisfy the Conditions Precedent and in particular:

5.5.1 shall provide a written report summarizing all material matters relevant to understanding the then current status of its efforts as soon as reasonably practicable after receipt of a reasonable request from the receiving Party; and

5.5.2 shall immediately notify the other Party in writing of the occurrence of any event or circumstance which might reasonably be expected to prevent satisfaction or delay satisfaction of any of the Conditions Precedent.

## **6. OBLIGATIONS OF THE FUND**

**6.1** Subject to the Conditions Precedent, the Fund shall:

6.1.1 Transfer the Property, free from any and all mortgages, charges, pledges, liens, assignments, hypothecations, or other encumbrance or security interest to the SPV; and

6.1.2 Deliver the Property to the SPV with vacant possession with all rents and rates up to the date of transfer fully paid up.

## **7. OBLIGATIONS OF THE DEVELOPER**

7.1 In consideration for the allotment of the Developer's Interest, the Developer shall undertake all activities necessary to realize the objectives of the Project as outlined in the Project business case and to achieve the Fund's target IRR. Without prejudice to the generality of the foregoing, the Developer shall:

7.1.1 Carry out a feasibility study and all other pre-construction Project studies and due diligence exercises;

7.1.2 Prepare or cause to be prepared detailed Project design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion for the Fund review and final approval;

Proposed Joint Venture Opportunity for the Re-Development of Plot L.R. Number 330/1192, along Naivasha/Riara Road, Nairobi Kenya.

- 7.1.3 Prepare, or cause to be prepared, itemised Bills of Quantities and submit the same for review and final approval by the Fund and the Independent Technical Expert;
- 7.1.4 Develop the Property in accordance with the Project designs;
- 7.1.5 Finance the development of the Project and meet all and any contingent cost that may arise from the Project during the implementation phase, including, without limitation, the following costs:
  - 7.1.5.1 All costs associated with carrying out all Project studies and due diligence exercises;
  - 7.1.5.2 All costs associated with the transfer of the Property by the Fund to the SPV including but without limitation stamp duty (if any), capital gains tax (if payable), registration charges and all other incidental charges;
  - 7.1.5.3 All costs associated with the preparation of all Project designs;
  - 7.1.5.4 All costs associated with procuring all statutory and government approvals, registrations, notifications and permits necessary prior to and during the undertaking of the Project;
  - 7.1.5.5 All costs associated with procuring and/or setting up all machinery, vehicles, tools, apparatus and other things required for the carrying out and completion of all works related to the Project;
  - 7.1.5.6 All costs associated with the procurement of all materials and supplies for incorporation in any works related to the Project;
  - 7.1.5.7 All fees and other charges payable to all Project contractors; and
  - 7.1.5.8 All other costs associated with the carrying out of all works, including any site-preparation and/or temporary works, necessary for the implementation of the Project in accordance with the Project Designs.
- 7.1.6 With the co-operation of the Fund and at the cost of the Developer, procure all approvals, registrations, notifications and permits necessary prior to and during the undertaking of the Project;
- 7.1.7 Procure and enter into contracts with all Project contractors. Provided that, the Developer shall not retain the services of any Project contractor the appointment of whom the Fund has expressed a reasonable objection to;
- 7.1.8 In consultation with the Fund, monitor the performance of all Project contractors;

Proposed Joint Venture Opportunity for the Re-Development of Plot L.R. Number 330/1192, along Naivasha/Riara Road, Nairobi Kenya.

- 7.1.9 Provide liaison services and manage the relationship amongst Project contractors inter se and between the Project contractors on the one hand and the SPV and the Fund on the other hand;
- 7.1.10 Prepare and implement a marketing strategy for the sale of the Units subject to the approval of the Fund. Provided that, unless the Parties otherwise agree, the Developer may use the Fund's brand to market and promote the development to potential purchasers; and
- 7.1.11 In consultation with the Fund, procure the services of a qualified property agent for purposes of undertaking the marketing and sale of the units to end users.
- 7.2 The Developer accepts responsibility for the performance by the Project contractors of all services for which they are contracted and for their breach of any contracts entered with such Project contractors pursuant hereto. Without prejudice to the generality of the foregoing and to any other right or remedy that the Fund **may** have under the Agreement, the Developer shall indemnify and keep harmless the Fund and all of its trustees, employees, consultants, agents and officers against any costs, damages, claims or losses that may result directly or indirectly from breach of those contracts by any of the Project contractors.
- 7.3 The Fund may in its absolute discretion permit the Developer to create an Encumbrance on any Project Asset but, which the Fund may, in its discretion, deny if such Encumbrance has or may have a material adverse effect on the rights and obligations of the Fund under the Agreement or applicable laws or if the proceeds of any such encumbrance are not utilized towards the Project.
- 7.4 The Developer shall not make any addition, replacement or amendments to any financing agreements without the prior written consent of the Fund if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Fund and/or the Property, and in the event that any replacement or amendment is made without such consent, the Developer shall not enforce such replacement or amendment nor permit enforcement thereof against the Fund.
- 7.5 The Developer shall procure that the agreements entered into with Project contractors contain provisions that entitle the Fund to step into such agreement, by mutual agreement, and, in substitution of the Developer in the event of termination or suspension under the Agreement.

## **8. ALLOTMENT OF DEVELOPER'S EQUITY**

- 8.1 Parties hereby agree that the aggregate of the land value and all Project costs shall constitute the Total Development Costs. The Total Development Costs shall be a fixed amount throughout the Project period and shall only be subject to adjustment or variation subject to the provisions of the Joint Venture Agreement.
- 8.2 The Fund will transfer the Property into the SPV at the land value in consideration for acquiring the Fund's interest in the SPV.
- 8.3 The Developer shall invest in the Project by way of monetary contribution, and in particular meeting all the Project costs (to be more particularly described under the Agreement) in consideration for acquiring the Developer's Interest in the SPV.
- 8.4 In consideration for the Developer performing its obligations hereunder the Fund shall procure that the Developer is allotted the Developer's interests in the SPV upon achievement of the following Project milestones ("**Project Milestones**"):
- 8.4.1 First Tranche – On payment of all costs involved in undertaking site investigations and the transfer of the Property to the SPV by the Fund, undertaking all relevant designs (including, without limitation, a master plan and schematic layout, architectural designs (include site layouts, floor plans elevations and sections), and landscaping designs (**Milestone 1**);
  - 8.4.2 Second Tranche - On payment of all costs necessary for construction of all foundations (**Milestone 2**);
  - 8.4.3 Third Tranche - On payment of all costs necessary for construction of all walls up to and including the ring beams (**Milestone 3**);
  - 8.4.4 Fourth Tranche - On payment of all costs necessary for construction of all roofs and all tanks, perimeter walls, gates, plumbing and all other fixtures and accessories within the development (**Milestone 4**);
  - 8.4.5 Fifth Tranche - On payment of all costs necessary for completion of all interior works including, without limitation, ceilings, electrical wiring, all carpentry countertops and cupboards, tiling, installation of doors and windows, landscaping and clean-up of the site,

Proposed Joint Venture Opportunity for the Re-Development of Plot L.R. Number 330/1192, along Naivasha/Riara Road, Nairobi Kenya.

painting interior and exterior, and all other interior and exterior finishes, up to the issuance of a Certificate of Completion by the Project architect (**Milestone 5**).

8.5 The Independent Technical Expert shall be responsible for certifying the development milestones set out above for purposes of allotment of the Developer's Partnership Interest. Such certification (including any variation of the percentage partnership interest of a party) shall be made following the conduct of the Milestones tests. The Independent Technical Expert will be required to act independently, fairly and impartially and shall have a duty of care to both the Fund and the Developer.

## **9. INDEPENDENT TECHNICAL EXPERT**

9.1 The Parties will jointly appoint a suitably qualified and experienced firm to act as the Independent Technical Expert. The Independent Technical Expert shall be appointed through an open competitive tender process (the process set out in the procurement laws applicable to services contemplated in these Conditions) using terms of reference to be jointly developed by parties.

9.2 The Independent Technical Expert shall be responsible for certifying the development milestones for purposes of allotment of the Developer's equity.

9.3 The remuneration, cost and expenses of the Independent Technical Expert shall be paid by the Developer and such costs shall be taken into consideration in determining the Developer's equity.

9.4 Both parties may, terminate the appointment of the Independent Technical Expert at any time, but only after appointment of another Independent Technical Expert.

9.5 If either party has reason to believe that the Independent Technical Expert is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the other party and seek termination of the appointment of the Independent Technical Expert. Upon receipt of such representation, the parties shall hold a tripartite meeting with the Independent Technical Expert for an amicable resolution of the dispute, and if any difference or disagreement between the Fund and the Developer remains unresolved, the dispute shall be settled in accordance with the Dispute Resolution Procedure to be set out in the Agreement. In the event that the appointment of the Independent Technical Expert is

terminated hereunder, both parties shall appoint forthwith another Independent Technical Expert in accordance with this clause.

9.6 If either Party disputes any advice, instruction, decision, direction or award of the Independent Technical Expert, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure as set out the Agreement.

## **10. INDEPENDENT FINANCIAL EXPERT**

10.1 Both parties shall appoint, and have during the subsistence of this Agreement an Independent Financial Expert (IFE), a firm chosen by both parties through a competitive tendering process to offer overall project auditing services, ensure both parties to the JV meet their respective financial obligations under the Agreement.

10.2 The Independent Financial Expert will be required to act independently, fairly and impartially and shall have a duty of care to both the Fund and the Developer.

10.3 The remuneration, cost and expenses of the Independent Financial Expert shall be paid by the Developer and such costs shall be taken into consideration in determining the Developer's equity.

10.4 Both parties may terminate the appointment of the Independent Technical Expert in the same manner and through the same process as that applicable to the independent Technical expert.

10.5 In the event of there being any financial disputes or any difference between the parties, the IFE shall seek to resolve the differences and if the parties are unable to resolve the same, such dispute shall be resolved by parties having recourse to the Dispute Resolution Procedure as set out the Agreement.

## **11. GOOD FAITH**

11.1 Each Party shall use all reasonable efforts to promote the best interests of the SPV and the Project and to consult fully on all matters materially affecting the Project. Each Party shall act in good faith towards the other Party and the SPV in order to give effect to the spirit of this Agreement and to promote the success of the Project.

11.2 When consent or approval is required of a Party under this Agreement or in the course of the activities of the SPV or Project Contractors or any other consultants retained for purposes of the Project, such consent or approval shall not unreasonably be withheld.

11.3 Each Party undertakes to ensure that its Representatives attend meetings of the Board of Representatives and do not to create a Deadlock by non-attendance.

11.4 Each Party undertakes with the other Party that it will (so far as it is legally able) exercise all voting rights and powers available to it in relation to any person (including the SPV, any affiliate and any Representative appointed by it) to ensure that the provisions of this Agreement and any relevant ancillary agreement are fulfilled and performed and generally that full effect is given to the principles set out in this Agreement.

## **12. INSURANCE**

12.1 The Developer shall be responsible for and keep in force current appropriate insurance covers for its property and persons engaged in the performance and or provision of the Services and/ or works under the contract.

12.2 The Developer shall (*except in respect to losses, injuries or damage resulting from any act or neglect of KPPF*) indemnify and keep indemnified KPPF against all losses and claims for injuries or damage to any person or property whatsoever which may arise out of or in consequence of the contract and against all claims, demands, proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.

## **13. ASSIGNMENT**

The Development Partner/ Developer shall not assign in whole or in part its obligations to perform under this contract, except with KPPF's prior written consent.

## **14. TERMINATION OF CONTRACT**

14.1 KPPF may, without prejudice to any other remedy for breach of contract, by written notice sent to the Supplier, terminate this contract in whole or in part due to any of the following: -

- a) *if the Developer fails to perform any or all of the services and/ or works within the period(s) specified in the contract, or within any extension thereof granted by KPPF.*
- b) *if the Developer fails to perform any other obligation(s) under the contract.*
- c) *if the Developer, in the judgment of KPPF has engaged in corrupt or fraudulent practices in competing for or in executing the contract.*
- d) *by an act of force majeure.*

- e) *if the Developer becomes insolvent or bankrupt*
- f) *if the Developer has a receiving order issued against it, compounds with its creditors, or an order is made for its winding up (except for the purposes of its amalgamation or reconstruction), or a receiver is appointed over its or any part of its undertaking or assets, or if the Development Partner suffers any other analogous action in consequence of debt.*
- g) *if the Developer abandons or repudiates the Contract.*

14.2 In the event that KPPF terminates the contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, services and/ or goods similar to those undelivered or not rendered, and the Developer shall be liable to KPPF for any excess costs for such similar services and/ or works and or any other loss PROVIDED that the Developer shall not be so liable where the termination is for convenience of KPPF.

14.3 The Parties may terminate the Contract by reason of an act of *force majeure* as provided for in the contract.

14.4 The Contract may automatically terminate by reason of an act of *force majeure* as provided for in the Contract.

## **15. LIQUIDATED DAMAGES**

Notwithstanding and without prejudice to any other provisions of the contract, if the Development Partner fails to perform any or all of the services and/ or works within the period agreed upon and specified in the contract, KPPF shall, without prejudice to its other remedies under the contract, deduct from the contract prices, liquidated damages sum equivalent to 0.5% of the performance price per day of delay of the delayed due services and/ or works up to a maximum of ten percent (10%) of the performance price of the delayed due services and/ or works.

## 16. Resolution of Disputes

16.1 In this clause 16, the following capitalized terms shall have the following meaning:

a. **Dispute** means any disagreement, difference or conflict that arises between the Parties as a result of the formation, existence, performance, interpretation, nullification (or consequences thereof), termination or invalidation of this Agreement, or arising from, out of or related to this Agreement in any manner whatsoever; and

b. **Dispute Notice** means a notice given in writing by one Party to the other and that describes in reasonable and sufficient detail, the Dispute resulting from this Agreement.

16.2 If any Party deems that a Dispute has arisen, then such Party may issue a Dispute Notice to the other Party.

16.3 KPPF and the Development Partner may make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the contract.

16.4 If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute, either party may resort to request 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.

16.5 To the extent permitted by law, the award of the arbitration tribunal shall be final and binding upon the Parties and either Party may apply to a court of competent jurisdiction for enforcement of such award.

16.6 The language to be used in the arbitral proceedings shall be English.

16.7 The place of arbitration shall be held Nairobi, Kenya.

## 17. ANTI MONEY LAUNDERING

The Development Partner confirms that the funds employed to pay for the Project or any sums pursuant to this Agreement are not and shall not be from the proceeds of crime. The Developer hereby indemnifies the Fund against any loss that the Development Partner may suffer as a result of the funds employed for the Project or any sums pursuant to this Agreement being deemed by any Competent Authority to be from proceeds of crime.

## 18. GOVERNING LAW AND JURISDICTION

18.1 The Agreement shall be governed by, and construed in accordance with, the laws of the Republic of Kenya.

Proposed Joint Venture Opportunity for the Re-Development of Plot L.R. Number 330/1192, along Naivasha/Riara Road, Nairobi Kenya.

## SECTION IX - TENDER FORM

Date:  
Tender No.

**To:**

The Kenya Power Pension Fund,  
Stima Plaza,  
Kolobot Road, Parklands,  
P.O Box 1548 – 00600,  
Nairobi, Kenya.

Ladies and Gentlemen,

1. Having read, examined and understood the Tender Document including all Addenda, the receipt of which is hereby duly acknowledged, we, the undersigned Tenderer, offer to perform, *(the latter two where applicable)* ..... *(insert DEVELOPMENT PARTNER FOR THE PROPOSED JOINT VENTURE IN THE RE-DEVELOPMENT OF LAND REFERENCE NUMBER 330/1192 Nairobi, Kenya Tender No. KPPF/PROC/2-A/02/19)* in accordance and conformity with the said tender document and in particular the Price Schedule in Section XXII that are made part of this Tender.
2. We undertake, if our Tender is accepted, to perform and provide the services and/ or goods in accordance with the Schedule of Requirements.
3. If our Tender is accepted, we will obtain the guarantee of a bank in a sum of equivalent to ten percent (10%) of the contract price for the due performance of the contract, in the form(s) prescribed by Kenya Power Pension Fund.
4. We agree to abide by this Tender for a period of.....days (**Tenderer please indicate validity of your Tender**) from the date fixed for tender opening as per the Tender Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

Proposed Joint Venture Opportunity for the Re-Development of Plot L.R. Number 330/1192, along Naivasha/Riara Road, Nairobi Kenya.

5. This Tender, together with your written acceptance thereof and your notification of award, shall not constitute a contract, between us. The contract shall be formed between us when both parties duly sign the written contract.
  
6. We understand that you are not bound to accept any Tender you may receive.

Yours sincerely,

---

Name of Tenderer

---

Signature of duly authorised person signing the Tender

---

Name and Designation of duly authorised person signing the Tender

---

Stamp or Seal of Tenderer

**\*NOTES:**

1. KPPF requires a validity period of at **least One Hundred and Twenty (120) days.**
2. This form must be duly **signed, stamped and/or sealed.**

Proposed Joint Venture Opportunity for the Re-Development of Plot L.R. Number 330/1192, along Naivasha/Riara Road, Nairobi Kenya.

## SECTION X - CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

All Tenderers are requested 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 ..... Postal Code .....                                 |
| Tel No.....  |
| Facsimile.....   |
| Mobile and/ or CDMA No.....  |
| E-mail:.....   |
| Nature of your business .....  |
| Registration Certificate No.....                                       |
| Maximum value of business which you can handle at any time KSh.....    |
| Name of your Bankers .....Branch... ..                                 |
| *Names of Tenderer’s contact person(s) .....                           |
| Designation of the Tenderer’s contact person(s) .....                  |
| Address, Tel, Fax and E-mail of the Tenderer’s contact person(s) ..... |

Proposed Joint Venture Opportunity for the Re-Development of Plot L.R. Number 330/1192, along Naivasha/Riara Road, Nairobi Kenya.

.....  
.....

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**Part 2 (a) Sole Proprietor**  
Your name in full .....  
Nationality ..... Country of origin .....  
\*Citizenship details.....

---

**Part 2 (b) Partnership**  
Give details of partners as follows: -

| Names  | Nationality | *Citizenship Details | Shares |
|--------|-------------|----------------------|--------|
| 1..... |             |                      |        |
| 2..... |             |                      |        |
| 3..... |             |                      |        |
| 4..... |             |                      |        |
| 5..... |             |                      |        |

**Part 2 (c) Registered Company**  
Private or Public .....  
State the nominal and issued capital of company-  
Nominal KSh.....  
Issued KSh.....  
Give details of all directors as follows

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

Name of duly authorized person to sign for and on behalf of the Tenderer

.....

Designation of the duly authorized person.....

Signature of the duly authorized person.....

**\*NOTES TO THE TENDERERS ON THE QUESTIONNAIRE**

1. ***It is compulsory to Attach Copy of CR12 for local bidders with the confidential business questionnaire form . For foreign Tenderers shall submit details of nominal and issued share capital in the currency of the country of origin of the Tenderer***
2. *If a Kenyan citizen, please indicate under "Citizenship Details" whether by birth, naturalization or registration.*
3. *The details on this Form are essential and compulsory for all Tenderers. **Failure to provide all the information requested shall lead to the Tenderer's disqualification.** The address and contact person of the Tenderer provided above shall at all times be used for purposes of this tender.*

**SECTION XI - TENDER SECURITY FORM – (BANK GUARANTEE)**

**(To Be Submitted On Bank’s Letterhead)**

**Date:**

**To:**

The Kenya Power Pension Fund,  
Stima Plaza,  
Kolobot Road, Parklands,  
P.O Box 1548 – 00600,  
Nairobi, Kenya.

**WHEREAS** ..... (*name of the Tenderer*) (*hereinafter called “ the Tenderer”*) has submitted its Tender dated ..... for **Tenders for Proposed Joint Venture for the re-development of plot L.R. No. 330/1192 Riara Road, Nairobi Kenya** (*hereinafter called “ the Tender”*);

**KNOW ALL PEOPLE** by these presents that **WE**.....of .....having our registered office at.....(*hereinafter called “ the Bank”*), are bound unto The Kenya Power and Lighting Company Limited (*hereinafter called “ KPPF” which expression shall where the context so admits include its successors-in-title and assigns*) in the sum of ..... for which payment well and truly to be made to the said KPPF, the Bank binds itself, its successors, and assignees by these presents.

We undertake to pay you, upon your first written demand declaring the Tenderer to be in breach of the tender requirements and without cavil or argument, the entire sum of this guarantee being ..... (*amount of guarantee*) as aforesaid, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This tender guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the date below.

This guarantee is valid until the .....day of.....20.....

EITHER

**SEALED** with the )

Proposed Joint Venture Opportunity for the Re-Development of Plot L.R. Number 330/1192, along Naivasha/Riara Road, Nairobi Kenya.

**COMMON SEAL** )

of the said **BANK** )

this .....day )

of .....20.... )

in the presence of :- )

)

\_\_\_\_\_ )

)

and in the presence of:- )

)

\_\_\_\_\_ )

\_\_\_\_\_  
BANK SEAL

OR

**SIGNED** by the **DULY AUTHORISED REPRESENTATIVE(S)/ ATTORNEY(S)** of the **BANK**

\_\_\_\_\_  
Name(s) and Designation of duly authorised representative(s)/ attorney(s) of the Bank

\_\_\_\_\_  
Signature(s) of the duly authorised person(s)

**NOTES TO TENDERERS AND BANKS**

- Please note that no material additions, deletions or alterations regarding the contents of this Form shall be made to the Tender Security to be furnished by the Tenderer. If any are made, the Tender Security shall not be accepted and shall be rejected by KPPF. For the avoidance of doubt, such rejection will be treated as non-submission of the Tender Security where such Security is required in the tender.*

2. *It is the responsibility of the Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPPF. The period for response shall not exceed three (3) days from the date of KPPF's query. Should there be no conclusive response by the Bank within this period, such Tenderer's Tender Security shall be deemed as invalid and the bid rejected.*
  
3. ***The issuing bank should address its response or communication regarding the bond to KPPF at the following e-mail address –“ cmbuiya@ kplc.co.ke”***
  
4. *The Tender validity period is ninety( 90) days as set out in the Invitation to Tender( at Section I of the Tender document) or as otherwise may be extended by KPPF. Therefore the Tender Security must at all times be valid for at least 30 days beyond the tender validity period.*



## SECTION XII - DECLARATION FORM

Date \_\_\_\_\_

**To:**

The Kenya Power Pension Fund,  
P.O Box 1548 – 00600,  
Stima Plaza, Kolobot Road, Parklands,  
Nairobi,  
KENYA.

Ladies and Gentlemen,

The Tenderer i.e. (full name and complete physical and postal address) \_\_\_\_\_  
\_\_\_\_\_ declare the following: -

- a) That I/ We have not been debarred from participating in public procurement by anybody, institution or person.
- b) That I/ We have not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement anywhere.
- c) That I/We or any director of the firm or company is not a person within the meaning of paragraph 3.2 of ITT (Eligible Tenderers) of the Instruction to Tenderers.
- d) That I/ We are not insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- e) That I/We do hereby confirm that all the information given in this tender is accurate, factual and true to the best of our knowledge.

Yours sincerely,

\_\_\_\_\_  
Name of Tenderer

\_\_\_\_\_  
Signature of duly authorised person signing the Tender

\_\_\_\_\_  
Name and Designation of duly authorised person signing the Tender

\_\_\_\_\_  
Stamp or Seal of Tenderer

Proposed Joint Venture Opportunity for the Re-Development of Plot L.R. Number 330/1192, along Naivasha/Riara Road, Nairobi Kenya.

### **SECTION XIII– DRAFT LETTER OF NOTIFICATION OF INTENT OF AWARD**

To:

*(Name and full address of the Successful Tenderer).....*

Dear Sirs/ Madams,

RE: NOTIFICATION OF INTENT OF AWARD OF TENDER NO. ....

Pursuant to the provision under section 87 of the public procurement and asset disposal Act 2015 we refer to your tender dated ..... we are pleased to inform you that following evaluation, we intend to award you a contract for the above mentioned subject to provision herein.

This notification of intent does not constitute a contract. The formal Contract Agreement and notification of award, shall be entered into pursuant to the provisions of the Public Procurement and Asset Disposal Act, 2015 *(or as may be amended from time to time, or replaced)*.

You are required to accept or reject this offer within a period of 14 days.

We take this opportunity to remind you to again note and strictly comply with the provisions as stated in the tender document.

Kenya Power Pension Fund is committed to best practices in quality management systems and supply chain management, attached please read carefully our Suppliers' Charter. We look forward to a cordial and mutually beneficial business relationship.

Yours faithfully,

**FOR: THE KENYA POWER PENSION FUND**

**CEO & TRUST SECRETARY**

**SECTION XIV – DRAFT LETTER OF NOTIFICATION OF REGRET**

**To:** *(Name and full address of the Unsuccessful Tenderer).....*

Date:

Dear Sirs/ Madams,

**RE: NOTIFICATION OF REGRET IN RESPECT OF TENDER NO. ....**

Pursuant to the provision under section 87(3) of the public procurement and asset disposal Act 2015 to notify you that following evaluation, your Tender is unsuccessful. It is therefore not accepted.

The brief reasons are as follows:-

1. ....
2. ....
3. .... etc

The successful bidder was \_\_\_\_\_.

However, this notification does not reduce the validity period of your Tender Security. In this regard, we request you to relook at the provisions regarding the Tender Security, Signing of Contract and Performance Security as stated in the Instructions to Tenderers.

You may collect the tender security from our offices only after expiry of twenty five (25) days from the date hereof

It is expected that by that time KPPF and the successful bidder will have entered into a contract pursuant to the Public Procurement and Asset Disposal Act, 2015 *(or as may be amended from time to time or replaced)*. When collecting the Security, you will be required to produce the original or certified copy of this letter.

We thank you for the interest shown in participating in this tender and wish you well in all your future endeavours.

Yours faithfully,

**FOR: THE KENYA POWER PENSION FUND**

**CEO & TRUST SECRETARY**

Proposed Joint Venture Opportunity for the Re-Development of Plot L.R. Number 330/1192, along Naivasha/Riara Road, Nairobi Kenya.

**SECTION XV - PERFORMANCE SECURITY FORM (BANK GUARANTEE)**

**(To Be Submitted On Bank’s Letterhead)**

**Date:**

**To:**

The Kenya Power Pension Fund,  
Stima Plaza,  
Kolobot Road, Parklands,  
P.O Box 1548 – 00600,  
Nairobi, Kenya.

**WHEREAS**.....(hereinafter called “the Supplier”) has undertaken, in pursuance of your Tender Number.....(*reference number of the Tender*) and its Tender dated .....(*insert Supplier’s date of Tender taken from the Tender Form*) to supply .....(*description of the goods*) (hereinafter called “the Contract);

**AND WHEREAS** it has been stipulated by you in the said Contract that the Development Partner shall furnish you with a bank guarantee by an acceptable bank for the sum specified therein as security for compliance of the Supplier’s performance obligations in accordance with the Contract;

**AND WHEREAS** we have agreed to give the Development Partner a guarantee;

**THEREFORE WE HEREBY AFFIRM** that we are Guarantors and responsible to you, on behalf of the Supplier, up to a total sum of..... (*amount of the guarantee in words and figures*) and we undertake to pay you, upon your first written demand declaring the Development Partner to be in default under the Contract and without cavil or argument, any sum or sums within the limits of ..... (*amount of guarantee*) as aforesaid, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the .....day of.....20....

EITHER

**SEALED** with the )

Proposed Joint Venture Opportunity for the Re-Development of Plot L.R. Number 330/1192, along Naivasha/Riara Road, Nairobi Kenya.

**COMMON SEAL** )  
of the said **BANK** )  
 )

this .....day )

\_\_\_\_\_

BANK SEAL

of .....20.... )

in the presence of :- )

\_\_\_\_\_ )

and in the presence of:- )

\_\_\_\_\_ )

OR

**SIGNED** by the **DULY AUTHORISED**  
**REPRESENTATIVE(S)/ ATTORNEY(S)** of  
the **BANK**

\_\_\_\_\_  
Name(s) and Designation of duly authorised representative(s)/ attorney(s) of the Bank

\_\_\_\_\_  
Signature(s) of the duly authorised person(s)

**NOTES TO SUPPLIERS AND BANKS**

- Please note that no material additions, deletions or alterations regarding the contents of this Form shall be made to the Performance Security Bond (the Bond) to be furnished by the successful Tenderer/ Supplier. If any are made, the Bond may not be accepted and shall be rejected by KPPF. For the avoidance of doubt, such rejection will be treated as non-submission of the Bond where such Bond is required in the tender and Contract.*

2. *KPPF shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the Development Partner to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPPF. The period for response shall not exceed five (5) days from the date of KPPF's query. Should there be no conclusive response by the Bank within this period, such Performance Security may be deemed as invalid and the Contract nullified.*
  
3. ***The issuing Bank should address its response or communication regarding the bond to KPPF at the following e-mail address –“ tenders@ kppf.co.ke”***

## SECTION XVI – JOINT BIDDING AGREEMENT

THIS Joint Bidding Agreement executed on this \_\_\_\_\_ day of \_\_\_\_\_ Two thousand and sixteen between

M/s \_\_\_\_\_, a \_\_\_\_\_ incorporated under \_\_\_\_\_ and having its Registered Office at \_\_\_\_\_ (hereinafter called the "Lead Member", which expression shall include its successors, executors and permitted assigns) and

M/s \_\_\_\_\_, a \_\_\_\_\_ incorporated \_\_\_\_\_ and having its Registered Office at \_\_\_\_\_ (hereinafter called the "Technical Member", which expression shall include its successors, executors and permitted assigns) for the purpose of making a Tender and entering into the Joint Venture Agreement (in case of award) to be hereinafter referred to as the Contracts, against Tender of ..... (hereinafter referred to as the Fund).

### WHEREAS:

- A. The Fund desires to select a Development Partner for the re-development of L.R. No 330/1192 through a Joint Venture.
- B. The Fund had invited Tenders vide its tender Document;
- C. **Clause [insert]** of the Instructions to Bidders in this tender document stipulates that the Bidder qualifying on the strength of a joint venture to submit a legally enforceable Joint Bidding Agreement in a format specified by the Fund wherein the Members have to set out their roles and responsibilities for the implementation of the Project;
- D. The Tender has been submitted to the Fund vide letter no. \_\_\_\_\_ dated \_\_\_\_\_ in accordance with the relevant provisions of tender.

### NOW THEREFORE, THIS INDENTURE WITNESSES AS HEREUNDER:

In consideration of the above premises and agreements all the partners in this joint venture do hereby mutually agree as follows:

1) In consideration of the award of the Contract by the Fund to the Joint venture, we, the members and partners to the Joint Bidding Agreement do hereby unequivocally agree that partner, M/s Proposed Joint Venture Opportunity for the Re-Development of Plot L.R. Number 330/1192, along Naivasha/Riara Road, Nairobi Kenya.

(name of Lead Member), shall act as the Lead Member as defined in the tender for self and agent for and on behalf of the Joint venture Members.

2) Notwithstanding anything contrary contained in this Joint Bidding Agreement, all the Members shall be jointly and severally responsible for the execution of the Project in accordance with the terms of the Joint Venture Agreement.

3) The roles and responsibilities of the Lead Member are as follows:

a. \_\_\_\_\_

b. \_\_\_\_\_

4) The roles and responsibilities of the other Members are as follows:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

5) The Lead Member is hereby authorized by the Joint venture Members to bind the joint venture and receive instructions for and on their behalf. It is further understood that the execution of the Contract shall be done exclusively by the Lead Member.

6) The Lead Member shall be jointly liable and responsible for ensuring the individual and collective commitment of each of the members in discharging all their respective obligations. Each member further undertakes to be individually liable for the performance of its part of the obligations without in any way limiting the scope of collective liability envisaged.

7) The Lead Member shall inter alia undertake full responsibility for liaising with Lenders and mobilizing debt resources for the Project, achieving financial closure and implementation of the Project on behalf of the joint venture.

8) This Joint Bidding Agreement shall be construed and interpreted in accordance with the Laws of Kenya and shall have the exclusive jurisdiction in all matters relating thereto and arising hereunder.

Proposed Joint Venture Opportunity for the Re-Development of Plot L.R. Number 330/1192, along Naivasha/Riara Road, Nairobi Kenya.

9) It is further expressly agreed that the Joint Bidding Agreement shall be irrevocable and shall form an integral part of the Contract and shall remain valid till the term of the Contract unless expressly agreed to the contrary by the Fund.

10) The Lead Member is authorized and shall be fully responsible for the accuracy and veracity of the representations and information submitted by the Members respectively from time to time in response to the tender and for the purposes of the project.

11) It is hereby expressly understood between the partners to this Joint Bidding Agreement that neither partner may assign or delegate its rights, duties or obligations under the contract except with prior written consent of the Fund.

12) This Joint Bidding Agreement

- a) has been duly executed and delivered on behalf of each Party hereto and constitutes the legal, valid, binding and enforceable obligation of each such Party,
- b) sets forth the entire understanding of the Parties hereto with respect to the subject matter hereof;
- c) may not be amended or modified except in writing signed by each of the Parties and with prior written consent of the Fund.

**IN WITNESS WHEREOF**, the partners to the Joint Bidding Agreement have, through their authorized representatives, executed these present and affixed Common Seals of their respective companies on the Day, Month and Year first mentioned above.

For and behalf of Lead Member by:

(Signature) \_\_\_\_\_

(Name) \_\_\_\_\_

(Designation) \_\_\_\_\_

For and on behalf of the Members by:

(Signature) \_\_\_\_\_

Proposed Joint Venture Opportunity for the Re-Development of Plot L.R. Number 330/1192, along Naivasha/Riara Road, Nairobi Kenya.

(Name) \_\_\_\_\_

(Designation) \_\_\_\_\_

**SECTION XVII – FORMAT OF POWER OF ATTORNEY FOR AUTHORISED REPRESENTATIVE**

We ..... (name and address of the registered office) do hereby constitute, appoint and authorize Mr. / Mrs. / Ms ..... (name and residential address) who is presently employed with us and holding the position of ..... as our attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to our Tender for the project re-development of L.R. No 330/1192 through a Joint Venture, including signing and submission of all documents and providing information / responses to the Fund, representing us in all matters before the Fund, and generally dealing with the Fund in all matters in connection with our Tender for the said Project.

We hereby agree to ratify all acts, deeds and things lawfully done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us.

..... (Signature)  
(Name, Title and Address)

Accepted  
..... (Signature)  
(Name, Title and Address of the Attorney)

## **SECTION XVIII – PROJECT INVESTMENT APPRAISAL FORM**

*( Demonstrate the project IRR and value for money in the technical Tender. The bidder shall be required to clearly provide the computation of how they arrived at the IRR proposed.*

*Provide Tenders for best profit sharing and show what the profit is. (Detailed cashflow projection and analysis. This should indicate the projected holding period, exit strategy, IRR, NPVs as well as sensitivity analysis)]*

## **SECTION XIX FINANCING STRATEGY AND SALES AND MARKETING PLAN**

*[Detail:*

- *your source of funds and how you intend to finance the Project; and*
- *a detailed demonstration on marketing of the units by the SPV to potential purchasers.*

*Give a firm commitment that funds shall be available during Project implementation up to completion.]*

## **SECTION XX PROPOSED EXIT PLAN**

*[Tender on parties' exit upon completion of the Project]*

**SECTION XXI PROPOSED STRUCTURAL DESIGN SYSTEM, ELECTRICAL DESIGN SYSTEM, MECHANICAL DESIGN SYSTEM**

(tenderer to provide)

## SECTION XXI – PRICE SCHEDULE

Please indicate the internal rate of return (*The return indicated shall be as derived in the financial model taking into consideration all costs/expenses and revenue from the project*)

**NOTE:** This form must be duly signed, stamped and/or sealed

Name of Tenderer

---

Signature of duly authorised person signing the Tender

---

Name and Designation of duly authorised person signing the Tender

---

Stamp or Seal of Tenderer