



FINANCIAL  
SERVICES

**RFP FOR PROPOSED JOINT VENTURE  
OPPORTUNITIES FOR THE DEVELOPMENT OF PLOT  
LR NO. 4953/2338,2339, 23340 & 2341 MAU  
AREA,THIKA TOWN, KIAMBU COUNTY, KENYA.**

**RFP NO. CPF/JOINT VENTURE/DEVELOPMENT OF PLOT LR NO.  
4953/2338,2339, 23340 & 2341/2017/11**

**NOVEMBER 2017**

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**PROPOSED JOINT VENTURE OPPORTUNITIES FOR THE DEVELOPMENT OF PLOT LR NO. 4953/2338, 2339, 23340 & 2341-MAU AREA, THIKA TOWN, KIAMBU COUNTY-KENYA- REQUEST FOR PROPOSALS (RFP)**

**OPEN INTERNATIONAL TENDER.**

CPF Financial Services Ltd (hereinafter referred to as CPF) is an administrator of pension schemes registered under the Retirement Benefits Act and is the administrator of the Local Authorities Pensions Trust pension scheme (the Trust). CPF is mandated to provide procurement and project management services to the Trust and will therefore process this procurement for and on behalf of the Trust, the registered owner of the Property **LR. No 4953/2338, 2339, 23340 & 2341**, within the Republic of Kenya).

The Trust is desirous of developing the property as will be advised by a feasibility study, and is looking to partner with a potential investor in a joint venture arrangement where the investor is willing to finance and construct the development as detailed in the RFP document.

CPF invites interested Bidders for the proposed development as detailed in the RFP document. This RFP is open to both Local and International Bidders.

Interested Bidders may obtain further information from CPF's website [www.cpf.or.ke](http://www.cpf.or.ke) or at the Procurement office situated at:

CPF House, Haile Selassie Avenue; Nairobi.  
Mezzanine Floor;  
E-mail; [info@cpf.or.ke](mailto:info@cpf.or.ke); [procurement@cpf.or.ke](mailto:procurement@cpf.or.ke)

Documents obtained from the website are free of charge and Bidders are advised to register their submissions at the Procurement Office or via email address; [procurement@cpf.or.ke](mailto:procurement@cpf.or.ke) (Refer to registration form at Annex 9 in the RFP document).

A complete set of Bid Document(s) in English (hardcopy) may be purchased by interested Bidders upon payment of a non-refundable fee of Kenya Shillings 1,000 (One thousand Kenya Shillings) at the cash office on First floor during normal office working hours. The RFP document (hardcopy) will be issued from CPF's Procurement during normal working days on Monday to Friday between 0800hrs and 1700hrs except on Public Holidays and weekends.

Bidders submitting the RFP should be able to demonstrate and substantiate through their references and profiles that they have the requisite capability and capacity both technically and financially to execute the assignment.

RFP Documents completed as per instructions indicating the RFP Number; **RFP NO. CPF/ JOINT VENTURE/DEVELOPMENT OF PLOT LR NO. 4953/2338, 2339, 23340 & 2341/2017/II** and addressed as indicated below should be deposited in the Tender Box on the Mezzanine Floor of CPF House before **11.00 a.m. on 14<sup>th</sup> December 2017**.

The duly completed RFP documents which cannot fit into the Tender Box shall be received only between 10:00 -11:00 a.m.on the same RFP deadline day in the Procurement Office on Mezzanine Floor, CPF House and a receipt slip issued.

**The Group Managing Director**  
**CPF Financial Services Ltd**  
**CPF House, 7<sup>th</sup> Floor.**  
**Haile Selassie Avenue**  
**P. O. Box 28938, 00200 Nairobi**  
**Tel ; 2046901 – 05**  
**Fax ; (020) 2251807**  
**Mobile ; 0720433354**  
**E-Mail;[info@cpf.or.ke](mailto:info@cpf.or.ke)**

Technical proposals will be opened on the closing date at 11.30 a.m.in the presence of bidders' representatives who may wish to be present at CPF Boardroom on Mezzanine floor, CPF House Nairobi. Thereafter same will be evaluated in accordance with the **RFP Criteria** & CPF's Procurement Guidelines.

CPF Financial Services Ltd reserves the right to accept or reject any bid submitted.

Yours faithfully,

**H. K KILI**

**GROUP MANAGING DIRECTOR/CEO**

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## IMPORTANT NOTICE AND INFORMATION TO BIDDERS

1. The Contract for the proposed development shall be between the Trust and the successful Bidder.
2. The information contained in this RFP, except where the context otherwise requires, has been based on the assumption that the proposed development is implemented as described herein. Whilst CPF considers that the assumptions on which this document is based are reasonable, it must be recognized that the reliance that you place on them is a matter of commercial judgment for the bidders alone.
3. Queries relating to the information contained in this document shall be directed only to the contact persons referred to herein. No other person has the authority to give any information or to make any representation in respect of this RFP or the proposed development and, if given or made, such information or representation may not be relied upon as having been authorized by CPF.
4. This RFP is confidential and personal to you. It is provided to you on the understanding that it is not to be duplicated or distributed to any other person (s) or institution (s).
5. The Bidder **must** submit a Bid Security (in a separate sealed envelope labeled 'Bid Bond') at the time of submitting the Proposals. The Bid Security must be in the form specified under clause 4.8.2 and must be issued for the benefit of "CPF" in the amount of **Ksh. 250,000.00 (Two Hundred and Fifty Thousand Kenya Shillings only)** or equivalent in a freely convertible currency from Commercial Banks or Insurance Companies (Approved by Public Procurement Regulatory Authority). Where it takes the form of a bank guarantee, it must be issued by a reputable bank to CPF and must take the form set out in Annex I.
6. The Bid Security of the successful Bidder shall be maintained in full force and effect until such Bidder has executed an agreement with The Trust. The successful Bidder will be required to furnish CPF with a Performance Bond equivalent to 10% of the total proposed project contract sum in exchange of the Bid Security. The performance bond shall be issued in the name of The Trust.
7. The Bid Security of each Bidder that is not designated as the successful Bidder will be returned within 30 days following CPF's designation of successful Bidder, but not later than two months from the Proposal Deadline.
8. In the event that the Bidder withdraws its Proposal during the Validity Period, or the successful Bidder fails to execute the agreement as agreed to during negotiations, CPF will claim the Bid Security as liquidated damages and not by way of penalty, in view of it being impossible accurately to assess the amount of such damage, and may then convert any such security into money.
9. CPF will return the Bid Security to the successful Bidder in the event that CPF fails to execute an agreement with the successful Bidder.

10. The Bidder shall be deemed to have carefully examined all of the terms, conditions and requirements of this RFP, and also to have fully informed itself as to all conditions affecting this assignment. Failure to do so is at the Bidder's risk, and no claim will be considered at any time for reimbursement of any expenses incurred as a result of any misunderstanding with regard to the conditions imposed by this RFP.
11. Bidders are advised that it is mandatory to return the declaration statement of not engaging in corrupt activities.
12. Bidders are advised that they are required to serialize the pages of their Tenders and submit the number of copies stated under Instructions to Bidders section.

**NOTES:**

- 1.0 Any reference to a statutory provision shall be deemed to include a reference to any statutory modification or re-enactment of it.**
- 2.0 All proposals should as much as possible follow the RFP Format with minimal deviations.**
- 3.0 Bidder in this RFP shall have the same meaning as the joint venture partner.**

**SECTION I. LETTER OF INVITATION**

**Our Ref: PROPOSED JOINT VENTURE OPPORTUNITIES FOR THE DEVELOPMENT OF PLOT LR NO. 4953/2338, 2339, 23340 & 2341-MAU AREA, KIAMBU COUNTY-KENYA**

**RFP NO. CPF/JOINT VENTURE/DEVELOPMENT OF PLOT LR NO. 4953/2338, 2339, 23340 & 2341/2017/11**

**Date: 2<sup>nd</sup> November 2017**

Dear Sirs,

1. CPF on behalf of the Trust invites sealed Proposals from interested firms for the proposed development of plot LR. No **4953/2338, 2339, 23340 & 2341**. A summary of the property details and services are shown in the table below.

**2. Property detail and services;**

No	Location	Size	Details	Use
1	The Property is situated along Garissa Road approximately 8.5 Kms to the east of Garissa Road-Thika Town Junction. They lie directly opposite Thika Army Barracks and to the east of Mount Kenya University Graduation Pavillion.	LR. No <b>4953/2338, 2339, 23340 &amp; 2341</b> Each parcel measures <b>TWO DECIMAL TWO FIVE HECTARES (2.25 HA)</b> or 5.56 Hectares or thereabouts.	The property is devoid of structural developments. Water and electricity are available for connection to the subject properties. Foul drainage would be to septic Tanks, bio digester or other suitable means of disposal. The immediate access road is the tar-surfaced Garissa Road.	Residential/Commercial

3. A firm will be selected under Quality Based Selection (QBS) criteria and procedures described in this RFP. This criteria is specially designed for complex and specialized design. The objective is to get the best investment proposal with the highest returns, quality is therefore the forte. Under the criteria, the firm with the highest technical score shall be invited for negotiations on the key aspects of the RFP and which negotiations may culminate into signing of a contract between the parties.

4. The RFP includes the following eight (8) sections:

Section 1 - Letter of Invitation

Section 2 – Definitions

Section 3 - Terms of Reference

Section 4 – Property Details

Section 5 - Information to Bidders

Section 6 - Technical Proposal - Standard Forms

Section 7 – General Conditions of Contract

Section 8 - Appendices & Annexes

Yours Faithfully,

**H. K KILI, OGW**  
**GROUP MANAGING DIRECTOR/CEO**



## SECTION II – DEFINITIONS

The following terms used in this Request for Proposal (RFP) Document shall have the meaning given to them unless otherwise defined herein below:

<b>Term</b>	<b>Definition</b>
Acceptance Letter	Shall mean the letter issued by the Successful bidder to The Trust accepting the award.
Award Letter	Shall mean the letter issued by The Trust to the Successful Bidder
Bid	Shall mean the proposal containing the ‘Mandatory Requirements’ & the ‘Technical Proposal’ as submitted by a Bidder in response to this RFP Document.
Bidder	Shall mean any firm, Sole Proprietorship, Limited Company, Bidding consortium or partnership submitting a bid for the Project.
Bid Documents	Shall mean this Request for Proposal (RFP) together with all its attached Annexes and Standard Forms and which shall also be referred to as the RFP or RFP Document
Bid Security	Shall have a meaning assigned under clause No. 5 under the Section ‘Important Notice and Information to Bidders’ of this RFP.
Bid Submission Deadline	Shall mean the final date and time for the Bidders to submit their Bids as noted in the Introduction Page of this RFP.
Bid Validity Period	Shall mean the period during which Bids must remain valid from the date the tenders are opened.
Consortium Member	Shall mean each entity/firm in the Bidding Consortium.
Contract Period	Shall mean a period agreed between The Trust and the Development Partner and defined in the Joint Venture Agreement to be signed by both parties.

Development Cost	Shall mean the Total Development Cost offered by a Bidder in its Proposal for the development of the Project, AND INCLUDES the consultancy costs, construction costs, all taxes payable including Value Added Tax (V.A.T), and profits expected from the Project by the Development Partner BUT EXCLUDING the cost / value of Land.
Development Partner	Shall mean the Successful Bidder which shall, through a Special Purpose Vehicle (the “Project Company”), enter into a Joint Venture Agreement with The Trust to develop the Project.
Escrow Account	A joint bank account for managing all funds and any proceeds related to the Project.
IRR	Shall mean Internal Rate of Return which is a metric used in capital budgeting measuring the profitability of potential investments. Generally speaking, the higher a project's internal rate of return, the more desirable it is to undertake the project.
Joint Bidding Agreement (JBA)	Means the Joint Bidding Agreement outlined in Standard Form VIII to be entered into among the members forming the Bidding Consortium.
Joint Venture Agreement (JVA)	Means the Joint Venture Agreement to be entered into by The Trust and the Development Partner’s Special Purpose Vehicle. “Joint Venture Agreement” and “Contract” are synonymous.
Lead Consortium Member (LCM)	Shall mean the Member who shall be vested with the prime responsibility of representing the consortium.
Project	Shall mean the proposed development of plot LR. Nos 4953/2338, 2339, 2340 & 2341 through Joint Venture Partnership.
Project Facilities	Shall mean collectively all the facilities to be developed by the Development Partner at the Project Site in accordance with provisions of the Joint Venture Agreement.
Project Site	Shall mean LR Nos.4953/2338, 2339, 23340& 23341 situated along Garissa Road, Thika Town, Kiambu County.
RFP	Means this Request for Proposal Document.

Security Agent	Shall mean an independent bank / financial services institution or consultants to be agreed by both The Trust and the Development Partner prior to execution of the Joint Venture Agreement and whose function shall be to establish and maintain the Escrow Account in accordance with the prescribed conditions outlined in the Project Joint venture Agreement.
SPV	Shall mean a Special Purpose Vehicle which shall be a legal entity created solely to serve a particular function, such as, for facilitation of a financial arrangement or creation of a financial instrument for purposes of this project under the Joint Venture Agreement.
Technical Proposal	Shall mean the Technical Bid as submitted by the Bidder as per the format specified in this Request for Proposal.
The Trust	Shall mean the Local Authorities Pension Trust Registered Trustees

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## SECTION III – TERMS OF REFERENCE

### 2.1; Introduction

#### **Project Brief.**

The Trust is the registered owner of all that parcel of land LR. No **4953/2338,2339, 23340 & 2341** situated in Thika Town along Garissa Road in Mau Area, Kiambu County within the Republic of Kenya, and is desirous of constructing a residential, commercial or mixed development on the Property, as will be advised by a feasibility study. The Trust is looking for a potential investor / partner, who is interested in developing the property through a joint venture. The investor/partner, will provide a brief market feasibility report as part of their submission for our consideration and upon approval provide a more detailed feasibility study to support the approved proposal and shall execute the development. The Trust's contribution in this case will be land only with vacant possession. All other activities thereon until completion will be the responsibility of the Investor/ Partner.

#### **Objectives of the Assignment i.e. upon successful appointment**

The objective of the assignment is to undertake a financially and practically viable development. The Trust shall provide the land for the development and not be involved in developing the project but only be involved in overseeing the project's progress as a joint beneficiary of the final returns.

A joint venture model with the Development Partner will be applied to undertake the development.

The Trust emphasizes an arrangement where the Development Partner shall at their own cost;

1. Provide a market feasibility report
2. Provide proposals for best use development and propose the IRR with the best value for money in the technical proposal whilst demonstrating a clean basis/justification for the proposed IRR.
3. Provide proposals for best profit sharing under the JV.
4. Give the financing strategy and plan of the project.
5. Undertake a detailed market and financial feasibility study
6. Identify and confirm the property's boundaries / beacons.
7. Undertake design, including but not limited to architectural designs, structural designs, electrical and mechanical services designs and preparation of bills of quantities
8. Undertake all necessary approvals
9. Undertake construction of the development to completion with control of and responsibility towards on-time completion / delivery of the project.
10. Undertake sale or rental of the development as will be agreed in the joint venture, which may include retention of part of the development by The Trust and the Development Partner.

Items 1, 2, 3 & 4 form part of technical proposal submission for consideration.

**Deliverables;**

The Development Partner will;

1. Enter into a joint venture agreement with the Trust to develop the property. The Potential investor/Developer or Partner who offers proposals that are evident to provide the highest returns will have an added advantage.
2. The Development Partner shall submit the architectural, structural, mechanical and electrical designs, plans and drawings, layouts and specifications and shall submit to the Trust 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.
3. The Development Partner shall 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 Development Partner shall be the developer either directly or through appointment of a third party contractor and thus will remain responsible for the BQs preparation, tendering and construction.
4. The Development Partner shall develop the property in conformity with the master plan, architectural, structural, mechanical and electrical designs & plans, drawings, layouts and specifications, as specified under Clause 2 above and in accordance with the Joint Venture Agreement or other arrangements and the Project is anticipated to be completed on or before the proposed date of completion. Any delays after this date may cause for penalties to be applied on the investor as the control of the delivery of the project shall lie with the investor.
5. The Development Partner shall be required to inject equity into the joint venture with the Trust in the development of the property which may take the form of either a Limited Liability Company (LLC) or Limited Liability Partnership (LLP) investing equity in a Special Purpose Vehicle as the parties may agree;
6. Define the sale or rental rates offered as a factor of development costs and cost of land.
7. Propose the best exit plan.

**N/B IMPROVEMENTS TO TORs**

The Potential investor/Developer or Partner may offer suggestions and improvements to the Terms of Reference that would result in better implementation of the assignment. Such proposals if accepted will form part of the Terms of Reference of the proposals submitted by the Potential investor/Developer or Partner.

## SECTION IV: PROPERTY DETAILS

### PROPERTY:LR. No 4953/2338, 2339, 23340& 2341– GARISSA ROAD

**LOCATION:** The property is located on a prime area along Garissa road, opposite Kenya Army Barracks and approximately 8.5 Kms to the east of Garissa Road-Thika Town (Kenyatta Avenue) Junction.

**PROPERTIES TENURE:** Each title is leasehold Interest for a term of 99 years from 1<sup>st</sup> April, 1992.

**AREA:** Each parcel measures Two Decimal Two Five Hectares (2.25 HA) or 5.56 Hectares or thereabouts. The plots are contiguous with a combined acreage of about 22.24 Acres.

**SERVICES:** Water and electricity are available for connection to the subject properties. Foul drainage would be to septic tanks. Garissa road is tar-surfaced

**USER:** Residential.

**PLOT DESCRIPTION:** L.R Nos. 4953/2338, 2339 and 2340 are rectangular shaped while 2341 is a near trapezoidal in shape. Both parcels are characterized by mixed soils with a fairly level terrain. Boundaries are partly marked by about 4 feet height concrete filled steel tubes. Entrance to the property is open. All plots put together, the property is almost rectangular.

**IMPROVEMENTS:** L.R NO. 4953/2339 is developed with temporary structures utilized as caretaker's residence. The rest of the properties are devoid of structural developments.

**GENERAL REMARKS:** These are four (4No.) parcels of land each measuring approximately 5.5 Acres touching the main Garissa Road and Landless Estate to the East. The neighborhood is characterized by owner occupier residential developments and undeveloped plots.

View of the properties on Google Earth



The Technical Proposal shall constitute the following (The Bidder is advised to follow the sequential order of the table below as much as possible when preparing the technical proposal.)

**Mandatory Requirements (Bidders who fail to attain the mandatory requirements shall have their proposals disqualified and they shall not be progressed for technical evaluation).**

**Mandatory/Statutory Requirements**

**Must be provided by the Potential Investor failure to which the bid shall not be progressed to Phase 2.**

- 1) Must submit copies of the following documents (except for international investors in whose case the relevant standard and equivalent identification documents of their respective countries should be availed):-
  - Valid tax compliance certificate
  - Pin certificate
  - Certificate of registration / incorporation
- 2) Must issue a declaration (in the firms' own format and on its letterhead) of agreement to inject equity into the development either through a partnership/co-invest or joint ventures and such other arrangements with the Trust in the development of the Premises which may take the form of either a limited liability company or by investing equity in a Special Purpose Vehicle as the parties may agree.
- 3) Audited accounts for the last three (3) years (If the potential investor has been in business for less than 3 years, then accounts for the duration of years it has been in business shall suffice but evidence must be provided to this effect).
- 4) Tender security as detailed in the Information to Bidders must be provided.
- 5) List of directors and respective shareholding.
- 6) A covering letter in accordance with Standard Form Annex 5.
- 7) The Bidders Information Sheet in Accordance with Standard Form Annex 6.
- 8) In case of a Bidding Consortium (BC), the Power of Attorney for designating the Lead Consortium Member in accordance with



Standard Form Annex 7.  
 9) The number of copies as detailed under the ITB (Information to Bidders) and the technical proposals must be paginated.

**Technical Proposal Evaluation Criteria - Phase I**

The Technical Proposal 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 Proposal elements as in the RFP document (Technical Bid Requirements). The total points and relative weights for these elements are presented in the following table. The firm with the highest score shall be deemed to be the successful bidder.

Technical Bid Reference	Evaluation Elements	Points	Notes
Feasibility Study	Most appealing viable study promising the best returns and ease of implementation	20	The feasibility study should be able to; <b>a) Define the scope of the project:</b> The project scope has to be definitive and to the point. The Investor shall ensure to define the parts of the business that would be affected either directly or indirectly. This would include project participants and end-users. A well-defined project scope can ensure an accurate feasibility study. <b>b) The current analysis:</b> Conducting a current analysis and identifying the pros and cons of the current scenario. Outline the situation of the properties and identifying current challenges, how to overcome the challenges and



			<p>proposing the highest and best use of the properties.</p> <p><b>c) The requirements:</b> define the requirements depending on the objective of the project.</p> <p><b>d) The approach:</b> define the methodology for implementation of the project in the study.</p> <p><b>e) Monitoring and Evaluation:</b> This element will examine the cost effectiveness of the selected approach and the estimated total cost of the project. The study should outline the frequency of the periodic checks to monitor progress.</p> <p><b>f) Review:</b> Finally, all the above elements will be assembled into a feasibility study and a formal review will be conducted. The review will be used to verify the accuracy of the feasibility study and to make a project decision. At this stage, the study can be approved, rejected or even revised for purposes of making a good decision. If the feasibility study is approved, all the involved parties must sign the document.</p>
Design	Architectural design concept and approach to the Site. Adherence to Statutory Requirements.	10	<p>Demonstrates a coherent conceptual approach and orientation that meets the requirements of the CA. the design proposal will demonstrate the following:</p> <ul style="list-style-type: none"> <li>a) Clarity in presentation</li> <li>b) Design functionality</li> <li>c) Innovativeness</li> <li>d) Aesthetical values</li> <li>e) Site accessibility</li> <li>f) Environmental effectiveness</li> <li>g) Cost effectiveness</li> <li>h) Green buildings solutions</li> </ul>
Design Report	Design report detailing the functional content of the conceptual design	10	<p>Sufficient detail and adequate rationale is provided to support the proposed design in relation to:</p> <ul style="list-style-type: none"> <li>a) Net and Gross areas;</li> </ul>

			<ul style="list-style-type: none"> <li>b) Project planning;</li> <li>c) Design concepts and approach;</li> <li>d) Project environment;</li> <li>e) Functional design</li> </ul>
Comprehensive Site Plan.	Comprehensive Site Plan. To include Elevations and sections	5	Accurate and complete drawings are provided and should provide reasonable building height and ceiling heights
Landscape designs	Landscape designs To include recreational green spaces	5	Functional, accurate and complete drawings are provided.
Parking Design	Design for vehicles parking and drive ways and parking ratios.	5	Accurate and complete drawings should be provided specifying parking lot requirements and markings.
Innovation	Innovative use of Key materials and schedule of finishes. Demonstrate use of maintenance free materials	5	Detailed and accurate schedule provided.
Work Program	Construction Works Program	5	Detailed construction plans (text and drawings) is provided that includes: details of the proposed approach to commissioning; and key phasing and decommissioning.
Works Specifications	Construction works specifications	5	Sufficiently detailed written description adequately addressing: <ul style="list-style-type: none"> <li>a) construction method statement;</li> <li>b) Project management plan;</li> <li>c) impacts on existing engineering services and buildings;</li> <li>d) key materials and products to be used within the overall construction;</li> <li>e) safety strategies;</li> <li>f) quality control;</li> <li>g) utilities and building services strategies</li> </ul>
Structural Design System	Proposed Structural design system	3	Sufficiently detailed written description of the structural system to be provided.
Electrical Design System	Proposed Electrical and electronic design system	3	Sufficiently detailed written description provided.
Mechanical Design System	Mechanical services Design system	3	Sufficiently detailed written description provided.
Mobilization Plans	Mobilization plans, construction Staff organization, and list of Project equipment	3	Detailed mobilization plans, construction Staff organization, and list of Project equipment are provided.
Green	Use of renewable resources	3	Application of green technologies in

Technologies	and green technologies		the proposal”
Design Program, Methodology and Work Plan.	Preparation of the Design Program.Details of how you will execute the project proposed.	10	Qualified partners are to provide an outline of design and construction programme for the completion of the construction works. This construction programme should detail key deliverables and a critical path graph or equivalent - software. This timetable should demonstrate that the items required will be available and operational on the scheduled date (the implementation work plan).
Project Management Team for development	The consortium shall include a Project Management Team.	5	Qualified Partners are to provide the Project Management Team Organization chart and CVs for the <b>project Architectural firm, Quantity Surveying firm, Civil &amp; Structural Engineering firm(s),Electrical and Mechanical Engineering firm(s), Construction Manager, Project Manager and Facilities Manager.</b> Each project design team member should demonstrate adequate experience in handling housing projects of similar size and scale as the project”. Provide the cost for the team in the project cost proposal.
Project Supervision Team	Laser Property Services, a subsidiary company of the CPF Group shall represent the Trust		The cost for the project supervision team should be factored into the project cost proposal.
Quality of Members of the Consortium. Attach CVs of the lead consortium personnel together with the CVs of the key Staff of each member of the consortium who will be dedicated to this project.	The consortium must be comprised of skillful and qualified members. A chain is as strong as its weakest link.	20	Provide the skills, qualifications and the relevant experience of the personnel whose CVs are enclosed in the technical proposal.
Financing Strategy	Detail your source of funds and how you intend to	10	The financier should give a firm commitment that funds shall be

	finance the project		available during the project implementation.
Project Investment Appraisal	Propose the IRR with the best value for money in the technical proposal. The firm shall be required to clearly provide the computation of how they arrived at the IRR proposed. Provide proposals 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)	30	This should be detailed as much as possible and to be in the technical proposal. The Bidder must show proof of ability to offer the highest Return on Investment for the development which should be formula based.
<b>Reference Checks</b> Provide references from four (4) major clients who you have dealt with in similar ventures in the last 10 years and a letter authorizing CPF that it may confirm the details of the references if it deems appropriate. Attach the reference letters	The proposer to attach valid letters from the clients.	10	The CA may decide to conduct site visits to selected or all of the references if it wants to confirm the details of the references or deems it appropriate to conduct site visits.
Exit Plan	Agreement to pay the Landlord on an agreed return on investment fixed on an initial term of 15 years.	5	The proposer with the best and most financially viable exit plan will score more marks.
Neatness, thoroughness and flow of the proposal	Quality in packaging of the proposal.	5	Marks shall be awarded for neatness and good presentation of the proposal. The bidder can also state in its proposal whether the client can reserve the right to branding.
Oral Presentations	The Bidder shall be invited to come and make a presentation to the CA's Board on some aspects of the RFP.	20	The date of the oral presentation shall be communicated to the Bidders.

	<b>Total</b>	<b>200</b>	
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**There are 200 maximum possible points for the technical proposals which shall be aggregated to 100%. Any features that Bidders wish to include over and above the Trust's stated requirements will not receive any additional points.**

**The Technical Score shall have an overall weight of 100% in the Total aggregated score and shall be calculated as follows:**

$$Tx = TS \times 100\%$$

**Where: TS is the Technical score obtained in the above criteria and Tx is the weighted overall Technical Score.**

**SECTION V: INFORMATION TO BIDDERS**

<p><b>I. Introduction</b></p>	<p>I.1 The Bidders are invited to submit a Technical Proposal for proposed development of <b>plot LR. No 4953/2338, 2339, 23340 &amp; 2341</b>.The proposals will be the basis for contract negotiations and ultimately for a signed contract with the selected firm.</p> <p>I.2 The assignment shall be implemented in accordance with the requirements indicated in this RFP and the performance of the Bidder must be to CPF's satisfaction.</p> <p>I.3 The Bidders must familiarize themselves with CPF regulations with regard to the management of its Funds and take them into account in preparing their proposals.</p> <p>I.4 CPF will make available relevant data, information and reports it may have for this assignment.</p> <p>I.5 Please note that (i) all the costs of preparing the proposals and of negotiating the contract, are not reimbursable as a direct cost of the assignment; and (ii) CPF is not bound to accept any of the proposals submitted.</p> <p>I.6 CPF requires that Bidders provide professional, objective, and impartial advice and at all times hold CPF's interests paramount, without any consideration for future work, and strictly avoid conflicts with other assignments or their own corporate interests. Bidders shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of not being able to carry out the assignment in the best interest of CPF.</p> <p style="padding-left: 40px;">I.6.1 Without limitation on the generality of this rule, Bidders or any of their affiliates shall not be hired for any assignment which, by its nature, may be in conflict with another assignment of the Bidders.</p> <p>I.7 It is the CPF's policy that Bidders for this assignment observe the highest standard of ethics during the selection and execution of the contract. In pursuance of this policy, CPF:</p> <p style="padding-left: 40px;">(a) defines, for the purposes of this provision, the terms set forth below as follows:</p> <p style="padding-left: 80px;">(i) "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of an official in the selection process or in contract execution; and</p>
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	<p>(ii) “fraudulent practice” means a misrepresentation of facts in order to influence a selection process or the execution of the contract to the detriment of CPF, and includes collusive practices among Bidders (prior to or after submission of proposals) designed to establish prices at artificial, noncompetitive levels and to deprive CPF of the benefits of free and open competition.</p> <p>(b) will reject a proposal for award if it determines that the firm recommended for award has engaged in corrupt or fraudulent activities in competing for the assignment in question;</p> <p>1.8 Bidders shall be aware of the provisions on fraud and corruption stated in the Standard Contract under clauses 1.7.</p> <p><b>1.9 Bidding Consortium (BC)</b> Bids submitted by a Bidding Consortium shall comply with the following requirements;</p> <p>(a) The Joint Bidding Agreement entered into by the bidding consortium parties in the format outlined under Annex 4 in this RFP document shall be submitted with the bid.</p> <p>(b) One of the Party shall be nominated to be the Lead Consortium Member and shall be authorized to give and receive instructions for and on behalf of any and all the partners of the joint venture, and the execution of the contract;</p> <p>(c) All parties of the Bidding consortium shall be liable jointly and severally for the execution of the contract in accordance with the Contract.</p> <p><b>1.10 Pre-Bid Meeting</b> There will be a pre-bid meeting at a time, date and venue to be communicated to all Bidders by the Contracting Authority. The purpose of the meeting will be to introduce the bidders to the project, and present the business case to the bidders and highlight key issues in the RFP.</p>
<p><b>2. Clarification and Amendment of RFP Documents</b></p>	<p>2.1 Bidders may request a clarification of any of the RFP sections up to four (4) days before the proposal submission date. Any request for clarification must be sent in writing by paper mail, facsimile, or electronic mail to:</p> <p><b>The Group Managing Director CPF Financial Services Ltd CPF House, 7<sup>th</sup> Floor. Haile Selassie Avenue P. O. Box 28938, 00200 Nairobi Tel ; 2046901 – 05</b></p>

	<p><b>Fax ; (020) 2251807</b> <b>Mobile ; 0720433354</b> <b>E-Mail;<a href="mailto:info@cpf.or.ke">info@cpf.or.ke</a></b></p> <p>CPF will respond by electronic mail to such requests (including an explanation of the query but without identifying the source of inquiry) and may also send written copies of the response to all Bidders intending to submit proposals.</p> <p>2.2 At any time before the submission of proposals, CPF may, for any reason, whether at its own initiative or in response to a clarification requested by a firm, amend the RFP. Any amendment shall be issued in writing through addenda. Addenda shall be sent by electronic mail to all Bidders intending to submit proposals and will be binding on them. CPF may at its discretion extend the deadline for the submission of proposals.</p>
<p><b>3. Preparation of Proposal</b></p>	<p>3.1 Bidders are requested to submit a proposal written in English language.</p>
<p><b>Technical Proposal</b></p>	<p>3.2 In preparing the Technical Proposal, Bidders are expected to examine the sections constituting this RFP in detail. Material deficiencies in providing the information requested may result in rejection of a proposal.</p> <p>3.3 While preparing the Technical Proposal, Bidders must give particular attention to the following:</p> <ul style="list-style-type: none"> <li>(i) If a Bidder considers that it does not have all the expertise for the assignment, it may obtain a full range of expertise by associating with individual Potential Investor(s) and/or other Potential Investors or entities in a joint venture or sub-consultancy, as appropriate.</li> <li>(ii) It is desirable that the majority of the key proposed staff responsible for this assignment be permanent employees of the firm or have an extended and stable working relationship with it.</li> <li>(v) Reports to be issued by the Bidder as part of this assignment must be in English language and the firm’s personnel must have a working knowledge of the English language.</li> </ul> <p>3.4 The Technical Proposal shall provide the following information using the attached Standard Forms (Section 5):</p> <ul style="list-style-type: none"> <li>(i) A brief description of the firm’s organization and an outline of</li> </ul>



	<p>recent experience on assignments (Section 5B) of a similar nature, if any. For each assignment, the outline should indicate, inter alia, duration of the assignment, approximate value of the assignment, and firm’s involvement. CPF reserves the right to confirm or verify this information if it so considers appropriate.</p> <p>(ii) A detailed description of the methodology and work plan for performing the assignment (Sections 5D).</p> <p>(iii) Any comments or suggestions on the Terms of Reference and on the data, a list of services, and facilities to be provided by CPF(Section 5C).</p> <p>(iv) Any additional information including Company Profiles and experience in similar assignments and other information as may be requested in this RFP.</p> <p>3.5 The Technical Proposal shall include any the financing strategy and IRR information.</p>
<p><b>4. Submission, Receipt, and Opening of Proposals</b></p>	<p>4.1 The original proposals (Technical) shall be prepared in indelible ink. It shall contain no inter-lineation or overwriting, except as necessary to correct errors made by the firm itself. Any such corrections must be initialed by the persons or person who sign(s) the proposals.</p> <p>4.2 An authorized representative of the firm initials all pages of the proposal. The representative’s authorization is confirmed by a written power of attorney accompanying the proposal.</p> <p>4.3 For each proposal, the Bidders shall prepare one (1) original and four (4) copies of the Technical Proposal. Each Technical Proposal shall be marked “ORIGINAL” or “COPY” as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original governs.</p> <p>4.4 The original and all the four (4) copies of the Technical Proposal shall be placed in a sealed envelope clearly marked “<b>TECHNICAL PROPOSAL,</b>”</p> <p>4.4.1 The inner and outer envelopes shall:-</p> <p>(a) Be addressed to CPF at the address given in the Invitation to RFP.</p> <p>(b) Bear the RFP number and name on the envelope and the words: “<b>DO NOT OPEN BEFORE</b>” the day and time stated in the Invitation to RFP.</p> <p>4.4.2 The inner envelopes shall also indicate the name and address of the</p>

FIRM submitting the RFP to enable the RFP be returned unopened in case it is declared “late”.

4.4.3 If the outer envelope is not sealed and marked as required, CPF will assume no responsibility for the RFP’s misplacement or premature opening.

4.5 The completed Technical Proposals must be delivered at the submission address below on or before the stated tender deadline. Any proposal received after the closing time for submission of proposals shall be returned unopened.

4.6 The proposal submission address is:

**The Group Managing Director  
CPF Financial Services Ltd  
CPF House, 7<sup>th</sup> Floor.  
Haile Selassie Avenue  
P. O. Box 28938, 00200 Nairobi  
Tel ; 2046901 – 05  
Fax ; (020) 2251807  
Mobile ; 0720433354  
E-Mail ; [info@cpf.or.ke](mailto:info@cpf.or.ke)**

After the deadline for submission of proposals, the Technical Proposal shall be opened immediately by the procurement committee.

**4.8 Bid Security**

4.8.1 The Bidder shall furnish, as part of its RFP, an RFP security for the amount and form specified in the Bid Bond details under clause 4.8.2

4.8.2 The Bid security which shall be in the form of a bid bond shall be Kshs. 250,000 /= (Kshs. Two Hundred and Fifty Thousand Only) or equivalent in a freely convertible currency from Commercial Banks or Insurance Companies (Approved by Public Procurement Regulatory Authority) which shall be in the form of a Banker’s Cheque or cash deposited at the CPF’s cash office and a receipt issued to that effect, a copy of which shall be enclosed when submitting the RFP, a bank guarantee or a bank draft issued by a reputable bank located in Kenya and valid for thirty (30) days beyond the validity of the RFP.

4.8.3 The Bid security is required to protect CPF against the risk of Bidder’s conduct which would warrant the RFP security’s forfeiture.

4.8.4 The Bid security shall be denominated in Kenya Shillings or in another freely convertible currency and shall be in the form prescribed under clause 4.8.2.

4.8.55 Any RFP not secured with a Bid security denominated in Kenya Shillings or freely convertible currency will be rejected by CPF as non-responsive.

4.8.6 Unsuccessful Bidder's security will be discharged or returned as promptly as possible as but not later than thirty (30) days after the expiration of the period of the RFP validity prescribed by CPF.

4.8.7 The successful Bidder's Bid security will be discharged upon the Bidder signing the contract.

4.8.8 The Bid security may be forfeited:

- a) If a Bidder withdraws its RFP during the period of RFP validity specified by CPF in this RFP document; or
- b) In the case of a successful Bidder, if the Bidder fails to:
  - to sign the contract
  - If the Bidder fails to furnish CPF with a Performance Bond in exchange of the Bid Security and in accordance with the terms of the contract.
- c) If the Bidder rejects the correction of an arithmetic error in the RFP.

4.9 Within fifteen (15) days of receipt of the notification of Contract award, the successful Bidder shall furnish CPF with a Performance Bond equivalent to 10% of the contract value in exchange of the Bid Security. Such cover is meant to protect CPF from the risk of the firm's under performance during the entire contract period. The cover is withdrawn upon the expiry of the contract. The performance bond must be in the form of a bank guarantee or a bank draft issued by a reputable bank located in Kenya or an Insurance Cover issued by a reputable Insurance Firm in Kenya.

#### **4.10 Validity of the Proposals**

4.10.1 Proposals shall remain valid for 120 days or as specified in the Invitation to RFP after date of tender opening prescribed by CPF Financial Services Ltd. A proposal valid for a shorter period shall be rejected by CPF Financial Services Ltd as non-responsive.

4.10.2 In exceptional circumstances, CPF Financial Services Ltd may solicit the Service provider's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security shall also be suitably extended. A bidder may refuse the request without forfeiting its tender security. A bidder granting the request will not be required nor permitted to

	modify its tender.
<b>5. Proposal Evaluation</b>	
<b>General</b>	5.1 From the time the bids are opened to the time the contract is awarded, if any Bidder wishes to contact CPF on any matter related to its proposal, it should do so in writing at the address indicated in paragraph. 2.1. Any effort by the firm to influence CPF in the proposal evaluation, proposal comparison or contract award decisions may result in the rejection of the Bidder’s proposal.
<b>Evaluation of Technical Proposals</b>	5.2 The evaluation committee, appointed by CPF evaluates the proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria. Bidders shall be requested to make a presentation of their Technical Proposal to the evaluation committee and respond to any issues raised.
<b>6. Negotiations</b>	<p>6.1 Negotiations will be held at the address indicated in paragraph 4.6. The aim is to reach agreement on all points and sign a contract.</p> <p>6.2 Negotiations will include a discussion of the Technical Proposal, the proposed methodology and work plan, staffing and any suggestions made by the firm to improve the Terms of Reference. CPF and the firm will then work out final Terms of Reference, staffing, and bar charts indicating activities, staff-months, logistics and reporting. The agreed work plan and final Terms of Reference will then be incorporated in the “Appendix A - Description of Services” and form part of the contract. Special attention will be paid to getting the most the firm can offer within the available budget and to clearly defining the inputs required from CPF to ensure satisfactory implementation of the assignment.</p> <p>6.3 The financial negotiations will include discussions on the Profit Sharing model and the IRR; and will reflect the agreed technical modifications in the cost of the services.</p> <p>6.4 Having selected the firm on the basis of, among other things, an evaluation of proposed key staff; CPF expects to negotiate a contract on the basis of the experts named in the proposal. Before contract negotiations, CPF will require assurances that the experts will be actually available and will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were offered in the</p>

	<p>proposal without confirming their availability, the firm may be disqualified.</p> <p>6.5 The negotiations will conclude with a review of the draft form of the contract. To complete negotiations CPF and the firm will initial the agreed contract. If negotiations fail, CPF will invite the firm whose proposal received the second highest score to negotiate a Contract.</p>
<p><b>7. Award of Contract</b></p>	<p>7.1 The contract will be awarded following negotiations. After negotiations are completed, CPF will promptly notify the other Bidders that they were unsuccessful.</p>
<p><b>8. Confidentiality</b></p>	<p>8.1 Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the Bidders who submitted the proposals or to other persons not officially concerned with the process, until the winning firm has been notified that it has been awarded the contract.</p>

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**Section VI. Technical Proposal - Standard Forms**

- 6A. Technical Proposal submission form II.
- 6B. Firm's references.
- 6C. Comments and suggestions of Bidders on the Terms of Reference and on data and/or services to be provided by CPF.
- 6D. Description of the methodology and work plan for performing the assignment.

**6A. Technical Proposal Submission Form II**

[Location, Date]

To: [Name and address of Client]

Ladies/Gentlemen,

We, the undersigned, offer to venture into **partnership for the development of** [Property details] in accordance with your Request for Proposal dated [Date] and our Proposal. We are hereby submitting our Proposal for the Joint Venture, which includes this Technical Proposal.

If negotiations are held during the period of validity of the Proposal, i.e., before [Date] we undertake to negotiate on the basis of the proposed staff. Our Proposal is binding upon us and subject to the modifications resulting from Contract negotiations.

We understand you are not bound to accept any Proposal you receive and we confirm that we have no objection to your making inquiries regarding this Proposal from our referees.

We remain,

Yours sincerely,

Authorized Signature:

Name and Title of Signatory:

Name of Firm:

Address:

6B. Firm's References

**Relevant Services Carried Out in the Last Five Years that Best Illustrate Qualifications (where applicable)**

Using the format below, provide information on each assignment for which your firm/entity, either individually as a corporate entity or as one of the major companies within an association, was legally contracted.

Assignment Name:		Country:	
Location within Country:		Professional Staff Provided by Your Firm/Entity (profiles):	
Name of Client:		N° of Staff:	
Address:		N° of Staff-Months; Duration of Assignment:	
Start Date (Month/Year):	Completion (Month/Year):	Date	Approx. Value of Services (in Current US\$):
Name of Associated Potential Investors, If Any:		N° of Months of Professional Staff Provided by Associated Potential Investors:	
Name of Senior Staff (Project Director/Coordinator, Team Leader) Involved and Functions Performed:			
Narrative Description of Project:			
Description of Actual Services Provided by Your Staff:			

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

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**6C. Terms of Reference**

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On the Terms of Reference:

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

On the data and/or services to be provided by CPE:

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



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**6D. Description of THE METHODOLOGY and Work Plan for Performing the Assignment**

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Clearly demonstrate how you are going to carry out the assignment of this RFP.

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## **SECTION VII - GENERAL OUTLINE OF THE CONDITIONS OF CONTRACT**

### **GENERAL OUTLINE OF THE CONDITIONS OF THE CONTRACT**

#### **A. PROPOSALS**

##### **7.1 Duty to Carefully Examine these Instructions**

Bidders are advised to carefully examine the instructions contained herein and be satisfied with the conditions that must be satisfied prior to submitting a proposal and to the conditions that affect the award of the contract.

##### **7.2 Necessity for Careful Examination of Site Plan, Specifications**

The Bidder shall carefully examine the project site and shall investigate and be satisfied as to the conditions to be encountered, the character and quantity of surface and sub-surface materials or obstacles to be encountered, rights of way and easements at or near the site, the work to be performed and the materials to be furnished as required by the RFP. Any failure by the Bidders to acquaint themselves with the information that is available or with reasonable investigations that may be available will not relieve them from responsibility to properly estimate the difficulty or cost to perform the works.

##### **7.3 Clarification during Bidding**

The Bidder shall examine the RFP documents in preparing the Bid and shall report to THE TRUST any omissions, discrepancies or apparent errors found in the RFP document. Prior to the date of Bid opening, the Bidder shall submit a written request to THE TRUST as per Clause on clarification in the Information to Bidders and THE TRUST may give such clarification in the form of an addendum to all Bidders. Only THE TRUST's authorized personnel is authorized to answer questions or prepare addenda relating to the project. Information obtained from any other source shall not bind either party, may not be relied upon and shall have no standing in any event that may occur.

##### **7.4 Proposal Documents:**

Each proposal will consist of:

- I. Mandatory Requirements;
- II. Technical Proposal;

##### **a) Proposal Package:**

Any proposal submitted that is not signed by the Bidder or the Bidder's duly authorized representative shall be rejected by THE TRUST as non – responsive.

##### **b) Power of Attorney:**

When an agent signs the bid, a power of attorney shall be submitted with the proposal. Failure to submit the Power of Attorney may result in rejection of the bid as irregular and unauthorized. However, a Power of Attorney is not necessary in the case of a Partner in a partnership.

### **7.5 Competitive Bidding**

If more than one proposal is offered by an individual or business entity or combination thereof, under the same or different names, all such proposals may be rejected.

## **B. DESIGN REQUIREMENTS**

### **7.6 Scope of Work:**

The bidder shall furnish to THE TRUST complete sets of all architectural, structural engineering, mechanical engineering and electrical engineering drawings and Bills of Quantities and detailed specifications necessary to complete the project in accordance with the requirements of the contract documents.

From the approved drawings and detailed specifications, the Bidder shall furnish all labor, materials, equipment, services and transportation necessary for the complete construction of the project, including site works, structures, utilities and landscaping.

### **7.7 Intent of Contract Documents:**

The intent of the contract documents is to provide THE TRUST with a project that is complete in all respects. All items necessary or reasonably required are to be provided to produce a complete and operational project.

### **7.8**

#### **a) Laws and Codes**

For any item for which the above codes are not applicable, the Bidder shall comply with the requirements of the latest edition of the Kenya Building Code. Codes and specifications incorporated by reference shall be those of the latest edition at the time of receiving proposals, unless otherwise specified.

THE TRUST shall select a firm(s) to provide materials testing and inspection services during construction. The testing and inspection services firms are solely responsible to THE TRUST and the Project Managers for observation of construction, determination of adherence to the contract documents (including approved plans and specifications) and compliance with the applicable codes and standards.

#### **b) Plans and Specifications**

The plans and specifications shall state the design codes, standards and requirements used for the development of the plans including the edition and applicable sections.

Plans and specifications shall include a quality control programme and an implementation plan to ensure that the completed project complies in all respects to the project requirements.

The design professionals adopted by the Bidder shall specify all tests and inspections that are required by the building code and that are appropriate to achieve the project goals. The design professionals on record shall be retained to provide normal construction

administration services and shall make periodic visits to site to observe the quality of the works.

The final design drawings, specifications and calculations shall be signed and stamped by the appropriate registered professionals as complying with the requirements of the applicable codes, standards, practices and regulations.

The design professionals on record shall retain full responsibility for the design. The Development Partner shall incorporate changes, if any, resulting from plan check, peer review and / or THE TRUST's requirements into the final design without additional cost to THE TRUST. Such final drawings and specifications shall be re-submitted to THE TRUST for approval.

**c) Plan Approval by THE TRUST:**

No plans shall be approved for construction without the express written approval of THE TRUST's authorized representative.

At the discretion of THE TRUST, the project may be approved in parts provided that each part is assessed as in full compliance with the applicable requirements and can be completed without compromising compliance of the total project.

Any changes, alterations, substitutions or modifications made to the approved plans during construction must be approved in writing by THE TRUST's authorized representative, where they may be construed to impact on the adherence to the applicable codes, standards or regulations.

The Development Partner shall incorporate without additional cost to THE TRUST, any changes, alterations, substitutions or modifications made to the approved plans that are required during construction to satisfy code requirements, including those not previously identified in the approved plans, or to properly implement the approved plans, or where observed workmanship and / or discovered conditions so require.

The Development Partner shall be responsible for payment of applicable fees and shall incorporate any modifications required in the drawings and detailed specifications without additional cost to THE TRUST.

THE TRUST shall issue a certificate of completion when satisfied that the approved plans have been implemented and that all inspection and technical code and standards compliance issues identified during construction have been satisfactorily resolved.

**7.9 Drawings and Specifications:**

**a) Quality Requirements:**

The Development Partner shall submit to THE TRUST for approval, a complete set of drawings and detailed specifications necessary to construct the project, including drawings and detailed specifications for site layout, utilities and landscaping.

### **7.10 Approvals Prior to Construction:**

Review and approval of all drawings and detailed specifications must be obtained from THE TRUST before start of construction. The Development Partner shall proceed with earthworks, foundations and other elements while final plans and specifications for the balance of the work are being completed by the Project Manager.

The Development Partner is responsible for final approvals and approval of portions of the work by THE TRUST does not relieve the Development Partner of its responsibility for construction should changes be required if certain items of work are disapproved or changed due to plan check. The responsibility for a totally integrated design in accordance with the contract documents will remain with the Development Partner.

### **7.11 Divisions of the Performance Specifications:**

The performance specifications are divided into sections for convenience as set forth in the standard format. The actual limitations of work in the various trades and/or sections of the specifications are the responsibility of the Development Partner.

### **7.12 Layout of the Work:**

The Development Partner shall prepare surveys and design for excavations and shoring required for the project and assure compliance with all state and local regulations.

## **C. CONDUCT OF CONSTRUCTION WORK**

### **7.13 Laws to be Observed – Generally:**

The Development Partner shall observe all National and County Government Laws that affect the work under this contract.

The Development Partner shall hold harmless, defend and indemnify THE TRUST against any claim arising from the violation of any law, whether by itself or its agents, employees or sub-contractors.

If a conflict arises between the provisions of this contract and any other law, the Development Partner shall immediately notify THE TRUST's Project Manager in writing. "Law" as used in this paragraph includes statutes and regulations adopted as well as executive orders, authoritative interpretations and other rules and directives issued by legally constituted authority.

#### **7.14 Laws to be observed – Regarding Labor:**

##### **a) Labor:**

- I. The Development Partner shall comply with the provisions of the Kenyan Labor Laws.
- II. The Development Partner shall permit access by representatives of THE TRUST upon reasonable notice to its books, records, accounts, other sources of information and its facilities as THE TRUST shall require ascertaining compliance with this Clause.
- III. The Development Partner and its Sub-Contractors shall give written notice of their obligations under this Clause to labor organizations with which they have a collective bargaining or other agreement.

##### **b) Prevailing Wage:**

- I. Wage rates shall be minimum rates applicable as approved by the Cabinet Secretary that may be paid by the Development Partner on a public works contract.

Public works also means hauling refuse from a public works site to an outside disposal location.

Nothing herein contained shall be construed as preventing the Development Partner from paying more than the minimum rates set forth.

No extra compensation whatsoever will be allowed by THE TRUST due to the inability of the Development Partner to hire labor at minimum rates for the necessity for payment by the Development Partner of subsistence, travel time, overtime or other added compensations, all of which possibilities are elements to be considered and ascertained to the Development Partner's own satisfaction in preparing the bid.

- II. If it becomes necessary to employ crafts other than those listed, the Development Partner shall notify THE TRUST immediately and THE TRUST shall/ will ascertain additional prevailing rates and the rates thus demanded shall be applicable as minimum from time of initial employment.

- III. The Development Partner and any Sub-Contractor under the Development Partner shall comply fully with all labor laws.

- IV. The Development Partner and Sub-Contractors shall keep an accurate payroll record showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week and actual per diem wages paid to each journeyman, apprentice or worker employed in connection with the works.

Each payroll record shall contain verification by written declaration that the information contained in the payroll record is true and correct and that the Development Partner and Sub-Contractors have complied with the requirements.

For work performed by its employees on the project, the Development Partner's and Sub-Contractor's payroll records shall be available for inspection at all reasonable hours and a certified copy shall be made available upon request to THE TRUST's authorized representative.

V. The Development Partner is required to submit a minimum of the first two weeks of certified payroll and the Hourly Labor Rate Worksheet for its workers.

Additional weeks of certified payroll records may be required at the discretion of THE TRUST.

**b) Workers' Compensation:**

The Development Partner shall be required to secure payment of Workers' Compensation to its employees in accordance with Labor Laws and shall file with THE TRUST prior to performing the works, the certification required.

**Apprentice**

Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade in which they are employed and shall be employed only in the work of the craft or trade to which they are indentured.

The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship agreements under which a person is training.

**c) Education, Counseling and Training Programmes:**

All educational, counseling and vocational guidance programmes and all apprenticeship and on-the-job training programmes, under this contract, shall be open to all qualified persons, without regard to race, sex, colour, religion, national origin or ancestry.

Such programmes shall be conducted to encourage the fullest development of the interests, skills, aptitudes and capacities of all students and trainees with special attention to the problems of culturally deprived, educationally handicapped or economically disadvantaged persons.

Expansion of training opportunities under these programmes shall also be encouraged with a view toward involving larger numbers or participants from these segments of the labor force where the need for upgrading levels of skills is the greatest.

The Development Partner shall obtain copies of such safety orders as are applicable to the type of work to be performed and shall be governed by their requirements in all construction operations.

The Development Partner shall fully inform each Sub-Contractor and materials supplier as to the requirements of the applicable safety orders.

### **7.16 Environmental Requirements:**

#### **a) Air and Water Pollution Control:**

The Development Partner shall comply with all air and water pollution control rules, regulations, ordinances and statutes that apply to the work performed under the contract including any air pollution control rules, regulations, ordinances and statutes adopted under the authority of THE TRUST.

In the absence of any applicable air pollution control rules, regulations, ordinances or statutes governing solvents, all solvents, including but not limited to the solvent solutions of paints, thinners, curing compounds and liquid asphalt used on the project, shall comply with the applicable material requirements of the Kenya Bureau of Standards.

All containers of solvent paint, thinner, curing compound or liquid asphalt shall be labeled to indicate that the contents fully comply with these requirements.

Unless otherwise provided in the special provisions, material to be disposed of shall not be burned either inside or outside the premises.

A regular watering programme shall be initiated to adequately control the amount of fugitive dust.

Exposed soil surfaces shall be sprayed with water at least daily and as needed to mitigate dust.

Trucks hauling dirt from the site shall be covered in accordance with applicable requirements by the County Government.

To reduce exhaust emissions, unnecessary idling of construction vehicles and equipment shall be avoided.

Construction equipment shall be fitted with modern emission control devices and shall be kept in proper time.

#### **b) Sound Control Requirements:**

The Development Partner shall comply with all sound control and noise level rules, regulations and ordinances which apply to the work. In the absence of any such rules, regulations and ordinances, the Development Partner shall conduct its work to minimize disruption to others due to sound and noise from the workers and shall be responsive to THE TRUST's request to reduce noise levels.

Loading and unloading of construction materials will be scheduled so as to minimize disruptions to any activities. Construction activities will be scheduled to minimize disruption to the adjacent premises.



### **7.17 Substitution of Sub-Contractors:**

Once the Sub-Contractors have been listed, provisions of the subletting and subcontracting to any proposed substitution of subcontractors must be approved by the Project Manager.

The Development Partner must clearly advertise the specific bond requirements for the project including the requirement of a bond and the amount of the bond, in order to be eligible to substitute a Sub-Contractor.

When requested by the Project Manager, the Development Partner shall submit a Sub-Contractor Status Report, which will be compared with the list of approved contractor.

If any Sub-Contractors are still outstanding at the time of submittal, a follow-up request will be made. No substitution of any Sub-Contractors would be allowed without written approval of THE TRUST.

### **7.18 Development Partner's Responsibility for the Works:**

#### **a) Generally**

The Development Partner shall be fully responsible for all work performed under this contract and no Sub-Contractor will be recognized as such.

For purposes of assessing responsibility to the Development Partner, all persons engaged in the work shall be considered as employees of the Development Partner.

The Development Partner shall give its personal attention to the fulfillment of the contract and keep all phases of the work under its control.

THE TRUST will not arbitrate among Sub-Contractors nor between the Development Partner and one or more Sub-Contractors concerning responsibility for performing any part of the Project.

#### **b) Quality Control**

The Development Partner shall be fully responsible for the quality of materials and workers still in the project.

The Development Partner shall not rely upon the inspection and testing provided by THE TRUST other than those special inspections and tests performed by THE TRUST's selected laboratories for which there are written reports.

#### **c) Burden for Damage**

From the issuance of the Official Notice to Proceed until formal acceptance of the project by THE TRUST, the Development Partner shall have the charge and care of and shall bear the risk of damage to the project and materials and equipment for the project.

The Development Partner, at its own expense, shall promptly rebuild, repair, restore and make good all such damage to any portion or to all of the project and materials therefore

before the acceptance of the project by THE TRUST except for such damage as is proximately caused by acts of THE TRUST or public enemy.

In case of suspension of work from any cause whatsoever, the Development Partner shall be responsible for all materials and shall properly store them, if necessary and shall provide suitable drainage and erect temporary structures where necessary.

If the Development Partner damages any property belonging to THE TRUST, THE TRUST may, in addition to other remedies available to it, retain from money due to the Development Partner an amount sufficient to ensure repair of the damage or an amount to contribute towards repair of the damage.

The Development Partner shall be responsible for any damage to the project and materials and equipment for the project.

#### **d) Protection of Adjoining Facilities**

The Development Partner shall protect adjoining property and nearby buildings, roads and other facilities and improvements from dust, dirt, debris and other nuisances arising out of Development Partner's operations. Dust shall be controlled by sprinkling water or other effective methods acceptable to THE TRUST.

An erosion and sedimentation control program shall be initiated, which includes measures addressing erosion caused by wind and water sediment in runoff from site.

A regular watering program shall be initiated to adequately control the amount of fugitive dust in accordance with applicable Law.

#### **e) Safety**

The Development Partner shall exercise precaution at all times for the protection of persons and their property.

The Development Partner shall install adequate safety guards and protective devices for all equipment and machinery, whether used in the work or permanently installed as part of the project.

The Development Partner shall also provide and adequately maintain all proper temporary walks, roads, guards, railings, lights and warning signs.

The Development Partner shall comply with all applicable laws relating to safety precautions, including the safety regulations of the Project Manager.

If the Development Partner designates other employees, its Foreman shall have the duty of prevention of accidents.

The Development Partner shall institute a safety program, which includes all trades on the site.

Renovation, expansion, or remodel work of any existing building may expose workers to lead-containing materials such as paint, flashing and pipe joints. The Development Partner shall comply with all applicable laws addressing such exposure.

THE TRUST through its Project Manager may bring to the attention of the Development Partner a possible hazardous situation in the field regarding the safety of personnel on the site.

The Development Partner shall be responsible for verifying that all National and County Government workplace safety guidelines are being observed.

In no case shall this right to notify the Development Partner absolve the Development Partner of its responsibility for monitoring safety conditions.

Such notification shall not imply that anyone other than the Development Partner has assumed any responsibility for field safety operations.

In the event of an accident, the Development Partner shall make available to THE TRUST, copies of its accident report to its insurance carrier.

The Development Partner shall determine the cause of the accident and immediately correct any equipment, procedure or condition contributing to the accident.

#### **f) Utilities**

j) If the Development Partner discovers utility facilities not identified in the contract documents, the Development Partner shall immediately notify THE TRUST and the utility involved in writing of such discovery.

When the Development Partner is required by the plans and specifications to locate, remove or relocate utility facilities not identified in the contract documents with reasonable accuracy, she/he shall be compensated for any reasonable actual added cost incurred.

The Development Partner shall also be compensated for the cost of repairing any damage resulting from the discovery of such unidentified utility facility when such damage does not result from the failure of the Development Partner to exercise reasonable care.

All such compensation to the Development Partner shall be based on an actual cost plus Development Partner and subcontractor mark-up except that both the Development Partner's and sub-contractor's mark-up shall be reduced by (6) percent each, where the damages result from the failure of the Development Partner or sub-contractor to exercise reasonable care.

THE TRUST or the public utility, where it is the owner of the utility facilities shall have the sole discretion to perform repairs, or relocation work or permit the Development Partner to do such repairs or relocation work at a reasonable price, where such work is required to facilitate the project.

The Development Partner shall not be held liable / responsible for liquidated damages arising out of delay in the completion of the project which is caused by the failure of THE

TRUST or the owner of the utility to provide for removal or relocation of such unidentified utility facilities.

With the exception of the identification of main trunk line utility facilities in the contract documents, the foregoing provisions of sub- clause (i) shall not apply to and THE TRUST shall have no obligation to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the project can be inferred from the presence of other visible facilities such as buildings, meter and junction boxes on or adjacent on the site of the construction.

ii. Except as expressly provided in sub-clauses (i) and (ii) above, the Development Partner shall be responsible at its own cost for all work, expense or special precautions caused by the existence or proximity of utilities encountered at the site or in the performance of the project work including without limitation.

Repair of any damage that may result including any damage resulting from hand or exploratory excavation.

The Development Partner should note that the utilities that may be encountered at the site may include communication cables or electrical cables conducting high voltage. When excavating in the vicinity of the ducts enclosing such cables, special precautions are to be observed by the Development Partner at its own cost and shall include the following:

a) All cables and their enclosure ducts shall be exposed by careful hand excavation so as not to damage the ducts or cables nor;

b) Cause injury to persons and appropriate warnings signs, barricades and safety devices shall be erected.

iii. The Development Partner shall provide to THE TRUST as-built drawings of all utilities encountered and constructed indicating the size, horizontal location and vertical location based on the project bench mark or a stable datum.

#### **7.20 Responsibility to Secure and Pay for Permits, Licenses, Utility Connections Etc.**

The Development Partner shall secure all permits and licenses required for any operations required under this contract and shall pay all costs relating thereto as well as all other fees and changes that are required by the Project Manager, Telephony Company, special district or quasi-Project Managerial entity. It is the Development Partner's responsibility to ascertain the necessity of such permits and licenses in preparing its Bid and include in its Bid the cost thereof as well as adjustments for any delays, which may be caused by securing permits and licenses.

#### **7.21 Patented or Copyrighted Materials:**

The Development Partner shall assume all costs arising from the use of patented or copyrighted materials, equipment, devices or processes used on or incorporated in the

project and agrees to save harmless, defend and indemnify THE TRUST's Consultants, THE TRUST's employees from all suits, actions or claims for or on account of the use of any patented or copyrighted materials, equipment, devices or processes.

**7.22 Taxes:**

The Development Partner shall pay all taxes imposed by law (Kenya Revenue Authority) which are levied or become payable as a result of the Development Partner's performance under this contract.

**7.23 Contract Time:**

**a) Time is of Essence:**

All time limits specified in this contract are of the essence of the contract.

**b) Starting and Completion Dates:**

THE TRUST shall designate in the Notice to Proceed the starting date of the contract on which the Development Partner shall immediately begin and thereafter diligently execute the work to completion.

The Development Partner agrees to complete the work on the date specified for completion of the Development Partner's performance in the contract unless the adjustment arises under unusual circumstances.

The Development Partner may complete the work before the completion date if it will not interfere with THE TRUST's or other Contractors engaged in other related or adjacent work. The work shall be regarded as completed as noted on THE TRUST's Notice of Completion.

**7.24 Labor Force and Foremen:**

At all times the Development Partner shall provide sufficient labor to properly execute the work and to ensure completion of each part in accordance with the schedule and within the contract time.

The Development Partner shall make certain that competent workers are employed who are skilled in the type of work required and that workmanship is of the best, regardless of the quality of material. If in the judgment of THE TRUST, any person is incompetent or disorderly, the Development Partner shall promptly remove such person from the project and shall not re-employ such person thereon.

The Development Partner shall retain a competent, full time on-site Foreman to represent the Development Partner and to direct the project at all times while any work under this contract is being performed.

The Foreman shall prepare a daily report, which includes worker count and work in progress and shall provide the report to THE TRUST upon request.

The Development Partner shall make certain that all Sub-Contractors employed are properly registered and are in good standing with the Project Manager's requirements.

**7.25 Limitation of Construction Operations:**

The Development Partner shall limit the area and nature of the construction operations to that which is authorized in the plans and specifications or approved in writing by THE TRUST.

The Development Partner shall be responsible to others engaged in the related or adjacent work for all damage to work, to persons and to property and for loss caused by failure to complete the work within the specified time for completion.

The Development Partner shall co-ordinate its work with the work of others so that no discrepancies shall result in the project.

**7.26 Drawings Reflecting Actual Construction:**

During the course of construction, the Development Partner shall maintain drawings daily to show the project as it is actually constructed.

Every sheet of plans and specifications, which differs from the actual construction, shall be marked and sheets so changed shall be noted on the title of the plans and specifications.

All variation orders shall be shown by reference to sketch drawings and any supplementary drawings or change order drawings shall be included.

The Development Partner shall review the "as-built" drawings with the Project Manager at least once a month to demonstrate that all changes that have occurred are being fully and accurately recorded.

The altered contract drawings shall be sufficiently detailed so that future work on the project or in adjacent areas may be conducted with a minimum of difficulty.

Prior to the completion of the project, and prior to release of the final retention payments, the "as-built" drawings and specifications shall be transmitted to the Project Manager for further handling with a copy of the transmittal to THE TRUST.

Additionally, the Development Partner shall turn over to THE TRUST a re-drafted and complete set of "as-built" drawings of the actual construction.

Final payment will not be made to the Development Partner until the "as-built" drawings are received and spot checked by THE TRUST. Corrections if any shall be made as necessary.

**7.27 Access for Inspection:**

The Development Partner shall at all times permit THE TRUST and / or its Project Manager to visit and inspect the work and the shops where work is in preparation and shall maintain proper facilities and provide safe access for such inspection.

Work requiring testing, inspection or verification shall not be covered up without such test, inspection or approval.

The Development Partner shall notify the Project Manager in writing at least 24 hours in advance of the Project Manager being required to inspect the work.

#### **7.28 Clean-Up of Project and Site:**

The Development Partner shall clean up its work at frequent intervals and other times when directed by THE TRUST. At all times while finish work is being done, floors shall be kept broom clean.

Upon completion of the work, the Development Partner shall promptly remove from the premises, construction equipment and any waste materials not previously disposed of leaving the premises thoroughly clean and ready for occupancy.

In the event that the Development Partner does not maintain the project or the site clear of debris and rubbish in a manner acceptable to THE TRUST, THE TRUST may cause the project or site to be properly cleaned and may withhold the expense incurred thereof from payments due to the Development Partner.

#### **7.29 Project Sign, Advertising:**

The Development Partner shall furnish and install a project sign required as part of the work under the contract. As a minimum, the sign shall be 2 metres wide and 4 metres high. The sign shall identify the Project Name, the Employer, the Development Partner and the consultancy team.

No advertising is permitted on the project or site without written permission from THE TRUST.

### **D. INTERPRETATION AND ADHERENCE TO CONTRACT REQUIREMENTS**

#### **7.30 Interpretation of Contract Requirements:**

##### **a) Correlation:**

Contract documents shall be interpreted as being complementary, requiring a complete project. Any requirement occurring in anyone of the contract documents is as binding as though occurring in all contract documents.

Generally, the specifications address quality, types of materials and contract conditions while the drawings show placement, sizes and fabrication details of materials.

##### **b) Conflicts:**

In the event of conflict in the contract documents, the following priorities shall govern:

- (i) Addenda shall govern over all other contract documents and subsequent addenda shall govern prior addenda only to the extent modified. (ii). "Contract Conditions" shall govern over all sections of the specifications. No section of the specifications shall modify the Contract Conditions. (iii). In the event that provisions of codes, safety orders contract documents, referenced manufacturers specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.

**c) Omissions:**

In the event of omissions in the contract documents, the following shall apply:

i. If the contract documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials or equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the contract documents in accordance with such standard.

"Minor Detail" shall include the concept of substantially identical components, where the price of each such component is small even though the aggregate cost or importance is substantial and shall include a single component that is incidental even though its cost or importance may be substantial.

ii. The quality and quantity of the parts or material so supplied shall conform to trade standards and be compatible with the type, composition, strength, size and profile of the parts of materials otherwise set forth in the contract documents.

**7.31 Issuance of Interpretations, Clarifications, Additional Instructions:**

Should the Development Partner discover any conflicts, omissions or errors in the contract or have any question concerning interpretation or clarification of the contract, the Development Partner shall request in writing interpretation, clarification or additional detailed instructions before proceeding with the affected work.

The written request shall be given to the Development Partner with copies to THE TRUST and the Project Manager.

THE TRUST shall, within a reasonable time, issue in writing the interpretation, clarification or additional detailed instructions requested.

Should the Development Partner proceed with the work before receipt of the interpretation, clarification or instructions from THE TRUST, the Development Partner shall replace or adjust any work not in conformance therewith and shall be responsible for any resultant damage or added cost.

Should any interpretation, clarification or additional detailed instructions as approved by THE TRUST and in the opinion of the Development Partner, constitute work beyond the scope of the contract, the Development Partner must submit written notice thereof to THE TRUST within seven (7) calendar days following receipt of such interpretation, clarification



or additional detailed instructions and in any event prior to commencement of work thereon.

The Development Partner shall send copies of such correspondence to the Project Manager. Within seven (7) calendar days after the Development Partner issues its written notice, the Development Partner shall submit an explanation of how the interpretation, clarification or additional detailed instruction constitutes work beyond the scope of the contract, along with a detailed cost breakdown and an explanation of any delay impacts.

If in the judgment of THE TRUST, the notice is justified, the interpretation, clarification or additional detailed instructions shall be revised or the extra work authorized by contract change order or by Site Instruction with a change order to follow.

If THE TRUST decides that the claim is not justified, it shall give the Development Partner a written order that the claim is not justified and direct the Development Partner to perform such work.

The Development Partner shall proceed with the work upon receipt of the written order from THE TRUST to do so, in accordance with THE TRUST's interpretation of the contract requirements, but within seven (7) days of receipt of the order, the Development Partner must notify THE TRUST by letter that it protests the decision.

When performing disputed works, the Development Partner shall prepare time and materials records for each day and the Site Manager shall verify these records at the conclusion of each day.

The Development Partner shall have no claim for additional compensation because of such interpretation, clarification or additional detailed instruction, unless he / she gives written notice to THE TRUST within seven (7) calendar days as specified above.

### **7.32 Product and Reference Standards:**

#### **a) Product Designation:**

When descriptive catalog designations. Including the manufacturer's product brand name, or model number are referred to in the contract, such designations shall be considered as those found in industry publications.

#### **b) Reference Standards:**

When the standards of the Project Manager, trade societies or trade associations are referred to in the contract by specific date of issue, these shall be considered as part of this contract.

When such references do not bear a date of issue, the current and most recently published edition shall be considered a part of this contract.

### **7.33 Shop Drawings, Samples, Alterations or Equals, Substitutions:**

#### **a) Submittal Procedure:**

The Development Partner shall review and approve all shop drawings. "Shop drawings" include drawings, diagrams, illustrations, schedules, performance charts, brochures and

catalogues and other data prepared by any Sub-Contractor, manufacturer, supplier or distributor, which illustrate some portion of the work.

The Development Partner shall promptly review and mark the shop drawings and submit to THE TRUST, so as to cause no delay in the work together with samples as required by the contract and shall also submit any offer of alternatives or substitutions.

The Development Partner shall submit at least four copies of shop drawings with three to be retained by THE TRUST.

All such submittals shall be sent to THE TRUST at the address given in the Instructions to the Development Partner at the job start meeting.

A letter shall accompany the submitted items which shall contain a list of all matters submitted and shall identify all deviations in the shop drawings and samples from the requirements of the contract.

Failure by the Development Partner to identify all deviations may render any action taken by THE TRUST on the materials submitted to be void. Whether to void such action shall be in the discretion of THE TRUST. The letter and all items accompanying it shall be fully identified as to project name and location, the Development Partner's name and contract number.

By submitting the approved shop drawings and samples, the Development Partner represents that the data contained therein have been verified with conditions as they actually exist and that the shop drawings and samples have been checked and coordinated with the contract.

**b) Samples:**

Samples are physical examples furnished by the Development Partner to illustrate materials, equipment, colour, texture or workmanship and to establish standards by which the work will be judged. The work shall be in accordance with the samples submitted as required by the contract and reviewed by THE TRUST.

The Development Partner shall remove samples from the site when directed by THE TRUST. Samples not removed by the Development Partner at THE TRUST's direction will become the property of THE TRUST or will be removed or disposed of by THE TRUST at the Development Partner's expense.

**c) Alternatives or Equals:**

For convenience in designation on the plans or in the specifications, certain materials or equipment may be designated by a brand or trade name or the name of the manufacturer together with catalog designation or other identifying information, hereinafter referred to generically as designated by brand name".

Alternative material or equipment which is of equal quality and of the required characteristics for the purpose intended may be proposed for use provided the proposer complies with the following requirements:

i. The Proposer shall submit its proposal to THE TRUST for an alternative as “an equal” in writing prior to the award of the contract as required by THE TRUST.

ii. In exceptional cases where the best interests of THE TRUST so require, THE TRUST may give written consent to a submittal or re-submittal received after the expiration of the time limit designated.

If a Proposer desires consideration of “an equal” prior to submitting proposals, the Proposer is responsible for a timely submittal.

iii. No proposal will be considered unless accompanied by complete information necessary to permit determination of the equality of the offered materials or equipment. Samples shall be provided when requested by THE TRUST.

iv. The burden of proof as to the comparative quality and suitability of the offered materials or equipment shall be upon the Proposer.

Where the material is specified by capacity or performance, the burden of proof shall be on the Proposer to show that any particular equipment or materials meet the minimum capacities or performance requirements specified.

The Proposer shall furnish at its own expense all information necessary for a determination as to whether the minimum capacities or performance requirements will be met.

THE TRUST shall be judge of such matters. If THE TRUST rejects the use of alternative materials or equipment, then one of the products designated by brand name shall be furnished.

If changes or delays are required for proper installation or fit of alternative materials, articles or equipment, or because of deviations from contract documents such changes or delays shall be made at the Development Partner’s expense without recourse for reimbursement from THE TRUST.

**d) Substitutions:**

If the Development Partner proposes a product that is of lesser or greater quality or performance than the specified material or equipment, the Development Partner must submit any cost impact of this substitution.

By submitting a substitute of an unequal product shall be restricted to five (5) days after the effective date on the Notice-to-Proceed unless THE TRUST allows a longer or shorter period in writing.

**7.34 Quality of Materials, Articles and Equipment:**

Materials, articles and equipment furnished by the Development Partner for incorporation into the work shall be new. When the contract requires that materials, articles or

equipment be furnished but the quality or kind thereof is not specified, the Development Partner shall furnish materials, articles or equipment at least to the kind or quality or both of materials, articles or equipment which are specified.

### **7.35 Testing Materials, Articles, Equipment and Work:**

Materials, articles and equipment requiring tests shall be delivered to the site in ample time before intended use to allow for testing and shall not be used prior to testing and receipt of written approval.

The Development Partner shall be solely responsible for notifying THE TRUST where and when materials, articles, equipment and work are ready for testing. Should any such materials, articles and equipment or work be covered without testing and approval, if required, they shall be uncovered at the Development Partner's expense.

THE TRUST has the right to order the testing of any other materials, articles, equipment or work at any time during the progress of the work. Unless otherwise directed, all samples for testing shall be taken by THE TRUST from materials, articles or equipment to be used on the project or from work performed.

All tests will be under the supervision of and at locations convenient to THE TRUST.

THE TRUST shall select the laboratories for all tests. Decisions regarding the adequacy of materials, articles, equipment or work shall be issued to THE TRUST in writing. All costs of the initial required tests shall be borne by the Development Partner.

THE TRUST may decide to take further samples and tests and if the results show that the work was not defective, THE TRUST shall bear the cost of such samples and tests.

In the event the results show that the work was defective, the Development Partner shall bear the cost of such samples and tests.

Samples that are of value after testing shall remain the property of the Development Partner. THE TRUST may back-charge to the Development Partner all re-testing and re-inspection costs.

### **7.36 Rejection:**

Should any portion of the work done or any materials, articles or equipment delivered fail to comply with the requirements of the contract, such work, materials, articles or equipment shall be rejected in writing and shall immediately be made satisfactory to THE TRUST by the Development Partner at no additional expense to THE TRUST.

Any materials, articles or equipment, which are rejected, shall be immediately removed from the premises at the expense of the Development Partner.

THE TRUST may retain one and one-fourth times the cost of the rejected materials, articles, equipment and work from any payments due to the Development Partner until such time as it is made acceptable to them (THE TRUST).

### **7.37 Responsibility of Quality:**

The testing and inspection provided by THE TRUST shall not relieve the Development Partner of its responsibility for the quality of materials and workmanship provided by the Development Partner and the Development Partner shall make good all defective work discovered during or after completion of the project.

**7.38 Guarantee:**

The Development Partner hereby unconditionally guarantees the work under this Contract to be in conformance with the contract requirements and to be and remain free of defects in workmanship and materials for a period of one year from the date of acceptance of the project, unless a longer guarantee period is agreed between the parties.

By this guarantee, the Development Partner agrees within the guarantee period, to repair or replace any work together with any adjacent work which may be displaced in so doing which is not in accordance with the requirements of the contract or which is defective in its workmanship or material or without any expense whatsoever to THE TRUST.

Special guarantees that are required by the contract shall be signed by the Development Partner, who is responsible for the entire work and countersigned by the Sub-Contractor who performs the work.

Contract bonds shall remain in full force and effect during the one year guarantee period, unless a longer bond period is agreed.

The Development Partner further agrees that within five (5) calendar days after being notified in writing by THE TRUST of any work not in accordance with the requirements of the contract or of any defects in the work, the Development Partner shall commence and execute with diligence all work necessary to fulfill the terms of this guarantee and to complete the work in accordance with the requirements of the contract within a reasonable period of time.

In the event of failure to so comply, the Development Partner does hereby authorize THE TRUST to proceed to have the work done at the Development Partner's expense and the Development Partner agrees to pay the cost thereof upon demand.

THE TRUST shall be entitled to be reimbursed by the Development Partner all costs necessarily incurred upon the Development Partner's refusal to pay the above cost. Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to health or safety of THE TRUST, its employees, property or the public, THE TRUST may undertake at the Development Partner's expense without prior notice, all work necessary to correct any hazardous conditions caused by the work of the Development Partner not being in accordance with the requirements of this contract.

**SECTION VIII: Appendices & Annexes**

**APPENDIX A—DESCRIPTION OF THE SERVICES**

The description of the service is made up of the following:

- ◆ Terms of Reference
- ◆ Methodology
- ◆ Schedules indicating activities around the assignment.

**APPENDIX B— REPORTING REQUIREMENTS AND DELIVERABLES**

Indicate suitable format and timetable

**APPENDIX C— JOINT-POTENTIAL INVESTORS**

List under: C-1 List of approved Joint-Potential Investors (if already available);



**Appendix D —Services and Facilities Provided by the Client**

.....to be specified by the Potential Investor

**ANNEXES**

**ANNEX I— BID SECURITY FORM**

**(SPECIMEN BOND)**

*(To be in the letterhead of the Bank)*

Whereas..... *[name of the Potential Investor]*  
(hereinafter called “the Bidder”) has submitted its bid dated .....*[date of submission of bid]* for request for proposals **for development of plot LR. No 4953/2338, 2339, 23340 & 2341** by joint ventures(hereinafter called “the Bid”) KNOW ALL PEOPLE by these presents that WE.....  
...of.....having our registered office at ..... (hereinafter called “the Bank”), are bound unto.....  
*[name of Procuring entity]* (hereinafter called “CPF”) in the sum of .....  
*[Amount and currency]* for which payment well and truly to be made to the said Procuring entity, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this .....day of ..... 20.....

THE CONDITIONS of this obligation are:

1. If the Bidder withdraws its Bid during the period of bid validity specified by the bidder on the Bidder Form; or
2. If the bidder, having been notified of the acceptance of its Bid by the Procuring entity during the period of bid validity:
  - (a) fails or refuses to execute the Contract Form, if required; or
  - (b) fails or refuses to furnish the performance security, in accordance with the Notice and Information to Bidders;

we undertake to pay to CPF up to the above amount upon receipt of its first written demand, without CPF having to substantiate its demand, provided that in its demand CPF will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

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

\_\_\_\_\_ *[signature of the bank]*

Signed: \_\_\_\_\_

Sealed: \_\_\_\_\_

**ANNEX 2 - SELF DECLARATION FORMS**

**SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE.**

I, .....of P. O. Box ..... being a resident of

..... in the Republic of ----- do hereby make a statement as follows:-

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of .....  
..... (insert name of the Company) who is a Bidder in respect of **RFP No.** ..... for .....(insert tender title/description) for .....( insert name of the Procuring entity) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its servants and/or agents /sub-consultants will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of .....( insert name of the Procuring entity) which is the procuring entity.
3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of .....(name of the procuring entity).
4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender.
5. THAT what is deponed to hereinabove is true to the best of my knowledge information and belief.

.....  
(Title) (Signature) (Date)  
Bidder's Official Stamp

**ANNEX 3;REQUEST FOR REVIEW FORM**

**FORM RB I**

**REPUBLIC OF KENYA**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

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

BETWEEN

.....APPLICANT

AND

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

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

**REQUEST FOR REVIEW**

I/We.....,the above named Applicant(s), of address: Physical  
address.....Fax No.....Tel. No.....Email ....., hereby request the  
Public Procurement Administrative Review Board to review the whole/part of the above  
mentioned decision on the following grounds , namely:-

- 1.
  - 2.
- etc.

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

- 1.
  - 2.
- etc

SIGNED .....(Applicant)

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

**ANNEX 4 - FORMAT FOR CONSORTIUM 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 Consortium 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 Consortium Member", which expression shall include its successors, executors and permitted assigns) for the purpose of making a Proposal and entering into the Joint Venture Agreement (in case of award) to be hereinafter referred to as the Contracts, against Request for Proposal of LAPTRUST, or its authorized representative (hereinafter referred to as THE TRUST).

**WHEREAS** THE TRUST desires to select a Development Partner for the development of PLOT LR NO. 4953/2338, 2339, 23340 & 2341 MAU AREA, KIAMBU COUNTY, KENYA through Joint Venture Partnership.

**WHEREAS**, THE TRUST had invited Proposals vide its RFP Document; **AND WHEREAS Clause 3.2.3** of the Instructions to Bidders in this RFP document stipulates that the Bidder qualifying on the strength of a Bidding consortium to submit a legally enforceable Joint Bidding Agreement in a format specified by THE TRUST wherein the Consortium Members have to set out their roles and responsibilities for the implementation of the Project.

**AND WHEREAS** the Proposal has been submitted to THE TRUST vide letter no. \_\_\_\_\_ dated \_\_\_\_\_ in accordance with the relevant provisions of RFP.

**NOW THEREFORE, THIS INDENTURE WITNESSTH AS UNDER:**

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

1) In consideration of the award of the Contract by THE TRUST to the Consortium, we, the members of the Consortium and partners to the Joint Bidding Agreement do hereby unequivocally agree that partner, M/s (name of Lead Consortium Member), shall act as the Lead Consortium Member as defined in the RFP for self and agent for and on behalf of the Consortium Members.

2) Notwithstanding anything contrary contained in this Joint Bidding Agreement, all the Consortium 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 Consortium Member are as follows:

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

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

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

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

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

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

5) The Lead Consortium Member is hereby authorized by the Consortium Members to bind the Bidding Consortium 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 Consortium Member.

6) The Lead Consortium Member shall be jointly liable and responsible for ensuring the individual and collective commitment of each of the members of the consortium in discharging all their respective obligations. Each Consortium 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 Consortium 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 Consortium.

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.

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 TRUST.

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

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 TRUST.

**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 Consortium Member by:

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

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

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

For and on behalf of the Consortium Member by:

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

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

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

## **ANNEX 5 - FORMAT OF COVERING LETTER**

*(The covering letter is to be submitted by the Bidding Entity or the LCM of a Bidding Consortium, along with the Bid. To be provided on respective Bidder's letterhead).*

Date:

To:

Group Managing Director,  
CPF Financial Services,  
CPF House, 7<sup>th</sup> floor,  
P.O. Box 28938 – 00200,  
**NAIROBI.**

Dear Sir,

### **REF: DEVELOPMENT OF PLOT LR. Nos.4953/2338, 2339, 23340 & 2341 THROUGH JOINT VENTURE PARTNERSHIP**

Please find enclosed One (1) original and four (4) copies of our Technical Proposal in respect of the Selection of a Development Partner for the development of the NAIROBI CBD PROPERTY through Joint Venture Partnership, comprising of our **MANDATORY REQUIREMENTS & TECHNICAL PROPOSAL**, in response to the Request for Proposal ("RFP") Document issued by yourselves on \_\_\_\_\_(Date).

We hereby confirm the following:

1) The Bid is being submitted by \_\_\_\_\_ (name of the Bidding Entity / Lead Consortium Member in case of Bidding Consortium) who is the Bidding Entity / the Lead Consortium Member of the Bidding Consortium comprising \_\_\_\_\_ (mention the names of the entities who are the consortium members), in accordance with the conditions stipulated in the RFP. (In case of a Bidding Consortium). Our Bid includes the Power of Attorney for designating the Lead Consortium Member in the format specified in the RFP, and the Joint Bidding Agreement (as per the principles stated in the RFP) between, \_\_\_\_\_ (mention names of the entities that are the consortium members), who are the consortium member (s) as per the conditions stipulated in the RFP.

2) We have examined in detail and have understood the terms and conditions stipulated in the RFP Document issued by LAPTRUST and in any subsequent communication sent by LAPTRUST. We agree and undertake to abide by all these terms and conditions. Our Bid is consistent with all the requirements of submission as stated in the RFP or in any of the subsequent communications from LAPTRUST.



3) The information submitted in our Bid is complete, is strictly as per the requirements as stipulated in the RFP, and is correct to the best of our knowledge and understanding. We would be solely responsible for any errors or omissions in our Bid.

4) We confirm that our Proposal does not contain any Conditions.

5) The Bidding Company / Bidding Consortium of which we are the Lead Consortium Member (Please strike out whichever is not applicable), satisfies the legal requirements and meets all the eligibility criteria laid down in the RFP.

6) Power of Attorney from the Bidding Company / Lead Consortium Member authorizing the undersigned as the Authorized Representative who is authorized to perform all tasks including, but not limited to providing information, responding to enquiries, entering into contractual commitments on behalf of the Bidder, etc., in respect of the Project is included as a part of the Proposal.

7) We confirm that our Bid is valid for a period of 120 days from the last date of submission of the Bid.

For and on Behalf of:  
Signature and Stamp:  
(Authorized Representative and Signatory)

Name of the Person: .....

Designation: .....

## **ANNEX 6 - BIDDER'S INFORMATION SHEET**

Date:..... Applicant's Legal Name: <b>[Insert full legal name]</b>
In case of BC, legal name of each party: <b>[Insert full legal name of each party in JV]</b>
Applicant's Actual Country of Constitution: <b>[Indicate Country of Constitution]</b>
Applicant's actual or year of Constitution: <b>[Indicate year of Constitution]</b>
Applicant's legal address in country of constitution: <b>[insert street/ number/ town or city/ country]</b>
Applicant's authorized representative information: Name: <b>[insert full legal name]</b> Address: <b>[insert street/ number/ town or city/ country]</b> Telephone/Fax No: <b>[including country and city codes]</b> E-mail address: <b>[indicate e-mail address]</b>
Attached are copies of original documents of:
Articles of Incorporation or Documents of Constitution of the legal entity named above.
In case of government owned entity, documents establishing legal and financial autonomy and compliance with commercial law.

**ANNEX 7 - FORMAT OF POWER OF ATTORNEY FOR DESIGNATING THE LEAD CONSORTIUM MEMBER**

(Each firm to designate the LCM on separate sheet)

Whereas the THE TRUST has invited proposals from interested parties for the development of **plotLR. No 4953/2338, 2339, 23340 & 2341** through Joint Venture Partnership.

Whereas, the members of the Consortium are interested in bidding for the Project and implementing the Project in accordance with the terms and conditions of the Request for Proposal (RFP) Document and other connected documents in respect of the Project, and

Whereas, it is necessary under the RFP Document for the Consortium Member to designate the Lead Consortium Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's bid for the Project who, acting jointly, would have all necessary power and authority to do all acts, deeds and things on behalf of the Consortium, as may be necessary in connection with the Consortium's bid for the Project.

**NOW THIS POWER OF ATTORNEY WITNESSETH THAT;**

We, M/s. \_\_\_\_\_ (Consortium Member) (the respective names and addresses of the registered office) do hereby designate M/s.

\_\_\_\_\_ being one of the members of the Consortium, as the Lead Consortium Member of the Consortium, to do on behalf of the Consortium, all or any of the acts, deeds or things necessary or incidental to the Consortium's bid for the Project, including submission of proposal, participating in conferences, responding to queries, submission of information / documents and generally to represent the Consortium in all its dealings with THE TRUST, any other Government Agency or any person, in connection with the Project until culmination of the process of bidding and thereafter till the Agreement is entered into with THE TRUST.

We hereby agree to ratify all acts, deeds and things lawfully done by Lead Consortium Member, 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 / Consortium.

Dated this ..... day of ..... 2017.

Signed & Stamped: .....

**ANNEX 8 - 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 proposal for the project “Development of **plot LR. No 4953/2338, 2339, 23340 & 2341** through Joint Venture Partnership.”, including signing and submission of all documents and providing information / responses to THE TRUST, representing us in all matters before THE TRUST, and generally dealing with THE TRUST in all matters in connection with our Proposal 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)

**ANNEX 9 – RFP REGISTRATION FORM**

<b>RFP Registration Form</b>	
Procuring Entity;	
Date of RFP Notice (Advertisement);	
RFP Closing Date;	
Date RFP was Downloaded from Website;	
Name of Bidder, Contact Details and E-mail Address;	
Name of Authorized Personnel filling in this form;	
Company Stamp;	

## **ANNEX 10 - FORMAT FOR UNDERTAKING**

The information / documents submitted by us are true to our knowledge and if the information / documents so furnished shall be found to be untrue or false, the bid shall be liable for disqualification and our Bid Security accompanying the Bid will be forfeited.

Also, we are aware that if the information / document furnished is found to be untrue or false during the currency of contract, then our contract is liable for termination.

We hereby declare that we have made ourselves thoroughly conversant with the specifications, conditions laid by THE TRUST for this bid and we have understood the same before submitting this Bid.

We hereby certify and confirm that in the preparation and submission of our Bid for the proposals listed below, we have not acted in concert or in collusion with any other Bidder or other person(s) and also not done any act, deed or thing which is or could be regarded as anti-competitive.

We further confirm that we have not offered nor will offer any illegal gratification in cash or in kind to any person or agency in connection with the instant proposals.

We agree that the amount of Bid Security shall be liable to be forfeited by THE TRUST, should we fail to abide by the stipulation to keep the offer open for a period of not less than 90 days from the date fixed for opening the same and thereafter until it is withdrawn by us by the notice in writing duly addressed to the authority opening the Bids.

Signature of Bidder

Bidder \_\_\_\_\_

Address \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 2017.

**Signature of Witness**

Witness \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_  
Dated the \_\_\_\_\_ day of \_\_\_\_\_ 2017.