



**TENDER NO. 9 -2024/2025**

**TENDER FOR THE IMPLEMENTATION OF THE MAHWALALA ZONE 5  
TOWNSHIP ASSESSMENT FINDINGS AND GENERAL PLAN AMENDMENT**

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## MBABANE MUNICIPALITY

### TENDER FOR THE IMPLEMENTATION OF THE MAHWALALA ZONE 5 TOWNSHIP ASSESSMENT FINDINGS AND GENERAL PLAN AMENDMENT

#### 1. PREAMBLE

The Municipal Council of Mbabane requires a competent and reputable consultant to undertake the Implementation of the Mahwalala Zone 5 Township Assessment Report findings and the review and amendment of the General Plan of the township.

In 2022, Council appointed ZMCK Consulting Engineers to undertake a study that will pave the way for the Construction of Roads in the township and objectives were as follows:

1. To assess the existing access roads and drainage systems.
2. To undertake aerial, physical, and surveys, and to identify potential significant existing adverse geological and built environment features that may affect the implementation of the Construction of Access Roads. This entails investigation of the access roads against the general plan to determine if there are obstacles such as structural encroachment.
3. To undertake a demographic (household and information gathering survey) study of the properties affected by encroachments in Mahwalala Zone 5. The survey entailed information such as the number of structures (i.e. types of material used), contact details of owners and occupants, land ownership and land use rights, historical information of their settlement, tenure types, status of allocation, as well as a database of the gathered information.
4. To prepare a report with an analysis, findings and recommendations.
5. To engage the stakeholders, community and affected property owners.

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6. To prepare proposal for cadastral township redesign of the existing general plan that has considered all the relevant factors using relevant computer aided design system and geographic information system.
7. To obtain approval and buy-in of the proposed solutions and or amendment of the layouts (general plan) or any proposed solution from stakeholders and Council's leadership structures.

The report was approved by Council and the next phase of the project is implementation of the findings of the report. The Findings of the report can be summarised as follows:

1. The report showed that 229 plots were affected by one or more encroachment incidences, such as plots encroaching onto other plots, POS's, road reserves, etc.
2. Approximately 181 plots in the township have been affected by structural encroachment. Structural encroachments are defined in this study as the overlapping of a building/structure on the cadastre. Such structures have been found to partially occupy two or more plots on the exiting layout.
3. There are at least twelve (12) properties within the township that were found to be encroaching on Public Open Spaces. The extent of encroachments identified to be affecting open spaces range from a relatively small portions of a structure to complete structural encroachments.
4. There are at least 85 structures that were either found to be encroaching on to an access road and therefore restricting or blocking the access of other properties.
5. Another common occurrence with regards to encroachments in Mahwalala Zone 5 was the overlapping of structures into the road reserve. Such structures include buildings, wall fences, or simple wire fences. The findings show that there are at least 47 structure/property boundaries encroaching onto the Road Reserve within the township.
6. There are only nine (9) plots found to be undevelopable in the township.

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The consultant made the following recommendations:

1. Engagement of the affected property owners
2. Consolidation of properties
3. Reallocation to alternative plots
4. Amendment of the General Plan/Redesign of Layout/Adjusting of property boundaries

This programme is in line with Council's Integrated Development Plan's Strategic Theme 2 of Effective Infrastructure Development (Strategic Objective 2.2) and the Sustainable Development Goal 11.1. The ultimate end goal of the programme is to enable the construction of Level 1 Basic Roads (Infrastructure Construction Services) in Mahwalala Zone 5 in their appropriate positions.

## **Project Area and Township Background**

The project is situated at Mahwalala Extension 1 Township, better known as Mahwalala Zone 5 and is situated on **Portion 67 of Farm 75** measuring approximately **58 hectares**. The farm was occupied by citizens under the kukhonta system before the farm was incorporated into the urban area. In 1999, Council embarked on a program to formalize the township through an upgrading programme. Land Surveying work including plot pegging was carried out based on a layout and this initiative resulted in agreements between Council and the residents that certain homesteads that would be affected by the layout would not be compensated. Due to the demand for plots subsequent subdivisions of plots that were designated as public open space in terms of the General Plan were carried out without due regard to the future impact of the subdivisions.

## **2. SCOPE OF WORK**

The scope of work therefore entails the following:

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1. Desk-top analysis and historical research on the formation of the township
2. Conduct feasibility assessment on the properties affected by encroachments
3. Preparation of Project Action Plan
4. Implementation of the Project Action Plan

NB: The Project Action Plan should include the Facilitation of the Engagement of the Community, Stakeholders and Affected Property Owners.

The action plan includes implementing legal aspects of the solutions which includes Title Deeds amendments, General Plan amendment. Some of these solutions have legal bearings, and the consultant must implement the solutions in line with the respect legal provisions. The consultant will be expected to implement the necessary documentation for purposes of undertaking legal implementation of the activities affected by the following laws:

- The Human Settlements Authority Act, 1988
- The Land Survey Act, 1961 and related regulations
- The Sub-division of Land Act, 1957
- The Town Planning Act, 1961
- The Building Act, 1968 and related regulations
- The Mbabane Town Planning Scheme, 2016
- The Environmental Management Act, 2012
- The Constitution, 2005
- The Deeds Registry Act, 1968
- The Acquisition of Property Act, 1961
- The Roads Outspan Act, 1931
- Any other relevant legislation.

NB: Undertake and facilitate Affected Property Owners Engagement, Community Engagement and Stakeholder Consultation. During the assessment of the township, several challenges were highlighted, bringing forth the need to engage the resident. The Consultant will convene stakeholder meetings, including community meetings within the township (different meetings, for the different groups of residents per the impact of the encroachments onto their properties). Community engagements will be for the purpose of informing residents on the proposed changes to the General Plan,

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whilst allowing for submission and comments from residents. Comments should be formally recorded by the Consultants through minutes to be submitted to Council.

5. Preparation and Submission of Human Settlements Application for the amendment of the General and preparation and submission of Consolidation and Subdivision Plans to the respective approval authorities.

a. The Project Action Plan must guide the Consultant with regards to Subdivision, Consolidations and Amendment of the General Plan. The Consultant is expected to gather and collect information for submission of the applications to subdivide, consolidate and for the amendment of the general plan of the township to the Human Settlements Authority. The submission of subdivision and consolidation plans as well as the amended General Plan should be approved by relevant authorities including the Human Settlement Authority and the Surveyor General. This requires land surveying services by registered professional land surveyors approved by the Surveyor General.

b. Upon approval of the Subdivision, Consolidation and Amendment of the General Plan the consultant is expected to facilitate in consultation with the affected property owners, the change of title deeds/99-year leases where necessary. This requires conveyancing services for the issuance of new Title Deeds/99-Year Leases.

6. Upon meeting of all HSA application conditions, the Consultant will facilitate the declaration and Gazetting of the amendments of the township.

**3. FORM OF COMPLETED WORK**

The deliverables of this consultancy are:

- i. Submission of the desktop analysis report/ feasibility report, together with the Project Action Plan.
- ii. Submission of stakeholder engagements reports, as well as agreements with affected property owners on the recommended solutions.

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- iii. Submission of HSA application for review before submission to the HAS.
- iv. Approvals from the Ministry of Housing and Urban Development with respect to Subdivision Implementation, Subdivision and Consolidation and approval of the amended General by the Surveyor General, and the Human Settlement Authority
- v. Issuance of New Title Deeds/99-Year Leases.
- vi. Project close-out report.

**4. INFORMATION REQUIRED FROM TENDERERS**

Council will require the tenderers to submit the following information alongside the tender documents:

i) Relevant Experience

A detailed reference list stating examples of similar work undertaken, stating the size of the establishment, duration and the total cost of the work done.

The reference list must be a detailed listing of a contact name, address and telephone numbers of at least two recent (i.e. three years and less) clients who can be contacted in order to obtain a reference.

ii) Ownership of Consultancy

Ownership of the Consultancy firm shall need to be stated by way of producing relevant documents – Current Form J and Certificate of Incorporation. Joint ventures and subcontracting may be considered but must be clearly stated. However, local content must be 51% or more.

iii) Qualification of Staff to be assigned

Tenderers shall list all individuals that will be involved in this assignment and describe, in brief, their professional and/or academic background as well as their experience in executing similar projects. This will be in the form of CVs.

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## 5. CRUCIAL DOCUMENTS AT TENDER OPENING

At tender opening the Council will consider the following:

- I. Original Valid Tax compliance certificate;
- II. Certified copy of Valid Trading License;
- III. Certified copy of Certificate of Incorporation;
- IV. Certified copy of Current Form J and form C;
- V. Municipal Council of Mbabane tender purchase receipt (E 500).
- VI. Certified copy of labour compliance certificate
- VII. certified copy of ENPF certificate
- VIII. Police clearance for all directors

The above stated documents must be submitted in a separate envelope for clear identification.

## 6. EVALUATION OF TENDERS

- i. Council intends to award the contract on the basis of proven ability by the tenderer to carry out the assignment, a clear understanding of the issues, relevant experience, a rigorous approach to managing the collating of the available data and an ability to complete specific elements of the assignment on time.
- ii. The Evaluation Committee, appointed by the Client shall evaluate the proposals on the Least Cost Selection (LCS) basis of the following factors and their weighting:

### PRELIMINARY EXAMINATION

- a. **Preliminary Examination of Mandatory Documentation Required.** The Evaluation Committee will examine the minimum documentary requirements, to check **whether all the documents have been submitted**, signed and are in order

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in accordance to the Crucial Documents required at Tender Opening. The documents will be evaluated on a Yes/No Basis:

Below is the Tender Mandatory Documentation Submission Checklist

No.	Documentation	Comply (YES/NO)
1	Original Valid Tax compliance certificate;	
2	Certified copy of Valid Trading License;	
3	Certified copy of Certificate of Incorporation;	
4	Certified copy of Current Form J and form C;	
5	Certified copy of Labour Compliance Certificate	
6	Certified copy of Eswatini National Provident Fund certificate	
7	Copy of Valid Police Clearance of Company Directors	
8	Copy of Tender Receipt or proof of EFT payment	

The Client/Purchaser/MCM reserves the right to reject any Proposal at this stage.

## **TECHNICAL EVALUATION**

### **a. Key Professional Staff; Qualifications and Competence for the assignment (25);**

For each of the key professional, to show evidence of qualifications, experience, and competence/certification, submit for each person the following:

- 1. Submit Comprehensive Curriculum Vitae (CVs) for each member of the team**
- 2. Certified Copies Academic Certificates**
- 3. Submit Valid Certified Copies Professional Body Certification/Membership and/or together with Letters of Good Standing if applicable (where the certificate does not indicate validity period).**

Below is the list of the minimum key experts required for this assignment.

No.	Professional Staff Profile Required	Points
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1	<b>Team Leader – Town Planner</b> i. Town Planner as Team Leader must have Degree Level Qualification in Urban Planning/ Town & Regional Planning ii. Team Leader must have at least 5 years work experience with the ability to lead the community engagement exercise as a Community Liaison Officer.	20
2.	<b>Professional Land Surveyor</b> with GIS Expertise. (BSc Land Survey or BSc/B. Geomatics) with 5 years of work experience to assist with all mapping, land subdivision, consolidation, general plan preparation, reviewing and amendment of layouts, and land surveying.	2.5
3.	<b>Conveyancing Lawyer/Attorney</b> with a Degree in Law (LLB) with 5 years of work experience to assist with legal interpretations, preparation of agreements for the affected property owners, gazette preparations, lodging of township registration documentation at the Deeds Office, Title Deed Exchange, Title Deed Amendments, Expropriation of Land and Land Transfers where applicable and necessary.	2.5
<b>Total</b>		<b>25 Points</b>

**b. Experience of the Consultant (Company/Joint Venture Experience) in Executing Projects of similar nature (10)**

Specific experience of the tenderer related to the assignment is required. Below is criterion to be used to evaluate the consultant's experience in executing projects of similar nature.

No.	Project Requirement Criterion	Points
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1	<p>Number of Completed Projects for Towns/Cities or Private entities within the last 10 years (projects done before 2014 do not count) for project costs of more than E200,000 (projects below this threshold do not count), for the Preparation of the following types of Documents:</p> <ul style="list-style-type: none"> <li>▪ Township Establishment or Human Settlement Applications.</li> <li>▪ Brownfield Developments</li> <li>▪ Informal Settlement Upgrading Projects</li> <li>▪ General Plan Amendments</li> </ul>	10
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Submit A detailed reference list stating the required information per work type category to proof that the Consultant has undertaken work of similar nature per the criterions stated above.

The letters from the institutions must be submitted to indicating the details of the engagement such as **project name, year of project, duration of project and the total cost of the work** done must be clearly stated and submitted. The reference list must be a **detailed listing of a contact name, address and telephone numbers of the clients** who can be contacted in order to obtain a reference and verification or confirmations.

**c. Approach and Methodology (35);**

Below is the evaluation criteria that will be used to evaluate the approach and methodology. The evaluation committee will be looking for details that the consultant intends to follow regarding the effective provision of the professional services required for the development of the Master Plan.

The approach and methodology must demonstrate a practical, logical, and feasible approach in carrying out the objectives of the project and scope of work as well clearly demonstrate that the consultant can fulfil the project deliverables and specific

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requirements of the project. It must creatively and effectively address public and stakeholder participation will be addressed throughout the project Addresses challenges or problems specifically related to the planning of the city of Mbabane and must achieve the project objective.

No.	Scoring (for whole or each sub-element where applicable)	Maximum Points
1	<p><b>Excellent = 35 points</b></p> <p>The project objectives and scope of work and all the important issues articulated in the terms of reference are undoubtedly unpacked one-by-one and clearly interpreted and understood. The approach is an innovative and efficient and is clear and logical, wholistic (brings all the various elements together), consistent and integrated manner such that there is no doubt that the consultant understands the assignment requirements. The Consultant presents an outstanding technical knowledge and understanding of human settlement applications, general amendments, land subdivisions and consolidations, resolving of encroachments, social issues, and infrastructural dynamics. improve the project outcomes and the quality of the outputs The proposed approach and methodology details ways to. The proposed methodology unpacks how the phases of the project will be undertaken in order clearly come-up with the required outputs. The methodology and approach unpack how stakeholder and community engagement issues will be management. The consultant demonstrates how community level engagement will be handled, mass public communication and direct engagement of affected property</p>	35

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	<p>owners will be handled as well as how the evidence of the engagements will be handled.</p> <p>The approach and methodology also include understanding the inherent risks associated with a project with wide public interest and involvement and presents methods of addressing these risks as the project progresses in order to meet timelines.</p>	
2	<p><b>Good = 25 points</b></p> <p>The project objectives and scope of work and all the important issues articulated in the terms of reference are understood. The consult touches on the elements to a fair degree of measure, but not exceptionally and comprehensively. The consultant demonstrates that they can deliver on the project with a standard and general approach and methodology. The consultant's output quality will be of acceptable standard, but not exceptional. The risk management approach is there but exceptionally demonstrating full appreciation and understanding of the nature of dynamics of the project and understanding of legal frameworks of the project.</p>	25
3	<p><b>Acceptable = 15 points</b></p> <p>The approach and methodology is basic, generic and not necessary tailored to address the specific project objectives. The approach does not meaningfully deal with the critical characteristics, objectives and scope of work of the project. The risk management plan, stakeholder engagement plan and overall quality are basic and generic and do not</p>	15

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	demonstrate high level of technical application and expertise and understanding of the nature of the project and expectations.	
4	<b>Poor = 10 points</b>  The approach and methodology is there, but is poor, and is unlikely to satisfy the project objectives and scope of work. The consultant does not understand the issues articulated in the terms of reference and is clearly not experienced in the field of the project requirements. The consultant has misunderstood certain aspects of the terms of reference.	10
5.	<b>None-responsive = 0 points</b>  The is no clearly defined approach and methodology. There is no response that can be evaluated and the tenderer failed to address the methodology and approach in a manner that can be evaluated. There is nothing to evaluate.	0

#### d. Workplan and Timelines (10)

Consultants are to ensure that their Methodology and Work Plan is self-explanatory and **MUST** link the work plan to the Actual Staff Assigned. You must clearly show how each team member will contribute and the expected outcomes from each team member.

Below is an indication of how points will be awarded based on how well the Consultant presents the Project Management plan:

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Criteria	Points
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1	<p><b>Workplan and Timeline</b></p> <p>The workplan supports the scope of work and effectively defines and leads to deliverables required, particularly those of the key stakeholders for the assignment:</p> <ol style="list-style-type: none"> <li>i. <b>The workplan supports the scope of work</b> and effectively defines and leads to deliverables required, particularly those of the key stakeholders for the assignment (2)</li> <li>ii. The workplan is aligned and clearly linked with the Project Approach and Methodology (2)</li> <li>iii. <b>GANTT CHART available that outlines all the expected activities</b>, deliverables, considers periods for data gathering and analysis, public and stakeholder participation, workshops, meetings, corrections, presentations, public-advertising periods, approval stages, incorporation of comments/inputs per stage, risk factors etc. (2)</li> <li>iv. <b>Table describing tasks, output</b> and responsible professional expert and consolidation and quality controls of documentation. (2)</li> <li>v. <b>The Proposed Timeline Presents a clear and feasible timeline within the proposed timeline</b> by Council for completion of the assignment considering public and stakeholder participation, workshops, meetings, approval stages, incorporation of comments/inputs per stage, risk factors etc. (2)</li> </ol>	10
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## FINANCIAL EVALUATION

Financial proposal – the evaluation will follow a **Least-Cost Evaluation Method**. Only financial proposals of consultant’s obtaining a minimum score of 80% of the technical proposal evaluation will be considered.

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Consultants are, therefore, required to ensure that the methodology and work plan is self-explanatory, and you MUST link the work plan to the actual staff assigned. You must clearly show how each team member will contribute.

**Please note: Financial proposals of firms whose technical proposals do not meet the required standard will not be opened and will be returned to the firm unopened.**

## **7. PAYMENT SCHEDULE**

The Consultant shall be paid as follows:

- a. 30% upon submission of the Project Action Plan;
- b. 50% after the submissions and presentations of approvals from Surveyor General, the Humans Settlements Authority the land subdivisions, consolidations and amended General Plan.
- c. 20% upon receiving written Approval of amendments of the GP from the office of the Surveyor General
- d. 10%

## **8. REPORTING ARRANGEMENTS**

The consultant will work closely and report periodically to the City Planner-Projects, and when necessary to the delegated officials comprising of the project team.

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### **3. TECHNICAL PROPOSAL**

- a. In preparing the Technical Proposal, tenderers are expected to examine the Scope of Work in detail. Information deficiencies in providing the information requested may result in rejection of a proposal.
- b. While preparing the Technical Proposal, tenderers must give particular attention to the following:
  - Legally binding Joint Ventures are welcome, only with approval of the Client;
  - It is desirable that the majority of the key professional staff proposed be permanent employees of the firm or have an extended and stable working relationship with it;

### **4. FINANCIAL PROPOSAL**

5. Financial proposals must be broken down for better understanding and consideration. They must include all costs e.g., VAT and Expressed in Emalangeni.

***Quotations should be made on the understanding that no additions will be made on the grounds of price inflation or a failure to foresee the scope of work involved.***

Please ensure that the financial proposal is itemised, clearly detailing costs for the following:

- ✓ Preparation of the Environmental Assessment Application
- ✓ Preparation of the Application to the Human Settlements Authority
- ✓ Public Participation and Stakeholder Engagement costs

### **6. SUBMISSION OF PROPOSALS**

Tenderers should address their technical and financial proposals **UNDER SEPARATE ENVELOPES** to the Chief Executive Officer by no later than **12 NOON** on **Friday the 6<sup>th</sup> October 2024**. Any documents received after this date will be returned unopened to the tenderer.

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## SECTION 2. INSTRUCTIONS TO TENDERERS

### 1.0 Introduction

1.1 The Municipal Council of Mbabane now invites sealed Bids from Qualified Consultants to offer the above-mentioned services.

#### 1.2 Cost of Tendering

The Tenderer shall bear all costs associated with the preparation and submission of his tender, and the Municipal Council of Mbabane, hereinafter referred to as 'the Purchaser', will not be responsible or liable for these costs, regardless of the conduct or outcome of the tendering process.

### 2.0 The Tender Documents

#### 2.1 Content of Tender Documents

The goods required, tendering procedures and contract terms are prescribed in the Tender Documents. In addition to the Invitation for Tenders, the Tender Documents include:

- (a) Instructions to Tenderers;
- (b) General Conditions of Contract;
- (d) Schedule of Requirements;
- (e) Technical Specifications;
- (f) Tender Form;
- (g) Tender Eligibility Form;

2.2 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tender Documents. Failure to furnish all information required by the Tender Documents or submission of a tender not substantially responsive to the Tender Documents in any respect will be at the Tenderer's risk and may result in rejection of its tender.

### 3. Clarification of Tender Documents

3.1 A prospective Tenderer requiring any clarification of the Tender Documents may notify the Purchaser in writing or by facsimile at the Purchaser's mailing address indicated in the Invitation for Tenders. The Purchaser will respond in writing to any request for clarification of the Tender Documents which it receives no later than 7 days prior to the deadline for submission of tenders prescribed by the Purchaser. Written copies of the Purchaser's response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective Tenderers which have received the Tender Documents.

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Clarification requests must be sent in writing by electronic mail to the Client's address [chaziled@mbabane.org.sz](mailto:chaziled@mbabane.org.sz)

#### **4. Amendment of Tender Documents**

- 4.1 At any time prior to the deadline for submission of tenders, the Purchaser may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, modify the Tender Documents by amendment.
- 4.2 The amendment will be notified in writing or by facsimile to all prospective Tenderers which have received the Tender Documents and will be binding on them.
- 4.3 In order to afford prospective Tenderers reasonable time in which to take the amendment into account in preparing their tender, the Purchaser may, at its discretion, extend the deadline for the submission of tenders.

### **C. Preparation of Tenders**

#### **5. Language of Tender**

- 5.1 The Tender prepared by the Tenderer and all correspondence and documents related to the tender exchanges by the Tenderer and the Purchaser, shall be written in the English language, provided that any printed literature furnished by the Tenderer may be written in another language so long as accompanied by an English translation of its pertinent passages in which case, for purposes of interpretation of the tender, the English translation shall govern.

#### **6. Documents Comprising the Tender**

- 6.1 The tender prepared by the Tenderer shall comprise the following components:
  - (a) A completed Tender Form and Price Schedule
  - (b) A completed Tender Eligibility form

#### **7. Tender Form**

- 7.1 The Tenderer shall complete the Tender Form and the Price Schedule furnished in the Tender Documents, indicating the goods to be supplied, a brief description of the goods, their country of origin, quantity and prices.

#### **8. Tender Prices**

- 8.1 The Tenderer shall indicate on the appropriate Price Schedule attached to these documents the unit prices and total Tender Prices of the goods it proposes to

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supply under the Contract, including all customs duties, sales and other taxes payable on the goods if this Contract is awarded

8.2 Prices quoted by the Tenderer shall be fixed during the Tenderer's performance of the Contract and not be subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and rejected.

## 9. Tender Currency

9.1 The prices for goods and services to be supplied by the tenderer shall be quoted in Emalangeneni

## 10. Tender Security

10.1 The Tenderer shall furnish, as part of its tender, a tender security/(ies) in the specified amounts.

10.2 The tender security is required to protect the Purchaser against the risk of Tenderer's conduct which would warrant the security's forfeiture.

10.3 The tender security shall be in Emalangeneni, and shall be in one of the following forms:

(a) A bank guarantee or irrevocable Letter of Credit issued by a bank located in the Purchaser's country or abroad but acceptable to the Purchaser, in the form provided in the Tender Documents or another form acceptable to the Purchaser and valid for 30 days beyond the validity of the tender

10.4 Any tender not accompanied by the bid security shall be considered as non-responsive and rejected by the Purchaser

10.5 The tender security of unsuccessful Tenderers will be discharged/returned as promptly as possible but not later than 30 days after the expiration of the period of tender validity.

10.6 The successful Tenderer's tender security will be discharged upon the Tenderer executing the Contract and furnishing the performance security if required.

10.7 The tender security may be forfeited:

(a) if a Tenderer withdraws its tender during the period of tender validity specified by the Tenderer on the Tender Form; or

(b) in case of a successful Tenderer, if the Tenderer fails:

(i) to sign the Contract; or

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- (ii) to furnish the performance security if required.

## 11. Period of Validity of Tenders

- 11.1 Tenders shall remain valid for **90 days** after the date of tender opening prescribed by the Purchaser. A tender valid for a shorter period may be rejected by the Purchaser as non-responsive.
- 11.2 In exceptional circumstances, the Purchaser may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing (or by facsimile). The tender security shall also be suitably extended. A Tenderer may refuse the request without forfeiting its tender security. A Tenderer granting the request will not be required nor permitted to modify its tender.

## 12. Format and Signing of Tender

- 12.1 The Tenderer shall prepare one original and four copies of the tender documents, clearly marking each 'Original' and 'Copy', as appropriate. In the event of any discrepancy between them, the original shall govern.
- 12.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the Tenderer or a person or persons duly authorized to bind the Tenderer to the Contract. The latter's authorization shall be indicated by a written power-of-attorney accompanying the tender. All pages of the tender, except for un-amended printed literature, shall be initialled by the person or persons signing the tender.
- 12.3 The tender shall contain no inter-lineation, erasures or overwriting except as necessary to correct errors made by the Tenderer, in which case such corrections shall be initialled by the person or persons signing the tender.

## D. Submission of Tenders

### 13. Submission of Tenders

The Municipal Council of Mbabane wants to provide all bidders with the opportunity to submit tenders in a safe, convenient and secure manner. Tenders should be submitted physically to Council Civic Offices within the stipulated deadline.

- i. The Technical and Financial Tenders must be attached in separate and clearly marked envelopes.
- ii. Tenders received beyond the stipulated date and time will be declined/rejected.

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Tenders must be submitted physically to Council Civic Offices not later than 12noon (1200hrs), **Friday, 6<sup>th</sup> October 2024 at which time the Tenders will be opened in public. Tenders will not to be opened before 12noon (1200Hrs), Friday, 6<sup>th</sup> October 2024** The Municipal Council of Mbabane reserves the right to accept or reject any tender without giving reasons thereof and does not bind itself to accept the lowest or any tender.

#### **14. Deadline for Submission of Tenders**

14.1 Tenders must be received by the Purchaser at the specified address no later than **12 noon (1200Hrs) on Friday the 6<sup>th</sup> October 2024.**

14.2 The Purchaser may, at its discretion, extend this deadline for submission of bids by amending the Tender Documents, in which case all rights and obligations of the Purchaser and Tenderers previously subject to the deadline will thereafter be subject to the deadline as extended.

#### **15. Late Tenders**

15.1 Any tender received by the Purchaser after the deadline for submission of tenders prescribed by the Purchaser, will be rejected and returned unopened to the Tenderer.

#### **16. Modification and Withdrawal of Tenders**

16.1 The Tenderer may modify or withdraw its tender after the tender's submission, provided that written notice of the modification or withdrawal is received by the Purchaser prior to the deadline prescribed for submission of tenders.

16.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions of Clause 16. A withdrawal notice may also be sent by facsimile but followed by a signed confirmation copy, post marked not later than the deadline for submission of tenders.

16.3 No tender may be modified subsequent to the deadline for submission of tenders.

16.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the Tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security.

### **E. Tender Opening and Evaluation**

#### **17. Opening of Tenders by Purchaser**

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17.1 The Purchaser will open all tenders, in the presence of Tenderers' representatives who choose to attend, at the time and in the specified place. The Tenderers' representatives who are present shall sign a register evidencing their attendance.

17.2 The Tenderers' names, tender prices, modifications, tender withdrawals and the presence or absence of the requisite tender security and such other details as the Purchaser, at its discretion, may consider appropriate will be announced at the opening.

17.3 The Purchaser will prepare minutes of the tender opening.

## 18. Clarification of Tenders

18.1 To assist in the examination, evaluation and comparison of tenders the Purchaser may at his discretion, ask the Tenderer for clarification of its tender. The request for clarification and the response shall be in writing and no change in price or substance of the tender shall be sought, offered or permitted.

## 19. Evaluation of Tenders

### 19.1 Preliminary

The Purchaser will examine the tenders to determine whether they are complete, whether the required bid security has been furnished and whether the documents have been properly signed and a power of attorney attached giving authority to the signatory to sign the documents as well as whether the tenders are generally in order.

Prior to the evaluation of price, the Purchaser will determine the substantial responsiveness of each tender to the Tender Documents and a minimum of 70% should be achieved on technical evaluation to qualify for price evaluation of that proposal. For purposes of these Clauses, a substantially responsive tender is one which conforms to all the terms and conditions of the Tender Documents without material deviations.

Criteria for Preliminary Evaluation to determine substantial responsiveness

No.	Documentation	Comply (YES/NO)
1	Original Valid Tax compliance certificate;	
2	Certified copy of Valid Trading License;	
3	Certified copy of Certificate of Incorporation;	
4	Certified copy of Current Form J and form C;	

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5	Certified copy of Labour Compliance Certificate	
6	Certified copy of Eswatini National Provident Fund certificate	
7	Copy of Valid Police Clearance of Company Directors	
8	Copy of Tender Receipt or proof of Purchase / EFT payment	

**In addition to the above, the following will be checked:**

1. Tender Validity:	Equal or longer than the specified 90 days period.
2. Power of Attorney or Signing Authority.	Attached with tender documents, signed by Board of Directors and all tender documents pages initialed by authorized signatory
3. Tender Forms	Bidders must complete and signed the tender forms attached to this document

## 19.2 Evaluation of Price

Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Errors will be corrected by the Employer as follows:

- (a) where there is a discrepancy between the amounts in figures and in words, the amount in words will govern; and
- (b) where there is a discrepancy between the unit rate and the line-item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern, unless in the opinion of the Employer there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted will govern, and the unit rate will be corrected.

The amount stated in the Bid will be adjusted by the Employer in accordance with the above procedure for the correction of errors and, **with the concurrence of the Bidder,** shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid Security maybe forfeited.

## 20. Contacting the Purchaser

20.1 No Tenderer shall contact the Purchaser on any matter relating to its tender, from the time of the tender opening to the time the Contract is awarded.

20.2 Any effort by a Tenderer to influence the Purchaser in the Purchaser's tender evaluation, tender comparison or contract award decisions may result in the rejection of the Bidder's tender.

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## F. Award of Contract

### 21. Post-qualification

- 21.1 The Purchaser will determine to its satisfaction whether the Tenderer selected as having submitted the lowest evaluated responsive tender is qualified to satisfactorily perform the Contract.
- 21.2 The determination will take into account the Tenderer's financial, technical and production capabilities. It will be based upon an examination of the documentary evidence of the submitted Tenderer's qualifications as well as such other information as the Purchaser deems necessary and appropriate.
- 21.3 An affirmative determination will be a prerequisite for award of the Contract to the Tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the Purchaser will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

### 22. Award Criteria

- 22.1 The Purchaser will award the Contract to the successful Tenderer whose tender has been determined to be substantially responsive and whose Price has been determined as the lowest evaluated.

### 23. Purchaser's right to vary Quantities at Time of Award

- 23.1 The Purchaser reserves the right at the time of award of Contract to increase or decrease by up to 15% the quantity of goods and services specified in the Schedule of Requirements without any change in unit price or other terms and conditions.

### 24. Purchaser's Right to Accept Any Tender and to Reject Any or All Tenders

- 24.1 The Purchaser reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to award of Contract, without thereby incurring any liability to the affected Tenderer or Tenderers or any obligation to inform the affected Tenderer or Tenderers of the grounds for the Purchaser's action.

### 25. Notification of Award

- 25.1 Prior to the expiration of the period of tender validity, the Purchaser will notify the successful Tenderer in writing by registered letter sent by email or to the tenderers address, that its tender has been accepted.
- 25.2 The notification of award will constitute the formation of the Contract.
- 25.3 Upon the successful Tenderer's furnishing of performance security, the Purchaser will promptly notify each unsuccessful Tenderer and will discharge its

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tender security.

25.4 An Intention to Award notice will be published on the Eswatini Public Procurement Regulatory Authority (ESPPRA) website for a period of ten (10) working days. Any objections may be formally communicated in writing to:

The Chief Executive Officer  
Municipal Council of Mbabane  
Civic Offices  
Mahlokohla street  
P.O. Box 1  
Mbabane

## 26. Signing of Contract

- 26.1 At the same time as the Purchaser notifies the successful Tenderer that its tender has been accepted, the Purchaser will send the Tenderer the Contract Form provided in the Tender Documents, incorporating all agreements between the parties.
- 26.2 Within 30 days of receipt of the Contract Form, the successful Tenderer shall sign and date the Contract and return it to the Purchaser.

## 27. Performance Security

- 27.1 Within 30 days of the receipt of notification of award from the Purchaser, the successful Tenderer shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the Tender Documents or another form acceptable to the Purchaser.
- 27.2 Failure of the successful Tenderer to comply with the requirement of Clause 27.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Purchaser may make the award to the next lowest evaluated tenderer or call for new tenders.

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## SECTION 2. GENERAL CONDITIONS OF CONTRACT

### Terms and Conditions

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## STATEMENT OF INTENT

**WHEREAS** the Council is desirous to prepare and submit for approval Environmental Assessment and Human Settlement Establishment Applications.

**WHEREAS** the Council is desirous to ensure the legal processes of Environmental Assessment and Human Settlement Establishment Applications are followed and complied with and that the reports are prepared in an open and consultative manner, submitted, presented and corrected/updated on behalf of Council.

**AND WHEREAS**, the Council wishes to engage an independent Service Provider to, and the Service Provider is willing to accept such engagement or appointment.

**THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:**

### 1. DEFINITIONS AND INTERPRETATIONS

In this agreement, clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention, the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

1.1.1 **“Agreement”** means this service level agreement

between the Council and the Consultant.

**“Business Day”** means any day of the week

**“Commencement date”** means the .....2024.

**“Confidential information”** means proprietary information made available to a party pertaining to the other party or its business,

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which includes, but is not limited to all information that has a commercial value and is not available to the public;

**“Services,”** means the Implementation of the Mahwalala Zone 5 Assessment Report Findings

**“Signature Date”** means the date on which this agreement is signed by the party that signs it;

**“Termination Date”** means the date on which this agreement is terminated in terms of the Service Level Agreement.

**“Parties”** means the Council and the Consultant shall mean either one of them, as the context may require

For the purposes of this agreement, unless the context requires otherwise:

- The singular shall include the plural and vice versa.
- A reference to any one gender, whether masculine, feminine or neuter, includes the other two; and
- Any word or expression defined in and for the purposes of this Agreement shall, if expressed in the singular, include the plural and vice versa and a cognate word expression shall have a corresponding meaning.
- A Party includes a reference to that Party’s successors in title and assigns allowed at law; and
- A reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last-mentioned clauses.
- Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this Clause 2 or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.

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- Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their English meaning.
- A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
- Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- If the due date for performance of any obligation in terms of this Agreement is a day which is not a business day, then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding business day.
- Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.

## 2. ENGAGEMENT FOR SERVICES

The Council hereby appoints the Consultant, which hereby accepts such appointment, as an independent Consultant, to render the services subject to the terms and conditions of this agreement.

Notwithstanding anything to the contrary, this agreement does not constitute an agreement of employment, partnership, joint venture or, save as expressly stated

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otherwise, agency between Council and the Consultant and shall not give rise to any relationship of employer and employee, master and servant, save as expressly stated otherwise. Accordingly, neither party shall have power to conclude a contract in the name of the other, to grant or pledge credit of the other, to incur liabilities on behalf of the other, or to employ any person on behalf of the other and neither party shall hold itself out to have such power or purport to exercise any such power.

### 3. DURATION

Notwithstanding the date of signature hereof, this agreement shall commence on the ..... **2024 and end 18 months after.**

### 4. OBLIGATIONS OF THE CONSULTANT

Notwithstanding the conditions set in Performance and Standard Outputs (Appendix A) attached hereon, the Consultant shall be expected to:

1. Analyse the report and prepare a Project Implementation Plan to resolve the identified issues.
2. Facilitate of the Project Implementation Plan
3. The Project Implementation Plan should include the Facilitation of the Engagement of the Community, Stakeholders and Affected Property Owners.
4. The implementation plan includes implementing legal aspects of the solutions which includes Title Deeds amendments, General Plan amendment. solutions have legal bearings, and the consultant must implement the solutions in line with the respect legal provisions. The consultant will be expected to implement the necessary documentation for purposes of undertaking legal implementation of the activities affected by the following laws:
  - The Human Settlements Authority Act, 1988
  - The Land Survey Act, 1961 and related regulations
  - The Sub-division of Land Act, 1957
  - The Town Planning Act, 1961
  - The Building Act, 1968 and related regulations
  - The Mbabane Town Planning Scheme, 2016
  - The Environmental Management Act (2012)

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- The Constitution (2005)
  - Any other relevant legislation.
5. Undertake and facilitate Affected Property Owners Engagement, Community Engagement and Stakeholder Consultation. During the assessment of the township, several challenges were highlighted, bringing forth the need to engage the resident. The Consultant will convene stakeholder meetings, including community meetings within the township (different meetings, for the different groups of residents per the impact of the encroachments onto their properties). Community engagements will be for the purpose of informing residents on the proposed changes to the General Plan, whilst allowing for submission and comments from residents. Comments should be formally recorded by the Consultants through minutes to be submitted to Council.
  6. Preparation and Submission of Human Settlements Application for the amendment of the General and preparation and submission of Consolidation and Subdivision Plans to the respective approval authorities.
    - a. The Project Implementation Plan must guide the Consultant with regards to Subdivision, Consolidations and Amendment of the General Plan. The Consultant is expected to gather and collect information for submission of the applications to subdivide, consolidate and for the amendment of the general plan of the township to the Human Settlements Authority. The submission of subdivision and consolidation plans as well as the amended General Plan should be approved by relevant authorities including the Human Settlement Authority and the Surveyor General. This requires land surveying services by registered professional land surveyors approved by the Surveyor General.
    - b. Upon approval of the Subdivision, Consolidation and Amendment of the General Plan the consultant is expected to facilitate in consultation with the affected property owners, the change of title deeds/99-year leases where necessary. This requires conveyancing services for the issuance of new Title Deeds/99-Year Leases.

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7. Facilitation and Implementation of the Declaration and Gazetting of Human Settlements. Upon meeting of all HSA application conditions, the Consultant will facilitate the declaration and Gazetting of the amendments of the township.
8. The consultant shall recognise that this brown field application is being prepared by the Municipal Council on behalf of the Government (Land Owner) and therefore the approach and methodology must be cognizant of the dynamics of developing in particular the installation of township infrastructure and disposing (allocation) of brownfield government land.
9. The Consultant shall analyse and consolidate data collection and prepare a comprehensive application to the Surveyor General with respect to Subdivision and Consolidation and further to the Human Settlement Authority through the Ministry of Housing and Urban Development.
10. The Consultant shall conduct technical meetings with Ministry of Housing and Urban Development officials to get more insight on the applications
11. The consultant shall represent the client and present the application to the approval authorities and to the stakeholders interested and affected by the project.

## 5. QUALITY OF CONTRACT PERSONNEL

- 5.1 All Personnel and Operations engaged and performed by the Consultant for the delivery of services sought by Council herein shall at all times have the relevant and appropriate experience.

## 6. FEES AND COSTS

- 6.1 As consideration for the Service to be provided by the Consultant in terms of this agreement, the Council shall pay the Consultant the sum of E\_\_\_\_\_
- 6.2 The Consultant shall be paid as follows:
  - i. 20% upon submission of Inception Report from Stakeholder Engagement Plan for both Environmental Assessment and Human Settlement Authority applications.

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- ii. 10% upon submission of Project Categorisation letter from Eswatini Environment Authority
- iii. 20% after upon submission of Environmental Assessment Report/Application to Eswatini Environment Authority.
- iv. 10% upon receiving written Approval of the Environmental Assessment from Eswatini Environment Authority.
- v. 20% upon submission of Application to Humans Settlements Authority.
- vi. 20% upon receiving written Approval of Township Layouts from the Human Settlements Authority.

**Note: Approval means once comments have been addressed by each level of authority being Management, Council and the Eswatini Environment Authority and the Human Settlement Authority.**

6.2. The Council undertakes to pay the Consultant the fees contained in this clause 6 within 30 days of receipt of an invoice issued after the services have been rendered as per the contract.

## **7. OBLIGATION OF COUNCIL**

7.1 Council undertakes to pay all valid claims for work done to Councils satisfaction and in compliance with all the requirements of this Service Level Agreement. Such claims shall be processed upon presentation of a substantiated claim/invoice to Council.

7.2 No payments will be made where Council is not satisfied with the work submitted; where there is outstanding information/work by the consultant or when there is a dispute of fact regarding the work being invoiced.

7.3 Council shall ensure that the consultant has access to all council documents that the consultant may need in order to undertake this exercise.

7.4 Council shall ensure that the consultant is introduced and provided with information for Local Community Committee's in order to have access to the relevant communities where the consultant shall be working.

## **8. WARRANTIES AND INDEMNITIES**

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- 8.1 The Consultant hereby warrants to the Council that it has the commercial and technical expertise to render the Services to the Council.
- 8.2 The Consultant hereby warrants to the Council that it is duly authorized and has obtained all necessary approvals to enter into this agreement.
- 8.3 The Consultant hereby warrants to the Council that any person(s) employed by it to execute the services in terms of this agreement will be qualified and suitable to perform the services and shall perform the services properly, diligently, promptly, efficiently and in compliance with the laws of the Kingdom of Eswatini, Council's requirements and standards.
- 8.4 The Consultant hereby indemnifies and holds the Council harmless against any claim of any nature relating to any aspect of this agreement or any other cause whatsoever that the Consultant or any of its employees, directors, holding company or subsidiaries, might institute against the Council.
- 8.5 Save as otherwise set out in this agreement, the Consultant hereby indemnifies and holds the Council harmless against loss, damage, costs and/or expenses which the Consultant may suffer or incur and any claim which may be brought against the Consultant by any third party in respect of any loss, liability, damage, costs and/or expenses of any wilful or negligent act or omissions on the part of the Consultant or any of its employees.

## **9 CONFIDENTIAL INFORMATION**

9.1 Each party shall:

9.1.1 Keep confidential the confidential information of the other party and use the same care to do so as it uses to protect its own confidential information; and

9.1.2 Not disclose or grant access to the other party's confidential information or any part thereof to any other person unless it is necessary to perform its obligations in terms of this agreement or laws of the Kingdom of Eswatini.

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9.2 The obligations set out in clause 8.1 shall not apply to any:

9.2.1 Confidential information which the receiving party can demonstrate is already in the public domain or becomes available to the public through no breach by the receiving party;

9.2.2 Confidential information which was rightfully in the receiving party's possession without obligation of confidence prior to receipt from the disclosing party, as proven by its written records;

9.2.3 Confidential information which can be proven to have been rightfully received by the receiving party from a third party without obligation of confidence;

9.2.4 Confidential information which is independently developed by the receiving party as proven by its written records;

9.2.5 Confidential information which is approved for release with the prior written consent of the disclosing party; and

9.2.6 Disclosure of confidential information which is required by law to be disclosed or must be disclosed in order to comply with a judicial order or decree, provided that the receiving party has (where reasonably possible) given the disclosing party written notice of such request such that the disclosing party has an opportunity to defend, limit or protect such disclosure.

9.3 The rights and obligations in terms of this clause 8 are divisible from the rest of this agreement, and shall remain of full force and effect, notwithstanding termination of this agreement for any reason whatsoever, and shall continue to be effective indefinitely without limit in time.

## 10 COPYRIGHT

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On final completion or termination of the Agreement and payment of all fees and disbursements payable to the Consultant, all designs, specifications and copyright will become the sole property of the Client.

## **11 INDEMNITY AND LIMITATION OF LIABILITY**

11.1 The Consultant shall accept liability for and indemnify and keep indemnified the Council from and against claims, losses, damages and expenses relating to injury to any persons or loss of or damage to any property which may arise out of any negligent or intentional act or omission by the Consultant in relation to this agreement and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof on in relation thereto.

11.2 The Contract shall provide a fidelity insurance cover against possible loss or damage. The Consultant shall provide a certificate of insurance to Council.

## **12 BREACH**

If either party commits a breach of its obligations in terms of this agreement, the party not in breach shall:

12.1 In respect of any material breach, in addition and without prejudice to its rights in law or under this agreement, including but not limited to its right to claim damages, be entitled to terminate this agreement forthwith on notice to the party in breach, if the breach is not remedied within 10 (ten) business days after receipt by the party in breach of a written notice requiring it to do so; and

12.2 In respect of any breach other than that referred to in clause 11.1, and without prejudice, be entitled to exercise all other remedies available to it in law which are consistent with this agreement remaining in force including the claiming of specific performance (in so far as permissible) and/or damages,

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if the party in breach fails to remedy the breach within 10 (ten) business days after receipt by it of written notice requiring it to remedy the breach.

### **13 TERMINATION**

13.1 Notwithstanding the provisions of clause 3 and clause 11, either party may terminate this agreement with immediate effect by written notice if the other party:

13.1.1 Ceases or threatens to cease operating its business as a going concern;

13.1.2 If a judicial management or a curator ship order is made against it;

13.1.3 If any resolution or petition is passed or made for its winding up (other than solely for the purposes of amalgamation or reconstruction); and

13.1.4 If a judicial manager or curator is appointed for any of its businesses, assets or undertakings.

13.1.5 Notwithstanding anything to the contrary, and notwithstanding the termination of this agreement or any part thereof for any reason whatsoever, the provisions of this agreement which expressly or by implication are intended to survive such termination, shall survive such termination and shall continue to be of full force and effect.

13.2 Termination of this agreement or any part thereof shall in no way affect the liability of either party to the other in respect of any amounts which are, at the date of such termination, due, owing and payable by either party to the other after the date of termination.

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13.3 In the event of termination of this agreement or any part thereof, any amount paid by either party to the other in respect of any obligation to be performed after the date of such termination and which will not be transferable as a result of such termination shall, within 20 (twenty) days after such termination, be repaid to the party that has made such payment.

13.4 If either party purports to terminate this agreement or part thereof or claims that this agreement or any part thereof has terminated for any reason whatsoever, and the other party for any reason whatsoever disputes such termination, then both parties shall, without prejudice to their respective rights in terms of this agreement in law, continue to perform all their respective obligations in terms of this agreement until such time that the dispute is finally determined.

## **14 FORCE MAJEURE**

14.1 Neither party shall be liable to the other for its failure to perform the defective performance nor any delay in performing any obligation in terms of this agreement in the event and to the extent that such failure or delay is caused by force majeure.

14.2 For the purposes of this agreement "force majeure" shall mean any circumstance beyond the reasonable control of the party giving notice of force majeure ("the affected party") including, but not limited to terrorism, revolution, invasion, insurrection, riot, civil commotion, mob violence, sabotage, blockade, embargo, boycott, the exercise of military or usurped power, fire, explosion, theft storm, flood, rain, draught, wind, lightning, or any other adverse weather condition, epidemic, quarantine, major accident, acts or restraints of government imposition, or restrictions or embargos on imports or export. The affected party shall give notice thereof to the party not so affected ("the other party") immediately upon the occurrence of an

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event of force majeure and again immediately on the cessation thereof.

14.3 If the event the force majeure is in such a nature that it will result in the impossibility of performance of an obligation going to the root of this agreement, the other party shall be entitled, on receipt of this notice of the force majeure event, to terminate this agreement upon notice to the affected party, but shall not be entitled to recover any damages which it may suffer as a result of such premature termination.

14.4 If the event of force majeure is of such a nature that it will not result in the impossibility of performance of the obligation in question, but will delay the performance thereof, then the affected party shall be entitled to such extension of time in which to perform that obligation as may be reasonable in the circumstances, taking into account the interests of both parties, provided that if such force majeure situation persists for a period in excess of 30 (thirty) days, the other party shall be entitled to terminate this agreement, but shall not be entitled to recover any damages which it may suffer as a result of such premature termination.

NB: Notwithstanding the provisions of clause 14.2, inability to meet a payment because of lack of funds shall in no circumstances be treated as an event of force majeure. Council cannot assist them in their request due to that Council does not prepare land surveying diagrams indicating extents of encroachments that can stand in the high courts. That is the competence of private land surveyors that are professionally registered and authorised by the Surveyor General to practice in the country in terms of the Land Survey Act. Refer the lawyers to the latest list of the professional land surveyors issued by SG.

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## 15. GENERAL

### 15.1 Communications

All notices, demands and other written communications under this agreement shall be in English.

### 15.2 Remedies

No remedy conferred by this agreement is intended to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise. Each remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, by statute or otherwise. The election of any 1 (one) or more remedy by either of the parties shall not constitute a waiver by such party of the right to pursue any other remedy.

### 15.3 Severance

If any provision of this agreement is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and the parties shall endeavour in good faith to agree to an alternative provision to the void, illegal or unenforceable provision.

### 15.4 Survival of rights, duties and obligations

Termination of this agreement for any cause shall not release a party from any liability which at the time of termination has already accrued to such party or which thereafter may accrue in respect of any act or omission prior to such termination.

### 15.5 Entire Agreement

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This agreement constitutes the entire agreement between the parties and, save as otherwise expressly provided, no modification, amendment or waiver of any of the provisions of this agreement shall be effective, unless made in writing specifically referring to this agreement and duly signed by or on behalf of the parties.

### **15.6 Assignment**

This agreement shall be binding to the parties and to their respective successors and assigns; provided that neither party shall be entitled to cede its rights and delegate its obligations under this agreement without the prior written consent of the other party.

### **15.7 Further Assurance**

Each party shall co-operate with the other party and execute and deliver to the other party such other instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and confirm its rights and the intended purpose of this agreement.

### **15.8 Good Faith**

Each of the parties undertakes with the other to do all things reasonably within its power, which are necessary or desirable to give effect to the spirit and intent of this agreement.

### **15.9 Jurisdiction**

This agreement shall be governed by and construed in accordance with the laws of the Kingdom of Eswatini.

### **15.10**

In the event of proceedings arising out of or in connection with this agreement being instituted in the ordinary courts of law, such proceedings shall be instituted in the High Court and the parties' consent to the jurisdiction of the Magistrates Court for the District of Hhohho.

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## 16. Addresses

16.1 The parties choose for the purposes of this agreement the following postal and email addresses:

### *MUNICIPAL COUNCIL OF MBABANE:*

**Physical address** : Civic Offices, 1 Mahlokohla Street

**Postal Address** : P.O. Box 1, Mbabane, H100

**Email Address** : [infor@mbabane.org.sz](mailto:infor@mbabane.org.sz)

### *Details of Service Provider:*

**Physical Address** :

**Postal Address** :

**Email Address** :

16.1 Any legal process to be served on either of the parties may be served on it at the address specified for it in clause 15.1 and it chooses that address as its domicile citandi et executandi for all purposes under this agreement.

16.2 Any notice or other communication to be given to either of the parties in terms of this agreement shall be valid and effective only if it is given in writing, provided that any notice given by telefax shall be regarded for this purpose as having been given in writing.

16.3 A notice to either party which is sent by registered post in a correctly addressed envelope to the address specified for it in clause 15.1 shall be deemed to have been received (unless the contrary is proved) within 5 (five) business days from the date it was posted, or which it is delivered to the party by hand at that address shall be deemed to have been received on the day of delivery, provided it was delivered to a responsible person during ordinary business hours.

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16.4 Notwithstanding anything to the contrary in this clause 15, a written notice or other communication actually received by either the Council's designated Representative or the Consultant 's Representative, as the case may be, (and for which written receipt has been obtained) shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.

16.5 Either party may by written notice to the other party change its address for the purposes of clause 15.1 to any other address (other than a post office box number) provided that the change shall become effective on the 5<sup>th</sup> (fifth) business day after the receipt of the notice.

**17. COSTS**

Any costs, including attorney and own clients costs, incurred by either party arising out of the other party breaching any of the provisions of this agreement, shall be borne by the party in breach.

**THUS DONE AND SIGNED BY THE COUNCIL AT ..... ON  
THIS..... DAY OF ..... 2024**

**AS WITNESSES:**

1 .....

.....

**For and on behalf of Council**

2 .....

**THUS DONE AND SIGNED BY THE CONSULTANT AT..... ON  
THIS ..... DAY OF..... 2024**

**AS WITNESSES:**

1 .....

.....

**For and on behalf of Consultant**

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## APPENDIX A.

### PERFORMANCE AND STANDARD OUTPUT

DESIRED OUTCOMES	PERFORMANCE STANDARDS	MEASUREMENT TOOLS	TIMELINES/DUE DATES
<b>Contract Signing and Inception report</b>	Appointment Letter  Signing of Service Level Agreement (SLA)  Meeting and Presentation of the Inception Report to Management of Council	Appointment letter  Signed SLA  Approval of the Inception Report by Council after Incorporation of Comments	Month One after appointment
<b>Stakeholder Engagement Plan</b>	Meeting and Presentation of the Project Implementation Plan and Stakeholder Engagement Plan to Management of Council	Approval of the Project Implementation Plan and Stakeholder Engagement Plan Report by Council after Incorporation of Comments	Month Four after appointment
<b>Reports</b>	Submission of Reports of the Project Implementation Plan	Approval of the reports by MCM	Month Eighteen after appointment

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## DECLARATION OF ELIGIBILITY

[The Consultancy firm must provide a signed declaration on its company letterhead in the following format. If the Proposal is being presented by a joint venture or consortium all members must each sign their own declaration.]

[>>>Name of Consultancy firm, Address, and Date>>>]

To: The Chief Executive Officer  
Municipal Council of Mbabane  
Mahlokohla street  
P.O. Box 1, Mbabane

Dear Sirs,

### RE: TENDER NUMBER:

We hereby declare that:-

- a) I/We, including any joint venture partners or consortium partners, are a legal entity and have the legal capacity to enter into the contract;
- b) I/We are not insolvent, in receivership, bankrupt or being wound up, our affairs are not being administered by a court or a judicial officer, our business activities have not been suspended, and we are not the subject of legal proceedings for any of the foregoing;
- c) I/We have fulfilled our obligations to pay taxes and social security contributions;
- d) I/We have not, and our directors or officers have not, been convicted of any criminal offence related to our/their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a contract within a period of five years preceding the commencement of the procurement proceedings; and
- e) I/We do not have a conflict of interest in relation to the procurement requirement.
- f) I/We do not have any of its directors or officers, have not been convicted of any criminal offence relating to professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of five years preceding the commencement of procurement proceedings;
- g) I/We are not subject to suspension in accordance with section 55, and none of its directors or officers have been involved in a tenderer or supplier currently subject to suspension.

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Signed .....  
Authorised Representative

Date .....

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**PERFORMANCE SECURITY FORM**

To: Municipal Council of Mbabane

**WHEREAS** ..... hereinafter called the Supplier has undertaken, in pursuance of Contract No..... dated.....2024 to supply

.....

..... (Description of Goods and Services) hereinafter called the Contract.

**AND WHEREAS** it has been stipulated by you in the said Contract that the Supplier shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with the Supplier’s performance obligations in accordance with the Contract.

**AND WHEREAS** we have agreed to give the Supplier a Guarantee:

**THEREFORE WE** hereby affirm that we are Guarantors and responsible to you, on behalf of the Supplier, up to a total of ..... (Amount of the Guarantee in Words and Figures) and we undertake to pay you, upon your first written demand declaring the Supplier to be in default under the Contract and without cavil or argument, any sum or sums within the limit of ..... (Amount of Guarantee) as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

The guarantee is valid until the expiration of the period of guarantee on the goods and services supplied.

Signature and Seal of Guarantors.....  
.....  
.....

Date .....  
Address.....  
.....  
.....

## TENDER FORM

Date.....2024

Contract No 9 of 2024

TO: Municipal Council of Mbabane  
Civic Offices  
Mahlokohla Street  
PO Box 1  
Mbabane

Gentlemen:

Having examined the Tender Documents including Addenda Nos....., the receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply and deliver .....  
.....(description of Goods and Services) in conformity with the said Tender Documents for the sum of.....  
.....(Total Tender Amount in Words and Figures) or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this tender.

We undertake, if our tender is accepted, to commence delivery within .....(Number) days and to complete delivery of all the items specified in the Contract within ..... (Number) days calculated from the date of receipt of your Notification of Award.

If our tender is accepted we will obtain the guarantee of a bank in a sum not exceeding 10% of the Contract Price for the due performance of the Contract.

We agree to adhere by this tender for a period of 90 days from the date fixed for tender opening under Clause 22 of the Instruction of Tenderers and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

Until a formal contract is prepared and executed, this tender, together with your written acceptance thereof and your notification of award, shall constitute a binding contract between us.

We understand that **you may accept one or more items from our tender** and that you are not bound to accept the lowest or any tender you may receive.

Dated this.....day of.....2024..

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Signature:.....

(In the Capacity of):.....

Duly Authorized to sign tender for and on behalf of.....

**TENDER SECURITY FORM**

Whereas.....

....  
(hereinafter called the Tenderer) has submitted its tender dated.....2024.....for the supply and delivery of ..... (hereinafter called the Tender) by these presents that WE ..... of ..... having our registered office at .....(hereinafter called the Bank) are bound unto the Municipal Council of Mbabane (hereinafter called>the Purchaser) in the sum of ..... for which payment well and truly to be made to the said Purchaser, the Bank binds itself, its successors and assigns by these presents. Sealed with the Common Seal of the said bank this ..... day of .....,.....2024

THE CONDITIONS of this obligation are:

- 1. If the Tenderer withdraws its Tender during the period of tender validity specified by the Tenderer on the Tender Form; or
- 2. If the Tenderer, having been notified of the acceptance of its tender by the Purchaser during the period of tender 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 Instruction to Tenderers;

we undertake to pay the Purchaser up to the above amount upon receipt of its first written demand, without the Purchaser having to substantiate its demand, provided that in its demand the Purchaser will note that the amount claimed by it is due 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 the tender validity, and any demand in respect thereof should reach the Bank not later than the above date.

.....  
(Signature of the Bank)

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