Developing
Public-Private Partnerships
in Local Infrastructure and
Development Projects

A PPP MANUAL FOR LGUs | 3

Utilizing LGU PPP Project Templates and Bid Documents

VOLUME THREE

3

A PPP Manual for LGUs:
Utilizing LGU PPP Project Templates and Bid Documents

3

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By virtue of Executive Order No. 8, s 2010, the PPP Center is mandated to be the overall facilitator and catalyst of the Philippine PPP Program, in the pursuit and delivery of PPP projects. Through its functional units, namely, Project Development Service (PDS); Project Development and Monitoring Facility Service (PDMFS); Legal Service (LS); Policy Formulation, Evaluation and Monitoring Service (PFEMS); and Capacity Building and Knowledge Management Service (CBKMS), the PPP Center champions the Philippine PPP Program and provides technical assistance and advisory support to implementing agencies and local governments, thereby enabling and capacitating them in all aspects of PPP project development and implementation.

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A PPP Manual for LGUs
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Preface

The Manual is composed of three volumes.

Volume 1 - UNDERSTANDING PPP CONCEPTS AND FRAMEWORK - intends to familiarize the reader with the basic concepts and framework relevant to public-private partnerships in the Philippines.

Volume 2 - DEVELOPING PPP PROJECTS FOR LOCAL GOVERNMENT UNITS - intends to help LGUs understand the processes involved in a PPP venture. More specifically, it aims to make LGUs better understand the legal requisites and the procedural requirements, and the due-diligence analysis as they venture into PPPs for their development projects and elaborates on the steps and processes that LGUs can use to structure PPPs.

Volume 3 - UTILIZING LGU PPP PROJECT TEMPLATES AND BID DOCUMENTS - intends to clarify the concepts and tools presented in the first two volumes by providing templates based on projects that have been successfully implemented by the LGUs for PPP.

This volume is the third in this three-part Manual series.

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List of Acronyms

ACS	Any Convenient Scale
AISC	American Institute of Steel Construction
ANSI	American National Standards Institute
ASHRAE	American Society of Heating, Refrigerating and Air-Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
ATC	Authority to Construct
BCR or B/C ratio	Benefit-Cost Ratio
BLT	Build-Lease-and-Transfer
BOD	Biochemical Oxygen Demand
BOO	Build-Own-and-Operate
BOT	Build-Operate-and-Transfer
BSP	Bangko Sentral ng Pilipinas
BT	Build-and-Transfer
BTO	Build-Transfer-and-Operate
CAO	Contract-Add-and-Operate
CDC	City Development Council
CDP	Comprehensive Development Plan
CI	Contract of Implementation
CLUP	Comprehensive Land Use Plan
D/E	Debt-equity
DENR	Department of Environment and Natural Resources
DOT	Develop-Operate-and-Transfer
DPWH	Department of Public Works and Highways
ECC	Environmental Compliance Certificate
EDP	Electronic Data Processing
EIRR	Economic Internal Rate of Return
EIS	Environmental Impact Statement
EMB	Environmental Management Bureau
ENPV	Economic Net Present Value
FS	Feasibility Study
FIRR	Financial Internal Rate of Return
GAC	Government Administrative Center
GSIS	Government Service Insurance System
HLURB	Housing and Land Use Regulatory Board
ICC	Investment Coordination Committee
IRR	Internal Rate of Return
IRR	Implementing Rules and Regulations
IES	Integrated Electrical Services
LGIF	Local Government Infrastructure Fund
LGU	Local Government Unit
LLDA	Laguna Lake Development Authority
LWUA	Local Water Utilities Administration
NAPOCOR	National Power Corporation
NCI	Notice to Commence Implementation
NEMA	National Electrical Manufacturers Association
NOA	Notice of Award
NPV	Net Present Value
NTS	Not to Scale
NWRB	National Water Resources Board
O&M	Operations and Maintenance
PD	Presidential Decree
PBAC	Pre-qualification Bids and Award Committee
PPP	Public-Private Partnership
PSME	Philippine Society of Mechanical Engineers
PTO	Permit to Operate
RA	Republic Act
ROO	Rehabilitate-Own-and-Operate
ROR	Rate of Return
ROT	Rehabilitate-Operate-and-Transfer
ROW	Right of Way
SDR	Social Discount Rate
SEC	Securities and Exchange Commission
SMACNA	Sheet Metal and Air-Conditioning Contractor's National Association
STP	Sewerage Treatment Plant
UAP	United Architects of the Philippines
VAT	Value-Added Tax
WACC	Weighted Average Cost of Capital

Message from the President

MALACAÑAN PALACE
MANILA

Local governments play a necessary role in realizing our nation's development agenda. Their success, specifically in the implementation of their various infrastructure projects, is a testament to the evolving maturity of their leadership and the committed level of their involvement to realize projects that spur progress for the country. Local governments are in a better position to determine the kind of infrastructure projects that would prove beneficial to their constituents and to the local economy. These decisions are reached through a consultative approach that is the hallmark of a working democracy.

Public-private partnerships done at the local level has an encouraging rate of success. Limited funding, when proficiently allocated to technical expertise and appropriate resources, results in a faster and more efficient delivery of projects.

This Manual on Public-Private Partnerships for LGUs provides a systematic framework to help our local governments achieve what they have envisioned for their constituencies. Indeed, this framework will help stakeholders to navigate PPP requirements and orient them on the procedures of project management, thus assuring both the investors and the public that these partnerships will conform to the principles of transparency, accountability, and good governance that are the underlying foundations of our Social Contract with the Filipino People.

Let us continue working together to sustain this momentum of development and reap the fruits of this era of daylight and reform.

BENIGNO S. AQUINO III

MANILA
March 2012

Message from the Secretary of Socio-Economic Planning and Director-General of NEDA

NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY
PASIG CITY

The Public-Private Partnership (PPP) program has been adopted by the country as an important strategy to accelerate growth in the infrastructure industry. This, coupled with a strong business climate and good governance, has increased investor confidence in the Philippines as international financial institutions and foreign investors express renewed interest to bring their businesses to our shores.

This optimistic investor confidence, in turn, translates to increases in investments, production, consumption and growth. With the Philippine economy in the upturn, we can expect a 5.0 to 6.0 percent growth rate for this year.

It is time to act swiftly and boldly to take advantage of these gains. I encourage our local governments to ramp its local infrastructure projects through the PPP scheme and take advantage of what this arrangement has to offer, thereby creaeting more jobs and improving the quality of life of the Filipino.

This manual on Public-Private Partnerships for Local Government Units (LGUs) is envisioned as a tool that should guide its users among local governments in developing infrastructure projects using PPP processes. The Manual contains a concise methodology of developing projects under the PPP scheme, offering instruction in all aspects of project development and management.

Let this Manual direct you into creating well-prepared PPP projects that are founded upon the principles of sustainability, precision and transparency.

The infrastructure projects that emerge from this initiative will be your legacy to the Filipino people to whom you have vowed to serve with commitment and integrity.

CAYETANO W. PADERANGA JR.

Message from the PPP Center Executive Director

PUBLIC-PRIVATE PARTNERSHIP CENTER
QUEZON CITY

It is with great pride that the Public-Private Partnership Center (PPP Center) presents the Developing Public-Private Partnerships in Local Infrastructure and Development Projects: A PPP Manual for LGUs (LGU PPP Manual).

As part of our continuing role of capacitating government agencies in engaging in PPP projects, the LGU PPP Manual is seen to be a salient tool in increasing local government units' level of awareness and capacity in project identification, selection, preparation, and implementation.

The three volumes of the LGU PPP Manual intend to capacitate the readers with the basic concepts and framework relevant to public-private partnerships in the Philippines; help LGUs understand the processes involved in a PPP venture; and clarify PPP concepts and tools by providing examples of projects that have been successfully implemented by LGUs.

We, at the PPP Center, encourage all local governments – their local chief executives and project officers to maximize the use of this LGU PPP Manual. This serves as means to optimize their expertise on the PPP process in pursuit of delivering government's share in achieving inclusive growth.

COSETTE V. CANILAO

Introduction

The Volume intends to clarify the concepts and tools presented in the first two volumes by providing templates based on projects that have been successfully implemented by LGUs for PPP and to serve as ready reference for users of this Manual.

Three (3) sample projects for PPP arrangements are featured in this Volume:

a. Shopping Center and Public Market
b. Government Administrative Center
c. Water Supply System

The discussions focus on providing details on four (4) features of each of these sample projects:

a. Feasibility Study
b. Financial and Economic Model
c. Draft Contracts
d. Project Perspective and Floor Plans

The Volume provides detailed elaboration on the contents of a Feasibility Study to guide LGUs who are interested in pursuing a PPP venture. Under each sample project, instructions are provided on how to generate the sections of the FS. Sample PPP Contracts are also provided to guide LGUs in the drafting of their respective contractual arrangements with potential private sector investor partners.

The final section of this Volume is devoted to LGUs bidding documents, and provides examples of Instructions to Bidders, Draft PPP Contracts and standardized Bid Forms.

LGU SHOPPING CENTER AND PUBLIC MARKET

LGU SHOPPING CENTER AND PUBLIC MARKET

Feasibility Study

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Shopping Center and Public Market Perspective and Floor Plans

Feasibility Study

A1. PROJECT DESCRIPTION

This section is derived from the technical analysis done for a project. Concepts and procedures on Technical Analysis are provided in Volume 2.

Name of Project	:	Shopping Center and Public Market
Land Area	:	Approximately 1.0- 1.5 hectares
LGU Implementor	:	Chartered City or first class LGU
Private Investor	:	Name of the Company

The project will have three components: a commercial shopping center building (which is mainly of interest to the investor), a public market (which is mainly of interest to the LGU), and a parking lot and open spaces (needed to support both).

The **shopping center complex** will be the main revenue source for the PPP proponent. As such, this facility must be able to attract a large number of customers. There should be "crowd drawers" such as cinemas, recreational and amusement facilities. Hence, the project proponent is expected to pay great attention to this aspect in its market study. The LGU can provide information, but cannot substitute for good judgment on the part of the project proponent.

The **public market** is the incentive for the LGU to enter into a PPP arrangement with the private sector. The size and condition of a public market is a source of community pride and often reflects of the prosperity of a specific LGU.

Listed below are conceptual plans that show the layout of the facilities. Figures 3-1 to 3-6 can be seen on pages 66 to 75.

Conceptual Plan:

- Perspective — Figure 3-1
- Site Plan — Figure 3-2
- Floor Plan
  - Market — Figure 3-3
  - Shopping Center — Figure 3-4
- Sections
  - Market — Figure 3-5
  - Shopping — Figure 3-6

A 1.1 Physical Description of the Facility

A 1.1.1 Shopping Center

The sample commercial building has six levels (five upper ground plus one lower ground).

Total floor area would be 11,650 square meters. A breakdown of the total area by level is shown in Tables 3-2 (Shopping Center Floor Area) and 3-3 (Public Market Floor Area) in Section A1.6. Any development below ground level should be avoided as it is more expensive to develop and would adversely affect the financial viability of the project.

The proposed entertainment and recreational facilities are on the upper levels. The ground and middle floors contain a variety of shops, boutiques, and banks that will cater to a wide customer base.

The lower ground area contains the food center and a small supermarket. A conveniently located food center offering a wide variety of meals is an important feature of the shopping center because it tends to attract many customers.

A 1.1.2 Public Market

The public market component of this sample PPP project has a total floor area of 1,758 square meters, divided into two levels. Table 3-3 in Section A1.6 shows the public market floor area distribution. The ground level with an area of 784 square meters contains the wet and semi-wet sections of the market. The second level with an area of 784 square meters houses the *carinderia* (food stalls) section. All sections are patterned after the LGIF standard module, with some revisions on the second level.

Although the optimal number of stalls per section can only be determined after conducting a consumer survey, the wet and semi-wet sections contain 30-35 stalls each and the *carinderia* contains 10-15 stalls, as shown in Table 3-3. It is also assumed here that the LGU will need only one wet and one semi-dry section.

The dry goods section of the public market was intentionally omitted to avoid competition with the supermarket in the shopping center.

A 1.1.3 Parking Lot and Open Spaces

Open space is an optional yet important feature of the sample complex, as it will be used for vehicle circulation and parking. Although development of open parking spaces will result in additional capital investment for the PPP proponent, this option is still cheaper than others, such as basement or elevated parking. A parking area is essential for the commercial shopping center.

The total open space available for this sample project is 10,500 square meters, 3,500 square meters (or 35 percent) of which can accommodate 200 vehicles. The remaining 7,000 square meters will be reserved for driveways, sidewalks and green area (landscaping). The STP required for a project of this size can be located under the parking spaces.

A 1.2 Service Area

The service area should be determined by conducting a consumer survey, focusing on the consumer's place of residence, occupation, and consumption preferences and patterns. Proximity to competing markets will also determine the size of the service area.

The specifications of the service area of a shopping center are very difficult to establish without being site specific. Generally, larger service areas and populations translate into higher profits for the proponent. Since the target LGU is a city or a well-developed LGU, population is estimated at a minimum of 100,000 persons.

Important Factors Determining Service Area:

- Population Density
- Competition
- Pedestrian Count

These factors are described as follows.

A 1.2.1 Population density

To support a shopping center of the scale presented in this sample project, there should be a population density of 1,000 persons per square kilometer and a market population of 100,000 within a 45 minute trip.

A 1.2.2 Pedestrian Count

The pedestrian count - measured by the total number of pedestrians passing beside or near the proposed site per hour - represents the potential pool of customers. High pedestrian counts are often correlated with the number of major public transportation routes nearby.

A 1.2.3 Site Selection

The site for the public market/shopping center must be flat, free from flooding, and accessible to both public and private vehicles. Preference is given to sites located along public transportation routes. The property should be between one to one and one half hectares and must be owned by the LGU.

A 1.3 Estimated Project Cost

The estimated cost of this sample PPP project is about PhP402,524,080 million, excluding land. The breakdown of this cost is presented in Table 3-1.

Table 3-1: Shopping Center/Market Project Costs, 2011 (in Pesos)

Item	Unit Cost	Total Cost
1. Site Works		
• Earthworks	1,658,840	
• Pavement Works	7,480,600	
• Drainage System	904,000	
• Landscaping and Lighting 524x2,000	2,368,480	
• Ancillary Work	565,000	
Total Site Works		**PhP 12,976,920**
Structures		
Market Building	40,745,540	
Shopping Mall	281,512,380	
Well and storage tank	2,599,000	
Sewage Treatment Plan	3,430,680	
Total Structures		**PhP 328,287,600**
Equipment		
Escalator 1.6x5x2	18,080,000	
Elevator (Freight)	12,430,000	
Common Air-conditioning	24,798,980	
Standby Generator	5,950,580	
Total Equipment		**PhP 61,259,560**
Total Project Cost		**PhP 402,524,080**

A 1.4 Project Implementation Schemes

Two possible BOT variants may be used for the shopping center in combination with a BT arrangement for the public market.

- Build-Operate-and-Transfer
- Build-Transfer-and-Operate

In either case, the project proponent will operate only the shopping center and parking lot and open spaces. The public market will be transferred to the LGU for operation under the BT arrangement.

A 1.5 Project Financing

Under either scheme, the private sector proponent is responsible for raising capital for the construction of the entire complex, including all miscellaneous expenses that may be incurred as a result of this project. The LGU's main contribution to this partnership is the land on which the complex is built.

A 1.6 Sources of Revenue

Rentable units in both the shopping center and the public market will be the main source of revenue for the project.

A 1.6.1 Shopping Center

For this conceptual design, total rentable space for the shopping center is about 9,858 square meters or 85 percent of the total building floor area. Since revenue will be generated by rentals, the greater the rentable space, the more income the project will generate. However, renting only 85 percent of the total floor area will allow for the most comfortable flow of people and goods. The rentable area by level and approximate number of stalls is presented in Table 3-2.

Table 3-2: Shopping Center Floor Area

Floor Level	Total Area (sq.m.)	Rentable Area (sq.m.)	Number of Stalls
Lower Ground	1,840	1,390	open area intended for food center
Ground Floor	1,840	1,390	and grocery/supermarket
Second Level	2,164	1,942	90- 100
Third	2,164	1,942	90- 100
Fourth	2,164	1,942	90- 100
Fifth	1,478	1,252	open space, intended for cinemas and amusement centers
All Levels	11,650	9,858	

A 1.6.2 Public Market

For optimal consumer circulation and movement of merchandise, rentable space is computed at 60 percent of total floor area.

Table 3-3: Public Market Floor Area (in square meters)

Facility	Floor Area	Rentable Area	No. of Stalls
First Level:	**784**	**470**	
Wet Section	392	235	30-35
Semi-Wet Section	392	235	30-35
Second Level:	**784**	**470**	
Carinderia	784	470	10-15
Total	**1,468**	**940**	**70-95**

A 1.7 Performance Standards/Specifications

The shopping center complex will have the general specifications shown in Table 3-4.

Table 3-4: Shopping Center and Public Market Complex General Specifications

Public Market	Shopping Center	Open Spaces
• Individual light meters • Stainless steel counters • Individual water meters for wet section • Common light and water meters for service areas • Tiled flooring wherever applicable • Ventilation • Clean toilets • Separate delivery area • 24 hour security • Water system • Emergency generator	• Fully air-conditioned • Escalators • Freight elevators • Skylight atrium • 24 hour security • Emergency generator • Auxiliary water supply system	• Cemented parking and circulation areas • Parking space for 200 cars • Sewerage treatment plant below ground • Guarded parking spaces • Well lighted parking • Green area • Easement to accommodate loading and unloading from public utility vehicles

A2. PROJECT JUSTIFICATION

This section is derived from the market study done for a project. Concepts and procedures are provided in Volume 2.

The commercial building will be the main revenue source for the PPP proponent. As such, this facility must be able to attract a large number of customers. There should be "crowd drawers" such as cinemas, recreational and amusement facilities.

Note: The Project Proponent is expected to pay great attention to this point in its market study. The LGU can provide information, but cannot substitute for good judgment on the part of the Project Proponent.

The public market is the incentive for the LGU to enter into a BOT arrangement with the private sector. The size and condition of a public market is a source of community pride and often reflects of the prosperity of a specific LGU.

A3. PRECONDITIONS FOR SUCCESSFUL TENDER

This section is derived from the market study done for a project. Concepts and procedures are provided in Volume 2.

What LGUs need to know:

There are five preconditions for successful tender which the LGU must meet or demonstrate in order to attract private investors.

Five Preconditions

- Existence of an Available Site
- Local Support
- Adequate Consumer Base to Support a Shopping Center
- Absence of Competition from other Centers
- Favorable Market Conditions

These preconditions are described below.

A 3.1 Available Site

It is an absolute requirement that the project site be wholly owned by the LGU. If the ideal site identified is privately owned, the LGU must acquire the property, adding both time and costs to the project's implementation.

A 3.2 Local Support

The LGU must demonstrate full support to ensure the success of the project, bearing in mind that both the PPP proponent and the LGU benefit from the project's success. Examples of LGU support for the project are:

- *Sanggunian* resolution endorsing the project or appropriating funds to acquire the land, if the site is privately owned
- Protective laws prohibiting the development of a competitive shopping center, within three years for example, to ensure full occupancy
- Tax incentives, such as deferral of real property and business taxes
- Assisting the proponent in securing the necessary documents, permits, and endorsements from local as well as national agencies prior to construction
- Reclassification of land, if necessary, to increase the size of a commercial area

A 3.3 Adequate Consumer Base for the Shopping Center

Without a large market area the retail and entertainment components of this sample project will not be attractive to private investors. A market of 100,000 persons within a 45 minute trip has been estimated to be satisfactory population threshold.

A 3.4 Absence of Competitive Commercial Complexes

A corollary to the large market area requirement is that the community be relatively free of competing shopping centers.

A 3.5 Favorable Market Conditions

Success in finding a developer to provide a public facility at no cost to the LGU will require favorable market conditions. The indicators listed below are considered to be typical and have been used for the financial analysis contained in Sub-section A5. Since these indicators vary from locality to locality, each LGU must closely assess its own local conditions when determining financial feasibility.

Market Indicators

- Rental of commercial space/m2 P450/month
- Rate of population/household increase 10%/year

A4. ENVIRONMENTAL AND SOCIAL ANALYSIS

This section is derived from the Environmental Assessment and Social Impact Analysis done for a project. Concepts and procedures are provided in Volume 2.

What LGUs need to know:

Environmentally non-critical projects such as public markets and shopping centers are unlikely to pose any major adverse threat to the environment. The process of obtaining a permit is simple. One requirement is the location clearance which can be obtained from the HLURB.

The application for the location clearance specifies the location and scale of the proposed project. The clearance forms part of the Project Description which the project proponent needs to submit to the Regional Office of the DENR for its application for an ECC.

A project description describes in qualitative terms the potential environmental effects of the project at all stages. A matrix which describes the different aspects of the environment serves as a guide in determining the likely environmental impacts (Refer to Volume 2).

Once the ECC is obtained, the project proponent prepares its final engineering designs, submits them to DENR, and applies for an ATC. Now implementation of the project can begin. Upon completion of the facility, an inspector from DENR verifies that all environmental protection measures are in place. DENR issues a PTO which must be renewed annually.

Table 3-5: Process for obtaining an Environmental Clearance from DENR

Party Responsible	Requirement	Tools	Goal
LGU	Location Clearance	Location Clearance Checklist (See Volume 2)	HLURB/Office of Local Chief Executive issue Location Clearance
LGU Proponent	Project Description	Annotated Project Description including (A) Environmental Assessment Checklist and (B) Socio-Economic Cultural Impact Assessment Clearance (See Volume 2)	DENR Regional Office issues the ECC
Proponent	Final Design	(Engineering Drawings proposed by project proponent)	DENR issues Authority to Construct
Proponent	Constructs Facility		DENR inspects facility and issues Permit to Operate
Proponent	Operates PPP Facility		DENR annually inspects and issues Permit to Operate

Some of the issues to be addressed when applying for the DENR clearance are:

- Solid Waste
- Wastewater
- Public Health
- Odor
- Traffic

A 4.1 Solid Waste

Solid waste is one of the major problems associated with public markets either in a rural or urban setting. The LGU must be able to demonstrate that the additional solid waste generated by the project will be disposed of properly.

A 4.2 Waste water

Waste water services in a shopping center include restrooms, shops, food areas, restaurants and the public market. Wet stalls, semi-wet stalls and carinderia or eateries contribute to the majority of the waste water from the market. High Biochemical Oxygen Demand comes from unconsumed food. Cleaning operations in the meat, poultry and fish sections also contribute to waste water. As with solid waste, the LGU must demonstrate that sufficient drainage exists to handle the additional waste water generated by the project.

A 4.3 Public Health

Rodents, flies and other pests, in addition to the pathogenic bacteria that thrive in damp and unsanitary conditions, are common public problems associated with this type of project. Eateries add to the public health threat since epidemiological problems could arise from unsanitary conditions. In addition, both solid and liquid waste from restaurants and kitchens could accumulate as a result of improper or inadequate disposal. This issue is related to the previous two problems mentioned. The LGU must demonstrate that adequate provisions and monitoring will be undertaken.

A 4.4 Odor

Odor is one of the nuisances of public markets, particularly if the markets are not well maintained and operated. The LGU must demonstrate adequate provision for maintenance and monitoring.

A **4.5 Traffic**

Public markets located in the center of a town often create traffic jams, especially during peak hours. The LGU must ensure that the facility will not create a congestion problem.

The LGU must properly plan the locality's transportation and infrastructure needs to ensure that the increased demands on such services are met. Zoning plans and corresponding ordinances must be reviewed and updated in the light of new developments in the locality.

Good traffic management and enforcement should alleviate problems of traffic congestion. A system of one-way streets, designated waiting areas, and loading/unloading stops for jeepneys and tricycles are some of the ways of accomplishing this goal.

Financial Model

A5. FINANCIAL ANALYSIS

This section is derived from the Financial Analysis done for a project. Concepts and procedures are provided in Volume 2.

This section presents the results of the financial analysis of the proposed Shopping Center and Public Market Project. The analysis aims to determine the financial viability of the project under a given set of assumptions. The assumptions are shown in Table 3-6 in the next page (Assumptions for the Public Market).

A 5.1 Financial Indicators of Viability

The financial analysis is based on calculations of standard viability indicators.

Standard Viability Indicators

- Financial Internal Rate of Return (FIRR)
- Weighted Average Cost of Capital (WACC)
- Internal Rate of Return on Equity (IRR Equity)
- Net Present Value on Project (NPV)
- Net Present Value on Equity, after financing (NPV Equity)
- Payback Period, after tax

The FIRR and the NPV are measures of the financial feasibility of the project. The WACC is a benchmark used to evaluate the profitability of the proposed investment against alternative investment opportunities. The FIRR should be at least as high as the WACC in order for the project to be considered feasible.

The IRR on Equity and the NPV on Equity are of particular interest to the proponent since they are measures of the return of proponent's equity. This value helps the proponent to determine the optimum combination of debt and personal equity investment. The payback period after tax helps the LGU and the proponent determine whether any tax incentives are necessary.

Table 3-6: Assumptions for the Public Market

Revenue		**Comments**
Rental Space – Ground floor	1,390	Square meter
Rental Space – Other floors	8,468	Square meter
Rent – Ground Floor	600	Pesos/square meter/month
Rent – Other Floors	500	Pesos/square meter/month
Annual Increase in Rent Fee	5%	
Annual Expenses		
Months in Operation	12	Monthly Personnel
Security	180,000	Calculation: 6,000 x 30
Janitorial	72,000	Calculation: 4,000 x 18
Increase in Expenses	5%	
O&M	67,200	Calculation: _____ 2 Managers
Administration	67,200	_____ 2 Staff
Equipment Maintenance	11,200	
Utilities	34,120	
Supplies	11,200	
Depreciation, Building	173.44	Straight-line, 20 years
Depreciation, Equipment	36.42	
Income Tax Rate	30%	
Project Cost	402,524,080	
Capitalized Interest	34,502,06	
Land Acquisition	0	
Site Works	12,976,920	
Sewer Plant, Well and	46,029,680	% Increase in Public Market
Storage Tank	40,745,540	0.00%
Market	281,512,380	
Commercial Center	61,259,560	
Equipment	20	
Project life in years		

A5.2 Calculation of Financial Viability

To calculate financial viability, the financial performance of the project is calculated over a 20 year period. All currency is in 2011 prices. Year 0 is the beginning of construction and year one is the first year of operations. An Income Statement and a Cash Flow Statement (Table 3-8) are shown for the 20 year period.

A5.3 Financing Conditions

Different debt/equity ratios and financing terms are possible. The financial assumptions are shown below:

Financing Conditions

- Debt : 60% of cost including capitalized interest
- Equity : 40% of cost
- Repayment Period : Seven years, one year grace period on principal. Interest is capitalized in the first year
- Interest Rate : 9% per Annum

The debt service schedule is shown in Table 3-7. Loan proceeds are obtained at the beginning of the year and interest payments are due at the end of the year.

Table 3-7 Debt Service Schedule

Annual debt service payments for LGU Shopping Center and Public Market (PhP million)				
Year	**Principal repayment**	**Interest payment**	**Total debt service**	**Principal outstanding**
2013	-	21,736,300	21,736,300	241,514,448
2014	34,502,064	19,407,411	53,909,475	207,012,384
2015	34,502,064	16,302,225	50,804,289	172,510,320
2016	34,502,064	13,197,039	47,699,103	138,008,256
2017	34,502,064	10,091,854	44,593,918	103,506,192
2018	34,502,064	6,986,668	41,488,732	69,004,128
2019	34,502,064	3,881,482	38,383,546	34,502,064
2020	34,502,064	776,296	35,278,360	-

Table 3-8: : Income Statement, Cash Flow and Balance Sheet

1	**Operational cashflow projections for LGU Shopping Center and Public Market (PhP)**										
		0	1	2	3	4	5	6	7	8	9
		2013	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**
	CASH INFLOWS	**-**	**70,471,680**	**73,995,264**	**77,695,027**	**81,579,779**	**85,658,767**	**89,941,706**	**94,438,791**	**99,160,731**	**104,118,767**
	Revenues	-	70,471,680	73,995,264	77,695,027	81,579,779	85,658,767	89,941,706	94,438,791	99,160,731	104,118,767
	CASH OUTFLOWS	**402,524,080**	**11,350,000**	**11,917,500**	**12,513,375**	**13,139,044**	**13,795,996**	**14,485,796**	**15,210,086**	**15,970,590**	**16,769,119**
	Investment cost	402,524,080	-	-			-	-	-		
	Construction	402,524,080	-	-			-	-	-		
	O&M cost		11,350,000	11,917,500	12,513,375	13,139,044	13,795,996	14,485,796	15,210,086	15,970,590	16,769,119
	NET CASHFLOW	(402,524,080)	59,121,680	62,077,764	65,181,652	68,440,735	71,862,772	75,455,910	79,228,706	83,190,141	87,349,648
	NET CASHFLOW (after tax)	(402,524,080)	53,245,261	54,081,071	55,035,438	56,112,782	57,317,816	58,655,564	60,131,366	62,449,562	65,150,394
2	**Income Statement for LGU Shopping Center and Public Market (PhP)**										
			1	2	3	4	5	6	7	8	9
		2013	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**
	Income	**-**	**70,471,680**	**73,995,264**	**77,695,027**	**81,579,779**	**85,658,767**	**89,941,706**	**94,438,791**	**99,160,731**	**104,118,767**
	O&M cost	-	11,350,000	11,917,500	12,513,375	13,139,044	13,795,996	14,485,796	15,210,086	15,970,590	16,769,119
	Depreciation	-	20,126,204	19,119,894	18,163,899	17,255,704	16,392,919	15,573,273	14,794,609	14,054,879	13,352,135
	Interest payments	21,736,300	19,407,411	16,302,225	13,197,039	10,091,854	6,986,668	3,881,482	776,296	-	-
	Annuity or other taxable income	-	-	-	-	-	-	-	-	-	-
	Expenses	**21,736,300**	**50,883,615**	**47,339,619**	**43,874,314**	**40,486,602**	**37,175,583**	**33,940,551**	**30,780,991**	**30,025,469**	**30,121,254**
	Profit before tax		**19,588,065**	**26,655,645**	**33,820,714**	**41,093,177**	**48,483,185**	**56,001,155**	**63,657,800**	**69,135,262**	**73,997,513**
	Tax		5,876,420	7,996,693	10,146,214	12,327,953	14,544,955	16,800,346	19,097,340	20,740,579	22,199,254
	Profit after tax		**13,711,646**	**18,658,951**	**23,674,500**	**28,765,224**	**33,938,229**	**39,200,808**	**44,560,460**	**48,394,683**	**51,798,259**
	Retained earnings		13,711,646	32,370,597	56,045,096	84,810,320	118,748,550	157,949,358	202,509,818	250,904,501	302,702,760
2	**Balance sheet for LGU Shopping Center and Public Market (PhP)**										
		2013	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**
	ASSETS	**402,524,080**	**381,733,662**	**365,890,549**	**355,062,984**	**349,326,144**	**348,762,310**	**353,461,054**	**363,519,450**	**411,914,133**	**463,712,392**
	Current assets	0	-664,215	2,612,567	9,948,901	21,467,765	37,296,850	57,568,867	82,421,872	144,871,435	210,021,829
	Fixed assets	402,524,080	402,524,080	402,524,080	402,524,080	402,524,080	402,524,080	402,524,080	402,524,080	402,524,080	402,524,080
	-/- Accumulated depreciation		20,126,204	39,246,098	57,409,997	74,665,701	91,058,620	106,631,893	121,426,502	135,481,381	148,833,516
	Net fixed assets	402,524,080	382,397,876	363,277,982	345,114,083	327,858,379	311,465,460	295,892,187	281,097,578	267,042,699	253,690,564
	LIABILITIES	**402,524,080**	**381,733,662**	**365,890,549**	**355,062,984**	**349,326,144**	**348,762,310**	**353,461,054**	**363,519,450**	**411,914,133**	**463,712,392**
	Equity	161,009,632	161,009,632	161,009,632	161,009,632	161,009,632	161,009,632	161,009,632	161,009,632	161,009,632	161,009,632
	Subsidy [VGF]	0	0	0	0	0	0	0	0	0	0
	Loan	241,514,448	207,012,384	172,510,320	138,008,256	103,506,192	69,004,128	34,502,064	0	0	0
	Retained earnings		13,711,646	32,370,597	56,045,096	84,810,320	118,748,550	157,949,358	202,509,818	250,904,501	302,702,760
	Debt Ratio (Leverage)	**60.0%**	**56.3%**	**51.7%**	**46.2%**	**39.1%**	**30.0%**	**17.6%**	**0.0%**	**0.0%**	**0.0%**
	Equity Ratio	**40.0%**	**43.8%**	**48.3%**	**53.8%**	**60.9%**	**70.0%**	**82.4%**	**100.0%**	**100.0%**	**100.0%**
		-	-	-	-	-	-	-	-	-	-

10	11	12	13	14	15	16	17	18	19	20
2023	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**2030**	**2031**	**2032**	**2033**
109,324,706	**114,790,941**	**120,530,488**	**126,557,012**	**132,884,863**	**139,529,106**	**146,505,561**	**153,830,839**	**161,522,381**	**169,598,501**	**178,078,426**
109,324,706	114,790,941	120,530,488	126,557,012	132,884,863	139,529,106	146,505,561	153,830,839	161,522,381	169,598,501	178,078,426
17,607,575	**18,487,954**	**19,412,352**	**20,382,969**	**21,402,118**	**22,472,224**	**23,595,835**	**24,775,627**	**26,014,408**	**27,315,128**	**28,680,885**
17,607,575	18,487,954	19,412,352	20,382,969	21,402,118	22,472,224	23,595,835	24,775,627	26,014,408	27,315,128	28,680,885
91,717,130	96,302,987	101,118,136	106,174,043	111,482,745	117,056,882	122,909,727	129,055,213	135,507,974	142,283,372	149,397,541
68,007,350	71,027,181	74,217,031	77,584,449	81,137,410	84,884,332	88,834,097	92,996,073	97,380,134	101,996,685	106,856,688

10	11	12	13	14	15	16	17	18	19	20
2023	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**2030**	**2031**	**2032**	**2033**
109,324,706	**114,790,941**	**120,530,488**	**126,557,012**	**132,884,863**	**139,529,106**	**146,505,561**	**153,830,839**	**161,522,381**	**169,598,501**	**178,078,426**
17,607,575	18,487,954	19,412,352	20,382,969	21,402,118	22,472,224	23,595,835	24,775,627	26,014,408	27,315,128	28,680,885
12,684,528	12,050,302	11,447,787	10,875,397	10,331,627	9,815,046	9,324,294	8,858,079	8,415,175	7,994,416	7,594,696
-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	1
30,292,103	**30,538,256**	**30,860,138**	**31,258,367**	**31,733,745**	**32,287,270**	**32,920,129**	**33,633,706**	**34,429,583**	**35,309,545**	**36,275,581**
79,032,602	**84,252,685**	**89,670,350**	**95,298,646**	**101,151,118**	**107,241,836**	**113,585,433**	**120,197,134**	**127,092,798**	**134,288,956**	**141,802,844**
23,709,781	25,275,806	26,901,105	28,589,594	30,345,335	32,172,551	34,075,630	36,059,140	38,127,840	40,286,687	42,540,853
55,322,822	**58,976,880**	**62,769,245**	**66,709,052**	**70,805,782**	**75,069,285**	**79,509,803**	**84,137,994**	**88,964,959**	**94,002,269**	**99,261,991**
358,025,582	417,002,462	479,771,706	546,480,758	617,286,541	692,355,826	771,865,629	856,003,623	944,968,581	1,038,970,851	1,138,232,842

2023	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**2030**	**2031**	**2032**	**2033**
519,035,214	**578,012,094**	**640,781,338**	**707,490,390**	**778,296,173**	**853,365,458**	**932,875,261**	**1,017,013,255**	**1,105,978,213**	**1,199,980,483**	**1,299,242,474**
278,029,178	349,056,360	423,273,391	500,857,840	581,995,250	666,879,582	755,713,679	848,709,751	946,089,885	1,048,086,571	1,154,943,257
402,524,080	402,524,080	402,524,080	402,524,080	402,524,080	402,524,080	402,524,080	402,524,080	402,524,080	402,524,080	402,524,080
161,518,044	173,568,346	185,016,133	195,891,530	206,223,158	216,038,204	225,362,498	234,220,577	242,635,752	250,630,168	258,224,864
241,006,036	228,955,734	217,507,947	206,632,550	196,300,922	186,485,876	177,161,582	168,303,503	159,888,328	151,893,912	144,299,216
519,035,214	**578,012,094**	**640,781,338**	**707,490,390**	**778,296,173**	**853,365,458**	**932,875,261**	**1,017,013,255**	**1,105,978,213**	**1,199,980,483**	**1,299,242,474**
161,009,632	161,009,632	161,009,632	161,009,632	161,009,632	161,009,632	161,009,632	161,009,632	161,009,632	161,009,632	161,009,632
0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0
358,025,582	417,002,462	479,771,706	546,480,758	617,286,541	692,355,826	771,865,629	856,003,623	944,968,581	1,038,970,851	1,138,232,842
0.0%	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**
100.0%	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**
-	-	-	-	-	-	-	-	-	-	-

A 5.4 Finance Packaging Options

Two options can be considered: Developer-Operator and Developer. The option presented here is the case of a developer who will transfer the public market to the LGU upon completion of construction.

Rental revenues are estimated for commercial space and other facilities based on prevailing rates. The projected revenues and operating and maintenance expenses are presented in the income statement shown in Table 3-8.

Payment of real property taxes on improvements is the responsibility of the proponent. As an incentive to the proponents, the LGU may issue an exemption on the tax for a period of time. Responsibility ends when the property ownership is transferred to the LGU. Regardless of the investment mode, the tenants in the market and shopping center are obligated to pay all required business license fees to the LGU.

A 5.5 Financial Results

This project appears viable and attractive from the perspective of the private sector. Calculations for the financial results are shown in Table 3-9. The overall return to capital, the FIRR, of 20 percent is well over the WACC of 16.36 percent. The IRR on equity is 22 percent also well above the assumed acceptable rate of return on equity of 15 percent. The overall NPV of the project is P146.88 million which is well above zero.

The NPV on equity is high and the return to equity indicates that the project could support a higher debt to equity ratio. The payback period after taxes is within the five year payback period generally sought by the private sector. This result implies that tax incentives from the LGU may not be necessary in order to attract private investors.

Financial Viability Indicator Results

- FIRR (%) 14.54%
- IRR on Equity (%) 17.20%
- NPV on Project (million pesos) 87.353
- NPV on Equity (million pesos) 32.424
- Payback Period After Tax (years) 7 years

Table 3-9 Summary of Results of the Financial Analysis

	Concession period (years)			
	5	10	15	20
1 Debt amortization 1a Repayment starts in year: 1b Number of yearly installments 1c Tenor of debt (years)	 2 7 8	 2 7 8	 2 7 8	 2 7 8
2 Debt service coverage ratio 2a Minimum DSCR 2b Average DSCR	1.15 1.41	1.15 1.41	1.15 1.41	1.15 1.41
3 IRR & NPV 3a Project IRR (post tax) 3b Project NPV@11.4% (PhP million) 3c Equity IRR (post tax) 3d Equity NPV@15% (PhP million)	 -11.29% (180,875,346.29) -29.19% (121,591,246.11)	 7.31% (61,463,343.64) 7.23% (57,371,789.24)	 12.52% 24,491,851.04 14.82% (2,026,567.86)	 1 4.54% 87,353,844.08 17.20% 32,494,818.49
4 Debt-equity gearing	0%	0%	0%	0%
Loan coverage ratios LLCR PLCR	 0.16 0.16	 0.26 0.72	 0.27 1.42	 0.28 2.03

The high internal rate of return on equity means that the LGU should attempt to get much more out of the project, to benefit its public. There are two immediate recommendations. First, the LGU can ask for a larger public market, or ask the proponent to build ancillary facilities (e.g., public park). This would increase project cost, and reduce the IRR on equity. Second, the LGU might want to include a revenue-sharing provision in the contract, for example, to have 4 percent of gross revenue from the commercial center go to the LGU. This could then be used for running the public market at a lower rate (i.e., reduce stall fees).

Additionally, the high IRR on equity has two implications for the private sector proponent: (i) that smaller commercial centers might be possible, and still keep the project financially profitable, and (ii) that the commercial center rental fees can be lowered. A smaller commercial center implies that a smaller LGU population (i.e., the demand) will be needed to make the project financial viable. Thus, this project may be viable for LGUs with populations of less than 100,000.

A sensitivity analysis conducted below showed in Table 3-10 reflects that the LGU can increase the public market by up to fifty percent, and still keep the project financially attractive:

Table 3-10 Sensitivity Analysis for LGU Shopping Center and Public Market

		Pre-tax Project IRR (for 15-yr concession)		
		-20%	Base case	+20%
1	Construction cost	22.54%	16.66%	14.38%
2	O&M cost	17.39%	16.66%	15.92%
3	Revenue	11.85%	16.66%	21.03%

A6. ECONOMIC ANALYSIS

This section is derived from the Economic Analysis done for a project. Concepts and procedures are provided in Volume 2.

The economic feasibility of any proposed project is judged by determining whether the value of the resources created by the investment is greater than the value of the resources consumed. The approach used in the identification of costs and benefits for the financial analysis is similarly used for the economic analysis. The two analyses differ in the way costs and benefits are measured.

Economic Viability Indicators

- Economic Internal Rate of Return
- Economic Net Present Value on the project
- Benefit-Cost Ratio

The EIRR is the return on the resources invested. If it is greater than the SDR, the project is economically feasible. The ENPV is the economic value of a series of future payments assuming a given discount rate. The discount rate used here is the Social Discount Rate (SDR), which is currently set by the ICC at 15 percent. If the ENPV is greater than zero then the project is feasible. The SDR is the benchmark against which projects are measured to determine which potential projects are most desirable.

The BCR is the oldest measure for estimating economic feasibility and is equal to the present value of the ratio of the sum of the benefits and the sum of the costs. If the BCR is greater than one, the project is feasible. The larger the value, the more desirable the project becomes.

Resources Used

- Net Resource Investment
- Net Operation and Maintenance

The value of the resources consumed is not always exactly the same as the cost of investment. For example, if the cost of the steel to be used constructing the facility in the FIRR includes substantial taxes, the tax component of the cost is not included in the economic analysis because it is not part of the real resource cost of the steel (even if it is an important monetary cost). In this case, economists substitute shadow prices for monetary prices to capture the real value of the resource consumed.

However, at this level of feasibility, we have not been able to make a detailed breakdown of the investment costs into materials (both domestic and imported) and labor to make the required adjustment. Some conservative assumptions were made, however, to estimate the real resource cost of the investment. The labor component was assumed to be 30 percent of the total cost (excluding capitalized interest). Forty percent was assumed to be unskilled labor, valued at 0.6, which is the shadow wage rate for unskilled labor. The remaining 70 percent was multiplied by 0.9 to adjust for the value-added tax.

When preparing the economic analysis, the proponent would use detailed information on the materials and equipment and would deduct an additional 20 percent from the imported component to remove the effect of import duties. **To the extent that there are any imported components in this example, the economic cost estimate is inflated, making the project less feasible.**

Operation and maintenance costs are included as a proportion of the total costs for the new enterprise as the existing enterprise would have O&M expenditures regardless. Although we cannot directly measure the additional business that this sample project will generate, we can use proxies to estimate the value-added from the facility, shown below:

Benefit Proxies:

- Employment generation from new businesses in the shopping center and market
- Income generation from new businesses in the shopping center and market
- Increased land values around the center

The value-added of the facility is the net increase in commercial activity due to the presence of the facility. We assume here that 15 percent of the businesses in the facility are new enterprises and the remaining 85 percent have relocated from somewhere else. The direct benefits are at least equal to the value of the employment generated per new enterprise and the estimated net income of the businesses.

In addition to the new enterprises within the facility, there are also indirect benefits accruing to the businesses around the facility. Although we cannot directly estimate the value of additional commercial activity in the surrounding area, the value can be indirectly measured by the anticipated increase in land prices in the immediate surroundings.

The economic analysis calculation method together with the economic results is provided in Volume 4.

Provisions Unique to a Public Market

PROPOSED FACILITIES FOR PPP

The complex will be composed of the Public Market, Shopping Center and Open Spaces. As proposed, the Public Market has been identified as the first phase of the complex construction and will be constructed first. Its ownership will be transferred to the LGU for its operation and management.

The efficient operations of the market will be the responsibility of the market supervisor which will be appointed by the Local Chief Executive. Being owned and operated by the LGU, it will have sole responsibility to determine market fees and their collection.

PROPOSED SITE

The proposed site for the Public Market PPP project is along _____ Street in Barangay _____ with an estimated population of _____ persons as of (year, source of data).

It is classified as commercial in the (city/municipal) zoning plan, as shown in the location map on Figure _____. The area is _____ square meters under TCT No. _____ all of which belong to the (city/municipal) government.

The proposed site currently houses the (name) public market. It is composed of (No.) structures, mostly of (state type of materials). It has been operating as a public market since _____ (year/month) and there is a need to rehabilitate the market to improve its efficiency and operations. The composition of each section is presented below and the existing market layout is on Figures 3-2, 3-3 and 3-5.

SECTION	TOTAL AREA (sq.m.)	TOTAL RENTABLE AREA (sq.m.)	NUMBER OF STALLS
Meat/Poultry			
Fish/Seafoods			
Fruits/Vegetables			
Dry Goods			
Carinderia			

The market is operating ___ hours daily from ____ AM to ____ PM. It is expected that the new market will operate during these hours if not longer.

There are no provisions for vehicular parking, instead, customers make use of all available street side parking spaces which is causing traffic congestion.

EXISTING PUBLIC TRANSPORTATION

The market is along the main jeepney and/or bus route going to (location). A traffic count conducted by the local government revealed that out of _____ vehicles that pass this road daily, an estimated _____ vehicles are public utility vehicles. A tricycle terminal is also located _____ meters from the market which further adds to the traffic congestion, see figure _____.

There is a total of _____ commercial establishments within a one (1) kilometer radius of the proposed site. These establishments sell a variety of merchandise mostly _____. The biggest shopping mall (if one exists) is located about _____ kilometers. (Describe other shopping centers/malls if any). There are no other public markets in the locality (if a private market, state distance and brief description)

A pedestrian count conducted by the local government in (month/year) showed that there are an estimated _____ pedestrian passing through the proposed site from a.m. to _____ p.m. Peak hours are during (time) wherein _____ persons were counted.

EQUIPMENT REQUIREMENTS

Below are the minimum requirements for the operation of the market and open spaces.

- Individual lights and water meters
- Common light and water meters, for common areas such as hallways, toilets and parking spaces
- Emergency generators
- Two (2) elevated water tanks, with submersible pump to supply the water requirement of the whole complex
- Power washers
- Drainage Facilities
- Fire Prevention Equipment
- Common weigh scales to ensure correctness of weight
- Mechanical ventilators
- Public Address system

REQUIRED DRAWINGS

SPECIFICATIONS	SCALE
Location Plan and Vicinity Map	NTS
Topographical Plan	1:1000
Site Development Plan	1:1000
Water Supply Distribution System Plans	1:1000
Drainage System Plans	1:1000
Drainage Structures Typical Details	ACS
Plan and Details of Elevated Water Tank	ACS
Sewage Treatment Plant Plans	1:50
Sewage Treatment Plant Calculations	
Electrical Plans and Details	1:100
Mechanical Plans and Details	1:00
Architectural Plans and Details	1:00

NTS – Not To Scale, ACS – Any Convenient Scale

SITE CONSTRAINTS AND DEVELOPMENT OPTIONS

The design concept presented in the first part of this generic PPP project is intended to provide the LGU and prospective PPP proponent an idea of how these facilities will look like and the minimum investment required. The design also assumed a rectangular shaped property along a major thoroughfare. Since actual project sites may vary in size, shape and topographical character, the proponent is not limited to follow this design. Depending on site limitations, several development options may be available to the proponent, foremost of which is the integration of the components into one building.

PERFORMANCE AND OPERATING STANDARDS

Wet and Semi-Wet Sections

For easy identification, all the stalls will be numbered and will have provisions for lighted signboards. Construction will be of stainless steel material for easy cleaning and to promote an overall clean environment.

Carinderia

All the stalls will be of uniform size and will be constructed of wooden materials. No person will be allowed to sleep overnight inside the stalls since security will be provided. Each will have individual kitchens.

Open Spaces/Parking Lot

The open spaces will be mostly concrete pavement dedicated for parking, vehicular circulation and green area. Further, a curb easement will be provided to accommodate the loading and unloading of public vehicles so as not to hinder the flow of traffic. Tricycles will have a designated terminal inside the complex but will be strictly regulated. To avoid congestion, the number of tricycles that will be allowed in the terminal will be limited to the space capacity. Passenger waiting sheds will be provided. Unlike other public markets, hawkers or ambulant vendors will be strictly prohibited. An area for delivery vans or trucks will be provided for their exclusive use so as not to mingle with private vehicles.

Model Agreement – LGU Shopping Center

BUILD-OPERATE-TRANSFER AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Agreement ("AGREEMENT"), made and entered into this **<<(day/mo/yr)>>** for the **LGU Shopping Center Project** ("PROJECT") by and between:

<<NAME OF WINNING BIDDER>> (hereinafter referred to as **"PROPONENT"**, a corporation duly organized and existing under Philippine laws, with principal place of business at **<<address>>**, represented herein by its President - CEO,

and

THE GOVERNMENT OF <<LGU Name>> hereinafter referred to as "LGU", with corporate powers granted under the Local Government Code of 1991 (LGC) and represented herein by its Local Chief Executive/Governor, **<<Name of Local Chief Executive>>**, his authority is conferred by the Local Sanggunian through SP Resolution No. ____, series of _____,

(The LGU and the PROPONENT collectively referred to hereinafter as the "Parties" and individually as a "Party")

WITNESSETH:

WHEREAS, (state the rationale for the project and the background of the project)

WHEREAS, on **<<date>>**, the LGU obtained the approval of the _____ for the financing and construction of the SHOPPING CENTER under a Build-Operate-Transfer Agreement in line with RA 7718 (the BOT Law) and its IRR;

(Note: for the list of approving entity, please refer to Section 2.7.b of the IRR of the BOT Law)

WHEREAS, the PROPONENT has been selected by the LGU to undertake the financing and construction of the PUBLIC MARKET on the terms and conditions set forth in this Agreement as a result of a competitive public bidding process conducted by the LGU under the applicable provisions of the BOT Law;

NOW, THEREFORE, for and in consideration of the above premises and the mutual obligations, commitments and undertakings assumed and accepted hereunder, the PARTIES agree as follows:

ARTICLE 1 - DEFINITION OF TERMS

- **"Agreement"** - refers to this Agreement including its relevant Annexes executed along with this Agreement, and such amendments as may be executed thereafter, in accordance with this Agreement.
- **Build-Operate-Transfer Agreement** – a contractual arrangement whereby the proponent undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The proponent operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the proponent to recover its investment, and operating and maintenance expenses in the project. The proponent transfers the facility to the LGU concerned at the end of the fixed term that shall not exceed fifty (50) years.
- **"Contract Documents"**- shall be the documents referred to in Article 4 of this Agreement.
- **"Design and Technical Specifications"** – shall be the concept design, plans and technical drawing prepared by the LGU and provided in this Agreement as Annex A.
- **"Dispute"** – means any difference or disagreement of any kind whatsoever arising between the Parties in connection with, arising out of, or relating to the interpretation, implementation, breach, termination or validity of this Agreement.
- **"Force Majeure"** – is defined in Section 10.1 of this Agreement.
- **"PROJECT"** - the Project to be constructed, operated and maintained by the PROPONENT and transferred to the LGU after the Concession Period.

(The terms/items to be defined are not limited to those enumerated above. It may change and include other terms/items as needed)

ARTICLE 2 - THE PROJECT

Section 2.1 *Project Design* - The PROJECT shall involve the financing, design, construction, operation and maintenance of a PUBLIC MARKET, to be known as the **<<Project Title>>**to be built on an appropriate site located at _____. The Design and Technical Specifications prepared by the LGU which shall be fully complied with by the PROPONENT is attached as ANNEX A. The PROPONENT shall construct, operate and maintain the PROJECT, and eventually transfer the PROJECT to the LGU at the end of the concession period.

Section 2.2 *Project Cost* - The total cost of the PROJECT is indicated in PROPONENT's Technical Proposal (ANNEX B).

ARTICLE 3 - CONTRACTUAL ARRANGEMENT

Section 3.1 - The PROJECT shall be implemented through a Build-Operate-Transfer Agreement in accordance with the provisions of RA 7718, otherwise known as the BOT Law and its IRR.

Section 3.2 - Under this arrangement/scheme, the PROPONENT-OPERATOR operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the proponent to recover its investment, and operating and maintenance expenses in the project. The PROPONENT-OPERATOR transfers the facility to the LGU concerned at the end of the fixed term that shall not exceed fifty (50) years.

ARTICLE 4 - CONTRACT DOCUMENTS

Section 4.1 - The following documents, to be collectively referred to as the "Contract Documents", form an integral part of, and are hereby incorporated into, this Agreement:

Annex A - Concept Design and Technical Specifications prepared by the LGU
Annex B - PROPONENT's Technical Proposal
Annex C - PROPONENT's Financial Proposal
Annex D - Project Construction and Implementation Schedule

(may include other contract documents depending on the needs of each Project or as needed)

Section 4.2 - To the extent, if any, that there should be any irreconcilable conflict or discrepancy between the provisions of the Agreement and the Contract Documents, said provisions of the Agreement shall have precedence and shall govern.

ARTICLE 5 - UNDERTAKINGS OF THE PARTIES

Section 5.1 - The following shall be the obligations of the LGU:

1. It shall be provide and surrender the possession of the site for the PUBLIC MARKET and the corresponding right of way;
2. It shall maintain the PROPONENT in the peaceful and undisturbed possession of the project site for the entire duration of the construction works and operation periods;
3. It shall extend to the PROPONENT such assistance as may be necessary and indispensable for the early and expeditious completion and efficient operation of the PUBLIC MARKET;
4. It shall immediately upon completion of the PROJECT grant the PROPONENT the concession to operate the Public Market by issuing a Certificate of Completion and Acceptance" after inspection of the PROJECT and compliance with Concept Design has been verified. The PROPONENT shall be granted the franchise to operate the PROJECT for a period of _____ years; and
5. It shall not grant any third party any privilege and/or concession to construct a PUBLIC MARKET and operate the same until after the concession period.

Section 5.2 – The following shall be the responsibilities of the LGU:

1. It shall hold free and harmless and defend the PROPONENT from any and all actions, claims, liabilities and suits that may arise in connection with the project site and/or right of way;
2. It shall prepare the Concept Design and Technical Specification of the PROJECT;
3. It shall be responsible for the collection of the necessary taxes, fees, licenses, permits from those business establishments operating in the PUBLIC MARKET in accordance with the duly enacted Ordinances;
4. It shall be responsible for the operation, maintenance and upkeep of the PUBLIC MARKET, including the repair due to ordinary use/wear and tear;
5. It shall be responsible for the necessary peace-keeping force to maintain peace and order in the PROJECT Site;
6. It shall monitor the implementation of the PROJECT during its construction period to ensure that it is completed under the agreed Concept Design and Technical Specifications;
7. It shall monitor and regulate the operation, maintenance and performance of the PROJECT to safeguard the interest of the LGU and the welfare and safety of the public; and
8. It shall review and approve rules and regulations in the operation and maintenance of the PROJECT.

Section 5.3 - The following shall be the obligations of the PROPONENT:

1. It shall be responsible for the financing, development, construction, operation, maintenance and management of the PUBLIC MARKET; The PROPONENT shall see to it that the PROJECT is in compliance with the technical and operating specifications as stated in the PROPONENT's Technical Proposal (ANNEX B);
2. It shall complete the construction of the PUBLIC MARKET within the timeframe stated in the PROPONENT's Technical Proposal (ANNEX B) from receipt of the Notice to Proceed, as indicated in the Instruction to Bidders, save in case of valid extension/suspension of contract time granted and/or additional/extra work ordered to be done by the LGU outside of the requirements of the original plans and specification therefore;
3. It shall, at all times during the construction, operation, and management of the PUBLIC MARKET, comply with, and secure at its own cost all legal requirements, permits, licenses and approvals;
4. It shall pay all the electrical bills, water, gas and other rates payable during period of construction as well as during the operation of the PUBLIC MARKET including all Local Government charges except for the Real Property Taxes;
5. It shall not make or suffer any alteration or changes in plans and specifications during the construction or alteration/changes in the completed structure during the operation period without the written consent of the LGU; The LGU in case of request for alteration/changes shall act on the same within _____ calendar days, otherwise the request shall be considered as approved;
6. It shall not make or suffer any unlawful, improper, or offensive use of the premises, nor any use therefore other than the purpose for which the PROJECT has been constructed per plans and specifications and contained in the technical proposal of the PROPONENT without the written consent of the LGU;
7. It shall operate and maintain the PUBLIC MARKET based on accepted facility management practices and shall provide for repairs and replacement costs to ensure performance within the prescribed standards; and
8. It shall not keep and/or store in the building and its premises any injurious or prohibited drugs, substances or chemicals during the construction and concession period.

Section 5.4 – The following shall be the responsibilities of the PROPONENT.

1. Except in cases of Force Majeure, the PROPONENT, shall be responsible for any and all losses and damages to the PROJECT due to any cause or causes whatsoever, during the project implementation and shall not relieve the PROPONENT from any of its obligations under this Agreement;
2. It shall be responsible for all damages to any property belonging to LGU, private properties or the government, and except to the extent that such damages arise from the negligence of the LGU or its agents;
3. It shall be responsible for the death and/or injury to personnel of the LGU that may arise in connection with the execution of the Agreement;
4. It shall hold free and harmless and forever defend the LGU from any and all actions, claims, liabilities and suits, for losses and damages to properties of other contractors, if any, and/or third parties arising from the execution of the PROJECT and during the operation of the PUBLIC MARKET;

5. It shall be responsible for its employees' strict observance of the laws of the Republic of the Philippines relevant to the execution of this Agreement. The PROPONENT shall execute the Agreement with due regard to safety against accidents to its employees and to the employees of the LGU at the work site, if any, and shall provide such machinery, guards, safe walkways and such other safety devices as may be needed for the prevention of accidents. The PROPONENT shall be responsible for the payment of all indemnities, including hospital and medical expenses, arising out of any labor accidents which may occur in the course of the project execution and for which PROPONENT may be responsible under PD No. 442 as amended by the Labor Code;
6. If in the execution of the PROJECT, it is necessary to interrupt or obstruct the natural flow of rivers or streams within the work site, if any there be, the drainage of the surface, or the flow of artificial drains, the PROPONENT shall provide adequate measures to prevent damage to both public and private properties. The PROPONENT shall be liable for all damages that may occur, except to the extent that such damage arises from the contributory act or negligence of the LGU, in which case it shall be shouldered proportionately between the PROPONENT and the LGU;
7. It shall not trespass over the limits of the property of any third party without having previously received the relevant permit. It shall, moreover, be responsible for the care of all public and private properties that may be affected by the implementation of the PROJECT and adopt such reasonable precautions to avoid injury or harm over the same, otherwise, it shall recondition or repair or replace or reconstruct the damaged or destroyed property at its own expense, or pay compensation for the damage within the shortest possible period;
8. It shall assume full responsibility for the costs arising from any adverse environmental effects or other impacts that may result from the construction of the PROJECT;
9. It shall upon completion of the PROJECT, operate the PUBLIC MARKET for a period stated in the concession that shall be granted by the LGU, but in no case exceed _____ years, and thereafter transfer the facility to the LGU; and
10. It shall charge fees, rentals and charges not exceeding the amounts proposed in its bid or as negotiated to enable it to recover its investment, and operating and maintenance expenses in the PROJECT, plus a reasonable rate of return thereon.

ARTICLE 6 - PERFORMANCE SECURITIES AND INSURANCES

Section 6.1 *Construction Security* - To guarantee the faithful performance by the PROPONENT of its obligations and duties under this Agreement, the PROPONENT shall **put** up a Construction Security, within the period and in the form and amount stipulated in the Notice of Award. The security may be in the form of cash, manager's check, cashier's check, bank draft or guarantee confirmed by a reputable local bank acceptable to the LGU, standby letter of credit issued by a reputable bank acceptable to the LGU, provided that if a letter of credit is issued by a foreign bank, it must be confirmed by a local bank or offshore banking unit, surety bond callable on demand issued by the GSIS, by surety or insurance companies duly accredited by the Office of the Insurance Commissioner, or a combination thereof, in accordance with the following schedules:

a. Cash, irrevocable letter of credit, bank draft – a minimum of two percent (2%) of the total Project Cost
b. Bank Guarantee - a minimum of five percent (5%) of the total Project Cost
c. Surety Bond – a minimum of ten percent (10%) of the total Project Cost

The Construction Security shall be released by the LGU after the issuance of the "Certificate of Completion and Acceptance" of the Construction works, and the acceptance by the LGU of the PROJECT as completed in accordance with the agreed standards and specifications, provided that there are no claims filed against the PROPONENT or its Contractor.

In the event the completion timetable for the PROJECT is extended in accordance with this Agreement, the term of the Construction Security shall be extended accordingly.

Section 6.2 *Operating Security* - The PROPONENT shall post an Operating Security in the amount of Php_____ in the form of cash or a standby letter of credit issued by a reputable bank acceptable to the LGU, simultaneously with the acceptance of the facility and the release of the performance security to guarantee the operation of the PROJECT in accordance with the operating parameters and specifications under this Agreement. The Operating Security shall remain valid and in full force and effect for the duration of the Concession Period.

Section 6.3 *Failure to Post Performance Securities* - Failure of the PROPONENT to post any of the performance securities shall be sufficient ground for the LGU to not execute this Agreement. Should the LGU, under any of the conditions stipulated under Article 14, terminate this Agreement, the performance security not so released shall be forfeited in favor of the PROPONENT without any need of judicial action. The PROPONENT shall obtain the consent of the surety, if necessary, for any changes to this Agreement to ensure the effectivity of the performance securities submitted to the LGU.

Section 6.4 – *Warranty Security* – The PROPONENT shall at its own expense secure and post a Warranty Security to take care of any defect, hidden or otherwise, not noted during the PROJECT completion and those defects or deficiencies that may arise within a period of (1) year from the completion of the PROJECT. The Warranty Security shall be made effective immediately upon transfer of full legal ownership over the PROJECT in favor of the LGU.

Section 6.5 *Insurance* - In addition, to insure third parties of payment, in case damage or injury is done to their person

or property during the course of the performance by the PROPONENT of its responsibilities hereunder, the PROPONENT shall put up bonds and insurance normally required in infrastructure PROJECTs, such as but not limited to contractor's all-risk insurance, third party liability insurance, motor vehicle liability insurance, workmen's compensation insurance. Certified copies of the policies and official receipts of such bonds and insurances shall be submitted to the LGU. These bonds and insurance shall preferably be procured from the Government Service Insurance System (GSIS), but if it is impractical to do that, then they shall be procured from an insurance or bonding company accredited by the Insurance Commission and acceptable to the LGU.

Section 6.6 *Insurance Proceeds* - The proceeds from insurance claims, except Third Party Liability Insurance and Workmen's Compensation Insurance, with respect to loss or other damage to the PROJECT, shall first be applied by the PROPONENT to the extent necessary to fully repair or restore the PROJECT to its previous operating condition, or to completely rebuild the PROJECT.

ARTICLE 7 - CONTRACT MANAGEMENT, MONITORING AND EVALUATION

Section 7.1 *Contract Management* - Within ____ calendar days from the date of the signing of this Agreement, each Party shall form a Contract Management Committee, which shall be responsible for monitoring, managing and evaluating the full implementation of the PROJECT. Within ____ calendar days from its creation, each Party shall immediately send written notice to the other naming its members to the Contract Management Committee.

Section 7.2 *Project Reports* - Within _____ calendar days from receipt of the notice referred to in Section 7.1, the Contract Management Body shall meet and agree on the form of the report, the method for monitoring and obtaining the information required, the Party responsible for monitoring and reporting on each of the indicators and the frequency that each indicator should be monitored and reported.

The Parties shall ensure that Project Report will contain the performance indicators to determine the PROPONENT's and LGU's compliance with their respective obligations under the Agreement, the major risk factors for the PROJECT, events and conditions that has occurred which materially affects the PROJECT and all other material information that may be included by the Parties.

Section 7.3 *Monitoring and Reporting Obligations* - The Parties shall establish appropriate monitoring and reporting systems to comply with their monitoring and reporting obligations agreed upon and embodied in the Project Report.

The Project Reports shall be prepared and submitted within ___ calendar days after the end of the calendar month to which they apply. Where a Project Report shows that the Project falls below the key performance indicators, the PROPONENT shall state that fact in the report with a full explanation of the reasons for the below-target performance and the steps that it has or will be taking to ensure that performance is improved to meet the standard.

Section 7.4 *Regular Meetings* - The Contract Management Committee of the Parties shall meet once a month or more frequently if necessary in order to discuss the progress of the PROJECT, any problems or issues in the implementation of the PROJECT and the lessons learned from the monitoring and management of the PROJECT.

Section 7.5 *Right of LGU to Monitor* - The LGU shall be entitled to inspect, check, test and monitor the PROEJCT during the construction period and the operating period. The purpose of such monitoring shall be to determine whether the PROJECT are being designed, constructed, operated and maintained in accordance with the terms of this Agreement.

The PROPONENT shall allow the LGU or its duly authorized representatives to conduct such inspection and monitoring during normal business hours upon reasonable prior written notice to the PROPONENT. It shall ensure that the LGU or its agent or representative is given sufficient access to carry out the inspection. The monitoring and review shall be conducted in the presence of a duly designated representative of the PROPONENT.

ARTICLE 8 - PROPONENT'S WARRANTIES

Section 8.1 *Corporate Existence* - The PROPONENT warrants that it is a corporation or a partnership duly organized and validly existing under the laws of the Republic of the Philippines. It has all requisite power, authority and legal right to execute and deliver this Agreement and to perform its obligations thereunder; and has taken all appropriate and necessary corporate and legal action and obtained all necessary permits and approvals for the execution, delivery and performance of this Agreement and all other instruments, or documents contemplated hereunder.

Section 8.2 *Authorized Signatory* - The PROPONENT's signatory to this Agreement has full legal capacity and has been duly authorized by the Board of Directors of the PROPONENT to sign, execute and deliver this Agreement for and on behalf of the PROPONENT.

Section 8.3 *Validity and Enforceability* - This Agreement constitutes the legal, valid and binding obligation of the PROPONENT, enforceable against the PROPONENT in accordance with its terms. This Agreement is in satisfactory and proper legal form under the laws of the Republic of the Philippines.

Section 8.4 *Due Execution* - The execution, delivery and performance of this Agreement and the other documents herein referred to do not violate any provision of law, rule, regulation or order or decree of any court, tribunal or government authority, bureau or agency, or of the charter, by-laws or corporate rules of the PROPONENT, any corporation, or any contract or other undertaking to which the PROPONENT is a party.

Section 8.5 *Know-how* - The PROPONENT warrants that it has the know-how, resources, trained personnel and staff, technical, marketing and financial capabilities, as well as management expertise, to fulfill its duties and responsibilities hereunder, and implement the financing, design, construction, equipping, provisioning, maintaining, marketing and operating the PROJECT.

Section 8.6 *No Adverse Litigation* - There is no adverse litigation, arbitration, investigation or proceeding pending, or to its best knowledge threatened, against or affecting such Party that could reasonably be expected to materially adversely affect its ability to fulfill its obligations under this Agreement or that may affect the legality, validity, or enforceability of this Agreement.

Section 8.7 *Corruption* - The PROPONENT warrants that neither it, nor its representatives or agents, have offered any government officer or employee, national or local, any consideration or commission for its award of the Contract of this PROJECT nor has it exercised any corrupt, undue or unlawful influence, directly or indirectly through relatives within the third degree of consanguinity or affinity in securing this Agreement.

ARTICLE 9 - LGU WARRANTIES

Section 9.1 *Corporate Existence* - The LGU warrants that it is a duly organized and validly existing political subdivision and local government of the Republic of the Philippines and has all requisite power, authority and legal right to execute and deliver this Agreement, and to perform its obligations hereunder.

Section 9.2 *Due Execution* - The LGU has taken all appropriate legal and/or other action which may be required or appropriate to authorize the execution, delivery and performance of this Agreement and any and all other agreements, instruments or documents contemplated hereunder.

Section 9.3 *Validity and Enforceability* - This Agreement constitutes the legal, valid and binding obligation of the LGU, enforceable against the LGU in accordance with its terms. This Agreement is in satisfactory and proper legal form under the laws of the Republic of the Philippines.

Section 9.4 *No immunity* - The LGU further warrants that it is subject to the civil and commercial law in respect of its responsibilities under this Agreement and that it is not immune from suit, judgment or execution or any legal process in connection with said responsibilities. But nothing herein shall be considered as waiving the immunity of the State with regard to the assets and interests of the Republic of the Philippines.

ARTICLE 10 - FORCE MAJEURE

Section 10.1 *Definition of Force Majeure Event* - A "Force Majeure Event" means any event, condition, or circumstance and the effects thereof not within the reasonable control, directly or indirectly, of the Party affected, but only if and to the extent that:

a. Such event, condition, or circumstance is not the direct or indirect result of the breach by such Party of any of its obligations under this Agreement or the fault or negligence of such Party, its Affiliates, or any person under the Party's or its Affiliates' reasonable control;
b. Despite the exercise of reasonable diligence, such event, condition, or circumstance cannot be prevented, avoided, or removed by such Party; and
c. Such event, condition, or circumstance has a material adverse effect on the ability of such Party to perform all or a material portion of any of its obligations under this Agreement, and such Party has taken all reasonable precautions, due care, and alternative measures in order to avoid or mitigate the effects of such event on such Party's ability to perform its obligations under this Agreement.

Section 10.2 *Exceptions* - Force majeure shall not include infrastructure or equipment failure due to ordinary wear and tear, or defects in design, inappropriateness or weakness in materials or supplies, unavailability of financing, or any other happenstance that a Party can reasonably be expected to effectively guard against or control.

Section 10.3 *Responsibilities of the Parties during Force Majeure Event* - A party invoking Force Majeure shall:

a. Notify the other party in writing by any means of communication as soon as reasonably possible of the date of commencement of such Force Majeure Event, the nature and expected duration thereof, and the actions to be taken to prevent or reduce the effects of such event. The notice shall be sent by such Party not later than _____ calendar days after the date on which such Party first gains knowledge of such Force Majeure Event. If it fails to deliver such notice in accordance with this provision, such Party shall not be entitled to invoke the benefits of this Section;
b. Continue performance of its obligations that are not affected by the occurrence of the Force Majeure; and
c. Resume performance of affected obligations after the Force Majeure or after the effects of Force Majeure no longer exists, whichever is earlier, and shall formally notify the other party of such resumption.

Section 10.4 *Mitigation* - Each Party shall exert all reasonable efforts in accordance with Prudent Utility Practice or other applicable standard to prevent or mitigate the consequences of the Force Majeure Event on the performance of its obligations under this Agreement. The Parties shall consult with each other in good faith and shall use all reasonable endeavors to agree on appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued implementation of the PROJECT. The Parties shall exert all reasonable efforts to resume the performance of their obligations as soon as practicable following the declaration of a Force Majeure Event.

Section 10.5 *Effect of Force Majeure Events* - The affected Party shall be excused from performance and shall not be in default of any obligation under this Agreement for so long as its failure to perform such obligation is due to a Force Majeure Event, provided that:

a. The affected Party makes continuous diligent efforts to prevent or mitigate the effects of the Force Majeure Event;
b. The Party claiming a Force Majeure Event shall not be entitled to suspend performance or be excused for delayed performance under this Agreement for any greater scope or longer duration than is required by the Force Majeure Event or the delay occasioned thereby; and
c. Neither Party shall be relieved of or excused from its obligations under this Agreement solely because there may be increased costs or other adverse economic consequences incurred through the performance of such obligations.

ARTICLE 11 – DEFAULT

Section 11.1 *PROPONENT's Default* - The occurrence of any of the following shall constitute an event of default for the PROPONENT:

a. Failure to perform any of its obligation under this Agreement for a cause not attributable to force majeure, and such failure persists for more than ____ days;
b. Failure without justification to resume performance within _____ days after the force majeure that has prevented the PROPONENT from performing any other obligation hereunder has substantially ceased;
c. Deliberate material misrepresentation of any fact contained in its periodic reports to the LGU, or if it committed any deliberate falsity in his bid documents on which the LGU relied in giving it the contract award;
d. Filing of a voluntary or involuntary case or other proceeding by or against the PROPONENT seeking insolvency, bankruptcy, liquidation, reorganization, dissolution, winding up;
e. A pattern of continuing or repeated non-compliance, willful violation, or non-performance of other terms and conditions hereof including any material breach thereto, and the PROPONENT fails to remedy the same within ___ calendar days from notice thereof; and
f. Assignment or transfer without the prior approval of the LGU.

Section 11.2 *LGU's Default* - The occurrence of any of the following events shall constitute the LGU's Default:

a. LGU terminates, or cancels this Agreement without valid or justifiable cause;
b. Any representation or warranty made by the LGU and relied upon by the PROPONENT to its detriment turning out to be false in any material respect; and
c. Failure or refusal to perform any material covenant, agreement or obligation under this Agreement within _____ days after receipt by the LGU of a notice of default specifying the same, provided, however, that such period shall be extended if the failure or refusal is remediable but cannot reasonably be completed within _____ days and the LGU begins to diligently remedy such failure.

ARTICLE 12 - ASSIGNMENT, TRANSFER & OTHER CONVEYANCES

Section 12.1 *Assignment* - The PROPONENT may, with the prior written approval by the Local Chief Executive, with the concurrence of the Local Sanggunian, assign its rights, interest, benefits and obligations under this Agreement to any company or special purpose company or successor company or entity. The Assignee shall perform and comply with all its obligations and assume all the rights, interest, and benefits of the PROPONENT under this Agreement.

Section 12.2 *Assignment Void* - Any assignment or transfer without prior approval from the LGU shall be void and ineffectual.

Section 12.3 *Acceptance Tests and Procedures* – The Parties shall meet and agree on procedures, standards, protective settings and a program to be followed by the PROPONENT for the testing of facility in accordance with the agreed tests and test procedures set out in the Schedule (ANNEX D).

The PROPONENT shall give to LGU not less than ___ day notice of its intention to commence any testing of the facility. LGU and/or its expert shall be entitled to be present at any testing of the facility. Upon completion of any testing, the PROPONENT and the LGU shall jointly certify whether or not the facility has satisfied such test.

Section 12.4 *Transfer* – Prior to the end of the concession period, the PROPONENT shall arrange for the training of an adequate number of LGU personnel in relation to the operation of the PUBLIC MARKET. On the transfer date, the PROPONENT shall transfer to the LGU (and shall execute such documents as may reasonably be considered necessary to effect such transfer), free from any lien or encumbrance created by the PROPONENT and without the payment of any compensation, all its right, title, and interest in and to the fixtures, fittings, equipment and all improvements comprising the PUBLIC MARKET.

The PROPONENT shall also deliver to the LGU on such date such operation summaries/transfer notes, design drawings and other information as may be reasonably required by the LGU to enable it take over the PROJECT.

Section 12.5 *Buy-out* - Buyout shall take place under the following condition:

a. Change in Circumstances - In the event that as a result of any laws or regulation of the Republic of the Philippines, or any agency or other body under the control of the Government of the Republic of the Philippines, or any regional or municipal authority thereof, coming to effect after the date of this Agreement, or as a result of any such laws or regulations (including any official interpretation thereof which the PROPONENT has relied upon in entering into this Agreement) in force at the date hereof being amended, modified or repealed, the interest of the PROPONENT and/or the PROPONENT's financial rate of return (net of tax or other imposition, including, without limitation any withholding or remittance tax on the payment of dividends) on its investment is materially reduced, prejudiced or otherwise adversely affected (including without limitation, any restriction on the ability to remit funds in foreign currency outside the Philippines), or any changes which would drastically reduce the demand for the Project's services, then the Parties hereto shall meet and endeavor to agree to make amendments to this Agreement, and if after 90 days no such agreement has been reached, Buy-out Provision under this Section shall apply.

The LGU shall purchase all the PROPONENT's rights, titles and interests in PROJECT and thereupon all the PROPONENT's obligations hereunder shall cease. Provided, however, that the LGU and the PROPONENT shall first undergo arbitration pursuant to Article 13 (Dispute Resolution) prior to resorting to the buy-out option.

Section 12.6 *Buy-out Price* – The purchase price payable pursuant to the buy-out provision shall be Php_____.

ARTICLE 13 - DISPUTE RESOLUTION

Section 13.1 *Mutual Discussions* - In case of any dispute or controversy of any kind whatsoever between the Parties arising out this Agreement, said Parties shall first endeavor to resolve within _____ days such dispute by mutual discussion and amicable means between the President of the PROPONENT and the Local Chief Executive.

Section 13.2 *Arbitration* - Should the dispute (meetings) not be settled amicably by mutual discussion within ____ days from the initial meeting of the President of the PROPONENT and the LCE of the LGU, the dispute shall be finally and exclusively resolved by binding arbitration. The arbitration shall proceed in accordance with the provisions of the Arbitration Law of the Philippines, (Republic Act No. 876), in such place as the Parties may agree. While the dispute is being arbitrated, the performance by the Parties of their respective obligations shall not be suspended, unless otherwise declared by the arbitral tribunal or otherwise agreed by the Parties or unless the obligation to be performed is the very issue of the arbitration.

Section 13.3 *Expert Panel and Arbitral Award* - All expert panel and arbitral awards shall be in writing and shall state the reasons upon which they are based. The decision of the arbitral tribunal shall be final, binding and unappealable. The awards may include an award of costs, including reasonable attorneys' fees and disbursements. Judgments upon the awards may be entered by any court having jurisdiction thereof or having jurisdiction over the Parties or their assets.

ARTICLE 14 - CONTRACT TERMINATION

Section 14.1 *Right not to execute* - The Parties shall have the right not to execute the Agreement without resorting to legal proceedings in case of any substantial breach of conditions or obligations and responsibilities. A pattern of continuing or repeated non-performance, willful violation or non-compliance of the terms and conditions hereof will be deemed a fundamental breach of this Agreement.

Section 14.2 *Termination Procedure* - In case a Party commits an act constituting an event of default, the non-defaulting Party may terminate this Agreement by serving a written notice to the defaulting Party specifying the ground for termination and giving the defaulting Party a period of _____ days within which to rectify the default to the satisfaction of the non-defaulting Party. If the default is not remedied within this period to the satisfaction of the non-defaulting Party, then the latter will serve upon the former a written notice of termination indicating the effective date of termination.

Section 14.3 *LGU's Remedies* – Upon the occurrence of a PROPONENT's Default, the LGU may by Notice of Default, take on or more of the following actions:

a. Terminate this Agreement and enter into a franchise agreement with another Party for this PROJECT;
b. Take over the PROJECT and request the PROPONENT to assign all its right, title and interests to the PROJECT and under this Agreement to the LGU; or
c. Allow the PROPONENT's lenders/creditors to take over and proceed with the completion of the Project under the same terms and conditions of this Agreement.

Each right or remedy hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or current and hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the LGU of any one or more of any of such rights or remedies shall not preclude the simultaneous or subsequent exercise by the LGU of any or all other such rights or remedies

Section 14.4 *PROPONENT's Remedies* – Upon the occurrence of an LGU Default, the PROPONENT may by Notice of Default, take one or more of the following actions:

a. Terminate this Agreement and any other Agreement executed between the Parties in relation to the PROECT; or
b. Any and all remedies and compensation available by law or in equity or by statute or otherwise.

Each right or remedy hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or current and hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the PROPONENT of any one or more of any of such rights or remedies shall not preclude the simultaneous or subsequent exercise by the PROPONENT of any or all other such rights or remedies.

Section 14.5 *Survival of Termination Obligations* - For the avoidance of doubt, the respective obligations of the Parties in respect of the termination of this Agreement as set forth in this Article 14 shall survive and continue to be enforceable beyond the termination hereof.

ARTICLE 15 - GENERAL PROVISIONS

Section 15.1 *Effectivity* - This Agreement shall come into force and become effective upon and as of the date of the approval hereof by the authorized signatories of the LGU and the PROPONENT.

Section 15.2 *Entire Agreement* - This Agreement constitutes the entire agreement between the Parties with respect to the transactions contemplated herein. All prior discussions, understandings or arrangements between them prior to effective date, whether express or implied, concerning the PROJECT are superseded by this Agreement.

Section 15.3 *Waiver* - No provision in this agreement shall be considered waived by either Party unless such waiver is in writing and communicated to the other Party. The failure of any Party to insist on the strict performance of the obligation of the other shall not be considered a waiver of its right to do so.

Section 15.4 *Confidentiality* - Each Party shall hold in strict confidence from any other person all documents and information concerning any other Party furnished to it or its advisors, consultants, contractors, or agents by the other Party in connection with this Agreement or the transactions contemplated hereby.

Notwithstanding the foregoing, the confidentiality requirement shall not apply to such documents or information that were previously known by the Party receiving such documents or information, in the public domain and required by law to be disclosed to any person who is authorized by law to receive the same.

Section 15.5 *Further Assurances* - The Parties will do, execute, and deliver, or will cause to be done, executed, and delivered, all such further acts and such other things as each Party may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the representations, warranties, and covenants of this Agreement.

The Parties further assure that they shall perform their obligations in a highly professional and diligent manner, with due efficiency and economy and timely execution of works and other obligations, in all respects with that degree of skill, diligence, prudence and foresight required from them, and with due attention to the need for fairness, openness and good faith and their dealings.

Section 15.6 *Severability* - The validity of the remaining articles, clauses, provisions, terms and parts of this Agreement shall not be affected by a court, administrative body, or other proceeding of competent jurisdiction deciding that an article, section, provision, term, or part of this Agreement is illegal, unenforceable, in conflict with any law, or contrary to public policy.

Section 15.7 *Language* - English is the governing language of this Agreement, which shall be interpreted in accordance with English usage. All documents, notices, waivers, and all other communications written or otherwise between the Parties in connection with this Agreement shall be in the English language.

Section 15.8 *Notice* - All notices or communications shall be made in writing and be sent to the address given hereunder:

For the PROPONENT	For the LGU
_____	_____
_____	_____

Said notice shall be considered given if delivered by registered mail with return card, or through an internationally or nationally recognized courier service with delivery receipt requested, or by hand delivery. If the notice or communication is faxed, it shall be confirmed in writing. The notice or communication shall be effective upon receipt.

A Party may change its address by giving the other Party written notice of such change, provided that any such change shall not be effective until notice of such change has been received by the other Party.

Section 15.9 *Amendment* - This Agreement may be amended or modified only in writing and signed by the Parties, provided that prior to signing, said proposed amendments shall be approved by the Board of the PROPONENT and the Local Sanggunian of the LGU.

IN WITNESS WHEREOF, the Parties, acting through their respective duly authorized representatives, have caused this Agreement to be signed under their respective names on the date and at the place first above-written.

LGU NAME	[NAME OF WINNING BIDDER]
By:	By:
Name: _____	Name: _____
Title: _____	Title: _____

APPROVED BY:
Local Sanggunian of _____
Resolution No. _____, series of _____.

ACKNOWLEDGEMENT

Republic of the Philippines)
_____) s.s.

BEFORE ME, this ___ day of _____, 20___ in the _____, Philippines, personally appeared to me _____ and _____, with **[Valid Identification Document]** issued by the **[official agency]** on _____, known to me to be the same person who executed the foregoing instrument, and they acknowledged to me that the same is their free act and deed.

This instrument refers to a for the **<<Name of the Project>>**, consisting of _____ pages, including the page whereon this Acknowledgment appears, and has been signed on each and every page hereof by the parties hereto and their instrumental witnesses, initialed on each and every page hereof, and sealed by my notarial seal.

(Sgd.)
Notary Public
Until_____
PTR No. _____
Issued at _____
On _____

Doc. No. _____
Page No._____
Book No._____
Series of 20__

ANNEX A: Concept Design of the PROJECT
ANNEX B: PROPONENT's Technical Proposal
ANNEX C: PROPONENT's Financial Proposal
ANNEX D: Project Construction and Implementation Schedule

(may include other Contract Documents depending on the needs of each Project)

Model Agreement – LGU Public Market Project

BUILD-TRANSFER-OPERATE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Agreement ("AGREEMENT"), made and entered into this **<<(day/mo/yr)>>** for the **LGU Public Market Project ("PROJECT")** by and between:

<<NAME OF WINNING BIDDER>> (hereinafter referred to as "**PROPONENT**", a corporation duly organized and existing under Philippine laws, with principal place of business at **<<address>>**, represented herein by its President - CEO,

and

THE GOVERNMENT OF **<<LGU Name>>** hereinafter referred to as "LGU", with corporate powers granted under the Local Government Code of 1991 (LGC) and represented herein by its Local Chief Executive/Governor, **<<Name of Local Chief Executive>>**, his authority is conferred by the Local Sanggunian through SP Resolution No. ____, series of _____,

(The LGU and the PROPONENT collectively referred to hereinafter as the "Parties" and individually as a "Party")

WITNESSETH:

WHEREAS, (state the rationale for the project and the background of the project)

WHEREAS, on **<<date>>**, the LGU obtained the approval of the _____ for the financing and construction of the PUBLIC MARKET under a Build-Transfer-Operate Agreement in line with RA 7718 (the BOT Law) and its IRR;

(Note: for the list of approving entity, please refer to Section 2.7.b of the IRR of the BOT Law)

WHEREAS, the PROPONENT has been selected by the LGU to undertake the financing and construction of the PUBLIC MARKET on the terms and conditions set forth in this Agreement as a result of a competitive public bidding process conducted by the LGU under the applicable provisions of the BOT Law;

NOW, THEREFORE, for and in consideration of the above premises and the mutual obligations, commitments and undertakings assumed and accepted hereunder, the PARTIES agree as follows:

ARTICLE 1 - DEFINITION OF TERMS

- ***"Agreement"*** - refers to this Agreement including its relevant Annexes executed along with this Agreement, and such amendments as may be executed thereafter, in accordance with this Agreement.
- ***Build-Operate-Transfer Agreement*** – a contractual arrangement whereby the proponent undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The proponent operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the proponent to recover its investment, and operating and maintenance expenses in the project. The proponent transfers the facility to the LGU concerned at the end of the fixed term that shall not exceed fifty (50) years.
- ***"Contract Documents"***- shall be the documents referred to in Article 4 of this Agreement.
- ***"Design and Technical Specifications"*** – shall be the concept design, plans and technical drawing prepared by the LGU and provided in this Agreement as Annex A.
- "***Dispute"*** – means any difference or disagreement of any kind whatsoever arising between the Parties in connection with, arising out of, or relating to the interpretation, implementation, breach, termination or validity of this Agreement.
- ***"Force Majeure"*** – is defined in Section 10.1 of this Agreement.
- "***PROJECT"*** - the Project to be constructed, operated and maintained by the PROPONENT and transferred to the LGU after the Concession Period.

(The terms/items to be defined are not limited to those enumerated above. It may change and include other terms/items as needed)

ARTICLE 2 - THE PROJECT

Section 2.1 *Project Design* - The PROJECT shall involve the financing, design, construction, operation and maintenance of a PUBLIC MARKET, to be known as the **<<Project Title>>**to be built on an appropriate site located at _____. The Design and Technical Specifications prepared by the LGU which shall be fully complied with by the PROPONENT is attached as ANNEX A. The PROPONENT shall construct, operate and maintain the PROJECT, and eventually transfer the PROJECT to the LGU at the end of the concession period.

Section 2.2 *Project Cost* - The total cost of the PROJECT is indicated in PROPONENT's Technical Proposal (ANNEX B).

ARTICLE 3 - CONTRACTUAL ARRANGEMENT

Section 3.1 - The PROJECT shall be implemented through a Build-Operate-Transfer Agreement in accordance with the provisions of RA 7718, otherwise known as the BOT Law and its IRR.

Section 3.2 - Under this arrangement/scheme, the PROPONENT-OPERATOR operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the proponent to recover its investment, and operating and maintenance expenses in the project. The PROPONENT-OPERATOR transfers the facility to the LGU concerned at the end of the fixed term that shall not exceed fifty (50) years.

ARTICLE 4 - CONTRACT DOCUMENTS

Section 4.1 - The following documents, to be collectively referred to as the "Contract Documents", form an integral part of, and are hereby incorporated into, this Agreement:

Annex A - Concept Design and Technical Specifications prepared by the LGU
Annex B - PROPONENT's Technical Proposal
Annex C - PROPONENT's Financial Proposal
Annex D - Project Construction and Implementation Schedule

(may include other contract documents depending on the needs of each Project or as needed)

Section 4.2 - To the extent, if any, that there should be any irreconcilable conflict or discrepancy between the provisions of the Agreement and the Contract Documents, said provisions of the Agreement shall have precedence and shall govern.

ARTICLE 5 - UNDERTAKINGS OF THE PARTIES

Section 5.1 - The following shall be the obligations of the LGU:

1. It shall be provide and surrender the possession of the site for the PUBLIC MARKET and the corresponding right of way;
2. It shall maintain the PROPONENT in the peaceful and undisturbed possession of the project site for the entire duration of the construction works and operation periods;
3. It shall extend to the PROPONENT such assistance as may be necessary and indispensable for the early and expeditious completion and efficient operation of the PUBLIC MARKET;
4. It shall immediately upon completion of the PROJECT grant the PROPONENT the concession to operate the Public Market by issuing a Certificate of Completion and Acceptance" after inspection of the PROJECT and compliance with Concept Design has been verified. The PROPONENT shall be granted the franchise to operate the PROJECT for a period of _____ years; and
5. It shall not grant any third party any privilege and/or concession to construct a PUBLIC MARKET and operate the same until after the concession period.

Section 5.2 – The following shall be the responsibilities of the LGU:

1. It shall hold free and harmless and defend the PROPONENT from any and all actions, claims, liabilities and suits that may arise in connection with the project site and/or right of way;
2. It shall prepare the Concept Design and Technical Specification of the PROJECT;
3. It shall be responsible for the collection of the necessary taxes, fees, licenses, permits from those business establishments operating in the PUBLIC MARKET in accordance with the duly enacted Ordinances;
4. It shall be responsible for the operation, maintenance and upkeep of the PUBLIC MARKET, including the repair due to ordinary use/wear and tear;
5. It shall be responsible for the necessary peace-keeping force to maintain peace and order in the PROJECT Site;
6. It shall monitor the implementation of the PROJECT during its construction period to ensure that it is completed under the agreed Concept Design and Technical Specifications;
7. It shall monitor and regulate the operation, maintenance and performance of the PROJECT to safeguard the interest of the LGU and the welfare and safety of the public; and
8. It shall review and approve rules and regulations in the operation and maintenance of the PROJECT.

Section 5.3 - The following shall be the obligations of the PROPONENT:

1. It shall be responsible for the financing, development, construction, operation, maintenance and management of the PUBLIC MARKET; The PROPONENT shall see to it that the PROJECT is in compliance with the technical and operating specifications as stated in the PROPONENT's Technical Proposal (ANNEX B);
2. It shall complete the construction of the PUBLIC MARKET within the timeframe stated in the PROPONENT's Technical Proposal (ANNEX B) from receipt of the Notice to Proceed, as indicated in the Instruction to Bidders, save in case of valid extension/suspension of contract time granted and/or additional/extra work ordered to be done by the LGU outside of the requirements of the original plans and specification therefore;
3. It shall, at all times during the construction, operation, and management of the PUBLIC MARKET, comply with, and secure at its own cost all legal requirements, permits, licenses and approvals;
4. It shall pay all the electrical bills, water, gas and other rates payable during period of construction as well as during the operation of the PUBLIC MARKET including all Local Government charges except for the Real Property Taxes;
5. It shall not make or suffer any alteration or changes in plans and specifications during the construction or alteration/changes in the completed structure during the operation period without the written consent of the LGU; The LGU in case of request for alteration/changes shall act on the same within _____ calendar days, otherwise the request shall be considered as approved;
6. It shall not make or suffer any unlawful, improper, or offensive use of the premises, nor any use therefore other than the purpose for which the PROJECT has been constructed per plans and specifications and contained in the technical proposal of the PROPONENT without the written consent of the LGU;
7. •It shall operate and maintain the PUBLIC MARKET based on accepted facility management practices and shall provide for repairs and replacement costs to ensure performance within the prescribed standards; and
8. It shall not keep and/or store in the building and its premises any injurious or prohibited drugs, substances or chemicals during the construction and concession period.

Section 5.4 – The following shall be the responsibilities of the PROPONENT.

1. Except in cases of Force Majeure, the PROPONENT, shall be responsible for any and all losses and damages to the PROJECT due to any cause or causes whatsoever, during the project implementation and shall not relieve the PROPONENT from any of its obligations under this Agreement;
2. It shall be responsible for all damages to any property belonging to LGU, private properties or the government, and except to the extent that such damages arise from the negligence of the LGU or its agents;
3. It shall be responsible for the death and/or injury to personnel of the LGU that may arise in connection with the execution of the Agreement;
4. It shall hold free and harmless and forever defend the LGU from any and all actions, claims, liabilities and suits, for losses and damages to properties of other contractors, if any, and/or third parties arising from the execution of the PROJECT and during the operation of the PUBLIC MARKET;
5. It shall be responsible for its employees' strict observance of the laws of the Republic of the Philippines relevant to the execution of this Agreement. The PROPONENT shall execute the Agreement with due regard to safety against accidents to its employees and to the employees of the LGU at the work site, if any, and shall provide such machinery, guards, safe walkways and such other safety devices as may be needed for the prevention of accidents. The PROPONENT shall be responsible for the payment of all indemnities, including hospital and medical expenses, arising out of any labor accidents which may occur in the course of the project execution and for which PROPONENT may be responsible under PD No. 442 as amended by the Labor Code;
6. If in the execution of the PROJECT, it is necessary to interrupt or obstruct the natural flow of rivers or streams within the work site, if any there be, the drainage of the surface, or the flow of artificial drains, the PROPONENT shall provide adequate measures to prevent damage to both public and private properties. The PROPONENT shall be liable for all damages that may occur, except to the extent that such damage arises from the contributory act or negligence of the LGU, in which case it shall be shouldered proportionately between the PROPONENT and the LGU;
7. It shall not trespass over the limits of the property of any third party without having previously received the relevant permit. It shall, moreover, be responsible for the care of all public and private properties that may be affected by the implementation of the PROJECT and adopt such reasonable precautions to avoid injury or harm over the same, otherwise, it shall recondition or repair or replace or reconstruct the damaged or destroyed property at its own expense, or pay compensation for the damage within the shortest possible period;
8. It shall assume full responsibility for the costs arising from any adverse environmental effects or other impacts that may result from the construction of the PROJECT;
9. It shall upon completion of the PROJECT, operate the PUBLIC MARKET for a period stated in the concession that shall be granted by the LGU, but in no case exceed _____ years, and thereafter transfer the facility to the LGU; and
10. It shall charge fees, rentals and charges not exceeding the amounts proposed in its bid or as negotiated to enable it to recover its investment, and operating and maintenance expenses in the PROJECT, plus a reasonable rate of return thereon.

ARTICLE 6 - PERFORMANCE SECURITIES AND INSURANCES

Section 6.1 *Construction Security* - To guarantee the faithful performance by the PROPONENT of its obligations and duties under this Agreement, the PROPONENT shall put up a Construction Security, within the period and in the form and amount stipulated in the Notice of Award. The security may be in the form of cash, manager's check, cashier's check, bank draft or guarantee confirmed by a reputable local bank acceptable to the LGU, standby letter of credit issued by a reputable bank acceptable to the LGU, provided that if a letter of credit is issued by a foreign bank, it must be confirmed by a local bank or offshore banking unit, surety bond callable on demand issued by the GSIS, by surety or insurance companies duly accredited by the Office of the Insurance Commissioner, or a combination thereof, in accordance with the following schedules:

a. Cash, irrevocable letter of credit, bank draft – a minimum of two percent (2%) of the total Project Cost
b. Bank Guarantee - a minimum of five percent (5%) of the total Project Cost
c. Surety Bond – a minimum of ten percent (10%) of the total Project Cost

The Construction Security shall be released by the LGU after the issuance of the "Certificate of Completion and Acceptance" of the Construction works, and the acceptance by the GU of the PROJECT as completed in accordance with the agreed standards and specifications, provided that there are no claims filed against the PROPONENT or its Contractor.

In the event the completion timetable for the PROJECT is extended in accordance with this Agreement, the term of the Construction Security shall be extended accordingly.

Section 6.2 *Operating Security* - The PROPONENT shall post an Operating Security in the amount of Php_____ in the form of cash or a standby letter of credit issued by a reputable bank acceptable to the LGU, simultaneously with the acceptance of the facility and the release of the performance security to guarantee the operation of the PROJECT in accordance with the operating parameters and specifications under this Agreement. The Operating Security shall remain valid and in full force and effect for the duration of the Concession Period.

Section 6.3 *Failure to Post Performance Securities* - Failure of the PROPONENT to post any of the performance securities shall be sufficient ground for the LGU not to execute this Agreement. Should the LGU, under any of the conditions stipulated under Article 14, terminate this Agreement, the performance security not so released shall be forfeited in favor of the PROPONENT without any need of judicial action. The PROPONENT shall obtain the consent of the surety, if necessary, for any changes to this Agreement to ensure the effectivity of the performance securities submitted to the LGU.

Section 6.4 – *Warranty Security* – The PROPONENT shall at its own expense secure and post a Warranty Security to take care of any defect, hidden or otherwise, not noted during the PROJECT completion and those defects or deficiencies that may arise within a period of (1) year from the completion of the PROJECT. The Warranty Security shall be made effective immediately upon transfer of full legal ownership over the PROJECT in favor of the LGU.

Section 6.5 *Insurance* - In addition, to insure third parties of payment, in case damage or injury is done to their person or property during the course of the performance by the PROPONENT of its responsibilities hereunder, the PROPONENT shall put up bonds and insurance normally required in infrastructure PROJECTs, such as but not limited to contractor's all-risk insurance, third party liability insurance, motor vehicle liability insurance, workmen's compensation insurance.

Certified copies of the policies and official receipts of such bonds and insurances shall be submitted to the LGU. These bonds and insurance shall preferably be procured from the Government Service Insurance System (GSIS), but if it is impractical to do that, then they shall be procured from an insurance or bonding company accredited by the Insurance Commission and acceptable to the LGU.

Section 6.6 *Insurance Proceeds* - The proceeds from insurance claims, except Third Party Liability Insurance and Workmen's Compensation Insurance, with respect to loss or other damage to the PROJECT, shall first be applied by the PROPONENT to the extent necessary to fully repair or restore the PROJECT to its previous operating condition, or to completely rebuild the PROJECT.

ARTICLE 7 - CONTRACT MANAGEMENT, MONITORING AND EVALUATION

Section 7.1 *Contract Management* - Within _____ calendar days from the date of the signing of this Agreement, each Party shall form a Contract Management Committee, which shall be responsible for monitoring, managing and evaluating the full implementation of the PROJECT. Within _____ calendar days from its creation, each Party shall immediately send written notice to the other naming its members to the Contract Management Committee.

Section 7.2 *Project Reports* - Within _____ calendar days from receipt of the notice referred to in Section 7.1, the Contract Management Body shall meet and agree on the form of the report, the method for monitoring and obtaining the information required, the Party responsible for monitoring and reporting on each of the indicators and the frequency that each indicator should be monitored and reported.

The Parties shall ensure that Project Report will contain the performance indicators to determine the PROPONENT's and LGU's compliance with their respective obligations under the Agreement, the major risk factors for the PROJECT, events and conditions that has occurred which materially affects the PROJECT and all other material information that may be included by the Parties.

Section 7.3 *Monitoring and Reporting Obligations* - The Parties shall establish appropriate monitoring and reporting systems to comply with their monitoring and reporting obligations agreed upon and embodied in the Project Report.

The Project Reports shall be prepared and submitted within ___ calendar days after the end of the calendar month to which they apply. Where a Project Report shows that the Project falls below the key performance indicators, the PROPONENT shall state that fact in the report with a full explanation of the reasons for the below-target performance and the steps that it has or will be taking to ensure that performance is improved to meet the standard.

Section 7.4 *Regular Meetings* - The Contract Management Committee of the Parties shall meet once a month or more frequently if necessary in order to discuss the progress of the PROJECT, any problems or issues in the implementation of the PROJECT and the lessons learned from the monitoring and management of the PROJECT.

Section 7.5 *Right of LGU to Monitor* - The LGU shall be entitled to inspect, check, test and monitor the PROEJCT during the construction period and the operating period. The purpose of such monitoring shall be to determine whether the PROJECT are being designed, constructed, operated and maintained in accordance with the terms of this Agreement.

The PROPONENT shall allow the LGU or its duly authorized representatives to conduct such inspection and monitoring during normal business hours upon reasonable prior written notice to the PROPONENT. It shall ensure that the LGU or its agent or representative is given sufficient access to carry out the inspection. The monitoring and review shall be conducted in the presence of a duly designated representative of the PROPONENT.

ARTICLE 8 - PROPONENT'S WARRANTIES

Section 8.1 *Corporate Existence* - The PROPONENT warrants that it is a corporation or a partnership duly organized and validly existing under the laws of the Republic of the Philippines. It has all requisite power, authority and legal right to execute and deliver this Agreement and to perform its obligations thereunder; and has taken all appropriate and necessary corporate and legal action and obtained all necessary permits and approvals for the execution, delivery and performance of this Agreement and all other instruments, or documents contemplated hereunder.

Section 8.2 *Authorized Signatory* - The PROPONENT's signatory to this Agreement has full legal capacity and has been duly authorized by the Board of Directors of the PROPONENT to sign, execute and deliver this Agreement for and on behalf of the PROPONENT.

Section 8.3 *Validity and Enforceability* - This Agreement constitutes the legal, valid and binding obligation of the PROPONENT, enforceable against the PROPONENT in accordance with its terms. This Agreement is in satisfactory and proper legal form under the laws of the Republic of the Philippines.

Section 8.4 *Due Execution* - The execution, delivery and performance of this Agreement and the other documents herein referred to do not violate any provision of law, rule, regulation or order or decree of any court, tribunal or government authority, bureau or agency, or of the charter, by-laws or corporate rules of the PROPONENT, any corporation, or any contract or other undertaking to which the PROPONENT is a party.

Section 8.5 *Know-how* - The PROPONENT warrants that it has the know-how, resources, trained personnel and staff, technical, marketing and financial capabilities, as well as management expertise, to fulfill its duties and responsibilities hereunder, and implement the financing, design, construction, equipping, provisioning, maintaining, marketing and operating the PROJECT.

Section 8.6 *No Adverse Litigation* - There is no adverse litigation, arbitration, investigation or proceeding pending, or to its best knowledge threatened, against or affecting such Party that could reasonably be expected to materially adversely affect its ability to fulfill its obligations under this Agreement or that may affect the legality, validity, or enforceability of this Agreement.

Section 8.7 *Corruption* - The PROPONENT warrants that neither it, nor its representatives or agents, have offered any government officer or employee, national or local, any consideration or commission for its award of the Contract of this PROJECT nor has it exercised any corrupt, undue or unlawful influence, directly or indirectly through relatives within the third degree of consanguinity or affinity in securing this Agreement.

ARTICLE 9 - LGU WARRANTIES

Section 9.1 *Corporate Existence* - The LGU warrants that it is a duly organized and validly existing political subdivision and local government of the Republic of the Philippines and has all requisite power, authority and legal right to execute and deliver this Agreement, and to perform its obligations hereunder.

Section 9.2 *Due Execution* - The LGU has taken all appropriate legal and/or other action which may be required or appropriate to authorize the execution, delivery and performance of this Agreement and any and all other agreements, instruments or documents contemplated hereunder.

Section 9.3 *Validity and Enforceability* - This Agreement constitutes the legal, valid and binding obligation of the LGU, enforceable against the LGU in accordance with its terms. This Agreement is in satisfactory and proper legal form under the laws of the Republic of the Philippines.

Section 9.4 *No immunity* - The LGU further warrants that it is subject to the civil and commercial law in respect of its responsibilities under this Agreement and that it is not immune from suit, judgment or execution or any legal process in connection with said responsibilities. But nothing herein shall be considered as waiving the immunity of the State with regard to the assets and interests of the Republic of the Philippines.

ARTICLE 10 - FORCE MAJEURE

Section 10.1 *Definition of Force Majeure Event* - A "Force Majeure Event" means any event, condition, or circumstance and the effects thereof not within the reasonable control, directly or indirectly, of the Party affected, but only if and to the extent that:

a. Such event, condition, or circumstance is not the direct or indirect result of the breach by such Party of any of its obligations under this Agreement or the fault or negligence of such Party, its Affiliates, or any person under the Party's or its Affiliates' reasonable control;
b. Despite the exercise of reasonable diligence, such event, condition, or circumstance cannot be prevented, avoided, or removed by such Party; and
c. Such event, condition, or circumstance has a material adverse effect on the ability of such Party to perform all

or a material portion of any of its obligations under this Agreement, and such Party has taken all reasonable precautions, due care, and alternative measures in order to avoid or mitigate the effects of such event on such Party's ability to perform its obligations under this Agreement.

Section 10.2 *Exceptions* - Force majeure shall not include infrastructure or equipment failure due to ordinary wear and tear, or defects in design, inappropriateness or weakness in materials or supplies, unavailability of financing, or any other happenstance that a Party can reasonably be expected to effectively guard against or control.

Section 10.3 *Responsibilities of the Parties during Force Majeure Event* - A party invoking Force Majeure shall:

a. Notify the other party in writing by any means of communication as soon as reasonably possible of the date of commencement of such Force Majeure Event, the nature and expected duration thereof, and the actions to be taken to prevent or reduce the effects of such event. The notice shall be sent by such Party not later than _____ calendar days after the date on which such Party first gains knowledge of such Force Majeure Event. If it fails to deliver such notice in accordance with this provision, such Party shall not be entitled to invoke the benefits of this Section;
b. Continue performance of its obligations that are not affected by the occurrence of the Force Majeure; and
c. Resume performance of affected obligations after the Force Majeure or after the effects of Force Majeure no longer exists, whichever is earlier, and shall formally notify the other party of such resumption.

Section 10.4 *Mitigation* - Each Party shall exert all reasonable efforts in accordance with Prudent Utility Practice or other applicable standard to prevent or mitigate the consequences of the Force Majeure Event on the performance of its obligations under this Agreement. The Parties shall consult with each other in good faith and shall use all reasonable endeavors to agree on appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued implementation of the PROJECT. The Parties shall exert all reasonable efforts to resume the performance of their obligations as soon as practicable following the declaration of a Force Majeure Event.

Section 10.5 *Effect of Force Majeure Events* - The affected Party shall be excused from performance and shall not be in default of any obligation under this Agreement for so long as its failure to perform such obligation is due to a Force Majeure Event, provided that:

a. The affected Party makes continuous diligent efforts to prevent or mitigate the effects of the Force Majeure Event;
b. The Party claiming a Force Majeure Event shall not be entitled to suspend performance or be excused for delayed performance under this Agreement for any greater scope or longer duration than is required by the Force Majeure Event or the delay occasioned thereby
c. Neither Party shall be relieved of or excused from its obligations under this Agreement solely because there may be increased costs or other adverse economic consequences incurred through the performance of such obligations

ARTICLE 11 – DEFAULT

Section 11.1 *PROPONENT's Default* - The occurrence of any of the following shall constitute an event of default for the PROPONENT:

a. Failure to perform any of its obligation under this Agreement for a cause not attributable to force majeure, and such failure persists for more than ____ days;
b. Failure without justification to resume performance within _____ days after the force majeure that has prevented the PROPONENT from performing any other obligation hereunder has substantially ceased;
c. Deliberate material misrepresentation of any fact contained in its periodic reports to the LGU, or if it committed any deliberate falsity in his bid documents on which the LGU relied in giving it the contract award;
d. Filing of a voluntary or involuntary case or other proceeding by or against the PROPONENT seeking insolvency, bankruptcy, liquidation, reorganization, dissolution, winding up;
e. A pattern of continuing or repeated non-compliance, willful violation, or non-performance of other terms and conditions hereof including any material breach thereto, and the PROPONENT fails to remedy the same within ___ calendar days from notice thereof; and
f. Assignment or transfer without the prior approval of the LGU.

Section 11.2 *LGU's Default* - The occurrence of any of the following events shall constitute the LGU's Default:

- LGU terminates, or cancels this Agreement without valid or justifiable cause;
- Any representation or warranty made by the LGU and relied upon by the PROPONENT to its detriment turning out to be false in any material respect; and
- Failure or refusal to perform any material covenant, agreement or obligation under this Agreement within _____ days after receipt by the LGU of a notice of default specifying the same, provided, however, that such period shall be extended if the failure or refusal is remediable but cannot reasonably be completed within _____ days and the LGU begins to diligently remedy such failure.

ARTICLE 12 - ASSIGNMENT, TRANSFER & OTHER CONVEYANCES

Section 12.1 *Assignment* - The PROPONENT may, with the prior written approval by the Local Chief Executive, with the concurrence of the Local Sanggunian, assign its rights, interest, benefits and obligations under this Agreement to any company or special purpose company or successor company or entity. The Assignee shall perform and comply with all its obligations and assume all the rights, interest, and benefits of the PROPONENT under this Agreement.

Section 12.2 *Assignment Void* - Any assignment or transfer without prior approval from the LGU shall be void and ineffectual.

Section 12.3 *Acceptance Tests and Procedures* – The Parties shall meet and agree on procedures, standards, protective settings and a program to be followed by the PROPONENT for the testing of facility in accordance with the agreed tests and test procedures set out in the Schedule (ANNEX D). The PROPONENT shall give to LGU not less than ___ day notice of its intention to commence any testing of the facility. LGU and/or its expert shall be entitled to be present at any

testing of the facility. Upon completion of any testing, the PROPONENT and the LGU shall jointly certify whether or not the facility has satisfied such test.

Section 12.4 *Transfer* – Prior to the end of the concession period, the PROPONENT shall arrange for the training of an adequate number of LGU personnel in relation to the operation of the PUBLIC MARKET. On the transfer date, the PROPONENT shall transfer to the LGU (and shall execute such documents as may reasonably be considered necessary to effect such transfer), free from any lien or encumbrance created by the PROPONENT and without the payment of any compensation, all its right, title, and interest in and to the fixtures, fittings, equipment and all improvements comprising the PUBLIC MARKET.

The PROPONENT shall also deliver to the LGU on such date such operation summaries/transfer notes, design drawings and other information as may be reasonably required by the LGU to enable it take over the PROJECT.

Section 12.5 *Buy-out* - Buyout shall take place under the following condition:

a. Change in Circumstances - In the event that as a result of any laws or regulation of the Republic of the Philippines, or any agency or other body under the control of the Government of the Republic of the Philippines, or any regional or municipal authority thereof, coming to effect after the date of this Agreement, or as a result of any such laws or regulations (including any official interpretation thereof which the PROPONENT has relied upon in entering into this Agreement) in force at the date hereof being amended, modified or repealed, the interest of the PROPONENT and/or the PROPONENT's financial rate of return (net of tax or other imposition, including, without limitation any withholding or remittance tax on the payment of dividends) on its investment is materially reduced, prejudiced or otherwise adversely affected (including without limitation, any restriction on the ability to remit funds in foreign currency outside the Philippines), or any changes which would drastically reduce the demand for the Project's services, then the Parties hereto shall meet and endeavor to agree to make amendments to this Agreement, and if after 90 days no such agreement has been reached, Buy-out Provision under this Section shall apply.

The LGU shall purchase all the PROPONENT's rights, titles and interests in PROJECT and thereupon all the PROPONENT's obligations hereunder shall cease. Provided, however, that the LGU and the PROPONENT shall first undergo arbitration pursuant to Article 13 (Dispute Resolution) prior to resorting to the buy-out option.

Section 12.6 *Buy-out Price* – The purchase price payable pursuant to the buy-out provision shall be Php_____.

ARTICLE 13 - DISPUTE RESOLUTION

Section 13.1 *Mutual Discussions* - In case of any dispute or controversy of any kind whatsoever between the Parties arising out this Agreement, said Parties shall first endeavor to resolve within _____ days such dispute by mutual discussion and amicable means between the President of the PROPONENT and the Local Chief Executive.

Section 13.2 *Arbitration* - Should the dispute (meetings) not be settled amicably by mutual discussion within ____ days from the initial meeting of the President of the PROPONENT and the LCE of the LGU, the dispute shall be finally and exclusively resolved by binding arbitration. The arbitration shall proceed in accordance with the provisions of the Arbitration Law of the Philippines, (Republic Act No. 876), in such place as the Parties may agree. While the dispute is being arbitrated, the performance by the Parties of their respective obligations shall not be suspended, unless otherwise declared by the arbitral tribunal or otherwise agreed by the Parties or unless the obligation to be performed is the very issue of the arbitration.

Section 13.3 *Expert Panel and Arbtiral Award* - All expert panel and arbitral awards shall be in writing and shall state the reasons upon which they are based. The decision of the arbitral tribunal shall be final, binding and unappealable. The awards may include an award of costs, including reasonable attorneys' fees and disbursements. Judgments upon the awards may be entered by any court having jurisdiction thereof or having jurisdiction over the Parties or their assets.

ARTICLE 14 - CONTRACT TERMINATION

Section 14.1 *Right not to execute* - The Parties shall have the right not to execute the Agreement without resorting to legal proceedings in case of any substantial breach of conditions or obligations and responsibilities. A pattern of continuing or repeated non-performance, willful violation or non-compliance of the terms and conditions hereof will be deemed a fundamental breach of this Agreement.

Section 14.2 *Termination Procedure* - In case a Party commits an act constituting an event of default, the non-defaulting Party may terminate this Agreement by serving a written notice to the defaulting Party specifying the ground for termination and giving the defaulting Party a period of _____ days within which to rectify the default to the satisfaction of the non-defaulting Party. If the default is not remedied within this period to the satisfaction of the non-defaulting Party, then the latter will serve upon the former a written notice of termination indicating the effective date of termination.

Section 14.3 *LGU's Remedies* – Upon the occurrence of a PROPONENT's Default, the LGU may by Notice of Default, take on or more of the following actions:

a. Terminate this Agreement and enter into a franchise agreement with another Party for this PROJECT;
b. Take over the PROJECT and request the PROPONENT to assign all its right, title and interests to the PROJECT and under this Agreement to the LGU; or
c. Allow the PROPONENT's lenders/creditors to take over and proceed with the completion of the Project under the same terms and conditions of this Agreement.

Each right or remedy hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or current and hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the LGU of any one or more of any of such rights or remedies shall not preclude the simultaneous or subsequent exercise by the LGU of any or all other such rights or remedies

Section 14.4 *PROPONENT's Remedies* – Upon the occurrence of an LGU Default, the PROPONENT may by Notice of Default, take one or more of the following actions:

a. Terminate this Agreement and any other Agreement executed between the Parties in relation to the PROECT; or
b. Any and all remedies and compensation available by law or in equity or by statute or otherwise.

Each right or remedy hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or current and hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the PROPONENT of any one or more of any of such rights or remedies shall not preclude the simultaneous or subsequent exercise by the PROPONENT of any or all other such rights or remedies.

Section 14.5 *Survival of Termination Obligations* - For the avoidance of doubt, the respective obligations of the Parties in respect of the termination of this Agreement as set forth in this Article 14 shall survive and continue to be enforceable beyond the termination hereof.

ARTICLE 15 - GENERAL PROVISIONS

Section 15.1 *Effectivity* - This Agreement shall come into force and become effective upon and as of the date of the approval hereof by the authorized signatories of the LGU and the PROPONENT.

Section 15.2 *Entire Agreement* - This Agreement constitutes the entire agreement between the Parties with respect to the transactions contemplated herein. All prior discussions, understandings or arrangements between them prior to effective date, whether express or implied, concerning the PROJECT are superseded by this Agreement.

Section 15.3 *Waiver* - No provision in this agreement shall be considered waived by either Party unless such waiver is in writing and communicated to the other Party. The failure of any Party to insist on the strict performance of the obligation of the other shall not be considered a waiver of its right to do so.

Section 15.4 *Confidentiality* - Each Party shall hold in strict confidence from any other person all documents and information concerning any other Party furnished to it or its advisors, consultants, contractors, or agents by the other Party in connection with this Agreement or the transactions contemplated hereby.

Notwithstanding the foregoing, the confidentiality requirement shall not apply to such documents or information that were previously known by the Party receiving such documents or information, in the public domain and required by law to be disclosed to any person who is authorized by law to receive the same.

Section 15.5 *Further Assurances* - The Parties will do, execute, and deliver, or will cause to be done, executed, and delivered, all such further acts and such other things as each Party may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the representations, warranties, and covenants of this Agreement.

The Parties further assure that they shall perform their obligations in a highly professional and diligent manner, with due efficiency and economy and timely execution of works and other obligations, in all respects with that degree of skill, diligence, prudence and foresight required from them, and with due attention to the need for fairness, openness and good faith and their dealings.

Section 15.6 *Severability* - The validity of the remaining articles, clauses, provisions, terms and parts of this Agreement shall not be affected by a court, administrative body, or other proceeding of competent jurisdiction deciding that an article, section, provision, term, or part of this Agreement is illegal, unenforceable, in conflict with any law, or contrary to public policy.

Section 15.7 *Language* - English is the governing language of this Agreement, which shall be interpreted in accordance with English usage. All documents, notices, waivers, and all other communications written or otherwise between the Parties in connection with this Agreement shall be in the English language.

Section 15.8 *Notice* - All notices or communications shall be made in writing and be sent to the address given hereunder:

For the PROPONENT	For the LGU
_____	_____
_____	_____

Said notice shall be considered given if delivered by registered mail with return card, or through an internationally or nationally recognized courier service with delivery receipt requested, or by hand delivery. If the notice or communication is faxed, it shall be confirmed in writing. The notice or communication shall be effective upon receipt.

A Party may change its address by giving the other Party written notice of such change, provided that any such change shall not be effective until notice of such change has been received by the other Party.

Section 15.9 *Amendment* - This Agreement may be amended or modified only in writing and signed by the Parties, provided that prior to signing, said proposed amendments shall be approved by the Board of the PROPONENT and the Local Sanggunian of the LGU.

IN WITNESS WHEREOF, the Parties, acting through their respective duly authorized representatives, have caused this Agreement to be signed under their respective names on the date and at the place first above-written.

LGU NAME	[NAME OF WINNING BIDDER]
By:	By:
Name: _____	Name: _____
Title: _____	Title: _____

APPROVED BY:
Local Sanggunian of _____
Resolution No. _____, series of _____.

ACKNOWLEDGEMENT

Republic of the Philippines)
_____) s.s.

BEFORE ME, this ___ day of _____, 20___ in the _____, Philippines, personally appeared to me _____ and _____, with [Valid Identification Document] issued by the [official agency] on _____, known to me to be the same person who executed the foregoing instrument, and they acknowledged to me that the same is their free act and deed.

This instrument refers to a for the **<<Name of the Project>>**, consisting of _____ pages, including the page whereon this Acknowledgment appears, and has been signed on each and every page hereof by the parties hereto and their instrumental witnesses, initialed on each and every page hereof, and sealed by my notarial seal.

(Sgd.)
Notary Public
Until _____
PTR No. _____
Issued at _____
On _____

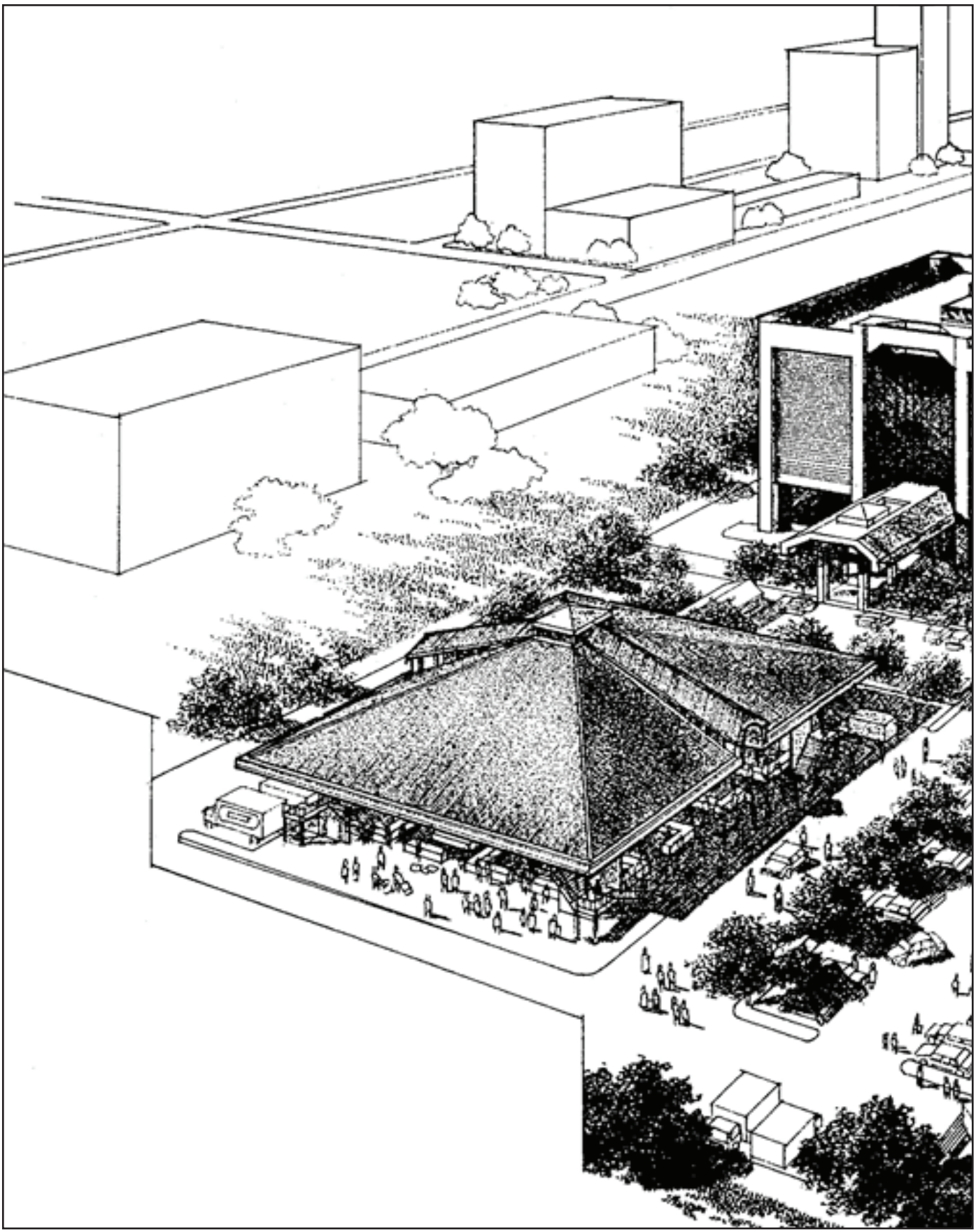
Doc. No._____
Page No._____
Book No._____
Series of 20___

ANNEX A: Concept Design of the PROJECT
ANNEX B: PROPONENT's Technical Proposal
ANNEX C: PROPONENT's Financial Proposal
ANNEX D: Project Construction and Implementation Schedule

(may include other Contract Documents depending on the needs of each Project)

Shopping Center and Public Market Perspective and Floor Plans

Figure 3-1: Public Market and Shopping Center Perspective



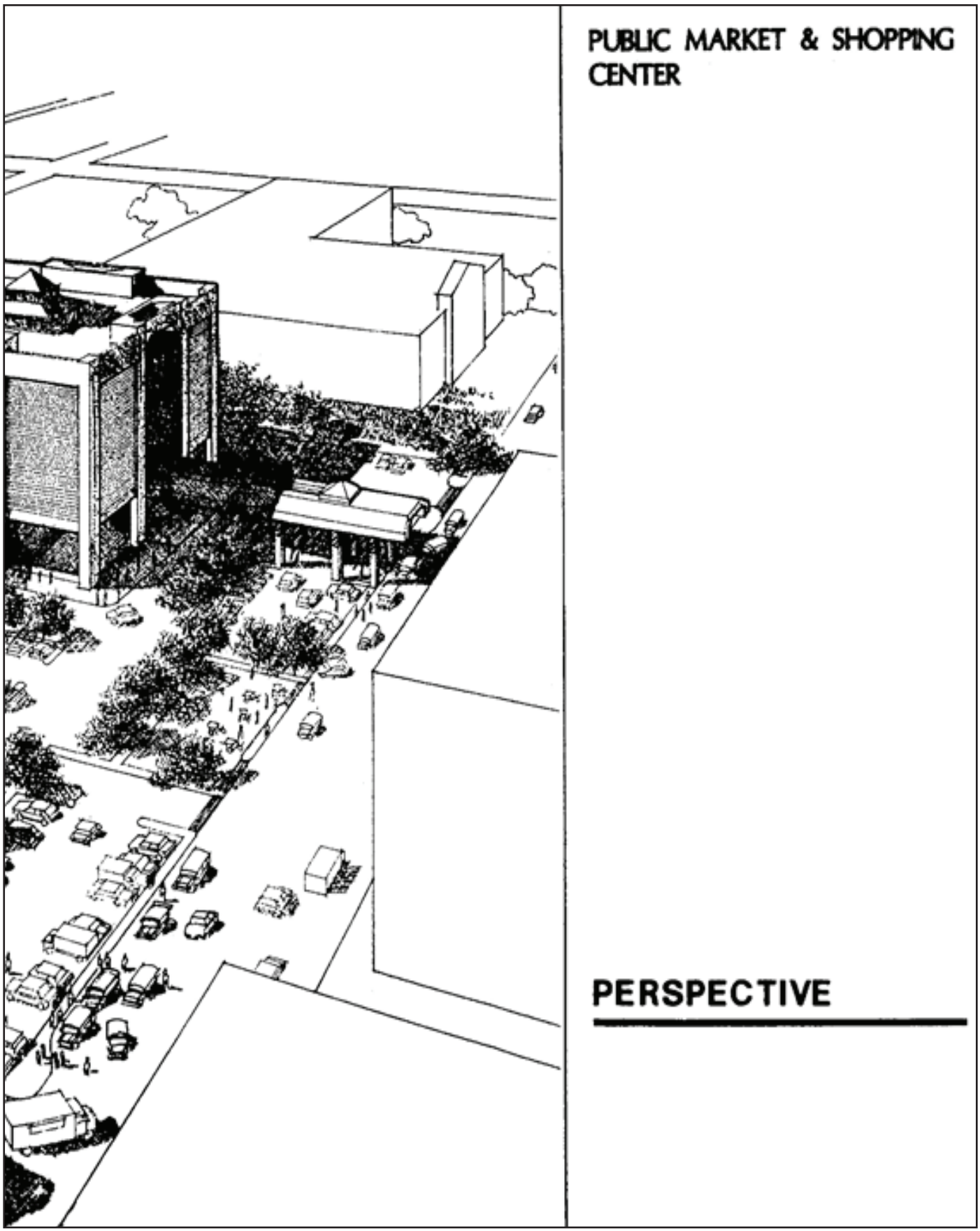
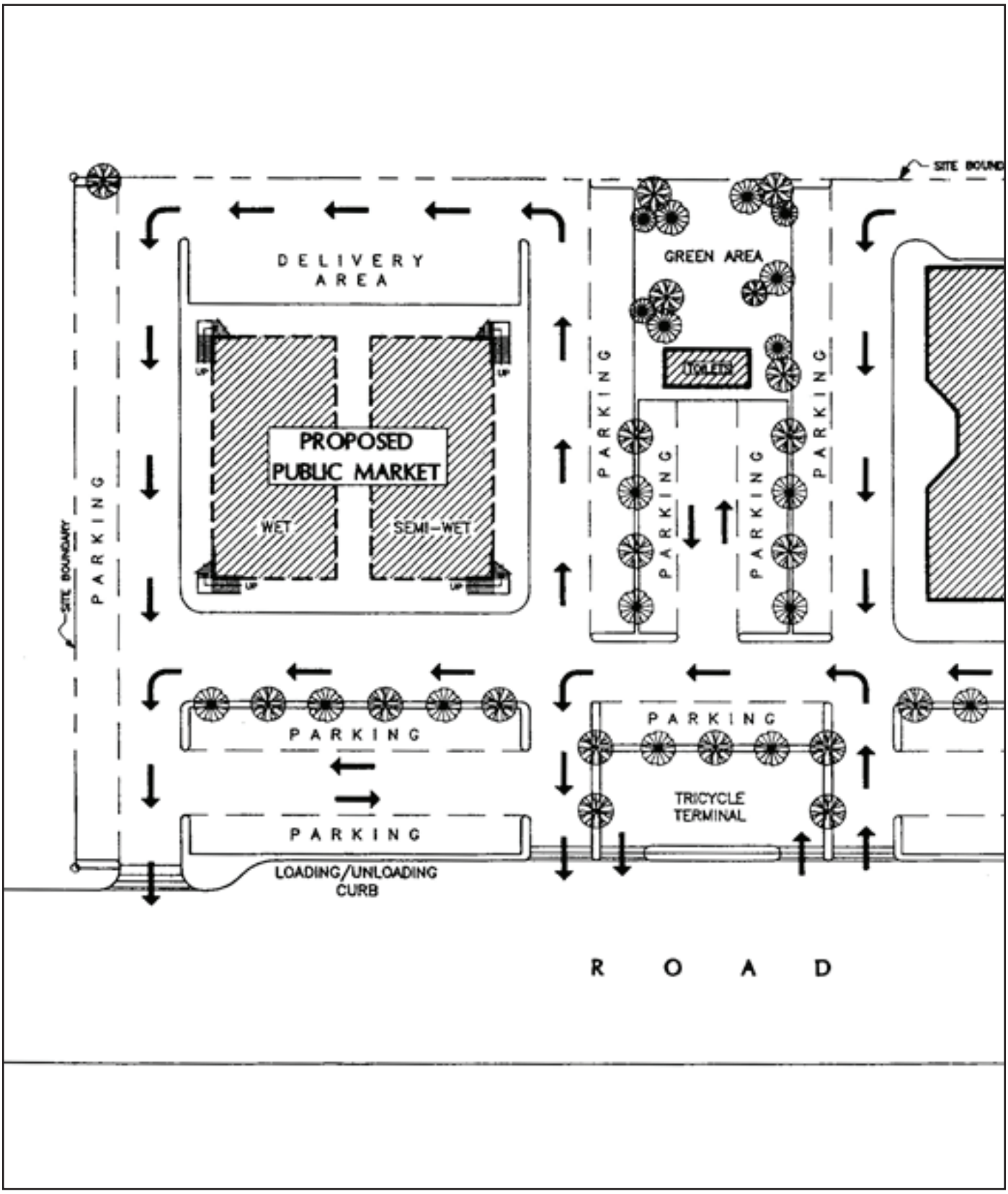

PUBLIC MARKET & SHOPPING CENTER
PERSPECTIVE

Figure 3-2: Public Market and Shopping Center Conceptual Plan



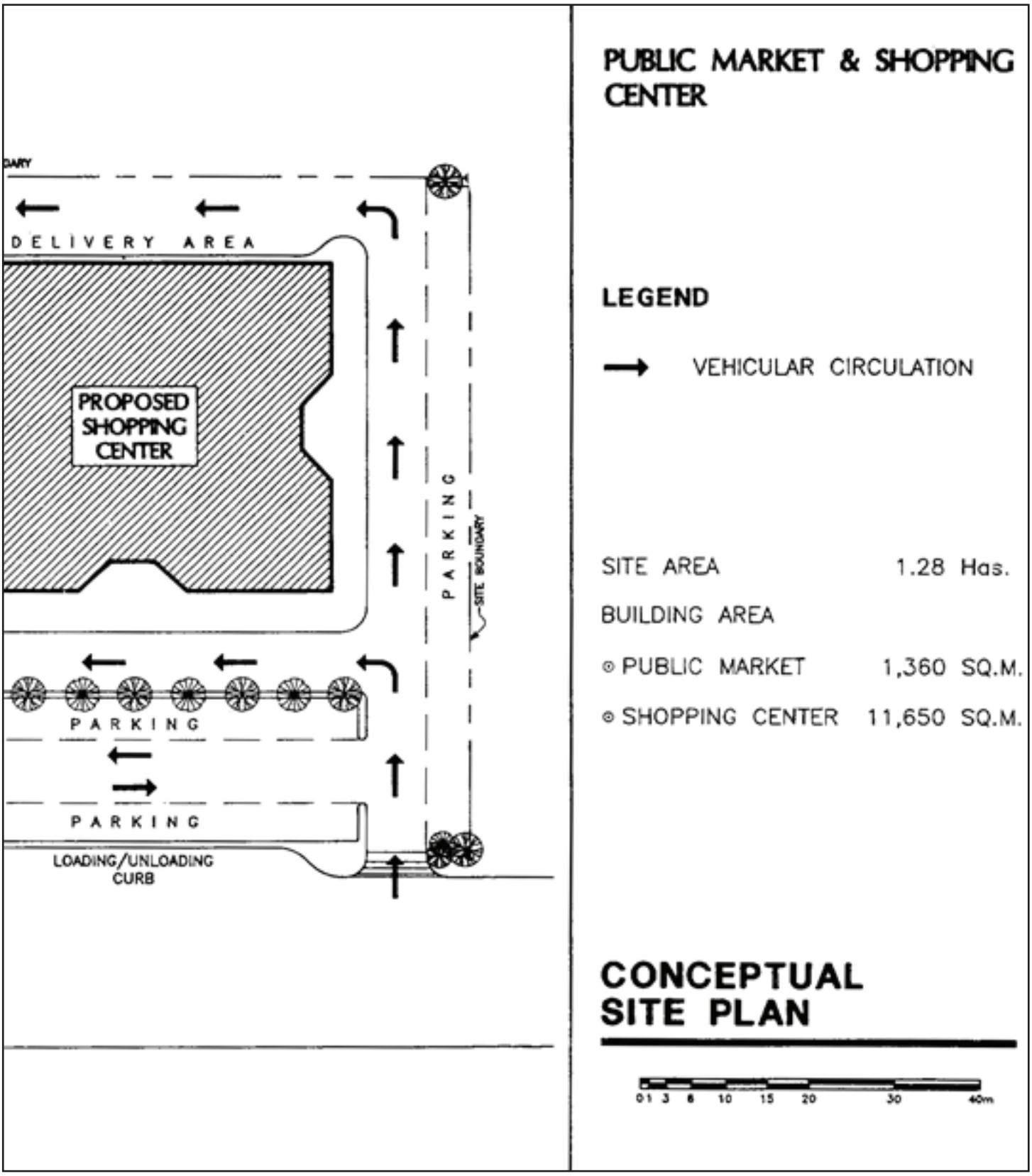
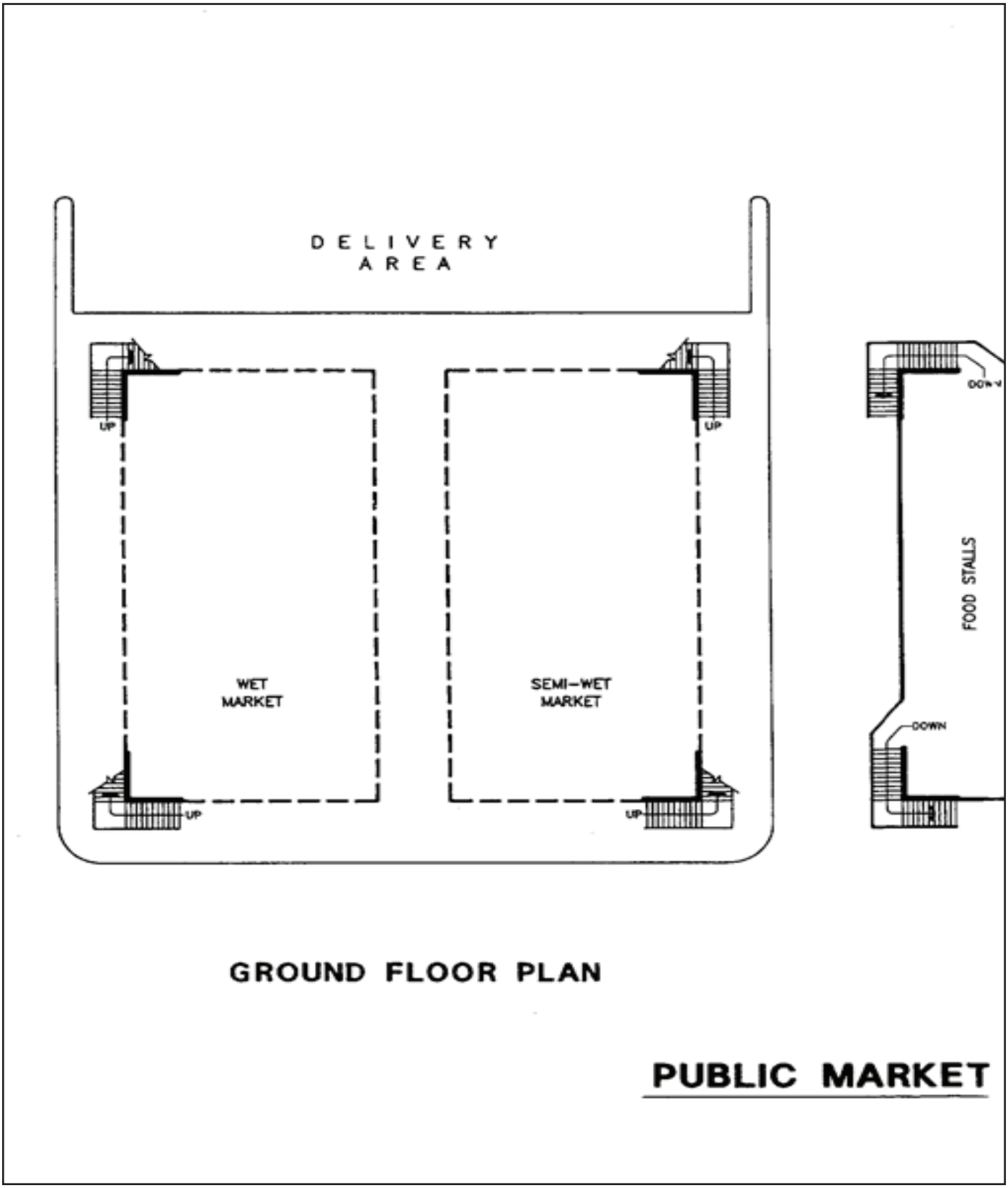
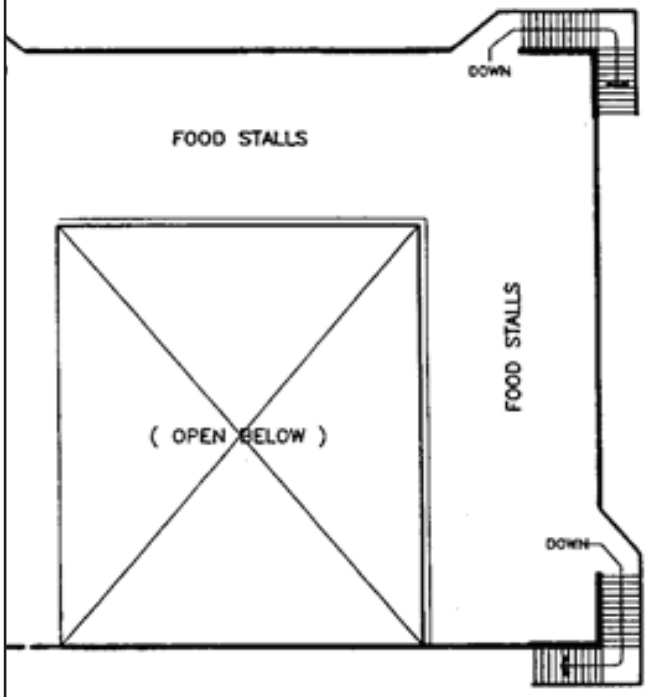

PUBLIC MARKET & SHOPPING CENTER
DELIVERY AREA
PROPOSED SHOPPING CENTER
PARKING
SITE BOUNDARY
PARKING
PARKING
LOADING/UNLOADING CURB
LEGEND
VEHICULAR CIRCULATION
SITE AREA 1.28 Has.
BUILDING AREA
PUBLIC MARKET 1,360 SQ.M.
SHOPPING CENTER 11,650 SQ.M.
CONCEPTUAL SITE PLAN
0 1 3 6 10 15 20 30 40m

Figure 3-3: Public Market Conceptual Floor Plan





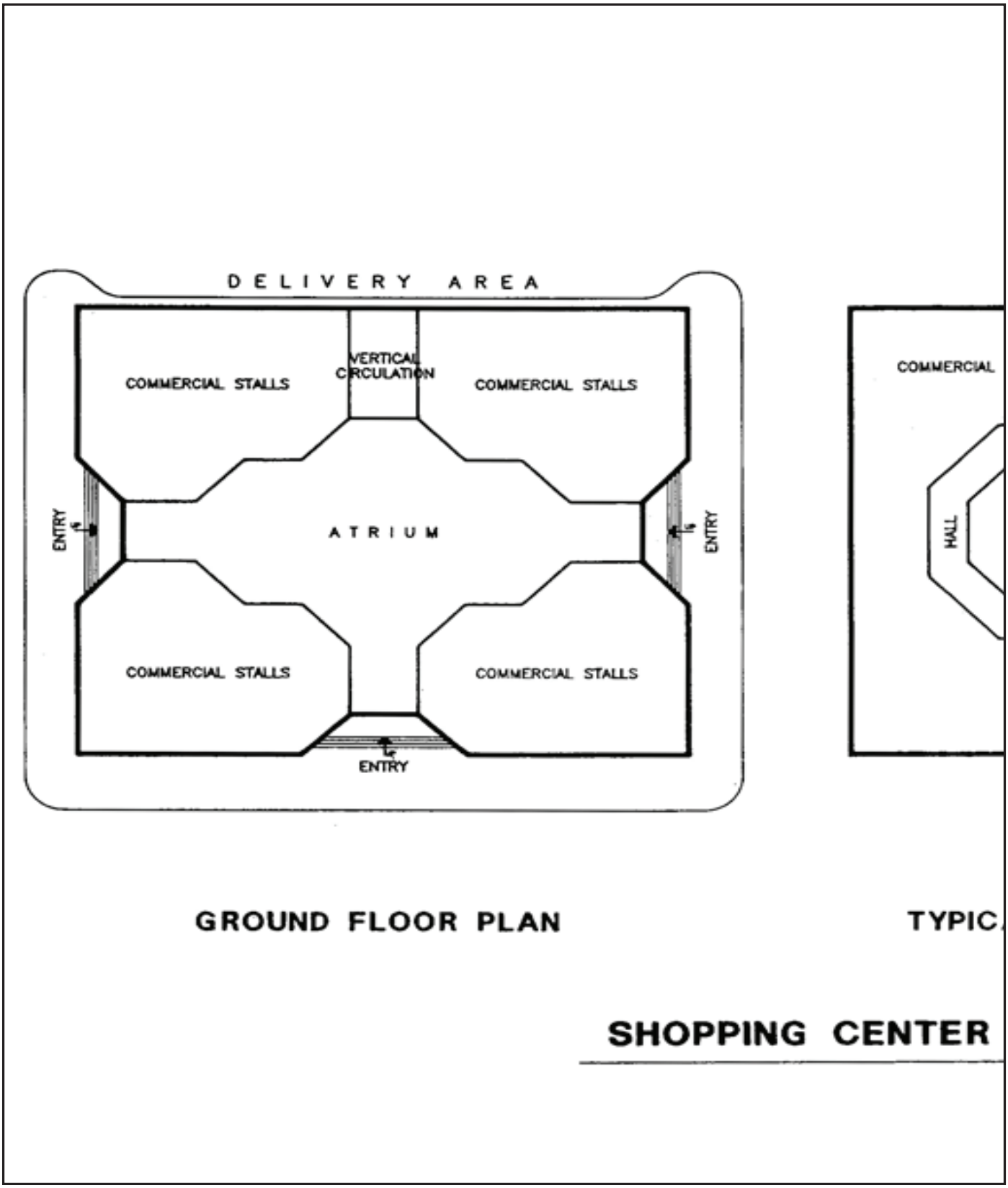
SECOND FLOOR PLAN

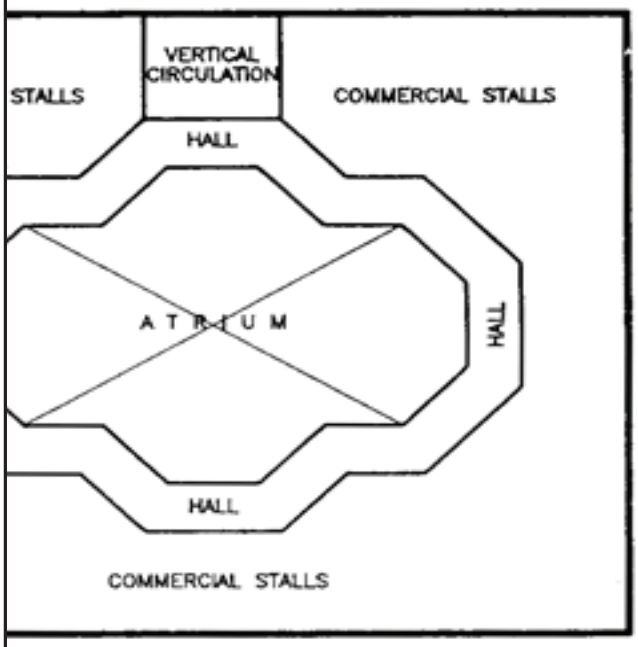
PUBLIC MARKET & SHOPPING CENTER

SITE AREA	1.28 Has.
BUILDING AREA	
⊙ PUBLIC MARKET	1,360 SQ.M.

CONCEPTUAL FLOOR PLAN

Figure 3-4: Shopping Center Conceptual Floor Plan





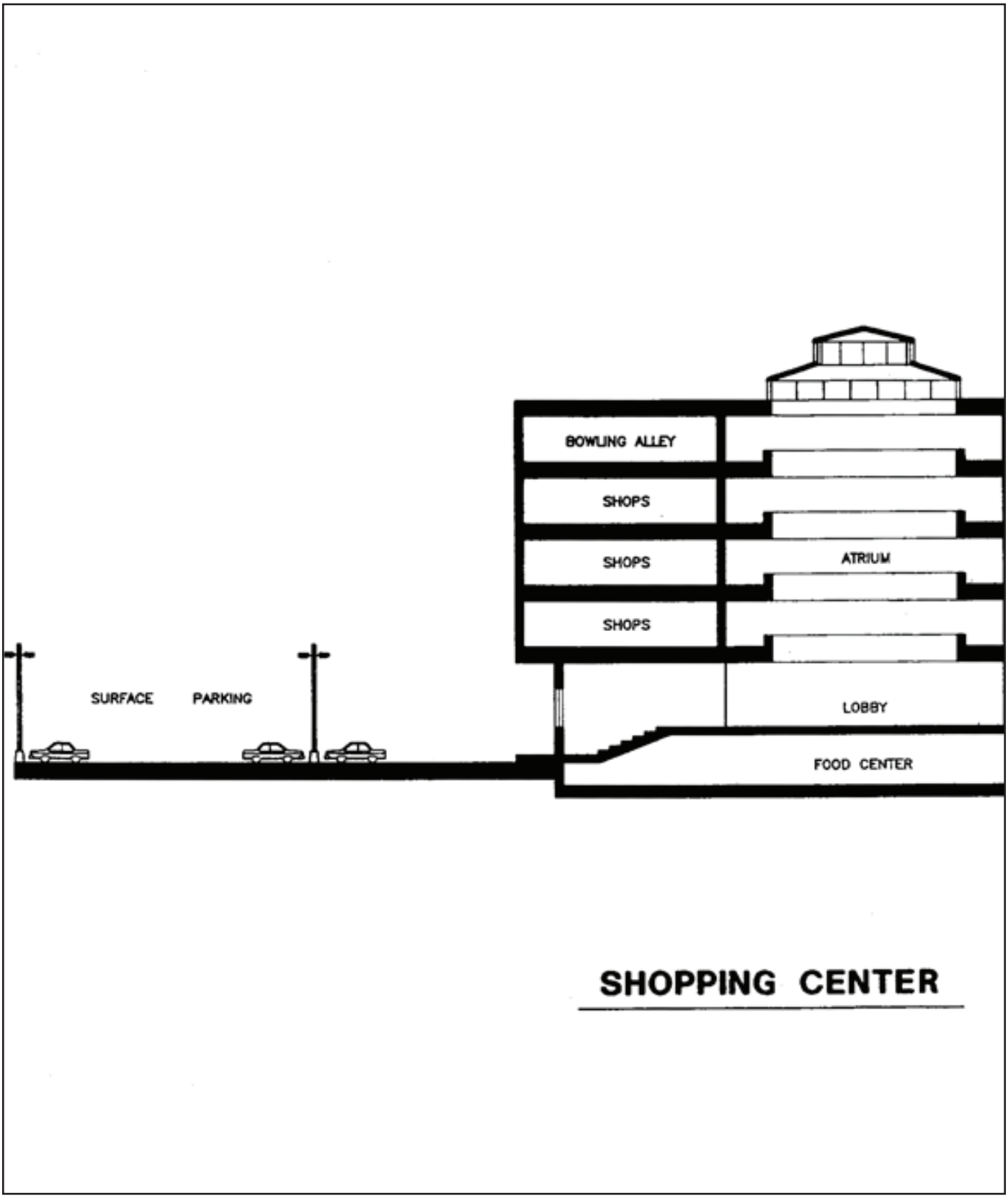
AL UPPER FLOORS PLAN

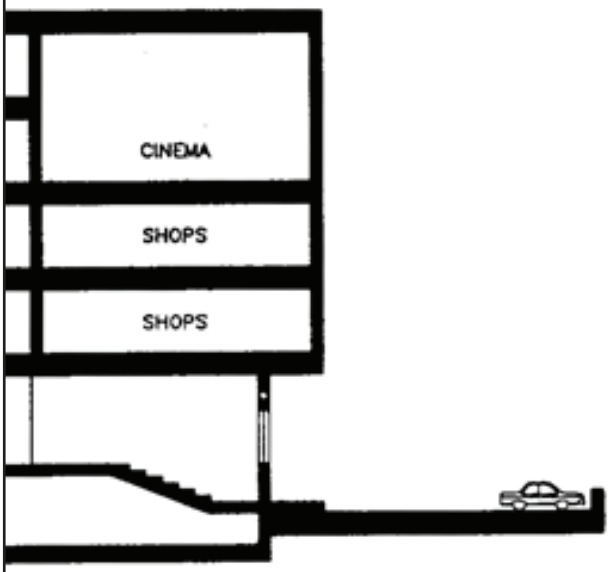
PUBLIC MARKET & SHOPPING CENTER

SITE AREA	1.28 Has.
BUILDING AREA	
⊙ SHOPPING CENTER	11,650 SQ.M.

CONCEPTUAL FLOOR PLAN

Figure 3-5: Shopping Center Conceptual Section





PUBLIC MARKET & SHOPPING CENTER

SITE AREA 1.28 Has.

BUILDING AREA

⊙ SHOPPING CENTER 11,650 SQ.M.

CONCEPTUAL SECTION

LGU GOVERNMENT ADMINISTRATIVE CENTER

LGU GOVERNMENT ADMINISTRATIVE CENTER

Feasibility Study

B1. Project Description

- B1.1 Physical Description of the Facility
- B 1.2 Site Requirements
- B1.3 Project Implementation Scheme
- B1.4 Project Financing

B2. Project Justification

- B2. 1 Economic Criteria Supporting the Center

B3. Preconditions for Successful Tender

- B3.1 Available Site
- B3. 2 Local Support
- B3.3 Favorable Market Conditions

B4. Analysis of Environmental Impacts

Financial Model

B5. Financial Analysis

Provisions Unique to a Government Administrative Center

Model Agreement

Government Administrative Center Perspective and Floor Plans

Feasibility Study

B1. PROJECT DESCRIPTION

This section is derived from the technical analysis done for a project. Concepts and procedures on Technical Analysis are provided in Volume 2.

Name of Project	:	Government Administrative Center
Land Area	:	Approximately 6,000 square meters
LGU Implementor	:	Provincial capital, chartered city' or first class LGU
Private Partner	:	Real Estate Developer

Provincial governments, chartered city governments, and first class municipal governments may be the most qualified implementers of this sample project because of their relatively larger needs for administrative offices. Figures 3-6 to 3-11 can be seen on pages 120 to 126.

Conceptual plans have been provided to show the layout of the facilities.

Conceptual Plan:

- Perspective Figure 3-6
- Site Plan Figure 3-7
- Floor Plan Figure 3-8
- Sections Figure 3-9

B 1.1 Physical Description of the Facility

B 1.1.1 Building

Most of the building's floor area will be devoted to accommodate the offices of national government departments or bureaus, as well as select provincial, city or municipal government units. These functions could include management, finance, general services, technical services and production functions for the corresponding government agencies.

A building floor area of approximately 6,000 square meters was adopted as the model for this sample project. These specifications are based on the typical size of contemporary office facilities and were selected in order to achieve greater economy and efficiency in operations for both the LGU concerned and its private partner.

This government administrative center seeks to create a higher revenue stream by integrating high-technology

building systems into the physical structure, making it a "smart" building. These systems may include electrical raceways, access-floor systems, computer networks, fiber optics, communication lines, and interior environment control, the availability of which can justify higher rentals and capture higher occupancy rates.

B 1.1.2 Site Area

An optional lot area of approximately 6,000 square meters would be sufficient to accommodate the building structure, the required parking and circulation spaces, and also allow space for future expansion. Parking and circulation spaces are commensurate to the capacity of the building.

B 1.1.3 Model Design

The project has four major components:

Major Components

- Office modules
- Specialized functions module
- Circulation/utilities core
- Vehicular parking and open spaces

The modular design allows flexibility in the physical planning of the project, without compromising functional efficiency, allowing the project to be adapted to the conditions of individual LGUs. In addition, future expansion may be carried out without disrupting ongoing operations. Design and performance standards shall be adapted for site development and interior space planning. These include vehicular circulation and parking, office work space allocations, personnel circulation, elevators, lighting, and ventilation. Table 3-11, Government Administrative Center Distribution, in square meters summarizes the space allocation of the above components.

Table 3-11: Government Administrative Center Area Distribution (in sqm)

Facility	Unit Area	Total Area
1. Building Facility		
1.1 Office modules		
Module A:		
Ground Floor	450	
2nd to 4th floor	1,350	
Module B:		
Ground Floor	450	
2nd to 3rd Floor	900	
Total Office Modules		**3,150**
1.2 Specialized functions module		
EDF offices	450	
Telecommunication offices	225	
Records keeping/ storage	225	
Seminar/ training facilities	225	
Total Special Function Mode		**1,125**
1.3 Circulation/utility core		**1,275**
1.4 Cafeteria/restaurant		**450**
Total Building Area		**6,000**
2. Site Development		
Parking area 45 to 50 stalls	1,450-1,650 sq.m.	

The efficiency of an office building design is measured by the ratio of rentable space to total space. Average efficiency is approximately seventy percent (70%) while the maximum possible is eighty-five percent (85%). The efficiency of this building is 79 percent, i.e., of the total 6,000 square meter area, about 4,740 is leasable space. Based on this efficiency level and a 6-9 square meter per employee standard, the building can accommodate an average of 475 to 700 employees.

a) Office Modules

The office space to be leased to the LGUs and other government offices will be 3,150 square meters, capable of accommodating 350 to 525 employees. The office area is an open plan which can easily be subdivided according to need. The designs of the modules are oriented to permit natural lighting and ventilation on all sides. However, air conditioners may be installed by tenants if desired. The split-package type is the most cost-efficient.

b) Specialized Functions Module

The specialized functions model entails four stories (above ground) and a basement, occupying about 1,125 sq. m. Specialized functions and services include the following:

Specialized Functions

- Electronic Data Processing
- Telecommunications
- Records keeping and storage
- Training and seminar facilities.

The space allocated for these functions is sufficient to accommodate about 190 employees. Like the office modules, the specialized functions module is oriented to allow natural lighting and ventilation on all four sides.

Functions by Floor

- Records keeping and storage: basement level
- Administration office and seminar and training facilities: ground floor
- Electronic data processing: second and third floors
- Telecommunications: fourth floor

High technology systems can be incorporated into the design to enhance efficiency.

c) Circulation/Utilities Core

This central area contains the main lobby on the ground floor, elevator lobbies at each floor, elevators, main stairs, toilets, and utility rooms. The design can be formulated in various ways using this core to unify the building clusters.

d) Vehicular Parking and Open Spaces

Vehicle parking areas will be located and sized to ensure smooth circulation and provide adequate capacity. Initially, parking space for 45-50 vehicles will be provided. Generous open spaces shall be allocated for landscaping and future expansion.

B 1.2 Site Requirement

B 1.2.1 Service Area Standards

A Government Administrative Center should be situated in the provincial capital to best serve the needs of both national and local government offices. Not only do government offices conduct the largest volume of business in capitals, but these locales are also traditional centers of commerce and industry.

However, if the most progressive city or LGU is not the capital, situating the Government Administrative Center in the busy city or LGU may be a more favorable alternative.

B 1.2.2 Site Selection

The ideal location for the Administrative Center is within an existing Civic Center/City Hall Complex. Such positioning makes the center highly accessible to the Local Government which it directly serves. A project prerequisite is that the site be owned or controlled by the government, preferably by the LGU involved. Furthermore, utilities such as power, water, drainage and telecommunication systems may already be in place within a developed complex.

The new structure needs only tap into existing lines. A site within a Civic Center would therefore require the least cost to develop.

In the event that there is either no existing Civic Center or no available land within the Civic Center, an alternative site can be identified. The following criteria should be considered in the site selection process:

Site Selection Criteria

- Proximity to the Provincial Capital, City or Municipal Hall
- Generally flat terrain and free from flooding
- Accessible to the general public
- Conforming to the city or LGU land use/zoning plan
- Availability of utility systems and services such as power, water, telecommunication facilities, and drainage/sewerage systems.

B 1.2.3 Estimated Project Cost

The capital cost for this sample project is estimated to be PhP209,857,724 million. This figure includes site development works, building structural systems, foundations, building circulation core (hallways, toilets, lobbies, etc.), vertical circulation systems, fire protection, architectural exterior and interior finishes, exterior lighting and landscaping, and provisions for tenant electrical, mechanical, communication and information systems. A breakdown of the budget estimate is shown in Table 3-12.

Items not included in Cost Estimate

- Specialized equipment and systems that enhance building functions, such as computers and telecommunication systems
- Land acquisition which is the responsibility of the LGU concerned

The capital cost estimates for this project are based on "high end" unit prices for construction. These account for extra conduits for telecommunications and power, fixtures for specialized equipment, and generously-sized climate control features, all of which contribute to the "smart" building concept. These premiums raise the capital cost of the project by about 5 to 8 percent.

Table 3-12: Government Administrative Center Project Cost in Pesos

Cost Item	Unit Cost	Total Cost
1. Building Structure		
1.1 Office modules	85,428,000	
1.2 Circulation/ utility core	32,092,000	
1.3 Specialized functions module		
- EDP offices	6,272,000	
- Telecommunication offices	7,119,000	
- Seminar/training facilities	6,102,000	
- Records keeping/storage facilities	5,339,250	
1.4 Fire protection	4,520,000	
1.5 Water storage tank (300 gallons)	596,640	
Total Building		**157,468,890**
2. Site Development Works		
Earth works	791,000	
Pavement works	2,079,200	
Drainage system	565,000	
Perimeter fencing	1,082,766	
Landscaping (hard and soft)	9,075,708	
Total Site Development		**13,593,674**
3. Sewerage System		
Septic Vault	1,695,000	
Sub-Surface Water Infiltration System (SWIS)	679,808	
Total Sewerage System		**2,374,808**
4. Ancillary Equipment	24,860,000	
Elevators	6,475,352	
Air-conditioning for specialized modules only		
Emergency Generator (450 kva)	5,085,000	
Total Equipment		**36,420,352**
	Total Project Cost	**209,857,724**

B 1.3 Project Implementation Scheme

The proposed implementation scheme for this type of project is BLT. The builder will construct the building on a publicly-owned parcel of land, arrange for the lease of space to the LGU and other government offices, and manage the finished building until its transfer to the LGU.

To improve the commercial viability of the project, space will be allocated for lease to the private sector, who may operate the services under the special functions module. The LGU will not receive a share of the revenue, but the building will be transferred free of charge at the end of the concession period.

B 1.4 Project Financing

The private sector proponent is responsible for raising capital for the construction of the entire complex, including all miscellaneous expenses that may be incurred as a result of this project. The LGU's main contribution is the land on which the complex is built.

B2. PROJECT JUSTIFICATION

This section is derived from the market/demand study done for a project. Concepts and procedures are provided in Volume 2.

The primary economic significance of the project is the promotion of efficiency in the inter-agency coordination of government offices and the facilitation of transactions between the government and its citizens.

Furthermore, the Government Administrative Center can contribute to increasing the status of the local government. To serve as a model for the community, the project plan can incorporate environmentally sensitive design considerations such as: energy efficiency, water recycling, waste recycling and management and landscaping with endemic tree and plant species. Where there are no existing centers of art and culture, the center may also provide a venue for exhibits, demonstrations, and information dissemination.

B 2.1 Economic Criteria Supporting the Government Administrative Center

Socio-economic criteria can be used to determine whether there is sufficient demand for the center. The ideal candidate LGU for this sample project should he a large urbanized settlement, preferably the largest in the province or region, with a high population density and economic growth of over 6 percent per year. The LGU should have well-established and developed economic activities and services, as well as functional and economic links with the national capital and regional areas. Also, the LGU should be experiencing growth in several key areas of employment and finance. The following criteria help assess the LGU's degree of development:

Urbanization Criteria

- government tax receipts per capita
- number of offices and number of employees in national and local government offices located in the city
- number of banks and growth in deposits
- power consumption and growth in demand
- number of commercial establishments

Traffic volume within the area is also a significant indicator of economic activity. The following consideration may be used:

Level and Growth in:

- average daily road traffic
- railway turnover : cargo and passenger
- seaport turnover : cargo and passenger
- airport turnover cargo and passenger

B3. PRECONDITIONS FOR SUCCESSFUL TENDER

This section is done during the project development phase and is identified by the technical working group of the LGU. Clarification on the process is available in Volume 2.

What LGUs need to know:

There are three preconditions for successful tender:

Preconditions

- Available Site
- Local Support for Project
- Favorable Market Conditions

B 3.1 Available Site

It is the LGU's responsibility to provide the land for the proposed facility. The task of acquiring the land can best be handled by the local government because (a) it is inherently in a better bargaining position than the private sector; (b) bureaucratic government procedures regarding the transfer of real estate ownership discourage private investors; and (c) delays in land acquisition have a substantial impact on project implementation.

Thus, it is highly desirable that the property be government-owned, as negotiations are limited to internal transactions and agreements. Should the preferred site be privately-owned, then the LGU concerned should acquire it contractually before the private proponent finalizes its development plans.

B 3.2 Local Support for the Project

The LGU can carry out two important steps to demonstrate to private investors that the investment is desirable and profitable.

a. **Assist in the procurement of the necessary government clearances and permits** to develop and operate the facility.
b. **Secure agreements from relevant national government offices and LGU departments of their intent to occupy** the government center and use the services to be provided by the proponent. The LGU should compile a list of potential government agency tenants and obtain expressions of intent from these agencies to occupy space in the center once it is completed. This is especially important when government agencies outside of the sponsoring LGU are expected to occupy the facility.

These two steps require LGU staff to be capable and energetic enough to carry out the complex coordination activities necessary.

The LGU can further attract private sector interest by limiting competition to the project through zoning regulations and by providing fiscal incentives such as tax holidays.

B 3.3 Favorable Market Conditions

This type of sample project is feasible only in communities that are large enough to support a private commercial office market. Smaller localities are unlikely to have real estate developers capable of, or interested in, constructing an office building of any kind. The LGU should have evidence of a robust demand for the facility and consumer willingness to pay a premium for higher quality accommodation and services.

Some of the hypothetical market pre-conditions which have been used to analyze the financial feasibility of this sample project are:

1. Full capacity utilization of the leasable floor area
2. Annual rental increase of 5 percent on the average
3. Sufficient demand for the specialized functions module

B4. ANALYZING ENVIRONMENTAL IMPACTS

This section is derived from the Environmental Assessment and Social Impact Analysis done for a project. Concepts and procedures are provided in Volume 2.

What LGUs need to know:

Projects such as a Government Administrative Center are considered unlikely to have a major adverse impact on the environment at any time. Therefore, obtaining a permit is simple.

One necessary requirement is clearance for the location which can be obtained from the HLURB. The application for the location clearance specifies the site and scale of the proposed project. The clearance forms part of the Project Description which the project proponent needs to submit to the Regional Office of the DENR for application for an ECC. The project description should indicate in qualitative terms the potential environmental effects of the project at its various stages of implementation. A matrix describing the different components of the project serves as a guide in determining the likely environmental impacts.

Once the ECC is obtained, the project proponent prepares its final engineering designs, submits them to the DENR and applies for an ATC. Implementation of the project can now begin.

Upon completion of the facility, an inspector from the DENR verifies that all environmental mitigation measures have been taken. The DENR then issues a PTO which must be renewed annually.

The extent of the facility's environmental impact depends on whether the center is constructed within an existing compound, in a developed commercial center, or in geographically remote area.

Table 3-13: Process for Obtaining an Environmental Clearance from DENR

Responsible Party	Requirement	Tools	Goal
LGU	Location Clearance	Location Clearance Checklist (See Volume 2)	Secure from HLURB clearance
LGU	Project Description	Annotated Project Description including i) Environmental Assessment Checklist; and ii)Socio Economic Cultural Impact Assessment Clearance (See Volume 2)	Secure from the DENR Regional Office Environmental Compliance Certificate
Proponent	Final Engineering Design	(Engineering Drawings proposed by project proponent)	Secure from the DENR regional office Authorization to Construct
Proponent	Constructs Facility		DENR inspects facility and issues Permit to Operate
Proponent	Operates BLT Facility		DENR annually inspects and issues Permit to Operate

Financial Model

B5. FINANCIAL ANALYSIS

This section is derived from the market/demand study done for a project. Concepts and procedures are provided in Volume 2.

B 5.1 Financial Analysis

The financial analysis is based on calculations of the following standard viability indicators:

- Financial Internal Rate of Return
- Internal Rate of Return on Equity
- Net Present Value of Project
- Net Present Value on Equity, after financing
- Payback Period, after tax

The FIRR and the NPV are measures of the financial feasibility of the project. The WACC is a benchmark used to evaluate the profitability of the proposed investment against alternative investment opportunities. The FIRR should be at least equal to the WACC in order for the project to be considered feasible. The WACC is estimated by summing the products of a) the equity component of the capital and the required rate of return, and b) the debt component and the interest rate of the loan. To illustrate, assume that the project has a 70-30 debt/equity ratio with an interest rate of 9 percent for the former and 15 percent of rate of return for the latter:

70% x 9% = 12.60

30% x 15% = +6.00

WACC = 10.8%

The IRR on Equity and the NPV on Equity are of particular interest to the proponent since they are measures of the profitability of proponent's equity, which helps the proponent determine the optimum amount to borrow or invest personally. The payback period after tax helps the LGU and the proponent determine whether any tax incentives are required.

B 5.1.1 Financial Assumptions

The assumptions used for the financial analysis are shown in Table 3-14.

Note that the main sources of revenue are the monthly rental payments for the office space, specialized functions module and cafeteria, as well as parking fees and association dues. The project cost on the other hand includes capitalized interest during construction.

B 5.I.2 Financing Conditions

Different ratios of debt to equity and financing terms are possible. The financial conditions assumed for calculation here are shown below:

Financing Conditions

- Debt : 70 percent of cost including capitalized interest
- Equity : 30 percent of cost
- Repayment Period : Seven years, including one year grace period during which interest is capitalized
- Interest Rate : 9 percent per Annum
- Equity ROR : 15 percent

On the equity ROR, the acceptable rate is assumed to be 15 percent considering that most of the project risks are borne by the proponent. Given an 9 percent interest rate for the debt, the WACC is as computed above, i.e., equal to 10.8 percent. The debt service schedule is shown in Table 3-16. Loan proceeds are disbursed at the beginning of the year and interest payments are due at the end of the year.

The proponent is responsible for payment of real property taxes on improvement. As an incentive to the proponent, the LGU may issue an exemption on the improvement tax for a given period of time. Responsibility ends when property ownership is transferred to the LGU. Regardless of the investment mode, the proponent pays all required business license fees.

Table 3-14: Financial Assumptions for a Government Administrative Center

Item	Amount	
Revenues:		
Office module area (in sq. m.)	3,150	
Special functions module and cafeteria	1,125	
Rental fee, office module	500	
Rental fee, special functions and café	500	
Annual rate of increase	5.0%	
Association dues	0	
Annual parking fees collected	252,000	
Expenses:		
Months in operation	12	
Security services	0	
Janitorial services	0	
Operating and maintenance	0	
Administrative support	44,800	
Equipment Maintenance	0	
Utilities	0	
Supplies and Materials	11,200	
Annual Depreciation, Building	8.67	
Annual Depreciation, Equipment	3.64	
Project Cost:	227845529	
Capitalize interest	17,987,805	
Land cost	0	
Site works	13,593,674	
Sewerage system	2,374,808	
Building structure	157,468,890	
Equipment	36,420,352	
Income tax rate	30%	
Project life in years	20	

Comment
The total rentable office space in square meters The total rentable space for specialized functions module Rental rate per square meter based on prevailing rental rates in provincial cities The rental rate for specialized functions and cafeteria is higher Assumed annual increase in rental fees Association dues are charged per square meter of rentable space per year Parking fee is P__ per day, five days a week, 50 weeks a year for 45 stalls
The government administrative center is in operation for 12 months a year This expense item is assumed by the lessee and not by the operator This expense item is assumed by the lessee and not by the operator This expense item is assumed by the lessee and not by the operator The amount is equivalent to monthly salaries of administrator at P_____ per month and two staffs at P_____ each
This expense item is assumed by the lessee and not by the operator This expense item is assumed by the lessee and not by the operator This expense item is assumed by the lessee and not by the operator Depreciation is calculated for 25 years based on straight-line method Depreciation is calculated for 10 years based on straight-line method
Including capitalized interest From first year interest expense The land or project site is provided by the LGU This include earth works, pavement works, drainage system, perimeter-fencing and landscaping
This include septic vault, sub-surface water infiltration system and exclude the water storage tank
This includes office modules, circulation with utility core, EDP and telecom offices, seminar/training facilities and records keeping and storage facilities
This includes air-conditioning units, elevators and a generator

Table 3-15: Income Statement, Cashflow and Balance

1	**Operational cashflow projections for LGU Government Administrative Center (PhP)**									
		0	1	2	3	4	5	6	7	8
		2013	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**
	CASH INFLOWS	**-**	**28,602,000**	**30,019,500**	**31,507,875**	**33,083,269**	**34,724,202**	**36,447,182**	**38,269,541**	**40,169,127**
	Revenues	-	28,602,000	30,019,500	31,507,875	33,083,269	34,724,202	36,447,182	38,269,541	40,169,127
	CASH OUTFLOWS	**199,857,724**	**672,000**	**705,600**	**740,880**	**777,924**	**816,820**	**857,661**	**900,544**	**945,571**
	Investment cost	199,857,724	-	-			-	-	-	
	Construction	199,857,724	-	-			-	-	-	
	O&M cost		672,000	705,600	740,880	777,924	816,820	857,661	900,544	945,571
	NET CASHFLOW	(199,857,724)	27,930,000	29,313,900	30,766,995	32,305,345	33,907,382	35,589,521	37,368,997	39,223,555
	NET CASHFLOW (after tax)	(199,857,724)	25,921,465	26,200,686	26,535,838	26,937,788	27,391,084	27,906,876	28,496,909	29,550,010
2	**Income Statement for LGU Government Administrative Center (PhP)**									
			1	2	3	4	5	6	7	8
		2013	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**
	Income	**-**	**28,602,000**	**30,019,500**	**31,507,875**	**33,083,269**	**34,724,202**	**36,447,182**	**38,269,541**	**40,169,127**
	O&M cost	-	672,000	705,600	740,880	777,924	816,820	857,661	900,544	945,571
	Depreciation	-	9,992,886	9,493,242	9,018,580	8,567,651	8,139,268	7,732,305	7,345,690	6,978,405
	Interest payments	12,591,037	11,241,997	9,443,277	7,644,558	5,845,838	4,047,119	2,248,399	449,680	-
	Annuity or other taxable income	-	-	-	-	-	-	-	-	-
	Expenses	**12,591,037**	**21,906,883**	**19,642,119**	**17,404,018**	**15,191,413**	**13,003,207**	**10,838,365**	**8,695,914**	**7,923,977**
	Profit before tax		**6,695,117**	**10,377,381**	**14,103,857**	**17,891,856**	**21,720,995**	**25,608,817**	**29,573,628**	**32,245,150**
	Tax		2,008,535	3,113,214	4,231,157	5,367,557	6,516,298	7,682,645	8,872,088	9,673,545
	Profit after tax		**4,686,582**	**7,264,166**	**9,872,700**	**12,524,299**	**15,204,696**	**17,926,172**	**20,701,539**	**22,571,605**
	Retained earnings		4,686,582	11,950,748	21,823,448	34,347,747	49,552,444	67,478,615	88,180,155	110,751,760
2	**Balance sheet for LGU Government Administrative Center (PhP)**									
		2013	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**
	ASSETS	**199,857,724**	**184,558,533**	**171,836,927**	**161,723,855**	**154,262,382**	**149,481,306**	**147,421,705**	**148,137,472**	**170,709,077**
	Current assets	0	-5,306,304	-8,534,668	-9,629,161	-8,522,984	-5,164,791	507,913	8,569,369	38,119,380
	Fixed assets	199,857,724	199,857,724	199,857,724	199,857,724	199,857,724	199,857,724	199,857,724	199,857,724	199,857,724
	-/- Accumulated depreciation		9,992,886	19,486,128	28,504,708	37,072,359	45,211,627	52,943,932	60,289,621	67,268,027
	Net fixed assets	199,857,724	189,864,838	180,371,596	171,353,016	162,785,365	154,646,097	146,913,792	139,568,103	132,589,697
	LIABILITIES	**199,857,724**	**184,558,533**	**171,836,927**	**161,723,855**	**154,262,382**	**149,481,306**	**147,421,705**	**148,137,472**	**170,709,077**
	Equity	59,957,317	59,957,317	59,957,317	59,957,317	59,957,317	59,957,317	59,957,317	59,957,317	59,957,317
	Subsidy [VGF]	0	0	0	0	0	0	0	0	0
	Loan	139,900,407	119,914,634	99,928,862	79,943,090	59,957,317	39,971,545	19,985,772	0	0
	Retained earnings		4,686,582	11,950,748	21,823,448	34,347,747	49,552,444	67,478,615	88,180,155	110,751,760
	Debt Ratio (Leverage)	**70.0%**	**66.7%**	**62.5%**	**57.1%**	**50.0%**	**40.0%**	**25.0%**	**0.0%**	**0.0%**
	Equity Ratio	**30.0%**	**33.3%**	**37.5%**	**42.9%**	**50.0%**	**60.0%**	**75.0%**	**100.0%**	**100.0%**

Sheet (Government Administrative Center, in '000 Pesos)

9	10	11	12	13	14	15	16	17	18	19	20
2022	**2023**	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**2030**	**2031**	**2032**	**2033**
42,163,692	**44,271,876**	**46,470,884**	**48,779,842**	**51,218,834**	**53,764,461**	**56,437,368**	**59,259,237**	**62,206,118**	**65,300,342**	**68,565,359**	**71,976,742**
42,163,692	44,271,876	46,470,884	48,779,842	51,218,834	53,764,461	56,437,368	59,259,237	62,206,118	65,300,342	68,565,359	71,976,742
992,850	**1,042,493**	**1,094,617**	**1,149,348**	**1,206,815**	**1,267,156**	**1,330,514**	**1,397,040**	**1,466,892**	**1,540,236**	**1,617,248**	**1,698,111**
992,850	1,042,493	1,094,617	1,149,348	1,206,815	1,267,156	1,330,514	1,397,040	1,466,892	1,540,236	1,617,248	1,698,111
41,170,842	43,229,384	45,376,267	47,630,494	50,012,019	52,497,305	55,106,854	57,862,197	60,739,226	63,760,106	66,948,111	70,278,632
30,808,435	32,149,972	33,558,320	35,046,532	36,628,340	38,287,044	40,036,782	41,892,423	43,836,899	45,885,543	48,054,473	50,326,298

9	10	11	12	13	14	15	16	17	18	19	20
2022	**2023**	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**2030**	**2031**	**2032**	**2033**
42,163,692	**44,271,876**	**46,470,884**	**48,779,842**	**51,218,834**	**53,764,461**	**56,437,368**	**59,259,237**	**62,206,118**	**65,300,342**	**68,565,359**	**71,976,742**
992,850	1,042,493	1,094,617	1,149,348	1,206,815	1,267,156	1,330,514	1,397,040	1,466,892	1,540,236	1,617,248	1,698,111
6,629,485	6,298,011	5,983,110	5,683,955	5,399,757	5,129,769	4,873,281	4,629,617	4,398,136	4,178,229	3,969,317	3,770,852
-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	1
7,622,335	**7,340,503**	**7,077,727**	**6,833,303**	**6,606,572**	**6,396,925**	**6,203,795**	**6,026,656**	**5,865,027**	**5,718,465**	**5,586,566**	**5,468,963**
34,541,357	**36,931,373**	**39,393,157**	**41,946,540**	**44,612,262**	**47,367,536**	**50,233,574**	**53,232,581**	**56,341,090**	**59,581,877**	**62,978,794**	**66,507,779**
10,362,407	11,079,412	11,817,947	12,583,962	13,383,679	14,210,261	15,070,072	15,969,774	16,902,327	17,874,563	18,893,638	19,952,334
24,178,950	**25,851,961**	**27,575,210**	**29,362,578**	**31,228,583**	**33,157,275**	**35,163,502**	**37,262,806**	**39,438,763**	**41,707,314**	**44,085,156**	**46,555,445**
134,930,710	160,782,671	188,357,881	217,720,459	248,949,042	282,106,317	317,269,819	354,532,625	393,971,388	435,678,702	479,763,858	526,319,303

2022	**2023**	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**2030**	**2031**	**2032**	**2033**
194,888,027	**220,739,988**	**248,315,198**	**277,677,776**	**308,906,359**	**342,063,634**	**377,227,136**	**414,489,942**	**453,928,705**	**495,636,019**	**539,721,175**	**586,276,620**
68,927,814	101,077,786	134,636,106	169,682,639	206,310,979	244,598,023	284,634,805	326,527,228	370,364,127	416,249,670	464,304,143	514,630,440
199,857,724	199,857,724	199,857,724	199,857,724	199,857,724	199,857,724	199,857,724	199,857,724	199,857,724	199,857,724	199,857,724	199,857,724
73,897,511	80,195,522	86,178,632	91,862,587	97,262,344	102,392,113	107,265,393	111,895,010	116,293,145	120,471,374	124,440,692	128,211,543
125,960,213	119,662,202	113,679,092	107,995,137	102,595,380	97,465,611	92,592,331	87,962,714	83,564,579	79,386,350	75,417,032	71,646,181
194,888,027	**220,739,988**	**248,315,198**	**277,677,776**	**308,906,359**	**342,063,634**	**377,227,136**	**414,489,942**	**453,928,705**	**495,636,019**	**539,721,175**	**586,276,620**
59,957,317	59,957,317	59,957,317	59,957,317	59,957,317	59,957,317	59,957,317	59,957,317	59,957,317	59,957,317	59,957,317	59,957,317
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
134,930,710	160,782,671	188,357,881	217,720,459	248,949,042	282,106,317	317,269,819	354,532,625	393,971,388	435,678,702	479,763,858	526,319,303
0.0%	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**
100.0%	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Table 3-16: Debt Service Schedule

Year	Principal repayment	Interest payment	Total debt service	Principal outstanding
2013	-	12,591,037	12,591,037	139,900,407
2014	19,985,772	11,241,997	31,227,769	119,914,634
2015	19,985,772	9,443,277	29,429,050	99,928,862
2016	19,985,772	7,644,558	27,630,330	79,943,090
2017	19,985,772	5,845,838	25,831,611	59,957,317
2018	19,985,772	4,047,119	24,032,891	39,971,545
2019	19,985,772	2,248,399	22,234,172	19,985,772
2020	19,985,772	449,680	20,435,452	-

Table 3-17: Summary of Results of the Financial Analysis

	Concession period (years)			
	5	10	15	20
1 Debt amortization				
1a Repayment starts in year:	2	2	2	2
1b Number of yearly installments	7	7	7	7
1c Tenor of debt (years)	8	8	8	8
2 Debt service coverage ratio				
2a Minimum DSCR	0.96	0.96	0.96	0.96
2b Average DSCR	1.16	1.16	1.16	1.16
3 IRR & NPV				
3a Project IRR (post tax)	-12.11%	6.54%	11.86%	13.94%
3b Project NPV@10.8% (PhP million)	-91,459,589.26	-32,108,397.22	11,628,614.66	44,434,021.13
3c Equity IRR (post tax)	-46.24%	5.76%	14.40%	16.99%
3d Equity NPV@15% (PhP million)	-56,895,802.69	-29,202,168.93	-3,073,415.45	13,195,895.26
4 Debt-equity gearing	0%	0%	0%	0%
Loan coverage ratios				
LLCR	(0.06)	0.02	0.02	0.02
PLCR	(0.06)	0.39	0.96	1.44

B 5.1.3 Results of the Financial Analysis

The results of the financial analysis are given below, based on viability indicators:

- FIRR (%) 13.94
- IRR on Equity (%) 16.99
- NPV on Project (million pesos) 44.43
- NPV on Equity (million pesos) 13.70
- Payback Period After Tax (years) 7 years

Calculations of the financial indicators are shown in Table 3-17. The financial indicators show that the project is viable.

B 5.1.4 Sensitivity Analysis

The project is viable even with a 20% increase in capital cost as seen below:

	Pre-tax Project IRR (for 15-yr concession		
	-20%	Base case	+20%
1 **Construction cost**	21.61%	15.70%	13.65%
2 **O&M cost**	15.79%	15.70%	15.61%
3 **Revenue**	11.72%	15.70%	19.35%

Notwithstanding, this project can be "re-packaged" by the proponent using any of the following alternatives to improve its viability:

a. Allocate more space for private tenants who are charged comparatively more than government tenants and diversify the use of space or services offered
b. The private partner may also provide special services to the LGUs, such as maintenance and security service, electronic data processing, record keeping, storage, telecommunications, and the use of training and seminar facilities. Again, substantial income should be derived from these activities
c. Enlarge the building. The LGU may permit additional office (or other revenue- producing) space to be built, generating additional net income. However the proponent should make sure that there is still demand for a higher capacity building
d. Sell the office spaces outright – similar to arrangements for condominiums – rather than lease it long term. Most developers and lenders prefer outright sales because revenues are generated up front. However, by selling the building, the LGU will give up ownership of the facility. If LGUs opt for the condominium arrangement, it should ensure a commensurate revenue share
e. Finally, the building might be re-designed as a less ambitious, more economical structure without the "smart" building features described in Sec. B.1.1.3. This could reduce project costs by approximately 5 to 8 percent

B6. ECONOMIC ANALYSIS

This section is derived from the Economic Analysis done for a project. Concepts and procedures are provided in Volume 2.

The economic feasibility of any proposed project is evaluated by calculating whether the value of the resources created by the investment is greater than the value of the resources consumed. Similar to the financial analysis cost-benefit analysis is used for the economic analysis as shown in Section B5. The main difference between the two is in the way the benefits are identified and in the valuation of both costs and benefits.

Economic Viability Indicators

- Economic Internal Rate of Return
- Economic Net Present Value on the project
- Benefit-Cost Ratio

The EIRR is the return on the resources invested and is compared with the SDR, which measures the economic opportunity cost of alternative investments. The SDR used here is 15% as currently set by ICC. If the EIRR is greater than the SDR, the project is considered economically feasible. The ENPV is the economic value of a series of future payments using the SDR as the discount rate. The SDR is currently estimated by the ICC at 15 percent. If the ENPV is greater than zero, then the project is feasible.

The BCR is the oldest measure of estimating economic feasibility. It is equal to the ratio of the sum of the present value of the benefits divided by the sum of the present value of the costs. If it is greater than 1, the project is feasible. The greater the value, the more desirable the project becomes.

Resources Used

- Net Resource Investment
- Net Operation and Maintenance

The economic value of the resources consumed is not always exactly the same as their market price. For example, if the cost of the steel to be used in constructing the facility in the FIRR includes taxes, the tax component of the cost is not included in the economic analysis because it is not part of the real resource cost of the steel (even if it is an important monetary cost) since it is merely a transfer payment. In another case, the market price of a resource may be affected by market distortions such as in the case of labor and foreign exchange. In which case, economists use shadow prices for monetary prices to capture the real value of the resource consumed. The concepts on price adjustment are covered in Volume I of this Manual.

However, at this level of feasibility we have not been able to make a detailed breakdown of the investment costs into materials (both domestic and imported) and labor to make the required adjustment. Some conservative assumptions were made, however, to estimate the real resource cost of the investment, namely:

a. The labor component was assumed to be 30 percent of the total cost (excluding capitalized interest). Forty percent was assumed to be unskilled labor, valued at 0:6, which is the ICC shadow wage rate for unskilled labor.
b. The remaining 70 percent for materials was multiplied by 0.9 to adjust the value added tax.

For accuracy of the economic analysis the foreign exchange component of the project cost should be identified and shadow priced by 120 percent, which is the ICC prescribed rate. In this analysis however, it was assumed that all materials are locally sourced.

Although we cannot directly measure the increased economic activity that will occur as a result of this sample project, proxies exist which will allow us to estimate the value-added from the facility. The proxies used for this analysis are shown below:

Benefit Proxy:

- Rent from Special Modules
- Public Time Savings
- Employment Generation

The main economic benefits of the project are generated from the logistical efficiency of the proximity of the government offices to each other. Although improved efficiency is only a partial measure of the value of improved government service, it is still a real gain. This study assumes that there will be a 25 percent reduction in trips for an average of 2,000 transactions a week which would result in three hour time savings, in addition to reduced round trip transportation costs.

The project also generates benefits from the new productive activities generated by record keeping, data processing, and telecommunication functions. Although the economic impact of these new enterprises is difficult to estimate, it is at least as large as the rent.

Other benefits include employment generation from the new economic activity. In this regard the project's contribution to the net reduction of unemployment in the influence area is attributed as it benefit.

NOTE: The economic analysis results is provided in Volume 4.

Provisions Unique to a Government Administrative Center

EXISTING FACILITIES

Majority of the national government regional offices are occupying facilities, either leased or owned, that are of considerable age and condition. These are scattered in various locations within the city/LGU. Likewise, the local government departmental offices are located in similar facilities within the city/municipal hall with very minimal expansion options or none at all.

These offices are presently located at the following facilities: _____

SITE SELECTION

The proposed government administrative center is to be constructed at _____. The prospective bidder is expected to conduct its own ocular inspection and survey of the proposed site to familiarize themselves with it. The bidder is likewise, free to perform all other technical testings that it may find necessary.

Table 3-18: Required Concept Design Documents

Drawing Number	Drawing Title	Drawing Description	Scale
1	Site Development Plan	Site plan of the GAC showing the major components (building, parking, setbacks, circulation, orientation, etc.)	1:500
2	Floor Plans	Floor plan of ground level and typical floor plan of every succeeding floor indicating building dimensions, space planning, circulation, core, fenestrations, floor elevations. etc.	1:100
3	Building Elevations	Elevation of all sides of the building indicating external building heights, fenestrations, design features, finishes, etc.	1:100
4	Building Sections	Sections along 2 major axes to show internal building height and vertical space relationships.	1:100
5	Detail Floor Plans	Floor plan of specific rooms/spaces of interest showing greater detail as needed for clarity.	1:50
6	Detail Sections/ Elevations	Sections/elevations of specific rooms/spaces of interests showing greater detail as needed for clarity.	1:50
7	Miscellaneous Details	Detail drawings showing specific architectural features for clarity	1:30 (variable)
8	Outline Technical Specifications	Brief description of materials and construction methods	N/A
9	Perspectives	Rendered perspective drawings showing thematic appearance of the facility from different angles, exterior and interior.	N/A

PRELIMINARY PROJECT COSTS AND FINANCIAL PLAN

The prospective bidder shall submit a preliminary, financing plan which identifies the project costs. These costs shall include items below.

Construction cost estimated on a unit cost basis (lump sum and/or cost per square meter) for each of these items:

- demolition and site preparation
- earthworks
- vehicular parking area
- driveway and sidewalk paving
- utilities (drainage, sewerage, water supply, power)
- building shell and core
- building utility systems (electrical, sanitary, mechanical, communications)
- architectural works (exterior and interior)
- landscaping
- elevators
- air-conditioning
- fire protection
- emergency generator
- security and fencing
- professional fees (architectural, engineering, etc.)
- contractor's profit, overhead and mobilization
- value-added tax (VAT) requirements

Operations and maintenance costs for the following items:

- personnel costs for administrative support staff
- supplies and materials

SITE CONSTRAINTS AND DEVELOPMENT OPTIONS

The conceptual development scheme for the government administrative center presented in this Manual is not intended to be the final design solution for this project; instead, it indicates the range of solutions that may be formulated to meet the needs and requirements set by the minimum design and performance standards. The prospective bidders should not hesitate to seek unique and innovative approaches to the planning and design of the government center.

In fact, the LGU encourages this practice. Alternative schemes that introduce novel solutions to the planning, design and operation of this facility should be carefully evaluated by the prospective bidders and the most appropriate recommendation presented.

However, each prospective bidder must follow several siting and operational constraints in formulating their respective conceptual design proposals. These constraints include site location and boundary limits, design and planning standards, and expansion options.

DESIGN AND PERFORMANCE STANDARDS

In order to ensure that the optimum functional efficiency level of the administrative center is achieved, the prospective bidders shall adhere to and maintain the following design and performance standards:

Office Planning

private offices
- minimum of 10 sq.m.
- maximum of 30 sq.m.

semi-private offices (for 2 or more occupants)
- 14 sq.m. to 35 sq.m.

general office space (open plan)
-economical standard 6 sq.m./person
-reasonable average 7 sq.m./person
-liberal standard 9 sq.m./person

interior circulation (ingress and egress to work stations)
- corridors 1.50 to 3.0 m. wide
- main aisles 1.50 m. wide (substantial traffic areas to main exits)
- intermediate aisles 1.20 m. wide (moderate amount of traffic)
- secondary aisles 0.90 m. wide (between rows of desk)

conference room (for use by 15 people)
- 47sq.m.
- add approximately 0.9 sq.m. for each additional person to be provided for.

reception areas (for use by 15 people)
- 37 sq.m.
- add approximately 0.9 sq.m. for each additional person to be provided for.

waiting/interviewing room (for use by 15 people)
- 20 sq.m.
- add approximately 0.9 sq.m. for each additional person be provided for.

storage/filing rooms
- 5 % of total office area

finished ceiling height (average)
- 2.4 m. to 2.6 m.

floor to floor height (typical)

- 3.4 m. to 4.5 m.

elevators

- 1 unit for every 2,300 sq.m.

elevator lobbies

- 1.8 to 2.8 m. wide	elevators on one side only
- 3.0 to 3.7 m. wide	elevators on both sides

Parking Facility

no. of parking slots required

- reasonable average	1 slot for every 90 sq.m. of office space
- liberal standard	1 slot for every 120 sq.m. of office space

area required per parking slot

- 26 sq.mt./car to 54 sq.mt./car
- this depends on configuration and angle of parking chosen

parking slot dimensions

- angle of parking	900 to curb (most economical)
- stall width	2.7 m.
- stall depth	5.7 m.
- curb length/car	2.7 m.
- driveway width	7.2 m.
- area per car	26 sq.m.

TECHNICAL SPECIFICATIONS

The prospective bidders shall prepare the technical specifications, describing in detail the materials and methods of construction to be implemented in the proposed government center to conform to the appropriate provisions of the following industry codes and standards:

Architectural Works

- National Building Code of the Philippines and its Implementing Rules and Regulations
- National Fire Protection Code
- DPWH Standard Specifications for Public Buildings
- HLURB Planning Guidelines
- UAP Documents
- Accessibility Law (1W 220)

Structural Works

- National Structural Code of the Philippines
- AISC
- ASTM

Mechanical Works

- National Fire Protection Code
- PSME
- ASME
- ASHRAE
- SMACNA

Sanitary Works

- National Water Code
- Local Water Utilities Administration (LWUA) Guidelines
- Philippine Plumbing Code

Electrical Works

- Philippine Electrical Code
- National Electrical Code
- Underwriter Laboratories
- NEMA
- ANSI
- IES

Model Agreement – LGU Government Administrative Center

BUILD-LEASE-TRANSFER AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Agreement ("AGREEMENT"), made and entered into this **<<(day/mo/yr)>>** at _____, Philippines, for the **Government Administrative Center Project** ("PROJECT") by and between:

<<NAME OF WINNING BIDDER>> (hereinafter referred to as **"PROPONENT"**, a corporation duly organized and existing under Philippine laws, with principal place of business at **<<address>>**, represented herein by its President - CEO,

-and-

THE GOVERNMENT OF <<LGU Name>> hereinafter referred to as "LGU", with corporate powers granted under the Local Government Code of 1991 "LGC" and represented herein by its Local Chief Executive/Governor, **<<Name of Local Chief Executive>>**, his authority is conferred by the Local Sanggunian through SP Resolution No. ___, series of _____,

(The LGU and the PROPONENT collectively referred to hereinafter as the *"Parties"* and individually as a *"Party"*)

WITNESSETH:

WHEREAS, (*state the rationale for the Project and the background of the Project*)

WHEREAS, on **<<date>>**, the LGU obtained the approval of the _____ for the financing and construction of a GOVERNMENT ADMINISTRATIVE CENTER under a Build-Lease-Transfer Agreement in line with RA 7718 (the BOT Law) and its IRR;

(***Note: for the list of approving entity, please refer to Section 2.7.b of the IRR of the BOT Law)***

WHEREAS, the PROPONENT-LESSOR has been selected by the LGU to undertake the financing and construction of a GOVERNMENT ADMINISTRATIVE CENTER on the terms and conditions set forth in this Agreement as a result of a competitive public bidding process conducted by the LGU under the applicable provisions of the BOT Law;

NOW, THEREFORE, for and in consideration of the above premises and the mutual obligations, commitments and undertakings assumed and accepted hereunder, the PARTIES agree as follows:

ARTICLE 1 - DEFINITION OF TERMS

- ***"Agreement"*** - refers to this Agreement including its relevant Annexes executed along with this Agreement, and such amendments as may be executed thereafter, in accordance with this Agreement.
- ***Build-Lease-Transfer Agreement*** – a contractual arrangement whereby the proponent is authorized to finance and construct an infrastructure or development facility and upon its completion turns it over to the LGU concerned on a lease agreement for a fixed period, after which ownership of the facility is automatically transferred to the LGU concerned.
- ***"Contract Documents"***- shall be the documents referred to in Article 4 of this Agreement.
- "Design and Technical Specifications" – shall be the concept design, plans and technical drawing prepared by the LGU and provided in this Agreement as Annex A.
- ***"Dispute"*** – means any difference or disagreement of any kind whatsoever arising between the Parties in connection with, arising out of, or relating to the interpretation, implementation, breach, termination or validity of this Agreement.
- ***"Force Majeure***" – is defined in Section 10.1 of this Agreement.
- ***"PROJECT"*** - the Project to be constructed, operated and maintained by the PROPONENT and transferred to the LGU after the Concession Period.

(The terms/items to be defined are not limited to those enumerated above. It may change and include other terms/ items as needed)

ARTICLE 2 - THE PROJECT

Section 2.1 *Project Design* - The PROJECT shall involve the financing, design, construction of a GOVERNMENT ADMINISTRATIVE CENTER to be built on an appropriate site located at _____. The Design and Technical Specifications prepared by the LGU which shall be fully complied with by the PROPONENT-LESSOR is attached as ANNEX A.

Section 2.2 *Project Cost* - The total cost of the PROJECT is indicated in the PROPONENT's Technical Proposal (ANNEX B).

ARTICLE 3 - CONTRACTUAL ARRANGEMENT

Section 3.1 - The PROJECT shall be implemented through the Build-Lease-Transfer Agreement in accordance with the provisions of RA 7718, otherwise known as the BOT Law and its IRR.

Section 3.2 - Under this arrangement/scheme, the PROPONENT-LESSOR shall undertake the financing, design and construction of the PROJECT and upon its completion turns it over to the LGU-LESSEE on a lease agreement for a fixed period, after which ownership of the facility is automatically transferred to the LGU-LESSEE.

ARTICLE 4 - CONTRACT DOCUMENTS

Section 4.1 - The following documents, to be collectively referred to as the "Contract Documents", form an integral part of, and are hereby incorporated into, this Agreement:

Annex A - Concept Design and Technical Specifications prepared by the LGU

Annex B - PROPONENT's Technical Proposal

Annex C - PROPONENT's Financial Proposal

Annex D - Project Construction and Implementation Schedule

(may include other contract documents depending on the needs of each Project or as needed)

Section 4.2 - To the extent, if any, that there should be any irreconcilable conflict or discrepancy between the provisions of the Agreement and the Contract Documents, said provisions of the Agreement shall have precedence and shall govern.

ARTICLE 5 - UNDERTAKINGS OF THE PARTIES

Section 5.1 - The following shall be the obligations of the PROPONENT-LESSOR:

1. It shall finance, design and construct the GOVERNMENT ADMINISTRATIVE CENTER in strict compliance with the technical and operating specifications as stated in the PROPONENT-LESSOR's Technical Proposal (ANNEX B);
2. It shall provide its own funds, materials, plants and equipment necessary for the expeditious implementation of the PROJECT;
3. It shall complete the construction of the PROJECT within _____ calendar days as indicated in the Instruction to Bidders, and upon completion, turn it over to the LGU-LESSEE on a lease agreement for a fixed period of _____ years, after which ownership of the facility is automatically transferred to the LGU-LESSEE; and
4. It shall, at all times during the construction of the GOVERNMENT ADMINISTRATIVE CENTER, comply with, and secure at its own cost all legal requirements, permits, licenses and approvals.

Section 5.2 – The following shall be the responsibilities of the PROPONENT-LESSOR:

1. Except in cases of Force Majeure, the PROPONENT-LESSOR, shall be responsible for any and all losses and damages to the PROJECT due to any cause or causes whatsoever, during the project implementation and shall not relieve the PROPONENT-LESSOR from any of its obligations under this Agreement;
2. It shall be responsible for all damages to any property belonging to LGU-LESSEE, private properties or the government, and except to the extent that such damages arise from the negligence of the LGU-LESSEE or its agents;
3. It shall be responsible for the death and/or injury to personnel of the LGU-LESSEE that may arise in connection with the execution of the Agreement;
4. It shall hold free and harmless and forever defend the LGU-LESSEE from any and all actions, claims, liabilities and suits, for losses and damages to properties of other contractors, if any, and/or third parties arising from the execution of the PROJECT;

5. It shall be responsible for its employees' strict observance of the laws of the Republic of the Philippines relevant to the execution of this Agreement. The PROPONENT-LESSOR shall execute the Agreement with due regard to safety against accidents to its employees and to the employees of the LGU-LESSEE at the work site, if any, and shall provide such machinery, guards, safe walkways and such other safety devices as may be needed for the prevention of accidents. The PROPONENT-LESSOR shall be responsible for the payment of all indemnities, including hospital and medical expenses, arising out of any labor accidents which may occur in the course of the project execution and for which PROPONENT-LESSOR may be responsible under PD No. 442 as amended by the Labor Code;
6. If in the execution of the PROJECT, it is necessary to interrupt or obstruct the natural flow of rivers or streams within the work site, if any there be, the drainage of the surface, or the flow of artificial drains, the PROPONENT-LESSOR shall provide adequate measures to prevent damage to both public and private properties. The PROPONENT shall be liable for all damages that may occur, except to the extent that such damage arises from the contributory act or negligence of the LGU-LESSEE, in which case it shall be shouldered proportionately between the PROPONENT-LESSOR and the LGU-LESSEE;
7. It shall not trespass over the limits of the property of any third party without having previously received the relevant permit. It shall, moreover, be responsible for the care of all public and private properties that may be affected by the implementation of the PROJECT and adopt such reasonable precautions to avoid injury or harm over the same, otherwise, it shall recondition or repair or replace or reconstruct the damaged or destroyed property at its own expense, or pay compensation for the damage within the shortest possible period;
8. It shall assume full responsibility for the costs arising from any adverse environmental effects or other impacts that may result from the construction of the PROJECT; and
9. It shall upon completion of the PROJECT, turn over the completed GOVERNMENT ADMINISTRATIVE CENTER to the LGU-LESSEE on a lease agreement for a fixed period of ___ years, after which ownership of the facility is automatically transferred to the LGU-LESSEE.

Section 5.3 - The following shall be the obligations of the LGU-LESSEE:

1. It shall pay the rents stipulated in the PROPONENT-LESSOR's FINANCIAL PROPOSAL (ANNEX C) at the time and manner stated in therein, which is entered into hereof as part of this Agreement;
2. It shall pay all electric bills, water, gas and other rates payable during the term of lease agreement;
3. It shall keep the leased premises in such repair as they are at the commencement of the term of the lease and during the continuance thereof, with the exception of those that may be damaged by reasonable use and wear and tear, and due to fire not caused thru the negligence of the LGU-LESSEE and/or its employees or other unavoidable casualties;
4. It shall pay all the electrical bills, water, gas and other rates payable during the term of the lease agreement;
5. It shall not make or suffer any alteration or changes without the written consent of the PROPONENT-LESSOR or make any waste of the premises;
6. It shall not make or suffer any unlawful, improper, or offensive use of the premises, nor any use therefore other than as office space;

7. It shall permit the PROPONENT-LESSOR to enter upon and examine the premises and make such repairs as he may think necessary for the protection thereof and/or to maintain the premises in good and tenantable condition; and
8. It shall not assign this lease or sub-lease the whole or part of the premises without the consent in writing of the PROPONENT-LESSOR first being obtained.

Section 5.4 – The following shall be the responsibilities of the LGU-LESSEE.

1. It shall at its own expense secure insurance, with both the PROPONENT-LESSOR and the LGU-LESSEE as co-insured in such amount as it shall compensate the insurable interests of both insured for the duration of the lease; and
2. It shall at all times and for the whole duration of the lease agreement maintain serviceable fire protection equipment and such security services to secure the premises and all expenses hereof shall be for its account.

ARTICLE 6 - PERFORMANCE SECURITIES AND INSURANCES

Section 6.1 *Construction Security* - To guarantee the faithful performance by the PROPONENT-LESSOR of its obligations and duties under this Agreement, the PROPONENT-LESSOR shall put up a Construction Security, within the period and in the form and amount stipulated in the Notice of Award. The security may be in the form of cash, manager's check, cashier's check, bank draft or guarantee confirmed by a reputable local bank acceptable to the LGU-LESSEE, standby letter of credit issued by a reputable bank acceptable to the LGU-LESSEE, provided that if a letter of credit is issued by a foreign bank, it must be confirmed by a local bank or offshore banking unit, surety bond callable on demand issued by the GSIS, by surety or insurance companies duly accredited by the Office of the Insurance Commissioner, or a combination thereof, in accordance with the following schedules:

a. Cash, irrevocable letter of credit, bank draft – a minimum of two percent (2%) of the total Project Cost
b. Bank Guarantee - a minimum of five percent (5%) of the total Project Cost
c. Surety Bond – a minimum of ten percent (10%) of the total Project Cost

The Construction Security shall be released by the LGU-LESSEE after the issuance of the "Certificate of Completion and Acceptance" of the construction works, and the acceptance by the LGU-LESSEE of the PROJECT as completed in accordance with the agreed standards and specifications, provided that there are no claims filed against the PROPONENT-LESSOR or its Contractor.

In the event the completion timetable for the PROJECT is extended in accordance with this Agreement, the term of the Construction Security shall be extended accordingly.

Section 6.2 *Failure to Post Performance Securities* - Failure of the PROPONENT-LESSOR to post any of the performance securities shall be sufficient ground for the LGU-LESSEE not to execute this Agreement. Should the LGU-LESSEE, under any of the conditions stipulated under Article 14, terminate this Agreement, the performance security not so released shall be forfeited in favor of the PROPONENT-LESSOR without any need of judicial action. The PROPONENT-LESSOR shall obtain the consent of the surety, if necessary, for any changes to this Agreement to ensure the effectivity of the performance securities submitted to the LGU-LESSEE.

Section 6.3 – *Warranty Security* – The PROPONENT-LESSOR shall at its own expense secure and post a Warranty Security to take care of any defect, hidden or otherwise, not noted during the turn over and acceptance of the PROJECT. The Warranty Security shall be made effective immediately upon transfer of full legal ownership over the PROJECT in favor of the LGU-LESSEE.

Section 6.4 *Insurance* - In addition, to insure third parties of payment, in case damage or injury is done to their person or property during the course of the performance by the PROPONENT-LESSOR of its responsibilities hereunder, the PROPONENT-LESSOR shall put up bonds and insurance normally required in infrastructure PROJECTs, such as but not limited to contractor's all-risk insurance, third party liability insurance, motor vehicle liability insurance, workmen's compensation insurance.

Certified copies of the policies and official receipts of such bonds and insurances shall be submitted to the LGU-LESSEE. These bonds and insurance shall preferably be procured from the Government Service Insurance System (GSIS), but if it is impractical to do that, then they shall be procured from an insurance or bonding company accredited by the Insurance Commission and acceptable to the LGU-LESSEE.

Section 6.5 *Insurance Proceeds* - The proceeds from insurance claims, except Third Party Liability Insurance and Workmen's Compensation Insurance, with respect to loss or other damage to the PROJECT, shall first be applied by the PROPONENT-LESSOR to the extent necessary to fully repair or restore the PROJECT to its previous operating condition, or to completely rebuild the PROJECT.

ARTICLE 7 - CONTRACT MANAGEMENT, MONITORING AND EVALUATION

Section 7.1 *Contract Management* - Within ____ calendar days from the date of the signing of this Agreement, each Party shall form a Contract Management Committee, which shall be responsible for monitoring, managing and evaluating the full implementation of the PROJECT. Within ____ calendar days from its creation, each Party shall immediately send written notice to the other naming its members to the Contract Management Committee.

Section 7.2 *Project Reports* - Within _____ calendar days from receipt of the notice referred to in Section 7.1, the Contract Management Committee shall meet and agree on the form of the report, the method for monitoring and obtaining the information required, the Party responsible for monitoring and reporting on each of the indicators and the frequency that each indicator should be monitored and reported.

The Parties shall ensure that Project Report will contain the performance indicators to determine the PROPONENT-LESSOR's and LGU-LESSEE's compliance with their respective obligations under this Agreement, the major risk factors for the PROJECT, events and conditions that has occurred which materially affects the PROJECT and all other material information that may be included by the Parties.

Section 7.3 *Monitoring and Reporting Obligations* - The Parties shall establish appropriate monitoring and reporting systems to comply with their monitoring and reporting obligations agreed upon and embodied in the Project Report.

The Project Reports shall be prepared and submitted within ___ calendar days after the end of the calendar month to which they apply. Where a Project Report shows that the Project falls below the key performance indicators, the PROPONENT-LESSOR shall state that fact in the report with a full explanation of the reasons for the below-target performance and the steps that it has or will be taking to ensure that performance is improved to meet the standard.

Section 7.4 *Regular Meetings* - The Contract Management Committee of the Parties shall meet once a month or more frequently if necessary in order to discuss the progress of the PROJECT, any problems or issues in the implementation of the PROJECT and the lessons learned from the monitoring and management of the PROJECT.

Section 7.5 *Right of LGU to Monitor* - The LGU-LESSEE shall be entitled to inspect, check, test and monitor the PROJECT during the construction period. The purpose of such monitoring shall be to determine whether the PROJECT are being designed and constructed in accordance with the terms of this Agreement.

The PROPONENT-LESSOR shall allow the LGU-LESSEE or its duly authorized representatives to conduct such inspection and monitoring during normal business hours upon reasonable prior written notice to the PROPONENT-LESSOR. It shall ensure that the LGU-LESSEE or its agent or representative is given sufficient access to carry out the inspection. The monitoring and review shall be conducted in the presence of a duly designated representative of the PROPONENT-LESSOR.

ARTICLE 8 – PROPONENT-LESSOR'S WARRANTIES

Section 8.1 *Corporate Existence* - The PROPONENT-LESSOR warrants that it is a corporation or a partnership duly organized and validly existing under the laws of the Republic of the Philippines. It has all requisite power, authority and legal right to execute and deliver this Agreement and to perform its obligations thereunder; and has taken all appropriate and necessary corporate and legal action and obtained all necessary permits and approvals for the execution, delivery and performance of this Agreement and all other instruments, or documents contemplated hereunder.

Section 8.2 *Authorized Signatory* - The PROPONENT-LESSOR's signatory to this Agreement has full legal capacity and has been duly authorized by the Board of Directors of the PROPONENT-LESSOR to sign, execute and deliver this Agreement for and on behalf of the PROPONENT-LESSOR.

Section 8.3 *Validity and Enforceability* - This Agreement constitutes the legal, valid and binding obligation of the PROPONENT-LESSOR, enforceable against the PROPONENT-LESSOR in accordance with its terms. This Agreement is in satisfactory and proper legal form under the laws of the Republic of the Philippines.

Section 8.4 *Due Execution* - The execution, delivery and performance of this Agreement and the other documents herein referred to do not violate any provision of law, rule, regulation or order or decree of any court, tribunal or government authority, bureau or agency, or of the charter, by-laws or corporate rules of the PROPONENT-LESSOR, any corporation, or any contract or other undertaking to which the PROPONENT-LESSOR is a party.
Section 8.5 Know-how - The PROPONENT-LESSOR warrants that it has the know-how, resources, trained personnel and staff, technical and financial capabilities, as well as management expertise, to fulfill its duties and responsibilities hereunder, and implement the financing, design, and construction of the PROJECT.

Section 8.6 *No Adverse Litigation* - There is no adverse litigation, arbitration, investigation or proceeding pending, or to its best knowledge threatened, against or affecting such Party that could reasonably be expected to materially adversely affect its ability to fulfill its obligations under this Agreement or that may affect the legality, validity, or enforceability of this Agreement.

Section 8.7 *Corruption* - The PROPONENT-LESSOR warrants that neither it, nor its representatives or agents, have offered any government officer or employee, national or local, any consideration or commission for its award of the Contract of this PROJECT nor has it exercised any corrupt, undue or unlawful influence, directly or indirectly through relatives within the third degree of consanguinity or affinity in securing this Agreement.

ARTICLE 9 – LGU-LESSEE WARRANTIES

Section 9.1 *Corporate Existence* - The LGU-LESSEE warrants that it is a duly organized and validly existing political subdivision and local government of the Republic of the Philippines and has all requisite power, authority and legal right to execute and deliver this Agreement, and to perform its obligations hereunder.

Section 9.2 *Due Execution* - The LGU-LESSEE has taken all appropriate legal and/or other action which may be required or appropriate to authorize the execution, delivery and performance of this Agreement and any and all other agreements, instruments or documents contemplated hereunder.

Section 9.3 *Validity and Enforceability* - This Agreement constitutes the legal, valid and binding obligation of the LGU, enforceable against the LGU-LESSEE in accordance with its terms. This Agreement is in satisfactory and proper legal form under the laws of the Republic of the Philippines.

Section 9.4 *No immunity* - The LGU-LESSEE further warrants that it is subject to the civil and commercial law in respect of its responsibilities under this Agreement and that it is not immune from suit, judgment or execution or any legal process in connection with said responsibilities. But nothing herein shall be considered as waiving the immunity of the State with regard to the assets and interests of the Republic of the Philippines.

ARTICLE 10 - FORCE MAJEURE

Section 10.1 *Definition of Force Majeure Event* - A "Force Majeure Event" means any event, condition, or circumstance and the effects thereof not within the reasonable control, directly or indirectly, of the Party affected, but only if and to the extent that:

a. such event, condition, or circumstance is not the direct or indirect result of the breach by such Party of any of its obligations under this Agreement or the fault or negligence of such Party, its Affiliates, or any person under the Party's or its Affiliates' reasonable control;
b. despite the exercise of reasonable diligence, such event, condition, or circumstance cannot be prevented, avoided, or removed by such Party; and
c. such event, condition, or circumstance has a material adverse effect on the ability of such Party to perform all or a material portion of any of its obligations under this Agreement, and such Party has taken all reasonable precautions, due care, and alternative measures in order to avoid or mitigate the effects of such event on such Party's ability to perform its obligations under this Agreement.

Section 10.2 *Exceptions* - Force majeure shall not include infrastructure or equipment failure due to ordinary wear and tear, or defects in design, inappropriateness or weakness in materials or supplies, unavailability of financing, or any other happenstance that a Party can reasonably be expected to effectively guard against or control.

Section 10.3 *Responsibilities of the Parties during Force Majeure Event* - A Party invoking Force Majeure shall:

a. Notify the other party in writing by any means of communication as soon as reasonably possible of the date of commencement of such Force Majeure Event, the nature and expected duration thereof, and the actions to be taken to prevent or reduce the effects of such event. The notice shall be sent by such Party not later than _____ calendar days after the date on which such Party first gains knowledge of such Force Majeure Event. If it fails to deliver such notice in accordance with this provision, such Party shall not be entitled to invoke the benefits of this Section;
b. Continue performance of its obligations that are not affected by the occurrence of the Force Majeure; and
c. Resume performance of affected obligations after the Force Majeure or after the effects of Force Majeure no longer exists, whichever is earlier, and shall formally notify the other party of such resumption.

Section 10.4 *Mitigation* - Each Party shall exert all reasonable efforts in accordance with Prudent Utility Practice or other applicable standard to prevent or mitigate the consequences of the Force Majeure Event on the performance of its obligations under this Agreement. The Parties shall consult with each other in good faith and shall use all reasonable endeavors to agree on appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued implementation of the PROJECT. The Parties shall exert all reasonable efforts to resume the performance of their obligations as soon as practicable following the declaration of a Force Majeure Event.

Section 10.5 *Effect of Force Majeure Events* - The affected Party shall be excused from performance and shall not be in default of any obligation under this Agreement for so long as its failure to perform such obligation is due to a Force Majeure Event, provided that:

a. The affected Party makes continuous diligent efforts to prevent or mitigate the effects of the Force Majeure Event;
b. The Party claiming a Force Majeure Event shall not be entitled to suspend performance or be excused for delayed performance under this Agreement for any greater scope or longer duration than is required by the Force Majeure Event or the delay occasioned thereby; and
c. Neither Party shall be relieved of or excused from its obligations under this Agreement solely because there may be increased costs or other adverse economic consequences incurred through the performance of such obligations.

ARTICLE 11 – DEFAULT

Section 11.1 *PROPONENT-LESSOR's Default* - The occurrence of any of the following shall constitute an event of default for the PROPONENT-LESSOR:

a. Failure to perform any of its obligation under this Agreement for a cause not attributable to force majeure, and such failure persists for more than _____ days;
b. Failure without justification to resume performance within _____ days after the force majeure that has prevented the PROPONENT-LESSOR from performing any other obligation hereunder has substantially ceased;
c. Deliberate material misrepresentation of any fact contained in its periodic reports to the LGU-LESSEE, or if it committed any deliberate falsity in his bid documents on which the LGU-LESSEE relied in giving it the contract award;
d. Filing of a voluntary or involuntary case or other proceeding by or against the PROPONENT-LESSOR seeking insolvency, bankruptcy, liquidation, reorganization, dissolution, winding up;
e. A pattern of continuing or repeated non-compliance, willful violation, or non-performance of other terms and conditions hereof including any material breach thereto, and the PROPONENT-LESSOR fails to remedy the same within ___ calendar days from notice thereof; and
f. Assignment or transfer without the prior approval of the LGU-LESSEE.

Section 11.2 *LGU-LESSEE's Default* - The occurrence of any of the following events shall constitute the LGU-LESSEE's Default:

a. LGU-LESSEE terminates, or cancels this Agreement without valid or justifiable cause;
b. Any representation or warranty made by the LGU-LESSEE and relied upon by the PROPONENT-LESSOR to its detriment turning out to be false in any material respect; and
c. Failure or refusal to perform any material covenant, agreement or obligation under this Agreement within _____ days after receipt by the LGU-LESSEE of a notice of default specifying the same, provided, however, that such period shall be extended if the failure or refusal is remediable but cannot reasonably be completed within _____ days and the LGU-LESSEE begins to diligently remedy such failure.

ARTICLE 12 - ASSIGNMENT, TRANSFER & OTHER CONVEYANCES

Section 12.1 *Assignment* - The PROPONENT-LESSOR may, with the prior written approval by the Local Chief Executive, with the concurrence of the Local Sanggunian, assign its rights, interest, benefits and obligations under this Agreement to any company or special purpose company or successor company or entity. The Assignee shall perform and comply with all its obligations and assume all the rights, interest, and benefits of the PROPONENT-LESSOR under this Agreement.

Section 12.2 *Assignment Void* - Any assignment or transfer without prior approval from the LGU shall be void and ineffectual.

Section 12.3 *Acceptance Tests and Procedures* – The Parties shall meet and agree on procedures, standards, protective settings and a program to be followed by the PROPONENT-LESSOR for the testing of facility in accordance with the agreed tests and test procedures set out in the Schedule (ANNEX D).
The PROPONENT-LESSOR shall give to LGU not less than ___ day notice of its intention to commence any testing of the facility. LGU and/or its expert shall be entitled to be present at any testing of the facility. Upon completion of any testing, the PROPONENT-LESSOR and the LGU shall jointly certify whether or not the facility has satisfied such test.

Section 12.4 *Transfer* – Prior to the end of the concession period, the PROPONENT-LESSOR shall arrange for the training of an adequate number of LGU personnel in relation to the operation of the GOVERNMENT CENTER. On the transfer date, the PROPONENT-LESSOR shall transfer to the LGU (and shall execute such documents as may reasonably be considered necessary to effect such transfer), free from any lien or encumbrance created by the PROPONENT and without the payment of any compensation, all its right, title, and interest in and to the fixtures, fittings, equipment and all improvements comprising the PROJECT.

The PROPONENT shall also deliver to the LGU on such date such operation summaries/transfer notes, design drawings and other information as may be reasonably required by the LGU to enable it take over the PROJECT.

Section 12.5 *Buy-out* - Buyout shall take place under the following condition:

a. Change in Circumstances - In the event that as a result of any laws or regulation of the Republic of the Philippines, or any agency or other body under the control of the Government of the Republic of the Philippines, or any regional or municipal authority thereof, coming to effect after the date of this Agreement, or as a result of any such laws or regulations (including any official interpretation thereof which the PROPONENT-LESSOR has relied upon in entering into this Agreement) in force at the date hereof being amended, modified or repealed, the interest of the PROPONENT-LESSOR and/or the PROPONENT-LESSOR's financial rate of return (net of tax or other imposition, including, without limitation any withholding or remittance tax on the payment of dividends) on its investment is materially reduced, prejudiced or otherwise adversely affected (including without limitation, any restriction on the ability to remit funds in foreign currency outside the Philippines), or any changes which would drastically reduce the demand for the Project's services, then the Parties hereto shall meet and endeavor to agree to make amendments to this Agreement, and if after 90 days no such agreement has been reached, Buy-out Provision under this Section shall apply.

The LGU-LESSEE shall purchase all the PROPONENT-LESSOR's rights, titles and interests in PROJECT and thereupon all the PROPONENT-LESSOR's obligations hereunder shall cease. Provided, however, that the LGU-LESSEE and the PROPONENT-LESSOR shall first undergo arbitration pursuant to Article 13 (Dispute Resolution) prior to resorting to the buy-out option.

Section 12.6 *Buy-out Price* – The purchase price payable pursuant to the buy-out provision shall be Php_____.

ARTICLE 13 - DISPUTE RESOLUTION

Section 13.1 *Mutual Discussions* - In case of any dispute or controversy of any kind whatsoever between the Parties arising out this Agreement, said Parties shall first endeavor to resolve within _____ days such dispute by mutual discussion and amicable means between the President of the PROPONENT-LESSOR and the Local Chief Executive.

Section 13.2 *Arbitration* - Should the dispute (meetings) not be settled amicably by mutual discussion within ____ days from the initial meeting of the President of the PROPONENT-LESSOR and the LCE of the LGU, the dispute shall be finally and exclusively resolved by binding arbitration. The arbitration shall proceed in accordance with the provisions of the Arbitration Law of the Philippines, (Republic Act No. 876), in such place as the Parties may agree.

While the dispute is being arbitrated, the performance by the Parties of their respective obligations shall not be suspended, unless otherwise declared by the arbitral tribunal or otherwise agreed by the Parties or unless the obligation to be performed is the very issue of the arbitration.

Section 13.3 *Expert Panel and Arbtiral Award* - All expert panel and arbitral awards shall be in writing and shall state the reasons upon which they are based. The decision of the arbitral tribunal shall be final, binding and unappealable. The awards may include an award of costs, including reasonable attorneys' fees and disbursements. Judgments upon the awards may be entered by any court having jurisdiction thereof or having jurisdiction over the Parties or their assets.

ARTICLE 14 - CONTRACT TERMINATION

Section 14.1 *Right not to execute* - The Parties shall have the right not to execute the Agreement without resorting to legal proceedings in case of any substantial breach of conditions or obligations and responsibilities. A pattern of continuing or repeated non-performance, willful violation or non-compliance of the terms and conditions hereof will be deemed a fundamental breach of this Agreement.

Section 14.2 *Termination Procedure* - In case a Party commits an act constituting an event of default, the non-defaulting Party may terminate this Agreement by serving a written notice to the defaulting Party specifying the ground for termination and giving the defaulting Party a period of _____ days within which to rectify the default to the satisfaction of the non-defaulting Party. If the default is not remedied within this period to the satisfaction of the non-defaulting Party, then the latter will serve upon the former a written notice of termination indicating the effective date of termination.

Section 14.3 *LGU-LESSEE's Remedies* – Upon the occurrence of a PROPONENT-LESSOR's Default, the LGU-LESSEE may by Notice of Default, take on or more of the following actions:

a. Terminate this Agreement and enter into a franchise agreement with another Party for this PROJECT;
b. Take over the PROJECT and request the PROPONENT-LESSOR to assign all its right, title and interests to the PROJECT and under this Agreement to the LGU; or
c. Allow the PROPONENT-LESSOR's lenders/creditors to take over and proceed with the completion of the Project under the same terms and conditions of this Agreement.

Each right or remedy hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or current and hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the LGU of any one or more of any of such rights or remedies shall not preclude the simultaneous or subsequent exercise by the LGU of any or all other such rights or remedies

Section 14.4 *PROPONENT-LESSOR's Remedies* – Upon the occurrence of an LGU-LESSEE Default, the PROPONENT-LESSOR may by Notice of Default, take one or more of the following actions:

a. Terminate this Agreement and any other Agreement executed between the Parties in relation to the PROJECT; or
b. Any and all remedies and compensation available by law or in equity or by statute or otherwise.
c. Each right or remedy hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or current and hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the PROPONENT-LESSOR of any one or more of any of such rights or remedies shall not preclude the simultaneous or subsequent exercise by the PROPONENT-LESSOR of any or all other such rights or remedies.

Section 14.5 *Survival of Termination Obligations* - For the avoidance of doubt, the respective obligations of the Parties in respect of the termination of this Agreement as set forth in this Article 14 shall survive and continue to be enforceable beyond the termination hereof.

ARTICLE 15 - GENERAL PROVISIONS

Section 15.1 *Effectivity* - This Agreement shall come into force and become effective upon and as of the date of the approval hereof by the authorized signatories of the LGU-LESSEE and the PROPONENT-LESSOR.

Section 15.2 *Entire Agreement* - This Agreement constitutes the entire agreement between the Parties with respect to the transactions contemplated herein. All prior discussions, understandings or arrangements between them prior to effective date, whether express or implied, concerning the PROJECT are superseded by this Agreement.

Section 15.3 *Waiver* - No provision in this agreement shall be considered waived by either Party unless such waiver is in writing and communicated to the other Party. The failure of any Party to insist on the strict performance of the obligation of the other shall not be considered a waiver of its right to do so.

Section 15.4 *Confidentiality* - Each Party shall hold in strict confidence from any other person all documents and information concerning any other Party furnished to it or its advisors, consultants, contractors, or agents by the other Party in connection with this Agreement or the transactions contemplated hereby.

Notwithstanding the foregoing, the confidentiality requirement shall not apply to such documents or information that were previously known by the Party receiving such documents or information, in the public domain and required by law to be disclosed to any person who is authorized by law to receive the same.

Section 15.5 *Further Assurances* - The Parties will do, execute, and deliver, or will cause to be done, executed, and delivered, all such further acts and such other things as each Party may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the representations, warranties, and covenants of this Agreement.

The Parties further assure that they shall perform their obligations in a highly professional and diligent manner, with due efficiency and economy and timely execution of works and other obligations, in all respects with that degree of skill, diligence, prudence and foresight required from them, and with due attention to the need for fairness, openness and good faith and their dealings.

Section 15.6 *Severability* - The validity of the remaining articles, clauses, provisions, terms and parts of this Agreement shall not be affected by a court, administrative body, or other proceeding of competent jurisdiction deciding that an article, section, provision, term, or part of this Agreement is illegal, unenforceable, in conflict with any law, or contrary to public policy.

Section 15.7 *Language* - English is the governing language of this Agreement, which shall be interpreted in accordance with English usage. All documents, notices, waivers, and all other communications written or otherwise between the Parties in connection with this Agreement shall be in the English language.

Section 15.8 *Notice* - All notices or communications shall be made in writing and be sent to the address given hereunder:

For the PROPONENT	For the LGU
_____	_____
_____	_____

Said notice shall be considered given if delivered by registered mail with return card, or through an internationally or nationally recognized courier service with delivery receipt requested, or by hand delivery. If the notice or communication is faxed, it shall be confirmed in writing. The notice or communication shall be effective upon receipt.

A Party may change its address by giving the other Party written notice of such change, provided that any such change shall not be effective until notice of such change has been received by the other Party.

Section 15.9 *Amendment* - This Agreement may be amended or modified only in writing and signed by the Parties, provided that prior to signing, said proposed amendments shall be approved by the Board of the PROPONENT and the Local Sanggunian of the LGU.

IN WITNESS WHEREOF, the Parties, acting through their respective duly authorized representatives, have caused this Agreement to be signed under their respective names on the date and at the place first above-written.

LGU NAME	[NAME OF WINNING BIDDER]
By:	By:
Name: _____	Name: _____
Title: Local Chief Executive	Title: _____

APPROVED BY:
Local Sanggunian of _____
Resolution No. _____, series of _____

ACKNOWLEDGMENT

Republic of the Philippines)
_____) S.S.

BEFORE ME, a Notary Public for and in _____, Philippines, on this _____day of _____, 200___, personally appeared (LGU's Representative) and (Winning Bidder's Representative), known to be the same persons who executed the foregoing <<Type of Contractual Arrangement>> for the <<Name of the Project> which instrument consists of _____ pages including the page on which this Acknowledgment is written, and signed at the left hand margin of each and every page by the parties executing this instrument and their witnesses, and sealed with my notarial seal and aforesaid parties acknowledged to me that the same is their free act and deed . The parties exhibited to me their competent evidence of identity, (govt.-issued ID presented and ID number) issued at _____on _____valid until _____and (govt.-issued ID presented and ID number) issued at _____on _____valid until _____, respectively.

(Sgd.)
Notary Public
Until _____
PTR No. _____
Issued at _____
On _____

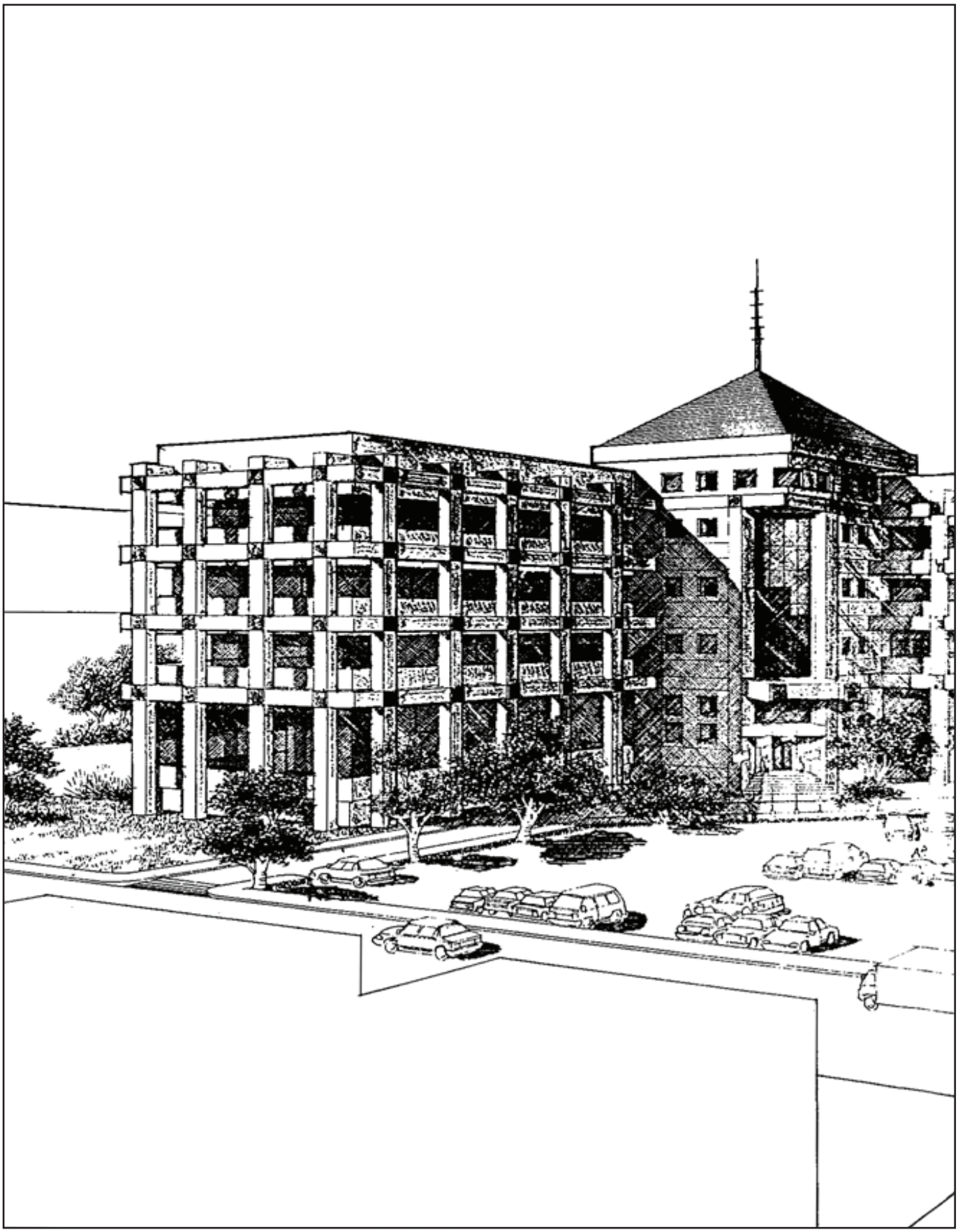
Doc. No. _____;
Page No._____;
Book No._____;
Series of _____.

ANNEX A: Concept Design of the PROJECT
ANNEX B: PROPONENT's Technical Proposal
ANNEX C: PROPONENT's Financial Proposal
ANNEX D: Project Construction and Implementation Schedule

(may include other Contract Documents depending on the needs of each Project)

Government Administrative Center Perspective and Floor Plans

Figure 3-6: Government Administrative Center Perspective



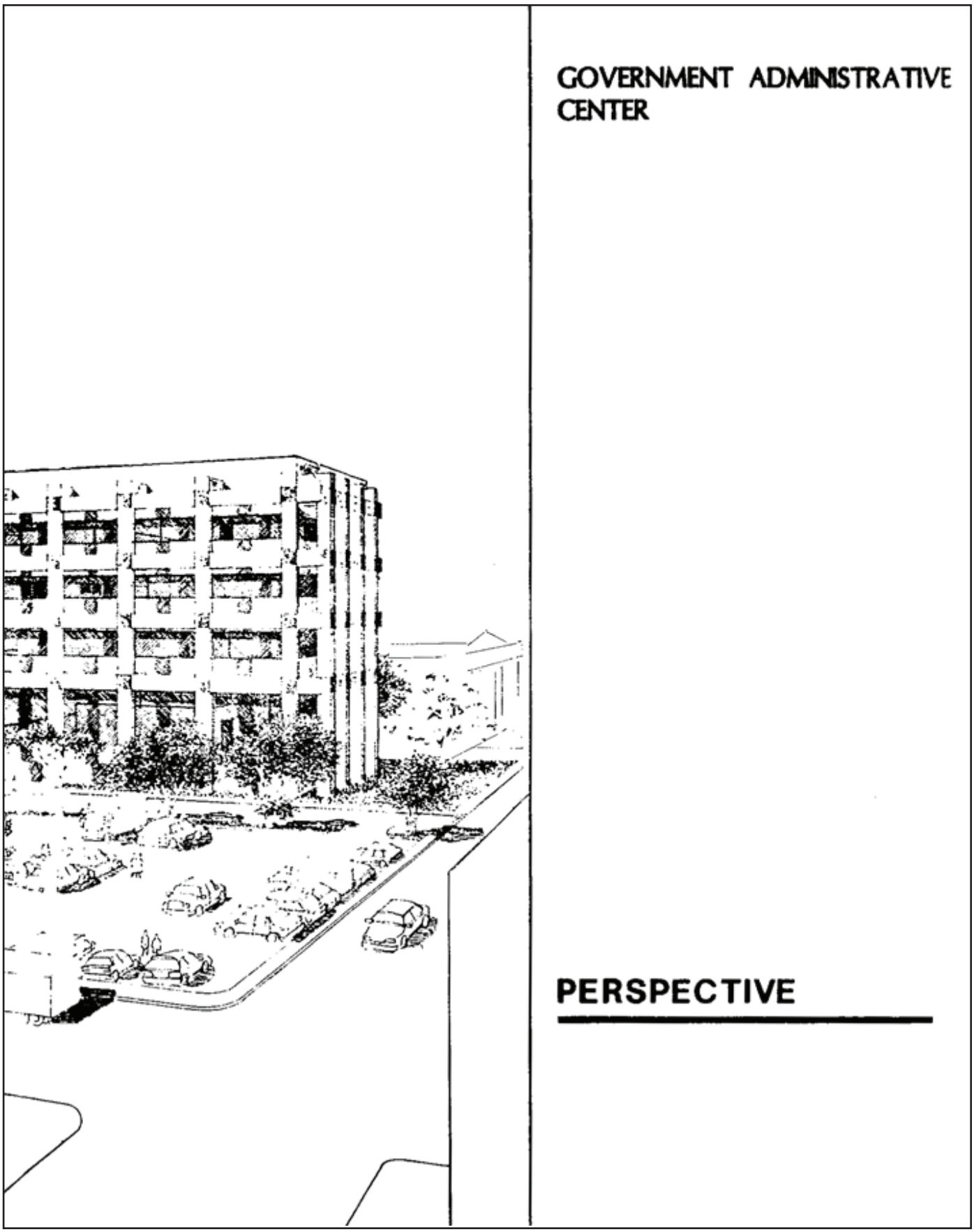
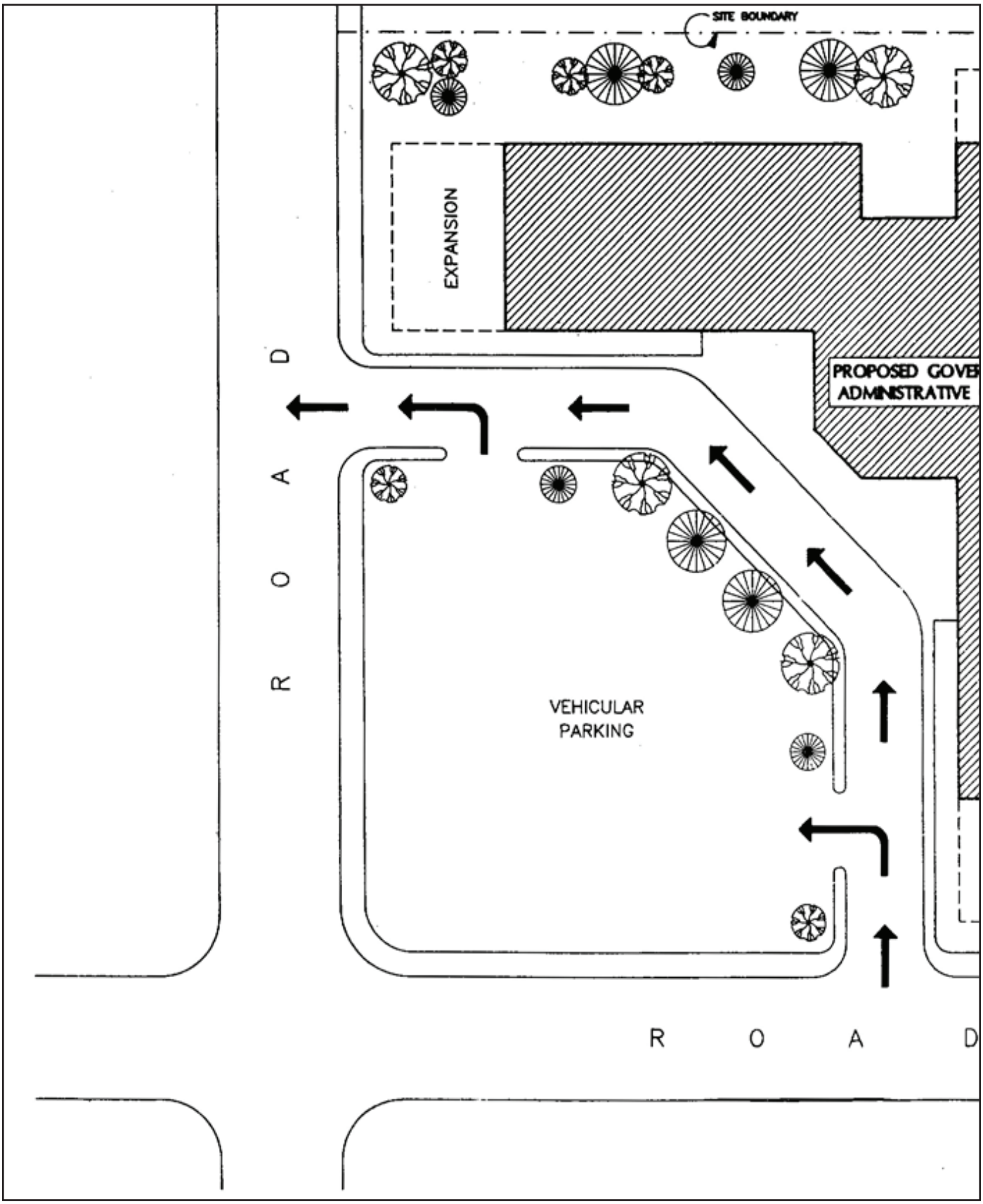

GOVERNMENT ADMINISTRATIVE CENTER
PERSPECTIVE

Figure 3-7: Government Administrative Center Conceptual Site Plan, Vehicular Circulation



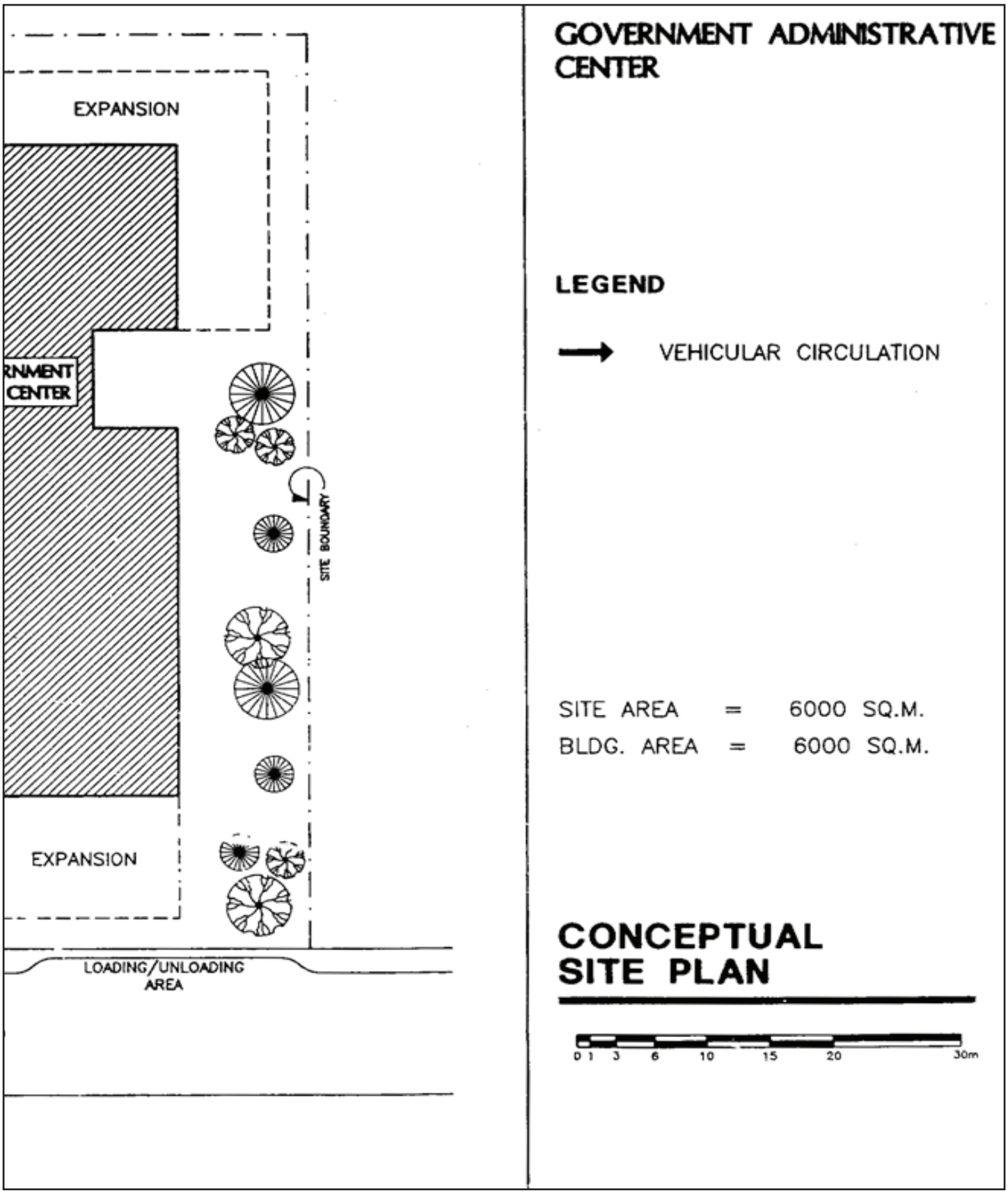
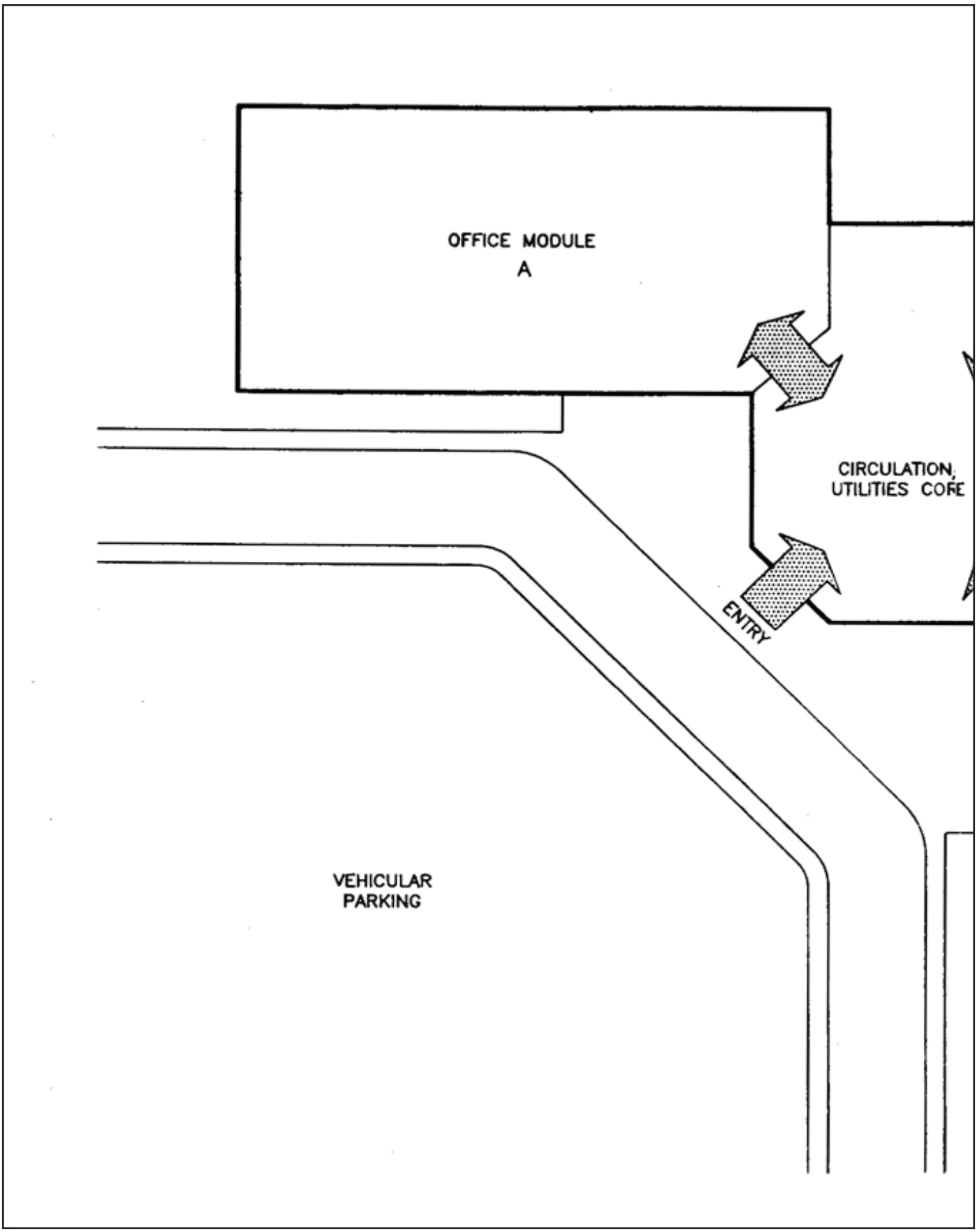
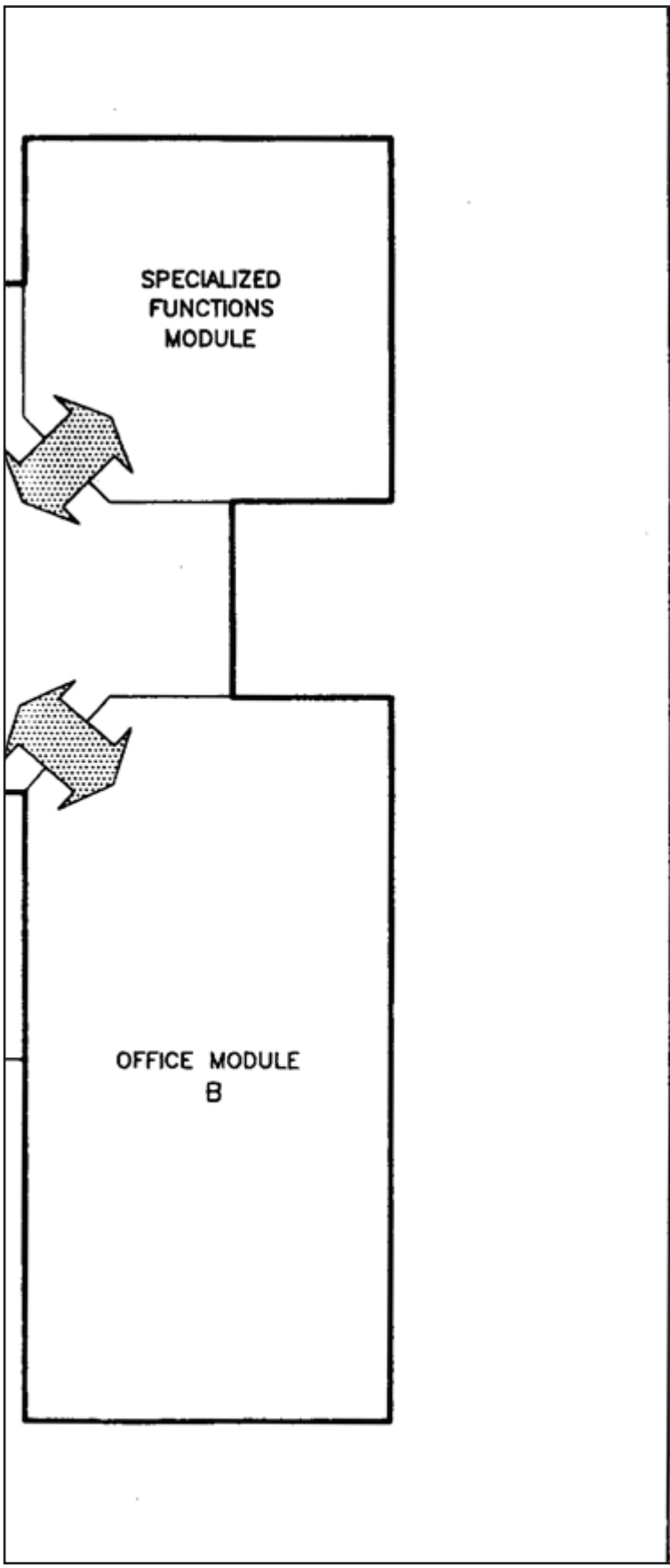

EXPANSION
RNMENT
CENTER
SITE BOUNDARY
EXPANSION
LOADING/UNLOADING
AREA
GOVERNMENT ADMINISTRATIVE CENTER
LEGEND
VEHICULAR CIRCULATION
SITE AREA = 6000 SQ.M.
BLDG. AREA = 6000 SQ.M.
CONCEPTUAL SITE PLAN
0 1 3 6 10 15 20 30m

Figure 3-8: Government Administrative Center Conceptual Floor Plan, Pedestrian Circulation





GOVERNMENT ADMINISTRATIVE CENTER

LEGEND

PEDESTRIAN CIRCULATION

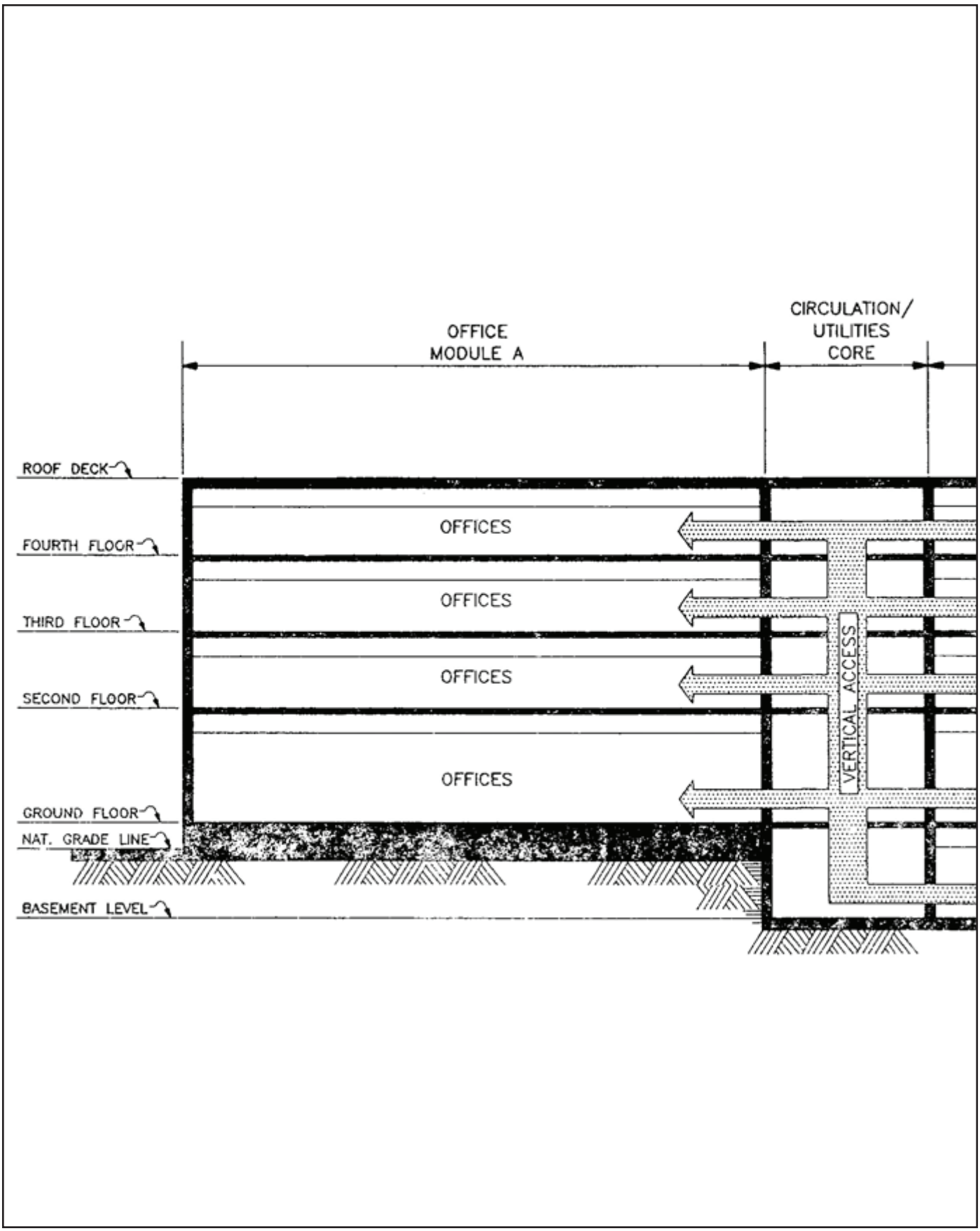
BREAKDOWN OF AREAS

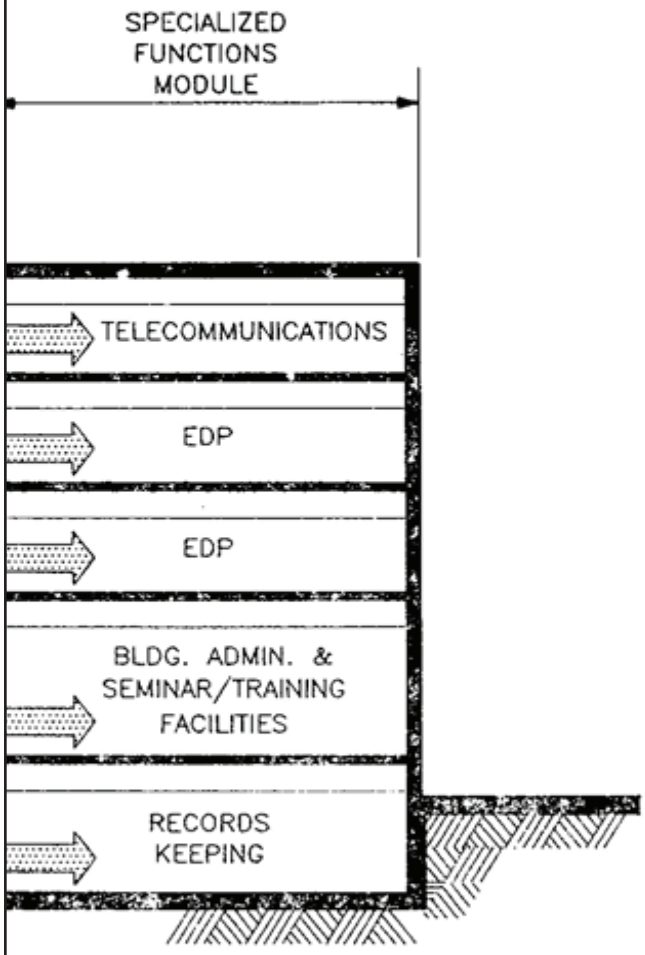
• OFFICE MODULES	3150 SQ.M.
• SPECIALIZED FUNCTIONS MODULE	1125 SQ.M.
• CIRCULATION/UTILITIES CORE	1275 SQ.M.
• CAFETERIA/RESTAURANT	450 SQ.M.

CONCEPTUAL FLOOR PLAN

0 1 3 6 10 15 20m.

Figure 3-9: Government Administrative Center Conceptual Section, Pedestrian Circulation





GOVERNMENT ADMINISTRATIVE CENTER

LEGEND

PEDESTRIAN CIRCULATION

CONCEPTUAL SECTION

0 1 3 6 10 15 20m

LGU WATER SUPPLY SYSTEM

LGU WATER SUPPLY SYSTEM

Feasibility Study

C1. Project Description

- C1.1 Physical Description of the Facility
- C1.2 Personnel Requirements
- C1.3 Site Requirements
- C1.4 Service Area
- C1.5 Estimated Project Costs
- C1.6 Project Implementation Schemes
- C1.7 Project Financing
- C1.8 S Sources of Revenue

C2. Project Justification

C3. Preconditions for Successful Tender

- C3.1 Land Availability and Right of Way
- C3.2 Private Sector Capabilities
- C3.3 Willingness to Pay
- C3.4 Availability of Good Water Source
- C3.5 Sufficient Household Clustering

C4. Environmental and Social Impacts

Financial Model

C5. Financial Analysis

C6. Economic Analysis

Provisions Unique to a Water Supply System

Model Agreement for Water Supply System

Feasibility Study

C1. PROJECT DESCRIPTION

This section is derived from the technical analysis done for a project. Concepts and procedures on Technical Analysis are provided in Volume 2.

Nature of Project	:	Water Source Development, Treatment and Distribution
Land and Bldg. Requirements	:	Land for 10 deep wells and a 5,000 sq. m. administration and maintenance center, storage tanks, distribution system and 20,000 service connections.
LGU Implementor	:	Province, City or Large LGU
Private Partner	:	Contractor with experience in water supply backed by a reputable financing institution or individual.

C1.1 Physical Description of the Facility

This generic water project description involves the establishment of a water supply and distribution system with 20,000 service connections for an LGU with a population of 100,000. Water will be sourced from 10 deep wells. The distribution system consists of four 500 cubic meter capacity storage tanks, 50,000 meters of distribution system mains and laterals, and 20,000 metered service connections (plus fire hydrants for the city center).

C1.1.1 Demand for Water

Demand for water determines the capacity of the system. This system has been sized for an LGU of 100,000. The parameters used for calculating the total demand is shown in Table 3-19.

Table 3-19: Design Parameters

Item	Quantity	Unit
Present Population	100,000	persons
Domestic Demand	100	1pcd
Average Daily Domestic Demand	10,000	m3/day
Institutional Demand (20% of Domestic)	2,000	m3/day
Commercial Demand	2,000	m3/day
Unaccounted for Water (10% of Domestic)	1,000	m3/day
Total system Demand	14,500	m3/day
Future (10 years) Demand (25% of Domestic)	17,500	m3/day

C 1.1.2 Associated Buildings

The related facilities for operation and maintenance of the water supply facility should include administrative offices, a laboratory, a locker room and a maintenance shop.

Table 3-20: Building Area Requirements

Structure	Area (in m2)
Offices	400
Laboratory	50
Maintenance Shop	100
Well Sites	5,000

Offices - Office space must be provided for administration and matters such as billing, customer and staff relations, accounting, management and engineering.

Laboratory - Small room for water testing for residual chlorine, pH, temperature, turbidity and color should also be provided.

Maintenance Shop - This will house the repair services for utility vehicles, general maintenance on pumps and water meters. Provision should be made to provide space for the storage of spare parts and other consumable materials.

C 1.2 Personnel Requirements

The number of staff required is 50. The plantilla positions and breakdown of personnel required is shown in Table 3-21.

Table 3-21: Number and Staff by types of Positions

Position	Staff
1. Administration	
General Manager	1
Secretary	1
2. Sanitary Engineering	
Sanitary Engineer	1
3. Billing/Accounting	
Accountant	1
Office Clerks	6
Water Readers	15
4. Operations	
Pump Operators	5
Procurement Officer	1
Maintenance/Mechanical/Plumbers	5
Rig Operators	2
Laboratory Technicians	2
Security Guards	4
Drivers	2
Assistant	4
Total Staff	50

C 1.3 Site Requirements

Sites should be selected for the water sources, pumping station, storage tanks, and distribution network. A description of these requirements is provided in Section C1 (Design considerations for local water systems).

The water source and design of the wells are dependent on the hydrogeologic conditions of the area. Choice of the well site and type should be driven by purely technical considerations.

For the deep-wells and pumping station, a 400 square meter fenced lot is required. Design requirements of the pumping station are discussed in Section C1.1.1.

Storage tanks are located together with the wells, thus requiring no additional land area. The distribution network is discussed in Section C.1.3. According to the primary siting requirement, pipes are placed on the same side of the street so they can be easily located when repairs or maintenance are required.

C 1.4 Service Area

The service area should include the most populated areas even if these go beyond the poblacion area. System planners should take into consideration not only the current settlement pattern but also the future potential demographic tends. For the purpose of this sample study, the service area is assumed to require 20,000 service connections.

C 1.5 Estimated Project Cost

The estimated investment cost and annual operation and maintenance costs for this water supply and distribution system are shown in the Tables below. The total investment cost is P158,295,000 million and annual operation and maintenance cost is P18,358,000 million.

Table 3-22: Water Project – Breakdown of Investment Costs (in Pesos)

Cost Item	Cost
1. Deep wells	23,450,000
2. Administrative Buildings	8,700,000
3. Tools & Equipment	3,295,000
4. Distribution System	100,700,000
5. 7.5% Contingency	10,510,000
6. Survey	1,800,000
7. Environmental Impact Assessment	250,000
8. Feasibility Study	250,000
9. Detailed Design	6,230,000
10. Project Management	3,110,000
Capital Cost	158,295,000

Table 3-23: Annual Operation and Maintenance costs in Pesos

Cost Item	Cost
Salaries and Wages	4,095,000
Electricity	8,213,000
Chlorine	1,500,000
Consumables and Spares	1,300,000
Repairs and Maintenance	1,750,000
Fuel and Oil	300,000
Outside Consultant Services	300,000
Contingencies	900,000
Capital Cost	18,358,000

C 1.6 Project Implementation Schemes

The recommended implementation scheme here is BOT where the developer constructs and operates the facility until it is transferred to the LGU according to an agreed upon schedule. In some cases in which existing water systems are already operated by Water Districts, the LGUs or water districts can just BOT water development and treatment, with the distribution component still under the responsibility of the water district.

C 1.7 Project Financing

The private sector is responsible for raising all financing required for the construction, operation, and maintenance of the facility. The LGU contributes the land required for wells, distribution lines and buildings.

C 1.8 Sources of Revenue

Project revenues will come from water sales, connection fees, and other water related charges.

C2. PROJECT JUSTIFICATION

This section is derived from the market/demand study done for a project. Concepts and procedures are provided in Volume 2.

Many rural water supply systems are not functioning properly. They show major deficiencies after short periods of operation and are often not fully utilized by the targeted population. Reasons include inadequate design and construction, inadequate funds and personnel for operation and maintenance, and inadequate logistic support for spare parts, chemicals and fuels.

Adequate, accessible, and safe water supply is a pre-requisite for improved public health and socio-economic development. Improvement of an existing water supply system or the installation of a new water supply facility will yield a number of benefits.

Improved water supply contributes to reducing infant mortality and improves life expectancy. It reduces the occurrence of water related diseases, resulting in savings in medical treatment, and increased productivity and income. In addition, less time is required to transport water from the nearest source to the point of use. Improved water supply will attract more businesses and reduce outward migration to cities.

A successful water distribution system can result in the establishment of other community projects. An improved water supply system will permit the installation of fire hydrants near fire risk infrastructure such as public markets.

C3. PRECONDITIONS FOR SUCCESSFUL TENDER

This section is done during the project development phase and is identified by the technical working group of the LGU. Clarification on the process is available in Volume 2.

What LGUs need to know:

The following are the requirements that must be present in order to ensure the successful implementation of the project under the DOT scheme:

Requirements

- Land Availability and Right of Way
- Private Sector Capability
- Willingness to Pay for Services
- Water Source Availability
- Sufficient Household Clustering

The requirements are described below.

C 3.1 Land Availability and Right of Way

The LGU must be able to source and purchase the required land for the deep wells and administration/maintenance center. The LGU must also be able to obtain right of way for the installation of distribution mains, laterals and service man holes.

C 3.2 Private Sector Capability

Potential DOT operators with the financial resources to meet the cost of planning, design, construction, operation and maintenance of the water project should be available in the area.

C 3.3 Willingness to Pay for Services and Support of the LGU

The concerned *Sanggunian* must be willing to pass ordinances to allow the proponent to recover costs. Consumer payments must meet all costs, including the recovery of capital. Important ordinances would include:

- Grant of permission to the DOT operator to disconnect any water supply service for non-payment of bills
- Grant of permission to the DOT operator to charge a non-refundable service connection fee and a refundable deposit for service connection and water meter
- Allowing the BOT operator to establish a rate per cubic meter with built in escalation mutually acceptable to the BOT operator and the LGU. The agreed water tariff schedule should enable of the installed cost of the project including repayment of the principal, interest expense, and reasonable return to equity

C 3.4 Availability of a Good Water Source

A geologist or hydrogeologist must be used to identify a good water source. This is to ensure that the wells to be installed will continue to yield safe and sufficient water. This will always turn out to be a good investment later.

C 3.5 Sufficient Household Clustering

If households within the project area are sufficiently clustered, a less costly and more efficient transmission and distribution system can be built.

C4. ENVIRONMENTAL AND SOCIAL IMPACTS

This section is derived from the Environmental Assessment and Social Impact Analysis done for a project. Concepts and procedures are provided in Volume 2.

Water supply systems are considered to be environmentally critical because they are likely to have adverse impact on the environment at some point during construction and/or operation.

An EIS is required for projects that are environmentally critical. An EIS is a comprehensive study which involves extensive investigation of the potential environmental impacts of a given project. The impacts of the project at the various stages of implementation from construction to operation to decommissioning are determined. Measures to mitigate any adverse impacts are recommended. The beneficial effects, if any, should also be discussed and explained. An environmental scoping session can be conducted as part of the public consultation process.

The Technical Revenue Committee of the EMB reviews the EIS and sets the project conditions. Within 90 days, the EMB is expected to issue the ECC. The proponent, upon receipt of the ECC, proceeds to finalize project design, incorporating the conditions set forth under the ECC.

After receipt of ECC, the project proponent prepares its final engineering design, submits it to DENR or LLDA and applies for ATC. Implementation of the project can then begin. Depending on project location, either the DENR or the LLDA issues the ATC and eventually, the PTO. Upon completion of the facility, an inspector from DENR or LLDA verifies to see to it that all environmental mitigation measures are in place. DENR or LLDA issues a PPTO which must be renewed annually. The process is prescribed in Table 3-26.

Table 3-24 : Process for Securing Environmental Clearance

Responsible Party	Requirement	Tools	Goal
LGU	Locational Clearance	Locational Clearance Checidist	HLURB/Office of Local Chief Executive issues Locational Clearance
Proponent	EIS prepared after (optional) EMB scoping	EIS Format may be obtained at EMB	DENR annually inspects and issues Permit to Operate
Proponent	Final Design	(Engineering Drawings prepared by proponent)	DENR issues Authority to Construct
Proponent	Constructs Facility		DENR inspects facility and issues Permit to Operate
LGU	Operates BT Facility		DENR annually inspects and renews Permit to Operate

C 4. 1 Health Impacts

The positive effects on public health of water projects are discussed in Section E-2. Potential adverse effects have to be addressed in the EIS.

The major potential health risk associated with water supply systems is the increased in the incidence of water-borne or related diseases due to inadequately designed water projects.

Three major impacts on health

- contamination of water source
- creation of disease-vector habitat
- salt water intrusion

C 4.1.1 Contamination of water source

The water source and/or water supply can become contaminated through surface water runoff, damaged pipes, or soil structure collapse.

Surface water runoff can enter the source as drainage water from above ground or seepage from below the surface. Damaged pipes and uncovered conduits can allow debris and waste to contaminate the transported water.

Proper siting of the facility is, therefore of utmost importance to avoid contamination of water supply.

C 4.1.2 Creation of disease-vector habitat

The common sources of disease vector habitat are uncovered conduits, open sewage drains, unprotected storage and settling tanks, and puddles around reservoirs, cisterns and wells. To avoid disease vector habitats, the operator must follow proper operation rules. The LGU must also ensure the adequacy of the drainage system.

C 4.1.3 Salt water intrusion

Withdrawal of large amounts of water from the ground could result in saltwater intrusion. The NWRB (which is tasked with the implementation the Water Code of the Philippines) regulates the amount of water to be withdrawn and recommends the location of groundwater wells for large uses such as industrial and agricultural facilities. The LGU must get the approval of the NWRB once a source has been selected.

Financial Model

C5. FINANCIAL ANALYSIS

This section is derived from the Financial Analysis done for a project. Concepts and procedures are provided in Volume 2.

This section presents the results of the financial analysis of the proposed Water System Sample Project. The analysis aims to determine the financial viability of the project under a given set of assumptions.

C 5.1 Financial Indicators of Viability Used

This financial analysis will generate values for the following standard viability indicators.

- Financial Internal Rate of Return
- Internal Rate of Return on Equity
- Net Present Value on Project
- Net Present Value on Equity, after financing
- Payback Period, after tax

The FIRR and NPV on project are preliminary measures of the financial feasibility of the overall project. The WACC is a benchmark used to compare the profitability of the proposed investment against the weighted cost of project financing.

The IRR on Equity and the NPV on Equity measure project profitability based on the proponents' equity, financing sources and cost. The FIRR and the IRRe should be higher than the WACC in order for the project to be considered feasible. The payback period after financial charges and after tax helps the LGU and the proponent determine whether any tax or other incentives are required.

C 5.2 Calculation of Financial Viability

To arrive at the viability indicators, the financial performance of the project was calculated over a 20 year period. All costs are in 1995 prices. Construction period is two years.

Year one is the first year of operation. The Income Statement, Cashflow and Balance Sheet (Table 3-25) are shown for the 20 year period.

C 5.3 Financing Conditions

Different loan equity ratios and financing terms are possible. The financial conditions assumed here are shown below:

Financing Conditions

- Loan : 60% of project cost including capitalized interest
- Equity : 40% of project cost
- Repayment Period : seven(7) including one(1) year grace period when interest is capitalized
- Interest Rate : 9% per Annum
- Desired Return of Equity : 22%
- WACC : 14.2%

The debt service schedule is shown in Table 3-26 and assumes that the loan proceeds are obtained at the beginning of the year and interest payments are due at the end of the year.

Table 3-25: Water Supply System Income Statement, Cashflow and Balance Sheet in '000 Pesos

1	Operational cashflow projections for LGU Water Project (PhP)										
				1	2	3	4	5	6	7	8
		2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
	CASH INFLOWS	-	-	**61,100,000**	**61,100,000**	**51,100,000**	**51,100,000**	**51,100,000**	**61,320,000**	**61,320,000**	**61,320,000**
	Revenues	-	-	61,100,000	61,100,000	51,100,000	51,100,000	51,100,000	61,320,000	61,320,000	61,320,000
	CASH OUTFLOWS	**63,318,000**	**94,977,000**	**18,358,000**	**18,725,160**	**19,099,663**	**19,481,656**	**19,871,290**	**20,268,715**	**20,674,090**	**21,087,571**
	Investment cost	63,318,000	94,977,000	-			-	-	-		
	Construction	63,318,000	94,977,000	-			-	-	-		
	O&M cost		-	18,358,000	18,725,160	19,099,663	19,481,656	19,871,290	20,268,715	20,674,090	21,087,571
	NET CASHFLOW	(63,318,000)	(94,977,000)	42,742,000	42,374,840	32,000,337	31,618,344	31,228,710	41,051,285	40,645,910	40,232,429
	NET CASHFLOW (after tax)	(63,318,000)	(94,977,000)	34,858,204	34,207,716	26,466,439	25,725,558	24,984,686	31,397,449	30,655,483	29,912,434
2	Income Statement for LGU Water Project (PhP)										
				1	2	3	4	5	6	7	8
		2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
	Income	-	-	**61,100,000**	**61,100,000**	**51,100,000**	**51,100,000**	**51,100,000**	**61,320,000**	**61,320,000**	**61,320,000**
	O&M cost	-	-	18,358,000	18,725,160	19,099,663	19,481,656	19,871,290	20,268,715	20,674,090	21,087,571
	Depreciation	-	-	7,914,750	7,519,013	7,143,062	6,785,909	6,446,613	6,124,283	5,818,069	5,527,165
	Interest payments	-	-	8,547,930	7,632,080	6,410,948	5,189,815	3,968,682	2,747,549	1,526,416	305,283
	Annuity or other taxable income	-	-	-	-	-	-	-	-	-	-
	Expenses	-	-	**34,820,680**	**33,876,253**	**32,653,673**	**31,457,380**	**30,286,585**	**29,140,547**	**28,018,574**	**26,920,020**
	Profit before tax		-	**26,279,320**	**27,223,747**	**18,446,327**	**19,642,620**	**20,813,415**	**32,179,453**	**33,301,426**	**34,399,980**
	Tax		-	7,883,796	8,167,124	5,533,898	5,892,786	6,244,025	9,653,836	9,990,428	10,319,994
	Profit after tax		-	**18,395,524**	**19,056,623**	**12,912,429**	**13,749,834**	**14,569,391**	**22,525,617**	**23,310,998**	**24,079,986**
	Retained earnings		-	18,395,524	37,452,147	50,364,576	64,114,410	78,683,801	101,209,418	124,520,416	148,600,402
2	Balance sheet for LGU Water Project (PhP)										
		2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
	ASSETS	**63,318,000**	**158,295,000**	**176,690,524**	**182,179,004**	**181,523,290**	**181,704,982**	**182,706,230**	**191,663,704**	**201,406,559**	**211,918,402**
	Current assets	0	0	26,310,274	39,317,767	45,805,115	52,772,715	60,220,576	75,302,333	90,863,257	106,902,265
	Fixed assets	63,318,000	158,295,000	158,295,000	158,295,000	158,295,000	158,295,000	158,295,000	158,295,000	158,295,000	158,295,000
	-/- Accumulated depreciation		0	7,914,750	15,433,763	22,576,824	29,362,733	35,809,346	41,933,629	47,751,698	53,278,863
	Net fixed assets	63,318,000	158,295,000	150,380,250	142,861,238	135,718,176	128,932,267	122,485,654	116,361,371	110,543,302	105,016,137
	LIABILITIES	**63,318,000**	**158,295,000**	**176,690,524**	**182,179,004**	**181,523,290**	**181,704,982**	**182,706,230**	**191,663,704**	**201,406,559**	**211,918,402**
	Equity	25,327,200	63,318,000	63,318,000	63,318,000	63,318,000	63,318,000	63,318,000	63,318,000	63,318,000	63,318,000
	Subsidy [VGF]	0	0	0	0	0	0	0	0	0	0
	Loan	37,990,800	94,977,000	94,977,000	81,408,857	67,840,714	54,272,571	40,704,429	27,136,286	13,568,143	0
	Retained earnings		0	18,395,524	37,452,147	50,364,576	64,114,410	78,683,801	101,209,418	124,520,416	148,600,402
	Debt Ratio (Leverage)	60.0%	60.0%	60.0%	56.3%	51.7%	46.2%	39.1%	30.0%	17.6%	0.0%
	Equity Ratio	40.0%	40.0%	40.0%	43.8%	48.3%	53.8%	60.9%	70.0%	82.4%	100.0%
		-	-	-	-	-	-	-	-	-	-

9	10	11	12	13	14	15	16	17	18	19	20
2023	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**2030**	**2031**	**2032**	**2033**	**2034**
61,320,000	**61,320,000**	**71,540,000**	**71,540,000**	**71,540,000**	**71,540,000**	**71,540,000**	**81,760,000**	**81,760,000**	**81,760,000**	**81,760,000**	**81,760,000**
61,320,000	61,320,000	71,540,000	71,540,000	71,540,000	71,540,000	71,540,000	81,760,000	81,760,000	81,760,000	81,760,000	81,760,000
21,509,323	**21,939,509**	**22,378,300**	**22,825,866**	**23,282,383**	**23,748,031**	**24,222,991**	**24,707,451**	**25,201,600**	**25,705,632**	**26,219,745**	**26,744,140**
21,509,323	21,939,509	22,378,300	22,825,866	23,282,383	23,748,031	24,222,991	24,707,451	25,201,600	25,705,632	26,219,745	26,744,140
39,810,677	39,380,491	49,161,700	48,714,134	48,257,617	47,791,969	47,317,009	57,052,549	56,558,400	56,054,368	55,540,255	55,015,860
29,442,716	29,062,823	35,834,846	35,450,467	35,063,376	34,673,271	34,279,854	41,036,835	40,635,928	40,230,853	39,821,334	39,407,100

9	10	11	12	13	14	15	16	17	18	19	20
2023	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**2030**	**2031**	**2032**	**2033**	**2034**
61,320,000	**61,320,000**	**71,540,000**	**71,540,000**	**71,540,000**	**71,540,000**	**71,540,000**	**81,760,000**	**81,760,000**	**81,760,000**	**81,760,000**	**81,760,000**
21,509,323	21,939,509	22,378,300	22,825,866	23,282,383	23,748,031	24,222,991	24,707,451	25,201,600	25,705,632	26,219,745	26,744,140
5,250,807	4,988,267	4,738,853	4,501,911	4,276,815	4,062,974	3,859,826	3,666,834	3,483,493	3,309,318	3,143,852	2,986,659
0	0	0	0	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-
26,760,130	**26,927,776**	**27,117,153**	**27,327,776**	**27,559,198**	**27,811,005**	**28,082,817**	**28,374,285**	**28,685,093**	**29,014,950**	**29,363,597**	**29,730,799**
34,559,870	**34,392,224**	**44,422,847**	**44,212,224**	**43,980,802**	**43,728,995**	**43,457,183**	**53,385,715**	**53,074,907**	**52,745,050**	**52,396,403**	**52,029,201**
10,367,961	10,317,667	13,326,854	13,263,667	13,194,241	13,118,699	13,037,155	16,015,714	15,922,472	15,823,515	15,718,921	15,608,760
24,191,909	**24,074,557**	**31,095,993**	**30,948,557**	**30,786,561**	**30,610,297**	**30,420,028**	**37,370,000**	**37,152,435**	**36,921,535**	**36,677,482**	**36,420,441**
172,792,311	196,866,868	227,962,861	258,911,418	289,697,980	320,308,276	350,728,305	388,098,305	425,250,740	462,172,275	498,849,758	535,270,198

2023	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**2030**	**2031**	**2032**	**2033**	**2034**
236,110,311	**260,184,868**	**291,280,861**	**322,229,418**	**353,015,980**	**383,626,276**	**414,046,305**	**451,416,305**	**488,568,740**	**525,490,275**	**562,167,758**	**598,588,198**
136,344,981	165,407,804	201,242,651	236,693,118	271,756,494	306,429,765	340,709,619	381,746,454	422,382,382	462,613,235	502,434,569	541,841,669
158,295,000	158,295,000	158,295,000	158,295,000	158,295,000	158,295,000	158,295,000	158,295,000	158,295,000	158,295,000	158,295,000	158,295,000
58,529,670	63,517,936	68,256,789	72,758,700	77,035,515	81,098,489	84,958,315	88,625,149	92,108,642	95,417,959	98,561,811	101,548,471
99,765,330	94,777,064	90,038,211	85,536,300	81,259,485	77,196,511	73,336,685	69,669,851	66,186,358	62,877,041	59,733,189	56,746,529
236,110,311	**260,184,868**	**291,280,861**	**322,229,418**	**353,015,980**	**383,626,276**	**414,046,305**	**451,416,305**	**488,568,740**	**525,490,275**	**562,167,758**	**598,588,198**
63,318,000	63,318,000	63,318,000	63,318,000	63,318,000	63,318,000	63,318,000	63,318,000	63,318,000	63,318,000	63,318,000	63,318,000
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
172,792,311	196,866,868	227,962,861	258,911,418	289,697,980	320,308,276	350,728,305	388,098,305	425,250,740	462,172,275	498,849,758	535,270,198
0.0%	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**
100.0%	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**
-	-	-	-	-	-	-	-	-	-	-	-

Table 3-26: Debt Service

Year	Principal repayment	Interest payment	Total debt service	Principal outstanding
2013	-	-	-	-
2014	-	-	-	-
2015	-	8,547,930	8,547,930	94,977,000
2016	13,568,143	7,632,080	21,200,223	81,408,857
2017	13,568,143	6,410,948	19,979,090	67,840,714
2018	13,568,143	5,189,815	18,757,958	54,272,571
2019	13,568,143	3,968,682	17,536,825	40,704,429
2020	13,568,143	2,747,549	16,315,692	27,136,286
2021	13,568,143	1,526,416	15,094,559	13,568,143
2022	13,568,143	305,283	13,873,426	0

Table 3-27: Summary of Results of the Financial Analysis

	Concession period (years)			
	5	10	15	20
1 Debt amortization				
1a Repayment starts in year:	2	2	2	2
1b Number of yearly installments	7	7	7	7
1c Tenor of debt (years)	8	8	8	8
2 Debt service coverage ratio				
2a Minimum DSCR	1.32	1.32	1.32	1.32
2b Average DSCR	1.53	1.69	1.69	1.69
3 IRR & NPV				
3a Project IRR (post tax)	-2.42%	12.51%	16.39%	17.75%
3b Project NPV@14.2% (PhP million)	-49,667,155.56	-8,865,697.23	15,551,145.49	29,970,447.25
3c Equity IRR (post tax)	-1.85%	18.54%	23.54%	24.80%
3d Equity NPV@15% (PhP million)	-19,558,883.15	-5,714,157.98	3,560,430.67	7,496,183.75
4 Debt-equity gearing	0%	0%	0%	0%
Loan coverage ratios				
LLCR	3.16	0.02	1.26	1.32
PLCR	0.88	1.36	2.13	2.99

C 5.4 Finance Packaging Option

The option presented here is the BOT, where the private proponent will build the facility, operate it, collect revenues and transfer it back to the LGU after an agreed upon period of 20 years.

Revenues are generated from water sales, connection fees and deposits which concessionaires are required to put up when applying for interconnection. The interconnection fee is pegged at P1,000 for both domestic and commercial clients. The deposit fee is a one-time fee of P1,000 for domestic users and P4,000 for commercial users. The project revenues and operating and maintenance expenses are presented in the income and cashflow statements. Payment of real property taxes on improvements is the proponent's responsibility.

C 5.5 Other Assumptions

a. Tariff – Tariff per cubic meter will start at P10/m3 in a year and will increase by P2/m3 every after 5 years over the 20 year life of the project.
b. Schedule of Interconnections – 10,000 will be interconnected during year 1 of operations and the other 10,000 during year 2. The number of connections (total of 20,000) will be broken down into 16,000 domestic and 4,000 commercial users.
c. Estimate of water demand – To arrive at the estimate of water demand, average consumption per connection was assumed at 30 cubic meters per month.
d. Construction period – Construction period for the construction/installation of wells transmission systems, building/workshops will take two (2) years. 40% of total project cost will be spent in year 1 of construction and the rest in year 2.
e. Operations and Maintenance Cost – O&M costs are all in constant 2011 prices. The assumed escalation for consumables/spares, repairs/maintenance and contingencies (of 2% per year) are increases in real costs due to merit adjustments and real increases in repairs/maintenance as the system becomes old.

C 5.6 Financial Results

This project appears viable and attractive to the private sector.

The financial calculations are shown in Table 3-29. The overall return to capital, (FIRR), of 17.75% percent is well over the WACC of 14.20 percent. The return to equity is 24.80 percent.

The overall NPV of the project is P29.97 million which, is well above zero. The NPV on equity is similarly high, suggesting that the project could support a higher loan to equity mix.

The payback period after taxes is 6 years. This result implies that' there is no need to provide tax incentives to attract the private investor.

Financial Viability Indicator Results

- FIRR (%) 17.75
- IRR on Equity (%) 24.80
- NPV on Project (million pesos) 29.97
- Payback Period After Tax 6 years

C6. ECONOMIC ANALYSIS

This section is derived from the Economic Analysis done for a project. Concepts and procedures are provided in Volume 2.

The economic feasibility of any proposed project is evaluated by weighing the value of the resources created by the investment against the value of the resources consumed. The mathematical tools used for the economic analysis are similar to the tools used for the financial analysis shown. The difference lies in the way costs and benefits are measured. In economic analysis, the project costs and benefits are translated to their equivalent economic values.

Economic Viability Indicators

- Economic Internal Rate of Return
- Economic Net Present Value on the project
- Benefit-Cost Ratio

If the EIRR is greater than the social opportunity cost capital or SDR, the project is economically feasible. The SDR is the benchmark against which feasible potential projects are ranked. The SDR is currently set by NEDA at 15 percent.

The NPV is the difference between the summation of the discounted stream of costs and the summation of the discount stream of economic benefits. If the NPV is greater or equal to 0, then the project is feasible.

The BCR is the most traditional measure for estimating economic feasibility. It is equal to the present value of the stream of future benefits divided by the present value of the stream of future costs. If its value is greater than 1, the project is feasible. The higher the value the more desirable the project becomes.

It is important to note that the value of the resources consumed is not always exactly the same as the cost of the investment. For example, if the cost of the steel to be used in constructing the facility includes taxes, the tax component of the cost is not included in the economic analysis because it is not part of the real resource cost of the steel (even if it is an important monetary cost). In this case shadow prices are used to translate the real value of the resources consumed.

At this stage, it is not possible to breakdown the investment cost in detailed into materials (both domestic and imported) and labor to make the necessary adjustment. Some conservative assumptions are made to estimate the real resource cost of the investment. The labor component is assumed to be 30 percent of the total cost (excluding capitalized interest).

Unskilled labor is assumed to be 40 percent of total labor. It is valued at 0.6, the NEDA shadow rate for unskilled labor. The remaining 70 percent is multiplied by 0.9 to adjust for the value added tax. For materials and equipment we reduce the cost by 20 percent for the imported component to compensate for the effects of import duties.

Although we cannot directly measure the resources that would be created as a result of this project, proxies exist which will allow us to estimate the value-added from the facility. The proxies used for this analysis are shown below:

Benefit Proxies

- Net Health Benefits
- Net Time Savings

The net health benefits accruing to improved water supply are difficult to isolate for a number of reasons. First, improving water supply alone without significantly changing the sanitation and hygiene conditions of the city will not significantly decrease the mortality rate. It is also difficult to Quantifying the impact on family members of lost wages the opportunity cost of spent time nursing a sick relative. The long term effects of the loss of a head of household are also difficult to quantify.

Nevertheless, some attempt has been made to quantify the savings resulting from to improved health and a reduction in mortality by measuring foregone wages and the cost of medical care. Health benefits may appear small because only parts of the benefits have been measured.

Savings in required time to transport water are significant and other additional savings could have been calculated as well. Other quantifiable benefits include savings in fuel required to boil water from an unsecured source. The time saved to transport water is assumed to be a 45 minutes per household per day, valued at the shadow price of labor.

Provisions Unique to a Water Supply System

EXISTING FACILITIES

The following facilities exist to provide services: _____. The Local Government Unit does not now have a potable water treatment and distribution system. Community well heads will be phased-out as potable water becomes available.

SITE SELECTION

The facility is to be constructed at _____. The _____ will require approximately 10 deep wells each capable of generating 20 cubic meters of water per second. Extensive ground water testing reveals that four sites are required for deep wells treatment and storage. The sites are shown in Figure 1.2.4. These sites are sufficiently large to accommodate treatment, storage and maintenance facilities.

EQUIPMENT REQUIREMENTS

It has been determined that all major equipment requirements can be met through Philippine sources. The major equipment components include:

- ten deep well pumps and controls
- 20,000 water meters
- deep well electrical connection equipment
- chlorination equipment
- laboratory equipment
- two pick-up trucks
- work over rig
- ten motor bikes
- tools and equipment

PUBLIC UTILITY CLASSIFICATION

The potable water scheme will be operated as a public utility and, as such, will require the granting of a public utility franchise. Under the requirements of the Implementing Rules and Regulations, projects which are to be implemented under the BOT scheme whose operations require a public utility franchise have restrictions on ownership. These restrictions specifically require that the concessionaire and facility operator, if applicable, must be a Filipino or, if a corporation, must be duly registered with the SEC and owned up to at least 60 percent by Filipinos.

Table 3-28: Required Concept Design Documents

Drawing Number	Drawing Title	Drawing Description	Scale
1	Deep Well Site Plans	Site plan for each Deep Well Site indicating major components	1:1,000
2	Distribution System Location Plan	Location plan for the Distribution System	1:2,000
3	Deep Well Cross Section Plan	Plan showing Cross-Section of Deep Well Construction	1:500
4	Maintenance Work Shop Floor Plan	Plan showing floor layout	1:500
5	Administrative Building Floor Plan	Plan showing floor layout	1:500
6	Administrative Building Sections and Elevation	Plan showing sections and elevation of administrative building	1:200
7	Laboratory Building Floor Plan	Assume part of Administrative Building	NA
8	Outline Specifications	Brief description of construction methods and materials	NA

Construction costs are calculated on a unit cost basis, i.e. lump sum and cost per square meter, for each of the following line items:

- Construction of Wells
- Deep Well Pumps and Controls
- Water Meters
- Electrical Connections
- Pump Houses
- Chlorination Equipment
- Site Works
- Security Fencing
- Administrative Building
- Quality Control Laboratory
- Office and Lab Equipment
- Maintenance Shop
- Maintenance Tools and Equipment
- Pick-up Trucks (2)
- Work Over Big
- Motor Bikes (2)
- Elevated Water Tanks
- Distribution System Mains
- Service Connections
- Water Meters
- Fire Hydrants

SITE CONSTRAINTS AND DEVELOPMENT OPTIONS

While the Pre-FS includes two development schemes for deep well sites, water storage and distribution system location, these are intended to provide each of the prospective bidders a range of solutions which meet the minimum design and performance standards. Alternative approaches to the siting, design and phasing of facilities must be considered on a project-specific basis.

WELL SITE LOCATIONS AND BOUNDARIES

The LGU should define the geographic boundaries of alternative deep well site and/or Administrative Center (i.e. includes water quality laboratory and Maintenance Workshop).

DISTRIBUTION SYSTEM LOCATION AND SERVICE AREA

The LGU should delineate the alternative location of main lines for the existing Service Area arid future Service Area. Highlight the Service Area boundaries and main line locations. The Figure should also show the number of expected connections of main line.

PERFORMANCE STANDARDS

The primary system performance standards are as follows:

- Deep Well Production - 20 cubic meters per second
- Overall System Production Capacity - 12,500 cubic meters per day
- Water Treatment Capacity - 20 cubic meters per second
- Storage System Capacity - 2,000 cubic meters per day
- Distribution System Capacity - 700 cubic meter per hour
- 24-Hour Distribution System Pressure - (to be determined)
- Maximum Loss Rate - 15% of extracted water

The minimum performance standard for connections will be ___ to be achieved by the ___ year of the concession.

OPERATING STANDARDS

The potable water scheme will be operated over an 18 hour period per day with water pressured maintained over a 24 hour period each day. Meter reading and billing will be on a monthly basis. Maximum response time to system failures will be 10 minutes for mains or connections.

The minimum treatment water quality standard will be _____ .

Fire Hydrants

The spacing standard for fire hydrants will be ___ meters. The flow capacity of hydrants will be square meters per second.

Deep Well Specifications

Project specifications will be site-specific.

Deep Well Pumps and Controls Specifications

Project specifications will be site-specific.

Water Meter Specifications

Project specifications will be site-specific.

Electrical Connections

Project specifications will be site-specific.

Pump House Specifications

Project specifications will be site-specific.

Chlorination Equipment Specifications

Project specifications will be site-specific.

Security Fence Specifications

Project specifications will be site-specific.

Site Works Specification

Project specifications will be site-specific.

Administrative Building Specifications

The Administrative Building will be 400 square meters in size. Project specifications will be site-specific.

Quality Control Laboratory Specifications

The Laboratory will be 50 square meters in size. Project specifications will be site-specific.

Maintenance Workshop Specifications

The maintenance workshop will be 100 square meters in size. Project specifications will be site- specific.

Elevated Water Tank Specifications

Project specifications will be site-specific.

Water Main Specifications

Water mains will be 150 mm/100 mm PUC at 50,000 meters.

Water Connection Specifications

Water pipe will be _____ mm estimated at _____meters.

Fire Hydrants

Project specifications will be site-specific.

HYDROLOGICAL SURVEYS

The concessionaire will be responsible for the conduct of hydrological surveys.

GEOTECHNICAL SURVEYS

The selected bidder will conduct preliminary soils, materials and foundation investigations at the location of structures for the purposes of water table determination, materials locations, sub-grade evaluation, and foundation design. All standard and applicable tests required to adequately classify and identify the 'in-situ' soils and their characteristics shall be carried out in an approved laboratory by qualified professionals in accordance with the LGU Engineering Office requirements and international standards. For purposes of the concept design and bid proposal to be prepared by each prequalified bidder, the soil conditions typical for this area are to be assumed.

DEEP WELL PUMP AND CONTROL SYSTEM CHECK PLAN

An equipment installation and system check plan must be prepared and approved by the LGU Engineering Office and its designated technical consultant. The objective of this plan is to ensure that adequate provision for all equipment is made in the Final Engineering documents.

These provisions include power requirements and mechanical requirements. In addition, the installation and system check plan is to provide specifications for each of the following items:
Installation supervision - methods and procedures by which quality and progress surveys at the equipment provider's factory and at the potable water scheme are to accomplish; these surveys are to be undertaken at predetermined periods during production and installation.

Equipment testing - methods and procedures by which the equipment supplier and the, potable water scheme operator verify compliance with specifications, safety controls and quality. Performance tests are to be undertaken which ensure that operational performance is commensurate with the required capacity.

Model Agreement – LGU Water Supply System

BUILD-OPERATE-TRANSFER AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Agreement ("AGREEMENT"), made and entered into this **<<(day/mo/yr)>>** at _____, Philippines, for the **LGU Water System Project** ("PROJECT") by and between:

<<NAME OF WINNING BIDDER>> (hereinafter referred to as **"PROPONENT"**, a corporation duly organized and existing under Philippine laws, with principal place of business at **<<address>>**, represented herein by its President - CEO,

-and-

THE GOVERNMENT OF <<LGU Name>> hereinafter referred to as **"LGU"**, with corporate powers granted under the Local Government Code of 1991 (LGC) and represented herein by its Local Chief Executive/Governor, **<<Name of Local Chief Executive>>**, his authority is conferred by the Local Sanggunian through SP Resolution No. ____, series of _____,

(The LGU and the PROPONENT collectively referred to hereinafter as the "*Parties*" and individually as a *"Party"*)

WITNESSETH:

WHEREAS, (state the rationale for the project and the background of the project)

WHEREAS, on **<<date>>**, the LGU obtained the approval of the _____ for the financing and construction of a WATER SYSTEM FACILITY under a Build-Operate-Transfer Agreement in line with RA 7718 (the BOT Law) and its IRR;
(Note: for the list of approving entity, please refer to Section 2.7.b of the IRR of the BOT Law)

WHEREAS, the PROPONENT-OPERATOR has been selected by the LGU to undertake the financing and construction of a WATER SYTEM FACILITY on the terms and conditions set forth in this Agreement as a result of a competitive public bidding process conducted by the LGU under the applicable provisions of the BOT Law;

NOW, THEREFORE, for and in consideration of the above premises and the mutual obligations, commitments and undertakings assumed and accepted hereunder, the PARTIES agree as follows:

ARTICLE 1 - DEFINITION OF TERMS

- ***"Agreement"*** - refers to this Agreement including its relevant Annexes executed along with this Agreement, and such amendments as may be executed thereafter, in accordance with this Agreement.
- ***Build-Operate-Transfer Agreement*** – a contractual arrangement whereby the proponent undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The proponent operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the proponent to recover its investment, and operating and maintenance expenses in the project. The proponent transfers the facility to the LGU concerned at the end of the fixed term that shall not exceed fifty (50) years.
- ***"Contract Documents"***- shall be the documents referred to in Article 4 of this Agreement.
- ***"Design and Technical Specifications"*** – shall be the concept design, plans and technical drawing prepared by the LGU and provided in this Agreement as Annex A.
- ***"Dispute"*** – means any difference or disagreement of any kind whatsoever arising between the Parties in connection with, arising out of, or relating to the interpretation, implementation, breach, termination or validity of this Agreement.
- ***"Force Majeure"*** – is defined in Section 10.1 of this Agreement.
- ***"PROJECT"*** - the Project to be constructed, operated and maintained by the PROPONENT and transferred to the LGU after the Concession Period.

(The terms/items to be defined are not limited to those enumerated above. It may change and include other terms/ items as needed)

ARTICLE 2 - THE PROJECT

Section 2.1 *Project Design* - The PROJECT shall involve the financing, design, construction, operation and maintenance of a WATER SYSTEM FACILITY to be built on an appropriate site located at _____. The Design and Technical Specifications prepared by the LGU which shall be fully complied with by the PROPONENT-OPERATOR is attached as ANNEX "A". The PROPONENT-OPERATOR shall construct, operate and maintain the PROJECT, and eventually transfer the PROJECT to the LGU at the end of the concession period.

Section 2.2 *Project Cost* - The total cost of the PROJECT is indicated in PROPONENT's Technical Proposal (ANNEX B).

ARTICLE 3 - CONTRACTUAL ARRANGEMENT

Section 3.1 - The PROJECT shall be implemented through the Build-Operate-Transfer Agreement in accordance with the provisions of RA 7718, otherwise known as the BOT Law and its IRR.

Section 3.2 - Under this arrangement/scheme, the PROPONENT-OPERATOR operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the proponent to recover its investment, and operating and maintenance expenses in the project. The PROPONENT-OPERATOR transfers the facility to the LGU concerned at the end of the fixed term that shall not exceed fifty (50) years.

ARTICLE 4 - CONTRACT DOCUMENTS

Section 4.1 - The following documents, to be collectively referred to as the "Contract Documents", form an integral part of, and are hereby incorporated into, this Agreement:

Annex	A	-	Concept Design and Technical Specifications prepared by the LGU
Annex	B	-	PROPONENT's Technical Proposal
Annex	C	-	PROPONENT's Financial Proposal
Annex	D	-	Project Construction and Implementation Schedule

(may include other contract documents depending on the needs of each Project or as needed)

Section 4.2 - To the extent, if any, that there should be any irreconcilable conflict or discrepancy between the provisions of the Agreement and the Contract Documents, said provisions of the Agreement shall have precedence and shall govern.

ARTICLE 5 - UNDERTAKINGS OF THE PARTIES

Section 5.1 - The following shall be the obligations of the LGU:

1. It shall provide and surrender the possession of the site for the WATER SYSTEM FACILTY to the PROPONENT-OPERATOR and the corresponding right of way;
2. It shall maintain the PROPONENT-OPERATOR in the peaceful and undisturbed possession of the project site for the entire duration of the construction works and operation of the WATER SYSTEM FACILITY;
3. It shall extend to the PROPONENT such assistance as may be necessary and indispensable for the early and expeditious completion and efficient operation of the WATER SYSTEM FACILITY;
4. It shall not grant any third party any privilege and/or concession to construct a WATER SYSTEM FACILITY and operate the same until after the concession period; and
5. It shall not impair and/or abrogate this Agreement until after the full recovery of the PROPONENT-OPERATOR's investment, plus a reasonable rate of return thereon.

Section 5.2 – The following shall be the responsibilities of the LGU:

1. It shall hold free and harmless and defend the PROPONENT-OPERATOR from any and all actions, claims, liabilities and suits that may arise in connection with the project site and/or right of way;
2. It shall prepare the Concept Design and Technical Specification of the PROJECT;
3. It shall shoulder any and all expenses that may be incurred in the acquisition of additional project site and/or right-of-way, if necessary, without obligation on the part of the PROPONENT-OPERATOR;
4. It shall be responsible for the necessary peace-keeping force to maintain peace and order in the PROJECT Site;
5. It shall monitor the implementation of the PROJECT during its construction period to ensure that it is completed under the agreed Concept Design and Technical Specifications; and
6. It shall immediately upon completion of the construction of the FACILITY, grant the PROPONENT-OPERATOR the franchise to operate the same.

Section 5.3 - The following shall be the obligations of the PROPONENT-OPERATOR:

1. It shall be responsible for the financing, development, construction, operation, maintenance and management of WATER SYSTEM FACILITY; The PROPONENT shall see to it that the PROJECT is in compliance with the technical and operating specifications as stated in the PROPONENT's Technical Proposal (ANNEX B);
2. It shall provide its own funds, materials, plants and equipment necessary for the expeditious implementation of the FACILITY;
3. It shall complete the construction of the FACILITY within the timeframe stated in the PROPONENT's Technical Proposal (ANNEX B) from receipt of the Notice to Proceed, as indicated in the Instruction to Bidders, save in case of valid extension/suspension of contract time granted and/or additional/extra work ordered to be done by the LGU outside of the requirements of the original plans and specification therefore;
4. It shall, at all times during the construction, operation, and management of the FACILITY, comply with, and secure at its own cost all legal requirements, permits, licenses and approvals;
5. It shall pay all the electrical bills, water, gas and other rates payable during period of construction as well as during the operation of the FACILITY including the Real Property Taxes;
6. It shall not make or suffer any alteration or changes in plans and specifications during the construction or alteration/changes in the completed structure during the operation period without the written consent of the LGU; The LGU in case of request for alteration/changes shall act on the same within _____ calendar days, otherwise the request shall be considered as approved;
7. It shall not make or suffer any unlawful, improper, or offensive use of the premises, nor any use therefore other than the purpose for which the facility has been constructed per plans and specifications and contained in the technical proposal of the PROJECT-OPERATOR without the written consent of the LGU;
8. It shall operate and maintain the FACILITY based on accepted facility management practices and shall provide for repairs and replacement costs to ensure performance within the prescribed standards; and
9. It shall not keep and/or store in the building and its premises any injurious or prohibited drugs, substances or chemicals during the construction and concession period.

Section 5.4 – The following shall be the responsibilities of the PROPONENT-OPERATOR:

1. Except in cases of Force Majeure, the PROPONENT-OPERATOR, shall be responsible for any and all losses and damages to the PROJECT due to any cause or causes whatsoever, during the project implementation and shall not relieve the PROPONENT-OPERATOR from any of its obligations under this Agreement;
2. It shall be responsible for all damages to any property belonging to LGU, private properties or the government, and except to the extent that such damages arise from the negligence of the LGU or its agents;
3. It shall be responsible for the death and/or injury to personnel of the LGU that may arise in connection with the execution of the Agreement;
4. It shall hold free and harmless and forever defend the LGU from any and all actions, claims, liabilities and suits, for losses and damages to properties of other contractors, if any, and/or third parties arising from the execution of this Agreement;
5. It shall be responsible for its employees' strict observance of the laws of the Republic of the Philippines relevant to the execution of this Agreement. The PROPONENT-OPERATOR shall execute the Agreement with due regard to safety against accidents to its employees and to the employees of the LGU at the work site, if any, and shall provide such machinery, guards, safe walkways and such other safety devices as may be needed for the prevention of accidents. The PROPONENT-OPERATOR shall be responsible for the payment of all indemnities, including hospital and medical expenses, arising out of any labor accidents which may occur in the course of the project execution and for which PROPONENT may be responsible under PD No. 442 as amended by the Labor Code;
6. If in the execution of the PROJECT, it is necessary to interrupt or obstruct the natural flow of rivers or streams within the work site, if any there be, the drainage of the surface, or the flow of artificial drains, the PROPONENT-OPERATOR shall provide adequate measures to prevent damage to both public and private properties. The PROPONENT-OPERATOR shall be liable for all damages that may occur, except to the extent that such damage arises from the contributory act or negligence of the LGU, in which case it shall be shouldered proportionately between the PROPONENT-OPERATOR and the LGU;
7. It shall not trespass over the limits of the property of any third party without having previously received the relevant permit. It shall, moreover, be responsible for the care of all public and private properties that may be affected by the implementation of the PROJECT and adopt such reasonable precautions to avoid injury or harm over the same, otherwise, it shall recondition or repair or replace or reconstruct the damaged or destroyed property at its own expense, or pay compensation for the damage within the shortest possible period;
8. It shall assume full responsibility for the costs arising from any adverse environmental effects or other impacts that may result from the construction of the PROJECT;
9. It shall upon completion of the PROJECT, operate the WATER SYSTEM FACILITY for a period stated in the concession that shall be granted by the LGU, but in no case exceed _____ years, and thereafter transfer the facility to the LGU;
10. It shall charge fees, rentals and charges not exceeding the amounts proposed in its bid or as negotiated to enable it to recover its investment, and operating and maintenance expenses in the PROJECT, plus a reasonable rate of return thereon; and
11. It shall operate and maintain the WATER SYSTEM FACILITY in accordance with all environmental and other national and local laws and regulations and shall comply with any changes in such law and regulations and with any new laws and regulations.

ARTICLE 6 - PERFORMANCE SECURITIES AND INSURANCES

Section 6.1 *Construction Security* - To guarantee the faithful performance by the PROPONENT of its obligations and duties under this Agreement, the PROPONENT-OPERATOR shall put up a Construction Security, within the period and in the form and amount stipulated in the Notice of Award. The security may be in the form of cash, manager's check, cashier's check, bank draft or guarantee confirmed by a reputable local bank acceptable to the LGU, standby letter of credit issued by a reputable bank acceptable to the LGU, provided that if a letter of credit is issued by a foreign bank, it must be confirmed by a local bank or offshore banking unit, surety bond callable on demand issued by the GSIS, by surety or insurance companies duly accredited by the Office of the Insurance Commissioner, or a combination thereof,

in accordance with the following schedules:

a. Cash, irrevocable letter of credit, bank draft – a minimum of two percent (2%) of the total Project Cost
b. Bank Guarantee - a minimum of five percent (5%) of the total Project Cost
c. Surety Bond – a minimum of ten percent (10%) of the total Project Cost

The Construction Security shall be released by the LGU after the issuance of the "Certificate of Completion and Acceptance" of the Construction works, and the acceptance by the LGU of the PROJECT as completed in accordance with the agreed standards and specifications, provided that there are no claims filed against the PROPONENT-OPERATOR or its Contractor.

In the event the completion timetable for the PROJECT is extended in accordance with this Agreement, the term of the Construction Security shall be extended accordingly.

Section 6.2 *Operating Security* - The PROPONENT-OPERATOR shall post an Operating Security in the amount of Php_____ in the form of cash or a standby letter of credit issued by a reputable bank acceptable to the LGU, simultaneously with the acceptance of the FACILITY and the release of the performance security to guarantee the operation of the PROJECT in accordance with the operating parameters and specifications under this Agreement.
The Operating Security shall remain valid and in full force and effect for the duration of the Concession Period.

Section 6.3 *Failure to Post Performance Securities* - Failure of the PROPONENT-OPERATOR to post any of the performance securities shall be sufficient ground for the LGU not to execute this Agreement. Should the LGU, under any of the conditions stipulated under Article 14, terminate this Agreement, the performance security not so released shall be forfeited in favor of the PROPONENT-OPERATOR without any need of judicial action. The PROPONENT-OPERATOR shall obtain the consent of the surety, if necessary, for any changes to this Agreement to ensure the effectivity of the performance securities submitted to the LGU.

Section 6.4 – *Warranty Security* – The PROPONENT-OPERATOR shall at its own expense secure and post a Warranty Security to take care of any defect, hidden or otherwise, not noted during the PROJECT completion and those defects or deficiencies that may arise within a period of one (1) year from the completion of the PROJECT. The Warranty Security shall be made effective immediately upon transfer of full legal ownership over the PROJECT in favor of the LGU.

Section 6.5 *Insurance* - In addition, to insure third parties of payment, in case damage or injury is done to their person or property during the course of the performance by the PROPONENT-OPERATOR of its responsibilities hereunder, the PROPONENT-OPERATOR shall put up bonds and insurance normally required in infrastructure projects, such as but not limited to contractor's all-risk insurance, third party liability insurance, motor vehicle liability insurance, workmen's compensation insurance.

Certified copies of the policies and official receipts of such bonds and insurances shall be submitted to the LGU. These bonds and insurance shall preferably be procured from the Government Service Insurance System (GSIS), but if it is impractical to do that, then they shall be procured from an insurance or bonding company accredited by the Insurance Commission and acceptable to the LGU.

Section 6.6 *Insurance Proceeds* - The proceeds from insurance claims, except Third Party Liability Insurance and Workmen's Compensation Insurance, with respect to loss or other damage to the PROJECT, shall first be applied by the PROPONENT-OPERATOR to the extent necessary to fully repair or restore the PROJECT to its previous operating condition, or to completely rebuild the PROJECT.

ARTICLE 7 - CONTRACT MANAGEMENT, MONITORING AND EVALUATION

Section 7.1 *Contract Management* - Within _____ calendar days from the date of the signing of this Agreement, each Party shall form a Contract Management Committee, which shall be responsible for monitoring, managing and evaluating the full implementation of the PROJECT. Within _____ calendar days from its creation, each Party shall immediately send written notice to the other naming its members to the Contract Management Committee.

Section 7.2 *Project Reports* - Within _____ calendar days from receipt of the notice referred to in Section 7.1, the Contract Management Committee shall meet and agree on the form of the report, the method for monitoring and obtaining the information required, the Party responsible for monitoring and reporting on each of the indicators and the frequency that each indicator should be monitored and reported.

The Parties shall ensure that Project Report will contain the performance indicators to determine the PROPONENT's and LGU's compliance with their respective obligations under the Agreement, the major risk factors for the PROJECT, events and conditions that has occurred which materially affects the PROJECT and all other material information that may be included by the Parties.

Section 7.3 *Monitoring and Reporting Obligations* - The Parties shall establish appropriate monitoring and reporting systems to comply with their monitoring and reporting obligations agreed upon and embodied in the Project Report.

The Project Reports shall be prepared and submitted within ___ calendar days after the end of the calendar month to which they apply. Where a Project Report shows that the Project falls below the key performance indicators, the PROPONENT-OPERATOR shall state that fact in the report with a full explanation of the reasons for the below-target performance and the steps that it has or will be taking to ensure that performance is improved to meet the standard.

Section 7.4 *Regular Meetings* - The Contract Management Committee of the Parties shall meet once a month or more frequently if necessary in order to discuss the progress of the PROJECT, any problems or issues in the implementation of the PROJECT and the lessons learned from the monitoring and management of the PROJECT.

Section 7.5 *Right of LGU to Monitor* - The LGU shall be entitled to inspect, check, test and monitor the PROEJCT during the construction period and the operating period. The purpose of such monitoring shall be to determine whether the PROJECT are being designed, constructed, operated and maintained in accordance with the terms of this Agreement.

The PROPONENT-OPERATOR shall allow the LGU or its duly authorized representatives to conduct such inspection and monitoring during normal business hours upon reasonable prior written notice to the PROPONENT-OPERATOR. It shall ensure that the LGU or its agent or representative is given sufficient access to carry out the inspection. The monitoring and review shall be conducted in the presence of a duly designated representative of the PROPONENT-OPERATOR.

ARTICLE 8 - PROPONENT'S WARRANTIES

Section 8.1 *Corporate Existence* - The PROPONENT-OPERATOR warrants that it is a corporation or a partnership duly organized and validly existing under the laws of the Republic of the Philippines. It has all requisite power, authority and legal right to execute and deliver this Agreement and to perform its obligations thereunder; and has taken all appropriate and necessary corporate and legal action and obtained all necessary permits and approvals for the execution, delivery and performance of this Agreement and all other instruments, or documents contemplated hereunder.

Section 8.2 *Authorized Signatory* - The PROPONENT-OPERATOR's signatory to this Agreement has full legal capacity and has been duly authorized by the Board of Directors of the PROPONENT-OPERATOR to sign, execute and deliver this Agreement for and on behalf of the PROPONENT-OPERATOR.

Section 8.3 *Validity and Enforceability* - This Agreement constitutes the legal, valid and binding obligation of the PROPONENT-OPERATOR, enforceable against the PROPONENT-OPERATOR in accordance with its terms. This Agreement is in satisfactory and proper legal form under the laws of the Republic of the Philippines.

Section 8.4 *Due Execution* - The execution, delivery and performance of this Agreement and the other documents herein referred to do not violate any provision of law, rule, regulation or order or decree of any court, tribunal or government authority, bureau or agency, or of the charter, by-laws or corporate rules of the PROPONENT-OPERATOR, any corporation, or any contract or other undertaking to which the PROPONENT-OPERATOR is a party.

Section 8.5 *Know-how* - The PROPONENT-OPERATOR warrants that it has the know-how, resources, trained personnel and staff, technical and financial capabilities, as well as management expertise, to fulfill its duties and responsibilities hereunder, and implement the financing, design, construction, equipping, provisioning, maintaining and operating the PROJECT.

Section 8.6 *No Adverse Litigation* - There is no adverse litigation, arbitration, investigation or proceeding pending, or to its best knowledge threatened, against or affecting such Party that could reasonably be expected to materially adversely affect its ability to fulfill its obligations under this Agreement or that may affect the legality, validity, or enforceability of this Agreement.

Section 8.7 *Corruption* - The PROPONENT-OPERATOR warrants that neither it, nor its representatives or agents, have offered any government officer or employee, national or local, any consideration or commission for its award of the Contract of this PROJECT nor has it exercised any corrupt, undue or unlawful influence, directly or indirectly through relatives within the third degree of consanguinity or affinity in securing this Agreement.

ARTICLE 9 - LGU WARRANTIES

Section 9.1 *Corporate Existence* - The LGU warrants that it is a duly organized and validly existing political subdivision and local government of the Republic of the Philippines and has all requisite power, authority and legal right to execute and deliver this Agreement, and to perform its obligations hereunder.

Section 9.2 *Due Execution* - The LGU has taken all appropriate legal and/or other action which may be required or appropriate to authorize the execution, delivery and performance of this Agreement and any and all other agreements, instruments or documents contemplated hereunder.

Section 9.3 *Validity and Enforceability* - This Agreement constitutes the legal, valid and binding obligation of the LGU, enforceable against the LGU in accordance with its terms. This Agreement is in satisfactory and proper legal form under the laws of the Republic of the Philippines.

Section 9.4 *No immunity* - The LGU further warrants that it is subject to the civil and commercial law in respect of its responsibilities under this Agreement and that it is not immune from suit, judgment or execution or any legal process in connection with said responsibilities. But nothing herein shall be considered as waiving the immunity of the State with regard to the assets and interests of the Republic of the Philippines.

ARTICLE 10 - FORCE MAJEURE

Section 10.1 *Definition of Force Majeure Event* - A "Force Majeure Event" means any event, condition, or circumstance and the effects thereof not within the reasonable control, directly or indirectly, of the Party affected, but only if and to the extent that:

a. such event, condition, or circumstance is not the direct or indirect result of the breach by such Party of any of its obligations under this Agreement or the fault or negligence of such Party, its Affiliates, or any person under the Party's or its Affiliates' reasonable control;
b. despite the exercise of reasonable diligence, such event, condition, or circumstance cannot be prevented, avoided, or removed by such Party; and

c. such event, condition, or circumstance has a material adverse effect on the ability of such Party to perform all or a material portion of any of its obligations under this Agreement, and such Party has taken all reasonable precautions, due care, and alternative measures in order to avoid or mitigate the effects of such event on such Party's ability to perform its obligations under this Agreement;

Section 10.2 *Exceptions* - Force majeure shall not include infrastructure or equipment failure due to ordinary wear and tear, or defects in design, inappropriateness or weakness in materials or supplies, unavailability of financing, or any other happenstance that a Party can reasonably be expected to effectively guard against or control.

Section 10.3 *Responsibilities of the Parties during Force Majeure Event* - A party invoking Force Majeure shall:

a. Notify the other party in writing by any means of communication as soon as reasonably possible of the date of commencement of such Force Majeure Event, the nature and expected duration thereof, and the actions to be taken to prevent or reduce the effects of such event. The notice shall be sent by such Party not later than _____ calendar days after the date on which such Party first gains knowledge of such Force Majeure Event. If it fails to deliver such notice in accordance with this provision, such Party shall not be entitled to invoke the benefits of this Section;
b. Continue performance of its obligations that are not affected by the occurrence of the Force Majeure; and
c. Resume performance of affected obligations after the Force Majeure or after the effects of Force Majeure no longer exists, whichever is earlier, and shall formally notify the other party of such resumption.

Section 10.4 *Mitigation* - Each Party shall exert all reasonable efforts in accordance with Prudent Utility Practice or other applicable standard to prevent or mitigate the consequences of the Force Majeure Event on the performance of its obligations under this Agreement. The Parties shall consult with each other in good faith and shall use all reasonable endeavors to agree on appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued implementation of the PROJECT. The Parties shall exert all reasonable efforts to resume the performance of their obligations as soon as practicable following the declaration of a Force Majeure Event.

Section 10.5 *Effect of Force Majeure Events* - The affected Party shall be excused from performance and shall not be in default of any obligation under this Agreement for so long as its failure to perform such obligation is due to a Force Majeure Event, provided that:

The affected Party makes continuous diligent efforts to prevent or mitigate the effects of the Force Majeure Event;

The Party claiming a Force Majeure Event shall not be entitled to suspend performance or be excused for delayed performance under this Agreement for any greater scope or longer duration than is required by the Force Majeure Event or the delay occasioned thereby; and

Neither Party shall be relieved of or excused from its obligations under this Agreement solely because there may be increased costs or other adverse economic consequences incurred through the performance of such obligations

ARTICLE 11 – DEFAULT

Section 11.1 *PROPONENT-OPERATOR's Default* - The occurrence of any of the following shall constitute an event of default for the PROPONENT-OPERATOR:

a. Failure to perform any of its obligation under this Agreement for a cause not attributable to force majeure, and such failure persists for more than ____ days;
b. Failure without justification to resume performance within _____ days after the force majeure that has prevented the PROPONENT-OPERATOR from performing any other obligation hereunder has substantially ceased;
c. Deliberate material misrepresentation of any fact contained in its periodic reports to the LGU, or if it committed any deliberate falsity in his bid documents on which the LGU relied in giving it the contract award;
d. Filing of a voluntary or involuntary case or other proceeding by or against the PROPONENT-OPERATOR seeking insolvency, bankruptcy, liquidation, reorganization, dissolution, winding up;
e. A pattern of continuing or repeated non-compliance, willful violation, or non-performance of other terms and conditions hereof including any material breach thereto, and the PROPONENT fails to remedy the same within ___ calendar days from notice thereof; and
f. Assignment or transfer without the prior approval of the LGU.

Section 11.2 *LGU's Default* - The occurrence of any of the following events shall constitute the LGU's Default:

a. LGU terminates, or cancels this Agreement without valid or justifiable cause;
b. Any representation or warranty made by the LGU and relied upon by the PROPONENT-OPERATOR to its detriment turning out to be false in any material respect; and
c. Failure or refusal to perform any material covenant, agreement or obligation under this Agreement within _____ days after receipt by the LGU of a notice of default specifying the same, provided, however, that such period shall be extended if the failure or refusal is remediable but cannot reasonably be completed within _____ days and the LGU begins to diligently remedy such failure.

ARTICLE 12 - ASSIGNMENT, TRANSFER & OTHER CONVEYANCES

Section 12.1 *Assignment* - The PROPONENT-OPERATOR may, with the prior written approval by the Local Chief Executive, with the concurrence of the Local Sanggunian, assign its rights, interest, benefits and obligations under this Agreement to any company or special purpose company or successor company or entity. The Assignee shall perform and comply with all its obligations and assume all the rights, interest, and benefits of the PROPONENT-OPERATOR under this Agreement.

Section 12.2 *Assignment Void* - Any assignment or transfer without prior approval from the LGU shall be void and ineffectual.

Section 12.3 *Acceptance Tests and Procedures* – The Parties shall meet and agree on procedures, standards, protective settings and a program to be followed by the PROPONENT-OPERATOR for the testing of facility in accordance with the agreed tests and test procedures set out in the Schedule (ANNEX D).

The PROPONENT-OPERATOR shall give to LGU not less than ___ day notice of its intention to commence any testing of the facility. LGU and/or its expert shall be entitled to be present at any testing of the facility. Upon completion of any testing, the PROPONENT-OPERATOR and the LGU shall jointly certify whether or not the facility has satisfied such test.

Section 12.4 *Transfer* – Prior to the end of the concession period, the PROPONENT shall arrange for the training of an adequate number of LGU personnel in relation to the operation of the WATER SYSTEM FACILITY. On the transfer date, the PROPONENT-OPERATOR shall transfer to the LGU (and shall execute such documents as may reasonably be considered necessary to effect such transfer), free from any lien or encumbrance created by the PROPONENT-OPERATOR and without the payment of any compensation, all its right, title, and interest in and to the fixtures, fittings, equipment and all improvements comprising the PROJECT.

The PROPONENT-OPERATOR shall also deliver to the LGU on such date such operation summaries/transfer notes, design drawings and other information as may be reasonably required by the LGU to enable it take over the PROJECT.

Section 12.5 *Buy-out* - Buyout shall take place under the following condition:

a. Change in Circumstances - In the event that as a result of any laws or regulation of the Republic of the Philippines, or any agency or other body under the control of the Government of the Republic of the Philippines, or any regional or municipal authority thereof, coming to effect after the date of this Agreement, or as a result of any such laws or regulations (including any official interpretation thereof which the PROPONENT-OPERATOR has relied upon in entering into this Agreement) in force at the date hereof being amended, modified or repealed, the interest of the PROPONENT-OPERATOR and/or the PROPONENT-OPERATOR's financial rate of return (net of tax or other imposition, including, without limitation any withholding or remittance tax on the payment of dividends) on its investment is materially reduced, prejudiced or otherwise adversely affected (including without limitation, any restriction on the ability to remit funds in foreign currency outside the Philippines), or any changes which would drastically reduce the demand for the Project's services, then the Parties hereto shall meet and endeavor to agree to make amendments to this Agreement, and if after 90 days no such agreement has been reached, Buy-out Provision under this Section shall apply.

The LGU shall purchase all the PROPONENT-OPERATOR's rights, titles and interests in PROJECT and thereupon all the PROPONENT-OPERATOR's obligations hereunder shall cease. Provided, however, that the LGU and the PROPONENT-PROPONENT shall first undergo arbitration pursuant to Article 13 (Dispute Resolution) prior to resorting to the buy-out option.

Section 12.6 *Buy-out Price* – The purchase price payable pursuant to the buy-out provision shall be Php_____.

ARTICLE 13 - DISPUTE RESOLUTION

Section 13.1 *Mutual Discussions* - In case of any dispute or controversy of any kind whatsoever between the Parties arising out this Agreement, said Parties shall first endeavor to resolve within _____ days such dispute by mutual discussion and amicable means between the President of the PROPONENT-OPERATOR and the Local Chief Executive.

Section 13.2 *Arbitration* - Should the dispute (meetings) not be settled amicably by mutual discussion within ____ days from the initial meeting of the President of the PROPONENT-OPERATOR and the LCE of the LGU, the dispute shall be finally and exclusively resolved by binding arbitration. The arbitration shall proceed in accordance with the provisions of the Arbitration Law of the Philippines, (Republic Act No. 876), in such place as the Parties may agree. While the dispute is being arbitrated, the performance by the Parties of their respective obligations shall not be suspended, unless otherwise declared by the arbitral tribunal or otherwise agreed by the Parties or unless the obligation to be performed is the very issue of the arbitration.

Section 13.3 *Expert Panel and Arbtiral Award* - All expert panel and arbitral awards shall be in writing and shall state the reasons upon which they are based. The decision of the arbitral tribunal shall be final, binding and unappealable. The awards may include an award of costs, including reasonable attorneys' fees and disbursements. Judgments upon the awards may be entered by any court having jurisdiction thereof or having jurisdiction over the Parties or their assets.

ARTICLE 14 - CONTRACT TERMINATION

Section 14.1 *Right not to execute* - The Parties shall have the right not to execute the Agreement without resorting to legal proceedings in case of any substantial breach of conditions or obligations and responsibilities. A pattern of continuing or repeated non-performance, willful violation or non-compliance of the terms and conditions hereof will be deemed a fundamental breach of this Agreement.

Section 14.2 *Termination Procedure* - In case a Party commits an act constituting an event of default, the non-defaulting Party may terminate this Agreement by serving a written notice to the defaulting Party specifying the ground for termination and giving the defaulting Party a period of _____ days within which to rectify the default to the satisfaction of the non-defaulting Party. If the default is not remedied within this period to the satisfaction of the non-defaulting Party, then the latter will serve upon the former a written notice of termination indicating the effective date of termination.

Section 14.3 *LGU's Remedies* – Upon the occurrence of a PROPONENT-OPERATOR's Default, the LGU may by Notice of Default, take on or more of the following actions:

a. Terminate this Agreement and enter into a franchise agreement with another Party for this PROJECT;
b. Take over the PROJECT and request the PROPONENT-OPERATOR to assign all its right, title and interests to the PROJECT and under this Agreement to the LGU; or
c. Allow the PROPONENT-OPERATOR's lenders/creditors to take over and proceed with the completion of the Project under the same terms and conditions of this Agreement.

Each right or remedy hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or current and hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the LGU of any one or more of any of such rights or remedies shall not preclude the simultaneous or subsequent exercise by the LGU of any or all other such rights or remedies

Section 14.4 *PROPONENT-OPERATOR's Remedies* – Upon the occurrence of an LGU Default, the PROPONENT may by Notice of Default, take one or more of the following actions:

a. Terminate this Agreement and any other Agreement executed between the Parties in relation to the PROJECT;
   or
b. Any and all remedies and compensation available by law or in equity or by statute or otherwise.

Each right or remedy hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or current and hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the PROPONENT-OPERATOR of any one or more of any of such rights or remedies shall not preclude the simultaneous or subsequent exercise by the PROPONENT of any or all other such rights or remedies.

Section 14.5 *Survival of Termination Obligations* - For the avoidance of doubt, the respective obligations of the Parties in respect of the termination of this Agreement as set forth in this Article 14 shall survive and continue to be enforceable beyond the termination hereof.

ARTICLE 15 - GENERAL PROVISIONS

Section 15.1 *Effectivity* - This Agreement shall come into force and become effective upon and as of the date of the approval hereof by the authorized signatories of the LGU and the PROPONENT-OPERATOR.

Section 15.2 *Entire Agreement* - This Agreement constitutes the entire agreement between the Parties with respect to the transactions contemplated herein. All prior discussions, understandings or arrangements between them prior to effective date, whether express or implied, concerning the PROJECT are superseded by this Agreement.

Section 15.3 *Waiver* - No provision in this agreement shall be considered waived by either Party unless such waiver is in writing and communicated to the other Party. The failure of any Party to insist on the strict performance of the obligation of the other shall not be considered a waiver of its right to do so.

Section 15.4 *Confidentiality* - Each Party shall hold in strict confidence from any other person all documents and information concerning any other Party furnished to it or its advisors, consultants, contractors, or agents by the other Party in connection with this Agreement or the transactions contemplated hereby.

Notwithstanding the foregoing, the confidentiality requirement shall not apply to such documents or information that were previously known by the Party receiving such documents or information, in the public domain and required by law to be disclosed to any person who is authorized by law to receive the same.

Section 15.5 *Further Assurances* - The Parties will do, execute, and deliver, or will cause to be done, executed, and delivered, all such further acts and such other things as each Party may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the representations, warranties, and covenants of this Agreement.

The Parties further assure that they shall perform their obligations in a highly professional and diligent manner, with due efficiency and economy and timely execution of works and other obligations, in all respects with that degree of skill, diligence, prudence and foresight required from them, and with due attention to the need for fairness, openness and good faith and their dealings.

Section 15.6 *Severability* - The validity of the remaining articles, clauses, provisions, terms and parts of this Agreement shall not be affected by a court, administrative body, or other proceeding of competent jurisdiction deciding that an article, section, provision, term, or part of this Agreement is illegal, unenforceable, in conflict with any law, or contrary to public policy.

Section 15.7 *Language* - English is the governing language of this Agreement, which shall be interpreted in accordance with English usage. All documents, notices, waivers, and all other communications written or otherwise between the Parties in connection with this Agreement shall be in the English language.

Section 15.8 *Notice* - All notices or communications shall be made in writing and be sent to the address given hereunder:

For the PROPONENT	For the LGU
_____	_____
_____	_____

Said notice shall be considered given if delivered by registered mail with return card, or through an internationally or nationally recognized courier service with delivery receipt requested, or by hand delivery. If the notice or communication is faxed, it shall be confirmed in writing. The notice or communication shall be effective upon receipt.

A Party may change its address by giving the other Party written notice of such change, provided that any such change shall not be effective until notice of such change has been received by the other Party.

Section 15.9 *Amendment* - This Agreement may be amended or modified only in writing and signed by the Parties, provided that prior to signing, said proposed amendments shall be approved by the Board of Directors of the PROPONENT and the Local Sanggunian of the LGU.

IN WITNESS WHEREOF, the Parties, acting through their respective duly authorized representatives, have caused this Agreement to be signed under their respective names on the date and at the place first above-written.

LGU NAME	[NAME OF WINNING BIDDER]
By:	By:
Name: _____	Name: _____
Title: _____	Title: _____

APPROVED BY:
Local Sanggunian of _____
Resolution No. _____, series of _____.

ACKNOWLEDGMENT

Republic of the Philippines)
_____) S.S.

BEFORE ME, a Notary Public for and in _____, Philippines, on this _____day of _____, 200___, personally appeared (LGU's Representative) and (Winning Bidder's Representative), known to be the same persons who executed the foregoing **<<Type of Contractual Arrangement>>** for the **<<Name of the Project>** which instrument consists of _____ pages including the page on which this Acknowledgment is written, and signed at the left hand margin of each and every page by the parties executing this instrument and their witnesses, and sealed with my notarial seal and aforesaid parties acknowledged to me that the same is their free act and deed . The parties exhibited to me their competent evidence of identity, (govt.-issued ID presented and ID number) issued at _____on _____valid until _____and (govt.-issued ID presented and ID number) issued at _____on _____valid until _____, respectively.

(Sgd.)
Notary Public
Until_ _____
PTR No. _____
Issued at _____
On_____

Doc. No. _____;
Page No._____;
Book No._____;
Series of _____.

ANNEX A: Concept Design of the PROJECT
ANNEX B: PROPONENT's Technical Proposal
ANNEX C: PROPONENT's Financial Proposal

(may include other Contract Documents depending on the needs of each Project)

BIDDING DOCUMENTS

BIDDING DOCUMENTS

Part 1: Instructions to Bidders

Part 2: Draft Contract

Part 3: Bid Forms

Part 1 – Instructions to Bidders

(The contents of this document may change depending on the needs and unique circumstances of each Project. LGUs are not precluded from inserting additional requirements as needed.)

Section 1 - PROJECT INFORMATION

1.1 General Description

This Section shall contain at least the following:

- the name of the Project
- the rationale for undertaking the Project
- the socio-economic situation of the LGU
- project description
- other information relative to the Project

1.2 Project Objectives

The following are the objectives the Project:
(state the objectives specific to the Project)

1.3 Contractual Arrangement of the Project

The Project is envisioned to be implemented as a **<<type of contractual arrangement>>** under Republic Act 7718, otherwise known as the BOT Law and its IRR.
(Provide a brief description of the nature of the contractual arrangement, the rationale for choosing such contractual arrangements, among others)

1.4 Scope of the Project

(Describe the undertakings of the Project Proponent as well as its own undertakings)

1.5 Requirements

The Project shall conform to pertinent laws, government regulations, environmental standards and other requirements that may be stipulated in the Contract.

Section 2 – GENERAL INFORMATION

2.1 Who May Participate

Any individual, partnership, corporation or firm, whether local or foreign, including joint venture or consortia of local, foreign, or local and foreign firms may participate in the bidding for the Project under the provisions of the R.A. 7718, otherwise known as the BOT Law, and its IRR.

2.1 Pre-qualification, Bids, and Award Committee (PBAC)

The conduct of Bids shall be administered by the LGU through its PBAC in accordance with the rules set forth in the amended Implementing Rules and Regulations of RA 7718 or the BOT Law.
The PBAC will be responsible for all aspects of the Project from pre-bidding up to contract award including the following: publication of the invitation to pre-qualify and bid, qualification of prospective bidders, conduct of pre-bid conferences and issuance of supplemental notices, conduct of the bidding, evaluation of bids, and recommendation for contract award to the LCE and the Sanggunian.

2.3 Participation in the Bidding

2.3.1 Responsibility of the Project Proponent

The Project Proponent shall be solely responsible for taking all the necessary steps to carefully examine and be acquainted with the requirements, terms and conditions of the bidding documents with respect to the cost, duration, and execution/operation of the Project. The PBAC shall not assume any responsibility regarding erroneous interpretations or conclusions by the Project Proponent out of data furnished or indicated in the bidding documents.

2.3.2 Cost of Bidding

All Project Proponents shall bear all costs associated with their participation in the bidding process, in the preparation and submission of their Bids, to include losses or damages resulting thereto. The PBAC shall in no case be held responsible or liable for such costs regardless of the result of the bidding process.

2.3.3 Change in Consortium/Joint-Venture Membership

If the membership of the consortium/joint-venture has changed, the new or replacement member/s shall submit organizational profile, audited balance sheets and income statements (latest 3-year income statements) and letter of testimonial from a reputable bank, incorporation papers, VAT registration certificate, statement of completed/ongoing projects, preliminary business plan and list of members and roles.

A consortium member may join more than one consortium, partnership or joint venture that is participating in this bid.

2.4 Supplemental Notices

If a qualified bidder is in doubt as to the meaning of any data or requirements or any part of the bidding documents, written request may be submitted to the PBAC for an interpretation of the same, allowing sufficient time to reply before the submission of his bid. Any substantive interpretation given shall be issued in the form of a Supplemental Notice and furnished to all bidders. The PBAC may also issue Supplemental Notices to all bidders any time for purposes of clarifying any provisions of the bidding documents provided that the same is issued within a reasonable period to all bidders to consider the same in the preparation of their bids. Receipt of all Supplemental Notices shall be duly acknowledged by each bidder prior to the submission of his bid and shall be so indicated in the bid.

2.5 Language

All correspondences, documents, annexes, bid forms and technical data forms submitted for this bidding shall be drawn up in the English Language.

2.6 Treatment of Documents from Bidders

All documents and information submitted by the bidders and officially accepted by the PBAC shall be treated and considered strictly confidential.

2.7 Pre-Bid Conference

Interested Project Proponents may attend the Pre-Bid Conference, to clarify issues and raise questions pertinent to the bid documents or the bidding process. The pre-bid conference is scheduled on <<date>> at <<time>> to be held at the <<LGU address>>. Any change in schedule shall be given not less than five (5) days in advance by the PBAC.

Project Proponents wishing to raise any issue/s or question/s are required to submit their questions in writing (i.e., through mail, hand-delivery, facsimile or e-mail) which should be submitted to PBAC Secretariat at least three (3) working days before the scheduled date of the Pre-Bid Conference.

A summary of the pre-bid conference proceedings shall also be issued to all prospective bidders by the PBAC.

The PBAC will issue corresponding bid bulletins for all modification/clarification made on the bidding documents and issues resolved during the Pre-Bid Conference which will be distributed to all Project Proponents.

2.8 Bid Security/Bond

2.8.1 Purpose

The Bid Security or Bid Bond guarantees that the proposed contract awardee, shall, within 7 calendar days from receipt of NOA, enter into a contract with LGU and provide the required performance security within the prescribed period.

2.8.2 Form and Validity

The Bid Security which shall be included as part of the technical envelope/proposal shall be in the form of cash, certified check, manager's check, letter of credit, or a bank draft/guarantee issued by a reputable bank, or a surety bond callable on demand issued by the GSIS or by an entity duly registered and recognized by the Office of the Insurance Commissioner and acceptable to the LGU or any combination thereof.

In case the bid security is issued by a foreign bank, said security has to be confirmed and validated by its local branch in the Philippines or by a bank that is duly registered and authorized by the BSP.

2.8.3 Amount

All Project Propone nts must furnish, as part of its Proposal, a Bid Security in accordance with the following schedules:

PROJECT COST (as estimated by the Agency/ LGU or proposed by the Project Proponent)	REQUIRED BID SECURITY
Less than Php 5.0 billion	2.0% of the Project Cost
Php 5.0 billion to less than Php 10.0 billion	1.5% of the Project Cost or Php 100 million, whichever is higher
Php 10.0 billion and more	1.0% of the Project Cost or Php 150 million, whichever is higher

2.8.4 Return of the Bid Security

An unsuccessful Project Proponent's Bid Security shall be returned and released as soon as the contract of the successful Project Proponent has been approved by the Sanggunian.

The winning Project Proponent's Bid Security shall be returned after the Contract has been signed and the winning Project Proponent has furnished the required Performance Security.

2.8.5 When to File

The Bid Security and the total estimated project cost (in words and figures) shall be contained in a separate sealed envelope with marking "BID SECURITY OF (NAME OF PROJECT PROPONENT)". The envelope for Bid Security and the total estimated project cost must be contained in the envelope for Technical Proposal and must be submitted on or before the deadline for the submission of bids. Failure to post the bid security is a ground for automatic rejection of the bid.

2.8.6 Forfeiture of the Bid Security

The Bid Security may be forfeited for any of the following reasons:

a. If a Project Proponent withdraws its Bid after the bid opening date;

b. If any member of the joint venture or consortium withdraws prior to the actual award and/or implementation of the project which could be a ground for the cancellation of the contract and forfeiture of the proponent's Bid Security unless it was found out that the Project Proponent is still capable of successfully carrying out the project or have provided a suitable and acceptable substitute with equal or better qualifications; and

c. If the successful Project Proponent fails to sign the Contract Agreement within 7 days upon notification by the LGU or if the winning Project Proponent fails to furnish the documents mentioned in this bid documents.

Section 3 – FORMULATION OF PROPOSALS

3.1 LGU Site Visit

All Project Proponents and/or any of their authorized representatives are encouraged to visit and inspect the project site and obtain such information as may be necessary for the preparation of their bids.

3.2 Signing of Proposals

Each page of the Original Technical and Financial Bid, including the accomplished Bid Forms, must be signed by the Project Proponent, through its authorized representative/s.

The complete Bid shall be without alterations, erasures or insertions except as necessary to correct errors made by the Project Proponent, in which case, the person signing the Proposal shall initial such corrections.

3.3 Submission of Bid Documents

Only authorized representative of the Project Proponent is allowed to submit the bid documents to the PBAC Secretariat. A duly notarized authority of the representative executed by the LGU of the Project Proponent must accompany the bid documents and attached to its covering letter.

3.4 Withdrawal and/or Modification of Bids

Withdrawal and/or modification of bids may be allowed upon written notice by the bidder concerned to the PBAC prior to the time and date set for the opening of the First Envelope as specified in Section 5.2. No bids shall be modified or withdrawn after this time. Bid modifications received after said period shall be considered late and will be returned unopened. Bids withdrawn after the bid opening date shall cause the forfeiture of the Project Proponent's Bid Security.

Section 4 - BID PROPOSAL FORMAT

4.1 Bid Components

The Project Proponent's response to this bid documents must consist of the following part, having each item of every part properly identified with tabs, which must be submitted simultaneously:

4.1.1 The Technical Proposal shall contain the following submissions that shall be contained in the First Envelope:

a. Technical soundness (proposed technical specifications) – This shall contain, among other, a confirmation of the technical soundness of the design, plans, and technical drawings of the Project prepared by the LGU attached as Annex A of the draft Contract;
b. Operational feasibility – This shall describe the proposed organization, methods and procedures for the operation and maintenance of the Project;
c. Project cost and financing – This shall indicate the construction cost (broken down into detailed components) of the Project and the proposed financing plan broken down according to equity and debt, including proposed sources (foreign and/or local financing institutions) and cost of money;
d. Operating and Maintenance Cost – This shall contain the annual Operating and Maintenance cost for the Project as a percentage of the annual revenue;
e. Preliminary environmental assessment – This shall indicate the possible adverse effects of the Project on the environment and the corresponding mitigating measures;
f. Bid security – This shall be in the form, amount and period of validity prescribed in Section 2.7.

4.1.2 The Financial Proposal shall contain the following submissions that shall be contained in the Second Envelope;

- Compliance statements with regard to the financial parameters stated in the tender documents, which may include those on liquidated damages, performance and warranty bonds, insurance cover for the project including comprehensive general liability insurance, acceptance tests and procedures, and warranty period and procedures (after transfer)
- Proposed Project Cost, operation and maintenance cost, project financing scheme including the amount of equity to be infused and debt to be obtained for the project, sources of financing, and all other related costs
- Financial bid corresponding to the parameters set by the LGU

4.2 Contents and Structure

4.2.1 Technical Proposal

The contents must be presented in the following order:

- Title Page – The response to this bid documents must be entitled:

NAME OF THE PROJECT

(The name of the Project Proponent and members of the consortium, joint venture or partnership must also be indicated on this page, with emphasis on the name of the LGU)

- Table of Contents – a listing of the contents of the Proposal, to include tables, illustration, brochures and other attachments
- Certification of Bid – a certification of the Project Proponent's submission and compliance with the requirements in the bid documents
- Confirmation of the technical soundness of the design, plans, and technical drawings of the Project prepared by the LGU and any additional plans and technical drawings that may help in appreciating the technical proposal
- Organizational Plans and Operations and Management Plans for the Project
- List of proposed suppliers, consultants, sub-contractors and their corresponding company profiles, relevant experiences, list of key personnel, and indicators of the financial standing of the firm/ company
- Other requirements as provided

4.2.2 Financial Proposal

This envelope must contain the financial costs for the Project to be constructed, operated and maintained according to the prescribed design and performance specifications.

4.3 Required Marking/Labels of Bid Envelopes

Envelopes must be rightfully marked as ORIGINAL or COPY. The Project Proponent's name and address must also be written to enable the LGU-PBAC to return the Bid unopened in case the Bid submission is declared late.

If the envelopes are not properly sealed and marked as instructed, the PBAC shall assume no responsibility for the misplacement or premature opening of the submitted Bid. A Bid which is opened prematurely for this cause will be rejected by the PBAC and returned to the Project Proponent.

4.3.1 The Technical Proposal shall have the following markings/labels:

Original or Duplicate No. 1 to 9

NAME OF THE PROJECT

FIRST ENVELOPE – TECHNICAL PROPOSAL

Pre-qualification, Bids, and Awards Committee

Office of the Local Chief Executive

Address

4.3.2 The Financial Proposal shall have the following markings/labels:

Original or Duplicate No. 1 to 9

NAME OF THE PROJECT

FIRST ENVELOPE – FINANCIAL PROPOSAL

Pre-qualification, Bids, and Awards Committee

Office of the Local Chief Executive

Address

4.4 Number of Original and Duplicate Bids to be Submitted

Bidders shall submit bids in the following manner to the PBAC:

- one (1) original set
- nine (9) duplicate sets

Section 5 - RECEIPT AND OPENING OF BID

5.1. Submission

Project Proponents are required to submit their Proposals at the following address:

_____

_____

_____

5.2 Time and Date of Submission

All Bid Documents shall be submitted on or before <<date>> and <<time>>. Bidders must punch their respective time cards, with the name and signature of designated company/joint venture/consortium representative, in the bundy clock located at the <<address>>. The PBAC Secretariat or any of its designated representatives shall counter sign the time cards.

Opening of the envelopes for Technical Proposal shall follow thereafter.

5.3 Submission of Late Bids

Bids submitted after the deadline for submission shall be considered late and shall be returned unopened to the bidder. Incomplete number of duplicate sets required shall likewise be returned to the bidder. The time and date recorded or printed in the card time by the PBAC official bundy clock shall be utilized in determining the actual and official time of submission.

5.4 Attendance of Bid Representatives

At most, 2 representatives of the Project Proponent shall be allowed to attend and shall sign a register signifying their attendance in the opening of bids.

5.5 Opening of the Envelope for Technical Proposal

At the date and time of bid opening, the PBAC shall open only the technical proposal and ascertain whether the same is complete in terms of the data and information required under these bid documents.

5.6 Automatic Rejection of Bids

Technical Proposals determined at the bid opening date to have incomplete submissions or data vis-à-vis the technical requirements and/or not accompanied by the required Bid Security in the form, amount and period of validity prescribed shall be automatically rejected and their financial bids returned unopened.

Those who failed the evaluation of the technical proposal shall not be considered further and the PBAC shall return their financial proposals unopened together with the reasons for their disqualification from the bidding.

5.7 Opening of the Financial Proposal

The Financial Proposal of a Project Proponent whose Technical Proposal has been determined to be complying shall be opened at a time, date and place to be announced by the PBAC. The Financial Proposals of complying Project Proponents shall be evaluated whether they have submitted the required documents in accordance with the prescribed form.

Section 6 - BID VALIDITY

6.1 Validity of Bids

Bids and bid securities shall be valid for a period of <<number of days >> days from the date of opening of bids. (In no case shall this be more than one hundred eighty (180) calendar days from the date of opening of bids). The award of the contract to the winning bidder shall be made within the period of the validity of the bids. The bidding proposals and documents of the winning bidder shall remain with and be considered the property of the LGU. All other bidding proposals and documents, including the bid securities, shall be returned to the losing bidders within 5 days from the execution of the contract between the LGU and the winning bidder.

6.2 Extension of Validity of Bids

When an extension of validity of bids is considered necessary, those who submitted bids shall be requested in writing to extend the validity of their bids before the expiration date. However, bidders shall not be allowed to modify or revise the price or other substance of their bids.

Bidders shall have the right to refuse to grant such an extension without forfeiting their bid security, but those who are willing to extend the validity of their bid should be required to provide a suitable extension of bid security.

Section 7 - EVALUATION OF BIDS

7.1 First Stage – Technical Evaluation

7.1.1 The PBAC shall evaluate each Technical Proposal according to the following criteria:

a. Technical soundness – The proposed technical standards and specifications of the Project should conform to the design, standards and specifications prescribed in Part II – draft BOT Contract.

b. Operational Feasibility – The proposed organization, methods and procedures for operating and maintaining the completed facility must be well-designed, should conform to the prescribed performance standards and should be shown to be workable.

c. Project Financing – The proposed financing plan should positively show that the same could adequately meet the construction cost requirements of the Project.

d. Environmental Standards – The proposed design and the technology must be in accordance with the environment standards and acceptable to the DENR. Any negative or adverse effect on the environment as a consequence of the project as proposed by the project proponent must be properly identified, including the corresponding corrective and mitigating measures.

7.1.2 The PBAC shall complete the evaluation of the Technical Proposals on or before _____ (within 30 calendar days from the deadline for the submission of bids).

7.1.3 Those bidders who failed the First Stage shall no longer be considered for the Second Stage and the PBAC shall immediately return their bid proposals (Second Package shall remain unopened) together with the reason for their failure in the First Stage.

7.2 Second Stage – Financial Evaluation

7.2.1 Only the Financial Proposals of those bidders who passed the First Stage evaluation shall participate in the Second Stage of the bid evaluation process.

7.2.2 The second envelope evaluation shall involve the assessment and comparison of the financial proposals of the bidders, based on the parameters and criteria for evaluation of financial component of the bids provided by PBAC.

7.2.3 A Filipino project proponent who submits an equally advantageous bid with exactly the same price and technical specifications that are equally advantageous as that of a foreign project proponent shall be given preference.

7.2.4 The second stage of the bid evaluation shall be completed by the PBAC within 30 calendar days from the date the first stage is completed.

7.3 Direct Negotiation

Direct negotiation shall be resorted to when there is only one complying bidder left as defined hereunder:

a. If after advertisement, only one project proponent submits Bids that are subsequently found by the PBAC to be complying.

b. If after advertisement, more than one project proponents submit Bids but only one is found by the PBAC to be complying. In such events however, any disqualified bidder may appeal the decision of the PBAC to the Local Chief Executive's Office within 15 working days from receipt of the notice of disqualification. The Local Chief Executive shall act on the appeal within 45 days from receipt thereof. The decision of the Local Chief Executive shall be final and executory.

7.4 Failure of Bidding

When no complying bids are received or in case of failure to execute the contract with a qualified and contracting bidder due to refusal of the latter, the bidding shall be declared a failure. In such cases, the project shall be subjected to a re-bidding.

7.5 Right to Reject All Bids

The PBAC reserves the right to reject any or all bids, waive any minor defects therein and accept offer most advantageous to the LGU.

Section 8 - AWARD

8.1 Recommendation to Award

Within 7 calendar days from the date the financial evaluation shall have been completed, the PBAC will submit to the LCE a recommendation of award. The PBAC will prepare and submit a detailed evaluation/ assessment report on its decision regarding the evaluation of the bids and explain in clear terms the basis of its recommendations.

8.2 Decision to Award

Within 7 calendar days from the submission by PBAC of the recommendation to award, the LCE shall decide on the award. The approval shall be manifested by signing and issuing the "Notice of Award" to the winning Project Proponent within 7 calendar days from approval thereof.

All unsuccessful bidders shall be informed in writing of the decision of the PBAC to award the project to the winning Project Proponent. Such decision shall be made available to the public when requested.

8.3 Contents of the Notice of Award

The "Notice of Award", which is issued by the LCE, shall indicate, among others, the following:

a. prescribed performance security

b. proof of commitment of the required equity contribution, as specified by the LGU:

   i. in the case where the Project Proponent is a corporation - e.g., treasurer's affidavit attesting to actual paid-up capital, subscription agreement(s) between a shareholder(s) of the Project Proponent and the Project Proponent itself covering said equity contribution, or shareholders agreement between and amongst 2 or more shareholders of the Project Proponent undertaking to contribute/subscribe the required equity contribution; or

   ii. in the case of a joint venture/consortium - an undertaking of the members thereof to infuse the required equity contribution to the joint venture/consortium.

c. proof of firm commitments from reputable financial institution to provide sufficient credit lines to cover the total estimated cost of the project

d. in the case of a joint venture/consortium, the agreement indicating that the members are jointly and severally liable for the obligations of the Project Proponent under the contract

e. such other conditions imposed by the LGU

Failure to submit the requirements within the prescribed 30-calendar day period will result in confiscation of the bid security. Within 7-calendar days upon receipt of the foregoing requirements for award, the LCE shall determine and notify the winning bidder of its compliance of all the conditions stated in the said notice.

8.4 Withdrawal of a Member

The withdrawal of any member of the joint venture or consortium prior to the actual award and/or implementation of the project could be a ground for the cancellation of the contract and forfeiture of the proponent's bid security. The LCE upon recommendation of the PBAC may, however, proceed with the award of the contract or the implementation of the Project if, upon its determination, he finds that the other members of the joint venture or consortium are still capable of successfully carrying out the project or that they have provided a suitable and acceptable substitute with equal or better qualifications.

Section 9 - EXECUTION OF CONTRACT

9.1 Period of Execution

Within 30 calendar days from receipt of NOA, the winning Project Proponent shall submit all requirements mentioned in Section 8.3.

In turn, within 7 calendar days from receipt by the winning bidder of the notice from the LGU that all conditions stated in the NOA have been complied with, the authorized signatories of the winning bidder and the LGU shall execute and sign the contract for the Project.

9.2 Responsibilities of the Winning Project Proponent

The winning Project Proponent shall prepare the final and detailed engineering designs and plans based on the prescribed minimum design and performance standards and specifications and submit the same to LGU.

The LGU shall review the detailed engineering designs and plans prepared by the winning Project Proponent and approve the same if found acceptable prior to actual project implementation. However, this approval notwithstanding, the winning Project Proponent shall be solely responsible for the integrity of the detailed engineering plans. Approval thereof shall not diminish nor transfer this responsibility to LGU.

The winning Project Proponent shall be responsible for obtaining the required clearances, building permits and other approvals, if any, from the other governmental agencies as may be required under existing laws, rules and regulations.

9.3 Failure to Enter into Contract with the LGU

In the event of refusal, inability or failure of the bidder with the lowest complying evaluated bid to enter into contract with the LGU within the time provided therefore, the PBAC concerned shall forfeit the bid security of the bidder. In such an event, the LCE upon recommendation of the PBAC shall consider the next lowest evaluated bid for award. If the same shall likewise refuse or fail to enter into contract with the LGU, the bid security of the bidder shall be forfeited and the LCE shall consider the next lowest bid, and so on until a contract shall have been entered into. In the event that the LGU is unable to execute the contract with any of the complying and qualified bidders due to the refusal of the latter, the Project may be subjected to a re-bidding.

Each unsuccessful bidder shall also be notified of the award through official notices/communications. NOA shall be made available to the public when requested.

Section 10 - APPROVAL OF CONTRACT

10.1 Contract Approval

The Contract shall be approved or disapproved by the Sanaggunian within 15 calendar days from the date the winning Project Proponent has signed the contract.

10.2 Notice to Proceed

Within 15 days from approval of the Contract by the Sanggunian, a Notice to Proceed shall be issued to the winning Project Proponent.

Section 11 - BID SCHEDULE

The Schedule of events in the bidding process for the Project is provided in the table below. Prequalified Project Proponents shall be notified on any change in the schedule through Bid Bulletins.

ACTIVITY	DURATION
1. Pre-Bid Conference	
2. Submission of Technical and Financial Bids and Opening of Technical Bids	
3. Technical Evaluation and Benchmarking	
4. Notification of Technical Evaluation Results	
5. Opening of Financial Envelopes	
6. Financial Evaluation	
7. Review of Evaluation Results by LGU-PBAC	
8. Issuance of Notice of Award	
9. Contract Signing	
10. LGU Sanggunian Approval of Contract	
11. Notice to Proceed	
12. Implementation	

Section 12 - INQUIRIES

All inquiries concerning this bid documents should be submitted in writing to the Chairman, PBAC and received at LGU on or before (date). Answers will be furnished to all Proponents in the form of bid bulletin within 10 working days from receipt of the inquiry. The PBAC shall not entertain inquiries that are not in writing and not addressed to the PBAC.

Part 2 - Draft PPP Contract

(The contents of this draft Contract may change depending on the needs and unique circumstances of each Project. LGUs are not precluded from inserting provisions it deems important or as needed)

KNOW ALL MEN BY THESE PRESENTS:

This Agreement ("AGREEMENT"), made and entered into this **<<(day/mo/yr)>>** at _____, Philippines, for the **<<Name of the Project>>** ("PROJECT") by and between:

<<NAME OF WINNING BIDDER>> (hereinafter referred to as "PROPONENT", a corporation duly organized and existing under Philippine laws, with principal place of business at **<<address>>**, represented herein by its President - CEO,

-and-

THE GOVERNMENT OF <<LGU Name>> hereinafter referred to as "LGU", with corporate powers granted under the Local Government Code of 1991 "LGC" and represented herein by its Local Chief Executive/Governor, **<<Name of Local Chief Executive>>**, his authority is conferred by the Local Sanggunian through SP Resolution No. ____, series of _____,

(The LGU and the PROPONENT collectively referred to hereinafter as the *"Parties"* and individually as a *"Party"*)

WITNESSETH:

WHEREAS, *(state the rationale for the project and the background of the project)*

WHEREAS, on **<<date>>**, the LGU obtained the approval of the _____ to develop and implement the Project under a **<<type of contractual arrangement>>** in line with RA 7718 (the BOT Law) and its IRR;

(Note: for the list of approving entity, please refer to Section 2.7.b of the IRR of the BOT Law)

WHEREAS, the PROPONENT has been selected by the LGU to undertake the Project on the terms and conditions set forth in this Agreement as a result of a competitive public bidding process conducted by the LGU under the applicable provisions of the BOT Law;

NOW, THEREFORE, for and in consideration of the above premises and the mutual obligations, commitments and undertakings assumed and accepted hereunder, the PARTIES agree as follows:

ARTICLE 1 - DEFINITION OF TERMS

- ***"Agreement"*** - refers to this Agreement including its relevant Annexes executed along with this Agreement, and such amendments as may be executed thereafter, in accordance with this Agreement.
- ***Type of Contractual Arrangement*** – (for definition, please refer to the IRR of the RA 7718 (BOT Law).
- ***"Contract Documents"***- shall be the documents referred to in Article 4 of this Agreement.
- ***"Design and Technical Specifications"*** – shall be the concept design, plans and technical drawing prepared by the LGU and provided in this Agreement as Annex A.
- ***"Dispute"*** – means any difference or disagreement of any kind whatsoever arising between the Parties in connection with, arising out of, or relating to the interpretation, implementation, breach, termination or validity of this Agreement.
- ***"Force Majeure"*** – is defined in Section 10.1 of this Agreement.
- ***"PROJECT"*** - the Project to be constructed, operated and maintained by the PROPONENT and transferred to the LGU after the Concession Period.

(The terms/items to be defined are not limited to those enumerated above. It may change and include other terms/ items depending on the needs of each Project)

ARTICLE 2 - THE PROJECT

Section 2.1 *Project Design* - The PROJECT shall involve the financing, design, construction, operation and maintenance of **<<name of the project>>**. The Design and Technical Specifications prepared by the LGU which shall be fully complied with by the PROPONENT is attached as ANNEX A.

Section 2.2 *Project Cost* - The total cost of the PROJECT is indicated in PROPONENT's Technical Proposal (ANNEX B).

Section 2.3 *Project Scope* - The PROJECT encompasses the following:
(Project scope may change depending on the needs and unique circumstances of each Project)

ARTICLE 3 - CONTRACTUAL ARRANGEMENT

Section 3.1 - The PROJECT shall be implemented through the **<<type of contractual arrangement>>** scheme in accordance with the provisions of RA 7718, otherwise known as the BOT Law and its IRR.

Section 3.2 - Under this arrangement/scheme, the PROPONENT, as private sector participant shall undertake the financing, construction, operation and management of the PROJECT and is allowed to recover its total investment, operating and maintenance costs, plus a reasonable return thereon indicated in the PROPONENT's Financial Model (ANNEX C) by the collection of fees or charges.

ARTICLE 4 - CONTRACT DOCUMENTS

Section 4.1 - The following documents, to be collectively referred to as the "Contract Documents", form an integral part of, and are hereby incorporated into, this Agreement:

Annex	A	-	Concept Design prepared by the LGU
Annex	B	-	PROPONENT's Technical Proposal
Annex	C	-	PROPONENT's Financial Proposal
Annex	D	-	Project Construction and Implementation Schedule

(may include other contract documents depending on the needs of each Project or as needed)

Section 4.2 - To the extent, if any, that there should be any irreconcilable conflict or discrepancy between the provisions of the Agreement and the Contract Documents, said provisions of the Agreement shall have precedence and shall govern.

ARTICLE 5 - UNDERTAKINGS OF THE PARTIES

Section 5.1 - The following shall be the obligations of the LGU:

1. It shall assist the PROPONENT in obtaining any and all Philippine governmental and or other authorizations, approvals, licenses, permits, and or consents which may be required and or necessary to enable the PROPONENT to perform its obligations under this Agreement;
2. It shall assist the PROPONENT in obtaining any and all Philippine governmental authorizations, approvals, licenses, permits, and or consents which may be required for the financing of this Project including without limitation any authorization, approval, license, permit, and or consent from the Bangko Sentral ng Pilipinas and or the Department of Finance;
3. It shall assist the PROPONENT in availing of any incentives or privileges or the like provided under Philippine law, including without limitation, the Philippine Omnibus Investments Code; and
4. It shall extend to the PROPONENT such assistance as may be necessary and indispensable for the early and expeditious completion of the PROJECT.

Section 5.3 – The following shall be the responsibilities of the LGU:

1. It shall monitor and exercise technical supervision over the PROJECT, including the right to inspect the PROJECT during its construction, testing and operation to determine whether the PROJECT is complying with all legal requirements and it is completed under the agreed engineering standards/specifications;
2. It shall hold free and harmless and defend the PROPONENT from any and all actions, claims, liabilities and suits that may arise in connection with the PROJECT; and
3. It shall prepare the Concept Design and Technical Specification of the PROJECT.

(state other obligations/responsibilities which are specific to each Project or type of contractual arrangement)

Section 5.4 - The following shall be the obligations of the PROPONENT:

1. It shall be responsible for the financing, development, construction, operation, maintenance and management of the PROJECT; The PROPONENT shall see to it that the PROJECT is in compliance with the technical and operating specifications as stated in the PROPONENT's Technical Proposal (ANNEX B);
2. It shall complete the PROJECT within the timeframe stated in the PROPONENT's Technical Proposal (ANNEX B) from receipt of the Notice to Proceed, save in case of valid extension/suspension of contract time granted and/or additional/extra work ordered to be done by the LGU outside of the requirements of the original plans and specification therefore;
3. It shall, at all times during the construction, testing, operation and maintenance of the PROJECT, comply with, and secure at its own cost all legal requirements, permits, consents and approvals;
4. It shall not make or suffer any alteration or changes in plans and specifications during the construction or alteration/changes in the completed structure during the operation period without the written consent of the LGU; The LGU in case of request for alteration/changes shall act on the same within _____ calendar days, otherwise the request shall be considered as approved; and
5. It shall operate and maintain the PROJECT based on accepted facility management practices and shall provide for repairs and replacement costs to ensure performance within the prescribed standards.

Section 5.5 – The following shall be the responsibilities of the PROPONENT.

1. Except in cases of Force Majeure, the PROPONENT, shall be responsible for any and all losses and damages to the PROJECT due to any cause or causes whatsoever, during the project implementation and shall not relieve the PROPONENT from any of its obligations under this Agreement;
2. It shall be responsible for all damages to any property belonging to LGU, private properties or the government, and except to the extent that such damages arise from the negligence of the LGU or its agents;
3. It shall be responsible for the death and/or injury to personnel of the LGU that may arise in connection with the execution of the Agreement;
4. It shall hold free and harmless and forever defend the LGU from any and all actions, claims, liabilities and suits, for losses and damages to properties of other contractors, if any, and/or third parties arising from the execution of the PROJECT and during the operation of the PROJECT;
5. It shall be responsible for its employees' strict observance of the laws of the Republic of the Philippines relevant to the execution of this Agreement. The PROPONENT shall execute the Agreement with due regard to safety against accidents to its employees and to the employees of the LGU at the work site, if any, and shall provide such machinery, guards, safe walkways and such other safety devices as may be needed for the prevention of accidents. The PROPONENT shall be responsible for the payment of all indemnities, including hospital and medical expenses, arising out of any labor accidents which may occur in the course of the project execution and for which PROPONENT may be responsible under PD No. 442 as amended by the Labor Code; and
6. It shall assume full responsibility for the costs arising from any adverse environmental effects or other impacts that may result from the construction of the PROJECT.

(state other obligations/responsibilities of the PROPONENT which are specific to each Project or type of contractual arrangement)

ARTICLE 6 - PERFORMANCE SECURITIES AND INSURANCES

Section 6.1 *Construction Security* - To guarantee the faithful performance by the PROPONENT of its obligations and duties under this Agreement, the PROPONENT shall put up a Construction Security, within the period and in the form and amount stipulated in the Notice of Award. The security may be in the form of cash, manager's check, cashier's check, bank draft or guarantee confirmed by a reputable local bank acceptable to the LGU, standby letter of credit issued by a reputable bank acceptable to the LGU, provided that if a letter of credit is issued by a foreign bank, it must be confirmed by a local bank or offshore banking unit, surety bond callable on demand issued by the GSIS, by surety or insurance companies duly accredited by the Office of the Insurance Commissioner, or a combination thereof, in accordance with the following schedules:

a. Cash, irrevocable letter of credit, bank draft – a minimum of two percent (2%) of the total Project Cost
b. Bank Guarantee - a minimum of five percent (5%) of the total Project Cost
c. Surety Bond – a minimum of ten percent (10%) of the total Project Cost

The Construction Security shall be released by the LGU after the issuance of the "Certificate of Completion and Acceptance" of the Construction works, and the acceptance by the LGU of the PROJECT as completed in accordance with the agreed standards and specifications, provided that there are no claims filed against the PROPONENT or its Contractor.

In the event the completion timetable for the PROJECT is extended in accordance with this Agreement, the term of the Construction Security shall be extended accordingly.

Section 6.2 *Operating Security* - The PROPONENT shall post an Operating Security in the amount of Php_____ in the form of cash or a standby letter of credit issued by a reputable bank acceptable to the LGU, simultaneously with the acceptance of the FACILITY and the release of the performance security to guarantee the operation of the PROJECT in accordance with the operating parameters and specifications under this Agreement. The Operating Security shall remain valid and in full force and effect for the duration of the Concession Period.

Section 6.3 *Failure to Post Performance Securities* - Failure of the PROPONENT to post any of the performance securities shall be sufficient ground for the LGU not to execute this Agreement. Should the LGU, under any of the conditions stipulated under Article 14, terminate this Agreement, the performance security not so released shall be forfeited in favor of the PROPONENT without any need of judicial action. The PROPONENT shall obtain the consent of the surety, if necessary, for any changes to this Agreement to ensure the effectivity of the performance securities submitted to the LGU.

Section 6.4 – *Warranty Security* – The PROPONENT shall at its own expense secure and post a Warranty Security to take care of any defect, hidden or otherwise, not noted during the PROJECT completion and those defects or deficiencies that may arise within a period of (1) year from the completion of the PROJECT. The Warranty Security shall be made effective immediately upon transfer of full legal ownership over the PROJECT in favor of the LGU.

Section 6.5 *Insurance* - In addition, to insure third parties of payment, in case damage or injury is done to their person or property during the course of the performance by the PROPONENT of its responsibilities hereunder, the PROPONENT shall put up bonds and insurance normally required in infrastructure PROJECTs, such as but not limited to contractor's all-risk insurance, third party liability insurance, motor vehicle liability insurance, workmen's compensation insurance. Certified copies of the policies and official receipts of such bonds and insurances shall be submitted to the LGU. These bonds and insurance shall preferably be procured from the Government Service Insurance System (GSIS), but if it is impractical to do that, then they shall be procured from an insurance or bonding company accredited by the Insurance Commission and acceptable to the LGU.

Section 6.6 *Insurance Proceeds* - The proceeds from insurance claims, except Third Party Liability Insurance and Workmen's Compensation Insurance, with respect to loss or other damage to the PROJECT, shall first be applied by the PROPONENT to the extent necessary to fully repair or restore the PROJECT to its previous operating condition, or to completely rebuild the PROJECT.

ARTICLE 7 - CONTRACT MANAGEMENT, MONITORING AND EVALUATION

Section 7.1 *Contract Management* - Within ____ calendar days from the date of the signing of this Agreement, each Party shall form a Contract Management Committee, which shall be responsible for monitoring, managing and evaluating the full implementation of the PROJECT. Within ____ calendar days from its creation, each Party shall immediately send written notice to the other naming its members to the Contract Management Committee.

Section 7.2 *Project Reports* - Within _____ calendar days from receipt of the notice referred to in Section 7.1, the Contract Management Body shall meet and agree on the form of the report, the method for monitoring and obtaining the information required, the Party responsible for monitoring and reporting on each of the indicators and the frequency that each indicator should be monitored and reported.

The Parties shall ensure that Project Report will contain the performance indicators to determine the PROPONENT's and LGU's compliance with their respective obligations under the Agreement, the major risk factors for the PROJECT, events and conditions that has occurred which materially affects the PROJECT and all other material information that may be included by the Parties.

Section 7.3 *Monitoring and Reporting Obligations* - The Parties shall establish appropriate monitoring and reporting systems to comply with their monitoring and reporting obligations agreed upon and embodied in the Project Report.

The Project Reports shall be prepared and submitted within ___ calendar days after the end of the calendar month to which they apply. Where a Project Report shows that the Project falls below the key performance indicators, the PROPONENT shall state that fact in the report with a full explanation of the reasons for the below-target performance and the steps that it has or will be taking to ensure that performance is improved to meet the standard.

Section 7.4 *Regular Meetings* - The Contract Management Committee of the Parties shall meet once a month or more frequently if necessary in order to discuss the progress of the PROJECT, any problems or issues in the implementation of the PROJECT and the lessons learned from the monitoring and management of the PROJECT.

Section 7.5 *Right of LGU to Monitor* - The LGU shall be entitled to inspect, check, test and monitor the PROJECT during the construction period and the operating period. The purpose of such monitoring shall be to determine whether the PROJECT are being designed, constructed, operated and maintained in accordance with the terms of this Agreement.

The PROPONENT shall allow the LGU or its duly authorized representatives to conduct such inspection and monitoring during normal business hours upon reasonable prior written notice to the PROPONENT. It shall ensure that the LGU or its agent or representative is given sufficient access to carry out the inspection. The monitoring and review shall be conducted in the presence of a duly designated representative of the PROPONENT.

ARTICLE 8 - PROPONENT'S WARRANTIES

Section 8.1 *Corporate Existence* - The PROPONENT warrants that it is a corporation or a partnership duly organized and validly existing under the laws of the Republic of the Philippines. It has all requisite power, authority and legal right to execute and deliver this Agreement and to perform its obligations thereunder; and has taken all appropriate and necessary corporate and legal action and obtained all necessary permits and approvals for the execution, delivery and performance of this Agreement and all other instruments, or documents contemplated hereunder.

Section 8.2 *Authorized Signatory* - The PROPONENT's signatory to this Agreement has full legal capacity and has been duly authorized by the Board of Directors of the PROPONENT to sign, execute and deliver this Agreement for and on behalf of the PROPONENT.

Section 8.3 *Validity and Enforceability* - This Agreement constitutes the legal, valid and binding obligation of the PROPONENT, enforceable against the PROPONENT in accordance with its terms. This Agreement is in satisfactory and proper legal form under the laws of the Republic of the Philippines.

Section 8.4 *Due Execution* - The execution, delivery and performance of this Agreement and the other documents herein referred to do not violate any provision of law, rule, regulation or order or decree of any court, tribunal or government authority, bureau or agency, or of the charter, by-laws or corporate rules of the PROPONENT, any corporation, or any contract or other undertaking to which the PROPONENT is a party.

Section 8.5 Know-how - The PROPONENT warrants that it has the know-how, resources, trained personnel and staff, technical, marketing and financial capabilities, as well as management expertise, to fulfill its duties and responsibilities hereunder, and implement the financing, design, construction, equipping, provisioning, maintaining, marketing and operating the PROJECT.

Section 8.6 *No Adverse Litigation* - There is no adverse litigation, arbitration, investigation or proceeding pending, or to its best knowledge threatened, against or affecting such Party that could reasonably be expected to materially adversely affect its ability to fulfill its obligations under this Agreement or that may affect the legality, validity, or enforceability of this Agreement.

Section 8.7 Corruption - The PROPONENT warrants that neither it, nor its representatives or agents, have offered any government officer or employee, national or local, any consideration or commission for its award of the Contract of this PROJECT nor has it exercised any corrupt, undue or unlawful influence, directly or indirectly through relatives within the third degree of consanguinity or affinity in securing this Agreement.

ARTICLE 9 - LGU WARRANTIES

Section 9.1 *Corporate Existence* - The LGU warrants that it is a duly organized and validly existing political subdivision and local government of the Republic of the Philippines and has all requisite power, authority and legal right to execute and deliver this Agreement, and to perform its obligations hereunder.

Section 9.2 *Due Execution* - The LGU has taken all appropriate legal and/or other action which may be required or appropriate to authorize the execution, delivery and performance of this Agreement and any and all other agreements, instruments or documents contemplated hereunder.

Section 9.3 *Validity and Enforceability* - This Agreement constitutes the legal, valid and binding obligation of the LGU, enforceable against the LGU in accordance with its terms. This Agreement is in satisfactory and proper legal form under the laws of the Republic of the Philippines.

Section 9.4 *No immunity* - The LGU further warrants that it is subject to the civil and commercial law in respect of its responsibilities under this Agreement and that it is not immune from suit, judgment or execution or any legal process in connection with said responsibilities. But nothing herein shall be considered as waiving the immunity of the State with regard to the assets and interests of the Republic of the Philippines.

ARTICLE 10 - FORCE MAJEURE

Section 10.1 *Definition of Force Majeure Event* - A "Force Majeure Event" means any event, condition, or circumstance and the effects thereof not within the reasonable control, directly or indirectly, of the Party affected, but only if and to the extent that:

a. such event, condition, or circumstance is not the direct or indirect result of the breach by such Party of any of its obligations under this Agreement or the fault or negligence of such Party, its Affiliates, or any person under the Party's or its Affiliates' reasonable control;
b. despite the exercise of reasonable diligence, such event, condition, or circumstance cannot be prevented, avoided, or removed by such Party; and
c. such event, condition, or circumstance has a material adverse effect on the ability of such Party to perform all or a material portion of any of its obligations under this Agreement, and such Party has taken all reasonable precautions, due care, and alternative measures in order to avoid or mitigate the effects of such event on such Party's ability to perform its obligations under this Agreement;

Section 10.2 *Exceptions* - Force majeure shall not include infrastructure or equipment failure due to ordinary wear and tear, or defects in design, inappropriateness or weakness in materials or supplies, unavailability of financing, or any other happenstance that a Party can reasonably be expected to effectively guard against or control.

Section 10.3 *Responsibilities of the Parties during Force Majeure Event* - A party invoking Force Majeure shall:

a. Notify the other party in writing by any means of communication as soon as reasonably possible of the date of commencement of such Force Majeure Event, the nature and expected duration thereof, and the actions to be taken to prevent or reduce the effects of such event. The notice shall be sent by such Party not later than _____ calendar days after the date on which such Party first gains knowledge of such Force Majeure Event. If it fails to deliver such notice in accordance with this provision, such Party shall not be entitled to invoke the benefits of this Section;
b. Continue performance of its obligations that are not affected by the occurrence of the Force Majeure; and
c. Resume performance of affected obligations after the Force Majeure or after the effects of Force Majeure no longer exists, whichever is earlier, and shall formally notify the other party of such resumption.

Section 10.4 *Mitigation* - Each Party shall exert all reasonable efforts in accordance with Prudent Utility Practice or other applicable standard to prevent or mitigate the consequences of the Force Majeure Event on the performance of its obligations under this Agreement. The Parties shall consult with each other in good faith and shall use all reasonable endeavors to agree on appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued implementation of the PROJECT. The Parties shall exert all reasonable efforts to resume the performance of their obligations as soon as practicable following the declaration of a Force Majeure Event.

Section 10.5 *Effect of Force Majeure Events* - The affected Party shall be excused from performance and shall not be in default of any obligation under this Agreement for so long as its failure to perform such obligation is due to a Force Majeure Event, provided that:

a. The affected Party makes continuous diligent efforts to prevent or mitigate the effects of the Force Majeure Event;
b. The Party claiming a Force Majeure Event shall not be entitled to suspend performance or be excused for delayed performance under this Agreement for any greater scope or longer duration than is required by the Force Majeure Event or the delay occasioned thereby ; and
c. Neither Party shall be relieved of or excused from its obligations under this Agreement solely because there may be increased costs or other adverse economic consequences incurred through the performance of such obligations.

ARTICLE 11 – DEFAULT

Section 11.1 *PROPONENT's Default* - The occurrence of any of the following shall constitute an event of default for the PROPONENT:

a. Failure to perform any of its obligation under this Agreement for a cause not attributable to force majeure, and such failure persists for more than ____ days;
b. Failure without justification to resume performance within _____ days after the force majeure that has prevented the PROPONENT from performing any other obligation hereunder has substantially ceased;
c. Deliberate material misrepresentation of any fact contained in its periodic reports to the LGU, or if it committed any deliberate falsity in his bid documents on which the LGU relied in giving it the contract award;
d. Filing of a voluntary or involuntary case or other proceeding by or against the PROPONENT seeking insolvency, bankruptcy, liquidation, reorganization, dissolution, winding up;
e. A pattern of continuing or repeated non-compliance, willful violation, or non-performance of other terms and conditions hereof including any material breach thereto, and the PROPONENT fails to remedy the same within ___ calendar days from notice thereof; and
f. Assignment or transfer without the prior approval of the LGU.

Section 11.2 *LGU's Default* - The occurrence of any of the following events shall constitute the LGU's Default:

a. LGU terminates, or cancels this Agreement without valid or justifiable cause;
b. Any representation or warranty made by the LGU and relied upon by the PROPONENT to its detriment turning out to be false in any material respect; and
c. Failure or refusal to perform any material covenant, agreement or obligation under this Agreement within _____ days after receipt by the LGU of a notice of default specifying the same, provided, however, that such period shall be extended if the failure or refusal is remediable but cannot reasonably be completed within _____ days and the LGU begins to diligently remedy such failure.

ARTICLE 12 - ASSIGNMENT, TRANSFER & OTHER CONVEYANCES

Section 12.1 *Assignment* - The PROPONENT may, with the prior written approval by the Local Chief Executive, with the concurrence of the Local Sanggunian, assign its rights, interest, benefits and obligations under this Agreement to any company or special purpose company or successor company or entity. The Assignee shall perform and comply with all its obligations and assume all the rights, interest, and benefits of the PROPONENT under this Agreement.

Section 12.2 Assignment Void - Any assignment or transfer without prior approval from the LGU shall be void and ineffectual.

Section 12.3 *Acceptance Tests and Procedures* – The Parties shall meet and agree on procedures, standards, protective settings and a program to be followed by the PROPONENT for the testing of facility in accordance with the agreed tests and test procedures set out in the Schedule (ANNEX D).

The PROPONENT shall give to LGU not less than ___ day notice of its intention to commence any testing of the facility. LGU and/or its expert shall be entitled to be present at any testing of the facility. Upon completion of any testing, the PROPONENT and the LGU shall jointly certify whether or not the facility has satisfied such test.

Section 12.4 *Transfer* – Prior to the end of the concession period, the PROPONENT shall arrange for the training of an adequate number of LGU personnel in relation to the operation of the PROJECT. On the transfer date, the PROPONENT shall transfer to the LGU (and shall execute such documents as may reasonably be considered necessary to effect such transfer), free from any lien or encumbrance created by the PROPONENT and without the payment of any compensation, all its right, title, and interest in and to the fixtures, fittings, equipment and all improvements comprising the PROJECT.

The PROPONENT shall also deliver to the LGU on such date such operation summaries/transfer notes, design drawings and other information as may be reasonably required by the LGU to enable it take over the PROJECT.

Section 12.5 *Buy-out* - Buyout shall take place under the following condition:
Change in Circumstances - In the event that as a result of any laws or regulation of the Republic of the Philippines, or any agency or other body under the control of the Government of the Republic of the Philippines, or any regional or municipal authority thereof, coming to effect after the date of this Agreement, or as a result of any such laws or regulations (including any official interpretation thereof which the PROPONENT has relied upon in entering into this Agreement) in force at the date hereof being amended, modified or repealed, the interest of the PROPONENT and/or the PROPONENT's financial rate of return (net of tax or other imposition, including, without limitation any withholding or remittance tax on the payment of dividends) on its investment is materially reduced, prejudiced or otherwise adversely affected (including without limitation, any restriction on the ability to remit funds in foreign currency outside the Philippines), or any changes which would drastically reduce the demand for the Project's services, then the Parties hereto shall meet and endeavor to agree to make amendments to this Agreement, and if after 90 days no such agreement has been reached, Buy-out Provision under this Section shall apply.

The LGU shall purchase all the PROPONENT's rights, titles and interests in PROJECT and thereupon all the PROPONENT's obligations hereunder shall cease. Provided, however, that the LGU and the PROPONENT shall first undergo arbitration pursuant to Article 13 (Dispute Resolution) prior to resorting to the buy-out option.

Section 12.6 *Buy-out Price* – The purchase price payable pursuant to the buy-out provision shall be Php_____.

ARTICLE 13 - DISPUTE RESOLUTION

Section 13.1 *Mutual Discussions* - In case of any dispute or controversy of any kind whatsoever between the Parties arising out this Agreement, said Parties shall first endeavor to resolve within _____ days such dispute by mutual discussion and amicable means between the President of the PROPONENT and the Local Chief Executive.

Section 13.2 *Arbitration* - Should the dispute (meetings) not be settled amicably by mutual discussion within ____ days from the initial meeting of the President of the PROPONENT and the LCE of the LGU, the dispute shall be finally and exclusively resolved by binding arbitration. The arbitration shall proceed in accordance with the provisions of the Arbitration Law of the Philippines, (Republic Act No. 876), in such place as the Parties may agree. While the dispute is being arbitrated, the performance by the Parties of their respective obligations shall not be suspended, unless otherwise declared by the arbitral tribunal or otherwise agreed by the Parties or unless the obligation to be performed is the very issue of the arbitration.

Section 13.3 *Expert Panel and Arbitral Award* - All expert panel and arbitral awards shall be in writing and shall state the reasons upon which they are based. The decision of the arbitral tribunal shall be final, binding and unappealable. The awards may include an award of costs, including reasonable attorneys' fees and disbursements. Judgments upon the awards may be entered by any court having jurisdiction thereof or having jurisdiction over the Parties or their assets.

ARTICLE 14 - CONTRACT TERMINATION

Section 14.1 *Right not to execute* - The Parties shall have the right not to execute the Agreement without resorting to legal proceedings in case of any substantial breach of conditions or obligations and responsibilities. A pattern of continuing or repeated non-performance, willful violation or non-compliance of the terms and conditions hereof will be deemed a fundamental breach of this Agreement.

Section 14.2 *Termination Procedure* - In case a Party commits an act constituting an event of default, the non-defaulting Party may terminate this Agreement by serving a written notice to the defaulting Party specifying the ground for termination and giving the defaulting Party a period of _____ days within which to rectify the default to the satisfaction of the non-defaulting Party. If the default is not remedied within this period to the satisfaction of the non-defaulting Party, then the latter will serve upon the former a written notice of termination indicating the effective date of termination.

Section 14.3 *LGU's Remedies* – Upon the occurrence of a PROPONENT's Default, the LGU may by Notice of Default, take on or more of the following actions:

a. Terminate this Agreement and enter into a franchise agreement with another Party for this PROJECT;
b. Take over the PROJECT and request the PROPONENT to assign all its right, title and interests to the PROJECT and under this Agreement to the LGU; or
c. Allow the PROPONENT's lenders/creditors to take over and proceed with the completion of the Project under the same terms and conditions of this Agreement.

Each right or remedy hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or current and hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the LGU of any one or more of any of such rights or remedies shall not preclude the simultaneous or subsequent exercise by the LGU of any or all other such rights or remedies

Section 14.4 *PROPONENT's Remedies* – Upon the occurrence of an LGU Default, the PROPONENT may by Notice of Default, take one or more of the following actions:

a. Terminate this Agreement and any other Agreement executed between the Parties in relation to the PROJECT;
   or
b. Any and all remedies and compensation available by law or in equity or by statute or otherwise.

Each right or remedy hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or current and hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the PROPONENT of any one or more of any of such rights or remedies shall not preclude the simultaneous or subsequent exercise by the PROPONENT of any or all other such rights or remedies

Section 14.5 *Survival of Termination Obligations* - For the avoidance of doubt, the respective obligations of the Parties in respect of the termination of this Agreement as set forth in this Article 14 shall survive and continue to be enforceable beyond the termination hereof.

ARTICLE 15 - GENERAL PROVISIONS

Section 15.1 *Effectivity* - This Agreement shall come into force and become effective upon and as of the date of the approval hereof by the authorized signatories of the LGU and the PROPONENT.

Section 15.2 *Entire Agreement* - This Agreement constitutes the entire agreement between the Parties with respect to the transactions contemplated herein. All prior discussions, understandings or arrangements between them prior to effective date, whether express or implied, concerning the PROJECT are superseded by this Agreement.

Section 15.3 *Waiver* - No provision in this agreement shall be considered waived by either Party unless such waiver is in writing and communicated to the other Party. The failure of any Party to insist on the strict performance of the obligation of the other shall not be considered a waiver of its right to do so.

Section 15.4 *Confidentiality* - Each Party shall hold in strict confidence from any other person all documents and information concerning any other Party furnished to it or its advisors, consultants, contractors, or agents by the other Party in connection with this Agreement or the transactions contemplated hereby.

Notwithstanding the foregoing, the confidentiality requirement shall not apply to such documents or information that were previously known by the Party receiving such documents or information, in the public domain and required by law to be disclosed to any person who is authorized by law to receive the same

Section 15.5 *Further Assurances* - The Parties will do, execute, and deliver, or will cause to be done, executed, and delivered, all such further acts and such other things as each Party may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the representations, warranties, and covenants of this Agreement.

The Parties further assure that they shall perform their obligations in a highly professional and diligent manner, with due efficiency and economy and timely execution of works and other obligations, in all respects with that degree of skill, diligence, prudence and foresight required from them, and with due attention to the need for fairness, openness and good faith and their dealings.

Section 15.6 *Severability* - The validity of the remaining articles, clauses, provisions, terms and parts of this Agreement shall not be affected by a court, administrative body, or other proceeding of competent jurisdiction deciding that an article, section, provision, term, or part of this Agreement is illegal, unenforceable, in conflict with any law, or contrary to public policy.

Section 15.7 *Language* - English is the governing language of this Agreement, which shall be interpreted in accordance with English usage. All documents, notices, waivers, and all other communications written or otherwise between the Parties in connection with this Agreement shall be in the English language.

Section 15.8 *Notice* - All notices or communications shall be made in writing and be sent to the address given hereunder:

For the PROPONENT	For the LGU
_____	_____
_____	_____

Said notice shall be considered given if delivered by registered mail with return card, or through an internationally or nationally recognized courier service with delivery receipt requested, or by hand delivery. If the notice or communication is faxed, it shall be confirmed in writing. The notice or communication shall be effective upon receipt.

A Party may change its address by giving the other Party written notice of such change, provided that any such change shall not be effective until notice of such change has been received by the other Party.

Section 15.9 *Amendment* - This Agreement may be amended or modified only in writing and signed by the Parties, provided that prior to signing, said proposed amendments shall be approved by the Board of the PROPONENT and the Local Sanggunian of the LGU.

IN WITNESS WHEREOF, the Parties, acting through their respective duly authorized representatives, have caused this Agreement to be signed under their respective names on the date and at the place first above-written.

LGU NAME
By:
Name: _____
Title: _____

[NAME OF WINNING BIDDER]
By:
Name: _____
Title: _____

APPROVED BY:
Local Sanggunian of _____
Resolution No. _____, series of _____.

ACKNOWLEDGMENT

Republic of the Philippines)
_____) S.S.

BEFORE ME, a Notary Public for and in _____, Philippines, on this _____day of _____, 200___, personally appeared (LGU's Representative) and (Winning Bidder's Representative), known to be the same persons who executed the foregoing **<<Type of Contractual Arrangement>>** for the **<<Name of the Project>** which instrument consists of _____ pages including the page on which this Acknowledgment is written, and signed at the left hand margin of each and every page by the parties executing this instrument and their witnesses, and sealed with my notarial seal and aforesaid parties acknowledged to me that the same is their free act and deed . The parties exhibited to me their competent evidence of identity, (govt.-issued ID presented and ID number) issued at _____on _____valid until _____and (govt.-issued ID presented and ID number) issued at _____on _____valid until _____, respectively.

(Sgd.)
Notary Public
Until _____
PTR No. _____
Issued at _____
On _____

Doc. No. _____;
Page No._____;
Book No._____;
Series of _____.

ANNEX A: Concept Design of the PROJECT
ANNEX B: PROPONENT's Technical Proposal
ANNEX C: PROPONENT's Financial Proposal
ANNEX D: Project Construction and Implementation Schedule

(may include other Contract Documents depending on the needs of each Project)

Part 3 – Bid Forms

BID FORM NO. 1 - BID LETTER

THE CHAIRMAN
Pre-qualification, Bids and Awards Committee
Name of Project_____
LGU Name_____

Gentlemen:

In accordance with the Bidding Document for the construction of the **<<Name of Project>>** on a **<<type of contractual arrangement>>** Scheme for the **<<LGU Name>>** the undersigned, having been authorized, as evidenced by a Special Power of Attorney, appended hereto as Annex _____, representing the bidder **<<(Name of Bidder)>>**,

a consortium whose members bind themselves together, a corporation/firm organized and existing under laws of _____, a partnership consisting of _____ with business address at _____, hereby bids to undertake the
<<Name of the Project>>

The Bidder also commits to undertake the Project in _____ (_____) calendar days, reckoned from the Effectivity Date of the Agreement.

Further, the Bidder agrees, upon receipt of the written Notice of Award, to execute the Agreement.

Enclosed is the Bidder's Proposal Bond in the sum of _____
(Words and Figures; State in U.S. Dollars or Philippine Pesos at BSP rates prevailing five (5) days before bid opening date)
in the form of _____ cash, _____ manager's check, _____cashier's check, _____ irrevocable standby letter of credit, callable on demand (Please check applicable form).

The BIDDER also agrees that if this bid proposal is accepted and the bidder fails to execute the Agreement within _____ calendar days from receipt of Notice of Award, the Proposal Bond accompanying this bid shall be forfeited in favor of "LGU" for such failure.

The bid shall be valid for no less than one hundred twenty (120) calendar days from the bid opening date.

The BIDDER warrants that no official or employees of the **<<LGU Name>>** has been employed or retained in the preparation of this Bid Proposal.

Very truly yours,

_____
Name of Project Proponent/BIDDER

_____

Business Address

By: _____

Name in Print and Signature

_____

Designation

WITNESSES:

_____	_____
Name in Print and Signature	Name in Print and Signature
_____	_____
Address	Address

BID FORM NO.2 - ACCEPTANCE OF CRITERIA AND WAIVER

REPUBLIC OF THE PHILIPPINES)
PROVINCE, LGU OF _____)S.S.

WAIVER

I, _____, President/General Manager of _____ _____, a corporation of duly registered in the Securities and Exchange Commission (SEC) with address at _____ after having been duly sworn in accordance with law, depose and say:

1. That I am duly authorized by the company I represent to enter into agreement with the Government of the Republic of the Philippines through the **<<LGU Name>>** in the pre-qualification and bidding for the **<<Name of Project>>**;
2. That pursuant to Section 5.6 of the Implementing Rules and Regulations of the Republic Act No. 7718, I hereby submit this WAIVER;
   a. I accept the prequalification and evaluation criteria established by the LGU-PBAC
   b. I waive my right to seek a writ of injunction or prohibition or restraining order against the LGU and/or its PBAC-ITP to prevent or restrain the prequalification process or any proceedings related thereto, the holding of a bidding or any proceedings related thereto, the negotiation of an award of the contract to successful bidder, and the carrying out of the awarded contract;
   c. This waiver, however, shall be without prejudice to the right of a disqualified or losing bidder to question the lawfulness of its disqualification or rejection of its bid by appropriate administrative or judicial processes not involving the issuance of a writ of injunction or prohibition or restraining order.

Done this _____ day of _____ 20__ in _____.

Affiant:

_____

SUBSCRIBED AND SWORN to before me this _____ day of _____ 200_ in _____ affiant exhibited to me this CTC No. _____ issued on _____ at __ _____.

Notary Public:

Doc. No. _____:
Page No. _____:
Book No. _____:
Series of 20__

BID FORM NO. 3 - STATEMENT OF BIDS

Name of Project_____
LGU Name_____

1.0 GENERAL

In accordance with the provision of the Bidding Documents for the **<<Name of Project>>**, and all attachments, exhibits and documents referred to therein, _____ hereby offers to finance and construct the **<<Name of Project>>** and operate and maintain it on behalf of the LGU in accordance with provision set forth herein.

BIDDER understands that the LGU shall rely on the following representations in evaluating and ranking the Bids and that inability of the BIDDER to substantiate the basis for any representation may result in adjustment of his rating, or in the event of the misrepresentation, disqualification from the bid.

BIDDER understands that this Bid shall be incorporated directly into and made part of the Agreement. The Bid and other guarantees shall constitute material terms of the Agreement.

2.0 PROJECT DESCRIPTION

The BIDDER warrants the financing and construction the **<<Name of Project>>** on a **<<type of contractual arrangement>>**, assuming cost overruns, delays and specified performance risk, taking into consideration the design issued with the Bidding Documents, to operate and maintain the facility/project for cooperation period of _____ years and turn over to the LGU after the specified cooperation period.

Guaranteed Construction Period: _____ (Number) Years/Months.
The Bidder warrants to complete the construction of the project on or before _____, 20__.

Guaranteed Date of Start of Commercial Operation:

(indicate each major component of the Project)

3.0 PROPOSAL BOND

As required by the LGU, upon submission of the Bid, BIDDER shall post with LGU a Proposal Bond in the amount specified in the Instructions to Bidders in US $ or its equivalent in the Philippine Pesos at the BSP exchange rate prevailing five (5) days before bid opening date.

Proposal Bond:

_____

(State Amount)

_____

(Form of Security)

_____

(Bonding Company)

_____

(Bonding Number)

_____

(Validity Period)

4.0 BIDDER'S CAPITALIZATION AND ORGANIZATION

List below as participants and/or other interested parties in the organization and their equity holdings:

NAME OF PARTICIPANT	PARTICIPATION*	SHARE OF TOTAL EQUITY (%)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

** Refers to participation as in "Principal Sponsor", "Consultant", "Contractor", "Operator", "Financier", "Equipment Supplier", etc.*

List below the officials of the organization and their company affiliations. In case of a consortium, this refers to the Board of Directors of the Principal Sponsor.

MEMBERS OF THE BOARD OF DIRECTORS:

NAME	COMPANY
_____	_____
_____	_____
_____	_____
_____	_____

CORPORATE OFFICIALS:

NAME	POSITION
_____	_____
_____	_____
_____	_____

5.0 NOTICES

Communications with Project Proponent regarding this Bid should be directed to:

Name : _____

Title : _____

Address : : _____

_____

_____

Telephone No. : _____

Telefax No. : _____

6.0 EXCEPTIONS

Deviations/Clarifications (if any) to the Bid Documents and Agreement are attached to this Bid. If no deviations/ clarifications are presented, please indicate.

_____ Deviations/Clarifications presented

_____ No deviations/clarifications presented

7.0 CERTIFICATION

BIDDER certifies that all of the statements and representations made in this Bid including exhibits, documents and other attachments are true to the best of the BIDDER's knowledge and belief, and agrees to the bound by representations, terms, and conditions in the Bidding Documents and the Agreement.

Submitted by:

_____

Name of Project Proponent/BIDDER

_____

Name and Signature of Authorized Representative

_____

Designation

_____

Date Signed

WITNESSES:

_____	_____
(Name and Signature)	(Name and Signature)
_____	_____
(Address of Witness)	(Address of Witness)

BID FORM NO. 4 - DEVIATIONS/CLARIFICATION SHEETS

Bidders are not permitted to deviate from the principal requirement of the Bid Documents and the Agreement. Bids exhibiting non-conformance shall be rejected. However, minor deviations from the Bidder's standard practice and/or advantageous to the LGU will be allowed if such deviations are within standard practice and/or advantageous to the LGU.

Such deviations shall be clearly detailed in the form attached (additional sheets shall be used as necessary) and the entries shall be referred to the Bid Documents and/or the Agreement, Section or Clause Number to which they refer.

Deviations and clarifications not submitted in the specified manner may be rejected.

CONFORME: _____

BID FORM NO. 5 - PRESENTATION OF DEVIATIONS/CLARIFICATION FROM THE BID DOCUMENT/DRAFT AGREEMENT

SECTION/ CLAUSE NO.	TEXT	BIDDER'S PROPOSAL

BID FORM NO. 6 - BIDDERS PROPOSED TARIFF/RATE SCHEDULE

(To be included in Second Envelope)

Bidders are to complete this form as part of their proposal. This form is to be included in the second envelope marked "FINANCIAL PROPOSAL". (The presentation must contain the discounted tariff/rate at the date of submission of the bids for the project in its entirety or for its component parts as may be required in the bid documents).

Pro Forma
(Name of Surety Company)
(Office Address)
Bond Number _____

BIDDER'S BOND
FOR PROJECT:_____
_____

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, duly organized and existing under the laws of the Republic of the Philippines, with office address at _____ , as the Bidder, hereinafter called the PRINCIPAL and _____, duly organized and existing under the laws of the Republic of the Philippines, with office address at _____, hereinafter called the SURETY are held firmly bound unto the **<<LGU Name>>** hereinafter called the OBLIGEE, in the sum of PESOS _____ (P_____), Philippine Currency, callable on demand for the payment of which sum, well and truly to be made, we bid ourselves, our successor and assigns, jointly and severally and firmly by these presents.

WHEREAS, the condition of the aforementioned OBLIGEE require the BIDDER to submit a bond for the bid for the above project;

WHEREAS, the PRINCIPAL agree to comply with all the terms and conditions of the said bid with the aforementioned OBLIGEE;

NOW AND THEREFORE, the conditions of this obligation are such that if the above bonded PRINCIPAL shall, in case he becomes the successful Bidder in the said bid mentioned above, accept a contract with the said OBLIGEE under the terms and conditions of said bid, then this obligation shall be null and void; otherwise it shall remain in full force and effect for a period of one hundred twenty (120) calendar days following the opening of bids.

WITNESS OUR HANDS AND SEALS this __day of _____, 20__ at _____, Philippines.

PRINCIPAL	SURETY
By:	By:
_____	_____

SIGNED IN THE PRESENCE OF:

_____ _____

GLOSSARY OF TERMS

CASH FLOW - A financial statement showing the cash generated and disbursed by a project. Net cash flow is reported profit plus (i) depreciation, (ii) depletion and capital expenditures, and (iii) amortization. This is a measure of the company's liquidity, and alternatively can be looked at as consisting of net income (earnings) plus noncash expenditures (such as depreciation charges).

CONSTRUCTION - Refers to new construction, rehabilitation, improvement, expansion, alteration, and related works and activities including the necessary supply of equipment, materials, labor and services and related items needed to build or rehabilitate an infrastructure or development facility.

CONTRACTOR - Refers to any entity accredited under Philippine laws which may or may not be the project proponent and which shall undertake the actual construction and/or supply of equipment for the project.

CONTRACTUAL ARRANGEMENT - Refers to any of the following contractual arrangements or schemes, as well as other variations thereof as may be approved/authorized by the President, by which infrastructure and/or development projects may be undertaken pursuant to the provisions of the IRR of RA 6957 as amended by RA 7718.

BUILD-AND-TRANSFER (BT) - A contractual arrangement whereby the project proponent undertakes the financing and construction of a given infrastructure or development facility and after its completion turns it over to the government agency or local government unit concerned, which shall pay the proponent on an agreed schedule its total investment expended on the project, plus a reasonable rate of return thereon. This arrangement may be employed in the construction of any infrastructure or development projects, including critical facilities which, for security or strategic reasons, must be operated directly by the Government.

BUILD-LEASE-AND-TRANSFER (BLT) - A contractual arrangement whereby a project proponent is authorized to finance and construct an infrastructure or development facility and upon its completion turns it over to the government agency or. Local government unit concerned on a lease arrangement for a fixed period after which ownership of the facility is automatically transferred to the government agency or local government unit concerned.

BUILD-OPERATE-AND-TRANSFER (BOT) - A contractual arrangement whereby the project proponent undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. .The project proponent operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the project proponent to recover its investment, and operating and maintenance expenses in the project. The project proponent transfers the facility to the government agency or

local government unit concerned at the end of the fixed term which shall not exceed 50 years. This shall include a supply-and-operate situation which is a contractual arrangement whereby the supplier of equipment and machinery for a given infrastructure facility, if the interest of the Government so requires, operates the facility providing in the process technology transfer and training to Filipino nationals.

BUILD-OWN-AND-OPERATE (BOO) - A contractual arrangement whereby a project proponent is authorized to finance, contract, own, operate and maintain an infrastructure or development facility, in which the proponent is allowed to recover its total investment, operating and maintenance costs plus a reasonable return by collecting tolls, fees, rentals or other charges from facility users. Under this project, the proponent which owns the assets of the facility may assign its operation and maintenance to a facility operator.

BUILD-TRANSFER-AND-OPERATE (BTO) - A contractual arrangement whereby an Agency/LOU contracts out the building of an infrastructure facility to a private entity such that the contractor builds the facility on a mm-key basis, assuming cost overruns, delays, and specified performance risks. Once the facility is commissioned satisfactorily, title is transferred to the implementing agency. The private entity, however, operates the facility on behalf of the implementing agency under an agreement.

CONTRACT-ADD-AND-OPERATE (CAO) - A contractual arrangement whereby the project proponent adds to an existing infrastructure facility which it is renting from the Government and operates the expanded project over an agreed franchise period. There may or may not be a transfer arrangement as regards the added facility provided by the project proponent.

DEVELOP-OPERATE-AND-TRANSFER (DOT) - A contractual arrangement whereby favorable conditions external to a new infrastructure project to be built by the project proponent are integrated into the arrangement by giving the same the right to develop adjoining property, and thus, enjoys some of the benefits the investment creates such as higher property or rent values.

REHABILITATE-OPERATE-AND-TRANSFER (ROT) - A contractual arrangement whereby an existing facility is turned over to the private sector to refurbish, operate and maintain for a franchise period, at the expiry of which the facility is turned over to the Government. The term is also used to describe the purchase of an existing facility from abroad, importing, refurbishing, erecting and consuming it within the host country.

REHABILITATE-OWN-AND-OPERATE (ROO) - A contractual arrangement whereby an existing facility is turned over to the private sector to refurbish and operate with no time limitation imposed on ownership. As long as the operator is not in violation of its franchise, it can continue to operate the facility in perpetuity.

DEVELOPMENT PROGRAM - Refers to national, regional or local government plans or programs included in, but not limited to, the Medium-Term Philippine Development Plan, the Regional Development Plans and Local Development Plans.

DIRECT GOVERNMENT GUARANTEE - Refers to an agreement whereby the Government or any of its Agencies/LGUs assume responsibility for the repayment of debt directly incurred by the project proponent in implementing the project in case of a loan default.

ECONOMIC INTERNAL RATE OF RETURN (EIRR) - The rate at which the present value of the net economic benefits from a project over a specific period of operation equals the economic project costs. The project's EIRR is generally compared with a hurdle rate as a consideration to continue developing and/or implementing the project.

FACILITY OPERATOR - Refers to a company registered with the Securities and Exchange Commission, which may or may not be the project proponent, and which is responsible for all aspects of operation and maintenance of the infrastructure or development facility, including but not limited to the collection of tolls, fees, rentals or charges from facility users.

FINANCIAL INTERNAL RATE OF RETURN (FIRR) – The rate at which the net cash inflows of a project are discounted so that their total net present value is equal to the total project cost. A project's FIRR is generally compared with a hurdle rate, sometimes determined as the long term cost of capital, as a consideration to continue pursuing the project.

GOVERNMENT UNDERTAKINGS – Refers to any form of contribution and/or support provided under Rule 13 of the IRR of RA 6957 as amended, e.g. cost sharing, credit enhancements, which the Government may extend to the project proponents under any of the contractual arrangements authorized under the IRR.

ICC – Refers to the Investment Coordination Committee of the National Economic and Development Authority (NEDA) Board.

IRR – Shall mean the Implementing Rules and Regulations of Republic Act No. 6957, as amended by Republic Act No. 7718.

LIST OF PRIORITY PROJECTS – Refers to the list of private sector infrastructure or development projects approved in accordance with Sections 2.6 and 2.7 of the IRR.

LOCAL GOVERNMENT UNITS (LGU) – Refers to provincial, city and/or municipal government entities.

NEGOTIATED CONTRACT – Refers to contracts entered into by the Government for convenience even if broader tendering would have been possible. This type of contract may be resorted to only in cases prescribed under Rule 10 of the IRR.

NET PRESENT VALUE (NPV) – The difference between the net cost inflows of a project discounted at a given rate less the cost of the project. The decision rate for the NPV criterion is to accept projects with NPV greater than or equal to zero.

PREQUALIFICATION, BIDS AND AWARDS COMMITTEE (PBAC) – The PBAC for LGUs has the following members:

- City or municipal Local Chief Executive or Governor as Chairman
- The Chairman of the appropriations committee of the sanggunian concerned
- A representative of the minority party in the sanggunian concerned, if any, or if there be none, one chosen by said sanggunian from among its members
- The local treasurer
- Two representatives of non-governmental organizations that are represented in the local development council concerned, to be chosen by the organizations themselves
- Any practicing certified public accountant from the private sector, to be designated by the local chapter of the Philippine Institute of Certified Public Accountants, if any
- Representatives of the Commission on Audit shall observe the proceedings of such committee and shall certify that the rules and procedures for prequalification, bids and awards have been complied with. The PBAC can have as many as 10 members.

PRIVATE SECTOR INFRASTRUCTURE OR DEVELOPMENT PROJECTS - The general description of infrastructure or development projects normally financed and operated by the public sector but which will now be wholly or partly implemented by the private sector, including but not limited to, power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications, railroad and railways, transport systems, land reclamation projects, industrial estates or townships, housing, government buildings, tourism projects, public markets, slaughterhouses, warehouses, solid waste management, information technology networks and database infrastructure, education and health facilities, sewerage, drainage, dredging, and other infrastructure and development projects as may otherwise be authorized by the appropriate agency. Such projects shall be undertaken through contractual arrangements as defined herein, including on variations that may be approved by the President of the Philippines.

PROJECT PROPONENT - Refers to the private sector entity with contracted responsibility for the project and which has an adequate base to implement said project consisting of equity and firm commitments from reputable financial institutions to provide, upon award, sufficient credit lines to cover the total estimated project cost.

PUBLIC UTILITY PROJECTS - Refers to projects including public roads and thoroughfares, railways and urban rail mass transit, electricity and gas distribution systems, city and municipal water distribution and sewerage systems, and telecommunication systems serving the general public, and such other public services as defined under the Public Services Act, as amended.

UNSOLICITED PROPOSALS - Refers to such private sector infrastructure or development projects which may be entered into by an Agency/LGU subject to the requirements/conditions prescribed in Rule 11 of the IRR of RA 6957 as amended by RA 7718.

Developing Public-Private Partnerships in Local Infrastructure and Development Projects

A PPP MANUAL FOR LGUs

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